# PRIVY COUNCIL DIGEST

(1836 - 1930)

BY

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VOLUME II.

I-Z

THE MADRAS LAW JOURNAL OFFICE,
MYLAPORE, MADRAS.
1930.

# THE PRIVY COUNCIL DIGEST

## VOLUME II.

#### IMMOVABLE PROPERTY.

-See Under Property-Immovable Property.

#### IMPARTIBLE ESTATE.

See HINDU LAW-IMPARTIBLE ESTATE.

#### IMPRISONMENT.

What amounts to-Loss of freedom-Sufficiency of -Actual detention and complete loss of freedom-Necestity.

In the leading case of Bird v. Jones, Coleridge, J. said: "Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom; it is one part of the definition of freedom to be able to go whichersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own." Williams, J. speaks of imprisonment a being "entire restraint," and Pattison, J. adds, "imprisonment is, as I apprehend, a total restraint of the liberty of the person for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him (158). (Lord Macnaghten.) SYED MAHAMAD YUSU-UD-DIN v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1903) 30 I. A. 154=

30 C. 872 (879)=7 C. W. N. 729= 5 Bom. L. R. 490=8 Sar. 503.

-Bail-Person on-If still under imprisonment.

The question is: Is a prisoner who has been released on ball under imprisonment still so long as he is out on bail?

It was said that the imprisonment continued until the warrant to arrest the appellant was set aside. So long as the restrain of ball lasted—and it may be taken that it lasted until the warrant was set aside—the appellant, it was

## IMPRISONMENT-(Centd.)

argued, was not a free man; he was even liable to be actually imprisoned through the action of his surety, or possibly by reason of the intervention of the Government.

All this may be very true. But no authority was cited in support of the contention. The whole weight of authority is the other way. Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment (158). The appellant's imprisonment did not last one minute after he was liberated on bail. The very object of granting bail was to relieve him from imprisonment (158). (Lord Macnoghten.) SYED MAHAMAD YUSUF-UD-DIN 2. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1903) 30 I. A. 154 = 30 C. 872 (879) = 7 C. W. N. 729 = 5 Bom. L. R. 490 = 8 Sar. 503.

——Contract by person under. See CONTRACT—IM-PRISONMENT.

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#### INAM.

ALTUMGAH INAM.
AMARAM GRANT.
DESAI—INAM VILLAGE OF.
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GRANT IN.
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## Altumgah Inam.

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-See UNDER AMARAM GRANT.

## Desai-Inam village of.

- Minor inams in-Kadim or judid-Eridence. See DESAI-INAM VILLAGE OF-MINOR INAMS IN-KADIM OR JADID. (1928) 56 I. A. 44 = 53 B. 222.

and Jadid inams-Distinction. See DFSAI-INAM VILLAGE OF-MINOR INAMS IN-RESUMPTION OF.

## (1928) 56 I. A. 44 = 53 B. 222.

-Shet sannadis in-Services to be rendered to Desai by-Personal services generally or services connected with administration of Inam village-Evidence. See DESAI-INAM VILLAGE OF-SHET SANNADIS IN.

(1928) 56 I. A. 44 = 53 B. 222.

## Dharmadaya Inam.

-Grant of -Nature of.

The grant was made to B as "inam Dharmadaya" and was to be hereditary. The signification of such a grout is that it was made on grounds of religion, and not on political grounds. The mere fact that in occasional correspondence the grant is referred to as "jagir" or "saranjam", i.e., political, cannot derogate from the effect of the language of the grant itself. (Viscount Haldaue.) MAHARAJA OF KOLHAPUR P. BALA MAHARAJ.

(1923) 50 I.A. 308 (322) = 48 B. 1 = 33 M. L. T. 378 = (1923) M. W. N. 633 = 26 Bom. L. R. 252 = 28 C. W. N. 906 = 77 I. C. 100 = A. I. B. 1923 P. C. 194.

## Grant in.

ESTATE CONVEYED UNDER-EVIDENCE.

ESTATE CONVEYED UNDER-GUIDANCE AS TO-ENG-LISH RULES AS TO REAL PROPERTY NOT A.

HEIRS IN-FEMALE HEIRS IF INCLUDED.

HEREDITARY VILLAGE OFFICER-MAINTENANCE OF-PROPERTY LIABLE FOR-GRANT BY GOVERN. MENT IN INAM OF.

LAND ITSELF GRANTED UNDER-EXTENT OF IN-TEREST PASSING IN CASE OF.

LAND REVENUE ONLY OR LAND ITSELF CONVEYED

MALE DESENDANTS.

MELWARAM ONLY OR KUDIVARAM ALSO CONVEYED MINERALS.

INAM-(Centa),

Grant in-(Contd.)

QUARRIES IN ESTATE-GRANTFE'S RIGHT IN AND TO

RESUMPTION OF -NATURE OF -ACT OF STATE. ESTATE CONVEYED UNDER-EVIDENCE.

- I nam proceedings - Land Acquisition proceedings-Value of-Terms of original grant known.

Though the extract from the Inam register, the Regulations, Acts and Standing Orders relating to Inams and a land acquisition preceeding, if they stood alone might well be urged as evidence of what passed under the original grant, they lose their evidentiary value when evidence of the terms of the original grant itself is forthcoming (66). (Sir Lawrence Jenkins.) SECRETARY OF STATE FOR INDIA IN COUNCIL P. SRINIVASA CHARIAR.

(1920) 48 I. A. 56 = 44 M. 421 (430) = (1921) M. W. N. 111=29 M. L T. 181= 19 A. L. J. 201 = 3 U. P. L. R. (P.C.) 43 = 25 C. W. N. 818 = 13 L. W. 592 = 33 C. L. J. 380 = 60 I. C. 230 = 40 M. L. J. 262.

ESTATE CONVEYED UNDER-GUIDANCE AS TO-ENGLISH RULES AS TO REAL PROPERTY NOT A.

The grant was of a village in inam and the rules of English law as to real property in England can afford no guidance as to what passed under such a grant (65). (Sir Laturence Jenking.) SECRETARY OF STATE FOR INDIA I COUNCIL P. SRINIVASA CHARIAR.

(1920) 48 I. A. 56=44 M. 421 (429)= (1921) M. W. N. 111 = 29 M. L. T. 181 = 1 19 A. L. J. 201 = 3 U.P.L.R. (P.C.) 43 = 13 L. W. 592=25 C. W. N. 818= 33 C. L. J. 380 = 60 I. C. 230 = 40 M. L. J. 262.

-See also Cases under GRANT-INDIAN GRANT-ESTATE PASSING UNDER.

# HEIRS IN-FEMALE HEIRS IF INCLUDED.

-Grantee member of community in which female inheritance is possible-" Heirs"-Meaning of-Female heir if included.

If the word "heirs" is intented to be limited either to the male or female line, it must be done so in direct terms, or by necessary implication; and in the absence of that limitation there is nothing where female inheritance is possible to prevent the female being an heir equally with the male.

Held, accordingly, that, under an Inam grant to a Mahomedan by which the succession was limited to direct lineal heirs, female heirs were entitled to inherit equally with male INAM-(Contd.)

Grant in-(Contd )

HEIRS IN-FEMALE HEIRS IF INCLUDED-(Contd.)

heirs. (Lord Buckmaster.) MIR SARDAR ALI P. MIRZA (1929) 31 L. W. 304 = MAKSUDALI BEG. 1930 A. L. J. 68 = 34 C. W. N. 208 =

A. I. R. 1930 P. C. 41 = 58 M. L. J. 125.

HEREDITARY VILLAGE OFFICER-MAINTENANCE OF-PROPERTY LIABLE FOR - GRANT BY GOVERN-MENT IN INAM OF.

-Effect on its liability for maintenance.

The plaintiffs-respondents brought the suit out of which the appeal arose to recover from the appellants, the owners of the village of D, the amount of the arrears of certain hereditary rights of office, alleged to be due to the plaintiffs

from the appellants.

The plaintiffs' suit was founded on the allegation that they were the hereditary Mujoomdars. Paick, and Mehta of a pergunna, and that the owners of the village of D which was situate within the pergunna were bound to pay the hereditary Mujoonidars and their officers the annual sum of Rs: 56; that the village of D had in the year 1803 been granted by the Governor-in-Council to the father of the appellants; and that neither the appellants' father nor the appellants who succeeded to the village as his heirs had paid any part of the hereditary or customary dues.

The appellants pleaded in defence a claim of redemption from the payment of all customary dues, by virtue of the grant of the village by the Government to their father in

Held that the grant of the village, in inam by the Government, could not deprive the Mujoomdars of their hereditary rights (33). (Mr. Justice Erskine.) BEEMA SHUNKER P. JAMAS-JEE SHAPOR-JEE.

(1837) 2 M. I. A. 23=5 W. B. P.C. 121-1 Suth. 84-1 Sar. 149.

LAND ITSELF GRANTED UNDER-EXTENT OF INTEREST PASSING IN CASE OF.

-- Test. See INAM-GRANT IN-LAND REVENUE ONLY OR LAND ITSELF CONVEYED UNDER.

(1920) 48 I. A. 56 (65) = 44 M. 421 (429). LAND REVENUE ONLY OR LAND ITSELF CONVEYED

UNDER.

-Grant of land iiself-What interest passes under-Test.

The grant was of a village in inam. A grant of this description may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. (Sir Lawrence Jenkins.) SECRETARY OF STATE FOR INDIA (1920) 48 I. A. 56 (65)= t. SRINIVASA CHARIAR.

44 M. 421 (429)=(1921) M. W. N. 111= 29 M. L. T. 181 = 19 A. L. J. 201 = 25 C. W. N. 818 -3 U. P. L. R. (P.C.) 43=13 L. W. 592 33 C. L. J. 380 = 60 I. C. 230 = 40 M. L. J. 262.

## MALE DESCENDANTS.

-Grant confined to-Female descendants-Right of. to share in grant-Berar Inam Rules-Scope and Effect

The Berar Inam Rules lay down the conditions which are usually to accompany an inam, but they contain nothing to prevent Government from altering or modifying any of the conditions in the case of any particular grant. And where the right of inheritance is by the Inam certificate confined to a particular class of descendants which in its exclusion of is no reason why the grant in these terms should not have the meaning of S. 3, sub-S. 2 of the Estates Land Act,

INAM-(Contd.)

Grant in-(Cont./.)

MALE DESCENDANTS-(Contd).

effect (301-2). (Lord Blancsburgh.) SUBHAN ALI 7. (1925) 52 I.A. 294 = 52 C. 971 = IMAMI BEGUM. 23 A.L.J. 667 = 88 I.C. 347 = (1925) M.W.N. 535 -21 N.L.R. 117 - 30 C.W.N. 122 = A.I.R. 1925 P.C. 184 = 50 M.L.J. 136 (141).

-Grant to a person and his-Succession of each male descendant under-Re-grant by Government or continu-

ance of old grant.

Under an Inam grant by Government "to be continued rent-free in perpetuity to present holder and hls male descendants," the succession of each male descendant of the grantee to the inam does not involve a re-grant by Government. It is merely a continuance of the grant to the descendant in accordance with its originally declared terms (300-1). (Lord Blancsburgh.) SUBHAN ALI P. IMAMI (1925) 52 I.A. 294 - 52 C 971 -BEGUM.

23 A.L.J. 667 - 88 I.C. 347 - (1925) M.W.N. 535-21 N.L.R. 117 = 30 C.W.N. 122 -A.I.R. 1925 P.C. 184 - 50 M.L.J. 136 (142).

MELVARAM ONLY OR KUDIVARAM ALSO CONVEYED UNDER.

Evidence-Oakes' Inam register-Value of.

The entry in Mr. Oakes' inam register affords conclusive evidence that the grant of the agraharam village by the Reddi King was a grant not only of the revenue but of the soil of the village (217). (Sir John Edge.) SURYANA-(1918) 45 I. A. 209= RAYANA P. PATANNA.

41 M. 1012 (1020-1) = 29 C.L.J. 153 -(1918) M.W.N. 859 = 25 M.L.T. 30 = 23 C.W.N. 273 = 9 L.W. 126 - 21 Bom. L.R. 547 - 48 I.C. 689 -36 M.L.J. 585.

-Evidence as to-Cumulative effect of to be consider:d-Piccemcal consideration, improper.

The District Munsif held that an inam grant of an agraharam was a grant of the melvaram only, relying on 4 main points. The High Court reversed him and held that the document was equally consistent with a grant of both the varams. The learned Judges did so, dealing with each of the points relied upon by the Munsif separately, and finding the points inconclusive as to each of them.

Held, that the High Court's mode of treating the evidence was faulty, inasmuch as it ignored the weight which was obtained from the effect of the whole. (Lord Atkin.) SEETHAYYA 2. SUBRAMANYA SOMAYAJULU.

(1929) 52 M. 453 - 29 L.W. 804 - 33 C.W.N. 578 -A.I.B. 1929 P.C. 115 - 56 M.L.J. 730 (738).

-Kudivaram-Grant also of-Evidence showing.

In a case in which the question was whether a grant under which the plaintiff held the suit a graharam village was a grant of its revenue only, or whether it was a grant of the preprietary right in the village, that is, of the soil of the village, the original grant itself, which was of 1373, was not forthcoming. But that grant had been recognized and confirmed by the British Government, Mr. Oakes' inam register prepared in pursuance of S. 15 of Regulation 31 of 1802 showed that the whole of the suit agrabaram village had been granted by Sri Madana Veraa Reddi to N, and had been enjoyed by his successors in title for 429 years. It was not proved, nor was there any evidence to suggest, that at the date of the grant there were any tenants in the village holding lands with any rights of occupancy by cus tom or otherwise.

Held, reversing the courts below, that the grant under which the plaintiff held was not a grant of the revenne only of the village, that it was therefore not an "estate" within INAM-(Contd.)

Grant in- (Contd.)

MELVARAM ONLY OR KUDIVARAM ALSO CONVEYED UNDER-(Contd.)

(Sir John Edge.) SURVANARAVANA 2. PATANNA

(1918) 45 I.A. 209 = 41 M. 1012 (1020-1) 29 C.L.J. 153 = (1918) M.W.N. 859 - 25 M.L.T. 30 23 C.W.N. 273-9 L.W. 126-21 Bom. L.R. 547-48 I.C. 689 - 36 M.L.J. 585.

-In a suit for ejectment brought by an inamedar of a village in respect of part thereof, it appeared that, in 1783, in confirmation of a grant of 1748, which was not in exidence, the village, together with gardens, boly shrines, wells, and tanks was granted as a surva agraharam by the zemindar in favour of appellant's ancester, to be cultivated and enjoyed by the grantee hereditarily.

In a confirmatory document of 1788, the grantee was re-

ferred to as a resident of the said village.

The evidence showed that tenancies had been continually granted by the inamdars for short periods and at variable rents; that when tenancy lands were compulsorily acquired by Government, compensation was paid to the agraharamdar, and no claim thereto was put forward by the tenants. that in 1904 all the tenants formally relinquished their Lands to appellant and put them in his possession and that the property remained vacant till 1907 when the defendants were admitted as fen ints, they severally declaring that they had no right of occupancy except such as was given to them by the tenancy agreements and that the appellant might take possession of the lands at the end of the year of tenancy without any refinquishment by them.

it was also found in the suit on issues specially directed that the suit land was waste at the time of the grant of the inam and that at the time of the letting to the defendants

they had no occupancy right.

Held, that the inam grant carried not the land-revenue alone, but the whole proprietary interest in the property. that the property was not an estate, within the meaning of the Madras Estates Land Act, 1908, that S. 189 of the Act did not apply, and that appellant could eject the defendants by a suit in the civil courts. (Procunt Case.) UPADRA-SHTA VENKATA SASTRULUE, DIVI SEETHARAMUDU

(1919) 46 I.A. 123 = 43 M. 166 - 26 M L.T. 175 = 10 L.W. 633 - 23 C.W.N. 129 - 30 C.L.J. 441 -21 Bom. L. R. 925 = 17 A.L.J. 725 = 51 I.C. 304 = 37 M.L.J. 42.

 A village in the district of Tanjore, which had, prior to 1723, been granted by a Raja of Tanjore to a temple, was in 1723 re-granted by the then Raja of Tanjare to

Held, on a construction of the Sanad of 1723 and in all the circumstances of the case, that the Kudivaram and melwaram interest in the lands of the village were conveyed to the temple, and that the lands in the village were not an "estate" within the meaning of the Madras Estates Land Act. (Sir John Edge.) NAINAPILLAI MARKAYAR :-RAMANATHAN CHETTIAR. (1923) 51 I.A. 83 (96) -

47 M. 337 = A.I.R. 1924 P.C. 65 22 A.L.J. 130 = 19 L.W. 259 = 34 M.L.T. 10 = (1924) M.W.N. 293 = 10 O. & A.L.R. 464 = 28 C.W.N. 809 - 82 I.C. 226 - 46 M.L.J. 546.

-Kudituram-Grant also of Use of word "inam" in grant if indicative of-Right not expressly conveyed.

Where the grant itself does not convey in express terms the kudiwaram to the grantee, the use of the word "inam" does not give any indication of the intention of the donor to convey it, even if he had the right to bestow it on the donee. (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA r. VEERAMA L'EDDI. (1922) 49 I.A. 286 (298-9) = | INAM-(Contd.)

Grant in-(Contd.)

MELVARAM ONLY OR KUDIVARM ALSO CON-VEYED UNDER-(Contd.)

45 M. 586 (602)= 27 C.W.N. 245=37 C L.J. 199-16 L.W. 102-31 M.L.T. 54 = (1922) M.W.N. 749 = A. I. R. 1922 P. C. 292-68 I. C. 538 = 43 M.L.J. 640.

Militaram-Grant only of-Evidence sheroing.

The plaintiff, the head of a mute, sued to eject the defendants, cultivating tenants, from the lands in their occupation in a certain cillage, which he alleged belonged to his must. The plaint alleged that, in 1743 the poligar of the estate within which the said village was situated, granted to the head of the mutt for the time being the village in question; and that since then the successive holders of the office had been in possession and enjoyment not only of the right to the meiwaram, but also to the right of the Kudiwaram.

The grant in favour of the plaintiff dld not in express terms grant to the mandar both the warams. It spoke of other villages held by the grantor which it might be inferred from the document was occupied by tenants, nor did it expressly say that only the melwaram right was granted to the donce. The defendants adduced evidence showing that they had been from time immemorial in possession of their holdings; that they had transferred their holdings wholly or in part, from time to time; that the lands had descended to their heirs in succession, and the descendants of the transferees were in possession; that they had partitioned the holdings amongst themselves; that they had made improvements, sunk wells and erected buildings thereon for huslandry and dwelling purposes, and had received compensation when any portion of their holdings were taken by Government for public purposes,

Hel 1, affirming the courts below, that the plaintiff did not possess the kudiwaram which he claimed, and that the defendants had clearly acquired their occupancy rights by prescription long before the Estates Land Act came into force. (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA

P. VEERAMA REDDI.

(1922) 49 I. A. 286 (303 4, 306) = 45 M. 586 (610 1) = 27 C. W. N. 245 = 37 C. L. J. 199 = 16 L.W. 102 = 31 M. L. T. 54 = (1922) M. W. N. 749 = A. I. R. 1922 P. C. 292=68 I. C. 538= 43 M. L. J. 640

-The question was whether an inam grant of an agra haram, made more than 250 years before and recognised by the British Government, was a grant of both the Varams or was a grant of the Melvaram only. The District Munsif held that it was a grant of Melvaram only, relying on four main points. 272,-

(1) The grant purported to be a grant "of shrotriem" "as shrotriem". The final recital in the document was as follows:-" As we have granted to you the said agraharum you should enjoy the same from son to grandson, paying the shrotriem thereon and be happy."

(2) The grant was of a monje.

(3) The grantors were admittedly deshpandpas who were revenue officers or farmers of revenue under the paramount authority.

(4) The Brahmins represented by the grantee were learned Brahmins apparently not resident in the village granted, but resident about two miles away.

The High Court held, on the other hand, that the document was equally consistent with a grant of both the varams.

Hild, restoring the Munsif's judgment, that the grant was, on its true construction, a grant of the melvaram JULU.

INAM-(Cental.)

Grant in-(Contd.)

MELVARAM ONLY OR KUDIVARAM ALSO CONVEYED UNDER-(Contd.)

A shrotriem grant may in fact grant the Kudivaram as well as the melvaram, but the term shrotriem in the final

recital in the grant can only mean revenue. The word monje in the particular context does not mean merely a defined place. View of Sadasivaiyar, J., in 38 M. 891 at 892 that the phrase indicates "a village in which there were peasant proprietors owning cultivable lands even then" (at the time of the grant) approved. (Lord Atkin.) SEETHAVVA P. SUBRAMANIA SOMAVA-

(1929) 52 M. 453-56 I.A. 146-31 Bom. L.R. 756=49 C.L.J. 566-

(1929) M.W.N. 553-117 I.C. 507-29 L W. 804-33 C. W. N. 578 - A. I. R. 1929 P. C. 115 = 56 M. L. J. 730.

-Presumption-Onus of Proof.

The courts below acted upon a supposed presumption of law to the effect that in the case of an inamelar it should be presumed, in the absence of the inam grant under which he held, that the grant was of the royal share of the revenue only. There is no such presumption of law (218). (Sir John Edge.) SURAYANRAYANA 2. PATANNA

(1918) 45 L A. 209 - 41 M. 1012 (1020-1) -29 C. L. J. 153 - (1918) M. W. N. 859 -25 M. L. T. 30 = 23 C. W. N. 273 = 9 L. W. 126 21 Bom. L. R. 547 = 48 I. C. 689 - 36 M. L. J. 585

-There is no presumption of law that an inam grant of a village, even if made to a Brahmin, is prima facic a grant of the " Melwaram " right only and does not include the "Kudivaram." Each case must be considered on its own facts; and in order to ascertain the effect of the grant, resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained. (Viscount Cave.) UPADRASHTA VENKATA SASTRULU P. DIVI SEETHARAMUDU.

(1919) 46 I. A. 123 = 43 M. 166 = 26 M. L. T. 175 -10 L. W. 633 = 23 C. W. N. 129 - 30 C. L. J. 441 21 Bom. L. B. 925 = 17 A. L. J. 725 = 51 I. C. 304 = 37 M. L. J. 42

-The plaintiff, the head of a mutt, sued to eject the defendants from the lands in their occupation in a certain village, which he alleged belonged to the mutt of which he was the head. The defendants denied the right of the plaintiff to eject them, and alleged that he was only entitled to the melvaram and not to the kudivaram, and that the defendants had occupancy rights in the suit lands. On appeal to the Privy Council, the plaintiff contended, relying on the decisions in L. R. 45 L. A. 209 and L. R. 47 I. A. 76, that there was a presumption that he owned both the varams, that the onus of proving that he had the Kudivaram right was wrongly placed on him by the Courts below Held, that there was no such presumption in plaintiff's

Neither in L. R. 45 I. A. 209 nor in L. R. 47 I. A. 76 is there a suggestion of a presumption in favour of the inamdar or pattadar on the one side or of the ryot on the other. It was further distinctly pointed out ln L. R. 46 L. A. 123 that each case must be considered on its own facts. In 44 M. 588 Full Bench, the learned Judges held that underlying the exposition of their Lordships in L. R. 45 I. A. & 47 I. A. such an initial presumption is to be inferred. In drawing this inference they were clearly in error. Each case must be dealt with on its own facts, with special regard to the evidence and circumstances therein (302-3). (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA P. VEE-RAMA REDDI. (1922) 49 I. A.286 = 45 M. 586 (605-7) =

27 O. W. N. 245 = 37 C. L. J. 199 = 16 L. W. 102 = 31 M. L. T. 54=(1922) M. W. N. 749=

INAM-(Contd.)

Grant in-(Contd.)

MELVARAM ONLY OR KUDIVARAM ALSO CONVEYED UNDER-(Contd.)

> A. I. R. 1922 P. C. 292 = 68 I. C. 538 = 43 M. L. J. 640.

-In regard to the question whether an inam grant does or does not comprise both the Varams, there is no presumption either way, and each case must be decided on its own circumstances. (Lard Atkin.) SEETHAYYA P. (1929) 52 M. 453= SUBRAMANYA SOMAYAJULU.

56 I.A. 146-31 Bom. L.R. 756-49 C.L.J. 566= (1929) M.W.N. 553=117 I.C. 507= 29 L. W. 804 - 33 C. W. N. 578 -

A. I. R. 1929 P. C. 115 - 56 M. L. J. 730 (735).

#### MINERALS.

Grantee's right to. See UNDER MINERALS.

QUARRIES IN ESTATE-GRANTEE'S RIGHT IN AND TO WORK.

Onus of proof of -Shrotricm mam grant.

In a suit by a person claiming to be grantee under a shortriem inam grant for a declaration of his right to the rocks and hills within the village granted, the burden is on the plaintiff of establishing the grant, and it is for him to show that it contained terms apt to vest in him the quarries, and the full right to work them. (64). (Sir Lawrence Jenkins.) SECRETARY OF STATE FOR INDIA IN COUNCIL. (1920) 48 I. A. 56-P. SRINIVASA CHARLAR.

44 M. 421 (428) = (1921) M. W. N. 111 = 29 M. L. T. 181 = 19 A. L. J. 201 = 3 U. P. L. R. (P. C.) 43 - 25 C. W. N. 818 = 13 L. W. 592 = 33 C. L. J. 380 = 60 I. C. 230 = 40 M. L. J. 262.

RESUMPTION OF -NATURE OF-ACT OF STATE.

-Wrongful act of individual - Test-Peishwa-Village granted in inam by-Resumption of, by his officer. See ACT OF STATE-ACT AMOUNTING TO AN, OR NOT -WRONGFUL ACT OF INDIVIDUAL.

(1838) 2 M. I. A 37 (50-1).

## Karnam service inam

See KARNAM.

#### Kattubadi.

-See UNDER KATTURADI.

#### Kinds of.

-Enam grants were of various descriptions-as an Altumgha Enam. There were various other grants, as grants for religious or charitable purposes; and also two other descriptions of grants, called "Amaram," and "Kattu-barly," and the latter grants were grants resumable (132-3). (Dr. Lushington.) UNIDE RAJAHA RAJE BOM-MARAUZE BAHADUR P. PEMMASAMY VENKATADRY NAIDOO. (1858) 7 M. I.A. 128 = 4 W. B. 121 = 1 Suth. 300 - 1 Sar. 637.

#### Meaning of.

'The word "Enam" originally meant a grant generally. Probably in process of time, when the word "Enam" alone was used, it meant a grant in perpetuity, not resumable (132-3). (Dr. Lushington.) UNIDE RAJAHA RAJE BOMMARAUZE BAHADUR v. PEMMASAMY VENKATADRY (1858) 7 M. I. A. 128 4 W. R. 121= NAIDOO. 1 Suth. 300-1 Sar. 637.

-" Inam " is an Arabic word meaning reward. (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA v. VEE-RAMA REDDI. (1922) 49 I, A. 286 (298-9)= 45 M. 586 (602) = 27 C. W. N. 245 = 37 C. L. J.199 =

16 L. W. 102 = 31 M. L. T. 54 = (1922) M. W. N.749 =

INAM-(Cental.)

Meaning of (Coutd.)

A. I. R. 1922 P. C. 292 - 68 I. C. 538 - 43 M. L. J. 640. Nature and incidents of.

-Inams are Government grants subject to Quit-rentsand in some instances to services. They were not assessed for land revenue at the date of the permanent settlement. (Lord Parker.) KANDUKURI BALASURYA ROW 2. SECRETARY OF STATE FOR INDIA.

(1917) 44 I. A. 166 (185) - 40 M. 886 -19 Bom L. R. 751 = 2 Pat. L. W. 260 = 26 C. L. J. 290 = 22 M. L. T. 76 = 21 C. W. N. 1089 = 15 A. L. J. 697 = (1917) M. W. N. 536 = 6 L. W. 340 = 41 I. C. 98-33 M. L. J. 144.

Saranjam.

Distinction.

Much importance-and, in their Lordships opinion, too much importance - has been attached in the judgments of the courts below to the distinction between the term Inam and Saranjam. The learned Judges treat the lands of Satara referred to in one or two of the documents as Saranjam, by way, as they apprehend, of distinction from the other lands which are treated as Inam. In their Lordships' view, the terms are not mutually exclusive in the sense indicated. The latter term, namely, inam, is one of mere generic significance, applicable to a Government grant as a whole (214). (Lord Shaw.) RAGHOJIRAO SAHEB V. LAKSHMAN RAO SAHEB.

(1912) 39 I. A. 202 - 36 B. 639 (659)= 16 C. W. N. 1058 = 12 M. L. T. 472 = (1912) M. W. N. 1140 14 Bom. L. R. 1226 17 C. L. J. 17-16 I. C. 239-23 M. L. J. 383.

Saranjam and-Mixed estate of, held on political tenure.

Resumption and re-grant of-Government's power of Dispute as to. See SARANJAM-POLITICAL TENURE. (1892) 20 I.A 50 (68-9) - 17 B. 431 (456).

Spiritual Preceptor -- Grant by Native ruler to.

-Personal inam of graatee-Appanage or endowment of office-Test. See GRANT-NATIVE RULER-SPIRI TUM. PRECEPTOR. (1917) 45 I.A. 1 41 M. 296.

#### INAM COMMISSION.

Object and scope of.

One, if not the principal, object of the Inom Commission appears to have been to ascertain what lands had been effectually made subject to religious trusts, and, as such, had become either rent-free, or subject only to a small and fixed The enquiry seems to have been conducted quit-rent. locally, under the authority of the Inam Commissioner, by the Deputy Collectors of the different districts, and to have been carried on from village to village. ARUMUGAM CHETTY :. PERRIYANNAN SERVAL

(1875) 3 Suth. 218 (220) = 25 W.B. 81. -Proceedings of Evidentiary value of Trusteeship of pageta-Right to-Dispute as to-Inam proceedings -Recognition of title of defendants in-Presumption from.

The plaintiffs appellants were or represented the Nattukottai Chetties called "the Nagarattars." The suit was brought by them against persons of a different caste, called "the Nattars". The object of the suit was to have it declared that the Nagarattars were entitled to the management of two pagodas devoted to the service of the Durga Goddess, whose particular title was Periyanayaki. They also claimed to have delivered over to them the possession of those pagodas, with the appurtenances consisting of ornaments and other articles relating to the worship of that idol.

The case made by the Nagarattars was that those pagodas were mere dependencies of a larger pagoda dedi-

## INAM COMMISSION—(Contd).

cated to the worship of Siva, of which they were the admitted managers; that the three pagodas had been supported out of the same funds; that they, the Nagarattars, had the administration of these funds; that the worship and all the services of the pagodas were performed by servants appointed by them; and that on the night of 28-4-1871, the defendants forced open the doors of the said Periyanayaki Amman's pagodas, and took possession of the said pagodas, and of the sacred jewels and other property. The cause of action was alleged to be the forcible dispossession. No evidence was, however, adduced of the said forcible entry and dispussession.

The Nattars, on the other hand, asserted that the pagodas in question where wholly distinct from the pagoda of Siva, and in no way connected, by worship or otherwise, with it.

The proceedings of the Inam Commission of 1863 however showed that the Nattars asserted that the pagoda of the Goddess Periyanayaki belonged to them, that the claim was acquiesced in by the Collector, and that the names of three Nattars were added as trustees in the inam patta.

Held that the proceedings of the Inam Commission turned the scale of the conflicting evidence in favour of the Nattars, and that the Nagarattars had not made out their right to disturb the possession which existed (222). ARU-MUGAM CHETTY P. PERIYANNAN SERVAL

(1875) 3 Suth. 218 = 25 W.R. 81.

-Title-deed granted at-Effect of.

The title-deed of the Inam Commissioners confers no

higher title than was originally granted.

There is language in the Act of 1862 that might possibly he read as having that effect, but this was corrected by Act VIII of 1869, and it is now clear that though a larger interest was created, nothing done under the Inam Commission rould sest in the inamdars a subject-matter not already belonging to them (67). (Sir Lawrence Jenkins.) SECRE-TARY OF STATE FOR INDIA IN COUNCIL F. SRINIVASA-CHARLAR, (1920) 48 I.A. 56 = 44 M. 421 (431) =

(1921) M W.N. 111 = 29 M.L.T. 181 = 19 A.L.J. 201 = 3 U.P.L.B. (P.C.) 43 = 25 C.W.N. 818 = 13 L.W. 592 = 33 C.LJ. 380 = 60 I.C. 230 = 40 M.L.J. 262

## INAM COMMISSIONER.

—— Decision of as such—What amounts to. See BOMBAY ACTS—TITLES TO RENT FREE ESTATES ACT OF 1852. (1927) 54 I A. 380 (387) = 51 B. 830.

## INAM PROCEEDINGS.

-Inam grant-Estate conveyed under-Evidentiary value as to-Terms of grant known See INAM-GRANT IN-ESTATE CONVEYED UNDER- EVIDENCE-INAM PROCEEDINGS. (1920) 48 I A. 56 (66)= 44 M. 421 (430).

-Object and scope of-Gift made prior to such proceedings-Purpose of dedication in case of-Inam register -Entry in-Usage and practice established-Conflict between-Effect. See HINDU LAW-RELIGIOUS ENDOW-MENT-MUTT-DEDICATION TO-PURPOSE OF

(1921) 48 I.A. 302 (326-7) = 44 M. 831 (864).

## INAM REGISTER

Gift made before Inam proceedings-Purpose of dedication in case of-Entry in Inam register as to-Usage and practice-Purpose disclosed by established-Conflict between-Which prevails. See HINDU LAW-RELIGIOUS ENDOWMENT-MUIT-DEDICATION TO-PURPOSE OF.

(1921) 48 1.A. 302 (326-7)=44 M. 831(854). Object and purpose of - History of property in-Evi-

dentiary value of.

## INAM REGISTER—(Contd.)

The making of the Inam Register was no doubt for the ultimate purpose of determining whether or not the lands were tax free. But the preparation of this Register was a great act of State and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. The Inam Commissioners through their officials made inquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was taxfree, but of a statement of the history and tenure of the property itself. Held, while such a report would not displace actual and authentic evidence in individual cases, ye. the Court, when such evidence is not available, cannot fail to attach the utmost importance, as part of the history of the propery, to the information set forth in the Inam Re-ARUNACHALLAM CHETTY P. gister. (Lord Shaw.) VENKATACHALAPATHI GURUSWAMIGAL.

(1919) 46 I.A. 204 (217.8)=43 M. 253 (262.3)= 24 C W.N. 249 = 26 M.L.T. 479 = 10 L.W. 642 = (1919) M.W.N. 850 = 17 A.L.J. 1097 = 53 I.C. 288 = 37 M.L.J. 460.

Oakes' register-Evidentiary value of. See INAM-GRANT IN-MELVARAM ONLY OR KUDIVARAM ALSO CONVEYED UNDER - EVIDENCE - OAKES' INAM RE (1918) 45 I.A. 209 (217) GISTER. 41 M. 1012 (1020 1).

## INAM RULES OF BERAR.

-Scope and Effect of, See INAM-GRANT IN-MALE DESCENDANTS-GRANT CONFINED TO. (1925) 52 T.A. 294 (301-2)-52 C. 971.

## INAM.

"Inami" means " grants of land full refit live, and in hereditary and perpetual occupation. (57). (Lord Haunen.) SHEKH SULTAN SANI D. SHEKH AJMODIN. (1892) 20 I.A. 50-17 B. 431 (444) - 6 Sar. 52.

## INCOME TAX.

-Bad debts-Deduction for, in year in which loss is sustained-English practice as to-Correctness of.

Quare as to the correctness of the practice of the Island Revenue Authorities in England under the Income-Tax Acts sanctioning the practice of permitting debts that are had to be deducted in the year the loss is sustained (231). (Lord Buckmaster.) GLEANER CO., LTD. p. THE ASSESSMENT (1922) 31 M.L.T. 227 P.C. COMMITTEE.

-Debts bad or doubtful-Deduction of, from income -Assesse's right to-Conditions-Jamaica Income-Tax Act of 1919-S 10-Construction.

Section 10 of the Income-Tax Act, 1919, Jamaica, which in many respects follows closely the provisions of the Income Tax Acts in England, provides:-

No deduction in respect of income shall be allowed in

(d) any debts, except bad debts, proved to be such to the satisfaction of the Assessment Committee, and doubtful debts to the extent that they are respectively estimated by the Assessment Committee to be bad. In the case of bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such delit shall be deemed to be the value thereof.

It was contended that the true meaning of the section was that debts might be deducted in the year in which they were found to be bad from the annual profits of that year, although the debt might have been long antecedently incurred, or in other words, that for the purposes of the statute the actual calculation of the annual profits in any particular year involved allowance for debts included in

## INCOME-TAX-(Contd.)

former accounts as good or doubtful but discovered as bad in the year under consideration.

Held that that contention could not be accepted (229).

S. 10 provides, in the first place, that in making up the account there cannot be a deduction for "any debts." This can only mean that the trader is not at liberty to limit the "income" which he returns to the amount actually received, but must estin ate the value of the debts that have accrued due to him in the year's trading. But the provision that so excludes him provides also that there should be exempted from this exclusion had debts proved to be such to the satisfaction of the Assessment Committee and doubtful debts to the extent to which they are estimated by the Assessment Committee to be had. Their Lordships think that this exception must apply to the general provision as to the debts, and that as the debts which may not be deducted are debts that have accrued due to to the taxpayer in the year's trading but have not been received, so the exception is out of that amount, and had and doubtful debts are, consequently, had or doubtful debts arising out of the year's trading and ascertained and determined to be bad or doubtful during that year. The investigation by the Assessment Committee of the debts is an investigation year by year, and when once they have been the subject of investigation, alteration is impossible, except under the provisions of the sections relating to appeal and further Passessment or the recovery of sums paid in excess (230). (Lord Buckmaster.) GLEANER CO., LTD 25, THE ASSESSMENT COMMITTEE. (1922) 31 M L. T. 227 P. C.

The med actually reterved if part of integric. The might well be argued that in the case of Topusiness, delity not actually received formed no part of the income at all, although, as is well-known the annual profits or gains of Ta trader are not properly measured by considering only the monies taken (229). (Lord Buckmaster.) GLEANER CO., I.TD. :. THE ASSESSMENT COMMITTEE.

(1922) 31 M. L. T. 227 P. C.

-Direct tax if a-Gross retrente-Income-Taxes on-Distinction.

Income-tax has always been regarded as the typical example of a direct tax. There are marked distinctions between a tax on gross revenue and a tax on income, which for taxation purposes means gains and profits. There may be considerable gross revenues, but no income taxable by an income-tax in the accepted sense, (Lord Warrington of Clyffe.) KING F. CALEDONIAN COLLIERIES, LTD.

(1928) 111 I. C. 216 - A. I. R. 1928 P. C. 282.

-Expenditure designed to produce results wholly or partly in subsequent years-Reduction of-Assessee's right

In every trade much of the expenditure, in each yearsuch as expenditure in the purchase of raw material, in the repair of plant or the advertisement of goods for sale-is designed to produce results wholly or partly in subsequent years; but, nevertheless, such expenditure is constantly allowed as a deduction for the year in which it is incurred (226). (Viscount Care.) WARD & CO. p. THE COMMIS-SIONER OF TAXES. (1922) 33 M. L. T. 225 P. C.

-Expenditure exclusively incurred in the production of assessable income-Meaning-Voluntary expense incurred for purpose of preventing extinction of business-Deduction of -Assessee's right of.

S. 86(1) of the Land and Income-tax Act of 1916 (New Zealand) provides -In calculating the asses able income derived by any person from any source no deduction shall be made in respect of any of the following sums or matters:-(a) Expenditure or loss of any kind exclusively incurred in the production of the assessable income derived from that

#### INCOME-TAX-(Contd.)

Held that a voluntary expense incurred with a view to influencing public opinion against taking a step which would have depreciated and partly destroyed the profit bearing thing was not, within the true meaning of S. 86 (1) of the Act of 1916, exclusively incurred in the production of assessable income (226).

The expenditure in question was not necessary for the production of profit nor was it in fact incurred for that puroose. The expense may have been wisely undertaken, and may properly find a place, either in the balance-sheet or in the profit and loss account of the assessees; but this is not enough to take it out of the prohibition in S. 86 (1) (a) of the Act. For that purpose it must have been incurred for the direct purpose of producing profits (227). (Viscount Care.) WARD & CO., THE COMMISSIONER OF TAXES. (1922) 33 M. L. T. 225 P. C.

—Profit — Evidence of—Book keeping entry per will conclusive. The Crown is not entitled to take a mere book keeping entry as conclusive evidence of the existence of a profit. (Lord Phillimore.) WILLIAM RICHARD DOUGHTY v. COMMISSIONER OF TAXES.

(1927) A. I. R. 1927 P. C. 76 (80) - 102 I. C. 17 (2).

-Sale of whole concern at a profit-Liability of profit to tax.

Income-tax being a tax opon income, it is established that the sale of a whole concern which can be shown to be a sale at a profit as compared with the price given for the business, or at which it stands in the books, does not give rise to a profit taxable to income-tax. It is easy enough to follow out this doctrine where the business is one wholly or largely of production, such as a dairy farming business or a sheep rearing business, or even a manufacturing business, which was sold with the leaseholds and plant, even if these were added to the sale of the piece goods in stock, and even if those piece goads formed a very substantial part of the aggregate sold. Where, however, a business consists entirely in buying and selling, it is more difficult to distinguish between an ordinary and a realization sale, the object in either ca e being to dispose of goods at a higher price than that given for them, and thus to make a profit out of the business. The fact that large blocks of stock are sold does not render the profit obtained anything different in kind from the profit obtained by a series of gradual and smaller sales. This might even be the case if the whole stock was sold out in one sale. Even in the case of a realization sale, if there were an item which could be traced as representing the stock sold, the profit obtained by that sale, though made in conjunction with a sale of the whole consern, might conceivably be treated as taxable income. If a business be one of purely buying and selling, a profit made by the sale of the whole of the stock, if it stood by itself, might well be assessable to income-tax. The case is different where the sale was a slump transaction. (Lord Phillimore.) WILLIAM RICHARD DOUGHTY P. COM-MISSIONER OF TAXES (1927) A.I.R. (1927) P. C. 76-102 I. C. 17 (2).

## INCOME-TAX ACTS.

## Excess Profits Duty Act X of 1919.

-S. 6—Capital within—Interest-bearing securities to be treated as part of—What are—English and Indian Acts —Comparison.

In arriving at a conclusion as to what ars the interestbearing securities which form part of the assets of a business and are therefore to be treated as part of the capital within the meaning of S. 6 of the Indian Excess Profits Duty Act X of 1919, one guide may well be the difference of language between the later Indian and the earlier English Act. It is true that these are not Acts of the same legislature, and that the Indian Legislature and the draftsman

## INCOME TAX ACTS-(Contd.)

Excess Profits Duty Act X of 1919-(Contd.)

whom it employed may have thought it unnecessary to introcluce provisions like those contained in paras, 8 and 12 of Part I of the Fourth Schedule of the English Act, and may have meant no variation from the scheme of the English Act when it and he introduced the words "securities" and spoke of interest on certain securities as being profits from the business. Too much stress, therefore, should not be laid on these differences. At the same time, it is noteworthy that the Indian Act takes notice of the English Act in Sch. I, para 4: and the Court may come to the conclusion that the reason for the differences between the two Acts is not a mere difference of drafting, but a deliberate variation due to the different conditions under which business is carried on in India and in England. (Lord Phillimore.) ALCOCK, ASHDOWN & CO. P. CHIEF REVENUE AUTHO-RITY, BOMBAY. (1923) 50 I. A. 227 (238)= 47 B. 742 (754-5) = 25 Bom L. R. 920 = 21 A.L.J. 689 =

A. I. R. 1923 P. C. 138 = 33 M. L. T. 267 = 18 L. W. 918 - (1923) M. W. N. 557 = 39 C. L. J. 302 = 28 C. W. N. 762 = 75 I. C. 392 = 45 M. L. J. 592.

S. 6—Capital within—Interest-bearing securities to be treated as part of—Question as to—Fact or law— Reference of, to High Court under S, 51 of Income-Tax Act of 1918—Necessity.

The question what are the interest-bearing securities which form part of the assets of the business and are therefore to be treated as part of the capital within the meaning of S, 6 of the Excess Profits Duty Act, 1919, is not a pure question of fact upon which the decision of the Chief Revenue Authority would be conclusive. It is an important question of law arising upon the construction of the statute, and it ought to be referred by the Chief Revenue Authority to the High Court under S, 51 of the Income-tax Act of 1918. (Lord Phillimers.) ALCOCK, ASHDOWN & CO. P. CHIEF REVENUE-AUTHORITY, BOMBAY.

(1923) 50 I. A. 227 (237-8) = 47 B. 742 (753-6) =
25 Bom. L. R. 920 = 21 A. L. J. 689 =
A. I. R. 1923 P. C. 138 ·· 33 M. L. T. 267 =
18 L. W. 918 = (1923) M. W. N. 557 = 39 C. L. J. 302 =
28 C. W. N. 762 = 75 I. C. 392 = 45 M. L. J. 592.

## Income-Tax Act VII of 1918.

——S. 51—Case stated under—Decision of High Court
on—Nature of—Privy Council appeal against—Right of.
An appeal does not lie to His Majesty in Council from
the decision of the High Court (of Bombay) on a reference
by case stated under S. 51 of the Indian Income-tax Act of
1918.

It is admitted that no statute, Imperial or Indian, is to be found giving, expressly, or by implication, a right of appeal. either with or without the leave of the High Court of Bombay, to His Majesty in Council from a decision or order made, or judgment given, by the High Court, under the provisions of S. 51 of the Indian Income-tax Act. 1918, neither can any such statute be found giving a general right of appeal to His Majesty in Council from the orders or judgments of any class of Courts as S. 3 of the English Appellate Jurisdiction Act, 1876, gives a general right of appeal to the House of Lords from the judgments or orders of the Courts therein mentioned. Clause 39 of the Letters Patent of the High Court of Bombay cannot be relied upon as giving a right of appeal from the decision and order of the High Court under S. 51 of the Income-tax Act because the decision is not either a final judgment or a final decree or a final order within the meaning of that clause. The decision, judgment or order made by the Court under S. 51 of the Income-Tax Act is merely advisory, made by the Court in exercise of its consultative jurisdiction, and not in the proper and legal sense of the term final. (Lord Atkinson.) TATA INCOME TAX ACTS-(Contd.)

Income Tax Act VII of 1918-(Contd.)

IRON AND STEEL CO. P. CHIEF REVENUE-AUTHORITY. BOMBAY.

(1923) 50 I. A. 212 = 47 B. 724 = 25 Bom. L. R. 908 = A. I. R. (1923) P. C 148=21 A. L. J. 675= 18 L. W. 372 = (1923) M. W. N. 603 =

33 M. L. T. 301 = 9 O. & A.L.R. 783 = 28 C.W.N. 307 39 C. L. J. 16 = 74 I. C. 469 = 45 M. L. J. 295.

S. 51 - Decision of High Court under-Privy Coun-

cil appeal from-Right of.

No express provision for appeals to His Majesty in Council from orders of a High Court in India made upon references under S. 51 is to be found in that statute, but until the case of L. R. 50 I.A. 212 was decided by the Board, it was apparently generally supposed in India that appeals from such orders were regulated by Ss. 109 and 110 of C. P. C. of 1908. The effect of the judgment in the case cited was, however, definitely to lay it down that from these orders there was in fact no statutory right of appeal at all (423-4). (Lord Bianesburgh.) DELHI CLOTH AND GENE RAL MILLS CO. P. INCOME TAX COMMISSIONER, DELHI. (1927) 54 I. A. 421 = 8 Pat. L. T. 791 =

25 A. L. J. 964 = 4 O.W.N 1053 = A. I. R. 1927 P. C. 242 - 53 M. L. J. 819.

S. 51-Decision of High Court under-Nature of -

Revenue authority if bound to act up to.

The decision of the High Court under S. 51 is not an executive document directing something to be done or not to be done, but is merely the expression of the majority of the judges who heard the case, together with a statement of the grounds upon which those opinions are hased. It amounts only to a ruling that a certain deduction claimed by a taxpayer to be allowed from the sum for which Le has been already assessed to income tax is not permissible. Should the tax-payer be sued for the income-tax for which he has been assessed, proof of the assessment would be but the first step in the litigation, not the final one. These circumstances would go to show that however the decision or order right definitely and finally fix the amount of the assessment. it was only interlocutory. The Revenue authorities are undoubtedly bound to act up to the decision of the Court made under S. 51 of the Income Tax Act. (Lord Atkinson.) TATA IRON AND STEEL CO. P. CHIEF REVENUE AUTHORITY, BOMBAY.

(1923) 50 I. A. 212 (223-4) - 47 B. 724 (737-8) = 25 Bom. L. R. 908 - A. I. R. 1923 P. C. 148 -21 A. L. J. 675 = 18 L. W. 372 = (1923) M. W. N. 603 -33 M. L. T. 301=9 O. & A.L.B. 783=28 C.W.N. 307= 39 C. L. J. 16=74 I C. 469=45 M. L. J. 295. -S. 51-Law point serious-Reference to High Court

of-Duty of Revenue Authority as to-Improper refusal

to refer-Remedy in case of.

Always supposing that there is a serious point of law to he considered, there does lie a duty upon the Chief Revenue Authority, under S. 51 of the Indian Income-Tax of 1918, to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the High Court, under S, 45 of the Specific Relief Act, 1877, to control him and to order him to state a case. S. 106 (2) of the Government of India Act of 1915 does not exclude the power of the High Court, because its order to a revenue officer to do his statutory duty would not be the exercise of "original jurisdiction in any matter concerning the revenue" within the meaning of the earlier part of that clause, nor has the proceeding anything to do with the collection of the revenue within the meaning of the latter part of the clause. (Lord Phillimore.) ALCOCK, ASHDOWN AND CO. P. CHIEF REVENUE-AUTHORITY, BOMBAY.

(1923) 50 I. A. 227 (233-4, 236) = 47 B. 742 (752-3, 749-50) = 25 Bom. L. R. 920 =

INCOME-TAX ACTS-(Contd.)

Income-Tax Act VII of 1918-(Conta.)

21 A. L. J. 689 = A. I. R. 1923 P. C. 138 = 33 M. L. T. 267 - 18 L. W. 918 = (1923) M. W. N. 557 = 39 C. L. J. 302 = 28 C. W. N. 762 = 75 I. C. 392 = 45 M. L. J. 592.

S. 51-Words-May-Shall be lawful-Meaning of -Duty if involved in. See STATUTE-INTERPRETATION -WORDS-MAY-SHALL BE LAWFUL.

(1923) 50 I. A. 227 (236) = 47 B. 742 (751-2)

S. 51 (3) - Judgment - Meaning of.

The word " judgment " in S. 51, sub-S. 3 of the Incometax Act of 1918 is not used in its strict legal and proper sense. (Lord Atkinson.) TATA IRON AND STEEL CO. 2. CHIEF REVENUE-AUTHORITY, BOMBAY.

(1923) 50 I. A. 212 (223 4) - 47 B. 724 (737-8) = 25 Bom. L. R. 908 = A. I. R. 1923 P.C. 148 = 21 A. L. J. 675 = 18 L. W. 372 = (1923) M. W. N. 603 = 33 M. L. T. 301 = 9 O. & A.L.R. 783 = 28 C.W.N. 307 = 39 C. L. J. 16-74 I. C. 469-45 M. L. J. 295,

#### Income Tax Act XI of 1922.

-S. 13-Undervaluation of opening and closing stocks of business-Ascertainment of real profits in case of -Mode of-Raising valuation of closing stock without considering amilar under-valuation of opening stock-Permissibility.

When the opening and closing stocks of a business are both undervalued, the real profits of the company of a particular year cannot be ascertained by merely raising the valuation of the closing stock, without taking into consideration

the similar undervaluation of the opening stock.

The method of introducing stock into each side of a profit and loss account for the purpose of determining the annual profits is a method well understood in commercial circles and does not necessarily depend upon exact trade valuations being given to each article of stock that is so introduced, The one thing that is essential is that there should be a definite method of valuation adopted which should be carried through them from year to year, so that in case of any deviation from strict market values in the entry of the stock at the close of one year, it will be rectified by the accounts in the next year. It may, of course, be that in so adjusting the figures of stock there may be special cases in which the valuation is so treated as justly to cause it to be open to dispute. If the method of altering both valuations is not adopted, it is perfectly plain that the profit which is brought forward is not the real one. It may be more or it may be less, but it has no relation to the true profit if the stock is valued on one basis when it goes out without considering the value of the stock when it comes in.

gains shall be computed for the purposes of Ss. 10, 11 and 12 in accordance with the method of accounting regularly employed by the assessee"; i.e., the method regularly and properly employed by the assessee. (Lord Buckmatter.)
COMMISSIONER OF INCOME TAX, BOMEAY PRESIDENCY P. AHMEDABAD NEW COTTON MILLS CO., LTD.

(1923) 31 L. W. 297 = 1930 A.L J 76=51 C.L.J. 128= 34 C.W.N. 262 - A.I.B. 1930 P.C. 56 - 58 M L.J. 204.

-Ss. 26, 55, 58- Super-Tax-Rate of-Unregistered Association converted into a limited company-Profits made prior to conversion-Rate applicable on-Indian Finance Act XIII of 1925-S.7.

Where an unregistered Association is converted into a limited company, the rate of super-tax applicable to it, in respect of the profits of the Association for the year previous to that of the conversion, is the flat rate of one anna in the rupee appropriate to a company. (Lird Chancellor.) COMMISSIONER OF INCOME TAX, BOMBAY P, WESTERN INDIA TURF CLUB, LTD.

INCOME-TAX ACTS-(Contd.)

Income Tax Act XI of 1922-(Could.)

(1927) 55 I.A. 14 - 52 B. 123 - 30 Bom. L. R. 105 -47 C. L. J. 96 - 5 O. W. N. 38 - 106 I. C. 642 -A. I. R. 1928 P. C. 1 - 32 C. W. N. 457 -27 L. W. 404 - 26 A. L. J. 474 - I. L. T. 40 B. 38 -

L W. 404 = 26 A. L. J. 474 I. L. T. 40 B. 38 54 M. L. J. 1.

——Ss. 40. 42. 43—Company resident outside Br. India —Loan on deposit by to company incorporated in Br. India —Interest paid by latter to former on — Assessment to income-tax of—Liability of borreaving company in Br. India for—Agent in S., 42 and 43—Mouning of.

The respondents were a company having their office in Bombay. A company called the Hongkong Trust Corporation, incorporated in Hongkong (hereinafter called the Hongkong Company), lent money, from time to time, on deposit to the respondents, and the respondents duly paid interest at the rate stipulated for on the money deposited. The Income-Tax Officer duly served a notice on the respondents in terms of S. 43 of the Indian Income-tax Act, 1922, that he intended to treat them as agents of the Hongkong Company, and after hearing the respondents as to liability, he assessed them to income-tax as agents of the Hongkong Company in respect of the amount of interest in the year of charge.

Held, affirming the High Court, that the interest in question was a profit or gain accruing or arising to a person residing out of British India—to wit the Hongkong Company from a business connection in British India, and therefore

falling under the words of S. 42 of the Act.

Held further, reversing the High Court, that the respondents could be treated as the "agent" of the Hongkong Company for the purpose of S. 42 of the Act in respect of the interest so paid by them to the Hongkong Company and could be deemed to be assessee under S. 42 in respect of any income-tax which might be levied on such interest and to be the 'agent' of the Hongkong Company under Ss. 42 & 43 of the Act, in respect of interest payable on such loan and in respect of any income-tax that might be chargeable on such interest.

If S. 42 stood alone "agent" in that section would mean an agent in actual receipt of the profits or gains which were to be assessed, but S. 43 puts the person—who comes within its term artificially into the position of the agent and of assessee under S. 42. (Viscount Dunotin.) COMMISSIONER OF INCOME-TAX. BOMBAY PRESIDENCY P. BOMBAY TRUST CORPORATION, LTD. (1929) 34 C. W. N. 230 =

1930 A.L.J. 73 = 32 Bom. L.R. 361 = 121 I.C. 532 = A.I.R. 1930 P.C. 54 = 58 M.L.J. 197.

S. 66 (PRIOR TO AMENDMENT BY ACT XXIV OF 1926)— DECISION OF HIGH COURT UNDER.

-P. C. appeal from-Right of.

No express provision for appeals to His Majesty in Council from orders of a High Court in India made upon references either under S. 51 of the Indian Income-Tax Act, 1918, or under S. 66 of the Act of 1922, is to be found in either statute, but until the case of L. R. 50 I. A. 212 was decided by the Board, it was apparently generally supposed in India that appeals from such orders were regulated by Ss. 109 & 110 of C. P. C. of 1908. The effect of the judgment in the case cited was, however, definitely to lay it down that from these orders there was, in fact, no statutory right for appeal at all (423-4). [Lord Blanesburgh.] DELHI CLOTH AND GENERAL MILLS Co. 7: INCOME TAX COMMISSIONER, DELHI. (1927) 54 I. A. 421 =

8 Pat. L. T. 791 = 25 A.L.J. 964 = 4 O.W.N. 1053 = A.I.R. (1927) P.C. 242 = 53 M.L.J. 819.

P. C. appeal from Special leave for—Grant of—Condition. See P. C.—APPEAL—SPECIAL LEAVE FOR—GRANT OF—INCOME-TAX ACT OF 1922.

(1927) 54 I.A. 421 (426) = 53 M.L.J. 819.

INCOME-TAX ACTS-(Contd.)

Income Tax Act XI of 1922-(Contd.)

S. 66. (a)-P. C. APPEAL UNDER.

-Precision for-Object of

The right of appeal introduced by the Act of 1926 is very probably conceded in order to rectify an omission inadvertently made from previous legislation, and is not one thought of for the first time (426). (Lord Blanceburgh.)

DELHI CLOTH AND GENERAL MILLS CO. v. INCOMETAX COMMISSIONER, DELHI. (1927) 54 I.A. 421=

8 Pat. L. T. 791 = 25 A.L.J. 964 = 4 O.W.N. 1053 = A.I.R. (1927) P.C. 242 = 53 M.L.J. 819.

----Right of -Conditions-Certificate by High Court of case being fit one for appeal-Case falling soithin, S. 110 of C.P.C. of 1908, but not so certified-Distinction,

The appeal given by S. 66-A of the Indian Income-Tax of 1922 (added by the Indian Income-Tax Amendment Act of 1926) is by sub-S. 2 of that section confined to a case which the High Court certifies "to be a fit one for appeal to His Majesty in Council." These words are textually the same as the concluding words of S. 109 (c) of C.P.C. of 1908, and, coupled with the carefully limited referential words to the C.P.C. in sub-S. 3, suffice to exclude from any right of appeal cases which fall within the requirements of S. 110 of the Code, and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. The words of qualification, "so far as may be," in sub-S. 3 of S. 66-A are apt to confine the statutory right of appeal to the cases described in sub-S. 2 (424.5). (Lord Blanesburgh.) DELHI CLOTH AND GENE-RAL MILLS CO. LTD., P. INCOME-TAX COMMISSIONER, (1927) 54 I.A. 421 = 8 Pat. L.T. 791 =

25 A.L.J. 964 = 4 O.W.N. 1053 = A.I.R. 1927 P.C. 242 = 53 M.L.J. 819.

-Right of, against decision made before Act of 1926 came into force.

No appeal lies to His Majesty in Countil under S. 66-A of the Income-Tax Act of 1922 (added by Act XXIV of 1926) from a decision of the High Court (upon a case stated under S. 66 of the Income-Tax Act of 1922) made before the Act of 1926 came into force (425).

There is in S. 66-A a clear suggestion that a judgment of the High Court referred to in sub-S. (2) of that section is one which under sub-S. (1) has been pronounced by "not less than two judges of the High Court" a condition which was not itself operative until the entire section came into force (425-6). (Land Blanesburgh.) DELHI CLOTH AND GENERAL MILLS, CO. v. INCOME-TAX COMMISSIONER, DELHI. (1927) 54 I.A. 421 = 8 Pat. L.T. 791=

25 A.L.J. 964 = 4 O.W.N. 1053 = A.I.R. (1927) P.C. 242 = 53 M.L.J. 819.

INCUMBRANCE.

—Interest not directly created by a person but allowed to grow up by his sufferance and negligence if an. See BENGAL ACTS—TENANCY ACT OF 1885—S. 161.

(1921) 48 I.A. 499 (507) = 49 C. 27 (36.)

— Right of passage if included in. See LAND ACQUI-SITION ACT OF 1894—S. 16—INCUMBRANCE.

(1916) 43 1..A. 310=41 B. 291 (297).

INCUR.

-Meaning of.

'Incur' means to run into, no doubt, but it is constantly used in the sense of meeting with, of being exposed to, of being liable to (100). A voluntary act on the part of the person liable is not necessary (99-100). (Lord Hobhouse.) WAGHELARAJSANJI 7. SHAIKH MASLUDIN.

(1887) 14 I.A. 89 = 11 B. 551 (565-6) = 5 Sar. 16.

——See also Bombay acts — Ahmedabad TalukDari act of 1862—Ss. 9 &12.

(1887) 14 I.A. 89 (99-100) = 11 B. 551(565-6).

## INDEPENDENT PRINCE.

-Lands of, in British India-Jurisdiction of British Indian Courts in respect of. See JURISDICTION-INDE-(1869) 12 M.I.A. 523 (534-5) PENDENT PRINCE.

## INDEPENDENT STATES.

-Transaction between - Propriety of-Jurisdiction of Municipal Courts to decide. See JURISDICTION-INDE-(1859) 7 M.I.A. 476 (529.) PENDENT STATES.

#### INDIA.

Administration of—System of—Government of India Act of 1858.

-Effect of.

By the Government of India Act, 1858, the delegation of sovereign power to the East India Co., was determind, and it has since been exercised directly on behalf of the Crown; in India (speaking generally) through the same authorities as before, in England through the Secretary of State.

Under the sovereign power thus delegated for so long to the company, and since 1858 exercised directly on behalf of the Crown, the British Empire in India has been built up. (Sir Arthur Wilson.) HEMCHAND DEVCHAND P. AZAM (1905) 33 I.A. 1-SAKARLAL CHHOTAM LAL.

33 C. 219 (243) =10 C.W N. 361 = 8 Bom L R. 129 = 3 A.L.J. 250 = 3 C.L.J. 395 = 1 M.L.T. 115 = 9 Sar. 5 = 16 M. L. J. 115.

-System prior to-Governors of Provinces-Position and powers of, during that period. See EAST INDIA COM PANY-POSITION OF, LEGAL AND CONSTITUTIONAL, UP (1905) 33 I.A. 1 = 33 C. 219 (242-3). TO 1858.

#### Customs in.

-Varieties of—See HINDU LAW—CUSTOM—INDIA. (1921) 48 I.A. 539 (546) = 41 M. 740 (747).

## English Settlement in.

-See SETTLEMENT IN FOREIGN COUNTRIES.

## Family life-Ties of

Stricter than in England.

In India the ties of family life are far stricter than in England (129.) (Lord Hobbiouse.) SURENDRAKESHAY (1892) 19 I. A. 108= ROY v. DOORGASUNDARI DASSI. 19 C. 513 (533) = 6 Sar. 150.

# Land in-Soil of-Ownership of.

-Presumption—Native rulers -Rights of — Madras

Regulation 31 of 1802.

The fact that rulers in India generally collected their land revenues by taking a share of the produce of the land is not by itself evidence that the soil of lands in India was not owned by them and could not be granted by them; indeed, that fact would support the contrary assumption, that the soil was vested in the rulers who drew their land revenue from the soil, generally in the shape of a share in the produce of the soil, which was not a fixed and invariable share, but depended on the will of the rulers (216). In the absence of reliable evidence no court is entitled to make the assumption that in the times when the Reddi Kings ruled in the Northern Circars the ownership of the soil of land in India was not in the sovereign or ruler, and that the right of the ruler was confined to a right to receive as revenue a share in the produce of the soil from the cultivator. Such an assumption was not recognised in Regulation XXXI of 1802 (2167.) (Sir John Edge). SURYANARAYANA P. PATANNA.

(1918) 45 I. A. 209 = 41 M. 1012 (1019)= 29 O. L.J. 153=(1918) M. W. N. 859=25 M. L. T. 30= 23 C.W.N. 273=9 L. W. 126=21 Bom. L. R. 547=

INDIA-(Contd.)

## Land-Revenue system in.

-Basis of.

The land revenue system in India is founded upon the notion that the State is entitled to receive a certain portion of the produce of all lands not especially exempted from assessment. Of course, some Governments have been more exacting than others, but the general action of Native Governments was to take a certain proportion (125). (Sir James W. Celvile.) VASUDEY SADASHIV MODAK v. (1877) 4 I. A. 119-COLLECTOR OF RATNAGIRI. 2 B. 99 (108) = 3 Sar. 701 = 3 Suth. 391.

-The root idea of British rule in India is that he who has the soil must pay, not in kind like a proper tithe, but in money, a certain proportion of what he gets from cultivation, and this money payment can be raised from time to time so as to maintain the proportion to the fruits of cultivation which have increased, (Viscount Dunedin.) BOMANJI ARDESHIR WADIA P. SECRETARY OF STATE FOR INDIA.

(1928) 56 I. A. 51 = 53 Bom. 230 - 27 A. L. J. 47 = 33 C. W. N. 293 - 49 C. L. J. 179 = I. D. (1929) P.C. 41 - 31 Bom. L. B. 256 - 114 I. C. 1 = A. I. R. 1929 P. C. 34.

#### People of.

Accounts - Keeping of - Habit of. See ACCOUNTS -KEEPING OF-INDIANS.

Ancient law of - Preservation of -Legislative procisions for purpose of.

A long series of legislative provisions have been enacted for the purpose of securing to the people of India the maintenance of their ancient law, amongst others, in matters of inheritance and succession, and many minor enactments have been passed to facilitate the administration of the laws so preserved. The object and principle of this legislation has been throughout to enable the people of various races and creeds in India to live under the law to which they and their fathers had been accustomed, and to which they were bound by so many ties (253.) (Sir Arthur Wilson.) RANI BHAGWAN KUAR P. JOGENDRA CHANDRA BOSE.

(1903) 30 I. A. 249 = 31 C. 11 (29) = 7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381. Religious communities in-Domestic usages and social relations of.

Religion pervading and governing.

In India, all or almost all, the great religious communities of the world exist, side by side, under the impartial rule of the British Government. While Brahmin Buddhist, Christian, Mahomedan, Parsee, and Sikh are one nation, enjoying equal political rights and having perfect equality before the tribunals, they co-exist as separate and very distinct communities having distinct laws affecting relation of life. The law of husband and wife, parent and child, the descent, devolution, and disposition of property are all different, depending, in each case, on the body to which the individual is deemed to belong; and the difference of religion pervades and governs all domestic usages and social relations (323.) (Lord Justice James.) SKINNER v. ORDE. (1871) 14 M. I. A. 309 = 17 W. B. P. C. 77 =

10 B L B. 125 (P. C.) = 8 Moo. P. C. (N. S.) 261= 2 Suth. 521 = 3 Sar. 34.

## INDIAN LEGISLATURE.

British territory-Jurisdiction over-Transfer to Native state of, under British Supervision and control-Power of.

What was attempted was neither more nor less than a rearrangement of jurisdiction within British territory, by the exclusion of a certain district from the regulations and codes in force in the Bombay Presidency, and from the jurisdic-48 I. C. 689 = 36 M.L.J. 585. tion of all the High Courts with a view to the establish-

#### INDIAN LEGISLATURE-(Contd.)

ment therein of a native jurisdiction ander British supervi sion and control. But this could not be done without a Legislative Act, which, in this case, was never passed (152.)

By the Imperial Statute 3 and 4 Will C. 85, S. 43, a general power of legislation (with certain exceptions not material for this purpose) was given to the Governor General in Council as to (among other things) " all courts of justice, whether established by His Majesty's charters or otherwise, and the jurisdiction thereof." This power is, in substance, continued by 24 and 25 Vict C. 67, S. 22, though the particular clause of the former statute is thereby repealed. By the 24 and 25 Vict. C. 104, S. 9, the High Courts of the several Presidencies were established, with such jurisdiction as Her Majesty should by her letters-patent confer upon them; and under the same statute each of those courts was also to have and to exercise, " save as by Her Majesty's letters-patent might be otherwise directed, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General in Council," all jurisdiction, power, and authority previously vested in any of the East India Company's Courts within the same Presidency which were abolished by that Act. It is unnecessary to refer to later enactments, which only modified these provisions in a way not affecting the present case. The jurisdiction, therefore, of the Courts of the Bombay Presidency over Gangli rested, in 1866, upon British Statutes, and could not be taken away or altered (so long as Gangli remained British territory) so as to substitute for it any native or other extraordinary jurisdiction, except by legislation in the manner contemplated by those statutes (152.) (Lord Selbone.) Damodhar Gordhan e. Deoram Kanji. (1876) 3 I. A. 102 -1 A. C. 322 -1 B. 367 (460-1) = 25 W. R. 261 = 3 Sar. 543.

Conditional legislation by-Not ultra vires.

Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial Legislature, they may be well exercised, either absolutely or condtionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred. It certainly used no words to exclude it. There are many important instances of such legislation in India. Among them are the great Codes of Civil and of Criminal Procedure. By S. 385 of C. P. C. of 1859. it is provided that "this Act shall not take effect in any part of the territories not subject to the gene al regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor General in Council " (not in his legislative capacity), " or by the local Government to which such territory is subordinate, and notified in the Gazette." S. 445 of Cr. P. C. of 1861 is precisely similar. Sic also S. 39 of Act 23 of 1861 (195.6.) (Lord Selborne.) QUEEN P. BURAH. (1878) 5 I. A. 178 =

4 C. 172 (182-3) = 3 C. L. R. 197 = 3 Sar. 834 =

3 Suth. 556. -Government-Suit against-Procedure regulating-

Formalities of-Legislation as regards-Power of, See GOVERNMENT OF INDIA ACT OF 1858-S, 65-SUIT AGAINST GOVERNMENT. (1913) 40 I. A. 48 = 40 C. 391. -High Court's invisdiction-Removal of place or

territory from-Legislation as regards-Validity. So far from being in contravention of any of the provisions of the statute 24 and 25 Vict. C. 104, or of the Letters

## INDIAN LEGISLATURE-(Contd.)

Patent issued under that statute (as altered by the Act of 1865), their Lordships find that such an exercise of legislative authority by the Governor-General in Council as might remove any place or territory from the jurisdiction of the High Court at Calcutta is expressly contemplated and authorized both by those statutes and by the letters patent themselves (192.) (Lord Scherne.) QUEEN v. BURAH. (1878) 5 I. A. 178-4 C. 172 (179) = 3 C. L. R. 197=

3 Sar 834 = 3 Suth. 556.

-Land-Right over-Claim to-Suit against Government in respect of-Right of-Legislation taking away-Validity of. See GOVERNMENT OF INDIA ACT OF 1858 -S. 65-LAND. (1913) 40 I. A. 48 = 40 C. 391. --- Legal reform-Indian legislature taking lead of

English in-No improbability in.

There is no improbability in the Indian Legislature taking the lead of the English in a legal reform. Such reform may have been long recognized as desirable in England without an opportunity occurring for its embodiment, in a legislative enactment, and it may well be that the opportunity occurred sooner in India than in this country (England), where the calls for legislative action are so much more numerous (170-1). (Lord Parker.) RAMDAS VITHALDAS DURBAR r. S.AMEERCHAND & CO.

(1916) 43 I. A. 164-40 B. 630 (637)= 18 Bom. L R. 670 = 20 C.W.N. 1182 = 24 C. L. J. 820 = 14 A.L.J. 1045 = (1916) 2 M.W.N. 110 = 4 L.W. 342 = 20 M.L.T. 194 = 35 I. C. 954 = 31 M. L. J. 541.

-Legislation by-Validity of-Discretionary power left to Lieutenent-Governor to determine time and manner of its operation and whether whole or portion of it should be applied-Effect. See GARO HILLS ACT OF 1869, S. 9. (1878) 5 I. A. 178 (193) = 4 C. 172.

--- Legislative power not created or authorized by Council's Act-Creation of-Power of.

The Governor-General in Council could not, by any form of enactment, create, in India, and arm with general legislative authority, a new legislative power, not created or authorized by the Council's Act (194). (Lord Selborne.) THE QUEEN P. BURAH. (1878) 5 I. A. 178=

4 C. 172(181) = 3 C. L. B. 197 = 3 Sar. 834 = 3 Suth. 556.

Position and powers of-Legislation by-Validity of - Jurisdiction of civil courts to decide on-Points for consideration in such case.

The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions, (1934). (Lord Schorne.) THE QUEEN v. BURAH.

(1878) 5 I. A. 178 = 4 C. 172 (180-1) = 3 C. L.R. 197=

3 Sar. 834 = 3 Suth. 556.

## INDIAN LEGISLATURE-(Contd.)

-Privy Council-Judicial functions of-Exclusion of in regard to proceedings before Courts of Justice-Power of.

Semble. It is beyond the power of the Indian Legislature to exclude the judicial functions of Her Majesty in Council in cases of proceedings before Courts of Justice (508). (Lord Justice Knight Bruce.) NAWAB OF SURAT, (1854) 5 M. I. A. 499. In re.

-Privy Council Appeal-Right of-Taking away of -Power of-Sanction of Croson-Necessity.

It is the prerogative of the Crown to do justice between all its subjects, and the Indian Legislature could have no power to limit or affect that prerogative without the sanction of the Crown. The finality created by an Act of the Indian Legislature without the sanction of the Crown must. therefore, be limited to the jurisdiction of the Legislative power which created it, and cannot affect the right of appeal to Her Majesty in Council (455). (Lord Justice Turner.) MODEE KAIKHOOSCROW HORNMUSJEE P. (1856) 6 M. I. A. 448 = 4 W.R. 94 = COOVERBHAEE. 1 Suth. 268-1 Sar. 562.

## INHERENT POWER.

-See C. P. CODE OF 1908, S. 151.

#### INHERITANCE.

Dispute as to-Reference to private arbitrator of-Decision by him according to his notion of wishes and intentions of deceased-Propriety. See ARBITRATION -ARBITRATOR-PRIVATE ARBITRATOR.

(1891) 18 I. A. 73 (77) - 18 C. 414 (419.)

-Law applicable. See HINDU LAW-INHERITANCE -LAW APPLICABLE.

-Law of. See HINDU LAW—INHERITANCE—LAW OF.

-Legal course of-Alteration of. See HINDU LAW -INHERITANCE-LEGAL COURSE OF-ALTERATION OF AND HINDU LAW-WILL-INHERITANCE.

Right of—Agreement barring—Validity — Right following from a status. See HINDU LAW—ADOPTION -ADOPTED SON-ADOPTIVE FATHER-INHERITANCE (1886) 13 I. A. 97 (99) = 9 M. 499 (505).

-Right of-Bar of-Possibility in law-Right following from a status. See HINDU LAW-ADOPTION-ADOPTED SON—ADOPTIVE FATHER—INHERITANCE TO, (1922) 50 I. A. 58 (68) = 2 P. 230.

-Royal descent—General law of—Legal heir—Conditions, See ROYAL DESCENT-GENERAL LAW OF (1869) 12 M. I. A. 523 (541-2).

-Rule of, applicable to parties-Alteration of-Arbitrator's power as to. See ARBITRATION-ARBITRA-TOR-INHERITANCE-RULE OF ETC.

(1901) 28 I. A. 111 (118) = 23 A. 383 (392).

## INJUNCTION.

AWARD-AMOUNT REALISED IN EXECUTION OF-WITHDRAWAL OF-INJUNCTION RESTRAINING,

DECLARATION OF TITLE, AND-SUIT FOR, BY PERSON WITH ONLY POSSESSORY RIGHT AGAINST TRES-

DISOBEDIENCE OF-CONTEMPT FOR-LIABILITY FOR. DISTURBANCE OF PLAINTIFF'S RIGHTS - RELIEF APPROPRIATE IN CASE OF.

EXECUTION OF SPECIFIC WORKS BY DEFENDANT-

FLOODING OF PLAINTIFF'S LANDS BY DEFENDANT'S ORDER FOR. WORKS-FORM OF INJUNCTION IN CASE OF.

GRANT OF -DISCRETION OF COURT. INCONVENIENT RESULTS—INJUNCTION LEADING TO.

## INJUNCTION-(Contd.)

INSOLVENCY.

INTERIM INJUNCTION.

LEASE.

NATIVE STATE-SUIT IN-INJUNCTION RESTRAIN ING.

PERSON NOT PARTY TO PROCEEDING AND NOT SUBJECT TO JURISDICTION OF COURT.

Possessory title-Person only with.

RECEIPT OF MONEY-INJUNCTION RESTRAINING.

REVERSION-PERSON ENTITLED IN-INJUNCTION AT INSTANCE OF.

SPIRITUAL MINISTER OR GURU-IMPARTING OF UPADESAM AND RECEIPT OF GIFTS BY.

TEMPLE—UNBELIEVERS INTRUDING INTO-INJUNC-TION RESTRAINING.

TENANTS IN COMMON-OUSTER BY ONE OF.

## Award—Amount realised in execution of— Withdrawal of-Injunction restraining.

Suit for declaration of invalidity of award and for-Maintainability. See Sp. R. A.—SS. 42, 56. (1922) 49 I. A. 366 (373) - 50 C. 1(9-10).

## Declaration of title, and-Suit for, by person with only possessory right against trespasser.

Decree in-Form of, See Sp. R. A.-S. 42-CASES UNDER-TRESPASSER

(1893) 20 I. A. 99 (106-7) = 20 C. 834 (842-3).

## Disobedience of-Contempt for-Liability for.

-Interim injunction-Disobelience of-Injunction ultimately disolved.

An injunction, although subsequently discharged because the plaintiff's case failed, must be obeyed while it lasts.

Where, therefore, in a suit for dissolution of partnership and for accounts, a Receiver of the partnership assets was appointed and a temporary injunction was granted restraining the defendants interalia from receiving certain payments from Government, held that, although the plaintiff's case ultimately failed and the interim injunction was dissolved, the defendant or defendants who received payments from Government while the injunction lasted and contrary to the terms thereof were guilty of contempt. (Sir George Faravil.) EASTERN TRUST CO. P. MC KENZIE MANN & CO., LTD. (1915) 20 C. W. N. 457 (462)= 35 I. C. 378 - 84 L. J. P. C. 152.

-Receipt of money-Injunction restraining-Disobedience of-No injunction restraining giver. See INJUN-CTION-RECEIPT OF MONEY.

(1915) 20 C. W. N. 457 (462).

## Disturbance of plaintiff's rights-Relief appropriate in case of.

-Turning out of defendants-Declaration of plaintiffs' right of-Propriety. See DECLARATION-TURNING OUT (1891) 18 I. A. 59 (72)= OF DEFENDANTS. 18 C. 448 (462).

## Execution of specific works by defendant-Order for.

-Propriety. See INJUNCTION-FLOODING OF, ETC. (1903) 30 I. A. 60 (65) = 27 B. 344 (352).

## Flooding of plaintiff's lands by defendant's works-Form of injunction in case of.

-Execution of specific works-Order for-Propriety. In a suit for damages for injury caused to plaintiff's fields by the negligence of defendants in the construction and working of a railway and for an injunction compelling defendants to remove the obstructions causing damage to the plaintiff, held, that the injunction should be in general terms restraining defendants from flooding the lands of the

## INJUNCTION -(Contd.)

Plooding of plaintiff's lands by defendant's works —Form of injunction in case of—(Contd.)

plaintiff or causing or permitting them to be flooded by the works of the railway.

It would be inconvenient if the Court were to direct the execution of specified works which it has no power to supervise (65). (Lord Managhten.) HIS HIGHNESS THE GAEKWAR OF BARODA P. GANDHI KACHRABHAI KASTURCHAND. (1903) 30 I. A. 60 = 27 B. 344 (352) = 7 C. W. N. 393 = 5 Bom. L. R. 405 = 8 Sar. 426.

## Grant of ... Discretion of court.

-Exercise of -Principles.

The right to an injunction depends in India upon statute and is governed by the provisions of the Specific Relief Act (I of 1877). S. 52 of that Act places the grant of an injunction in the discretion of the Court, a discretion to be exercised of course as the discretion of Courts always is (192). (Six Arthur Wilson.) TITURAM MUKERJE = COHEN. (1905) 32 I. A 185 – 33 C. 203 (218) = 2 C. L. J. 408 = 9 C. W. N. 1073 = 7 Bom. L. B. 920 = 3 A. L. J. 59 = 8 Sar. 908 = 15 M. L. J. 379

## Inconvenient results - Injunction leading to.

--- Grant of -Propriety.

Courts of Equity are chary of granting injunctions which may lead to inconvenient results (245). (Lord Watson.) STRANG, STEEL & CO. r. A. SCOTT & CO.

(1889) 16 I A. 240 = 17 C. 362 (368) = 5 Sar. 338.

#### Insolvency.

——Creditor—Foreign representative of estate of—Injunction restraining, from taking proceedings against foreign debtors of insolvent—Grant of—Jurisdiction. Sci. INSOL-VENCY—INSOLVENT—CREDITOR OF.

(1840) 2 M. I. A. 353 (388-9).

——Dividend—Creditor's receipt of—Injunction restraining—Suit by assignee for—Jurisdiction to entertain—Insolvency Court and Other Courts. See INSOLVENCY—DIVIDEND—CREDITOR'S RECEIPT OF—INJUNCTION RESTRAINING. (1840) 2 M. I. A. 353 (389).

#### Interim injunction.

Disobedience of—Contempt for –Liability for—
Injunction ultimately dissolved—Effect. See Injunction
 DISOBEDIENCE OF. (1915) 20 C. W. N. 457 (462).

-Nature of Jurisdiction of Court to grant-Disobedience of injunction-Liability for contempt for.

A Court, which has jurisdiction over all the parties to an action, has jurisdiction to restrain them by an interim injunction from doing any of the acts complained of; its order and injunction operates in personam, and compels the party forbidden to do any act, whether the receipt of money or the like, to refrain from doing it, whoever the party may be, and whatever his rights may ultimately prove to be. The existence of such a jurisdiction has been part of the equitable jurisdiction of our Courts for centuries, and is necessary for the safe preservation of the subject-matter of the action until the rights of the parties can be finally determined. It is a misconception to speak of the order and injunction of the Court in such a case as only permissive; it is, of course, interlocutory, not final, but it is binding on all parties to the order so long as it remains undischarged, and although it cannot bind Government (not a party to the suit) not to pay or make the Government responsible for that obedience to the law which the Court is entitled to expect, the party who receives in breach of the order is guilty of a contempt in no way cured by the payment by the Government. (Sir George Farwell.) EASTERN TRUST CO. P. MC KENZIE MANN & CO., LTD.

(1915) 20 C. W. N. 457 (462)=35 I. C. 378.

#### INJUNCTION-(Contd.)

#### Lease.

Lessee — Dispossession wrongful by lessor of— Reme'ly in case of—Possession—Injunction—Specific Performonce—Suit for—Lease not an executory contract. See LEASE—LESSEE — DISPOSSESSION WRONGFUL OF— REMEDY IN CASE OF.

(1865) 10 M. I. A. 386 (395-6).

— Property demised—Use of, by lessee or his assigns, in a manner not contemplated by lease—Injunction restraining—Suit for—Lessor's right of—Lease made according to terms of Regulation, VIII of 1819—Effect, See LEASE—LESSEE—PROPERTY DEMISED—USE OF, ETC.

(1928) 55 M. L. J. 456 (462).

## Native state-Suit in-Injunction restraining.

——Suit in British Indian Court for —Maintainability.

See CIVIL PROCEDURE CODE, OF 1908—S. 11—CASES
UNDER—BRITISH INDIAN COURT. (1916) 36 C. 710.

# Person not party to proceeding and not subject to jurisdiction of court.

——Injunction against—Grant of—Validity. See INSOL-VENCY—ASSIGNEE IN CREDITOR OF INSOLVENT. (1840) 2 M. I. A. 353 (388-9).

## Possessory title-Person only with.

Declaration of title and injunction against trespasser
 Suit for—Right of—Decree in—Form of, See SP. R.
 A.—S. 42—CASES UNDER—TRESPASSER.

(1893) 20 I. A. 99 (106-7) - 20 C. 839 (842-3).

## Receipt of money-Injunction restraining.

- Disobedience of Liability for contempt for No injunction restraining giver-Effect.

Their Lordships differ entirely from the statement that an injunction under which the hand giving may be innocent, and the hand receiving guilty, would be an anomaly not in accord with the policy of the law which developed the power of injunction. Such an injunction is, on the contrary, in accordance with ordinary practice and well-settled princi-ples. If a claimant to an inalienable Government pension succeeded in persuading the Court in this country that he had a prima facic claim to it, and obtained an interim injunction, the true owner of the pension could be committed for contempt if he received his money in defiance of the order, although the Crown was no party to the litigation, and paid in disregard or ignorance of the order. (Sir George Farwell.) EASTERN TRUST CO. P. MC. KENZIE MANN & CO., LTD. (1915) 20 C. W. N. 457 (462)= 35 I. C. 378 = 84 L. J. P. C. 152.

# Reversion—Person entitled in—Injunction at instance of.

-Grant of-Conditions.

The granting of injunction under S. 52 of Act I of 1877 is in the discretion of the Court. In the exercise of a sound discretion, no injunction ought to be granted where there is no evidence of any injury to the reversion vested in the holder of Khorphosh grant, nor is there any evidence that his right (viz., security for the rent which he is entitled to receive) has been interfered with or impaired and when the granting of the injunction will inflict far more injury to the persons against whom injunction is sought than any benefit which the holder of the Kharphosh grant may derive by the injunction being granted. (Sir Arthur Wilson.) TITU-RAM MUKERJI 2. COHEN.

(1905) 32 I. A. 185 (192)=33 C. 203 (218)= 2 C. L. J. 408=9 C.W.N. 1073=7 Bom. L. R. 920= 3 A.L.J. 59=8 Sar. 908=15 M.L.J. 379

## INJUNCTION-(Contd.)

## Spiritual Minister or Guru-Imparting of Upadesam and receipt of gifts by.

-Injunction restraining-Legality-Acts done by him in his individual capacity - Acts done by him colore officii -Distinction. See SPIRITUAL MINISTER-IMPARTING (1928) 56 M. L. J. 121 (126). OF UPADESAM, ETC.

## Temple-Unbelievers intruding into-Injunction restraining.

Suit by beneficiaries for - Maintainability. HINDU LAW - RELIGIOUS ENDOWMENT- TEMPLE (1925) 53 I A 42 (56-7) = 3 R. 582. WORSHIP IN.

## Tenants in common-Ouster b one of.

-Remedy of others in case of-Joint possession-Injunction-Damages. See (1) JOINT TENANTS-TENANTS IN COMMON-OUSTER BY ONE OF.

(1890) 17 I. A. 110 (120-1) - 18 C. 10 (21-2.)

- AND (2) CO-SHARERS-JOINT ESTATE.

#### INSANITY.

-Evidence of-Proof of. See UNDER HINDU LAW -INHERITANCE-EXCLUSION FROM -INSANITY.

-Lucid intervals-Likelihood of-Ganja-Use of-

Mental incapacity due to

There is no satisfactory evidence of any lucid interval between the periods when he was undoubtedly a lunatic, and as his mental incapacity arose from an excessive habitual use of ganja, it is extremely unlikely that such an interval should have occurred. (Sir Andrew Scotte.) ABHIRAM GOSWAMI v. SHYAMA CHARAN NANDI.

(1909) 36 I. A. 148 (166) = 36 C. 1003 (1014) = 10 C.L.J. 284 = 14 C. W. N. 1 = 11 Bom. L. B. 1234 = 6 A.L.J. 857 = 4 I. C. 449 = 19 M. L. J. 530.

#### INSOLVENCY.

ASSIGNEE IN.

DIVIDEND.

ENGLISH BANKRUPTCY.

EVIDENCE-6 GEO. IV, C. 16; 2 AND 3 WILL IV, C. 114

-PROVISIONS IN.

EXECUTION OF DECREE-ATTACHMENT IN-INSOL-VENCY OF JUDGMENT-DEBTOR AND VESTING ORDER SUBSEQUENT TO.

FRENCH INSOLVENCY.

GOMASTA.

HIGH COURT.

HINDU JOINT FAMILY.

INSOLVENT.

JURISDICTION IN-CONFLICT OF.

MORTGAGE-SUIT TO ENFORCE-DEATH OF MORT-GAGOR PENDING, AND DEVOLUTION OF HIS INTE-REST ON HIS SON, AN UNDISCHARGED INSOLVENT. SET-OFF.

SYSTEMS OF, IN INDIA.

## Assignee in.

COMPROMISE BY, WITHOUT SANCTION OF INSOL-

CREDITOR OF INSOLVENT -- INDIAN REPRESENTA-TIVES OF ESTATE OF-SUIT AGAINST-INJUNCTION IN, AGAINST FOREIGN REPRESENTATIVES OF ES-

DIVIDEND-CREDITOR'S RECEIPT OF-INJUNCTION

EQUITABLE MORTGAGE BY INSOLVENT BEFORE AD-

FOREIGN REAL ESTATE OF INSOLVENT NOT VESTED

FRIVOLOUS CLAIMS.

INSOLVENCY-(Could.)

Assignee in -(Contd.)

MORTGAGE-SUIT TO ENFORCE.

PROPERTY VESTED IN.

SALE BY

SUIT IN NAME OF-LEAVE OF INSOLVENCY COURT

TRADER INSOLVENT - ASSIGNMENT OF ALL HIS ASSETS BY.

TRANSFER BY INSOLVENT-SUIT TO SET ASIDE.

UNCERTIFICATED INSOLVENT - AFTER-ACQUIRED PROPERTY OF-RIGHT TO.

## COMPROMISE BY, WITHOUT SANCTION OF INSOLVENCY COURT.

-Setting aside of compromise on ground of -Alteration of its terms on ground of-Assignee's right to recover money paid under compromise on that ground,

It was contended that the Official Assignee had no power to consent to the compromise without the authority of the Insolvent Court. That might possibly be a ground for setting aside altogether the arrangement by which the assignee consented to receive the Rs. 65,000 in satisfaction of the claims of the creditors, as to which their Lordships express no opinion, but it cannot form a ground for altering the terms of the compromise, and allowing the assignce to recover from one who held no fiduciary relationship to him a sum which was paid to that person under the compromise and which it was never intended that the assignee should receive (126.) (Sir Barnes Peacock.) ARDOOL HOSSEIN ZEMAIL ABADIN S. TURNER.

(1887) 14 I.A. 111 - 11 B. 620 (643) - 5 Sar. 25.

CREDITOR OF INSOLVENT-INDIAN REPRESENTATIVES OF ESTATE OF-SUIT AGAINST-INJUNCTION IN, AGAINST FOREIGN REPRESENTATIVES

OF ESTATE OF CREDITOR. -Grant of-Jurisdiction - Foreign representatives neither parties to suit nor subject to court's jurisdiction.

The plaintiff was the assignee, under the Indian Insolvency Act, of P. & Co. The respondent was the Bengal representative of the estate of G, a deceased creditor of P. & Co. In a suit brought by the plaintiff against the respondent in the Supreme Court of Calcutta, on its Equity side, the plaintift sought for an injunction restraining the Batavian representatives of the estate of G, from taking proceedings, towards the realization of the debt due by P. & Co. to the estate of G. against certain debtors of P. & Co. domiciled at Bencoolen in Sumatra. The Batavian representatives of the estate of G, were not, however, made parties to the suit, and they were not subject to the jurisdiction of the Supreme Court.

Held, that the relief sought could not be granted as the Batavian representatives of the estate of G, were not parties to the suit, and were not subject to the jurisdiction of the Court (388-9.) (Mr. Baron Parke.) COCKERELL P. DICKENS.

(1840) 2 M. I. A. 353 = 3 Moo. P. C. 98 = 1 Mont. B. & D. 45 = Morton 407 = 1 Sar. 203.

DIVIDEND-CREDITOR'S RECEIPT OF-INJUNCTION RESTRAINING.

Suit for-Jurisdiction-Insolvency and other courts. See Insolvency—Dividend—Creditor's receipt of -INJUNCTION RESTRAINING. (1840) 2 M. I. A. 353 (389).

EQUITABLE MORTGAGE BY INSOLVENT BEFORE ADJUDICATION.

-Claim against assignee based on-Onus on claimant. See INSOLVENCY-INSOLVENT-TRANSFER BY-EQUIT-ABLE MORTGAGE BEFORE ADJUDICATION. (1896) 23 I. A. 106 (109) = 19 A. 76 (85). INSOLVENCY-(Contd.)

Assignee in-(Contd.)

FOREIGN REAL ESTATE OF INSOLVENT NOT VESTED IN.

-Mode of making it available for general body of creditors.

In a case in which real estate of the insolvent in Java was held not to pass by an assignment under S. 9 of the Indian Insolvent Act, 9 Geo. IV, C. 73, it was contended that the assignees of the insolvent might by some mode of proceeding have obtained that property, and made it available for the payment of the general creditors: With reference to that contention their Lordships observed as follows:—

We are not however able to see in what way that could have been accomplished by the law of England in force at Calcutta; there is no statement that it could have been done by the law in force at Java; as to the law of England, assuming that it did not pass, we have the authority of Lord Eldon in the analogous case of an English Commission of Bankruptcy, that a bankrupt could not be coappelled directly to assign his foreign real estate to his assignees, and though there are indirect methods, as withholding their certificate, or by creditors assigning their debts to others in order to obtain execution against the real estates, neither of these are in the power of the assigness, as such, nor would the first of them seem to be in any case properly applied (387-8). (Mr. Baron Parky.) COCKERELL P. DICKENS, (1840) 2 M. I. A. 353 = 3 Moo. P. C. 98 =

1 Mont. B. & D. 45 - Morton 407 - 1 Sar. 203.

#### FRIVOLOUS CLAIMS.

-Prutting forward of Transfer of No duty as to.

It forms no part of the Official Assignee's duties as an Officer of the Court charged with the realization of insolvent estates either himself to prefer frivolous claims unsupported by reliable evidence or to transfer them to others and thus promote unnecessary and useless litigation. (Sir John Wallis.) CHOCKALINGAM CHETTY F. SEETHALACHE. (1927) 55 I. A. 7 = 6 B.29 =

27 L. W. 1 = (1928) M. W. N. 20 = 4 O. W. N. 1231 – 32 C. W. N. 281 = 47 C. L. J. 136 = 1 L. T. 40 R. 18 = 30 Bom. L. R. 220 = 107 I. C. 237 = 26 A. L. J. 371 – A. I. R. 1927 P. C. 252 = 54 M. L. J. 88

## MORTGAGE-SUIT TO ENFORCE.

Death of mortgagor pending, and addition of his son, an undischarged insolvent, as L. R.—Preliminary and final decrees in suit—Effect of, on assignee not impleaded. See PROVINCIAL INSOLVENCY ACT OF 1907—S. 16 (5).

(1927) 54 I. A. 190 (1934) = 54 C. 595.

 ——Insolvency of mortgagor pending—Foreclosure decree obtained in suit without impleading assignee—Assignee's suit to set aside—Maintainability—Application by assignee to be impleaded in suit rejected—Effect. See MORTGAGE —SUIT TO ENFORCE—INSOLVENCY OF ETC.

(1927) 54 I. A. 190 (194-5) = 54 C. 595.

## PROPERTY VESTED IN.

--- (See also INSOLVENCY-HINDY JOINT FAMILY.)

IV, C. 73.

By the general law of nations debts due to an insolvent at Bencoolen in the island of Sumatra pass to the assignees of the insolvent by an assignment under the Indian Insolvent Act, 9 Geo, IV, C. 73 (388-9). (Mr. Baren Parke.) COCKERELL 2: DICKENS.

(1840) 2 M. I. A. 353 = 3 Moo. P. C. 98 = 1 Mont. B. & D. 45 = Morton 407 = 1 Sar. 203.

INSOLVENCY-(Contd.)

Assignee in-(Contd.)

PROPERTY VESTED IN-(Contd.)

— Foreign real estate of involvent—Involvency under 9 Geo IV., C. 73.

The question was whether real estate of the insolvent in Java passed by an assignment under S. 9 of the Indian Insolvent Act, 9 Geo. IV, C. 73.

Held that it did not (387).

Under the general assignment made by P & Co. (the insolvents) of all their property which could operate wherever, but not elsewhere, the Imperial Parliament could give the law, it certainly would not pass, unless the law of Java made such conveyance, being in the English form operative. There is nothing to show that it did. (Mr. Baren Parke.) COCKRELL 7. DICKENS. (1840) 2 M. I. A. 353.

3 Moo. P. C. 98=1 Mout B. & D. 45=Morton 407= 1 Sar. 203.

 Incidents of Advantages and burdens to which property to as subject in hands of insolvent.

In the event of Lankruptcy, arrangements are made in every system of law for the realization and distribution of the bankrupt's property. The terms employed in the different systems may vary, but in all there is an official, be he called an assignce or trustee or any other name, and that official is by force of the statute invested in the bankrupt's property. But the property he takes is the property of the bankrupt exactly as it stood in his person, with all its advantages and all its burdens (210). (Viscount Duncdin.) SHEOBORAN SINGH v. KULSUM-UN-NISSA.

(1927) 54 I. A. 204-49 A. 367 = 29 Bom. L. B. 877 = 101 I. C. 368 = A. I. R. 1927 P. C. 113 = 4 O. W. N. 543 - (1927) M. W. N. 444 =

25 A. L. J. 617 = 31 C. W. N. 853 = 39 M. L. T. 166 = 26 L. W. 326 = 52 M. L. J. 658.

SALE BY.

——Pre-emption custom if avails in case of. See PRE-EMPTION—CUSTOM OF—INSOLVENCY.

(1927) 54 I. A. 204 (210·1) = 49 A. 367.

- Property in forsession of alience of insolvent-Sale of Validity of Objection to-T. P. A.-S. 6 (c).

Sales by an Official Assignee of lands in possession of ahences from an insolvent are, in substance if not in form, nothing more than sales of the right to litigate, and, assuming, that they do not come within the prohibition in the Tr of P Act against the transfer of a mere right to sue—which has not been contended—they are open to the same objections, and are strongly to be deprecated. (Sir John Wallis.) CHOCKALINGAM CHETTY v. SEETHAI ACHE.

(1927) 55 I. A. 7 = 6 R. 29 = 27 L. W. 1 = (1928) M. W. N. 20 = 4 O. W. N. 1231 = 32 C. W. N. 281 = 47 C. L. J. 136 = 1 L. T. 40 R. 18 = 30 Bom. L. R. 220 = 107 I. C. 237 = 26 A. L. J. 371 = A. I. R. 1927 P. C. 252 = 54 M. L. J. 88.

SUIT IN NAME OF—LEAVE OF INSOLVENCY COURT FOR.

-Grant of-Conditions.

In a case in which the Official Assignee had allowed a suit to be brought in his name, their Lordships made the following observations:—It is impossible for them to belieive, upon the present materials, that the true state of the case, as between Cockrane and Mackenzie, was brought under the notice of the Insolvent Court. Their Lordships are of opinion, that before obtaining leave from the Insolvent Court to prosecute this soit, the true nature of the case should have been explained, and ihe Insolvent Court should have had an opportunity of exercising its controlling judgment upon the propriety of the Official Assignee lend-

INSOLVENCY—(Contd.)

Assignee in-(Contd)

SUIT IN NAME OF-LEAVE OF INSOLVENCY COURT FOR -(Contd.)

ing his name for such a purpose" (509). (Lord Justice Knight Bruce.) COCKRANE v. HURROSOUNDURI DEBIA. (1857) 6 M. I. A. 494 = 4 W. R. 103 = 1 Suth. 278 = 1 Sar. 575.

TRADER INSOLVENT-ASSIGNMENT OF ALL HIS ASSETS BY.

-Validity against assignee of. See INSOLVENCY-INSOLVENT-TRADER INSOLVENT-ASSIGNMENT OF (1891) 19 I. A. 15=19 C. 223. ALL HIS ASSETS BY.

TRANSFER BY INSOLVENT-SUIT TO SET ASIDE.

-Accounts on setting aside of transfer-Principle of

The assignee of A, who became insolvent in the year

1867, brought a suit against the appellant to recover assets alleged to belong to the insolvent's estate, of which the

appellant had wrongfully become possessed.

The insolvent had a business at Hong Kong, and his two brothers, one of whom was the appellant, also carried on business at the same place in partneeship. By the middle of 1866 the insolvent was in very embarrassed circumstances. In September, 1866, he absconded so as to conceal himself from his creditors. His petition in insolvency was presented on 17-12-1866, and he was adjudicated on 7-1-1867. Pending those transactions, that is to say, on 1-1-1867, between the date of the petition and the date of the adjudication, the whole of the insolvent's assets at Hong Kong were handed over by his manager to the firm of his brothers, and his books were also handed over. The transfer was a voluntary one and bad against the creditors,

On setting aside the transfer the first Court directed a general account of the dealings between the appellant's firm and the insolvent. The appellate Court limited that account, by directing that it should only commence with the

assets received after the date of the insolvency.

Held that the appellate Court went upon a right principle and its decree ought not to be varied in that respect (6-7). (Lord Hobhonic). RAHIMBHOY HUBIBBHOY P. TURNER. (1892) 20 I.A. 1=17 B. 341 (348-9)=6 Sar. 256.

-Date of transfer before or after involvency-Onus of

proof of.

The appellant, the Official Assignee of Calcutta, was appointed assignee of the estate of an insolvent firm, by an order of the High Court of Calcutta, on 22-12-1875, when the members of the firm were adjudged insolvents. The respondent was a banker at Cawnpore. The appellant seed to recover from the respondent Rs. 9,436 and interest, which he asserted had been collusively and fraudulently assigned to him by B, one of the insolvents, and on a date subsequent to 22-12-1875. The respondent contended that the money was assigned bona fide previous to the said date, in due course of business and in liquidation of debts previously and at the time due to him by the firm.

The Sub-Judge threw the onus on the respondent of proving that the transfer was made on a date prior to the in-

solvency.

Their Lordships were not prepared to say that the Sub-Judge was right as to the burden of proof (111-2). Richard Couch.) MILLER p. SHEO PERSHAD.

(1883) 10 I.A. 98=6 A. 84 (96)= 13 C.L.B. 305 = 4 Sar. 430.

Fraudulent transaction-Plea by assignce of transfer being a-Onus of proof in case of-Transfer many years before.

In a suit brought by the Official Assignee to set aside a deed of transfer executed by the insolvent very many years

INSOLVENCY-(Contd.)

Assignee in-(Contd.)

TRANSFER BY INSOLVENT-SUIT TO SET ASIDE-(Contd).

before on the ground that it was a fraudulent transaction intended to cheat the creditors of the transferor, Quaere whether the onus was on the plaintiff to make out his allegations, or upon the transferee to support the fairness of the transaction (507). (Lord Justice Knight Bruce.) COCKRANE P. HURROSOONDURRI DEBIA.

(1857) 6 M.I.A. 494-4 W.R. 103-1 Suth. 278-1 Sar. 575.

- Frandulent transfer-Issue as to-Voluntary transfer-Attack of transfer as a-Permissibility-Statement by plaintiff subsequent to issue of intention to attack transfer on that ground-Issue net recasted.

The plaintiff, the Official Assignee of Calcutta, sued, as the assignee of the estate and effects of an insolvent firm, for the recovery from the defendant of the amount of a debt due to the firm on the ground that it had been collusively and fraudulently assigned to him by one of the insolvents on a date subsequent to the insolvency. The issue raised in the case with regard to the point was, "when did the transfer of the principal sum in suit take place? Is the transfer unlawful, and was it fraudulently made or not?" On a subsequent date but before evidence was taken the trial judge questioned the pleaders of both parties. and recorded that the plaintiff's pleader stated that the plaintiff claimed to have the transfer declared invalid, on the grounds,--

1. That it was really made after the involvency, and

was made fraudulently.

2. Even granting that the transfer took place before the insolvency, it was voluntarily made, and was invalid under S. 24 of the Indian Insolvency Act.

The trial Judge did not, however, make any alteration in he issues which he had recorded.

Held that an alteration in the issues was not necessary, and that the question whether the transfer was voluntary and fraudulent and void as against the assignce was sufficiently raised (105-6). (Sir Richard Couch.) MILLER r. SHEO PERSHAD. (1883) 10 LA. 98 = 6 A. 84 (90) = 13 C.L.R. 305 = 4 Sar. 430.

-Voluntary transfer - Suit to set aside-Date of See INSOLVENCY-INSOLtransfer-Onus of proof of. VENT-VOLUNTARY TRANSFER BY-SUIT BY ASSIGNEE TO SET ASIDE. (1883) 10 I.A. 98 (111-2) = 6 A. 84 (96).

UNCERTIFICATED INSOLVENT-AFTER-ACQUIRED PROPERTY OF-RIGHT TO.

-Qualifications of-Insolvency Act, 11 and 12 Vict.,

Under 11 and 12 Vict. c. 21, the Assignee has a right to the subsequently-acquired property of an insolvent, unless the insolvent has obtained a certificate and discharge; but the assignee's right to the subsequently acquired property is subject to two qualifications:-(1) If the insolvent has acquired property sul.ject to liens and obligations, then any property taken by the assignee under that state of things is taken subject to those charges and equities which affect the property in the hands of the insolvent, and (2) if the insolvent carries on trade at a subsequent period, with the assent of the assignee of the estate under the Insolvent Act, in the first instance the property which is acquired in the subsequent trade will be subject in equity to the charge of the creditors in that trade, in priority to the claim of the assignee under the first insolvency. (Lord Kingsdown.) KERAKOOSE P. BROOKS. (1860) 8 M.I. A. 339 =

4 W.B. 61 = 14 Moo. P.C. 452 = 4 L.T. 712 = 1 Suth. 426 = 1 Sar. 778 INSOLVENCY-(Centá.)

Assignee in-(Cont.)

UNCERTIFICATED INSULVENT - AFTER ACQUIRED! PROPERTY OF-KIGHT TO-(Contd.)

-Trade carried on with assigned's knowledge-Property acquired by-Right to, if subject to charges of crediters in the trade.

An uncertificated insolvent horrowed money for the purpose of purchasing goods to carry on a business, and, in order to secure the advances made, gave a bond, and agreed in writing, to execute a mortgage of the goods so purchased to the lender to secure repayment. He afterwards executed an assignment of the goods for that purpose. The business was carried on with the knowledge of, and without any objection by, the assignee. The lender never had possession of the goods assigned to him by the insolvent, and the same remained in possession of the insolvent until

Hold, reversing the Supreme Court, that the insolvent's after acquired property was subject to the lien of the lender, and that such lien was paramount to any claim of the official assignee under the insolvency. (Land Kingsdesen.) (1860) 8 M.I.A. 339 KERAKOOSE v. BROOKS.

4 W.B. 61 = 14 Moo. P.C. 452 - 4 L. T. 712 = 1 Suth. 426 - 1 Sar. 778.

#### Dividend.

Creditor's receipt of Infunction restraining Suit by assignce for-Jurisdiction-Insolvency Court-Other Courts.

The respondent was the Indian representative of the estate of G, a creditor of a person who had been adjudged an insolvent under the Indian Insolvency Act. There were foreign representatives of the estate of G. Those representatives had realised part of the debt due by the insolvent to the estate of G by taking proceedings against real estate of the insolvent in those places and were taking steps to realize the balance from debtors of the insolvent in those places. Alleging that the sum realized by the said representatives represented more than the sum to which the estate of G was or might be entitled by way of dividend, the assignee in insolvency instituted a suit in the Supreme Court of Calcutta on its Equity side against the respondent for, inter alia, an injunction restraining the respondent from suing for, demanding, or recovering any future dividend from the estate of the insolvent, until all his other creditors had received proportionate dividends.

On a contention raised by the respondent, that the jurisdiction to grant such a relief was vested only in the Insolvency Court and could be had only by a petition presented to that Court, and the Supreme Court, on its Equity side, had no jurisdiction to grant such relief, held that the Insolvency Court had not, under the 9th Geo. iv. c. 73, jurisdiction to determine such matters on petition, and that even assuming it had such jurisdiction, its jurisdiction was not (Mr. Baron Parke). COCKERELL r. exclusive (389). (1840) 2 M.I. A. 353=3 Moo. P C. 98= DICKENS.

1 Mont B and D. 45 = Morton 407 = 1 Sar. 203.

-Croliter's right to-Effect on, of realization by him of part of his debt from fund not passing by assignment and not available for general body of creditors.

P. and Co., who were indebted to the estate of G, domiciled at Batavia, in a sum of Rs. 2,52,460, became insolvents, and the plaintiffs were the assignees, under the Indian Insolvent Act, of P. and Co. After the insolvency, the representatives of G in Batzvia proceeded in the Court at Ratavia to recover satisfactian from a real estate in Java, the joint property of P. and Co. and C. and Co., but held in the individual name of P. Notwithstanding the opposition of the assignees of P. and Co., the Batavian represen-

INSOLVENCY-(Contd.)

Dividend-(Contd.)

tatives of G recovered a sum of Rs. 1.50,134, a sum greatly exceeding the amount of all the dividends declared, or likely to be declared, on the debt of Rs. 2,52,460.

In the meantime, and before the process against the real estate in Java, the Bengal representatives of G received from the plaintiffs dividends amounting to Rs. 71,793 on the whole debt.

On a bill filed by the plaintiffs against the respondent, the then Bengal representative of G, for a refund of all the dividends received by him or his predecessors in interest, and for an injunction restraining the respondent from recovering, or attempting to recover, any further dividends from the estate of P. & Co., until all the other creditors of P. & Co. had received dividends on their debts proportionate to, and in the like ratio as, the sum realized by the representatives of G in the island of Java, or which had been or might be realized by them in other places, held that the respondent could neither be compelled refund the money obtained by means of the real estate, or the dividends received on the debt, or be restrained from receiving those thereafter to become due (386-7).

The principle is, that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all the creditors, and at the same time be allowed to come in pari passu with the other creditors for satisfaction out of the remainder of that fund; and this principle does not apply where that creditor obtains by his diligence something which did not and could not form a part of that fund (387). (Mr. Baron Parke.) COCKERELL v. DICK-(1840) 2 M.I.A. 353=3 Moo. P.C. 98=

1 Mont. B. & D. 45 = Morton. 407 = 1 Sar. 203

#### English Bankruptcy.

ASSIGNEE IN-PROPERTY VESTED IN.

Debt due to Bankrupt in India if - Suit for receivery of-Assignee's right of.

An assignment validly made under a Commission in England has the effect of carrying to the assignee a right to sue in India for debts due to the bankrupt This follows from all the rights of the bankrupt being duly vested in the assignee-vested in him by operation of the Bankrupt Laws as effectually as if he had himself made a voluntary transfer of them-good by the laws of the country where it was executed (290). (Lord Brougham ) JAMES CLARK v. BABOO ROUPLAUL MULLICK. (1839) 2 M.I.A, 263= 3 Moo. P.C. 252 = Morton 430 = 1 Sar. 188.

ASSIGNEE IN-SUIT BY, IN INDIA.

-Proof of bankruptcy and of assignment-Necessity. Though an assignment validly made under a Commission in England has the effect of carrying to the assignee a right to sue in India for debts due to the bankrupt, yet evidence must be given in the courts in India to prove the bankruptcy and assignment (290-1). (Lord Brougham.) JAMES CLARK 7. BABOO ROUPLAUL MULLICK.

(1839) 2 M.I.A. 263 = 3 Moo. P.C. 252 = Morton. 430-1 Sar. 188.

-Proof of bankruptcy and of assignment-Onus on assignee-Non-assumpsit-Defence plea of-Effect-Notice by defendant of intention to question bankruptcy and aisignment-Necessity-Waiter of-What amounts to.

In a suit brought in the Supreme Court of Calcutta by the surviving assignee of a bankrupt declared as such under a Commission of Bankruptcy, under the Great Seal of Great Britain, the defendant pleaded the general issue, and in that plea denied that he "undertook and promised in manner and form as the said plaintiff, assignee as aforesaid, bath

## INSOLVENCY-(Contd.)

## English Bankruptcy-(Contd.)

ASSIGNEE IN-SUIT BY, IN INDIA-(Contd.)

above complained." Two days after pleading that plea, the defendant gave the plaintiff notice in writing, that he intended to dispute the trading, petitioning creditor's debt, and the act of bankruptcy. The plaintiff not only did not object that the notice was irregular because it was dated two days after the plea appeared by the record to have been pleaded, but, treating the notice as regular, he endeavoured to prove his title by the assignment. Upon that plea issue was joined, and the trial Court gave a verdict for the plaintiff, liberty being reserved to the defendant to move to enter a non-suit. On a motion subsequently made by the defendant, the verdict was set aside, and a judgment of non-suit was entered with costs.

On objection taken by the plaintiff in appeal to the P. C. to the regularity of the notice, held that the plaintiff must be deemed to have waived his objection, if any, to the irregula-

rity of the notice (291-2).

Held further that the statutory provisions respecting notice did not extend to India, and that the plea of nonassumpsit put the bankruptcy and assignment in issue sufficiently without any notice (291-2). (Lord Brougham.) JAMES CLARK v. BABOO ROUPLAUL MULLICK.

(1839) 2 M.I.A. 263 = 3 Moo. P.C. 252 = Morton. 430 = 1 Sar. 188.

-Proof of trading, act of bankruptcy, petitioning ereditor's debt, and assignment-Onus on plaintiff of-Exidence-English rules of-Inapplicability of.

On 4-7-1826 a Commission of Bankruptcy, under the Great seal of Great Britain, was issued against one S. under which he was duly declared a bankrupt. Two persons were chosen assignees of his estate, and the usual assignment was

executed to them by the commissioners.

In a suit brought in the Supreme Court of Calcutta by the surviving assignee of S upon promises made to the bankrupt by the testator, the plaintiff gave in evidence a paper, purporting to be a copy of the proceedings in England, endorsed with the signature of a person stated to be clerk of the Enrolments, and sealed with a seal purporting to be that of the Court of Bankruptcy. No other proof was given of the trading, act of banksuptcy, or petitioning creditor's debt, nor of the commission or assignment. The paper produced was not proved to be a copy of the proceedings in England, nor was the scal proved to be that of the Court of Bankruptcy. There was evidence given of trading in India, but not coming down later than 1824. The promissory notes on which action was brought were proved to have been made by the defendant, as also the death of the other assignee, and the plaintiff's survivorship.

On objection taken by the defendant, held that the proceedings were not receivable at all, to prove the facts stated in them, and that even otherwise, the papers purporting to set them forth were not authenticated either by the evid nce of those who had examined them with the originals, or by proof of the seal under which they were said to be exempli-fied (290-1).

Held further that the depositions would, in any event, have not been sufficient to support the plaintiff's title, inasmuch as they failed to show a trading after the Statute 6th

Geo. iv, C. 16., came into operation (291).

The statutes which have been made to facilitate the proof of the bankruptcy and assignment in the English Courts do not extend to the Courts of India. The provisions respecting evidence, in the statutes 6th Geo. iv, C. 16, and 2nd and 3rd Will. iv, C. 114, do not extend to the Courts of India; and In those courts, evidence must be given such as would have been required to prove the facts had no such statutory Regu. t in British India-Maintainability.

## INSOLVENCY-(Centd.)

English Bankruptcy-(Contd.)

ASSIGNEE IN-SUIT BY, IN INDIA-(Contd.)

lations been made (290-1). (Lord Brougham.) JAMES CLARK v. BABOO ROUPLAUL MULLICK.

(1839) 2 M.I.A. 263 = 3 Moo. P.C. 252 = Morton. 430 = 1 Sar. 188.

-Title of assignce-Admission by defendant of-What amounts to.

The surviving assignee of Thomas Shepherd, a bankrupt, adjudged under an English Commission, brought an action of assumpsit against a debtor of the bankrupt resident within the jurisdiction of the Supreme Court of Calcutta upon promises made by him to the bankrupt. The defendant pleaded the general issue, and in that plea denied that he undertook and promised in manner and form as the said plaintiff, assignee as aforesaid, hath above complained."

It was contended that the form of the plea admitted the plaintiff's title, by admitting him to be assignee. It was further argued that his capacity of assignee could not be disputed, because it was not specially traversed by the defendant.

Held, that the manner in which the plea was framed did not import such an admission as was contended for (289).

The introduction (wholly unnecessary, no doubt, and very unusual) of the words "Assignee as aforesaid, does not appear to their Lordships to be an adoption of the description given by the plaintiff of the character in which he brings his suit; it is not an admission that he is entitled to sue as assignee, but only a reference to the description which he has given of himself; as if he had said, "Thomas Wyatt, who sues as alleging himself to be assignee of Thomas Shepherd" (289-90). (Lord Brougham.)
JAMES CLARK v. BABOO ROUPLAUL MULLICK.

(1839) 2 M. I. A. 263-3 Moo. P. C. 252-Morton. 430 - 1 Sar. 188.

#### EFFECT OF.

- Debt contracted by bankrupt in India prior to bank. ruptcy-Action for-Bankruptcy if bar to.

A certificate of conformity obtained under a commission of bankrupt in England is a bar to an action for a debt contracted by the bankrupt at Calcutta previously to his bankruptcy, although the creditor had no notice of the commission, and was resident at Calcutta. ((Lord Lyndhurst, L. C.) LEWIS OWEN EDWARDS D. HOWARD RONALD AND OTHERS. (1830) 1 Knapp. 259=1 Sar. 8.

## Evidence-6 Geo. iv, C. 16; 2 and 3 Will. iv, C. 114. Provisions in.

-Inapplicability to India of.

The provisions respecting evidence, in the statutes 6th Geo. iv, C. 16, and 2nd and 3rd Will. iv, C. 114, do not extend to the Courts of India (290). (Lord Brougham.) JAMES CLARK P. BABOO ROUPLAUL MULLICK.

(1839) 2 M. I. A. 263 = 3 Moo. P. C. 252 = Morton. 430 = 1 Sar. 188.

## Execution of decree - Attachment in -Insolvency of judgment-debtor and vesting order subsequent to.

-Sale pursuant to attachment-Stay of-Power and duty of Court. See EXECUTION OF DECREE-INSOL-VENCY OF JUDGMENT-DEBTOR PENDING PROCEEDINGS FOR-ATTACHMENT IN EXECUTION-INSOLVENCY AND VESTING ORDER SUBSEQUENT TO.

(1914) 41 I. A, 251 (255) = 42 C. 72 (80).

## French insolvency.

-Judgment obtained in French territory against insolvent after-Validity of, in French territory-Suit on INSOLVENCY-(Contd.)

French insolvency-(Cont.)

The plaintiff instituted a suit against the defendant in the District Court of South Arcot on a judgment by default obtained by the plaintiff against the defendant in Pondicherry in a suit instituted on a promissory note.

The defendant's firm was declared insolvent, at the instance of other creditors, by the Pondicherry Court; and the insolvency was declared to have effect from a date anterior to the plaintiff's judgment, and indeed to the commencement of the action in which it was obtained. In the insolvency proceedings syndics were appointed as usual, and the plaintiff applied for payment out of the estate; but it did not appear that he obtained payment of any dividend. The question was whether the French judgment on which the suit was brought according to French Law was null and void on the date of suit, and whether the suit in the Arcot Court based on the French judgment, therefore, was not sustainable.

Semble the decision of the Judicial Committee in Quelin v. Morisson (1 Knapp, 265) went far to show that the insol-

vency would afford a defence (229).

The conclusion arrived at by their Lordships on the other points in the case renders it unnecessary to consider the effect of the defendant's insolvency either on the validity of the judgment such on or of the insolvency affording a defence to the action if the judgment is still in force (229). (Lord Lindley.) ANNAMALAI CHETTY 2. MURU-GASA CHETTY. (1903) 30 I. A. 220 – 26 M. 544 (553) = 7 C. W. N. 754 – 4 Bom. L. R. 494 = 8 Sar. 523 =

#### Gomashta.

13 M. L. J. 287.

- Acts of Principal's insolvency founded on-Vali-

The High Court lay down in broad terms "that a man cannot commit any act of bankruptcy by an act of his agent, which he has not authorized, and of which act he had no cognizance." The meaning of the learned Judges evidently is that for the act in question the agent raust have specific authority, and that the authority cannot flow out of his

general position.

So understood their Lordships cannot assent to the principle laid down by the High Court. They cannot hold that the creditors of firms exclusively managed by gomasthas have no remedy by way of insolvency, whatever the gomastha may do; though he may make fraudulent conveyances, promote fraudulent executions, or, as in Hurruck's case, "levant, leaving the creditors to find him or his master if they could." And yet that consequence must follow if the principle laid down by the High Court, in this case be the true one. It is a question in each case whether the gomasta occupies such a position that the owner must stand or fall by his acts, so that his fraud or his flight shall by imputation be the fraud or the flight of the owner or multitude of owners, for the purpose of bringing their case within the Statute of Insolvency (11 & 12 Vict. C. 21). Their Lordships agree with the Judges who have held that the statute admits of application to such cases, and that to exclude it may lead to injustice and confusion in many cases (169-70). (Lord Hobbiouse.) KUSTOOR CHAND KAI BAHADUR ?. RAI DHANPUT SINGH BAHADUR.

(1895) 22 I. A. 162 = 23 C. 26 (35.6) = 6 Sar. 617 = 5 M. L. J. 269.

— Departure from place of business within meaning of S. 9 of Act of 1848—What amounts to—Principal's insoltency based on—Vatidity of.

In a case in which the appellant, a creditor, sought a declaration of insolvency against the respondent, a banker carrying on business in Calcutta and other places, the act

INSOLVENCY-(Contd.)

Gomashta-(Contd.)

of insolvency relied upon was that on two days the respondent's principal gomashta, and other gomashtas and servants, departed and were absent from his place of business at Calcutta with intext to defeat the respondent's creditors. It appeared that the respondent was an active and responsible owner, that his residence and head Koti at another place were well-known, that he occasionally went to Calcutta and to the Koti, that when difficulties arose, the principal gomashta applied to him to meet them, and that, when payment was suspended, the principal gomashta, openly by himself or by his servants, told the creditors that his principal was coming and that they must wait for his action.

Held, that, even if the principal gomashta had departed from the usual place of business within the meaning of S. 9 of the Indian Insolvency Act, his act would not be the act of the Respondent on which he could be adjudged an insol-

vent (170).

Held further, on the facts that the gomashta did not depart from the place of business at all within the meaning of S. 9 of the Indian Insolvency Act (167). (Lord Hobbergs.) KUSTOOR CHAND RAI BAHADUR P. RAI DHUN-PUT SINGH BAHADUR. (1895) 22 I. A. 162 = 23 C. 26 (33 4) = 6 Sar. 617 = 5 M. L. J. 269.

#### High Court.

—Involvency Court—Order of, against insolvent— Judgment entered up in High Court in pursuance of furisdiction in which it is entered up—Execution of judgment—Limitation—Limitation Act of 1908, Art. 183.

On 19.8-1868, the Insolvency Court of Bombay ordered that a judgment should be entered up in the name of the Official Assigneec against the insolvent N for a certain sum. That judgment was accordingly entered up in the High Court. It did not appear whether anything was done under the judgment till 5-4 1886, when the Insolvency Court ordered execution for a portion of the amount to be taken out against certain properties described in the order. The representatives of the insolvent, being summoned to show cause why the judgment should not be executed, assigned as cause that under the operation of the Limitation Act of 1877, the right to have execution was barred by lapse of

Held that the judgment of 1868 was entered up by the High Court, not by way of special or discretionary action, but in the ordinary course of the duty cast upon it by law, according to which every other case of the same kind would be dealt with; that it was therefore entered up in exercise of the ordinary original civil jurisdiction of the High Court; that under S. 86 of the Indian Insolvency Act no present right accrued to the Official Assignee to move for execution until the order of the 5th of April, 1886, was made; and that his application, which was made a few days afterwards, was well within time under Art. 180 of the Limitation Act of 1877 (162.3).

From the material statutes and charters, it appears that, although the Insolvency Court determines the substance of the questions relating to the insolvent's estate, such as the amount of the judgment to be entered up against him, and the propriety of issuing execution upon it, the proceedings in execution are the proceedings of the High Court and the judgment itself is the judgment of the High Court. And it is clearly entered up in the exercise of the ordinary original civil jurisdiction of the High Court, and not by way of special or disciplinary action (162). (Lord Hobboure.) NAVIVAHOO 2: TURNER. (1889) 16 I. A. 156=

——Order in insolvency of—Punjab Laws Act IV of 1872 —Adjudication under, prior—Effect—Property if vests in

13 B. 520 = 5 Sar. 400.

#### INSOLVENCY—(Contd.)

High Court-(Contd.)

Bombay Official Assignee. See INSOLVENCY-JURISDIC-37 I.A. 86=37 C. 418. TION-CONFLICT OF.

#### Hindu joint family.

Father - Adjudication of - Property vesting in Assignee by reason of. See PRESIDENCY TOWNS INSOL-VENCY ACT OF 1909, Ss. 17, 2, 52-HINDU JOINT (1924) 52 I. A. 22=6 Lah. 1. FAMILY-FATHER.

---Father - Insolvency of-Property vesting in assignce by reason of S.7 of Act of 1848 (11 & 12 Vict.;

Quaere whether the Imperial Parliament in passing the 11 and 12 Vict. C. 21, ever contemplated or intended that "the Real and Personal Estate of such petitioner" (in S. 7 of that Act) which a Court might order to be vested in an Official Assignee, or a right to sell it for the debts of a Hindu father, might be held to include or should include the unpartitioned separate interest of a Hindu co-parcener, who was not a petitioner, in the immoveable property of a joint family (33). (Sir John Edge.) SAT NARAIN D. BEHARI LAL. (1924) 52 I. A. 22 = 6 Lah. 1 = (1925) M. W. N. 1 = 23 A. L. J. 85 = 6 L. B. P. C. 1 = 21 L. W. 375 = 27 Bom. L. B. 135 = 29 C. W. N. 797 =

26 P. L. R 81 = A. I. R. 1925 P. C. 18 - 84 I. C. 883 = 46 M. L. J. 857. -Firm of-Adjudication of, or of father, manager of firm-Effect of, on minor sons partners of firm. See PRESIDENCY TOWNS INSOLVENCY ACT OF 1909-

SS. 17, 2, 52—HINDU JOINT FAMILY—FIRM OF. (1924) 52 I. A. 22 (27) = 6 Lah. 1.

-Member of-Adjudication of-Property vesting in assignee by reason of. See PRESIDENCY TOWNS INSOL-VENCY ACT OF 1909 Ss. 17, 2, 52-HINDE JOINT (1924) 52 I. A. 22 = 6 Lah. 1. FAMILY-MEMBER OF.

-Members of - Adult members of Dayalshagea family carrying on business—Insolvency of—Receiver in— Property vested in—Minor members of family—Property of, if also vests. See Provincial Insolvency ACT OF 1907, Ss. 18 (1) and (16). (1922) 49 I.A. 108 - 49 C. 560.

-Members of-Adult members of Dayabhaga family carrying on business-Insolvency of-Receiver in-Vesting in, of assets of firm-Assets of firm in hands of minor members-Recovery of-Suit by creditors of firm for-Maintainability-Parties-Receiver if one. See PROVIN-CIAL INSOLVENCY ACT OF 1907-Ss. 18 (1) & (16).

(1922) 49 I. A. 108 = 49 C. 560.

Members of-Adult members of Dayabhaga family carrying on business--Insolvency of-Receiver in-Vesting in, of assets of firm-Effect of, on assets of firm in hands of minor members-Recovery of such assets-Right of, if also vested in receiver. See PROVINCIAL INSOLVENCY ACT OF 1907, Ss. 18 (1) & (16). (1922) 49 L A. 108= 49 C. 560.

#### Insolvent.

COLLATERAL SECURITY-GOODS DEPOSITED BY IN-SOLVENT AS.

EXECUTION PROCEEDING PENDING AGAINST, AT DATE OF INSOLVENCY.

FRAUDULENT PREFERENCE BY.

TRADER INSOLVENT - ASSIGNMENT OF ALL HIS ASSETS BY-VALIDITY AGAINST ASSIGNEE OF.

TRANSFER BY.

UNCERTIFICATED INSOLVENT - AFTER-ACQUIRED PROPERTY OF.

VOLUNTARY TRANSFER BY.

## INSOLVENCY-(Contd.)

Insolvent-(Contd.)

COLLATERAL SECURITY-GOODS DEPOSITED BY INSOLVENT AS.

Sale by creditor of-Delivery of goods to assignee in insolvency on payment of their full value if amounts to a. See Defd-Construction-Collateral security. (1842) 3 M.I.A. 19 (39-40).

#### EXECUTION PROCEEDING PENDING AGAINST, AT DATE OF INSOLVENCY.

Further proceedings in execution in case of. See EXECUTION OF DECREE-INSOLVENCY OF JUDGMENT-DEBTOR.

#### FRAUDULENT PREFERENCE BY.

-Abandonment of speculation the result of which is still uncertain if a.

There is nothing fraudulent or improper in an insolvent Firm parting with or putting an end to a current speculation. the result of which is still uncertain, on the best terms they are able. On the contrary, such a course is an Lonest one to follow. If an honest man discovers he cannot pay a bet if he loses, and is ready to rescind the bet before the event happens, he is not bound to take the chance of winning for the benefit of his creditors. The rescission and abandonment of a speculation, whilst the result is still uncertain, is a totally differing thing from preferring one creditor to others after a debt has been incurred (231-2). (Lord Justice Mellish). MILLER P. BARLOW.

(1871) 14 M.I.A. 209 - 2 Sar. 727 - L.R. 3 P.C. 733 -8 Moo P.C. (N.S.) 127.

-Transfer giving, made more than 2 years before inselvency-Validity of.

There may not, or may, have been an intention on the part of the transferor to prefer the wife (transferee) to his other creditors; but it that was his intention, it does not necessarily invalidate the instrument of transfer. It is not proved that there was any contemplation of insolvency; the transaction was more than two years before the insolvency (50b). (Lord Justice Knight Bruce). COCKRANE P. HURROSOONDURRI DEBIA. (1857) 6 M.I.A. 494 --4 W.R. 103=1 Suth. 278=1 Sar. 575.

## TRADER INSOLVENT-ASSIGNMENT OF ALL HIS ASSETS BY-VALIDITY AGAINST ASSIGNEE OF.

-Assignment for substantial simultaneous advance and promise of future advances-Effect.

The question was whether a mortgage deed of the 11th of March, 1889, was valid against the assignee in insolvency

of the mortgagors, partners in a trading firm.

Prior to the mortgage, the mortgagees had assisted the mortgagors, either by payments or by incurring liabilities on promissory notes for them, to the extent of Rs. 30,000. At the time of the mortgage more assistance was given. Simultaneously with the mortgage the defendants' firm did receive, in the form of a joint promissory note signed by themselves and by the mortgagees, further assistance to the extent of Rs, 25,000. They also received an undertaking for further accommodation, amounting in the whole to a lakh of rupees. That promissory note, like at least one, if not more, of the former ones, was payable on demand; but there was an understanding that it should not be presented until some later date. It was, in fact, presented in the month of September, 1889. It was not taken up by the mortgagors, and it was taken up by the mortgagees. There was, therefore, substantially an advance of Rs. 25,000 simultaneously with the mortgage. The further accommodation to the extent of a lakh of rupees was not made, on account of a subsequent agreement.

Held that the deed must be held to be valid (18-9).

INSOLVENCY - (Contd.)

Insolvent-(Contd.)

TRADER INSOLVENT—ASSIGNMENT OF ALL HIS ASSETS BY—VALIDITY AGAINST ASSIGNEE OF—(Contd.)

Their Lordships are not aware of any case in which, a simultaneous advance of a large amount being made and future support being promised of a large amount, the validity of such a deed has been seriously called in question. In this case the simultaneous advance was nearly as much as the pre-existing debt, and the undertaking to give feture advances was considerably more (19). (Level Hobbouse.) KHOO KWAT SIEW P. WOOI TAIK HWAY.

(1891) 19 I. A. 15 = 19 C. 223 (231-2) = 6 Sar. 98.

-Assignment for substantial simultaneous advance and promise of future advances—Test of validity of—Intention that trader should carry on his butiness if a.

The question was whether a mortgage deed was valid against the assignee in insolvency of the mortgagors, partners in a trading firm. The consideration for the deed was, inter alia, a substantial simultaneous advance and a promise of large advances in future. It was argued for the assignee that the proper test of the validity of the deed was, whether it was the intention of the parties that the trader giving such a security should carry on his business.

Held that the question hardly arose except in those cases where the amount of additional assistance given at the time of the mortgage was so small as to create a doubt whether it was substantial, in which cases there would be an inquiry into the motives of the parties, whether they did really intend that the business should be carried on or not, but that it was impossible to raise such a question in cases where the amount of simultaneous and future advance was very large (19). (Lend Hobbious). KHOO KWAT SIEW 5. WOOI TAIK HWAT. (1891) 19 I.A. 15—19 C. 223 (231-2)—6 Sar. 98.

-Rule-Exception,

The well-known rule of law is, that if a trader assigns all his property, except on some substantial contemporaneous payment, or some substantial undertaking to make payment in future, that is an act of bankruptcy, and is void against the creditors and the assignee simply because nothing is left with which to carry on his business; whereas if he receives substantial assistance something is left to carry on the business (18). (Lord Hobbouse.) KHGO KWAT SIEW 2, WOOI TAIK HWAT.

(1891) 19 I.A. 15=19 C. 223 (231)=6 Sar. 98.

TRANSFER BY.

Assignee's suit to set aside. See Insolvency— Assignee in—Transfer by insolvent.

Assignment by of goods described as being in certain ware-houses to secure loan—Validity—Goods not all in ware-houses specified at date of assignment—Loan not advanced at that date, but advanced subsequently in instalments—Effect.

A gave to the appellant a bill of sale and assignment of goods, described as being in certain warehouses belonging to A, as security for the loan of a sum expressed to have been paid on the day of the date thereof. Very shortly after, A was, under the provisions of the Act, 9 Geo, IV, C. 73, entitled, "An Act to provide for the relief of Insolvent Debtors in the East Indies," adjudged by the Insolvent Debtors' Court to have committed an act of insolvency; and on the following day the respondent was duly appointed assignee of As estate and effects. The respondent then seized the goods purporting to have been assigned to the appellant, whereupon the appellant brought an action of trover against the respondent.

It appeared, in evidence, that a portion only of the goods was in the ware house specified at the date of the sale, that

INSOLVENCY-(Contd.)

Insolvent-(Contd.)

TRANSFER BY-(Contd.)

no part of the loan was paid on that day, and that the same was paid by instalments a few days afterwards.

The Supreme Court held, in view of the above evidence, that there had been no valid transfer, and consequently no conversion, and gave a verdict for the defendant, on the ground that the evidence given by the appellant did not support the written document set up by him as the foundation of his case, but was in contradiction to it.

Held, reversing the Court below, that the appellant was entitled to a new trial, as the Court below had not weighed all the circumstances in evidence, with sufficient accuracy to justify the verdict it had given. (Dr. Lushington.) MUTTY-LOLL SEAL P. ROBERT O'DOWDA.

(1848) 4 M. I. A. 382-6 Moo. P. C. 324 = 1 Sar. 369.

Equitable mortgage made before adjudication - Claim against assignce based on—Onus on claimant.

Where a creditor of an insolvent claimed as against the Official Assignce that he held as collateral security for his debt the title-deeds and documents of certain bouses and lands of the insolvent, and that the said title-deeds and documents had been delivered to him by the insolvent himself before the adjudication as security for the debt, held, that the onus was on the creditor to prove that the title-deeds in his possession had been deposited by the insolvent with him or his agents as security before the adjudication (109). (Sir Richard Couch.) MILLER v. BABU MADHO DAS. (1896) 23 I. A. 106=19 A. 76 (85)=7 Sar. 73.

--- Fraudulent nature of Proof of Transfer more than 2 years before insolvency.

C, a Hindu, by his will appointed G, and others, executors, and thereby gave and devised the residue of his estate to his daughter, H, the wife of G. All the executors proved, but C alone acted in the trusts of the will. G, being largely indebted to C's estate, by deed in 1831 conveyed to H part of Cx, estate as security for his debt. In 1833, G was declared insolvent under the Statute 9th Geo, IV., c. 73, H entered into possession of the property so conveyed to him and continued to hold the same uninterruptedly till the institution of a suit by the Official Assignee of the Insolvent Court, a period of twenty-two years. Held, in the absence of any proof of fraud in the transaction of 1831, or unfairness against H, in obtaining possession, so as to bring the case within the exception in cl. (1), Sec. 3 of Bengal Regulation II of 1805, that the possession by H, for more than twelve years was, by Bengal Regulation III of 1793, Sec. 14, a bar to the suit. (Lord Justice Knight Bruce.) RANE :. HURROSOONDRY DEBIA.

(1857) 6 M. I. A. 494 = 4 W. R. 103 = 1 Suth. 278 = 1 Sar. 575.

UNCERTIFICATED INSOLVENT-AFTER-ACQUIRED PROPERTY OF.

— Assignee's right to. See INSOLVENCY—ASSIGNEE IN—UNCERTIFICATED INSOLVENT.

## VOLUNTARY TRANSFER BY.

- Hundis-Contingent liability on-Transfer made to provide funds to meet-Voluntary transfer under S. 24 of Act of 1848 if a,

The plaintiff-appellant was the assignee of the estate of an insolvent co-partnership. He sued to recover from the defendant-respondent Rs. 9,000 and odd with interest, which he asserted had been collusively and fraudulently assigned to him by one of the insolvents, and on a date subsequent to 22—12—1875, when the order of adjudication was made; or, if in fact assigned before that date, that it was

INSOLVENCY-(Contd.)

Insolvent-(Contd.)

VOLUNTARY TRANSFER BY-(Contd.)

assigned "voluntarily" within the meaning of S. 24 of the Insolvent Act, and therefore under S. 24 fraudulent and void

as against him.

It appeared, as regards three sums of Rs. 2,500 each, that they were the amounts of three hundis drawn by one of the insolvent's firms upon another of them. Those hundis were drawn in favour of P, as the defendant's agent, and had been discounted by him, and were on the 20th of December in the hands of third persons. They were subsequently taken up by the defendant, or debited to him by the There was thus a contingent liability on the part of the defendant on those hundis, and on the 21st of December the parties must have had full knowledge that they would be dishonoured.

Their Lordships were not prepared to say that the transfer, so far as it provided the defendant with funds to meet the hundis, would, as a matter of law, be voluntary within the meaning of the Insolvent Act (109-110). (Sir Richard

Couch.) MILLER & SHEO PERSHAD.

(1883) 10 I. A. 98 = 6 A. 84 (96) = 13 C. L. R. 305 = 4 Sar. 430.

-Proof of-Quantum.

In a suit by the assignee of an insolvent co-partnership to recover from the defendant a certain sum of money on the ground that it had been assigned "voluntarily" within the meaning of S. 24 of the Insolvent Act, and therefore under S. 24 fraudulent and void as against him, held, on the evidence, reversing the High Court, that the transfer was voluntary within the meaning of the Insolvent Act and fraudulent and void as against the assignee (111). (Sir Richard Couch.) MILLER P. SHEO PERSHAD.

(1883) 10 I. A. 98 = 6 A. 84 (96) = 13 C. L. R. 305 = 4 Sar. 430.

-Suit by assignee to set aside alleged - Date of trans-

fer-Onus of Proof of. The members of a co-partnership were adjudicated insolvents on 22-12-1875, and the appellant was appointed

assignee of the estate of the co-partnership. He sued to recover from the defendant Rs. 9,000 and odd with interest, which he asserted had been collusively and fraudulently assigned to him by one of the insolvents, and on a date subsequent to 22-12-1875; or if in fact assigned before that date, that it was assigned "voluntarily" within the meaning of S. 24 of the Insolvent Act, and therefore under S. 24 fraudelent and void as against him.

The question was whether the transfer to the defendant was, as alleged by hlm, made on 20-12-1875. The Subordinate Judge put the burden of proof of this upon the

defendant.

Their Lordships were not prepared to say that he was right as to the burden of proof (111-2). (Sir Richard Couch.) MILLER v. SHEO PERSHAD.

(1883) 10 I. A. 98 = 6 A. 84 (96) = 13 C.L. B. 305 = 4 Sar. 430.

-Transfer made to put transferee in funds to meet hundies of insolvent accepted by transferce if a.

A firm trading at Calcutta stopped payment on a certain night, and was adjudicated insolvent two days after. One of its branches located at Lucknow transferred, on the day on which the firm stopped payment, a debt due to it to the defendant. The official Assignee instituted the suit out of which the appeal arose for the recovery of the amount from the defendant on the ground that such transfer was "voluntary" within the meaning of S. 24 of the Insolvency

The transfer was made by means of a draft dated the day on which payment was stopped, and purported to have

INSOLVENCY-(Contd.)

Insolvent-(Contd.)

VOLUNTARY TRANSFER BY-(Contd.)

been made by the debtor of the Lucknow branch under its assignment in favour of the defendant to the amount of such debt. The greater part of the amount thus transferred was to put the defendant (who had accepted certain hundis of the firm) in funds to meet such hundis. It also appeared that there was great delay in entering up the amounts transferred in the books of the various parties,

Held, on the evidence in, and the probabilities of, the case, that the transfer was "voluntary" within the meaning of the Insolvency Act and therefore void as against the

Official Assignee (111).

Their Lordships are not prepared to say that the transfer, so far as it provided the defendant with funds to meet the hundis, would, as a matter of law, be voluntary within the meaning of the Insolvent Act (110). (Sir Richard Couch.) (1883) 10 I. A. 98= MILLER 7. SHEO PERSHAD.

6 A. 84 (95, 94) = 13 C. L. R. 305 = 4 Sar. 430.

-See also PRESIDENCY INSOLVENCY ACT OF 1848, S. 24.

## Jurisdiction in-Conflict of.

-Administration of property-Court having power of-Court empowered to administer estate locally and partially-Court empowered to administer completely-Conflict between.

It would be matter for regret if the powers of one Court to administer the estate of an insolvent completely were restrained by those of another Court which can only do so locally and partially. (Sir Arthur Wilson.) OFFICIAL ASSIGNEE, BOMBAY P. REGISTRAR, SMALL CAUSE (1910) 37 I. A. 86 (92)= COURT, AMRITSAN.

37 C. 418 (424)=7 M. L. T. 417=14 C. W. N. 569=7 A. L. J. 357-12 Bom. L. B. 395=68 P. W.R. 1910= 11 C. L. J. 443 = 45 P. R. 1910 = 119 P. L. R. 1910 = 20 M. L. J. 432.

-Realisation and administration of property-Court having purisdiction as regards-Adjudication prior by court in which property not vested but which can only administer it - Adjudication later by Court in which property

A firm of traders carried on business at Amritsar and other places in the Punjab, and also at Bombay and elsewhere. On the application of a creditor, the Amritsar Insolvency Court, in the presence of four out of the five members of the said firm, made an order declaring them insolvent, and requiring them to furnish security, and to put in lists of property, creditors, and debtors.

Subsequently, all the members of the firm were, on an application by other creditors, adjudicated insolvent by the High Court of Bombay under 11 & 12 Vict. C. 21, and a vesting order was made at the same time, vesting the property of the debtors in the Official Assignee of Bombay.

Under the Imperial Act 11 and 12 Vict. C. 21, when an adjudication was made by the court, the estate of the debtor vested in the Official Assignee, and he was to administer it; while, under the Punjab Laws Act IV of 1872 (S. 27). no transfer of property took place, what was entrusted to the Punjab Court being merely administration.

On a question arising as to whether the property of the debtors in the Punjab passed under the vesting order of the Bombay Court, and whether the Official Assignee of Bombay, or the Insolvent Court at Amritsar, was entitled to realise and administer it, held that the property of the insolvents in the Punjab was vested in the Official Assignee of Pombay. (Sir Arthur Wilson.) OFFICIAL ASSIGNER, BOMBAY v. REGISTRAR, SMALL CAUSE COURT, AMRITSAR.

(1910) 37 I. A. 86 (91-2) = 37 C. 418 (424) =

INSOLVENCY-(Contd.)

Jurisdiction in-Conflict of-(Contd.)

7 M. L. T. 417 = 14 C. W. N. 569 = 7 A. L. J. 357 = 12 Bom. L. R. 395 = 68 P. W. R. 1910 = 11 C.L.J. 443 = 45 P. R. 1910 = 119 P. L. R. 1910 = 20 M. L. J. 432.

Mortgage—Suit to enforce—Death of mortgagor pending, and devolution of his interest on his son, an undischarged insolvent.

—Mortgagee's remedy in case of. See C. P. C. OF 1908, O. 22, R. 10—MORTGAGE SUIT.

(1927) 54 I. A. 190 (192-3) - 54 C. 595.

#### Set off.

— Debt secured on Government paper—Mutual eredit -Meaning of—Indian Insolvency Act (9th Geo. IV., C. 73), S. 36.

P. and Co., having borrowed a large sum of the Bank of Bengal, deposited Company's paper with the Bank to a greater amount, as a collateral security, accompanied with a written agreement, authorising the Bank, in default of the repayment, of the loan by a given day, " to sell the Company's paper for the re-imbursement of the Bank, rendering to P & Co, any surplus," Before default was made in the re-payment of the loan, P & Co. were declared insolvents, under the Indian Insolvent Act, 9 Geo. IV, C. 73; by S. 36 of which it was declared, that where there had been mutual credit given by the insolvents and any other person, one debt or demand might be set-off against the other; and that all such debts as might be proved under a commission of bankruptcy in England might be proved in the same manner under the Indian Act. At the time of the adjudication or insolvency, the Bank were also holders of two pronotes of P & Co., which they had discounted for them before the transaction of the loan, and the agreement as to the deposit of the Company's paper. The time for the repay-ment of the loan having expired, the Bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus.

Held, that the Bank could not set-off the amount of the two pro-notes, and that the case did not come within the clause of mutual credit in the Bankrupt Act. (Lord Brougham.) YOUNG P. BANK OF BENGAL.

(1836) 1 M. I. A. 87 = 1 Moo. P. C. 150 = 1 Deacon 622 = 1 Sar. 97.

## Systems of, in India.

Imperial and local acts relating to-Scopes of.

Under the Imperial Act of Parliament, 11 and 12 Vict., C. 21, relating to insolvency proceedings before what are now the High Courts in the Presidency towns in India, jurisdiction is conferred on those courts extending over the whole of India, and for many purposes over much wider limits.

Under the Punjab Laws Act, IV of 1872, in a series of sections beginning with S. 22, the Legislature of the Governor-General in Council has created a system of insolvency of its own, but, of course, such an Act can be effective only within the ambit prescribed by the Act.

There is, indeed, a third system in India, embodied in Chapter 20 of the C. P. C. of 1882. (Sir Arthur Wilson.) OFFICIAL ASSIGNEE. BOMBAY P. REGISTRAR, SMALL CAUSE COURT, AMRITSAR. (1910) 37 I. A. 86 (90) = 37 C. 418 (422-3) = 7 M. L. T. 417 = 14 C. W. N. 569 = 7 A. L. J. 357 = 12 Bom. L. R. 395 = 68 P. W. R. 1910 = 11 C. L. J. 442 = 45 P. P. 1005

11 C. L. J. 443=45 P R. 1910=119 P. L. B. 1910= 20 M. L. J. 432.

## INSOLVENCY ACTS.

FOR CASES UNDER THIS ACT SEE UNDER INSOLVENCY.

## INSOLVENCY ACTS-(Contd.)

-Interpretation of -Facts of Indian life-Reference to -Necessity.

The Statute (Indian Insolvency Act 11 and 12 Vict., C. 21 should be interpreted with reference to the facts of Indian life (170). (Lord Hobbiouse.) KUSTOOR CHAND RAI BAHADUR: RAI DHUNPUT SINGH BAHADUR.

(1895) 22 I. A. 162=23 C. 26 (36)=6 Sar 617= 5 M. L. J. 269,

— Presidency Towns Insolvency Act III of 1909. See PRESIDENCY TOWNS INSOLVENCY ACT III OF 1909.

—Provincial Insolvency Act III of 1907. See Pro-VINCIAL INSOLVENCY ACT III OF 1907.

——Punjab Laws Act IV of 1872. See Punjab Laws ACT IV of 1872.

——Singapore Bankruptcy Ordinance. Sre SINGAPORE BANKRUPTCY ORDINANCE.

Statute 6 Geo. IV., C. 16-S. 92-Repeal of, by 2 & 3 Will IV. C. 114. Ss. 7 and 9-Extent of-Petitioning seeditor's debt-Depositions of-Admissibility in evidence.

Quaere whether the provisions of 6th Geo. IV, C. 16, S. 92 are so far repealed by those of 2nd and 3rd William IV, C. 114, Ss. 7 and 9 as to make the depositions of the petitioning creditor's debt evidence only in the case specified by the latter Act, of the witnesses being dead (292). (Lord Brongham.) JAMES CLARK 7: BABOO ROUPLAUL MULLICK. (1839) 2 M. I. A. 263=3 Moo. P. C. 252= Morton 430=1 Sar. 188.

#### INSPECTION.

Corporation—Member of—Books of corporation— Inspection of—Right of. See Corporation—Member OF—INSPECTION. (1908) 35 I. A. 130 (136) = 32 B. 466 (476-7.)

## INSURANCE.

## Fire Insurance Policy.

Possession of premises damaged by fire taken and held by company under—Damages to goods of assured during period of—Company's liability for—Damage caused by water used to extinguish fire.

An insurance company taking and holding possession of premises damaged by fire under the provisions of the policy in that behalf does so in its own interest for the purpose of enabling it to minimise the damage and not because it is under a duty to the assured. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss. But when the company has so taken possession of the premises and done what in its opinion was wisest to minimise the damage, it cannot say that the actual damage is not the natural and direct consequence of the fire.

Where an insurance company took and held possession of premises damaged by fire under the provisions of the policy in that behalf and it was found that the premises were damaged not only by the water employed to extinguish the fire but also by the water being allowed to lie on the machinery thereafter and during the period the company was in possession, held that the company was liable for the loss caused till the moment of its delivery of the premises to the assured, i.e., for the loss caused by the water being allowed to lie on the machinery after the extinguishment of the fire, and not merely for the loss caused till the moment of the extinguishment of the fire. (Lord Moulton.) AHMEDBHOY HABIBBHOY F. BOMBAY FIRE AND MARINE INSURANCE CO., I.T.D. (1912) 40 I. A. 10 = 37 B. 183 =

CO., L.TD. (1912) 40 I. A. 10=37 B. 183 = 13 M. L. T. 11=11 A. L. J. 42=(1913) M. W. N. 64 = 15 Bom. L. R. 19=17 C. W. N. 269=17 C. L. J. 154 = 17 I. C. 75=24 M. L. J. 328.

## INSURANCE-(Contd.)

## Life Insurance Policy.

-Deposit without writing of-Charge if created by. See T. P ACT, S. 130-LIFE INSURANCE POLICY.

(1912) 40 I.A. 24 - 37 B. 198.

-Money due under-Right to-Actionable claim under S. 130, T. P. Act if an. See T. P. ACT, S. 130-LIFE (1912) 40 LA. 24 = 37 B. 198. INSURANCE POLICY.

#### Marine Insurance.

CARGO.

Insurance on-Abandocment in case of total loss-

Notice by assured of-Form of.

Whatever strictness of construction may have been applied to notices of abandonment in former times, it never could have been absolutely necessary to use the technical word "abandon"; any equivalent expressions which informed the underwriters that it was the intention of the assured to give up to them the property insured upon the ground of its having been totally lost, must always have been sufficient (311).

Held, that the letter of the 10th of June, from the assured to the underwriters, was a sufficient intimation of the intention of the assured to divest themselves of the property in the ship, and to vest it in the underwriters, subject to the question of their right to alandon, upon the ground of either an actual or a constructive total loss (311-2). (Lord Chelmsford.) CURRIE AND CO. P. BOMBAY NATIVE INSURANCE (1869) 6 Moo. P.C. (N.S.) 302 = L.B. 3 P.C. 72= 39 L.J. P.C. 1 = 22 L.T. 317 = 18 W.R. 296 Eng

-Insurance on-Abandonment in case of total lose-Notice by assured of-Reasonable time for giving-What amounts to.

It was objected, that if there was a total loss, the notice of adandonment was not given within a reasonable time. What is a reasonable time, in a case of this description, must depend upon the particular circumstances of each case. On the one hand the assured is not to delay his notice when a total loss occurs, in order to keep his chance of doing better for himself by keeping the subject insured, and then, when he finds it will be more to his advantage to do so, throwing the burden upon the underwriters; while, on the other, the underwriters cannot complain of a suspense of judgment fairly exercised on the part of the assured, to enable him to determine whether the circumstances are such as to entitle him to abandon (312).

Held, on the evidence, that there was no unreasonable delay in giving the notice of abandonment (312-3). (Lord Chelmsford.) CURRIE AND CO. v. BOMBAY NATIVE INSU-(1869) 6 Moo. P.C. (N.S.) 302-L.R. 3 P.C. 72=39 L.J. P.C. 1 = 22 L.T. 317= RANCE CO. 18 W.R. 296 Eng.

-Transhipment of, when ship disabled from pursuing voyage insured-Duty of captain as regards. See Insu-RANCE -- MARINE INSURANCE -- CAPTAIN OF SHIP-TRANSHIPMENT OF CARGO. (1869) 6 Moo. P.C. (N.S.) 302 (318).

" CARGO " AND " DISBURSEMENTS " OF SHIP-POLICIES OF, AGAINST TOTAL LOSS.

-Assured's right to recover upon-Evidence.

The appeal arose out of a suit brougt by the appellants to recover the amount of two Policies of Insurance effected by them with the respondents upon the " cargo " and " disbursements" respectively of the ship Northland, upon a voyage from Moulmein to Madras. The Policies were against total loss only.

The evidence was to the effect that, the ship having become a wreck, the captain, without taking any steps to save or discharge the cargo, deeming it impracticable, proceeded to dismantle the ship, and gave notice to the Insurers of

#### INSUBANCE-(Contd.)

Marine Insurance-(Contd.)

"CARGO" AND "DISBURSEMENTS" OF SHIP- POLI-CIES OF, AGAINST TOTAL LOSS-(Contd.)

abandonment of the cargo, and sold both ship and cargo by public auction, and that a large part of the cargo was afterwards saved.

The Court below held that, as the cargo might have been, and was, in fact, partially saved, there was no such total loss of the cargo and freight as entitled the assured to recover on either of the Policies,

Their Lordships affirmed the judgment below as regards the cargo, but varied it, so far as related to the Policy on disbursements, holding that as the ship, when she was reduced to a wreck, was incapable of earning any freight, there was such a total loss of the disbursements, to be paid out of the freight, as to entitle the assured to recover on that Policy. (Lord Chelmsford.) CURRIE & CO. v. BOM-BAY NATIVE INSURANCE CO.

(1869) 6 Moo. P. C. (N. S.) 302 = L. R. 3 P. C. 72 = 39 L. J. P. C. 1 = 22 L. T. 317 = 18 W. R. 296 (Eng).

CONTRACT FOR.

-What amounts to.

The suit was for breach of an alleged contract to "issue Policies of insurance covering war risks on goods" shipped or to be shipped by the plaintlffs "at the rate prevailing at the time of the plaintiff firm's declaration of the steamer, by which goods, as aforesaid, were to be shipped. was founded on (a) a written quotation by the defendants of their lowest rate on jute per S. S. Constantinos XII at 1 per cent, and war risk at 5 per cent. less 10 per cent; (b) an acceptance of this rate by the plaintiffs; and (c) an arrangement that the plaintiffs should supply the defendant company with a statement of the approximate amount to be covered. The alleged contract arose on an acceptance by word of mouth of a letter quoting a rate of premium and on a declaration by word of mouth, not of the name of the steamer, by which the goods were to be shipped, but of the expected value of the plaintiffs' goods to be loaded on board of her.

Held, that the contract alleged by the plaintiffs was a contract for sea insurance and nothing else (129). (Lord Summer.) SURAJMULL NAGOREMULL P. THE TRITON (1924) 52 I. A. 126 = INSURANCE CO., LTD.

52 C. 408 - 23 A. L. J. 105 - (1925)M. W. N. 257 -6 L. R. P. C. 66 27 Bom. L. R. 770 -29 C. W. N. 893 - A. I. R. 1925 P. C. 83 -86 I. C. 545 - 49 M. L. J. 136.

- Enforceability of -- Contract by word of mouth, See STATUTE - PROVISIONS OF-VIOLATION OF-OBJEC-(1924) 52 I. A. 126 (128-9) = 52 O. 408. TION TO.

OPEN COVER "-POLICIES IN TERMS OF.

-Refusal to issue-Specific Performance.

The appeal arose out of a suit brought by the appellant for the specific performance of a contract made by the respondent company to deliver a policy of insurance not exceeding Rs. 15,000 on rice and disbursements for and on

the Copeland Isle on a Voyage from Rangoon to Bombay.

The plaint alleged that on 9.3.1885, the appellant entered into an agreement at Rangoon with one M, for a charter of the latter's vessel, Copeland Isle, from Rangoon to Bombay, and that M guaranteed the vessel a good insurance risk and undertook to obtain insurance for such goods as the appellant should ship by her; that the appellant, intending to ship 100 bags of rice on board of her. required M, to obtain insurance for the sum of Rs. 15,000 upon the rice and the disbursements which the appellant was to make on account of the vessel; that M applied to the agents of the respondents at Rangoon to accept an

#### INSURANCE-(Contd.)

Marine Insurance-(Contd.)

"OPEN COVER"-POLICIES IN TERMS OF -(Contd.) insurance risk to the extent of Rs. 15,000 by the Copeland Isle to Bombay, which they agreed to do, and in due course issued an "open cover" for the same; that M brought and made over to the appellant the "open cover" and at the same time indorsed it over to the appellant, in accordance with the custom prevalent in Rangoon, and thereafter the appellant executed a charter party for the said vessel; that the appellant shipped 1000 bags of rice on the Copeland Isle, and disbursed on her the sum of Rs. 4000, and on 31-3-1885, wrote to the respondents' agents a letter requesting them to declare policies of insurance on 1000 bags of rice. value Rs. 10,000, and the disbursement of the vessel from Rangoon to Bombay. Rs. 5000, and inclosed the premium ; that the respondents on 1-4-1885 replied by letter regretting that as they did not grant the appellant an "open cover" they could not issue a policy, and returning the premium; and that the respondents persistently refused to issue the policy, and that the Copeland Isle whilst proceeding on her voyage to Bombay was totally lost.

Upon the evidence in the suit their Lordships came to the conclusion that the open cover was given to M, in order that he might give it to the charterer of the vessel, and that it was a proposal to insure, and that although addressed to M, it could not have been intended for his acceptance, as it was known that he was not going to ship the rice.

Held, that when M handed the open cover to the appellant it was a subsisting proposal capable of being accepted by him, and that when the appellant applied to the respondents for policies to the amount mentioned in the cover, there was an acceptance of the proposal so as to make a binding contract with the appellant to insure and issue a policy in terms of the open cover (70).

The acceptance by the appellant was made whilst the offer to insure was subsisting, and was sufficient to complete

the contract (70).

Quaere whether the contract became complete when the charterparty was signed, and the proposal to insure was acted upon (70). (Sir Richard Conch.) BHUGWANDASS D. THE NETHERLANDS INDIA SEA AND FIRE INSU-RANCE CO., OF BATAVIA. (1888) 16 I. A. 60 = 16 C. 564 - 5 Sar. 293.

#### SHIP.

-Actual total loss of-What amounts to.

A ship cannot be considered to be an actual total loss whenever she is under water, or even when she is submerged in such circumstances as to present to salvors a problem of some difficulty (191). (Viscount Sumner.) CATES CO. r. Franklin Fire Insurance Co.

(1927) A. I. R. 1927 P. C. 188 - 104 I C. 332 =

96 L. J. P. C. 132. -Captain of-Duty of, where ship and cargo in peril

of being lost,

When a ship and cargo are in peril of being lost, the captain is called upon to act for the benefit of all concerned-He is not at liberty to prefer the interests of one of the parties to another (315). The captain is bound where there is danger of loss of ship and cargo to act for the benefit of all concerned. He ought not to treat the ship as utterly lost, and to regard only the interests of the Owners of the cargo, and of the Underwriters (317). (Lord Chelmsford.) CURRIE AND CO. P. BOMBAY NATIVE INSURANCE CO.

(1869) 6 Moo. P. C. (N. S.) 302 = L. R. 3 P. C. 72= 39 L. J. P. C. 1=22 L. T. 317=18 W. R. 296 (Eng.). -Captain of-Transhipment of cargo-Duty as re-

gards-Ship disabled from pursuing voyage insured. The Captain is not under an absolute obligation to tran INSURANCE-(Contd.)

Marine Insurance-(Contd.)

SHIP-(Contd.)

voyage insured, but may exercise his discretion upon the subject (318). (Lord Chelmsford.) CURRIE & Co. v. BOMBAY NATIVE INSURANCE CO:

(1869) 6 Moo. P. C. (N. S.) 302 = L. R 3 P. C. 72 = 39 L. J. P. C. 1 = 22 L. T. 317 = 18 W. R. 296 (Eng.).

Scarcorthiness of Intermediate ports-Seaworthiness at-Warranty of-Time Policy-Voyage Policy-Distinction.

If, as was contended, in a time policy there is a warranty of seaworthiness, at the time the vessel started on her original voyage, this vessel is found by the Court below to have been seaworthy at such a time. Then comes the question, assuming she was seaworthy when she started on her voyage,-is there a further warranty that she shall be seaworthy at every intermediate port she touches at, pending the progress or continuance of her voyage, which is to last for a specified tinfe? Now, if it had been a voyage policy, there is no question, although there had been a warranty of seaworthiness when she started on her voyage, there would be no warranty that she should be seaworthy at an intermediate port at which she touched, which port she is endeavouring to make intermediate; and if it were to be held that there was a warranty in a time policy that the ship shall be seaworthy at her departure and at every intermediate port during the currency of the time policy, it would be holding that there is a warranty to a greater extent in a time policy than there would be in a voyage policy (370-1).

Held, therefore, that, assuming there was in a time policy a warranty of se-worthiness, it was satisfied at the time the voyage commenced, and that there was no warranty at any intermediate port (371). (Sir John Jervis.) JENKINS +. HEYCOCK. (1853) 5 M. I. A. 361 = 8 Moo. P. C. 351 = 1 Com. Law. Rep. 406 = 1 Sar. 452.

-Seasourthiness of-Warranty of-Annexing of. by custom and decision-Time policy-Voyage Policy-

The general rule is that a policy of indemnity, being a written instrument, the terms of that instrument must be construed subject to certain conditions, one of which is, that in a voyage policy, custom and decision have annexed to that contract a warranty of seaworthiness, and that there is no custom and no decision which warrants the Court in saying, that in a time policy any such warranty attaches (371). (Sir John Jervis.) JENKINS v. HEYCOCK. (1853) 5 M. I. A. 361 = 8 Moo. P. C. 351 =

1 Com. Law. Rep. 406=1 Sar. 452.

-Seaworthiness of Warranty of Time Policy.

If it were necessary to determine that in a time policy there is no warranty of seawor-hiness, my Lords would possibly be inclined to adopt the opinion of Lord Campbell and the Judges to the full extent, namely, that there is no warranty of seaworthiness in a time policy. It is not necessary to decide that point to the full extent (370). (Sir John Jerris.) JENKINS v. HEYCOCK.

(1853) 5 M. I. A. 361 = 8 Moo. P. C. 351 = 1 Com. Law. Rep. 406=1 Sar. 452.

-Sinking of boat insured against total loss-Notice of abandonment-Tender by assured of -Acceptance binding by underwriters of-What amounts to.

A boat, which was owned by the appellants and which was sunk, was covered at the time by policies of insurance, which were issued by the respondents, and which contained the following clauses :-

"In ascertaining whether the vessel is a constructive total ship a cargo when a ship is disabled from pursuing the and nothing in respect of the damaged or break-up value loss, the insured value shall be taken as the repaired value,

## INSURANCE-(Contd.)

Marine Insurance-(Contd.)

SHIP.

of the vessel or wreck shall be taken into account-Warranted to be subject to English law and usage as to liability for and settlement of any and all claims,

and also sue and labour clauses in the usual terms. dishursements policy further contained the words

"to follow Hull underwriters in the event of total or con-

structive or compromised total loss,"

The appellants sent to the underwriters' agents notice of the accident on the day of the collision and notice of abandonment which was refused by the respondents. was raised by the underwriters through salvors and while the surveys and estimates were being made for repairs the salvors asked the underwriters' representatives whether, if the wreck were to be sold, they would be given a chance to purchase. The salvors were asked to put their offer into writing which was done but after some interval it was withdrawn.

Held that, by reason of those communications between the underwriters and a third party, there had not been a binding acceptance of the abandonment which had been tendered by the assured, in spite of their formal refusal of it.

The underwriters in this tentative negotiation did not act as owners of the tug or exercise dominion over it, and they did not purport to sell and convey or to make a title for that purpose. An agreement to sell, had it been concluded, would only have been an executory contract, which they would be able to perform if and when they chose to accept the abandonment, but in itself it could not be an act of As a matter of fact, this every day proceeding was nothing more than a precaution, equally available in ownership. connexion with proving a defence in case they should resist the claim or with preparing to make the best of the loss if they should give up the contest and elect to pay. (Viscount Sumner.) CATES CO. v. FRANKLIN FIRE INSURANCE Co. (1927) A. I. B. (1927) P. C. 188 = 104 I. C 332 = 96 L. J. P. C. 132.

## INSURANCE COMPANY.

-Claim by assured-Delay in making-Intention not

to rely upon-Representation of-Effect. In their Lordships' view it is impossible to say with any confidence whether a representation by an Insurance Company that they did not intend to rely upon the delay on the part of the assured in making a claim to damage for destruction of his property by fire is a representation of an existing fact, a present existing resolve, or a promise or representation of an intention to do something in the future (34-5). (Lord Atkinson.) YORKSHIRE INSURANCE CO., LTD. P. (1922) 32 M. L. T. 25 P. C. -Claim with full particulars-Provision as to-THOMAS CRAINE Waiver of-Effect-Possession and management taken up

by Company-Effect. There were two conditions in an Insurance Policy, one that the assured should within a certain time submit full particulars as to the loss sustained and the other that at any time before the adjustment of the claim and without the Company incurring any liability thereby, the Company had a right to take over possession and management of the assured property and sell or do any other thing with regard to it. After a claim was preferred, the Insurance Co. took over possession of the assured's property and thus kept it out of possession of the rightful owner for some time.

Held, that the Company were estopped from setting up defects in the claim made and could not contend that the claim was wholly unsustainable on account of want of strict compliance with the clause requiring full particulars. (Lord YORKSHIRE INSURANCE CO., LTD. P. RAINE. (1922) 32 M. L. T. 25 P. C. THOMAS CRAINE.

## INSURANCE COMPANY-(Contd.)

-Policy-Validity of-Right to question-Acceptance of premiums with knowledge of circumstances entitling avoidance of policy-Effect.

The acceptance of premiums with the knowledge of circumstances entitling the insurer to avoid the policy estopped him from averring that by reason of those circumstances the policy was not valid (29). (Lord Atkinson.) SHIRE INSURANCE CO., LTD. P. THOMAS CRAINE.

(1922) 32 M. L. T. 25 P.C.

#### INSURANCE POLICY.

-See under (1) Insurance and (2) Insurance

## INTENTION.

-Object-Distinction between. See PENAL CODE-Ss. 34, 149. (1924) 52 I. A. 40 (52) = 52 C. 197.

#### INTEREST.

AGREEMENT ENHANCING—CONSIDERATION FOR.

AWARD OF -DISCRETION OF COURT.

BOND.

CLAIM TO-LIMITATION BAR TO.

COMPOUND INTEREST.

COSTS-INTEREST ON.

DECREE.

DECREE REVERSED ON APPEAL-AMOUNT RECOVER-ED UNDER-INTEREST ON.

ENHANCEMENT OF, ON DEFAULT.

EQUITABLE CLAIM TO.

EQUITABLE COMPENSATION-AWARD OF INTEREST

EXECUTION SALE - SETTING ASIDE OF-INTEREST ON PURCHASE-MONEY.

FUTURE INTEREST.

LIABILITY UNDER BOND FOR-EXEMPTION FROM.

MESNE PROFITS-INTERFST ON - DECREE SILENT

MONEY DECREE - JUDGMENT-DEBTORS UNDER-PAY-MENTS BY, AT DIFFERENT DATES IN SATISFACTION OF DECREE.

MONEY HAD AND RECEIVED-ACTION FOR-INTER-EST IN.

MONEY WRONGFULLY WITHHELD-INTEREST ON.

MORTGAGE-SUIT TO ENFORCE.

NEGOTIABLE INSTRUMENT.

PERIOD AND RATE OF-DISCRETION AS TO.

PRINCIPAL-INTEREST WHEN ACCESSORY TO, AND WHEN NOT.

RATE OF.

RIGHT TO.

STIPULATION AS TO-PENALTY OR NOT.

SUIT-INTEREST SUBSEQUENT TO.

SUIT AND DECREE-INTEREST BETWEEN DATES OF-RATE OF

WAGERING CONTRACT-SUM RECOVERABLE UNDER -INTEREST ON.

WILL-MANAGER UNDER-AMOUNT WITHHELD BY -INTEREST ON.

## Agreement enhancing-Consideration for.

Necessity. See DEBTOR AND CREDITOR-INTE-(1871) 8 B. L. R. 110. REST ON LOAN. Award of-Discretion of Court.

-Submission to-Effect.

Upon the question whether this sum ought to have been ordered to be refunded with interest, their Lordships are of opinion that this case stands clear of what is ruled in the final part of Lord Cairns' Judgment in Rodgers v. The Comptoir d' Escompte de Paris, because they find that in INTEREST-(Contd.)

#### Award of - Discretion of Court-(Contd.)

the proceedings of the Chief Court of the Punjab there was a submission to the discretion of the Court, whether interest on that sum should be allowed or not. With the exercise of that discretion in the particular case their Lordships are not disposed to interfere (146). (Six James W. Colvide.). FORESTER 2: SECRETARY OF STATE FOR INDIA.

(1877) 4 I. A. 137 = 3 C. 161 (173) = 3 Sar. 717 = 3 Suth. 405 - 1 P. R. 1877.

#### Bond.

——Interest payable under—Liability for — Exemption from, during period of Mutiny, and consequent interruption of British rules—Right to. See BOND—INTEREST PAYABLE UNDER. (1866) 11 M. I. A. 120 (127-8).

——Rate of interest fixed in—Reduction of, in suit to enforce bond—Power of—Bond not set aside but allowed to stand as security. See BOND — INTEREST—RATE OF, FIXED IN BOND. (1866) 11 M. I. A. 120 (127.)

#### Claim to-Limitation bar to.

Principal—Claim to, barred—Effect—Special contract to pay interest at specified rate—Existence and absence of—Distinction between cases of.

Where there is no independent contract to pay interest, the interest is a mere accessory of the principal. When interest is a mere accessory to the principal and a claim to the latter is barred by statute, the interest thereon cannot be recovered. This principle is inapplicable to a case in which there is a special stipulation to pay interest at a specified rate. (Lord Warrington of Clyfle.) CHEANG THEE PHIN 2. LAM KIN SANG.

(1929) 30 L. W. 470 - 6 O. W. N. 822 - 119 I. C. 623 - (1929) A. C. 670 - A. I. R. 1929 P. C. 240.

#### Compound interest.

Agreement for Necessity Compound interest not allowed in absence of agreement. (Lord Buckmaster.) JEWAN LAI DAGA P. NILMANI CHAUDHURI.

(1927) 55 I. A. 107 = 7 Pat. 305 = 26 A. L. J. 124 = (1928) M. W.N. 154 = 30 Bom. L.R. 305 = 107 I. C. 337 = 47 C. L. J. 302 = 32 C. W. N. 565 = 27 L. W. 740 = A. I. R. 1928 P. C. 80 = 54 M. L. J. 325.

-Agreement for--Proof of-Onus on creditor. (Lord Phillimore.) RADHA KISHUN P. HIRA LAL SINGH.

(1926) 4 O. W. N. 344 = (1927) M. W. N. 73 = 100 I. C. 668 = 31 C. W. N. 566 = 45 C L J 308 = 38 M. L. T. (P. C.) 97 = 29 Bom. L. R. 791 = A.I.R. 1927 P. C. 50 = 52 M.L.J. 715.

-Agreement to pay—Course of dealings between parties showing—Decree on foot of—Right to—Plaint setting up specific case of agreement to pay compound interest with annual rests inconsistent with agreement disclosed by the accounts—Effect.

The plaintiffs were members of a joint Hindu family, and they carried on a money-lending business. The defendant began to borrow money from the plaintiffs on the 20th of Pous 1310 Fusli (i.e., January 1903), when a sum of Rs 300 was advanced and after the expiration of 15 months eleven days' interest was debited to the account. Further sums were advanced from time to time, and the accounts were adjusted periodically, the last adjustment having taken place on the 25th Jeth 1324, corresponding to May, 1917, so that the account between the porties was running for about 14 years. Simple interest was charged upon each advance from the date of such advance until the date when the principal sum and interest were carried into a separate column of the account. The periods during which the interest was charged varied. The account was then adjusted and Interest cal-

INTEREST -(Contd.)

Compound interest-(Contd.)

culated on the total amount found due, so that compound interest was charged. During the time the accounts were running they were submitted to the defendant and on nine occasions he signed the accounts, the first occasion being 10th Majh 1312 and the last occasion being 25th Jeth 1324 Fusli. The accounts submitted by the plaintiffs to the defendant and signed by him as above mentioned showed the compound interest, the dates at which the adjustments respectively were made, and the period during which and the rate at which the compound interest was charged. Nevertheless, in a suit by the plaintiffs to recover the balance due to them by the defendant, the High Court held that the plaintiffs were not entitled to recover the compound interest charged in the accounts. They did so on the ground that the plaintiffs had, in their plaint in the suit, set up a specific case of an agreement that interest should be charged with annual rests, that annual rests had not been made in the accounts, and that the specific case set up had not been proved. The accounts did not, in fact, show annual rests.

Held that the High Court adopted too narrow a view of the plaintiff's case, that the pleadings alleged an agreement by the defendant to pay the compound interest charged in the accounts which were submitted to and accepted by him,

and that such agreement was proved.

It is true that it was alleged in paragraph 16 of the plaint that the plaintiff's practice was to charge interest with annual rests, but there is also a specific allegation that the defendant was informed of the claim to interest and compound interest and be accepted the claim. In view of these allegations in the plaint their Lordships are of opinion that the plaintiffs are entitled to rely upon the course of dealing between the parties as showing an agreement by the defendant to pay the compound interest which was in fact charged by the plaintiffs in the accounts submitted to him. (Sir Lancelet Sanderson.) HIRA LAL SARU v. LACHMI PRASAD NARAIN SINGH. (1929) 27 A. L. J. 787=

33 C. W. N. 921 = 31 Bom. L. R 905 = 117 I. C. 496 = 50 C. L. J. 183 = 30 L. W. 615 = (1929) M. W. N. 770 = A. I. R. 1929 P. C. 176 = 57 M. L. J. 319.

of—Admissibility. See EVIDENCE ACT—S 92. PROVISO 2. (1919) 47 I. A. 17 (23) = 44 B. 474.

Default—Compound interest on—Stipulation for— Penalty when and when not. See CONTRACT ACT—S. 74.

 Oppressive nature of, or of compound interest with rests—Test—Rate of interest—Reasonableness of—England and India—Distinction.

The question of compound interest cannot be regarded as entirely separable from the rate of interest. Compound interest at a moderate rate may not necessarily be oppressive and similarly compound interest with infrequent rests may or may not be oppressive, while compound interest cou-pled with a high rate of interest and with frequent rests might be in excess of any authority which the Karta (of a joint Hindu family) could have. The whole conditions and terms of the lending have to be regarded together. There is no rule, which their Lordships can discover, which binds them, when the terms of a loan are challenged, to lean to their reduction, or to presume that simple interest must always be judicially preferable to compound interest, or that rates, because they seem high here, must be unreasonable in India. Compound interest is common and may often be necessary and proper in India under the circumstances of that country. The matter is not one upon which, one way or the other, their Lordships' Board has ever decided that there is a presumption one way. (Viscount Sumner.) SUNDER MULL P. SATYA KINKAR SAHANA.

(1927) 55 I. A. 85=7 Pat. 294 = (1928) M. W. N. 242=

INTEREST -- (Contd.)

Compound interest-(Could.)

27 L. W. 461 = 26 A. L. J. 364 = 9 Pat. L. T. 203 = 5 O. W. N. 400 = 47 C. L. J. 403 = 32 C. W. N. 657 = 108 I. C. 337 = 30 Bom. L. R. 793= I. L. T. 40 Pat. 120 = A. I. R. 1928 P. C. 64 =

54 M. L. J. 427.

Stipulation for, when test of unconscionable bargain and when not. See CONTRACT ACT-S. 16-DERTOR-(1918) 35 M. L. J. 614. BORROWING BY.

#### Costs-Interest on.

-See Costs-Interest on and Executing COURT-COSTS-INTEREST ON.

-Date of -Interest up to-Rate of.

The Court must exercise a judicial discretion in giving effect to S. 10 of C. P. C. of 1861, and would not be justified in granting an inordinate or unusual rate of interest (210).

The rate of interest, however, to be allowed on the principal debt up to the date of the decree ought to be that, if any, which has been fixed by contract, express or implied, between the parties (211). (Sir James Colvile.) ORDE C. SKINNER. (1880) 7 L A. 196 = 3 A. 91 (107)= 7 C. L. R. 295-4 Sar. 178-3 Suth. 788.

-Future interest-Decree silent as to-Recovery of-Mode of-Execution or separate suit. See MESNE PRO-(1875) 2 I. A. 219 (228). FITS-FUTURE PROFITS -Interest not awarded by-Mortgage for-Validity-Executing Court-Interest allowed by-Interest not allowed

by-Cases of-Distinction. See MORTGAGE-INTEREST (1878) 5 I. A. 78 (85)--DECREE. 3 C. 602 (609-10).

-Interest not allowed by-Recovery of-Right of-Mode of. See DECREE-INTEREST-DECREE-INTEREST NOT ALLOWED BY-RECOVERY OF.

(1878) 5 I. A. 78 (85) = 3 C. 602 (609).

-Reduction of rate by-Benefit of-Right to, of stranger to decree claiming relief inconsistent with it.

The Court's power to regulate interest is given by S. 10 of Act XXIII of 1861, which answers to S. 209 of the present Code of Civil Procedure (1882). That power is given when a plaintiff sues for money due to him, and it is a discretionary power to give such rate as the court may think proper by decree. The decree can only operate between the parties to the suit, and those who claim under them. The plaintiff getting the security of a decree has his interest reduced in the generality of cases. That rate cannot, however, be availed of by persons who were not parties to the decree and who claim relief inconsistent with it.

Where, therefore, a puisne mortgagee, who had not been impleaded in a suit upon the prior mortgage, which resulted in a deceee and in the execution purchase of the mortgaged property by the prior mortgagee, sued the latter for redemp-tion of the prior mortgage, held that the plaintiff could not avail himself of the reduced rate of interest allowed by the decree on the prior mortgage but was liable for the rate of interest fixed by the prior mortgage (213.4). (Lord Hobhouse.) UMES CHUNDER SIRCAR v. MUSSUMMAT ZAHO-(1890) 17 I. A. 201 = 18 C. 164 (180) = OR FATIMA. 5 Sat. 507.

## Decree reversed on appeal—Amount recovered under -Interest on.

-Liability of unsuccessful party for-Rate of, to be allowed-Discretion as to. See C. P. C. of 1908-S. 144 -DECREE REVERSED ON APPEAL.

## Enhancement of, on default.

-Stipulation for. See CONTRACT ACT-S. 74.

INTEREST-(Contd.)

## Equitable claim to.

Condition of.

In order to invoke a rule of equity entitling a party to interest, it is necessary in the first instance to establish the existence of a state of circumstances which attacts the equitable jurisdiction, as for example, the non-performance of a contract of which equity can give specific performance, (I ord Tomlin.) MAINE ARD NEW BRUNSWICK ELEC-TRICAL POWER CO., I.TD, P. HART.

(1929) 30 L. W. 153 = A.I.R. 1929 P. C. 185 = 27 A.L.J. 1065 = (1929) M.W.N. 862 = 119 I.C. 615 98 L.J. P.C. 146 = 57 M.L J. 662.

-Executed contract-Suit on covenants and not on contract-Claim in case of.

When once such a contract has been executed, then, apart from cases where rescission on the ground of fraud is sought, there remains nothing to attract the equitable jurisdiction and the parties are left to their remedies at law.

Where a party cannot, and does not, sue upon the contract, because it is fully executed, and he sues only upon the covenants, those covenants must be construed according to the ordinary rules of construction, and if they do not, so construed, give the plaintiff interest, he cannot claim interest unless it is given to him at common law or under statute. There is no place in the matter for the exercise of equitable jurisdiction and, therefore, no rule of equity in regard to interest can have any application. (Lord Tomlin.) MAINE AND NEW BRUNSWICK ELECTRICAL POWER (1929) A.I.R. (1929) P.C. 185 = CO., LTD. P. HART. 30 L.W. 153 = 27 A. L.J 1065 - (1929) M.W.N. 862 -119 I.C. 615 - 98 L.J. P.C. 146 - 57 M.L.J. 662.

## Equitable compensation—Award of interest as.

-Dower decreed to Mahomedan widow-Award on. Ser MAHOMEDAN LAW-DOWER-INTEREST ON.

(1921) 25 C.W.N. 866 (875).

-Forbearance to enforce money payment-Award in case of.

Compensation for forbearance to enforce a money payment is best calculated on the basis of an equitable rate of interest (301). (Lord Parker.) HAMIRA BIBI v. ZUBAIDA (1916) 43 I.A. 294 = 38 A. 581 (589) =

14 A.L.J. 1055 = 20 M.L.T. 505 = (1916) 2 M.W.N. 551 = 4 L.W. 602 = 21 C.W.N. 1 = 1 Pat. L.W. 57 = 18 Bom. L.B. 999 = 25 C.L.J. 517 = 36 I.C. 87 = 31 M.L.J. 799.

-Will-Manager under-Amount withheld by-Interest on-Award of, as compensation. See INTEREST-WILL-MANAGER UNDER. (1880) 7 I.A. 196 (209-10) = 3 A. 91 (106).

## Execution sale-Setting aside of-Interest on purchase money.

-Payment of-Order for-Power to make. See CIVIL PROCEDURE CODE OF 1908-O. 21, R. 93. (1920) 40 M.L.J. 141.

## Future interest.

Award of-Discretion as to-Implication of exercise of, though point not expressly dealt with.

In a suit for redemption, the Judge of first instance did not give to the mortgagee interest from the date of suit. There was no reference in his judgment to the point. On appeal from his decree the mortgagee contended that the omission to give interest from the date of suit was due not to the exercise of any discretion vested in the trial Judge but to oversight. But the High Court refused to accept that contention and treated the trial Judge as having declined to award any interest for the period in question and held that it was a matter left to his discretion, and that

#### INTEREST-(Cent.)

#### Future interest-(Contd.)

under the circumstances of the case that discretion had not been unreasonably exercised. No application was made to the trial Judge to repair the alleged omission before the order was perfected, or at all. On further appeal by the mortgagee, held by their Lordships that, in the circumstances of the case, the order made by the trial Judge must be taken to represent in all respects his decision on the matter in point and that the discretion was not unreason ably exercised. (Lord Moulton.) MAJUMDAR HIRALAL ICHHALAL P. DESM NARSILAL CHATURBHUJDAS.

(1913) 40 I.A. 68 (73-4) = 37 B. 326 (339) = 17 C.W.N. 573 = 13 M.L.T. 415 = (1913) M.W.N. 428 = 11 A.L.J. 432 = 17 C.L.J. 474 = 15 Bom. L.R. 483 = 18 I.C. 909 = 25 M.L.J. 101.

In a case in which the Sub-judge had allowed interest up to the date of suit, it was contended that his order should have included a sum in respect of interest up to date of judgment and should as a judgment have been expressed to carry interest at the rate of 6 per cent, per annum. Their Lordships thought it more than likely that both items were excluded from the learned Judge's order by an oversight, and that, if the point had been present to his mind, he would in both the matters have adopted the general rule and allowed interest until payment.

Nevertheless their Lordships were not, merely on conjecture, prepared to direct any variation of the decree in respect of interest up to date of payment, being of opinion that such interest was not as of course, (Lord Blancsburgh.) DEWAN CHAND KIRPA RAM & CO. F. WELD & CO.

(1925) 88 I.C. 54 = A.I.R. (1925) (P.C.) 150 (155) = (1925) M.W.N. 459.

The allowance of interest post the date of the institution of a suit is, by S. 34, within the discretion of the Court, and as a rule the Board has not interfered with the exercise of a discretion vested in a High Court. (Six John Edge.) SOURENDRA MOHAN SINHA : HARL PRASAD SINHA.

(1925) 52 I.A. 418 (433) = 5 Pat. 135 = 42 C.L.J. 592 = 24 A.L.J. 33 - (1926) M.W.N. 49 = 7 Pat. L.T. 97 - A.I.R. 1925 P.C. 280 = 91 I.C. 1033 = 50 M.L.J. 1.

Decree silent as to—Recovery of—Mode of—Execution or separate suit. See MESNE PROFITS—FUTURE PROFITS.
 (1875) 2 I.A. 219 (228).
 Liability under bond for—Exemption from.

——Mutiny of 1857 and consequent interruption of British rule—Exemption during period of—Right to. Sov BOND—INTEREST PAVABLE UNDER—LIABILITY FOR. (1866) 11 M.I.A. 120 (127-8).

## Mesne profits-Interest on-Decree silent as to.

 Award of—Jurisdiction of executing Court—Discretion. Sci MESNE PROFITS—INTEREST ON—DECREE SILENT AS TO.

Money decree - Judgment debtors under -- Payments by, at different dates in satisfaction of decree.

——Contribution amongst persons paying—Interest in case of—Cakulation of—Principle, See CONTRIBUTION
—MONEY DECREE. (1907) 35 I.A. 32 = 35 C. 303.

Money had and received-Action for-Interest in.

---Plaintiff's right to.

In a Court of Law, the ordinary rule is, that in actions for money had and received interest is not given; but it is by no means clear that, even in a Court of Law, the fact of the defendant having received interest would not be a sufficient

#### INTEREST-(Contd.)

Money had and received—Action for—Interest in —(Contd.)

ground for making the defendant liable to pay interest (233). (Lord Justice Mellish.) MILLER v. BARLOW.

(1871) 14 M.I.A. 209 = 2 Sar. 727 = L.B. 3 P.C. 733 = 8 Moo. P.C. (N.S.) 127.

#### Money wrongfully withheld-Interest on.

Where the arrears of an annual payment called Tera garas Huk the right to which was purchased by the appellant at an execution sale was wrongfully withheld by the Government, held that the appellant, who was given a decree for the recovery of such arrears, was entitled to simple interest at the rate allowed by the Court on the arrears due when the suit was instituted, and on each subsequent payment as it accrued due (42). (Lord Kingidown.) SUMBHOOLALI. GIRDHURLALL v. COLLECTOR OF SURAT. (1859) 8 M.I.A. 1=4 W.R. 55=1 Suth. 387=1 Sar. 713.

— Where by the wrongful act of the defendant the plaintiff had been deprived of money which was actually making interest, held that a Court of Equity would clearly be disposed to give interest (233).

Held that the High Court, which had the powers both of a Court of Equity and a Court of Law, acted rightly in giving interest in such a case (233). (Lord Justice Mellith.)

MILLER P. BARLOW. (1871) 14 M.I.A. 209=
2 Sar. 727 = L.B. 3 P.C. 733=8 Moo. P.C. (N.S.) 127.

## Mortgage-Suit to enforce.

-Interest in. See Mortgage-Suit to enforce

## Negotiable Instrument.

## Period and rate of - Discretion as to.

-Interference in appeal with.

The other objection taken to the decree under appeal was as to the rate and period of interest directed by it. There was nothing contrary to law in this direction, and what was ordered was within the scope of the Court's discretion. With this exercise of discretion their Lordships declined to interfere. (Sir Lawrence Jenkint.) SRI RAJAH MALRAJU LAKSHMI VENKAYAMMA ROW 2. SRI RAJAH VENKADRI AFPA ROW. (1920) 13 L. W. 256 (259)=

(1921) M.W.N. 77 = 23 Bom. L.B. 713 = 19 A.L.J. 97 = 33 C.L.J. 171 = 25 C.W.N. 654 = 59 I.C. 767 = 40 M.L.J. 144.

Principal-Interest when accessory to, and when not.

See Interest—Claim to—Limitation bar to. (1929) 30 L.W. 470.

#### Rate of.

Bond—Rate fixed in—Reduction of, in suit to enforce bond—Power of. See BOND—INTEREST—RATE OF, ETC. (1866) 11 M.I.A. 120 (127).

——Commercial terms—Reasonable commercial terms of
—Test of. See HINDU LAW—JOINT FAMILY—MANAGER
—MORTGAGE BY—AUTHORITY AS TO—REASONABLE
COMMERCIAL TERMS.

Contract rate low in view of corrupt advantages stipulated for but not upheld by Court—Rate to be allowed in case of—Higher rate if can be claimed. See HINDU LAW —MINOR—GUARDIAN—CHARGE BY.

(1866) 10 M.I.A 454 (475).

Discretion as to-Exercise of-Principles.

The rate of interest should be fixed according to some principle, not according to the arbitrary discretion of the

INTEREST-(Contd.)

Rate of-(Contd.)

Judge (475). (Sir James W. Colvile.) LALLA BUNSEE-DHUR v. KOONWAR BINDESEREE DUTT SINGH.

(1866) 10 M. I. A, 454 = 2 Suth. 39 = 2 Sar. 167.

Discretion as to-Interference in appeal with. See INTEREST-PERIOD AND RATE OF.

-Exorbitant rate in India.

In India the rate of interest bears a very large proportion to the principal advanced (49). (Sir Arthur Hobhouse.) GUNGAPERSHAD SAHU v. MAHARANI BIBI.

(1884) 12 I. A. 47 = 11 C. 379 (383) = 4 Sar. 621.

Reasonableness of -England and India-Distinction. See INTEREST -- COMPOUND INTEREST-OPPRESSIVE (1927) 55 I.A. 85 = 7 Pat. 294. NATURE OF, ETC.

-Reduction by decree of-Benefit of-Right to, of stranger to decree claiming relief inconsistent with it. See INTEREST-DECREE-REDUCTION OF RATE BY.

-12 per cent .- Decree allowing-Aftermance of.

(1890) 17 I. A. 201 (213-4) = 18 C. 164 (180).

In a suit instituted by the sons of one of the deceased sons of a testator against A, one of the surviving sons of the testator, and the manager of the testator's estate under the terms of his will, for an account of his management of the joint estate and for payment to plaintiffs of their share of the rents and profits, the trial Jurige gave on the amount payable to the plaintiffs as and for their share 12 per cent. interest up to the date of the suit, gave 12 per cent, interest on the principal amount from the date of the institution of the suit up to the date of the decree, and directed that the decree, when compounded of the principal, interest, and costs, should carry interest only at 6 per cent. 12 per cent.

it appeared upon the accounts that the rate of interest allowed among the sharers themselves was 12 per cent. Held that the trial Judge, in calculating the interest as he had done, had done nothing which he was not entitled to

was notoriously the rate of interest prevalent in the

mofussil wherever interest was allowed by the Court; and

do (210-1). (Sir James Colvile.) ORDE v. SKINNER. (1880) 7 I A. 196 = 3 A. 91 (107) = 7 C. L. B. 295 = 4 Sar. 178 = 3 Suth. 788.

-12 per cent .- Reasonableness of - England and India

12 per cent. appears, according to our notions of this country (England), a high rate of interest. It may, however, well be that, having regard to the local conditions in India. it is a very proper and reasonable rate to impose. (Lord Buckmatter.) NARAIN DAS v. ABINASH CHAN-(1922) 27 C. W. N. 299 = 21 A. L. J. 201 = 37 C. L. J. 457 = 69 I. C. 273 = L. R. 3 P. C. 129 =

31 M. L. T. 217 (P. C.) = 16 L. W. 780 = A.I.B. 1922 P. C. 347 = (1922) M. W. N. 791 = 4 U. P. L. B. (P. C.) 111 = 44 M. L. J. 728 (731-2).

-12 per cent, ordinary rate.

12 per cent, per annum stated by their Lordships to be the ordinary rate (33). (Lord Hatherly, L. C.) FORESTER :. SECRETARY OF STATE FOR INDIA.

(1872) Sup. I. A. 10 = 12 B. L. R. 120 = 18 W.B. 349 = 3 Sar. 1=1 P. R. 1872-2 Suth. 628.

-21 per cent. per annum when allowed. (Lord Buckmaster.) JEWAN LAL DAGA 2. NILMANI CHAUDHURI. (1927) 55 I. A. 107 = 7 Pat. 305 = 26 A. L. J. 124 -

(1928) M. W. N. 154 = 30 Bom. L. B. 305 = 107 I. C. 337 = 47 C. L. J. 302 = 32 C. W. N. 565 = 27 L. W. 740 = A. I. R. 1928 P. C. 80 = 54 M. L. J. 325.

-24 per cent. not unusual in India.

2 Rupees per cent. per mensem is by no means an unusual rate of interest in cases from India coming before this

INTEREST-(Contd.)

Rate of -(Contd.)

Board. (Lord Atkinson.) LALA BALLA MAL v. ASHAD (1918) 16 A. L. J. 905 = 124 P.B. 1918 23 C. W. N. 233 = 25 M. L. T. 55 = 180 P. W. R. 1918 = 29 C. L. J. 165-1 U. P. L. R. (P. C.) 25=

21 Bom. L. R. 558 = 48 I. C. 1 = 35 M. L. J. 614 (621). -Varies with risk run. (Lord Buckmaster.) JEWAN

LAL DAGA 2. NILMANI CHAUDHURI. (1927) 55 I. A. 107 = 7 P. 305 = 26 A. L. J. 124 = (1928) M.W.N. 154 = 30 Bom. L. R. 305 = 107 L. C. 337 = 47 C. L. J. 302 = 32 C.W.N. 565 --

27 L. W. 740 = A. I. R. 1928 P.C. 80 = 54 M. L. J. 325 Right to.

-Contract-Mercantile usage-Necessity-Wagering conteact before Act XXI of 1848-Sum recoverable under

Neither by the English nor the Hindoo law, unless there be mercantile usage, can interest be imported into a contract, which contains no stipulation to that effect.

In an action on contract, known as Tajee Mundee Chitties, opium wager contracts. (before the passing of the Act, No. XXI, of 1848, which prohibited such gambling contracts.) the plaintiff claimed interest on the sum recovered. IIdd, that as there was no stipulation as to interest in the contract, or satisfactory evidence of mercantile usage at Calcutta to import interest into the contract, the interest claimed could not be allowed. (Lord Kings. down.) JUGGOMOHUN GHOSE r. KAISRECHUND.

(1862) 9 M. I. A. 260 = 1 Sar. 835.

35 M. L. J. 169.

-Contract, express or implied-Rule of low-Neces-

Interest depends on contract, express or implied, or on some rule of law allowing it. (Lord Sumuer.) (1918) 40 A. 497 (504) = DAS v. MAOBUL AHMAD. 22 C. W. N. 866-16 A L J. 693-5 P. L. W. 159-28 C. L J. 181-8 L W. 179-(1918) M. W. N. 535-24 M. L. T. 110 = 20 Bom. L. R. 864 = 46 I. C. 548 =

Stipulation as to-Penalty or not.

-See CONTRACT ACT-S. 74.

Suit-Interest subsequent to. See INTEREST-FUTURE INTEREST.

Suit and decree-Interest between dates of-Rate of.

-Discretion as to-P. C's interference with.

Under S. 34 of C. P. C. of 1908 there is a discretion in the Court as to the rate of interest to be awarded from the date of the institution of the suit until judgment. Where, therefore, both the Courts below held that the interest should be 81 per cent., their Lordships declined to dissent from that (Viscount Haldane.) PANNA LAL v. NIHAL (1922) 16 L.W. 80 (83) = 26 C. W. N. 737 = CHAND. (1922) M.W.N. 376 = 36 C.L.J. 5 = 24 Bom. L. R. 971 -31 M. L. T. 129 = 2 P. L. R. (P. C.) 1922 -

A.I.B. 1922 P.C. 46-67 I. C. 423-43 M. L. J. 66. Wagering contract-Sum recoverable under-Interest on.

-Right to-Act XX1 of 1848-Contract before. Sec (1862) 9 M. I. A. 260. INTEREST RIGHT TO.

Will-Manager under-Amount withheld by-Interest on.

-Liability for.

In a suit instituted by the sons of one of the deceased sons of a testator against A, one of the surviving sons of the testator and the manager of the estate of the testator under the terms of his will, for an account of his management of the joint estate and for payment to plaintiffs of their share INTEREST-(Contd.)

Will-Manager under-Amount withheld by-Interest on-(Contd.)

of the rents and profits, hidd that the defendant had to account for all his receipts on account of the joint estate, and had a right to set up by way of discharge whatever he

could properly claim under that head (209).

Held further that, having all the time kept the plaintiffs out of their share, the defendant ought, upon every ground of justice and equity, to pay some interest upon it, not merely upon the admitted debt, but also upon the amounts improperly claimed by him as items of discharge and disallowed by the Court (210). (Sir James Colvile.) ORDE 2. SKINNER.

(1880) 7 I. A. 196 - 3 A. 91 (106) - 7 C. L. B. 295 = 4 Sar. 178 - 3 Suth. 788.

#### INTEREST ACT XXXII OF 1839

## Applicability.

Agreement between parties regulating amount of interest.

By an agreement between Principal and Agents, 10 percent, was to be allowed as commission. The Sudder Court, under Act No. XXXII of 1839 allowed 12 per-ent, perannum from the date of the suit, on the amount found due to the Agents; such rate of interest disallowed on appeal, as that Act does not apply to an agreement between parties regulating the amount of interest. (Lord Justice Turner.) MURTUNJOY CHUCKERBUTTY P. COCKRANE.

(1865) 10 M. I. A. 229 (251) = 4 W. R. P. C. 1 = 1 Suth. 592 = 2 Sar. 124.

- Debts contingent in amount and time of becoming

The certainty as to the amount and time of payment required by the Interest Act XXXII of 1839 must exist at the time when the promise is made. The Act does not, accordingly, in this part affect debts contingent in amount, and time of becoming due (280). (Sir John Coloridge.) JUGGOMOHUN GHOSE P. MANIKCHUND.

(1859) 7 M. I. A. 263=4 W.B. P.C. 8=1 Suth. 357= 1 Sar. 681.

Promise contingent on events, which may never happen, to pay inm capable of ascertainment only, and if where these shall happen, and the time for the happening of which

may be indefinitely postponed.

Where the plaintiff stated that, in consideration that he had paid to the defendants the sum of Rs. 500, they had undertaken that if the average price per chest of Patna opium at the next ensuing public scale rose above Rs. 1 300, they would pay him such excess or difference within a reasonable time after the said sale, held that the contract was not within the scope of Act XXXII of 1839 (280).

There is no promise absolutely to pay any sum, certain or uncertain, nor any time limited for the payment, but only a promise contingent on events which may never happen, to pay a sum capable of ascertainment only, and if when these shall happen, and the time for the happening of which, if they ever do happen, may be indefinitely postponed. There seems to be an insuperable difficulty in bringing such a state of facts within any but the most forced construction of the words of the Act, which supposes a party to have been sued for breach of a contract for the payment, by virtue of a written instrument, of a sum certain at a certain time (280-1). (Sir John Coleridge.) JUGGOMOHUN GHOSE r. MANICKCHUND. (1859) 7 M. I. A. 263=

4 W. R. P. C. 8=1 Suth. 357=1 Sar. 681.

#### Construction of.

—English Act 3 & 4 Will. IV, C. 42—Decisions on— Reference to—Permissibility.

## INTEREST ACT XXXII OF 1839-(Contd.)

Construction of-(Contd.)

The words of the Interest Act of 1839 and of the English Act 3 & 4 Will iv, C. 42 being the same, the decisions on the English Act may be referred to as a guide in construing the Indian Act (120-1). (Lord Datey.) THAKUR GANESH BAKHSH: THAKUR HARIHAR BAKHSH.

(1904) 31 I. A 116=26 A. 299 (309·10)= 8 C. W. N. 521=6 Bom. L. R. 505=7 O. C. 116= 8 Sar. 628=14 M. L. J. 190.

#### Interest under.

-Allowance or refusal of-Discretion as to-P. C's interfernce with-Conditions.

The next question is, whether the discretion of the court in allowing or refusing to allow interest, in cases within the Interest Act XXXII of 1839, is liable to review or appeal.

We should, undoubtedly, he slow to interfere in any case before us in respect of any matter specifically within the power of the jury, as for example, the amount of damages; but dealing as we have to deal, with questions of fact as well as of law, we are not prepared to say that, in a case either of allowance or refusal, in which we were clear that the court below, acting either through prejudice or misunderstanding, had committed injustice, we should not feel bound to recommend to Her Majesty that an opportunity should be afforded of reconsidering the matter in a new trial (281-2). (Sir John Coloridge.) JUGGO MOHAN GHOSE P. MANICK CHUND. (1859) 7 M. I. A. 263=

4 W. R. P.C. 8=1 Suth. 357=1 Sar. 681.

-Award of -Principle of -Compensation to creditor -Penalty to debtor.

The Interest Act XXXII of 1839, by the qualifications which it imposes of certainty in time and amount, by requiring that this certainty, and the obligation itself to pay the principal, should be created by a written instrument, by making the interest run from the time at which the principal is payable, and, finally, by giving the jury a discretion as to the allowance of interest, even where all these circumstances concur, seems to have been framed, not simply on the principle of compensation to the creditor, but also on that of penalty to the debtor for not paying punctually at a time when he must have known the debt or sum, specific in amount, was to be paid. But for this consideration there was no reason why all the debts, without distinction, should not have been made to bear interest from the time when payable; no previous uncertainty of amount, or of time of payment, would have been material, nor should any distinction have been made between obligations by writing and by word of mouth; nor ought the jury to have had any discretion; for in all cases the need of compensation to the creditor may be assumed to have been the same. But, if the conduct of the debtor be taken into account, then the uncertainty of the amount, and the contingency as to the time of payment, and that there is no writing, are all more or less material; obviously the most honest and punctual debtor may be unprepared to pay an uncertain amount, which may not be due for months, or years, or only on the happening of a contingency, the falling in of which he may not know of. On this principle, too, the discretion given to the jury to consider all the circumstances of each particular case becomes perfectly reasonable. It is quite consistent with this view that where the debt is payable "otherwise" than at a certain time, interest is not to be allowed except from and after the time of a written demand of payment. (279-80). (Sir John Coleridge.) JUGGOMOHUN GHOSE r. MANICKCHUND. (1859) 7 M I.A. 263=

4 W. R. P. C. 8=1 Suth. 357=1 Sar 681.

Right to—Day for payment—Fixing of, in written instrument itself—Necessity—Reference in it to basis for calculating such day—Sufficiency of.

## INTEREST ACT XXXII OF 1839-(Contd.)

Interest under-(Contd.)

Quere whether in order to claim the benefit of the Interest Act it is necessary that the actual day for payment must be fixed in the written instrument itself, or whether it is enough if the basis of calculation which is to make the day of payment certain is to be found in the instrument although the actual day of payment is not found in it . (Lerd Davey.) THAKUR GANESH BAKHSH P. THAKUR HARI-(1904) 31 I. A. 116 (120-1)-HAR BAKHSH. 26 A. 299 (309-10) = 8 C.W.N. 521 = 6 Bom. L. R. 505=

7 O. C. 116 - 8 Sar. 628 = 14 M. L. J. 190. -Right of-Day for payment not fixed nor any basis

for calculating such day referred to.

Where an agreement, though it did not contain any express day for payment of a sum certain, did not even contain or refer to any basis by calculating which a certain date for payment might be arrived at, no interest could be claimed under the Interest Act (120-1). (Lord Davy.) THAKUR GANESH BAKHSH P. THAKUR HARIHAR BAKHSH.

(1904) 31 I. A. 116 = 26 A. 299 (309-10) 8 C. W. N. 521 - 6 Bom. L. R. 505 - 7 O.C. 116 8 Sar. 628 = 14 M. L. J. 190.

#### Object of.

-English Act 3 & 4 Will, iv. C. 42-Extension to India of provisions of

Act XXXII of 1839 was framed, as appears on the face of it, expressly in order to extend to India the provisions of the statute, 3rd and 4th Will. iv. C. 42, S. 28, and substantially adopts the language of it (278). (Sir John Coleridge.) JUGGOMOHUN GROSE v. MANICKCHUND.

(1859) 7 M.I.A. 263 - 4 W. R. 8 - 1 Suth. 357 = 1 Sar. 681.

The Interest Act of 1839 was passed for the purpose of extending to India the provisions of the English Act 3 & 4 Will. iv, C. 42 (120-1). (Lord Davey.) THAKUR GANESH BAKHSH D. THAKUR HARIHAR BAKHSH.

(1904) 31 I. A. 116 = 26 A. 229 (309-10) 8 C. W. N. 521 = 6 Bom. L. R. 505 = 7 O.C. 116 -8 Sar. 628 - 14 M. L. J. 190

## S. 1.—Sum certain payable at time certain.

Meaning of .

What is meant by a sum certain, and a time certain in the Interest Act XXXII of 1839? With respect both to amount and time of payment, it was argued that the maxim "id certum est quod certum reddi potest" must be applied ; and, in a reasonable sense, this is true. In the simplest case we may be obliged to have recourse to calculation for the actual amount, or to the calendar for the precise day of payment. A promise to pay on the last Saturday of the year, at the rate of 15 th. a week for twelve months, would certainly be a promise to pay a sum certain at a time certain. It was argued also that in repect of both time and amount it was a question of degree; this is also true (278-9). (Sir JUGGOMOHUN GHOSE P. MANICK John Coleridge.) (1859) 7 M.I.A. 263=4 W.B. P.C. 8-CHUND. 1 Suth. 357 = 1 Sar. 681.

-A sum certain is not payable by the written instrument at a time certain, within the meaning of S. I of the Interest Act XXXII of 1839, if its payment is contingent upon events which may or may not happen.

So held on a construction of S. 24 (1) of the New Brunswick Judicature Act 1909 (identical in terms with S. 28 of Lord Tenterden's Act, 3 & 4 Will. iv, C. 42 and S. 1 of the MAINE AND NEW Indian Statute.) (Lord Tomlin.) BRUNSWICK ELECTRICAL POWER CO, LID. P. HART.

(1929) 30 L.W. 153=27 A. L. J. 1065= (1929) M. W. N. 862=119 I. C. 615= 98 L.J. P. O. 146 = A. I.B. 1929 P.C. 185 = 57 M.L. J. 662.

## INTERNATIONAL AGREEMENT.

"Belligerents" within meaning of-Who are.

The Sixth article of the Sixth Convention of 1907 declares that " the provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

The question was whether the "belligerents" who were to be taken account of for the purposes of the article, were the belligerents merely who detained or suffered detention, or whether they were all the Powers who were simultaneously engaged in war, whether acting in alliance or in direct conflict with one another or not.

Their Lordships, while inclining to the former view, considered it unnecessary to decide the question (265).

Mutuality is of the essence of the Convention. Is that mutuality complete if the detaining Sovereign and the Sovereign of the ships detained ratify and abide by the Convention, or is it imperfect, so as to prevent the application of the Convention, unless and until other Powers in no way concerned in the ships or their fortunes, but merely connected with one or both of those Sovereigns in the gene ral war, have likewise ratifled and likewise abided by the Convention, whether or no they have ships or harbours, and whether or no they make or suffer captures or are ever directly affected by maritime war at all? It is very hard to credit that the operation of an agreement, so earnestly directed to the attainment of the highest practical ends in war, should have been deliberately made to depend on the accidents or the procrastinations of diplomatic procedure in time of peace, even when no real relation existed between the condition and the consequence, between the ratification of all the parties and the detention of the ships of one of them (264-5.) (Lord Sumuer.) BLONDE, ETC., IN THE MATTER OF THE STEAMSHIPS

(1922) 31 M. L. T. 260 P C.

-Consensus ad idem-Necessity-Mode of finding

Although no doubt comenns of idem is fundamentally necessary to an international agreement, as it would be to a private offer and acceptance under Municipal Law, it does not follow that in the intercourse of Sovereign States every interchange of messages, some formal and some informal, should be deemed to result in a new and binding agreement as soon as the parties have reached the stage of affirming identical propositions (262-3). (Lord Sumner.) BLONDE, ETC., IN THE MATTER OF THE STEAMSHIPS.

(1922) 31 M. L. T. 260 P. C.

-Construction of -Principles.

In constraing such an international agreement as that now in question, it is profitable to bear in mind from the outset sundry considerations, which are not the less important for being doubtless somewhat obvious. It results from deliberations among the representatives of many Powers, in which none can expect without some concession to insist upon his country's interests, its language or its law. It is expressed in what is by tradition the common language of international intercourse, but it would be unreasonable in the circumstances to expect of it either nicety of scholarship or exactitude of literary idiom. Neither the municipal law nor the technical terms of the negotiating countries can be expected to find a place in its provisions. Where interests conflict, much must be allowed to the effects of compromise; where the principles, by which future action is to be guided, are laid down broadly, leaving to the Powers concerned the actual measures to be taken in execution of those principles, it is unreasonable to expect a greater precision than the circumstances admit of, or to reject as incomplete provisions, which are expressed without much detail and sometimes only in outline. On the other hand, it is specially necessary to discover and to give effect to all the beneficent intentions, which such instruments embody and which their

## INTERNATIONAL AGREEMENT-(Contd.)

general tenor indicates. It is impossible to suppose, whatever the imperfections of their phrasing, that the framers of such instruments should have intended any power to escape its obligations by a quibbling interpretation, by a merely pedantic adherence to particular words, or by emphasising the absence of express words, where the sense to be implied from the purport of the convention is reasonably plain (265-6), (Lord Sumner.) BLONDE, ETC., IN THE MATTER OF THE STEAMSHIPS.

(1922) 31 M. L. T. 260 P. C.

- Exterritoriality in - Meaning of.

Art. 16 of the Zanzibar Treaty of 1886 provided that "subjects of her Britannic Majesty shall, as regards their person and property, enjoy within the dominions of His Highness the Sultan of Zanzibar the rights of exterritori-

ality."

On a question arising as to the meaning of the word "exterritoriality," held that, having regard to the latter part of Art. 16 and to the succeeding Articles which showed that the treaty actually specified all the usual benefits accorded by Mahomedan powers to a British subject, it could not be held that the moment a plot of fand was purchased by an Englishman it was stamped with the same character and was attended by the same incidents that would belong to it if it were actually transferred to England and surrounded by other English land, and that his neighbours, who might or might not be British subjects, must have their rights and liabilities governed by its fictitious and not by its actual situation.

It is reasonable to conclude that the things specified shew the nature of the immunicies desired by and accorded to the British subject—complete personal protection, assurance of satisfactory judicial tribunals, and such enjoyment of his property for himself and for those who claim under him as British law would afford him for British property (131.2). (Lent Hobbune.) SECRETARY OF STATE FOR FOREIGN AFFAIRS F. CHARLESWORTH PILLING & CO.

(1901) 28 I. A. 121 = 26 B. 1 (13) = 8 Sar. 1.

- Intention of parties to-Ascertainment of-Reference to what they have said-Permissibility.

The principle of ascertaining the intention of the parties to an agreement by giving due consideration to what they have said is no doubt valid in international matters (270). (Lord Sumner.) BLONDE, ETC., IN THE MATTER OF THE STEAMSHIPS. (1922) 31 M. L. T. 250 P. C.

— Municipal law relating to formation, interpretation, and discharge of contracts—Applicability of.

There are many rules both as to the formation, the interpretation and the discharge of contracts, which cannot be transferred indiscriminately from municipal law to the law of nations (270). (Lord Sumner.) BLONDE, ETC., IN THE MATTER OF THE STEAMSHIPS.

(1922) 31 M. L. T. 260 P. C.

Political tenure—Lands held under treaty or on political tenure. Sc. BOMBAY ACTS—REVENUE JURIS-DICTION ACT OF 1876—SS. 12, 4. (1923) 50 I.A. 308=48 B. 1

Sovereign powers—Contract or treaty between— Settlement of pension in perpetuity by—Validity—Private individual—Settlement by—Distinction. See MAHOMEDAN LAW—PENSION IN PERPETUITY.

(1889) 16 I. A. 175 (182) = 17 C. 234 (245).

Sovereign powers—Treaty between—Pension in perpetuity—Grant by treaty of—Issue—Heirs—Meaning.

By a deed of 1858 the then bigs of O-th.

By a deed of 1838 the then king of Oudh provided pensions for various members of his family, including M. J. and her son. His intention, as manifested in that deed, was that, in the event of the death of any of the pensioners

## INTERNATIONAL AGREEMENT-(Contd.)

leaving issue, his or her heirs, according to the Mahomedan law of inheritance, should receive payment of the pension in the proportions regulated by such law of inheritance.

In the latter part of the year 1841, the said King subscribed the sum of 12 lacs of rupees to the 5 per cent. Government loan which was then open. The money was paid into the Treasury of the Political Resident at Lucknow, and brought to the credit of the Government of India.

On 4-1-1842 the King wrote a letter to the Governor-General, in which, after referring to the deed of 1838 and stating that the allowance allowed to M. J. therein was insufficient, he expressed his desire that an additional pension should be paid "to her and to her issue, generation after generation, and womb after womb." The Governor-General assented to his request, and from that time until the time of the death of M. J. on 9-7-1881, the stipend was paid to her in accordance with terms of the arrangement between the Government of India and the King.

Held, on the construction of the King's letter of 1842, that it was his intention to provide for an additional pension for Malka Jehan of the same nature as that which he had provided for her in the year 1838, and that after her death, provided she should leave issue, it should be paid to such of her issue as should be her heirs according to the rules of

Mahemedan law of inheritance (181).

There is nothing in the King's letter of 1842 to lead to the inference that he intended by the increase of the pension of Malka Jehan to benefit any other persons than those who were to be benefited upon her death by the pension of 1838 (181-2). (Sir Barnes Peaceck.) NAWAB SULTAN MARRIAM BEGUM P. NAWAB SAHIB MIRZA.

(1889) 16 I. A. 175 - 17 C. 234 (243-4) = 5 Sar. 422.

#### IRREGULARITY.

## Arbitrator-Appointment of.

## Fundamental irregularity.

——Meaning of. See Bengal Acts—Alluvion and Diluvion Act, 1X of 1847—Assessment proceedings under—Fundamental irregularity.

(1924) 51 I.A. 241 (250) = 51 C. 802 (812-3).

#### Illegality or.

——Civil Procedure Code of 1908—O. 21, R. 68—Proclamation and sale—Interval between—Provision as to— Non-compliance with. See CIVIL PROCEDURE CODE OF 1908—O. 21, RR. 68,67—PROCLAMATION AND SALE.

(1893) 20 I. A. 176 (182) = 21 C. 66.

— Civil Procedure Code of 1908—O. 21, R. 69— Fresh proclamation under—Omission to issue. See CIVIL PROCEDURE CODE OF 1908—O. 21, R. 69—FRESH PRO-CLAMATION UNDER—OMISSION TO ISSUE.

(1906) 34 I. A. 37 (40·1) = 29 A. 196.

TION SALE—IRREGULARITY OR NULLITY.

Guardian ad litem—Order appointing—Omission to draw up. See CIVIL PROCEDURE CODE, 1908—O. 32, R. 4—GUARDIAN AD LITEM—ORDER APPOINTING.

(1903) 30 I. A. 182 (189) = 30 C. 1021 (1031-2)-

Jurisdiction—Procedure prescribed for exercise of— Non-compliance with. See CIVIL PROCEDURE CODE OF 1908—Ss. 39, 41 & 50. (1928) 55 I.A. 227= 3 Luck. 114.

(1919) 47 I.A. 33 (40-1) = 43 M. 550 (568).

### IRREGULARITY-(Contd.)

#### Illegality or-(Contd.)

-Statute-Provisions express of-Violation of. See CRIMINAL PROCEDURE CODE OF 1898-S. 537-TRIAL. (1901) 28 I. A. 257 (263) = 25 M. 61 (97-8).

-Tax-Operation of-Commencement of first year-Date of-Discrepancy as to. See BOMBAY ACTS-DIS-TRICT POLICE ACT, IV OF 1890, Ss. 25 & 25 A.-TAX (1927) 54 I. A. 338 (349) = 51 B. 725. UNDER.

-Tax- Collection of, through Municipality, when there is one-Statutory provision as to-Non-compliance with. See BOMBAY ACTS-DISTRICT POLICE ACT OF (1927) 54 I.A. 338 (352)= 1890—Ss. 25 (4) & 26 (1). 51 B. 725.

### Party responsible for-Objection to irregularity by

-Maintainability-Appeal-Death of plaintiff-appellant in-Substitution of defendant as L. R. at his own instance See PRACTICE-PARTIES--Objection by him to. PLAINTIFF-APPELLANT - DEATH OF

(1862) 9 M. I. A. 287 (302).

#### Waiver of.

-Arbitrator - Appointment of-Irregularity in-Waiver of. See Arbithation—Arbitrator—Appoin-MENT OF—IRREGULARITY IN—WAIVER OF.

Arbitrator-Irregularity on part of-Omission of party to object to, taking chance of favourable decision -Effect of. See ARBITRATION-AWARD-APPLICATION TO FILE-OBJECTION TO. (1876) 3 I. A. 209 (217, 220).

-Arbitrator-Proceedings before-Notes of-Preservation of-Failure-Irregularity-Omission to object to-Effect. See ARBITRATION-ARBITRATOR-PROCEEDINGS (1914) 38 I. A. 336 (343) = 27 M. L. J. 181. BEFORE.

-Award-Setting aside of-Suit for, by party acquiescing in proceedings and taking chance of favourable decision-Maintainability. See ARBITRATION - AWARD-SETTING ASIDE OF-SUIT FOR-PARTY ACQUIESCING (1859) 7 M. I. A. 441 (475). IN ETC.

-Jurisdiction-Procedure prescribed for exercise of-Non-compliance with-Irregularity by reason of-Acquiescence in-Effect. See CIVIL PROCEDURE CODE OF 1908 -Ss. 39,41 & 50. (1928) 55 I. A. 227 = 3 Luck. 114.

-Landlord-Tenants different of different lands-Ejectment sait single against-Evidence applicable to one tenant-Use of, against another-Irregularity-Waiver of -Effect. See CIVIL PROCEDURE CODE, OF 1908-O. 2, (1919) 47 I. A. 76 (86-7) = 43 M. 567 (578).

-Remand of case for trial de novo-Decision of case by court below on evidence already on record-Consent of party aggriroed to-Objection by him on appeal to such pro-

cedure-Right of.

A preliminary objection taken to the disposal of a suit without drawing up the issues in the suit as required by S. 10 of Bengal Regulation XXVI of 1814 was held fatal in appeal, and the case was accordingly remanded to the lower Court with directions to lay down the issues in a regular way, and to try and determine the suit de novo. The Court below accordingly prepared the proper issues and called upon the parties for their proofs. The plaintiff did not go into fresh evidence, but prayed for judgment on the evidence already given. On that evidence the Court below decided against the plaintiff.

Held, that, under the circumstances, the plaintiff was precluded from objecting in appeal to the disposal of the

case without fresh evidence (220),

If this manner of trial were irregular, it is not for the plaintiff to complain of an irregularity committed at his in- jungle lands.

#### IRREGULARITY-(Confd.)

Waiver of-(Contd.)

stance, or with his consent (220). (Lord Justice Turner.) MAHARAJAH KOOWER BABOO NITRASUR SINGH P. BABOO NUND LALL SINGH. (1860) 8 M. I. A. 199= 1 W. R. 51 = 1 Suth. 420 = 1 Sar. 744.

-Revenue sale-Irregularity in-Waiver by proprietor of-Appropriation of surplus purchase money by him if amounts to. See BENGAL REGULATIONS-GOVERNMENT INDEMNITY REGULATIONS XI OF 1822-S. 6 (3).

(1842) 3 M. I. A. 42 (97-8).

#### IRRIGATION WORKS.

-Preservation and repairs of-Duty of British Government and of Zemindars as regards -Nature of.

The tanks are ancient, and formed part of what may be termed a national system of irrigation, recognised by Hindu and Mahomedan Law, by regulations of the East India Co., and by experience older than history, as essential to the welfare, and, indeed, to the existence of a large portion of the population of India. The public duty of maintaining existing tanks, and of constructing new ones in many places, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved on Zemindars. The Zemindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them (385). (Sir. Robert P. Collier.) MADRAS RAILWAY CO. 2. ZEMINDAR OF CARVATENAGARAM. (1874) 1 I. A. 364 = 14 B. L. R. 209 = 22 W. R. 279 = 3 Sar. 391,

#### ISLAND.

-Sea-Islands formed in the-Crown's claim to-Three kinds of.

Hale, De Jure Maris, describes how " the king bath a title to maritima incrementa or increase of land by the sea; and this is of three kinds, tre:-1. Increase per projectionem vel alluvionem. 2. Increase per relictionem vel desertionem 3 Per insulae productionem." The third category is thus dealt with by Hale: "3. The third sort of maritime increase are islands arising de novo in the king's seas, or the king's arms thereof. These upon the same account and reason prima facie and of common right belong to the king; for they are part of that soil of the sea, that belonged before in point of propriety to the king; for when islands de noto arise, it is either by the recess or sinking of the water, or else by the exaggeration of Sand and Slubb, which in process of time grow firm land environed with water" (198-9). (Lord Shaw.) SECRETARY OF STATE FOR INDIA v. CHELIKANI RAMA RAO. (1916) 43 I. A. 192= 39 M. 617 (625) = 20 C. W. N. 1311 = 20 M. L T. 435 = (1916) 2 M W. N. 224 = 4 L. W. 486 = 14 A.L.J. 1114 = 18 Bom. L. R. 1007 = 35 I. C. 902 = 31 M. L. J. 324.

-Tidal and navigable river-Island formed in bed of sea near mouth or delta of-Croson's right to-Islands formed under three miles of mainland.

The Crown is the owner, and the owner in property, of islands arising in the sea within the territorial limits of the Indian Empire. The territory of the Crown does not cease at low water mark and the right over what extends seawards beyond that is not merely of the nature of jurisdiction or the like.

The suit lands were islands which had been formed in the bed of the sea near the mouth or delta of the river Godavari, which was a tidal and navigable river. The date of formation of the islands was not certain. The islands were within a short distance, much under three miles, of the mainland. The lands were at the date of suit mostly

#### ISLAND-(Contd.)

Held that the islands belonged in property to the British Crown. (Lord Shaw.) SECRETARY OF STATE FOR INDIA 7. CHELIKANI RAMA RAO.

(1916) 43 I. A. 192 (199, 201-3)= 39 M. 617 (625, 628) = 20 C. W. N. 1311 = 20 M. L. T. 435=(1916) 2 M. W. N. 224= 4 L. W. 486=14 A. L. J. 1114=18 Bom. L. R. 1007= 35 I. C. 902 = 31 M. L. J. 324.

#### ISSUMNOVISEE RETURNS.

-Nature of. See GHATWALLY TENURE-EXTENT OF LANDS INCLUDED IN

(1871) 14 M. I. A. 259 (264, 266).

#### ISTIMRAR.

-Meaning and effect of.

The word " istimrar " denotes its character of perpetuity and permanency of revenue (422). (Mr Ameer Ali.) SECRETARY OF STATE FOR INDIA v. RAJA OF VENKATA-GIRL. (1921) 48 I. A. 415-44 M. 864 (870) =

(1922) M. W. N. 1=30 M. L. T. 164= 26 C. W. N. 809 = (1922) P. C 168 = 73 I. C. 741 = 41 M. L. J. 624.

#### JAGIR.

ALTUMGAH JAGIR.

GHATWAL-JAGIR APPERTAINING TO OFFICE OF.

GHATWALLY TENURE OF NATURE DESCRIBED IN PRE-AMBLE TO REGULATION XXIX OF 1814-JAGIR HELD ON TENURE ANALOGOUS TO.

GRANT-USE OF WORD " JAGIR " IN.

GRANT OF.

GRANT OF, ON DEATH OF HOLDER-GOVERNMENT'S DECISION AS TO.

HEREDITARY TENURE UNDER.

MILITARY JAGIR-ZEMINDARY HELD AS.

NATIVE RULERS-JAGIRS HELD UNDER-TENURE OF.

OCCUPANCY REFERRED TO BY WORD.

RESUMPTION OF.

SARBARAKARI JAGIR IN KHURDAH.

VILLAGE HELD IN-KHALSAT WHEN APPLIED TO.

#### Altumgah Jagir.

-Meaning of-Grant under the royal seal. (Lord Hatherley, L. C.) FURESTER D. SECRETARY OF STATE FOR INDIA. (1872) Sup. I. A. 10 (31-2)=

12 B. L. R. 120 = 18 W. R. 349 = 3 Sar. 1= 1 P. B. 1872 = 2 Suth. 628.

## Ghatwal-Jaghir appertaining to office of.

-Possession of, by person not entitled to office-Rights acquired by. See GHATWAL-JAGHIR APPERTAINING TO OFFICE OF. (1923) 51 I. A. 37 (56-7) = 3 Pat. 183.

Ghatwally tenure of nature described in preamble to Regulation XXIX of 1814-Jaghir held on tenure analogous to.

-What amounts to. See GHATWALLY TENURE-REGULATION XXIX OF 1814. (1882) 9 I.A. 104 (120) = 9 C. 187 (203-4).

-Inheritance rule applicable to. See GHATWALLY TENURE-REGULATION XXIX OF 1814.

(1882) 9 I. A. 104 (122)= 9 C. 187 (206).

Resumption of-Zemindar-Government-Kight of. See GHATWALLY TENURE - REGULATION XXIX OF (1882) 9 I. A. 104(122) = 9 C. 187 (205).

Sale of, in son's hands in execution of decree against father-Validity of. See GHATWALLY TENURE-REGU-LATION XXIX OF 1814, (1882) 9 I. A. 104 (122-4)=

JAGIR-(Contd.)

#### Grant-Use of word "Jagir" in.

Estate conveyed in case of-Land itself or Landrevenue only. See GRANT-CONSTRUCTION OF-ESTATE CONVEYED-LAND ITSELF OR ETC.

(1917) 22 C. W. N. 577 (579.)

#### Grant of.

DECENNIAL SETTLEMENT-HEREDITARY GRANT BY GOVERNMENT BEFORE-LAND WITHIN ZEMINDARY HELD RENT-FREE UNDER.

-Inclusion of, in permanent settlement between zemindar and Government-Effect of, on rights of jagirdar. See PERMANENT SETILEMENT-JAGIR LANDS ETC.

(1870) 13 M. I. A. 438 (460.)

#### ESTATE CONVEYED UNDER.

-Grant to a person and after him to his heir for generation after generation.

All the villages in suit were at one time the estate of K. we father of J. Through extravagance or misfortune K fe // into poverty and he parted with the villages; whether in fac - r only in appearance was matter of dispute. / became a o successful man of business, and he also rendered active and valuable services to the Government at the time of the Sep, y Mutiny. Thus he became able to repossess himself of he estate which K had enjoyed, and the Government acknowledged his services by a grant dated April

The Sanad of April, 1861, recited the services of J, and that they had been recognised by the bestowal of the ti tle of Rajah " and were worthy of a further recognition by the grant of a "jagir." It then continued: "Be it known that the passession and jama (revenue) of the five villages granted tor generation after generation, shall for ever be given up and remitted, and that the revenue of the seven villages granted for lifetime shall remain under remission till his life-time, to wit, their Zemindars who now pay the revenue to British Government shall pay it to him, and after him they shall ever pay 10 p.c. as malikana allowance to his heir after the deduction of Government revenue, for generation after generation.

Held that the obvious meaning of the expression "his heir for generation after generation " was that the malikana was to form part of f's heritable property; and that whereas he took the whole income for his life only, he was to take the 10 p.c. malikana in absolute ownership (66-7).

Mr. Ross does not contend that the words " generation after generation " confer any interest less than absolute ownership, nor does he contend that the jama of the five villages did not pass to J in absolute ownership. His contention is, that as regards the seven villages there are two distinct gifts-one to I for his life, and the other after his death; and that at his death the malikana is given in absolute ownership to the person who may then happen to be his heir. That would attribute to the Government the strange intention of acknowledging the personal merits of J by conferring a benefit on some unknown heir for whom he might or might not have a regard. The construction also appears to be so strained as it is improbable (66). (Lord Hobbouse.) RAO BALWANT SINGH v. RANI KISHORI. (1898) 25 I. A. 54=20 A. 267 (283)=2 C. W. N. 278=

7 Sar. 279. -Grant to a person with his " putra-poutradi"-Grant to him and his lineal male descendants only-When amounts to-Chota Nagpur-Bengal-Distinction.

Where a village in Chota Nagpur was granted as jagir, to be enjoyed by the grantee with his putra-poutradi, but the evidence showed that those who succeeded to jagirs in the locality had always been males in the line of the grantee, 9 Q. 187 (206.8.) held that the grant was to the grantee and his lineal male JAGIR-(Contd.)

Grant of-(Contd.)

ESTATE CONVEYED UNDER-(Contd.)

descendants only and was resumable upon failure of such descendants.

Semble in a grant of a jagir in Bengal by a Bengali similar words in the grant would imply that an estate of inheritance had been granted to the grantee if there was nothing to show a contrary intention. (Sir John Edge.) RAM NARAYAN SINGH v. RAM SARAN LAL.

(1918) 46 I.A. 88 (95-6) = 46 C, 683 = 29 C, L. J. 332 = 17 A. L. J. 398 = 26 M. L. T. 207 = (1919) M.W.N. 518 = 50 I. C. 1 = 21 Bom. L. B. 597 = 20 C, W. N. 866 = 36 M. L. J. 344.

Indefinite terms-Grant in-Grant to a man and his heirs-Distinction.

There is no principle or authority which gives any warrant for the contention that a grant of a jagir to a man and his heirs only operates as giving a succession of life interests to the grantee and his heirs for the time being. It is true that where a jagir is granted in indefinite terms, it is taken to be for the life only of the jagirdar. But where there is a grant to a man and his heirs, and nothing to control the ordinary meaning of the words, the grantee takes an absolute interest. The principle that jagirs are to be considered life tenures only, "unless otherwise expressed in the grant," is expressly laid down in the Bengal Regulations. See Reg. XXXVII of 1793, S. 15. It is the law also in Bombay and other parts of India (25-6). (Lord Hobboust.) DOSI BAI v. ISHWARDAS JAGJIWANDAS.

\_\_\_\_\_Land itself or revenue only,
The term jagir implies no grant of the soil, but a personal
grant only of the revenue to the grantee (213). (Lord
Shaw.) RAGHOJIRAO SAHEB v. LAKSHMANRAO SAHEB.
(1912) 39 I.A. 202 = 36 B. 639 (658) =
16 C.W.N. 1058 = 12 M.L.T. 472 =
(1912) M.W.N. 1140 = 14 Bom. L.B. 1226 =
17 C.L.J 17 = 16 I.C. 239 = 23 M.L.J. 383.

——Pension—Grant in lieu of, of taluka with lands as jagir—Estate conveyed under—Land itself or land-revenue only. See CROWN—GRANT BY—ESTATE CONVEYED UNDER—LAND ITSELF OR LAND-REVENUE ONLY—UNDER—LAND ITSELF OR LAND-REVENUE ONLY—PENSION. (1917) 22 C.W.N. 517.

Pension-Jagir accompanying-Grant by Government of-Intention that two should be subject to same conditions.

A sunnud granted by the Governor of Bombay to N, who was the Commander-in-chief of the forces of the Nawab, provided as follows:-"Under these circumstances it has appeared incumbent and proper, in the view of the chief authority (Hoozoor), that some suitable provision should be made as a subsidy for the expenses of the above-named N and his descendants; that is to say, by reason of close relationship, and being descended from the same ancestors as those of the Nawabs of the maritime city of Surat. Therefore, this has been settled by the instrumentality of the Governor....as follows: That N, with his children or descendants, after the deduction of the income of the jaghire according to the particulars given at the foot hereof, that is now in the possession of the above-mentioned N, shall receive from the valiant English Company's Government the sum of Rs. 24,000 per annum by four equal instalments, .... Hereafter should it be necessary for the Government to resume the above-mentioned jagir, given on account of maintenance or otherwise, the amount of the income thereof shall be received by the above-mentioned N, and his children or descendants, from the Treasury of the valiant English company." There was a further provision that "on account of the merit and laudable qualities of N, he is to

JAGIR-(Contd.)

Grant of-(Contd.)

ESTATE CONVEYED UNDER-(Contd.)

receive during his lifetime Rs. 6,000 per annum by four equal instalments;" and then were appended the particulars of the jagir, consisting of 9 mehals, the revenue from which altogether amounted to Rs. 6,264-40.

Held, having regard to the peculiar character of the grant from the Government, that the Court below was right in treating it as conferring upon such of the descendants of N who would be entitled under it, an estate for life, and for life only (61).

The present is not the case of the State merely granting a jagir and declaring that that grant shall be hereditary, but it is a grant of a jagir accompanied with the grant of a pension under circumstances which indicate that the intention was that the grant of the jagir and the grant of the pension should be subject to the same conditions (62). (Sir Ribert P. Collier). GULABDAS JUGJIVANDAS v. CULLECTOR OF SURAT. (1878) 6 I.A. 54 = 3 B. 186 (191-2) = 3 Sar. 889.

-Presumption.

A jagir must be taken prima facie to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary (60). (Sir Robert P. Collier). GULABDAS JUGJIVANDAS 7: COLLECTOR OF SURAT.

(1878) 6 I.A. 54 = 3 B. 186 (190-1) = 3 Sar. 889.

——A jagir must be taken prima facic to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. (Sir John Edge.) RAM NARAIN SINGH v. RAM SARAN LAL.

(1918) 46 I.A. 88=46 C. 683=29 C L.J. 332= 17 A.L.J. 398=26 M.L.T. 207=(1919) M.W.N. 518= 21 Bom. L R. 597=20 C.W.N. 866= 50 I.C. 1=36 M.L.J. 344.

--- Words "Putra-pontradi"-Effect of.

The terms which will make the grant of a jaghir a grant of an estate of inheritance must, if they are to be considered alone, be terms which are not ambiguous, and must clearly show whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. The term "putra-poutradi" in a jaghir grant, standing by itself, and without any evidence to show whether in the locality of the jagir collaterals or females succeeded to jagirs, is ambiguous. (Sir John Edge.) RAM NARAYAN SINGH v. RAM SARAN LAL. (1918) 46 LA. 88=46 C. 683=29 C.L.J. 332 as

17 A.L.J. 398 = 26 M.L.T. 207 = (1919) M W.N 518 = 21 Bom. L.B. 597 = 20 C. W. N. 866 = 50 I.C. 1 = 36 M.L.J. 344.

.-- Words "Son, grandson, etc., from generation to generation"-Effect.

It has been observed by many writers of authority on the subject that the expressions "his son, grandson, etc., from generation to generation," in sunnuds granting a jagir or saranjam, do not, as might be supposed, impart a fixed hereditary tenure (59-60). (Lord Hannen). SHEKH SULTAN SAIN v. SHEKH AJMODIN. (1892) 20 I A. 50 = 17 B. 431 (447) = 6 Sar. 52.

#### INCIDENTS OF.

Grants in jagir of the ordinary character are personal and not hereditary, and are resumable at pleasure. Being personal and temporary, they are necessarily impartible. This accurately distinguishes between partibility as such, and any consequence, which may be supposed to flow from such a fact. The impartibility of jagir-lands is in truth entirely separated from the idea of succession by the fact

JAGIR-(Contd.)

Grant of-(Contd.)

INCIDENTS GF-(Contd.)

that the impartible lands were held together as a unit in the hands of one man who was rendering personal service to the Government of the day. It may be that upon his death a fresh grant, again to one man, and again in tesurn for personal service, was made, and it may also be that the one man selected was in the ordinary case the eldest son; but these matters of practice were not consequences of law. and the impartibility and unity which attached to personal service were not related to, but, on the contrary, were distinct from, the idea of succession by force of law to the impartible lands. Once grant that the lands were jugir and impartible as such, a custom of descent thereof by primogeniture was not a subject for proof, because such a custom would be radically inconsistent with the personal and nontransmissive character of a grant in jagir Lands held in jagir cannot, therefore, he held to be subject to the rule of primogeniture (212-3). (Lord Share.) RAGHOHRAO SAHEB P. LAKSUMANRAO SAHEB. (1912) 39 I.A. 202 =

36 B. 639 (657-8) - 16 C. W.N. 1058 = 12 M L.T. 472 = (1912) M W.N. 1140 = 14 Bom. L. R. 1226=17 C.L J. 17=16 I.C. 239= 23 M.L.J. 383.

PROOF OF.

Grant to a person and his lineal descendants-Grant by pottah and kabuliat-Evidence necessary in case of. See JAGIR-RESUMPTION OF-GRANTEE'S LINEAL DES-CENDANTS-FAILURE OF-RESUMPTION ON- SUIT BY GRANTOR'S HEIRS FOR-PROOF OF GRANT.

(1873) 2 Suth. 783 (784)

RESUMPTION OF.

See JACIR-RESUMPTION OF.

Grant of, on death of holder - Government's decision as to.

-Review of-Civil Courts-Jurisdiction, See SARAN-JAM- GRANT OF, ON DEATH OF HOLDER,

(1892) 20 I.A. 50 (68) = 17 B. 431 (456).

### Hereditary tenure under.

Decennial settlement-Hereditary tenure created before, and subsisting at the time of—Grant of tenure before settlement to pretended heirs of A—Decree declaring grantees to be trustees for real heirs of A-Grant of jagir after settlement to real heirs of A in pursuance of-Effect. See Sale of Land for Revenue Arrears ACT I of 1845-S. 26-EXCEPTION.

(1870) 13 M. L.A. 438 (455 6).

See SALE OF LAND FOR REVENUE Evidence. ARREARS ACT I OF 1845-S. 26-DECENNIAL SETTLE-MENT-TENURE CREATED BEFORE.

(1870) 13 M.I.A. 438 (455-6).

## Military Jagir-Zemindari held as.

-Incidents of-Alteration of, by perpetual settlement and by Reg. XI of 1793. See HINDU LAW-IMPARTIBLE ESTATE-MILITARY JAGIR. (1872) 19 W.R. 8.

Native rulers—Jagirs held under— Tenure of.

-Engagements of English Government with Rajah of Satara and with Jagirdars-Effect of, on such tenure.

The engagements entered into by the English Government with the Rajah of Satara and with the several jagirdars, did not impart any greater fixity of tenure than had been previously enjoyed by those jagirdars under the native rulers, and their jagirs were liable to resumption at the will of the Government, although from reasons of political expediency JAGIR-(Contd.)

Native rulers-Jagirs held under-Tenure of-(Contd.)

the English authorities would not be disposed to add to the disturbance and confusion attending a conquest, by dispossessing the holders of property to any greater extent than was necessary for safety (0). (Lord Hannen.) SHEIKH SULTAN SAIN F. SHEIKH AJMODIN.

(1892) 20 I.A. 50 = 17 B. 431 (447) = 6 Sar. 52. Occupancy referred to by word.

- Jazir held for life-Use of, in contradistinction to ilaka held as permanent semindary-Effect.

The word 'Jagir" primarily points to occupancy, though it may be occupancy of an office, such as that of Collector of Revenue. Where, however, a Jagir held for life only is, as in this sanad, used in contradistinction to an ilaka held as a permanent zemindary, it is an almost necessary inference that the occupancy referred to is an occupancy of land (579-80). (Lord Parker.) SAKINA BAI v. KANIZ FATIMA BEGUM.

> (1917) 22 C.W.N. 577=47 I. C. 632= (1918) M.W.N. 384.

Resumption of.

GOVERNMENT-RESUMPTION BY.

-Nawah of Carnatic - Jagir granted by-Resumption of-Legality of-Municipal Courts-Jurisdiction. See ACT OF STATE-ACTS AMOUNTING TO AN, OR NOT-JAGIR GRANTED BY NAWAB OF CARNATIC.

(1827) 7 M. 1. A. 555 (577-8).

-Validity of-Jurisdiction of civil courts to inquire into. See Saranjam-Resumption by Government

GRANTEE'S LINEAL DESCENDANTS-FAILURE OF-RESUMPTION ON.

-Right of-Eridence.

The question was whether Pargana Bundh in Chota Nagpur was, as contended by the Maharaja of Chota Nagpur, a mere jagir or tenure resumable on failure of the direct male line, or, as alleged by the plaintiff, a mortgagee from the holder, an independent estate held by the ancestors of the plaintiffs' mortgagor and was incorporated in the zemindari of the Maharajah of Chota Nagpur as a shikmi or dependent taluk, with its revenue payable through the Maharajah.

Held, on the evidence, that the Pargana was a mere jagir or tenure resumable on failure of the direct male line of the (Mr Ameer Ali.) SRINATH RAI v. PRATAP UDAI NATH SAHI DEO.

(1923) 28 C. W N. 145 = 33 M. L. T. 408 = (1923) M.W.N. 702 = A. I. R. (1923) P.C. 217.

-Suit by granter's heir for-Proof in-Onus of-Quantum of.

Suit to recover possession of certain lands upon the ground that those lands were granted by an ancestor of the plaintiff to one P, to be held in jagir tenure, that is, to P and his lineal descendants, that P's lineal descendants had failed, and therefore the plaintiff was entitled to resume Dossession.

Held, that in such a suit the initial onus was on the plaintiff to prove the grant alleged, viz., a grant to P.

Without the grant alleged the plaint would have shown no cause of action. It is necessary to ascertain to whom the grant was made, in order to determine the subsequent question to be tried, namely, whose descendants have or have not failed.

Quaere, whether on proof by the plaintiff of the grant alleged, the burden would be shifted upon the defendants to prove that the descendants of P, still lived, or whether the

JAGIR-(Contd.)

Resumption of - (Contd.)

GRANTEE'S LINEAL DESCENDANTS-FAILURB OF -RESUMPTION ON-(Contd.)

burden would be on the plaintiff to show that they had failed (783). MAHARAJAH JUGGERNATH SAHEE : MUSSI. (1873) 2 Suth. 783 = 19 W. R. 140 AHLAD KOWAR.

-Suit by granter's heir for-Proof of grant alleged -Mode proper of -Absence of - Proof necessary in case of.

Suit by plaintiff to recover possession of certain lands upon the ground that these lands were granted by an ancestor of his to one P, to be held in jagir tenure, that is, to P, and his lineal descendants, that P's lineal descendants had failed, and therefore that plaintiff was entitled to resume possession. Admittedly the tenure was created in the proper and usual manner, namely, by a pottah and kabuliat.

Held that, in such a case, the proper way for the plaintiff to prove the grant alleged by him, viz., a grant to P, was to produce the original kabuliat, or to give secondary evidence of it, after laying the foundation for the admission of

such secondary evidence (784).

Semble the absence of such proof might be supplied by proof that P was in fact the first jugirdar in possession of the jagir, and that it had descended from him through father and son to the last owner (784). MAHARAJAH JUG-GERNATH SAHEE P. MUSST, AHLAD KOWUR.

(1873) 2 Suth. 783 = 19 W. R. 140.

ZEMINDAR-RESUMPTION BY.

-Heirs-Failure of-Renumption on-Meaning and

effect of.

There seems to be some confusion as to the meaning of the word "resumption" in connection with jagir tenures alleged to be resumable on failure of the direct male line of the holder. It does not mean that on failure of the direct male line it "escheats" to the zemindar and becomes what is called his six or khas property; the jagir retains its character, but the zemindar becomes entitled to make a new settlement with the knowledge and sanction of the authorities (156). (Mr. Ameer Ali.) SRINATH RAI P. PRATAP UDM NATH SAHI DEO.

(1923) 28 C.W N. 145 = 33 M. L. T. 408 = (1923) M. W. N. 702 - A.I.B. 1923 P. C. 217.

-Onus of proof on him-Services of Jugirdar of publie nature-Services personal to remindar-Right of re-

sumption in cases of - Distinction. Before a zemindar can resume a jaghir, he must prove that the tenure on which the Jaghir was held was a tenure of service, by which personal services only to the semindar were to be performed by the Jaghirdar. If the services to be performed by the Jaghirdar are of a public nature, the zemindar cannot resume the Jaghir.

Held, that the zemindar had failed to prove that the services to be performed by the Jaghirdar were only personal services to himself, and that, therefore, he could not resume the Jagbir. RAJAH NILMONEY SINGH DEO P. GOVERN-

(1872) 2 Suth. 713 = 18 W. R. 321 = 12 B. L. B. 321. MENT. Sarbarakari Jagir in Khurdah.

-Rights of sarbarakar in. See SARBARAKAR -(1918) 45 I. A. 246 (249-50) = 46 C. 378. KHURDAH.

Village held in-Khalsat when applied to.

-Meaning of. See WORDS--KHALSAT. (1927) 54 I. A. 380 (388).

### JAIDAD TENURE.

Begam Sumroc-Tenure held by-Resumption of lands held on, on her death-Validity of-Jurisdiction of

### JAIDAD TENURE-(Contd.)

Municipal Courts to determine. See ACT OF STATE-ACT AMOUNTING TO AN, OR NOT-JAIDAD TENURE ETC.

(1872) Sup. I. A. 10 (17).

-Jaidadar-Arms and stores purchased by-Seizure by Government of, on resumption of Jaidad tenure-Act of State if an. See ACT OF STATE-ACT AMOUNTING TO AN, OR NOT-JAIDADAR.

(1872) Sup. I. A. 10 (32-3.)

-Jaidadar-Rights of-Arms and stores purchased by Ownership of.

The evidence shows that the arms and stores in question were purchased by Begum Sumroo, and there is no authority or evidence to show that those who held by jaidad are not entitled to things so purchased. They are entitled to all the rents on performance of a certain duty, which duty ceases on their death, and the next jaidadar would be bound to provide arms by virtue of his tenure (33), (Lord Hatherley. L. C.) FORESTER :. SECRETARY OF STATE FOR INDIA.

(1872) Sup. I. A. 10 = 12 B. L. R. 120 = 18 W.R. 349 = 3 Sar. 1=1 P.R. 1872=2 Suth. 628.

-Nature and incidents of.

The status of the Begum, in respect of her Doab possessions before 1803, is admitted to have been that of a jagir dar, holding upon a jaidad tenure, r. c., upon a grant of a certain district together with the public revenues of it, on the condition of keeping up a body of troops, to be employed when called upon in the service of the sovereign of whom the jagir was held (14). (Lord Hatherley, L. C.) FORESTER P. SECRETARY OF STATE FOR INDIA.

(1872) Sup. 1. A. 10 = 12 B. L. R. 120 = 18 W.R. 349 = 3 Sar. 1 = 1 P.R. 1872 = 2 Suth. 628.

### JAINS.

AGARWALLA JAINS.

ADOPTION AMONG.

CASTE OF.

LAW APPLICABLE TO.

MARRIAGE-ADOPTION-MONEY PRESENTS ON LARGE SCALE ON OCCASION OF.

RELIGIOUS DOCTRINES OF.

STRIDHAN OF MOTHER-SON'S RIGHT TO

LAW APPLICABLE TO-HINDU LAW- CUSTOM. ADOPTION-HINDU LAW-APPLICABILITY OF.

EVIDENCE SUFFICIENT TO SUPPORT FINDING OF PROOF OF CUSTOM IN PARTICULAR CASE BUT IN-SUFFICIENT TO MAKE CASE A PRECEDENT.

INHERITANCE-CUSTOM OF-APPLICABILITY OF. PRESUMPTION—ONUS OF PROOF.

RELIGION OF, GENERALLY-PROPERTY DEDICATED TO-APPROPRIATION OF, BY ONE OF SECTIONS,

SARAOGEE-AGARWALLAS.

ADOPTION AMONG.

HISTORY AND RELIGIOUS TENETS OF.

WIDOW SONLESS-HUSBAND'S ESTATE-INTEREST

SECTIONS OF-DOCTRINE, RITUAL AND WORSHIP OF. SWETAMBARI (OR SITAMBARI) JAINS-ADOPTION

TEMPLE OF ANTANKSHA PARASNATH AT SHIRPUR.

### Agarwalla Jains.

ADOPTION AMONG.

- Age for-Limit of.

Among the Agarwallas the qualifying age for adoption extends to the thirty-second year (242). (Mr. Ameer Ali.) DHANKAJ JOHARMAL 2. SONI BAL. (1925) 52 I. A. 231 = 52 C. 482 =

23 A. L. J. 273 = 2 O. W. N. 335 = 21 N. L. B. 50 =

Agarwalla Jains-(Contd.)

ADOPTION AMONG-(Contd.)

6 L. R. P. C. 97 - 27 Bom. L. R. 837 -(1925) M. W. N. 692 - A. I. R. 1925 P.C. 118 = 87 I. C. 357 - 49 M.L.J. 173.

-Ceremonies.

Among the Agarwallas the only ceremony of adoption consists in tying a turban round the head of the young man who is being adopted in the presence of the principal men of the community (the panehas) and giving them a feast (242). (Mr. Ameer Ali.) DHANRAJ JOHARMAL 2. SONI (1925) 52 1. A. 231 - 52 C. 482 = BAL.

23 A.L.J. 273 = 2 O.W.N. 335 = 21 N.LR. 50 = 6 L.R. P.C. 97 = 27 Bom. L R. 837 = (1925) M.W.N. 692 = A.I R. (1925) P C. 118 = 87 I. C. 357 - 49 M.L.J. 173.

-Declaration unequivocal of adoption by adoptive father followed by treatment of boy as adopted son-Valid adoption by-Custom of-Proof of. See JAINS-LAW APPLICABLE TO-HINDU LAW-CUSTOM-EVIDENCE SUFFICIENT ETC.-ADOPTION.

(1913) 40 I. A. 156 (159-60) = 40 C. 879 (889-90).

-Marriages-Money presents on large scale to relative on occasion of-Custom of.

Evidence was given, which may be accepted, that in the Agarwalla Jain community there is a practice on the occasion of adoptions and marriages to make money presents to relatives on a scale that may be called munificent. (Viscount Sumner.) HARTRAM v. MADAN GOPAL. (1928) 27 A.L.J. 406-33 C.W.N. 493-49 C.L.J. 335-114 I.C. 565 = 31 Bom. L.R. 710 = A.I.R. 1929 P.C. 77 = 30 L. W. 85 = (1929) M.W.N. 412 - 57 M.L.J. 581

-Married by--Adoption of-Custom of-Proof of See JAINS-LAW APPLICABLE TO-HINDU LAW-CUSTOM-EVIDENCE SUFFICIENT ETC.-ADOPTION OF MARRIED BOY. (1910) 37 I.A. 93 (104).

-Rules relating to-Sub-castes of Agarcoullas-No distinction among.

Whatever difference there might be between the various sub-sects of Agarwallas in the ritual of worship, there does not appear to be anything in the rules relating to adoption recognised by the caste as a whole (241-2). (Mr. Ameer Ali). DHANRAJ JOHARMAL P. SONI BAL

(1925) 52 I.A. 231 = 52 C. 482 = 23 A.L.J. 273-2 O.W.N. 335-21 N.L.B. 50-6 L. R. P. C. 97 = 27 Bom. L. B. 837 = (1925) M.W.N. 692 = A.I.R. (1925) P.C. 118 =

87 I.C. 357=49 M.L.J. 173. -Temporal or religious institution. See JAINS-AGARWALLA JAINS-RELIGIOUS DOCTRINES OF

(1925) 52 I. A. 231 (242) = 52 C. 482.

#### CASTE OF.

-The Agarwalla Jains belong to one of the twice-born classes (103-4). (Sir Arthur Wilson.) RUP CHAND r. JAMBU PARSHAD. (1910) 37 I.A. 93 (103-4)= 7 A.L.J. 349 = 14 C.W.N. 545 = 12 Bom. L.R. 402 = 11 C.L.J. 454 = 6 I. C. 272.

LAW APPLICABLE TO.

Hindu Late-Custom-Presumption.

The Agarwala Jains are governed by the ordinary Hindu Law (which means the Mithakshara Law) unless and until a custom to the contrary is established (Sir Arthur Wilson.) RUP CHAND D. JAMBU PARSHAD.

(1910) 37 I.A. 93 (103.4)=7 A.L.J. 349= 14 C.W.N. 545 = 12 Bom. L.R. 402 = 11 C.L.J. 454 = JAINS-(Contd.)

Agarwalla Jains-(Contd.)

MARRIAGE-ADOPTION-MONEY PRESENTS ON LARGE SCALE TO RELATIVES ON OCCASION OF.

Custom of. See JAINS-AGARWALLA JAINS-ADOPTION-MARRIAGE. (1928) 57 M. L. J. 581.

#### RELIGIOUS DOCTRINES OF.

The Agarwallas generally adhere to Jainism and repudiate the Brahminical doctrines relating to obsequial ceremonies, the performance of Sradh, the offering of oblations for the salvation of the soul of the deceased, nor do they belive that a son, either by birth or by adoption, confers spiritual benefit on the father. Consequently adoption is with them a mere temporal arrangement and has no particular object (242). (Mr. Ameer Ali.) DHANRAJ JOHARMAL v. SONI BAL (1925) 52 I.A. 231 = 52 C. 482 =

2 O.W.N. 335 = 21 N.L.R. 50 = 6 L.R. P.C. 97 = 23 A.L.J. 273 = 27 Bom. L.R. 837 = 1925 M.W.N. 692 = A.I R. 1925 P.C. 118 = 87 I. C. 357 = 49 M.L.J. 173.

STRIDHAN OF MOTHER-SON'S RIGHT TO.

-Mithakshara Law-Custom.

Under the Mithakshara Law as modified by the customs and usages of the Agarwalla community relating to Stridhan, a son is entitled to whatever belonged to his mother during her lifetime. (Viscount Sumner.) HARIRAM v. MADAN GOPAL BAGIA. (1928) 27 A.L.J. 406=

33 C.W.N. 493 = 49 C.L.J. 335 = 114 I.C. 565 = 31 Bom. L.R. 710 - A.I.R. 1929 P.C. 77= 30 L.W. 835 = (1929) M.W.N. 412 = 57 M.L.J. 581.

Law applicable to—Hindu Law—Custom.

ADOPTION-HINDU LAW OF-APPLICABILITY OF.

Presumption.

The Jains have so generally adopted the Hindu Law that the Hindu rules of adoption are applied to them in the absence of some contrary usage. (Sir John Edge.) SHEOKUARBAI P. JEORAJ.

(1920) 25 C.W N. 273 (275) = 16 N.L.R. 170= 2 U.P.L.R. (P.C.) 161 = (1920) M.W.N. 627= 61 I. C. 481.

EVIDENCE SUFFICIENT TO SUPPORT FINDING OF PROOF OF CUSTOM IN PARTICULAR CASE BUT INSUFFICIENT TO MAKE CASE A PRECEDENT.

-Adoption-Declaration unequivocal of adoption by adoptive father followed by treatment of boy as adopted son -Valid adoption by-Custom of.

The Courts below having concurrently found that among the Agarwal Banias of Zira the general rules of Hindu law as to adoptions did not apply, and that by the custom applicable to the Agarwala Banias of Zira an unequivocal declaration by the adopting father that a boy had been adopted, followed by subsequeat treatment of the boy as an adopted son, was sufficient to constitute a valid adoption, their Lordships, notwithstanding the limited character of the evidence upon which the findings were based, held that, as between the parties to the suit and to the appeal, and those claiming through or under them, the evidence was sufficient to support the findings (159-60). Edge.) CHIMAN LAL P. HARI CHAND.

17 C. W. N. 885 = 18 C. L. J. 70 = 19 I. C. 669 = 15 Bom. L. R. 646=14 M. L. T. 83=102 P. R. 1913= 187 P. L. R. 1913=126 P. W. R. 1913=

(1913) M. W. N. 509.

-Adoption of married boy-Custom of-Proof of. Held that the evidence in the case justified the finding of 6 I.C. 272. the Court below that a custom applicable to the parties

Law aplicable to-Hindu Law-Custom-(Contd.)

EVIDENCE SUFFICIENT TO SUPPORT FINDING OF PROOF OF CUSTOM IN PARTICULAR CASE BUT IN-SUFFICIENT TO MAKE CASE A PRECEDENT-(Contd.)

concerned (Agarwala Jains), and authorizing the adoption

of a married boy, had been established.

In view of the fact that the custom alleged in the pleading and found by the High Court was wide, while the evidence adduced in the case was limited to a comparatively small number of centres of Jain population, their Lordships were of opinion that that circumstance was enough to make the case an unsatisfactory precedent if in any future instance fuller evidence regarding the alleged custom should be forth-

With regard to the relative rights of the parties to the present case, who have had full opportunity of producing whatever evidence they desired to produce, the case was properly dealt with by the High Court upon the evidence before it; and their Lordships are not prepared to dissent from the finding of the High Court that the evidence in the case supported the custom. (Sir Arthur Wilson.) RUP CHAND v. JAMBU PARSHAD. (1910) 37 I A. 93 (104) – 7 A. L. J. 349 = 14 C. W. N. 545 = 12 Bom. L. R. 402 11 C. L. J. 454 = 6 I. C. 272.

INHERITANCE—CUSTOM OF—APPLICABILITY OF.

Plea of - P.C. appeal - Maintainability for hest tim: in-Mithakshara Law-Applicability of Admission in Courts below of.

The question was as to the succession to the property of a Jain. The contest was between the plaintiffs, the agnatic relations of the deceased, and the defendant, the husband of the deceased's daughter, who survived him. The question for decision was whether the daughter of the deceased took an absolute estate or only an estate for 15fe in the

deceased's estate. The plaintiffs alleged that the law governing the succession to the estate of the deceased was the Mithakshara Law. The defendant in the Courts below admitted that the Mithakshara Law applied to the case, but contended that, according to it, his wife took an absolute estate in her father's property. He never alleged that that law was modified by the custom of the Jains. In his appeal to the P. C. the defendant contended for the first time that the right of succession must be determined by the customs of the Jains, that those customs had not been ascertained, and that the suit ought to be remanded for the purpose of ascertaining them.

Held that the defendant could not, under the circumstances of the case, impeach the judgment below on the ground urged (30). (Sir Montague E. Smith.) CHOTAY LALL v. CHUNNOO LALL. 4 C. 744 (751-2) = 3 C.L.R. 465 = 3 Sar. 880 = 3 Suth. 572.

## PRESUMPTION-ONUS OF PROOF

The Jains might be governed, as to some matters, by special laws and usages, and where these are satisfactorily proved, effect ought to be given to them (107-8).

It would certainly have been remarkable if it had appeared that, in India, where, under the system of laws administered by the British Government, a large toleration is, as a rule, allowed to usages and customs differing from the ordinary law, whether Hindu or Mahomedan, the Courts had denied to the large and wealthy communities existing among the Jains, the privilege of being governed by their own peculiar laws and customs, when those laws and customs were, by sufficient evidence, capable of being ascertained and defined, and were not open to objection on grounds of public policy or otherwise (108).

JAINS-(Contd.)

Law aplicable to-Hindu Law-Custom-(Contd.)

PRESUMPTION—ONUS OF PROOF—(Contd.)

Undoubtedly a custom, being opposed to the spirit of the Hindu law, would require strong evidence for its support (109). And the decision of the question whether or not a particular custom has been established must be governed by the evidence taken in the suit in which the question is raised (109). (Sir Montague E. Smtth.) SHEO SINGH RALT. MUSSUMUT DAKHO. (1878) 5 I. A. 87 =

1 A. 688 (702-3) - 2 C. L. R. 193 = 3 Sar. 807 = 3 Suth. 529.

-L. R. 5 I. A, 87 is no authority for the position that it is to be presumed that all Jains are governed by customs with regard to inheritance differing from the ordinary law. On the contrary, the customs of the Jains, when they are relied upon, must be proved by evidence, as other special customs and usages varying the general law should be proved, and in the absence of proof the ordinary law must prevail (28, 30). (Sir Montague E. Smith.) CHOTAY (1878) 6 I. A. 15= LALL P. CHUNNO LALL. 4 C. 744 (752) = 3 C L.R. 465 = 3 Sar. 880 = 3 Suth 572. As to Jains, the Courts in India have always applied the Hindu law generally to their cases in the absence of custom varying that law (253). (Sir Arthur Wilson.) RANI BHAGWAN KUAR P. JOGENDRA CHANDRA BOSE.

(1903) 30 I. A. 249 - 31 C. 11 (30) - 7 C.W.N. 895-84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381. The Jains are of Hindu origin; they are Hindu dissenters, and although generally adhering to the ordinary Hindu law, that is, the law of the three superior castes, they recognise no divine authority in the Vedas and do not practise the Shraddhs, or ceremony for the dead. (Sir John Edge.) SHEOKUARBAI P. JEORAJ. (1920) 25 C. W. N. 273 (275) = 16 N. L. R. 170 =

2 U. P. L. R. (P. C.) 161 = (1920) M. W.N. 627 = 61 I. C. 481.

Religion of, generally—Property dedicated to-Appropriation of, by one of sections.

What amounts to-Propriety of.

Ancient buildings already dedicated to the common use of both sections of the Jain religious community were found subsequently to have been rebuilt or largely improved by the Swetambaras, the richer of the two sections. Held that that contribution to the common religious buildings could create no exclusive right in the Swetambaras. (Lord Phillimore.) MAHARAJ BAHADUR SINGH P. SETH HUKAM CHAND.

(1925) 24 A. L. J. 100 = (1926) M. W. N. 199 = 93 I. C. 219 = A. I. B. 1926 P. C. 13 = 50 M. L. J. 631 (634).

-Possibility of-Evidence of.

It is possible for one of the sections of the Jain religious community to appropriate sites dedicated to the religion of the Jains, generally; and the fact that that section without interference built upon them is after a long lapse of time sufficient evidence of appropriation. Phillimore.) MAHARAJ BAHADUR SINGH v. SETH (1925) 24 A. L. J. 100= HUKAM CHAND. (1926) M. W. N. 199 = 93 I. C. 219 =

A. I. R. 1926 P. C. 13 = 50 M. L. J. 631 (635)

Saraogee-Agarwallas.

ADOPTION AMONG.

-Daughter's son-Adoption by widow of-Custom of. Held, on the evidence, affirming the High Court, that by the custom of the sect a sonless widow of a Saraogee-Agarwalla can adopt a daughter's son (110). (Sir Montague Smith.) SHEO SINGH RAI v. MUSSUMUT DAKHO. (1878) 5 I. A. 87=1 A. 688 (704 5)=2 C. L. R. 193=

3 Sar. 807 = 3 Suth. 529.

Saraogee Agarwallas-(Contd.)

ADDPTION AMONG-(Cont.)

Wiles only - Meption by - Husbart's authority or assent of sapindas. Necessary-Alegted son and seiden -Pontien and rights of-Caston as to

H.Id, on the evidence affirming the High Court, that by the custom of the sect a sonless wislow of a Sataogee-Agarwalla enjoys the right of adoption without the permission of her husband or the consent of his beirs; that, on adoption, the adopted son takes the place of a begotten son; and that, on adoption, the estate taken by the wislow passes to the son as proprietor, she retaining a right to the guardianship of the adopted son and the management of the property during his minority, and also a right to receive during her life maintenance proportionale to the extent of the property and the social position of the family (110). (See Montague E. Smith ) SBLO SINGH RALE, MUSSUMUT DAKHO,

(1878) 5 I. A. 87 - 1 A. 688 (705-6) - 2 C. L. R. 193 -3 Sar. 807 - 3 Suth. 529.

### HISTORY AND RELIGIOUS TEXETS OF.

The parties are Sarangee-Agarwallas, one of the numerous sub-divisions of the sect of the Jains. What little is known of the history of that sect is to be found collected in the case reported in 10 Bons. H. C. R. 241. For upwards of eleven and twelve-centuries they have secoded from the creed of the Vedas, and their religious teners have more affinity with the proyepts of the Buildhists than with those of the Brahmins. They recognise the caste system of the Brahminical Hindus, and in such ceremonies as they retain. they generally avail themselves of the assistance of a Brahmin.

They differ particularly from the Brahminical Hindus in their conduct towards the dead, omitting all obsequies after the corpse is burnt or baried. They also regard the birth of a son as having no effect on the future state of his progenitor, and, consequently, adoption is merely a temporal arrangement and has no spiritual object. (See Montague Smith). SHEO SINGH RALE, MUSSUMUT DAKHO.

(1878) 5 I A 87 (107) - 1 A 688 (701-2) -2 C.L.R. 193 - 3 Sar. 807 - 3 Suth. 529.

WIDOW SONLESS-HUSBAND'S ESTATE-INTEREST IN.

Amestral and religionaried property-Distinction -Custom among them.

Held, on the evidence afarming the H. C., that a sonless widow of a Saraogee-Agarwalla takes by the custom of the sect a very much larger dominion over the estate of her husband than is conceded by Hindu Law to the widows of orthodox Hindus; and that she takes an absolute interest at least in the self-acquired property of her husband (110). (Sir Montague Smith.) SHEO SINGH RALF. MUSSUMUT DAKHO, (1878) 5 I. A. 87=1 A. 688 (704 5)= 2 C. L. R. 193 = 3 Sar. 807 = 3 Suth. 529.

Sections of-Doctrine, ritual and worship of,

-Differences in. (Lord Phillimser,) MAHARAJ BAHADUR SINGH :, SETH HUKAM CHAND.

(1925) 24 A. L. J. 100 = (1926) M. W. N. 199 = 93 I. C. 219 = A. I. R. (1926) P. C. 13 = 50 M. L. J. 631 (632-3).

Swetambari (or Sitambari) Jains-Adoption among.

-Ceremony-Giving and taking-Acts amounting

So long as it was proved that the defendant's natural mother did in fact give her son to the plaintiff as an adopted son and the plaintiff did in fact accept him as an adopted son to her deceased husband the adoption was JAINS-(Contd.)

Swetambari (or Sitambari) Jains-Adoption among -(Contd.)

the plaintiff (276). (Sir John Edge). SHEOKUARBAI v. JETRAJ. (1920) 25 C. W. N. 273=16 N. L. R. 170= 2 U. P. L. R. (P. C.) 161=(1920) M. W. N. 627= 61 I. C. 481.

Ceremony-Greing and taking-Necessity.

It is common ground that in the sect of the Jains to which the parties in this suit belong, tvz., the Sitambari sect, the only ceremony necessary to the validity of an adoption was the giving and taking of the adopted son (275). (Sir John Edge.) SHEOKUARBAI v. JEORAJ.

(1920) 25 C. W. N. 273 = 16 N. L R 170 = 2 U. P. L. R. (P.C.) 161 = (1920) M. W. N. 627 = 61 I. C. 481.

Married gream-up man-Adoption of.

In the Sitambari sect of Jains the adopted son may be at the time of his adoption a grown up and married man. (Sir John Edge). SHEOKUARBAI v. JEORAJ. (1920) 25 C. W. N. 273 (275)=16 N. L. B. 170=

2 U. P L. R. (P. C.) 161 = (1920) M. W. N. 627 = -61 I. C. 481.

-Proof of -Widow-Adoption by.

Where the question whether in a case in which the parties belonged to the Sitambari sect of Jains the defendant had been validly adopted by the plaintiff to her deceased husband, held that, there being satisfactory proof of the adoption, that evidence could not be discarded, merely because the defendant had, even after the adoption, continued to describe himself and to be described by his natural brother as a son of his natural father. (Sir John E(ge.) SHEOKUARBALE JEORAJ.

(1920) 25 C. W. N. 273 (278 9) = 16 N. L. B. 170 = 2 U. P. L. R. (P.C.) 161 = (1920) M. W. N. 627= 61 I.C. 481.

-Widere - Adoption by - Husband's authority -

In the Sitambari sect of Jains the widow of a sonless Jain can legally adopt to him a son without any express or implied authority from her deceased husband to make an adoption. (Sir John Edge.) SHEOKUARBAI v. JEORAJ.

(1920) 25 C. W. N. 273 (276) = 16 N. L. R. 170 = 2 U. P. L. R. (P. C.) 161 = (1920) M. W. N. 627= 61 I. C. 481.

## Temple of Antanksha Parasnath at Shirpur.

-Management of-Right of-Digambari and Suxtambari seets-Rights of - Scheme of management of 1905 -Effect of.

The appellants represented the Digambari division of the Jains, and the respondents the Swetambari division. The dispute between them related to the management of the Jain Temple of Antanksha Parasnath at Shirpur. The respondents instituted the suit out of which the appeal arose. By their plaint they asserted that the property in and right of management of the entire temple was and always had been exclusively in the Swetambaries. They prayed, inter alia, for a declaration of their absolute and uncontrolled right of management of the temple, and for an injunction restraining the defendants-appellants from interfering with plaintiffs' rights. The appellants by their written statement completely repudiated the claims of the respondents and asserted their own rights over the temple and the idol which were as extensive and as absolute as those put forward by the respondents.

The evidence adduced at the trial, however, disclosed that, to meet a common enemy who had usurped the management, valid, although the defendant was not placed on the lap of and had maltreated and plundered the pilgrims, the two

Temple of Antanksha Parasnath at Shirpur-(Contd.)

sects united with the result that, in May 1901, a joint com mittee of equal numbers of Swetambaris and Digambaris was formed to undertake the management of all affurs, that at a general meeting of the Jains in 1905, at which, the Joint Committee still being in management, there was formed a scheme whereby the worship of the idol was to be performed by both sects in turns according to a regular time-table and that from that date up to 1908, when the disputes between the two sects arose the two sects managed the temple through their Committee, and worship was carried on by each sect in accordance with its ceremonies and observances as prescribed by the time-table propounded in 1905.

The trial Judge, being of opinion that the above-mentioned arrangements set at rest all disputes as to worship and as to management of the temple held that the respondents were estopped from denying the right of the appel-lants to the joint management of the temple and to the worship of the idol in their own way as both of those matters were left in the year 1905. In so holding, the trial Judge purported to give effect to a plea of estoppel set up by the appellants in their written statement. The appellate court overruled him, being of opinion that the plea of estoppel set up by the appellants in their written statement had no reference to that position.

Held, that the appellate Court was right in thinking that the plea of estoppel set up by the appellants in their written statement had no reference to any claims founded

on the arrangements of 1905.

Each of the two sects asserted an exclusive property in the temple and idol, with a right of management entirely uncontrolled. Joint control imposed by the one sect upon the other was a suggestion foreign to the cases of both. It was the common position as pleaded that the arrangements of 1905 in no way infringed upon the absolute and exclusive rights claimed by each of them. Further the plea of estoppel contained in the written statement is perfectly general in its terms, and the appellants, when asked, refused to give any particulars of its meaning. In the absence of such particulars it seems to their Lordships impossible for the appellants to contend with success that it was thereby intended to set up against the respondents claim to exclusive management an estoppel which would at once be fatal to the same claim then being substantively put forward by themselves. Again, the written statement does not contain an alternative plea based upon the agreement of 1905; no issue with regard to the agreement was or could have been directed; and the evidence was not pointed to any such issue. (Lord Blanesburgh). HONASA RAMASA v. KALYANCHAND LALCHAND. (1929) 25 N. L. B. 163 = (1929) M. W. N. 929 =

### JAITH RYOT.

A jaith ryot might be either a head ryot or a tenureholder. (Mr. Ameer Ali.) JAGDEO NARAIN SINGH :: (1922) 49 I. A. 399 (404) = BALDEO SINGH. 2 P. 38 (44)=32 M. L. T. 1=(1923) M. W. N. 361= 27 C.W.N. 925 = 36 C.L.J. 499 = 3 Pat. L. T. 605 =

A. I.R. (1922) P.C. 272 - 71 I.C. 984 = 45 M. L. J. 460.

A. I. B. 1929 P. C. 261.

### JHUM CULTIVATION.

-Nature of.

The nature of jhum cultivation is thus explained: "The dastur of jhum cultivation is this : jhum is not cultivated in one place every year. When land is found anywhere sons, had mortgaged his share. It was sold by the mort-

#### JHUM CULTIVATION-(Contd.)

within these boundaries jhum cultivation is made thereon, and after measurement and assessment the mirasidars take the rest by apportionment according to their respective shares in the jhum revenue at the time of the hastbund measurement." And that description seems to be correct to the present day. (Sir Arthur Wilson.) MAHOMED ALI HAIDAR KHAN P. SECKETARY OF STATE FOR INDIA IN COUNCIL. (1908) 35 I. A. 195 (203) = 36 C. 1 (17) =

4 M. L. T. 234 = 8 C. L. J. 436 = 12 C. W. N. 1095 = 10 Bom. L R. 1101 = 1 I. C. 182 = 110 P. L. R. 1908 = 18 M. L. J. 549.

#### JOINT TENANCY.

#### Hindu Law-Recognition in.

-Limits of.

The principle of joint tenancy appears to be unknown to Hindu Law, except in the case of co-parcenary between the members of an undivided family. (Lord Watson.) JOGES-WAR NARAIN DEG P. RAM CHUND DUTT.

(1896) 23 I. A. 37 = 23 C. 670 (679) = 7 Sar. 13 = 6 M. L. J. 75.

#### Inheritance-Property acquired by several persons by-Tenancy in which, held.

-Eredeuce.

The question was whether the sons of a daughter, who lived together as a joint Hindu family, took, on their mother's death, the estate of their maternal grandfather jointly with benefit of survivorship. The District Judge. while of opinion that in law they did not acquire the property as joint owners, held that they had so dealt with

it as to shew that it was joint property.

There was nothing in the evidence which supported the view that the grandsons held the property in common rather than jointly; there was no separate dealing with any share. It was not suggested that if they succeeded jointly they ever ceased to hold it in the same way. The property was treated and dealt with as a whole, and so far joint ownership rather than ownership in common was the more probable. After their mother's death, and whilst their father was living, the elder of the two grandsons manage I the whole property and acted as his brother's guardian during his minority, which would hardly have been the case if the brothers had their separate interest in undivided shares,

Held, that the evidence did not so unmistakeably negative ownership in common as distinguished from joint ownership as to render it safe to decide the case on that ground alone. (Lerd Lindley.) RAJA CHELIKANI VEN KAYAMMA GARU :: RAJA CHELIKANI VENKATARAMA-(1902) 29 I. A. 156 (166-7)= NAYAMMA.

25 M. 678 (688 9) = 7 C. W. N. 1 = 4 Bom L. R.657 = 8 Sar. 286 = 12 M. L. J. 299.

### Presumption-England and India.

-Distinction

The tendency of the courts in this country (England) to presume tenancy in common rather than a joint tenancy has no application to Indian tenures, where the presumption is generally the reverse (38). (Sir Robert P. Collier.) RUN BAHADOOR SINGH v. LACHOO KOER.

(1884) 12 I. A. 23=11 C. 301 (310)=4 Sar. 602.

#### Sale deed-Purchasers under-Tenancy created between.

Description in deed of purchasers as "merchants"-Effect-Maxim "Inter mercatores jus accrescendi locum non habet "-Applicability-Conditions.

Under the will of a deceased person his four sons became entitled to shares in his residuary estate. P, one of the JOINT TENANCY-(Contd.)

Sale deed-Purchasers under-Tenancy created between-(Contd.)

gagee, and was subsequently bought from the purchaser by the son of P, and the three other sons of the testator, under an indenture which recited that, in consideration of a sum stated to have been paid by the purchasers out of money belonging to them on a joint account, the share of P, was conveyed to the said four persons as joint tenants absolutely. Each of the purchasers was in the deed described as a "merchant." The purchase money was raised by a mortgage of the purchased share and of certain other shares in the original testator's estate.

Held, that, according to the principles of English Law applicable to joint tenancy, the deed of conveyance created in terms a joint tenancy between the four purchasers.

One of the Judges in the appellate Court was of opinion that the maxim "Inter mercateres jus accretional focum non habet" applied to the case, and accordingly held that the tenancy created by the deed was a tenancy in common.

Held, that that view was untenable, because, though the purchasers were described in the deed as "merchants," there was no evidence at all that the purchase was in any way connected with their trade or indeed that they were jointly concerned in any trade. (Lord Warrington.) TAN CHEW HOE NEO P. CHEE SWEE CHENG.

(1928) 56 I. A. 112 (114) - 29 L. W. 434 -116 I. C 38 - A. I. R. 1929 P. C. 72 -56 M. L. J. 643.

#### Severance of.

- Agreement to effect-Evidence justifying inference of.

Held, that statements made by individual purchasers under a conveyance which in terms created a joint tenancy between them indicating that they respectively thought that there was no right of survivorship, and accounts proving a division of income after the deaths of some of the purchasers were insufficient of themselves to justify an inference of an agreement to sever between the purchasers. (Lord Warrington.) TAN CHEW HOR NEO 7. CHEE SWEE CHENG. (1928) 56 I. A. 112 (117-8) = 29 L. W. 434 = 116 I. C. 38 = A. I. R. 1929 P. C. 72 = 56 M. L. J. 643.

- Conveyance or agreement to convey by a joint tenant of his or her interest if effects.

Under the English Law, a conveyance, or an agreement to convey his or her personal interest by one of the joint tenants operates as a severance. (Lord Watson.) JOGES-WAR NARAIN DEO P. RAM CHUND DUTT.

(1896) 23 I. A. 37 = 23 C. 670 (679) = 7 Sar. 13 = 6 M. L. J. 75.

——Course of dealing leading to inference of, between purchasers under sale deed who were joint tenants—Parol evidence of—Admissibility—Evidence Act—S. 92—Effect.

See Straits Settlements Evidence Ordinance—S. 92. (1928) 56 I. A. 112 (115-6).

-Eridence of Sale deed-Purchasers under, joint tenants-Severance of joint tenancy between.

Held, on the evidence, that a severance of the joint tenancy between the purchasers under a conveyance had not been established. (Lord Warrington of Clyffe.) TAN CHEW HOE NEO: CHEE SWEE CHENG.

(1928) 56 I. A. 112 = 29 L W. 434 = 116 I. C. 38 = A. I. B. 1929 P. C. 72 = 56 M. L. J. 643.

-Modes of, in English Law.

With regard to the ways in which a joint tenancy may, under the English Law, be severed, Wood, V. C. observed, in Williams v. Hensman, as follows:—

#### JOINT TENANCY -(Contd.)

Severance of-(Contd.)

A joint tenancy may be severed in three ways: In the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share... Secondly, a joint tenancy may be severed by mutual agreement. And in the third place there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy-in-common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention with respect to the particular share, declared only behind the backs of the other parties interested. You must find, in this class of cases, a course of dealing by which the shares of all the parties to the contest have been affected.

Their Lordships accept this as an accurate statement of the Law. (Lord Warrington.) TAN CHEW HOE NEO T. CHEE SWEE CHENG. (1928) 56 I. A. 112 (115) = 29 L. W. 434 = 116 I. C. 38 = A. I. R. 1929 P. C. 72 = 56 M. L. J. 643.

#### JOINT TENANTS.

#### Adverse Possession between.

—English Law rule as to—Applicability of, to sharers in unpartitioned agricultural villages in India not holding their shares as members of joint family.

Quaere, whether the English rule of law that the possession of one of several co-parceners, joint tenants or tenants in common, is the possession of the others so as to prevent the statutes of limitation from affecting them is applicable to sharers in an unpartitioned agricultural village in India not holding their shares as members of a joint family. (Viscount Care.) VARTHA PILLAI 1. JEVARATHAMMAL. (1919) 46 I. A. 285 (292-3) = 43 M. 244 (252) = 24 C. W. N. 246-92 M. T. T. 274-10 A. T. J. 274

24 C. W. N. 346 = 27 M. L. T. 6 = 18 A. L. J. 274 = 22 Bom. L. R. 444 = (1919) M. W. N. 724 = 10 L. W. 679 = 53 I. C. 901 = 38 M. L. J. 313.

Exclusive possession of joint estate by one of.

— -- Meaning of, See Possession—Exclusive Possession. (1918) 9 L. W. 123 (1234).

#### Tenants in common.

Mostgages to two persons as—Suit by one mortgage to enforce his share of mortgage—Form of—Distinction —Error in form of suit—Amendment—Duty of court.

Where a mortgage is made by one mortgager to two temants in common, the right of either mortgagee who desires to realize the mortgaged property and obtain payment of the debt, if the consent of the co-mortgagee cannot be obtained, is to add the co-mortgagee as a defendant to the suit and to ask for the proper mortgage decree, which would provide for all the necessary accounts and payments, excepting that there could be no judgment for a sum of money entered as between the mortgagee defendant and the mort-

Under a compromise, the appellant (the daughter of a deceased Hindu) agreed to pay each of his two widows an absolute sum of Rs. 80,000 with interest at 6 p.c. until payment. To secure those sums the appellant executed a mortgage, mortgaging the real and personal estate of the deceased in payment of the said two sums of Rs. 80,000. The deed contained no covenant for payment of the mortgage debt, but consisted of a conveyance of the whole property to the two mortgagees as tenants in common and not as joint

#### JOINT TENANTS-(Centd.)

Tenants in common—(Contd.)

tenants, with separate provisos for redemption as to the real and personal estate in the same terms, viz., that upon payment " by sums of equal amounts to each of the two mortgagees and their representatives of Rs 80,000 with interest, and on payment of costs and incidental expenses" the said mortgagees, their respective heirs or assigns, will separately at the cost of the mortgagor "re-convey and re-assign the mortgaged property".

Held that the mortgage clearly effected the conveyance of the real estate to the real mortgagees as tenants in common and that no redemption could be effected of part of the property by paying to one of the mortgagees her separate debt. It is not a mortgage to each of a divided half, but a con-

veyance to them of the whole property.

One of the widows instituted proceedings under the mortgage deed against, inter alia, the appellant and the other widow for payment of the Rs. 80,000 with interest, and sale of half of the mortgaged property.

Held, affirming the High Court, that it was not possible to obtain a partial relief upon such a mortgage. But that permission should be granted to the plaintiff to make the

necessary amendments in the plaint,

It was within the competence of the court to make such an amendment, and indeed it was their clear duty to do it if thereby delay and expense would be avoided. (Lord Buckmaster.) SUNITABALA DEBI D. DHARA SUNDARI DEBI (1919) 46 I. A. 272 (277 8)-CHOWDHURANI. 47 C. 175 (179-80) = 22 Bom. L R 1=

17 A. L. J. 997 = (1919) M. W. N. 821 = 11 L W. 297 = 24 C. W. N. 297 = 52 I. C. 131 = 37 M. L. J. 483.

- Ouster by one of-Acts amounting to-Exclusive cultivation by one-Remedy of others in ease of-fount

possession-Injunction-Damages.

If there be two or more tenants in common, and one A be in actual occupation of part of the estate, and is engaged in cultivating that part in a proper course of cultivation as if it were his separate property, and another tenant in common B attempts to come upon the said part for the purpose of carrying on operations there inconsistent with the course of cultivation in which A is engaged, and the profitable use by him of the said part, and A resists and prevents such entry, not in denial of B's title, but simply with the object of protecting himself in the profitable enjoyment of the land, such conduct on the part of A would not entitle B to a decree for joint possession, or to one for an injunction. The proper remedy in such a case is to award R a sum of money as compensation in respect of the exclusive use by and benefit to A (120-2).

In India a large proportion of the lands, including many very large estates, is held in undivided shares, and if one shareholder can restrain another from cultivating a portion of the estate in a proper and husbandlike manner, the whole estate may, by means of cross injunctions, have to remain altogether without cultivation until all the shareholders can agree upon a mode of cultivation to be adopted, or until a partition by metes and bounds can be effected-a work which, in ordinary course, in large estates would prohably occupy a period including many seasons. In such a case, in a climate like that of India, land which had been brought into cultivation would probably become waste or jungle, and greatly deteriorated in value. In Bengal the Courts of justice, in cases where no specific rule exists, are to act according to justice, equity, and good conscience, and if, in a case of shareholders holding lands in common, it should be found that one shareholder is in the act of cultivating a portion of the lands which is not being actually used by another, it would scarcely be consistent with the rules above indicated to restrain him from proceeding with

#### JOINT TENANTS-(Contd.)

Tenants in common-(Contd.)

his work, or to allow any other shareholder to appropriate to himself the fruits of the other's labour or capital (120-1,) (Sir Barnes Peaceck.) ROBERT WATSON & CO. P. RAM CHAND DUTT. (1890) 17 I. A. 110 = 18 C. 10 (21.2) =

-Purchase by one of, of something schick another has received-Personal liability of purchaser to third tenant in common for what was received by his vendor.

It does not follow that, because a man who was tenant in common has received something and has then sold it to another tenant in common, a third tenant in common can make the purchaser answerable personally for that which was received by the person who has relinquished in his favour. (Lord Justice Turner.) RANI KHAJURUNISSA (1871) 8 B. L. R. 93= P. SVED AHMED ROZA.

16 W. R. P. C. 1 = 2 Suth. 438 = 2 Sar. 677.

-Share of one of-Right of other to.

A tenant in common is the owner of his own share; but he is not an owner of the other tenant in common's share (3) (Sir Barnes Peacock.) MUSSAMUT LACHHO v. MAYA RAM. (1882) 10 I. A. 1 = 5 A. 158 (160) = 4 Sar. 407.

#### JOINT TORT FEASORS.

-Judgment unsatisfied against one of-If a bar to suit against others. See COMPANY-DIRECTORS AMOUNT FRAUDULENTLY RECEIVED BY.

(1922) 32 M. L. T. 196 (205) P. C.

-Lessee-Joint tort-feasor with his sub-lessee-Liability to lessor as-Conditions-Evidence required. See LEASE-LESSEE-JOINT TORT-FEASOR, ETC.

(1928) 56 I. A. 93 (101-3).

 Liability of—Apportionment of—Plander of property in pursuance of common object-Persons joining in-Persons coerced to join in-Liability of. See DAMAGES-PLUNDER OF PROPERTY IN PURSUANCE OF COMMON (1860) 3 B. L. R. (P. C.) 44. OBJECT.

#### JOTE.

Meaning of.

" Jote " is a general term and it is not necessarily equivalent to "raiyati jote". The expression "jote" is little suited to the recognition of a pre-existing right (56.) (Lord Dunedin.) MIDNAPUR ZAMINDARI CO., LTD. P. NARESH (1920) 48 I. A. 49 = 48 C. 460 = NARAIN ROY. 14 L. W. 265 = 30 M. L. T. 279 = 64 I. C. 231 =

A.I.R. (1922) P. C. 241.

-See POTTAH-MEANING OF. (1921) 48 I.A. 267 (277) = 43 A. 355 (365).

#### JOTEDAE.

-Meaning of-Cultivator. (Sir John Wallis.) KUMAR GOPIKA RAMAN ROV P. ATAL SINGH.

(1929) 56 I. A. 119 = 56 C. 1003 = 27 A, L. J. 246 = 33 C. W. N. 463 = 49 C. L. J. 327 = 29 L. W. 674 = 10 Pat. L. T. 301=114 I. C. 561=31 Bom. L. R. 734= A. I. R. 1929 P. C. 99 = 56 M. L. J. 562 (567).

#### JOTE BIGHT.

--- Co-sharers-Join estate-Jote right in-Acquisition, creation, or purchase of, by one of owners-Permissibility -Effect. See CO-SHARERS-JOINT ESTATE - JOTE RIGHT IN. (1924) 51 I. A. 293 = 51 C. 631. RIGHT IN.

#### JUDGE.

(See also COURT.)

CONTEMPT OF COURT. DUTY OF-DISCHARGE OF. FUNCTION OF. IMPUTATION ON PUBLIC ACTS OF.

#### JUDGE - (Contd.)

JUDICIAL ACTS OF.

LIBEL UPON, IN HIS JUDICIAL CAPACITY.

MISCONDUCT OF-COSTS OF PROCEEDINGS OCCASION-ED BY

ORDER OF.

PERSONA DESIGNATA OR-TEST.

PERSONAL KNOWLEDGE OF-IMPORTING INTO JUDG. MENT OF.

PUBLIC ACTS OF -CRITICISM OF.

PUBLIC CAPACITY OF -- ATTACKS UNWARRANTED ON. REPRESENTATIVE OF

SALARY PAYABLE TO, IN EVENT OF DEATH WHILE HOLDING OFFICE-ASSIGNMENT OF,

SUPERIORS, JUDICIAL OR ADMINISTRATIVE-REFER-ENCE TO, FOR OPINIONS IN REGARD TO FORMING HIS OWN JUDGMENT OR FOR INSTRUCTIONS OR ORDERS AS TO COURSE TO BE PURSUED.

WITNESS KNOWN TO-CHARACTER AND CREDIBILITY OF-REMARKS UPON.

#### Contempt of court.

-Sa CONTEMPT OF COURT.

#### Duty of-Discharge of.

Presumption as to.

Their Lordships are bound to give the Financial Commissioner the benefit of the presumption that he did his duty as a Judge. AGHA HUSSUN KHAN BAHADOOR P. MUSSAMAT JANEE BEGUM. (1872) 8 M.J. 149.

-See also UNDER EVIDENCE ACT-S. 114. It.L. (c).

#### Function of.

-Judicial or administrative. See BENGAL REGULA-TIONS-PUTNI TALUKS REGULATION OF 1819-S, 14-COLLECTOR.

(1918) 45 I.A. 103 (108) - 46 C. 1 (9).

Judicial or Administrative- Land Acquisition Act of 1894-S. 11-Inquiry by Collector into value of land under. See LAND ACQUISITION ACT OF 1894-S. 11-INOURY INTO VALUE OF LAND UNDER.

(1905) 32 I. A. 93 (100-1) = 32 C. 605 (628-9).

-Judicial or Executive. See BOMBAY ACTS-DIS TRICT POLICE ACT IV OF 1590-S8, 25 AND 25-A-INCL-DENCE OF TAX UNI ER.

(1927) 54 I. A. 338 (344) = 51 B. 725.

-Judicial or Ministerial. See BENGAL REGULATIONS -LAND MORTGAGE REDEMPTION AND FORECLOSURE REGULATION XVII OF 1806-S. 8-FUNCTIONS OF JUDGE UNDER.

-Judicial or ministerial-Decree of High Court on its original side-Transmission of. See C. P. C. OF 1908-S. 39-HIGH COURT, ETC.

(1927) 54 I. A. 129 (134-5) = 54 C. 500.

### Imputations upon public acts of.

-Liability to prosecution for. See PENAL CODE-S. 499-JUDGE.

(1914) 41 I.A. 149=41 C. 1023 (1063 4.)

### Judicial acts of.

### IMMUNITY IN RESPECT OF.

England-Indges and Justices of the peace in. English Judges, when they act wholly without jurisdiction, whether they may suppose they had it or not, have no privilege; and the justices of the peace, whether acting as such, or in their judicial character, in cases of summary conviction, have no other than that of having notice of action, a limitation of time for bringing it, a restriction as to renne, the power of tendering amends, and of pleading the general

JUDGE-(Contd.)

Judicial acts of-(Contd.)

IMMUNITY IN RESPECT OF-(Contd.)

i-sue, with certain advantages as to costs (307). (Mr. Baron Parke.) CALDER P. HALKET.

(1839) 2 M I A. 293=3 Mco. P.C. 28= 4 State Tr. (N. S.) 481 = Morton. 386 = 1 Sar. 191.

INJURY OR WRONG IN RESPECT OF-LIABILITY FOR.

-Acts in Court - Acts of judicial character.

It is not merely in respect of acts in Court, acts redente curia, that an English Judge has immunity, but in res-

pect of all acts of a judicial nature (308).

Held, therefore, that an order under the seal of the Foujdarry Court, to being a native into that Court, to be there dealt with on a criminal charge, is an act of a judicial nature, and whether there was any irregularity or error in it, or not, would be dispunishable by ordinary process at law (308): (Mr. Baron Parke.) CALDER v. HALKET. (1830) 2 M. I. A. 293 = 3 Moo. P. C. 28 =

4 State Tr. (N.S.) 481 = Morton 386 = 1 Sar. 191.

- Juradiction limited - Judge with-Act without jurisdiction of- Liability for.

It is well settled that a Judge of a Court of Record in England, with limited jurisdiction, or a Justice of the Peace, acting judicially, with a special and limited authority, is not liable to an action of trespass for acting without jurisdiction, unless he had the knowledge or means of knowledge of which he ought to have availed himself, of that which constitutes the defect of jurisdiction (309). A Judge is not liable in trespass for want of jurisdiction, unless he knew, or ought to have known of the defect (310).

An affray having taken place in a village within the Zillah of .V. the police reported the particulars of the riot to the respondent, as acting Magistrate of the Foujdarry Court of the Zillah of N, and transmitted the depositions of the we unded persons, as well as some of the witnesses of the affray. The respondent, being of opinion that the appellant was concerned in the riot, directed an order for the apprehension of the latter, who was accordingly arrested, kept under surveillance, and was, after some days' investigation by the respondent, admitted to bail. But no further proceedings were taken against the appellant.

The appellant brought an action of trespass against the respondent to recover damages for the arrest and false imprisonment of the appellant by the respondent in his character of Judge and Magistrate, alleging that the appellant was a Europeau-born subject of the British Crown, that as such he was not answeralde to the general jurisdiction of the respondent, and that the special jurisdiction given by the 53rd Geo. III, C. 155, S. 105, did not warrant the mode of proceeding in the case.

It did not, however, appear from the evidence in the case, that the defendant-respondent was at any time informed of the European character of the plaintiff, or knew it before, or had such information as to make it incumbent on him to ascertain that fact.

Held, that the respondent was not liable (310).

Quaere whether, if distinct notice had been given by the plaintiff to the defendant, or proof brought forward that the defendant was well acquainted with the fact of his being British-born, the defendant would have been protected in the case, as being in the nature of a Judge of Record, acting irregularly within his general jurisdiction, or liable to an action of trespass, as acting by virtue of a special and limited authority, given by the statute, which was not complied with, and therefore altogether without jurisdiction (Mr. Baron Parke.) CALDER r. HALKET.

(1839) 2 M.I.A. 293 = 3 Moo. P.( 28= 4 State Tr. (N. S.) 481 = Morton 386 = 1 Sa : 191:

Judicial acts of-(Contd.)

INJURY OR WRONG IN RESPECT OF-LIABILITY FOR-(Contd.)

Statute 21 Geo. 111. C. 70-S. 24-Object and effect of.

S. 24 of the 21st Geo. III, C. 70, is as follows:-"And whereas it is reasonable to render the Provincial Magisstrates, as well natives as British subjects, more safe in the execution of their office, be it enacted, that no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever, exercising a judicial office in the country courts, for any judgment, decree, or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court."

Held that, on the right construction of the section, its object was to put the Judges of the Native Courts on the footing of Judges of the Superior Courts of Record, or Courts having similar jurisdiction to the Native courts in England, protecting them from actions for things done within their jurisdiction, though erroneously or irregularly done, but leaving them liable for things done wholly without

jurisdiction (306-7).

The true meaning of the section was to put the Judges of Native Courts of Justice on the same footing as those of English courts of similar jurisdiction. There seems no reason why they should be more or less protected than English Judges of general or limited jurisdiction, under the like circumstances. To give them an exemption from lia-bility, when acting bona fide in cases in which they had, though mistakenly, acted without jurisdiction, would be to place them on a better footing than English Judges or Magistrates, and to leave the injured individual wholly without civil remedy; for English Judges, when they act wholly without jurisdiction, whether they may suppose they had it or not, have no privilege; and the justices of the peace, whether acting as such, or in their judicial character, in cases of summary conviction, have no other than that of having notice of action, a limitation of time for bringing it, a restriction as to renne, the power of tendering amends, and of pleading the general issue, with certain advantages as to costs (307). (Mr. Baron Parke.) CALDER P. HAI KET. (1839) 2 M.I A. 293 = 3 Moo. P.C. 28 =

4 State Tr (N.S.) 481 = Morton 386 = 1 Sar. 191. TRESPASS FOR WANT OF JURISDICTION-ACTION OF.

-Liability for-Onus on plaintiff in.

A Judge is not liable in trespass for want of jurisdiction, unless he knew, or ought to have known, of the defect, and it lies on the plaintiff, in every such case, to prove that fact (310). (Mr. Baron Parke.) CALDER v. HALKET. (1839) 2 M. I. A. 293 = 3 Moo P. C. 28 =

4 State Tr. (N. S.) 481 = Morton 386 = 1 Sar. 191. Libel upon, in his judicial capacity.

-Publication of-Punishment for. See UNDER CON-

TEMPT of COURT. Misconduct of-Costs of proceedings occasioned by.

-Order as to. See COSTS-JUDGE AN OFFICER OF (1844) 3 M. I. A. 324 (328). EAST INDIA CO. Order of.

-Judicial or not. See JUDGE-FUNCTION OF.

Persona designata or-Test. -See BOMBAY ACTS-NAWAB OF SURAT ACT OF (1854) 5 M. I. A. 499 (508-9).

-Religious Endowments Act of 1863, S. 10-District Judge acting under. See RELIGIOUS ENDOWMENTS ACT OF 1863, S. 10-DISTRICT JUDGE ACTING UNDER. (1887) 14 L A. 160 (165) = 11 M. 26 (35).

JUDGE-(Contd.)

Personal knowledge of-Importing into judgment of.

Propriety of.

It appears that the Zillah Judge so far forgot that it was necessary to have the evidence brought forward under legal sanction and in public, in such a way that there might be the means of controverting it, that he imported, as a ground of his decision, something which came within his own knowledge. It is to be regrested that any such circumstance should have taken place, and still more is it to be regretted, when the case came before the Superior Court, that circumstance of that kind should have been alluded to as one which ought, in the smallest degree, to have any effect upon the judgment of the Court. It was impossible to pass that by without making any observation upon it (200). (Lord Langdale). JESWANT SING JEE (1844) 3 M. I. A. 245 = P. JET SING JEE.

6 W R. 46 P. C. = 1 Suth. 150 = 1 Sar. 274.

-The conclusion of the Pricipal Sudder Ameen as to the partnership seems to rest principally on his own knowledge and belief, or public rumour-grounds upon which no udge is justified in acting. (221). (Sir James W. Colvile.) MEETHUN BEBER & BUSHEER KHAN.

(1867) 11 M. I A. 213 = 7 W. R. P. C. 27 = 1 Suth. 683 = 2 Sar. 255.

R. & J's No. 41 Oudh.

It ought to be known, and their Lordships wish it to he distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. If the means of knowledge of the Judicial Commissioner of the facts spoken to by him in his judgment, as depending upon his own knowledge, were capable of being tested, it would probably turn out that it desended upon mere rumour or hearsay, and that his evidence as to those facts would not have been admissible if he had been examined as a witness (286). (Sir Barnes Peacock.) HURPURSHAD P. SHEO DVAL. (1876) 3. I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 =

--Where a Subordinate Judge stated as his reasons for dismissing an application to file an award under S. 525 of the Code of Civil Procedure, 1882, that the arbitrator misconducted himself, in making the award contrary to the custom of the parties and the Mahomedan law, and that he, the Judge, knew that the arbitrator was an intimate friend of one of the parties, and that he consequently made his award in that party's favour held that some of the reasons were entirely at variance with the function of a judge (75), (Lord Morris) MUHAMMED NAWAZ KHAN D. ALAM (1891) 18 I. A. 73 = 18 C. 414 (417-8) = KHAN. 70 P. R. 1891 = 6 Sar. 26.

-Witness known to Judge-Character and credibility of-Remarks upon-Not amounting to such importation.

When the trial Judge called two of the attesting witnesses "professional witnesses," and observed that they were persons of no character and were not entitled to any credit whatever. held that the appellate court erred in thinking that the trial Judge was importing his own personal knowledge of the parties, as being in the habit of coming before his Court (203). (Mr. Pemberton Leigh). BAMUNDOSS MOOKER. JEA. P. MUSSAMUT TARNEE. (1858) 7 M. I. A. 169= 1 Sar. 616.

Public acts of-Criticism of.

Freedom from. See PENAL CODE, S. 499-JUDGE. (1914) 41 I.A. 149=41 C. 1023 (1063-4).

Public capacity of-Attacks unwarranted on.

-Impropriety of.

It is essential to the proper administration of justice that unwarrantable attacks should not be made with impunity

Public capacity of-Attacks unwarranted on-(Contd.)

upon judges in their public capacity, (Sir Andrew Scotle), S. B. SARBADHICARY, In re.

(1906) 34 I.A. 41 (45) = 29 A. 95 (108) = 2 M L.T. 1-5 C.L.J. 130 = 11 C.W.N. 273 = 9 Bom. L.R. 9-4 A.L.J. 34 = 5 Cr. L.J. 152 = 9 Sar. 173 = 17 M.L.J. 74

#### Representative of.

——Clerk of Court if a. See REPRESENTATIVE. (1922) 49 I.A. 395 (397-8) = 50 C. 166 (170).

Salary payable to, in event of death while holding office—Assignment of.

-Validtty -Public policy.

N, one of the Puisne Judges of the Supreme Court of Madras, purported, for a good and valuable consideration, to make an equitable assignment to the appellants of all his right and interest in the amount of six months' salary payable under the statute 6th of Geo. iv, c, 85. The question was whether it was in the power of N to assign that sum, and whether that assignment was or was not against public policy.

Held that the assignment was not against public policy

(446).

The six months' salary payable to N' under the statute was part of the estate of N, of the same description as if it had been a policy of assurance upon his life; that is to say, a certain sum of money to which he would be entitled upon the contingency of a certain event; over which he had complete power of disposition by assignment in his lifetime, or by testamentary disposition. That sum of money was not one which at any time during the lifetime of N could possibly have been appropriated to his use, or for his benefit, for the purpose of sustaining with decorum and propriety the high rank in life, in which he was placed. The principles upon which the decisions against the assignment of salaries by persons filling public offices are founded are inapplicable to the assignment of such a sum of money (446-3).

ARBUTHNOT: NORTON. (1846) 3 M.I.A. 435=

5 Moo. P.C. 219=10 Jur. 145=1 Sar. 300.

Superiors, judicial or administrative—
Reference to, for opinions in regard to forming his
own judgment or for instructions or orders as
to course to be pursued.

-Propriety of.

Officers who act as judges, if entrusted, at the same time with administrative duties, ought to be most scrupulous in the endeavour to form their opinions independently. They ought not to refer to their superiors, whether judicial or administrative, for opinions to enable them to form their own judgments or for instructions or orders directing them as to the course which they as judges ought to pursue (121-2). (Sir Barnes Peacock). THAKOOR HARDEO BUX v. THAKOOR JAWAHIR SINGH.

(1877) 4 I.A. 178=3 C. 522 (532-3)=3 Sar. 704= Bald. 218=R. & J.'s No. 45=3 Suth. 427.

### Witness known to—Character and credibility of— Remarks upon.

—No importing of personal knowledge into judgment involved in. See JUDGE—PERSONAL KNOWLEDGE = IM-PORTING INTO JUDGMENT OF—WITNESS KNOWN TO JUDGE. (1858) 7 M.I.A. 169 (203).

#### JUDGMENT.

ACQUIESCENCE IN. ADMISSION IN.

ALTERATION OR AMENDMENT OF-JURISDICTION.

JUDGMENT-(Contd.)

AWARD—JUDGMENT ON. BASIS PROPER OF.

CO-DEFENDANTS-ADMISSION OR CONFESSION BY ONE OF.

CO-HEIRS—PROPERTY OF, ILLEGALLY TRANSFERRED BY ONE OF HEIRS—SUIT BY OTHER FOR RE-COVERY OF, FROM TRANSFEREE—MAINTAINABI-LITY.

CONSENT TO-WITHDRAWAL IN APPEAL OF.

CORRECTNESS OF-PRESUMPTION.

CO-SHARERS-JUDGMENT IN FAVOUR OF ONE OF.

COURT OF HIGHEST CIVIL JURISDICTION IN PRO-VINCE—FINAL JUDGMENT OF—MEANING OF.

DECREE-CONFORMITY BETWEEN.

DEPENDENT AND SUBORDINATE JUDGMENT SUBSE-QUENTLY REVERSED IN ULTERIOR PROCEEDING.

ERROR VITIATING.

EVIDENCE — MATTERS TURNING ON — DECISION BASED ON, WITHOUT OPPORTUNITY TO AGGRIEVED PARTY TO ADDUCE REBUTTING EVIDENCE,

FACT.

FINAL JUDGMENT-MEANING OF.

FOREIGN JUDGMENT.

INSOLVENCY—FRENCH INSOLVENCY—JUDGMENT OB-TAINED IN FRENCH TERRITORY AGAINST INSOL-VENT AFTER.

INTER PARTES-JUDGMENT NOT.

JOINT TORT-FEASORS — JUDGMENT UNSATISFIED AGAINST ONE OF.

JUDGMENT IN rem.

LITIGATION PRIOR - JUDGMENT INTER PARTES IN-DECISION OF SUIT ON BASIS OF.

MEANING OF.

MISTAKE IN—CORRECTION OF—DUTY OF AGGRIE-VED PARTY TO SEE TO.

MONEY PAID UNDER-RECOVERY OF.

Obiter dictum IN PRIOR JUDGMENT.

OBJECT PROPER OF.

OBJECTION DEALT WITH BY-RAISING OF.

PARTY-NON-APPEARANCE OF-JUDGMENT FOR OP-PONENT ON GROUND OF.

PERSONAL KNOWLEDGE OF JUDGE.

POINT NOT DEALT WITH BY -IMPLICATION OF DECI-SION OR OF OPINION OF COURT ON.

RESPECT FOR.

SOUNDNESS OF.

### Acquiescence in.

Admission in.

——Effect—Judgments and proceedings interpartes— Judgments and proceedings not inter partes—Distinction. See EVIDENCE—DEED—ADMISSION IN—EFFECT.

Alteration or amendment of-Jurisdiction.

-- Default of appearance - Judgment of English Courts on-Remedy of aggrieved party.

Where a party makes default in any of the Courts below, and the judgment is perfected against him upon that default, it cannot be amended upon any suggestion, unless there has been misprision, and the judgment has been entered contrary to the truth of the proceedings, as judgment for the defendant instead of non-suit. So where on writ of error the plaintiff does not appear after joinder in error, the judgment is of affirmance (220-1). But in this case no final judgment can be said to be pronounced, because the party making default may proceed again (221). (Lord Browgham.) RAJUNDER NARAIN RAE v. BIJAI GOVIND SING. (1839) 2 M.I.A. 181=1 Moo. P.C. 117=

1 Sar. 175.

Alteration or amendment of-jurisdiction-(Contd.)

English common law Courts-Jurisdiction of.

The Courts of Law, after the term in which the judgments are given, can only alter them so as to correct misprisions, a power given by the statutes of amendment (216). (Lord Brougham). RAJUNDER NARAIN RAE : BIJAI (1839) 2 M.I.A. 181= GOVIND SING. 1 Moo. P.C. 117 = 1 Sar. 175

-House of Lords-Judgments of, Scr UNDER HOUSE

OF LORDS.

Privy Council-Judgments of. See UNDER PRIVY COUNCIL-APPEAL-JUDGMENT IN.

Setting aside of.

Legal judgments cannot be treated as mere counters in the game of litigation. They are serious pronouncements, for the most part of the judicial officer of the State, touch ing the rights of disputes of subjects, bringing home to those subjects what the rules of justice required and are enforceable, if need be, by the forces of the State. Moreover, when once pronounced, they cannot be lightly set aside (170). The Court has no jurisdiction after the judgment at the trial has been passed and entered to rehear the case. The only cases in which the Court can interfere after the passing and entering of the judgment are these (1) Where there has been an accident or sl'p in the judgment as drawn up, and (2) Where the Court itself finds the judgment as drawn up does not correctly state what the Court actually decided and intended (175). (Lord Atkinson). SOMASUNDARAM CHETTY v. SUBRAMANIAN CHETTY.

(1926) 25 L. W. 163=(1926; M. W. N. 832= 4 O. W. N. 1= A. I. B. (1926) P.C. 136=99 I. C. 742.

### Award-Judgment on

-Merger of award in. See ARBITRATION-AWARD (1922) 49 L. A. 174 (180) = -JUDGMENT ON. 45 M. 496 (503).

### Basis proper of.

ORAL EVIDENCE-CONFLICT OF.

-(See also UNDER THIS VERY SUB-HEAD-PROBA-BILITIES IF AND WHEN).

-Conduct of parties-Documenrary evidence-Safe guide in such cases. See HINDU LAW-ADOPTION-EVIDENCE-ORAL EVIDENCE.

(1908) 36 I. A. 9 (18)=31 A. 116 (127). -Documents and admitted facts-Regard for-Necessity. (Sir James W. Colvile.) MUSST. CHEETHA v. (1867) 11 M. I. A. 369 (384) = BABOO MIHEEN. 2 Sar. 303.

-Documentary evidence -- Regard for -- Necessity. (Mr. Pemberton Leigh). MUSST, IMAM BANDI P. HUR-(1848) 4 M. I. A. 403 (407) = GOBIND GHOSE. 7 W.B. P.C. 67=1 Suth. 208=1 Sar. 371.

-Documentary evidence adequate - Insistency on-Propriety of. (Lord Chelmsford). SREE ECKOWRIE SINGH P. HEERALOLL SEAL.

(1868) 12 M .I. A. 136 (142)=11 W. B. P C. 2= 2 B. L. B. P. C. 4=2 Suth. 171=2 Sar. 399.

Probabilities-Facts beyond dispute-Safe guide. There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts, according to the ordinary course of human affairs and the usual habits of life. (Mr. Baron Parke). OOLLAH v. MUSSUMAT BEEBY IMAMAM.

(1836) 1 M. I. A. 19 (44-5)=5 W.B. 26 P.O.= 1 Suth. 46=1 Sar. 89.

#### JUDGMENT-(Contd.)

Basis proper of -- (Contd.)

ORAL EVIDENCE-CONFLICT OF-(Contd.)

-Probabilities-Preponderance of-Regard for-Necessity.

In a conflict of testimony nearly balanced, the case must be decided by the preponderance of probabilities (187). (Sir Richard Kindersley). WISE v. SUNDERLOOMISSA (1867) 11 M.I.A. 177 = CHOWDRANEE.

7 W.B. P.C. 13 = 1 Suth. 667 = 2 Sar. 249.

PERSONAL KNOWLEDGE OF JUDGE IF A.

-- Sa: JUDGE-PERSONAL KNOWLEDGE OF.

PROBABILITIES IF AND WHEN.

-(See also UNDER THIS VERY SUB HEAD-ORAL EVIDENCE-CONFLICT BETWEEN).

-This is a mere question of fact, upon which, as in almost all cases from India, the evidence is contradictory, and the decision must turn very much upon the probabilities of the case, to be collected from those facts which are sufficiently established (104). (Mr. Pemberton Leigh). RUNGAMMA 7. ATCHAMA. (1846) 4 M. I. A. 1= 7 W. R. 57 P. C. = 1 Suth. 197-1 Sar. 313.

-Several witnesses on the part of the appellant have sworn to the different facts necessary to prove the adoption. On the other hand, the respondents have produced witnessss who swear to facts inconsistent with such adoption. In such rircumstances, much must depend upon the probabilities of the case to be collected from those facts, as to which both parties are agreed (425). (Mr. Pemberton Leigh). HURADHUN MOOKURJIA 2. MUTHORANATH (1849) 4 M.I.A. 414 = 7 W.R. P.C. 71 = MOOKURJIA. 1 Suth. 213 = 1 Sar. 375.

-Considering the habits and customs of the native inhabitants of India, their well-known propensity to forge any instrument which they might deem necessary for their interest, and the extreme facility with which false evidence can be procured from witnesses, the probability or improbability of the transaction forms a most important consideration in ascertaining the truth of any transaction relied upon. It is therefore the duty of the Court to examine with care how far the transaction relied upon is consistent with all the probabilities of the case (155-6). (Dr. Lushington). BUNWAREE LAL P. MAHARAJAH HETNARAIN SING.

(1858) 7 M.I.A. 148=4 W.R. 128 - 1 Sar. 610= 1 Suth. 307.

-A suit to enforce the specific performance of an agreement alleged to have been executed by the defendant appellant was dismissed by the first Court, it "being unable to hold that the agreement set up had been proved." Chief Court on appeal arrived at a totally different conclusion; it found that the document was signed by the defendant, and it accordingly reversed the decision of the first Court and decreed the plaintiff's claim. On appeal to the Privy Council, the only question for determination was as to the genuineness of the defendant's signature on the suit agreement, and, although the parties were at issue on this. the vital point in the case, there was otherwise singular unanimity on the general facts.

Held that, in the conflict of opinion between the Courts below, it was necessary for their Lordships to examine the admitted facts and circumstances as furnishing the safest

guide to a correct conclusion (156-7).

Held further that in dealing with a case of that kind in which the parties were at issue on a vital question of fact, the safe principle was to consider which story fitted in with the admitted circumstances (162). (Mr. Ameer Ali). ING SHWE CO. (1911) 38 I. A. 155= 38 C. 805 (811, 817)=15 C. W. N. 934= DAVIS v. MAUNG SHWE CO.

13 Bom. L.R. 704=(1911) 2 M.W.N. 78 -

Basis proper of -(Contd.)

PROBABILITIES IF AND WHEN-(Cont.)

14 C.L.J. 250 4 Bur L. T. 223 = 8 A.L.J. 1193-10 M. L. T. 455-11 I.C. 801= 21 M. L. J. 1127.

-In a case in which the question was whether the res pondent was the wife of S and whether her three children were his legitimate offspring, some of the verbal evidence. and particularly that of the respondent, was untrustworthy. while the documents recorded a state of affairs which it was often hard to reconcile with probabilities.

Held that conjecture as to what might have led to a particular course of action was an uncertain guide and one liable to astray, and that unless the facts evidenced by documentary and oral testimony were so much at variance with known conditions as to be incapable of reasonable explanation, it was to those facts, and to those facts alone, that the Court must trust to reach a safe conclusion in the matter (217). (Lord Buckmaster). 1RSHAD ALI v. KARIMAN. (1917) 46 I.C. 217 = (1918) M.W.N. 394 =

22 C. W. N. 530 = 21 O. C. 86 = 5 O. L. J. 197 = 28 C.L.J. 173 - 20 Bom. L.R. 790 - 24 M.L.T. 86.

#### SPECULATION NOT.

-Their Lordships cannot assent to the reasoning by which Judges of that Court have arrived at the first of these conclusions. They seem to their Lordships in some passages to substitute speculation for proof (321). (Sir James W. Colvile.) KALEEPERSHAD TEWAREE P. RAJAH SAHIB PERHLAD SEIN. (1869) 12 M.I.A. 282=

12 W.R. P.C. 6=2 B.L.B P. C. 111= 2 Suth. 225=2 Sar. 430.

#### SUSPICION NOT.

 The decision of a Court must rest not upon suspicion. but upon legal grounds, established by legal testimony, (Lord Justice James). FAEZ BUKSH CHOWDRY : FUKEEROODEEN MAHOMED.

(1871) 14 M.I.A. 234(244) = 9 B.L.R. 456 -2 Suth. 490 = 2 Sar. 733

--- Their Londships commented adversely upon the readiness of Courts in India to disregard testimony in favour of suspicion (191). BBUGWAN DOSS 2: HUNNOO-MAN PERSHAD SAHOO. (1872) 5 Sar. 689.

-It is the duty of a Court, either of first instance or of appeal to act upon the issues and upon the proofs in the case. Of course, they must receive all evidence with careful scrutiny; if necessary, with suspicion; but they must after all decide the rights of neople according to the matters which are proved before them; and it never can be allowed that a Court is, simply upon a suspicion derived from its own notion of what is the habit of the people or anything else, to throw aside the whole evidence and give effect to their mere suspicion as if it were legal proof. This obviously applies with great additional force to a case where the suspicion acted on is wholly inconsistent with the case alleged and sworn to by the person in whose favour they have decided (691). BHUGWAN DOSS P. HUNNOOMAN PERSHAD SAHU. (1872) 5 Sar. 689.

-When the onus lies on the plaintiffs in seeking to set aside a solemn deed executed by their father, conjectures cannot be accepted as a substitute for proof. (Lord Col-

lim), ATAR SINGH P. THAKAR SINGH. (1908) 35 I.A. 206 (211)=35 C. 1039 (1046)= 4 M.L.T. 207 = 8 C.L.J. 359 = 12 C. W. N. 1049 = 10 Bom. L. R. 790 = 128 P.W.R. 1908 = 42 P.R. 1910 = 6 I.C. 721 = 18 M.L.J. 379.

-It is a settled principle that suspicion, though a

JUDGMENT-(Centd.)

Basis proper of -(Contd.)

SUSPICION NOT - (Contd.)

decision. (Mr. Ameer Ali). MOHAMMAD MEHDI HASAN KHAN P. MANDIR DAS. (1912) 39 I. A. 184 (190)= 34 A. 511 (517) = 10 A. L. J. 373 = 12 M. L. T. 392 = 14 Bom. L. R. 1073 = 17 C. W. N. 49 = 16 C. L. J. 629 = (1912) M. W. N. 1052 = 17 I. C. 396= 23 M. L. J. 741.

-The Court's decision must rest, not upon suspicion, but upon legal grounds established by legal testimony. (Sir Laurence Jenkins.) MINA KUMARI BIBI v. BIJOV SINGH DUDHURIA. (1916 | 44 I. A. 72 (77-8)=

44 C. 662 (672) = 21 M. L T. 344 = 5 L. W. 711 = 21 C. W. N. 585 = 25 C. L. J. 508 = 19 Bom. L. R. 424 = 15 A. L. J. 382=1 Pat. L. W. 425=40 I. C. 242= 32 M. L. J. 425

See also BENAMI-DECISION ON QUESTION OF-BUSIS PROPER OF.

-See also FRAUD-IMPUTATION OF GROSS, UPON SUSPICION ONLY. (1839) 2 M. I. A. 181 (246). TRIAL JUDGE-EVIDENCE ACCEPTED BY-REJECTION

IN APPEAL OF, AND DECISION OF CASE ON PROBABILITIES AND CONDUCT OF PARTIES.

Propriety. See EVIDENCE - WITNESSES-EVI-DENCE OF-REJECTION IN APPEAL OF.

(1867) 11 M. I. A. 177 (187-8).

Co-defendants - Admission or confession of one of.

-Decree against others on foot of-Propriety. See ADMISSION-CO-DEFENDANTS-JUDGMENT.

(1875) 2 I. A. 113 (129-30),

Co-heirs-Property of, illegally transferred by one of heirs-Suit by other for recovery of, from transferee-Maintainability.

-Judgment prior obtained by plaintiff against transferor not a bar to. See CO-HEIRS-PROPERTY BELONG-ING TO, ETC. (1869) 12 M. I. A. 507 (522).

### Consent to-Withdrawal in appeal of.

-Permissibility. See APPEAL-JUDGMENT UNDER -CONSENT TO. (1925) 88 I. C. 54.

#### Correctness of-Presumption.

-Incorrectness of-Onus on appellant to show. See APPEAL-APPELLANT-JUDGMENT UNDER APPEAL.

### Co-sharers-Judgment in favour of one of.

-Partition between him and his opponent on basis of -Effect of judgment as against another sharer - Res Judicata-Admissibility in evidence. See CO-SHARERS-DECREE IN FAVOUR OF ONE OF.

(1923) 50 I. A. 121 (132, 133-4) = 50 C. 446 (459-60).

### Court of highest Civil jurisdiction in Province-Final judgment of-Meaning of.

-Affirming judgment of a Court made final by statute if within-Reversing judgment of that Court not so made final-Effect. See PRIVY COUNCIL-APPEAL-COMPE-TENCY OF-COURT OF HIGHEST CIVIL JURISDICTION IN PROVINCE. (1877) 4 I. A. 178 (183) = 3 C.522 (527).

### Decree-Conformity between.

-Necessity-Absence of-Effect of, on validity of decree. See DECREE-JUDGMENT.

(1869) 12 M. I. A. 350 (355).

Dependent and subordinate Judgment subsequently reversed in ulterior proceeding.

ground for scrutiny, cannot be made the foundation of a of. See DECREE-MONEY PAID UNDER-RECOVERY OF.

#### Error vitiating.

-Misapprehension of parties as to scope and effect of suit if an.

The impression of the parties that the result of suing and being sued in the names of their respective attorneys of their respective firms (their principals) would be the same as if the firms themselves were the parties litigant is not the kind of error, if it be an error, which vitiates a judgment regularly pronounced (171). (Lord Atkinson.)
SOMASUNDARAM CHETTY v. SUBRAMANIAM CHETTY.

(1926) 25 L. W. 163 = (1926) M. W. N. 832 = 40. W. N. 1 = A. I. R. 1926 P. C. 136 = 99 I. C. 742.

Evidence—Matters turning on—Decision based on, without opportunity to aggrieved party to adduce rebutting evidence.

See PRACTICE - PROCEDURE-EVI-(1899) 27 I. A. 17 (25) = 23 M. 227 (234-5). DENCE.

#### Fact.

-- Issue of-Judgment based on-Ignoring in appeal of-Agreement of parties as to-Effect of. See APPEAL-FACT-JUDGMENT BELOW, ETC. (1928) 55 I. A. 299-55 C. 1048.

-Issue of-Opinion obiter as to-Reliance on, in sub-

sequent suit between parties-Propriety.

 On issues of fact as to division in status, adoption. and will, held, that the High Court erred in taking into consideration the opinion which had been expressed differ by the trial Judge in an earlier suit between the parties. (Lord Tomlin.) VIRAYYA P. ADENNA. (1929) 58 M.L. J. 245 (250).

—Misstatements as to—Correction of—Duty of aggrieved party. See JUDGMENT-MISTAKE IN. 

### Final Judgment-Meaning of.

-Order if and when a final judgment.

To constitute an order a final judgment, nothing more is necessary than that there should be a proper litis confertatio and a final adjudication between the parties to it on the merits (219). A "final judgment," in the strict and proper meaning of the words, is a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established (220-1). (Lord Atkinson.) TATA IRON AND STEEL CO. D. CHIFF REVENUE AUTHORITY, BOMBAY. (1923) 50 I.A. 212= 47 B. 724 (733, 735) = 25 Bom. L. B. 908 =

A. I. B. 1923 P. C. 148 = 21 A. L. J. 675 = 18 L. W. 372 = (1923) M. W. N. 603 = 33 M. L. T. 301 = 9 O. & A. L. B. 783 = 28 C. W. N. 307 = 39 C. L. J. 16 = 74 I. C. 469 = 45 M. L. J. 295.

### Foreign Judgment.

BRITISH INDIAN COURT-DECISION OF. HINDU LAW - ADOPTION-STATUS OF-DECISION ON, OF COURT OF NIZAM'S DOMINIONS.

NATIVE STATE-JUDGMENT OF COURT OF.

NIZAM'S DOMINIONS-COURTS OF-DECISION OF.

NON-RESIDENT FOREIGNER.

Res SO SITUATED AS TO BE WITHIN LAWFUL CON-TROL OF STATE UNDER AUTHORITY OF WHICH FOREIGN COURT SITS--DECISIONS AS TO DISPOSI-TION OF, BY THAT COURT ACTING WITHIN ITS JURISDICTION.

SUIT IN BRITISH INDIAN COURT ON-MAINTAIN-

ABILITY.

JUDGMENT-(Contd.)

Foreign Judgment-(Contd.)

BRITISH INDIAN COURT-DECISION OF.

Effect of, in Court of Native State. See CIVIL PROCEDURE CODE OF 1908-S. 11-CASES UNDER-(1916) 36 I. C. 710, BRITISH INDIAN COURT.

HINDU LAW-ADOPTION-STATUS OF-DECISION ON, OF COURT OF NIZAM'S DOMINIONS.

-Effect of, in British Indian Courts. See HINDU LAW-ADOPTION - STATUS OF-DECISION AS TO-NIZAM'S DOMINIONS.(1928) 56 I. A. 21 = 52 M. 175.

NATIVE STATE-JUDGMENT OF COURT OF.

-If a foreign judgment.

The judgments of the Courts of the Native State of Faridkote are, and ought to be, regarded in Her Majesty's Courts of British India as foreign judgments (184). (Earl of Selborne.) SIRDAR GURDVAL SINGH v. RAJA OF FARID-(1894) 21 I. A. 171 = 22 C. 222 (237) = KOTE 112 P. R. 1894 = 6 Sar. 503 = 4 M. L. J. 267.

NIZAM'S DOMINIONS-COURTS OF-DECISION OF.

-Effect of, in British Indian Courts-Hindu Law-Adoption-Status of-Decision as to. See HINDU LAW-ADDPTION-STATUS OF-DECISION AS TO-NIZAM'S (1928) 56 I. A. 21 = 52 M. 175. DOMINIONS.

#### NON-RESIDENT FOREIGNER.

-Contract by, while resident within jurisdiction and to be fulfilled there-Suit upon-Jurisdiction in.

The Court below observed: "A State assuming to exercise jurisdiction over an absent foreigner, in respect of an obligation arising out of a contract made by the foreigner while resident in the State and to be fulfilled there is not acting in contravention of the general practice or the principles of international law, so that its judgment should not be binding merely on the ground of the absence of the defendant."

If this doctrine were accepted, its operation, in the enlargement of territorial jurisdiction, would be very important. No authority, of any relevancy, was cited to support it (186). (Earl of Selborne.) SIRDAR GURDVAL SINGH v. (1894) 21 I. A. 171= RAJA OF FARIDKOTE.

22 C. 222 (239) = 112 P. R. 1894 = 6 Sar. 503 = 4 M. L. J. 267

-Personal action against-Ex-parte judgment in-Validity.

In a personal action a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts of every nation except (when authorised by special local legislation) in the country of the forum by which it was pronounced (185). (Earl of Selborne.) SIRDAR GURDVAL SINGH P. RAJA OF FARIDKOTE.

(1894) 21 I. A. 171 = 22 C. 222 (238) = 112 P. B. 1894 = 6 Sar. 503 = 4 M. L. J. 267.

-Personal action against-Ex-parte judgment in-Validity-Contract or tort-Suit in respect of-Cause of action arising within jurisdiction of foreign State.

The respondent, the Rajah of Faridkote, obtained in the Civil Court, of that native state two ex-parte judgments, in two suits instituted by him against the appellant, for certain sums of money and costs. Two actions, founded on those judgments, were brought by the Rajah against the appellant in the Court of the Assistant Commissioner of Lahore and were dismissed by that Court, on the ground that the judgments were pronounced by the Faridkote Court, without jurisdiction as against the appellant. The additional Commissioner of Lahore upheld those judgments on appeal. But the Chief Court of the Punjab differed from those

Foreign Judgment-(Contd.)

NON-RESIDENT FOREIGNER-(Contd.)

tribunals, and upheld the jurisdiction of the Faridkote Court.

The appellant was for five years, beginning in 1869, in the service of the late Rajah of Faridkote as his treasurer; and the cause of action, on which the suits in the Faridkote Court were brought, arose within that State, and out of that employment of the appellant by the late Rajah. The claim made in each of the suits was merely personal, for money alleged to be due, or recoverable in the nature of damages from the appellant.

The appellant left the late Rajah's service, and ceased to reside within his territorial jurisdiction, in 1874. He was from that time generally resident in another independent native state, that of Jhind, of which he was a native subject and in which he was domiciled; and he never returned to Faridkote after he left in 1874. He was in Jhind when he was served with certain processes of the Faridkotcourt. He disregarded them, and never appeared in either of the suits instituted by the Rajah, or otherwise submitted himself to that jurisdiction.

Held, reversing the chief court and restoring the courts below, that the judgments of the Faridkote court were an absolute nullity by international law, and that the suits brought on foot thereof were not maintainable. (Earl of Selborne.) SIRDAR GURDVAL SINGH P. RAJAH OF FARIDKOTE. (1894) 21 I. A. 171 = 22 C. 222 = 112 P. R. 1894 = 6 Sar. 503 = 4 M. L. J. 267.

-Personal action against - Invisdiction in-Cause of action arising within jurisdiction of that court.

No exception is made, in favour of the exercise of jurisdiction against a defendant not otherwise subject to it, by the courts of the country in which the cause of action arose, or (in cases of contract) by the courts of the locus solutionis, In those cases, as well as all others, when the action is personal, the Courts of the country in which a defendant resides have power, and they ought to be resorted to, to do justice (185-6). (Earl of Selborne.) SIRDAR GURDY AL SINGH F. RAJAH OF FARIDKOTE. (1894) 21 I. A. 171-

22 C. 222 (238) -112 P. R. 1894 - 6 Sar. 503 -4 M. L. J. 267.

RO SO SITUATED AS TO BE WITHIN LAWFUL CONTROL OF STATE UNDER AUTHORITY OF WHICH FOREIGN COURT SITS-DECISION AS TO DISPOSITION OF, BY THAT COURT ACTING WITHIN ITS JURISDICTION-CONCLU-SIVE NATURE OF.

-Where the subject-matter is a res so situated as to be within lawful control of the state under the authority of which a court sits, and that authority has conferred on the court jurisdiction to decide as to the disposition of the thing. and the court has acted within that jurisdiction, that decision is conclusive, whether, according to the law of another country, it might seem right or wrong. (Viscount Haldane.) INGENOUL r. WING ON & CO.

(1927) 47 C. L J. 263 = 107 I. C. 352 = 30 Bom. L. R. 753 = A. I. R. 1928 P. C. 83 (85.)

SUIT IN BRITISH INDIAN COURT ON-MAINTAINA-BILITY.

-Default-Judgment obtained in England by. An action upon a judgment obtained in England cannot be maintained in India, if the judgment had been entered in default of appearance and the action had not been tried

upon its merits. (Viscount Care.) OPPENHEIM & CO r. MAHOMED HANEEF. (1922) 49 I. A. 174 (178)= 45 M. 496 (501.2) = 26 C. W. N. 642 = 30 M. L. T. 291 = 16 L. W. 33 = (1922) M. W. N. 396 = JUDGMENT-(Contd.)

Foreign Judgment -(Contd.)

SUIT IN BRITISH INDIAN COURT ON-MAINTAIN-ABILITY-(Contd.)

24 Bom L R, 1245=36 C. P. L. J. 444=74 I.C. 616= A. I. R. (1922) P. C. 120 = 4 U. P. L. R. (P. C.) 36= 43 M.L.J. 422.

-French insolvency-Judgment obtained in French territory against insolvent after-Suit on. See INSOLVENCY -FRENCH INSOLVENCY. (1903) 30 I. A. 220 (229)= 26 M. 544 (553).

-Interogatories-Defendant's failure to annoer-Striking out of defence for-Ex parte judgment passed

In a suit brought by A in the High Court of judicature in England for the recovery of a sum of money from B, the latter put in a defence pleading to the merits of the plaintiff's claim. Thereupon, the plaintiff applied for and obtained liberty to exhibit interrogatories. The defendant B omitted to answer the interrogatories exhibited to him as a result of which the plaintiff applied for and obtained an order striking out the defendant's (B's) defence and placing the defendant in the same position as if he had not defended, and a judgment was given to the plaintiff (A) for the amount claimed. In a suit brought on that judgment by A against B in Madras, held that the judgment sued upon had not been given on the merits of the case within the meaning of sub-S. (b) of S. 13 of the Code of Civil Procedure, 1908, that consequently the suit could not be maintained on that judgment alone and that the merits must be investigated. (Lord Buckmaster, L. C.) KEYMER v. VISWANATHAM REDDI. (1916) 44 I. A. 6 = 40 M. 112=

21 M. L. T. 78 = 15 A. L. J. 92 = 21 C. W. N. 358 = 5 L. W. 342=19 Bom. L. R. 206=25 C. L. J. 233= 38 I. C. 683 = 32 M. L. J. 35.

Limitation—Plea of Indepent based on.
Semble sub-S. (b) of S. 13 of C. P. C. of 1908 refers to a case where judgment had been given upon the question of the statutes of limitation. ((Lord Buckmarter, L. C.) KEYMER P. VISWANATHAM REDDI.

(1916) 44 I. A. 6 = 40 M. 112 = 21 M. L. T. 78= 15 A. L. J. 92 = 21 C. W. N. 358 = 5 L. W. 342 = 19 Bom. L. R. 206 = 25 C. L. J. 233 = 38 I. C. 683 = 32 M. L. J. 35.

- Native state- Court of- Judgment of.

An action can be brought in Her Majesty's Courts upon a judgment of a Native State. (Earl of Selborne.) SIRDAR GURDVAL SINGH P. RAJAH OF FARIDKOTE

(1894) 21 I. A. 171 (184) = 22 C. 222 (237) = 112 P. R. 1894 = 6 Sar. 503 = 4 M. L. J. 267.

Insolvency—French insolvency—Judgment obtained in French territory against insolvent after.

-Suit on, Br. India-Maintainability. See INSOL-VENCY-FRENCH INSOLVENCY.

(1903) 30 I. A. 220 (229) = 26 M. 544 (553).

### Inter partes-Judgment not.

Admission in-Effect of. See ADMISSION-DELD -Admission in-Judgments and proceedings not INTER PARTES. (1886) 13 I.A. 32 (42) = 9 M. 307 (318)-

-Hindu Law-Adoption-Authority to adopt-Validity of-Decision as to, in suit between widow and adopted son-Effect of, as between reversioners and another boy adopted under same authority. See HINDU LAW-ADOP-TION-AUTHORITY TO ADOPT-VALIDITY OF-DECI-SION AS TO, BETWEEN WIDOW, ETC.

(1862) 9 M. I. A. 287 (302).

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### JUDGMENT-(Contd.)

Inter partes-Judgment not-(Contd.)

-Landord and Tenant-Tenant-Criminal proceedings against, by rival landlord-Compromise in-Effect of, as against landlord of that tenant. See EVIDENCE-DEED (1878) 6 L. A. 33 (41-2)= NOT INTER PARTES. 4 C. 633 (640).

-Law-Question of-Decision on-Authority of. See C. P. C. OF 1908-S. 11-CASES UNDER-LAW-QUES-(1881) 8 I. A. 229 (243) = 8 C. 302 (308). TION of.

Mortgage—Foreclosure of—Genuineness and effective nature of—Judgment as to. See MORTGAGE—FORE-CLOSURE OF-GENUINENESS AND EFFECTIVE NATURE OF-JUDGMENT NOT INTER PARTES AS TO.

(1898) 25 I. A. 54 (76) = 20 A. 267 (293.)

-Res indicata-Admissibility in evidence-Co-sharers -Decree in favour of one of-Partition between him and his opponent on basis of-Effect of, as regards another sharer. See CO-SHARERS-DECREE IN FAVOUR OF ONE (1923) 50 I. A. 121 (132, 133-4) = 50 C. 446 (459-60).

-Tenure-Rent of-Fixity of-Issue as to-Judg

ment as to

The appellant was the zemindar of a talook within which were comprised the suit mouzahs. He sued for a declaration that the defendants-respondents had no rights, mokurruri or dur-mokurruri, in the suit mouzahs, and for possession of the same. The respondents tendered in evidence certain decrees of the years 1817 and 1845 relating to the suit mouzahs, which decrees sustained the respondent's claim to hold at fixed rents. The appellant's predecessors in title were, however, not parties to those decrees.

Held that, although the predecessor of the appellant was no party to those decrees, it was competent to use the judgments as evidence shewing the rent paid for the possession at and prior to that date, nearly eighty years before suit (68). (Lord Shand.) RAM RANJAN CHUCKERBUTTY P. RAM NARAIN SINGH. (1894) 22 I. A. 60 = 22 C. 533 (542) =

-Will-Revocation of - Judgment at to.

Where, in a suit between A and B, the question was whether the will of C, was revoked or not, held, that a judgment in a suit brought by D, against A, to the effect that the will had been revoked was, though not conclusive, admissible as evidence, against him. (Sir Richard Couch.) BITTO KUNWAR P. KESHO PERSHAD.

(1897) 24 I.A. 10 (19) = 19 A. 277 (289) = I C.W.N. 265 = 7 Sar. 131.

### Joint tort feasors-Judgment unsatisfied against one of.

-If a bar to suit against others. See COMPANY-DIRECTORS OF - AMOUNT FRAUDULENTLY RECEIVED (1922) 39 M. L. T. 196 (205) (P.C.). BV.

### Judgment in rem.

Heirship to debtor-Decree declaring, in sust by one creditor of deceased-Effect of, against another creditor.

Semble: The decree in a Civil Court brought by a creditor of the estate of a deceased person that A was son and heir of the deceased is a mere decree inter parter and has not the effect of a decree in rem. The decision in such a suit will not be binding in another suit between A and another creditor of the estate of his alleged father (616). (Sir James W. Colvile.) GENERAL MANAGER OF THE RAJ DURBHANGA D. MAHARAJAH RAMAPUT SINGH.

(1872) 14 M.I.A. 605-17 W. R. 459= 10 B.L.B. 294=2 Suth. 575=3 Sar. 117.

#### JUDGMENT-(Could.)

Judgment in rem-(Contd.)

-Jurisdiction of Indian courts to give.

It appears to their Lordships to be extremely doubtful, whether there exists in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of probate and the like, and which in the case of War might be exercised in matters of prize) any ordinary court capable of giving, what can be called technically a judgment JOGENDRO DEB in rem (374.) (Sir James Celtile.) ROY KUT 2. FUNINDRO DEB ROY KUT

(1871) 14 M. I. A. 367 = 11 B. L. R. 244 (P.C.) = 17 W. R. 104 = 2 Suth. 517 = 3 Sar. 32.

-Legitimacy-Decision of ordinary civil court on-

Quaere, whether an ordinary Zillah court in India could in any case pass a decision which would have the effect of determining the legitimacy of a party against all the world (376). (Sir James W Colvile.) JOGENDRO DEB ROY KUT F. FUNINDRO DEB ROY KUT. (1871) 14 M.I.A. 367 =

11 B. L. R. 244 P.C. = 17 W. R. 104 = 2 Suth. 517 = 3 Sar. 32.

Status of person or family-Judgment inter partes determining-Not a judgment in rem.

A judgment is not a judgment in rem, because, in a suit by A, for the recovery of an estate from B, it has determined generally concerning the status of a particular person or family; it is merely a judgment inter partes. (Lord Jus-tice Turner.) KATAMA NATCHIAR v. THE RAJAH OF (1863) 9 M.I.A. 539 (601)= SHIVAGUNGA.

2 W. R. C. R. (P.C.) 31 = 1 Suth. 520 = 2 Sar. 25.

#### Litigation prior-Judgment inter partes in-Decision of suit on basis of.

-Irregularity. See SUIT-LITIGATION PRIOR. (1897) 24 I.A. 50 (67-8) = 24 C. 616 (626).

#### Meaning of.

-Income-Tax Act of 1918-S. 51 (3)-Meaning in. See INCOME-TAX ACTS-INCOME-TAX ACT OF 1918-S. 51 (3). (1923) 50 I.A. 212 (223-4) = 47 B. 724 (737-8.)

-Legal and other senses of.

The word " judgment" is indeed popularly used in many different senses, as when one says a certain man is a man of sound judgment, meaning that he is possessed of the intellectual faculty of deciding rightly on facts or circumstances, or where even in legal matters the expression of the opinion formed in a case by a judge who dissents from his colleagues is commonly called his judgment, though it can have no effect whatever on the determination of the suit or action in which it is delivered (222). In its strict legal and proper sense, a "judgment" is a decision obtained in an action. Every other decision is an order (221). (Lord Atkinson.)
TATA IRON AND STEEL CO. v. CHIEF REVENUE-(1923) 50 I.A. 212 = AUTHORITY, BOMBAY. 47 B. 724 (736) = 25 Bom. L. B. 908=

A. I. R. 1923 P. C. 148 = 21 A. L. J. 675 = 18 L.W. 372 = (1923) M.W.N. 603 = 33 M.L.T. 301 = 9 O. & A. L. B. 783 = 28 C.W. N. 307 = 39 C. L. J. 16 = 74 I.C. 469 = 45 M. L. J. 295.

Letters Patent (Bom.)-Cl. 39-Meaning in. The term "judgment" in the Letters Patent of the High Court of Bombay means in civil cases a decree and not a judgment in the ordinary sense. (Sir Lawrence Jenkins.) SEVAK JERANCHOD BHOGILAL P. THE DAKORE (1925) 22 L.W. 246= TEMPLE COMMITTEE. 30 C. W. N. 459 = A. I. B. 1925 P.C. 155=

23 A. L. J. 555=27 Bom. L.B. 872=2 O.W.N. 535= 87 L. C. 313 = L. B. 6 P. C. 117 = 41 C.L.J. 628 = (1925) M. W. N. 474 = 49 M.L.J. 25 (30).

Meaning of -(Contd.)

-See PRIVY COUNCIL - APPEAL - RIGHT OF-MADRAS CHARTER OF JUSTICE.

(1847) 4 M. I. A. 220 (221).

Mistake in-Correction of-Duty of aggrieved party to see to.

-Failure-Plea of mistake in oppeal by him-Main-

tainability.

If a judgment is given out in which there is an absolute misstatement of fact on a perfectly plain question it would be the duty of the person aggrieved to point out the error to the court which pronounced the judgment, and to attempt to have it set right. (Viscount Dunodin.) MAUNG KYI OH v. MA THAT PON. (1926) 4 R. 513

(1926) M. W. N. 489 = 3 O. W. N. 735 -A. I. R. (1926) P. C. 29 = 94 I. C. 916.

-If there is a slip in the judgment below, it is the duty of the aggrieved party to call the attention of the Court to it, so that it may be corrected. If he omits to do so, he cannot complain of it in appeal, even if that mistake has led to an erroneous decision on the question whether or not the suit was barred, (Viscount Sumner.) KHUSHALDAS GOKALDAS P. CHIMANUAL KALIDAS.

(1927) I L. T. 40 B. 62-108 I. C. 14-26 A.L.J. 505 = 30 Bom. L.R. 765 = 28 L W. 354 = A.I.R. (1928) P.C. 47=54 M.L.J. 651 (654). Money paid under-Recovery of.

-Right of-Rule-Exception-Mode of recovery in latter case. See DECREE-MONEY PAID UNDER-RE-COVERY OF-RIGHT OF.

### Obiter dictum in prior judgment.

-Decision in subsequent suit based on -Propriety of. See JUDGMENT-FACT-ISSUE OF-OPINION OBITER AS (1929) 58 M.L.J. 245 (250.)

Object proper of.

-What it should contain-Fluctuations of judge's

mind-Record of-Propriety.

The proper object of a judgment is to support, by the most cogent reasons that suggest themselves, the final conclusions at which the Judge has conscientiously arrived. Its excessive elaboration tends to impair its value by defeating the proper object of a judgment. In this case the judgment of the trial Judge records the fluctuations of the Judge's mind from day to day in the course of an exceptionally long trial; the effect, often temporary, upon him of a particular piece of evidence or argument of counsel; it subjects every witness to criticism more or less unfavourable; and from this mass of often conflicting statements, it is not easy for a Court of Appeal to extract the precise grounds on which the final conclusion rests (175). (Sir James W. Colvile) SRI RAGHUNADHA P. SRI BROZO KISHORO.

(1876) 3 L. A. 154 = 1 M. 69 = 25 W. R. 291 = 3 Sar. 583=3 Suth. 263.

Objection dealt with by-Raising of. -Presumption as to. See EVIDENCE ACT-S. 114, ILL (t)-JUDGMENT.

(1876) 4 LA. 66 (72) = 2 C. 327 (332-3). Party-Non-appearance of-Judgment for opponent on ground of.

-Propriety. See PRACTICE-PROCEDURE-PARTY -NON-APPEARANCE OF. (1839) 2 M.I.A. 181 (222). Personal knowledge of Judge.

-Importing of-Propriety. See JUDGE-PERSONAL KNOWLEDGE OF.

Point not dealt with by- Implication of decision or of opinion of court on. When not justified,

The case cited from the first volume of Madras High Court Reports decided that the assignment of the uraima

JUDGMENT-(Contd.)

Point not dealt with by-Implication of decision or of opinion of court on-(Contd.)

right by the urallers was not valid, because all the urallers had not joined in it. It cannot be inferred from such a ruling, that there was any implied decision, or even, as Mr. Mayne would put it, a dictum, in favour of the proposition that an assignment executed by all the urallers of any foundation of this kind would operate as an effectual transfer of their trust. The court merely decided on one patent defect of title, without considering whether, if that defect had not existed, the title could have been supported (82). (Sir James W. Colvile.) RAJAH VURMAH VALIA v. RAVI VURMAH VALIA. (1876) 4 I.A. 76=1 M. 235 (249)= 3 Sar. 687 = 3 Suth. 382.

Respect for.

-Circumstances calculated to destroy.

Hasty, uncalled for, and indiscreet expressions, casting suspicions of grave crimes against unnamed absent persons, without one tittle of evidence to support them are wholly unwarrantable, and cannot but destroy respect for the judgment and discretion of the Judge, and lower the confidence which might otherwise attach to his decision upon the questions really before him (171). (Sir Barnes Peacock.) KALI KISHORE DUTT GUPTA MOZUMDAR 2. BHUSAN (1890) 17 I. A. 159=18 C. 201 (213-4)= CHUNDER. 5 Sar. 607.

#### Soundness of.

-Reasons green unsatisfactory-Effect.

It does not follow that because the reasons given for a decision are unsatisfactory the decision itself is erroneous. (Lord Lindley). RAJA CHELIKANI VENKAYYAMMA GARU .. KAJA CHELIKANI VENKATARAMANAYYAMMA GARU (1902) 29 I. A. 156(166) = 25 M. 678 (688) = 7 C. W. N. 1 = 4 Bom. L. R. 657 = 8 Sar. 286= 12 M. L. J. 299.

JUDGMENT DEBTOR.

#### Admission by.

-Effect of, against execution purchaser. See HINDU LAW-JOINT FAMILY- MEMBER OF- SELF-ACQUISI-TION OF. (1873) 2 Suth 840 (844).

Decree by consent-Invalidity of on ground of its being contrary to Statute.

-Plea of-Estoppel. See CENTRAL PROVINCES TENANCY ACT OF 1883-S. 42. (1921) 48 I. A. 220 = 48 C. 591.

Estoppel against - Execution Purchaser -- Effect on

-Benamidar-Mortgage by-Validity of-Right to dispute-Estoppel-Real owner-Estoppel against-Decreeholder execution purchaser-Effect against. See BENAMI - BENAMIDAR-MORTGAGE BY-VALIDITY OF-RIGHT TO DISPUTE-ESTOPPEL-REAL OWNER.

(1895) 22 I. A. 129 (137) = 22 C. 909 (919-20).

Mort gagee-Execution purchaser. The sent of a dur-putni of a portion of the property of

which the plaintiff was Zemindar being in arrear, the plaintiff brought a suit for the rent against C, the then andoubted owner of the dur-putni estate. C defended that suit on the ground that he had sold his interest in the durputni to his wife and son, that that sale was an absolute and hona fide one, and that by virtue of that sale his wife and son had become owners of the dur-putni interest and he (C) had no right or interest in it. The plaintiff's suit was on that defence dismissed. The plaintiff thereupon brought another suit for the same rent against C's wife and son, obtained a decree against them, and purchased the durpunti in execution of that decree.

### JUDGMENT DEBTOR-(Contd.)

Estoppel against—Exection purchaser—Effect on-

suit against C, C purported to execute a mortgage of the dur-putni to Defendant No. 2, who afterwards sued upon that mortgage, obtained a decree, and purchased the right, title, and interest of C in execution in satisfaction of his mortgage.

In a suit brought by the plaintiff against Defendant No. 2, held that Defendant No. 2 was estopped from pleading that the sale of the dur-putni by C to his wife and son was a mere benami transaction, and that, notwithstanding that sale, C continued to be the real owner of the dur-putni.

Looking to what took place, the defendant No. 2 cannot be considered as having put himself, by reason of his purchase at the sale which he had brought about in execution of his decree on the mortgage bond, in a better position than he was in as mortgagee taking from C. It is admitted that, if he had claimed as a mortgagee or as an assignce of C, he would be estopped; and their Lordships think that he is substantially in the same position, that he did not by purchasing in this way put himself in a better position, and consequently that he is estopped by the statement which C made. (Sir Richard Couch). PORESHNATH MOOKERJEE (1882) 9 I. A. 147 = 9 C. 265 = v. ANATHNATH DEB. 4 Sar. 385.

## Execution of decree-Limitation Bar to.

-Plea of-Maintainability-Estoppel. See EXECU-TION OF DECREE-LIMITATION-PLEA BY JUDGMENT-DEBTOR OF.

## Execution Sale—Application to set aside.

-Maintainability-Estoppel. See C. P. C. OF 1908-O. 21, R. 90-APPLICATION UNDER-MAINTAINABILITY -ESTOPPEL.

### Representative of.

Execution purchaser -- Private purchaser -- Positions of -Distinction See (1) EXECUTION SALE-PRIVATE SALE (1881) 8 I.A. 65 (75) = -PURCHASERS AT. 7 C. 107 (118).

-(2) BENGAL REGULATIONS-ZILLAH COURTS REGULATION III OF 1793-S. 14-APPLICATION OF-EXECUTION PURCHASER. (1869) 12 M.I.A. 366 (378-9).

### JUDICIAL NOTICE.

-Government sale-Property sold at-Ownership of Government in-Notice of-Courts duty to take, COURT-JUDICIAL NOTICE-POWER TO TAKE (1848) 4 M. L.A. 339 (348).

-Limitation- Bar of suit or proceeding by-Notice of. See LIMITATION - BAR OF.

-Political change in neighbouring State-Notice of-Courts' power to take, See COURT-JUDICIAL NOTICE-(1914) 1 L. W. 989 (994). POWER TO TAKE.

Statute-Provisions of-Notice of-Courts' duty to take. See ARBITRATION-AWARD-DECREE IN ACCOR-DANCE WITH-VALIDITY-AWARD MADE AFTER ETC. (1891) 18 I. A. 51 (58) = 13 A. 300.

Subordinate Courts-Jurisdiction of-Judicial notice of-Duty of Superior Courts to take. See SUPREME COURT OF BOMBAY-NATIVE COURT-JURISDICTION OF. (1829) 1 Knapp 1 (58).

# JUDICIAL OFFICERS' PROTECTION ACT XVIII

OF 1850. -Search of house-Magistrate directing-Trespass-Liability for-Inquiry under Cr. P. C. by-Search in view of.

### JUDICIAL OFFICERS' PROTECTION ACT XVIII OF 1850-(Contd.)

When a District Magistrate directs a general search A few months after the dismissal of the plaintiff's of a house in view of an inquiry under the Criminal Procedure Code, in discharge of his judicial functions, he may well appeal for protection under Act XVIII of 1850. (Lerd Marnaghten.) CLARKE v. BROJENDRA KISORE (1912) 39 I. A. 163 (176-7)= ROY CHOWDBURY.

39 C. 953 (967)=16 C. W. N. 865=16 C L.J. 231= (1912) M. W. N. 760 = 12 M. L. T. 171 =

10 A L. J. 193 = 14 Bom. L. R. 717 = 13 Cr. L. J. 693 = 16 I. C. 501 = 23 M.L.J. 32.

Scope and applicability of.

Act XVIII of 1850 was for the protection of judicial officers acting judicially and officers acting under their orders. It has no application to the case of a person who is not a judicial officer, such as an officer in command of a cantonment, and who does not act judicially (172). (Sir Barnes Peacock). SINCLAIR v. BROUGHTON.

(1882) 9 I. A. 152-9 C. 341 (354) = 13 C. L. R. 185= 4 Sar. 387 = R & J's No. 69.

### JUDICIAL PROCEEDING.

-Administrative or ministerial proceeding-Test. See UNDER JUDGE-FUNCTION OF.

#### JULKUR.

-(See also FISHERY RIGHT).

-Meaning of.

The ordinary meaning of julkur is fishery (810), (Sir Robert P. Collier). RADHA GOBIND ROY SAHEB ROY (1880) 3 Suth. 809 = BAHADUR P. INGLIS. 7 C. L. B. 364 = Bald. 377

-The term "Julkur" is a general one, signifying, "Water-rights" and may therefore aptly include the rights to drift and stranded timber, as well as the right to fishings, or any other interest of a similar kind in the procedure of the river. (Lord Watson.) AMRITESWARI DEBI P. SECRETARY OF STATE FOR INDIA.

(1897) 24 I.A. 33 (44)=24 C. 504 (516)=1 C. W. N. 249 = 7 Sar. 101.

### JULPAI.

Meaning of.

"Julpai" is land on which the right of the Government is to collect fuel (187). (Sir Robert P. Collier). SECRETARY OF STATE FOR INDIA P. RANI ANUNDMOVI DEBI.

(1881) 8 I. A. 172 = 8 C. 95 (107) = 4 Sar. 281

#### JURISDICTION.

ABATEMENT TO-BAR OF-PLEAS IN.

ABSENCE OF.

ADMINISTRATION SUIT-HIGH COURT ORIGINAL SIDE-JURISDICTION ON.

ADMIRALTY.

AFFIRMATIVE ORDER-JURISDICTION TO MAKE. AFGHANS-JURISDICTION OF BRITISH CROWN OVER

-AMEER'S CONSENT TO EXERCISE OF. AGENT-CARRYING ON BUSINESS THROUGH-JURIS-

DICTION BY REASON OF-PLEA OF.

BRITISH INDIAN COURT.

BRITISH TERRITORY-CIVIL AND CRIMINAL JURIS-DICTION OVER-TRANSFER TO NATIVE STATE OF. CARRYING ON BUSINESS WITHIN,

CERTIORARI-WRIT OF.

CESSION OF TERRITORY.

CIVIL COURTS-JURISDICTION OF.

CONCURRENT JURISDICTION-COURT OF.

CONSULTATIVE JURISDICTION OF COURT.

CONTRACT.

CRIMINAL CASE.

CRIMINAL JURISDICTION—NATIVE STATE—RAIL-WAYS IN.

DEBT-SUIT TO RECOVER.

DECREE-FRAUD IN OBTAINING.

DWELLING WITHIN.

ECCLESIASTICAL COURTS IN ENGLAND.

ENGLISH EQUITY COURTS—DECREES OF—ALTERA-TION OF.

EXERCISE OF.

EXTRAORDINARY JURISDICTION.

FACTS ESSENTIAL TO.

FOREIGNER-JURISDICTION OVER.

HIGH COURT.

INDEPENDENT PRINCE—LANDS OF, IN BRITISH INDIA.

INDEPENDENT STATES—TRANSACTIONS BETWEEN— PROPRIETY OF.

INDIAN LEGISLATURE—LEGISLATION BY—VALIDITY OF.

INSOLVENCY—DIVIDEND—CREDITOR'S RECEIPT OF 
—INJUNCTION RESTRAINING.

LAW-PROTECTION OF-PERSON ENJOYING.

MORTGAGE—SUIT TO ENFORCE—JURISDICTION OF BRITISH INDIAN COURT TO ENTERTAIN.

NATIVE STATE.

ORDINARY JURISDICTION.

PARTITION SUIT—PRELIMINARY DECREE IN—EN-QUIRY DIRECTED BY—NON-APPEARANCE OF PLAIN-TIFF AT.

PARTNERSHIP, CONTRACT—BALANCE RESULTING FROM—SIUT BY ONE PARTNER AGAINST ANOTHER FOR.

PLACE OF SUIT-RULE GENERAL AS TO.

PLEA OF ABSENCE OF.

PROTECTION OF LAW—PERSON ENJOYING—OBEDI-ENCE OF, TO THAT LAW—DUTY AS REGARDS.

QUESTION AS TO.

RESIDENCE OF DEFENDANT-PLACE OF.

RESTITUTION OF CONJUGAL RIGHTS.

REVENUE.

STATUTE.

SUBORDINATE COURTS—JURISDICTION OF—JUDI-CIAL NOTICE OF.

SUIT—COURT IN WHICH, INSTITUTED—JURISDIC-TION OF—DEPRIVATION BY STATUTE OF, DURING PENDENCY OF SUIT.

SUPREME COURT.

TERRITORIAL JURISDICTION.

TESTAMENTARY JURISDICTION.

TRESPASS—ACTION OF—PLEA OF "NOT GUILTY".
USURPATION OF.

VALUATION FOR PURPOSES OF.

WILL-MANAGER UNDER-ACCOUNT AGAINST-SUIT BY BENEFICIARIES FOR.

WRONG AS WELL AS RIGHT.

### Abatement to-Bar of-Pleas in.

-Distinction.

A plea in abatement to the jurisdiction of the Court must point out another Court before which the matter is recognizable. A plea in bar, if well founded, is sufficient, without pointing out the Court in which the suit ought to have been instituted. (Lord Campbell.) SPOONER 2. JUDDOW. (1849-50) 4 M. I. A. 353 (375)=

6 Moo. P. C. 257 = Perry. O. C. 392 = 1 Sar. 363.

JURISDICTION -(Contd.)

#### Absence of.

CONSENT OF PARTIES-EFFECT.

We having no jurisdiction at all, consent cannot confer it (253). (Dr. Lushington,) JESWUNT SING JEE ... (1844) 3 M. I. A. 245 = 6 W. R. 46 P. C. = 1 Suth. 150 = 1 Sar. 274.

The parties cannot by consent give the Court the power which the statute must give (161). (Sir John Pattinon.) NUSSURWANJEE PESTONJEE v. MEER MYMOODEEN KHAN. (1855) 6 M.I.A. 134:

Ouscre whether consent would give jurisdiction to the Court dealing with an execution proceeding to determine a question which it was not competent to entertain (72). (Sir Robert P. Collier.) ABEDOONISSA KHATOON v. AMEEROONISSA KHATOON. (1876) 4 I.A. 66=2 C. 327 (333)=3 Sar. 677=3 Suth. 371.

—When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him (145). (Leval Watson.) LEDGARD v. BULL. (1886) 13 I. A. 134 = 9 A. 191 (203) = 4 Sar. 741.

No amount of consent could confer jurisdiction where no jurisdiction exists (167). (Sir Richard Baggalay.) MEENAKSHI NAIDOO P. SUBRAMANYA SASTRI. (1887) 14 I. A. 160 = 11 M. 26 (35 6).

The Bhagalpur Court had no jurisdiction to entertain the suit, which, beyond question, was a suit in regard to land in the Sonthal Parganas, and that being so the parties could not give it the necessary. jurisdiction by consent. To do so would be to nullify the express prohibition of S. 5 of the Sonthal Parganas Permanent Regulation III of 1872, which was binding on any court having jurisdiction in the Sonthal Parganas in the exercise of that jurisdiction. (215). (Lord Moulton.) MAHA PRASAD v. RAMANI MOHAN SINGH. (1914) 41 I. A. 197=42 C. 116 (149)=

18 C. W. N. 994 = 1 L. W. 619 = 20 C. L. J. 231 = 16 M. L. T. 105 = (1914) M. W. N. 565 = 16 Bom. L. B. 824 = 25 I. C. 451 = 27 M. L. J. 459.

Parties cannot by acquiescence or consent confer upon a court a jurisdiction which it has not got. (Sir John Edge.) SEVAK JERANCHOD BHOGILAL v. THE DAKORE TEMPLE COMMITTEE. (1925) 22 L. W. 246=30 C. W. N. 459=A. I. R. (1925) P. C. 155=

23 A. L. J. 555=27 Bom. L. R. 872=2 O. W. N. 535= 87 I. C. 313=L. R. 6 P. C. 117=41 C. L. J. 628= (1925) M. W. N. 474=49 M. L. J. 25 (29-30).

COURT'S DUTY TO TAKE NOTICE OF, EVEN IN
ABSENCE OF PLEA.

If the Court is forbidden by law to try the cause, neither the "New rules," nor any omission of the defendant would give the Court jurisdiction over it. The facts ousting the jurisdiction having been brought judicially to the notice of the Judge, and with perfect regularity, he usurps a jurisdiction which does not belong to him if he proceeds and gives judgment for the plaintiff. Therefore, these facts coming out, for the first time, on the trial of an issue, though they may seem, irrelevant to that issue, he must have power by directing a non-suit, or by some other means, to stop the trial. (375-6). (Lord Campbell.) SPOONER ... JUDDOW. (1849-50) 4 M. I. A. 353=

6 Moo. P. C. 257 = Perry O. C. 392=1 Sar. 363.

Whether the point that the jurisdiction of the Civil Courts was ousted under S. 241, Sub-s. (c) of the Agra Land Revenue Act of 1873 was pleaded or not, the Court

Absence of-(Contd.)

COURTS' DUTY TO TAKE NOTICE OF, EVEN IN ABSENCE OF PLEA-(Contd.)

no doubt could take cognizance of it (1745). (Lord Davey.) RAJA BALWANT SINGH P. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1903) 30 I. A. 172 = 25 A. 527 (531) = 8 C. W. N. 121 = 8 Sar. 564.

IRREGULAR EXERCISE OF.

-Distinction. See JURISDICTION - EXERCISE OF-IRREGULAR EXERCISE.

PLEA OF.

-See JURISDICTION-PLEA OF ABSENCE OF.

### Administration suit—High Court Original Side-Jurisdiction on.

-Executor principal within jurisdiction-Lease of land by executor outside jurisdiction.-Decree of Mofesil Court-Setting aside of both on ground of fraud-Suit also praying for-Effect. See ADMINISTRATION-SUIT FOR -HIGH COURT-ORIGINAL SIDE.

(1905) 32 I A. 193 (201) - 33 C. 180 (191-2).

#### Admiralty.

-See ADMIRALTY.

### Affirmative order—Jurisdiction to make,

-Negative order—Jurisdiction to make, if implied. See REGISTRATION ACT OF 1871, S. 76-APPLICATION (1876) 3 I. A. 221 (225 6) = FOR REGISTRATION. 2 C. 131 (137).

### Afghans-Jurisdiction of Br. Crown over-Ameer's consent to exercise of.

-Implication of - Circumstances justifying. See FOREIGN JUNISDICTION ACT, 1890, AND CHINA AND COREA ORDER IN COUNCIL, 1904.

(1914) 1 L. W. 989 (993).

### Agent-Carrying on business through-Jurisdiction by reason of-Plea of.

Onus of proof in case of.

The burden is clearly on the plaintiff of proving that at the time of the commencement of the suit the defendant was by his agent carrying on business at a place within the jurisdiction of the court in which the suit was instituted, and that that court has therefore jurisdiction to entertain the suit (228). (Lord Lindley.) ANNAMALAI CHETTY P. (1903) 30 I. A. 220 = MURUGASA CHETTY. 26 M. 544 (552-3) = 7 C. W. N. 754 =

4 Bom. L. B. 494 = 8 Sar. 523 = 13 M. L. J. 287.

### British Indian Court.

CRIMINAL JURISDICTION OF-NATIVE STATE-RAILWAYS IN.

-Jurisdiction on. See NATIVE STATE-RAILWAYS IN-CRIMINAL JURISDICTION, ETC. (1897) 24 I. A. 137 = 25 C. 20.

INDEPENDENT PRINCE-LANDS OF, IN BR. INDIA. ----Jurisdiction in respect of. See JURISDICTION-INDEPENDENT PRINCE. (1869) 12 M. I. A. 523 (534-5). INDEPENDENT STATES-TRANSACTIONS BETWEEN-PROPRIETY OF.

-Jurisdiction to decide. See JURISDICTION-CIVIL COURTS-INDEPENDENT STATES, (1859) 7 M. I. A. 476 (529).

NATIVE STATE.

-Railways in-Criminal Jurisdiction on. See NATIVE STATE-RAILWAYS IN-CRIMINAL JURISDICTION, ETC. (1897) 24 I. A. 137 = 25 C. 20.

#### JURISDICTION—(Contd.)

British Indian Court—(Contd.)

NATIVE STATE-(Contd.)

-Subject of-Jurisdiction over-Question as to-Importance of-Lability or non-liability of defendant depending upon it.

The defendants are both of them subjects of the Nizam, from whose cession the jurisdiction of the Secunderabad Court practically proceeds. In these circumstances, and especially where, as here, the liability or non-liability of such defendants may actually depend upon it, the question of jurisdiction becomes of first importance, different in character from such a question when it arises merely as between one Court and another in British India (60-1). (Lord Blancsburgh). BANSILAL ABIRCHAND 2.

(1925) 53 I. A. 58 = 53 C. 88 = MAHBUB KHAN. 23 L. W. 3 = A. I. R. (1925) P. C. 290 = 24 A. L. J. 48 = 43 C. L. J. 1=(1926) M. W. N. 108=

27 Punj. L. R. 1 (P. C.) = 28 Bom. L. R. 211 = 92 I. C. 760 - 49 M. L. J. 806.

——Suit in—Injunction restraining—Suit for—Jurisdic-tion to entertain. See C. P. C. OF 1908 S. 11—CASES (1916) 36 I. C. 710. UNDER BR. INDIAN COURT. British territory-Civil and Criminal jurisdiction over-Transfer to Native State of.

Power of - Mode of -Effect of.

Their Lordships assume that what was intended was to confer upon the Thakoor of Bhownuggar within the "transdistrict as large a criminal and civil jurisdiction as that which he exercised in his estates situate within the proper limits of the Kattyawar Political Agency, subject only to the same supervision and control of the Kattyawar Political Agent to which he was subject in respect of those estates. But such a grant of jurisdiction (if the Govern-ment of India or the Crown, without a Legislative Act, had been able to grant it), would not have deprived the Crown of its territorial rights over the "transferred" districts, or the persons resident therein of their rights as British subjects (150-1). (Lord Selborne). DAMODHAR GORDHAN P. DEORAM KANJI. (1876) 3 I. A. 102 = 1 A. C. 322-1 B. 367 (459) = 25 W. B. 261=

### Carrying on business within.

3 Sar. 543.

-Meaning of, in S. 12 of Letters Patent (Bomb.). The phrase "Carry on business" is a very elastic one, and is almost incapable of definition. The tribunal must in each case look to the particular circumstances. It appears to their Lordships that the Letters Patent intended it to relate to business in which a man might contract debts, and ought to be liable to be seed by persons who had business transactions with him (15). (Lord Morris.) GOSWAMI SHRI 108 SHRI GIRDHARIJI MAHARAJ P. SHRI GOVAR-DHAN LALJI GIRDHARIJI MAHARAJ.

(1893) 21 I. A. 13=18 B. 294 (298)=6 Sar. 396. -Priest-Offerings of devotees-Receipt of, if amounts

to carrying on of business.

In a suit brought in the H. C. of Bombay in the exercise of its ordinary original civil jurisdiction for the recovery from the defendant of certain articles and sums of money, or their value, it appeared that the defendant was the high priest of a shrine in the territories of the Rana of Oodeypore, that at the time of the suit he was on a temporary visit to Bombay for the purpose of meeting his devotees, that he had in Bomlay an establishment called a "pedi" in which a treasurer and servants were regularly employed, and that into that " pedi " offerings made by devotees to the aforesaid and other shrines in the territories of the Rana of Oodeypore were paid. The defendant had similar establishments in other places in the Bombay Presidency, and the

Carrying on business Within-(Contd.)

offerings collected there were transmitted to the " pedi " in Bombay. While the defendant was in Bombay he received his followers, and when invited to do so he visited their houses. On the occasions of such visit he invariably received an offering in money, but no bargain for the money was made beforehand. Such offerings were stictly personal, and were not paid into the "pedi"

Held, that neither the payment of the offerings into the " pedi," nor the receipt of them by the defendant personally, constituted " carrying on business " within the meaning of cl. 12 of the Letters Patent (16). Devotion to the shrine was the reason for the offering in each case (16). (Lard Morris.) GOSWAMI SHRI 108 SHRI GIRDHARIJI SHRI GOVINDARIJI MAHARAJ D. SHRI GOVERDHAN LALJI (1893) 21 I. A. 13= GIRDHARIJI MAHARAJ. 18 B. 294 = 6 Sar. 396.

#### Certiorari-Writ of.

-Grant of -High Courts - Jurisdiction of. See CERTIORARI-WRIT OF-GRANT OF-HIGH COURTS (1919) 46 I. A. 176 = 43 M. 146 (159).

#### Cession of territory.

-Inhabitants of ceded territory-Ante-cession rights of-Adjudication as upon-Jurisdiction as to. See CESSION OF TERRITORY-PROCLAMATION MADE AT.

(1924) 51 I. A. 357 (367) = 48 B. 613.

 Inhabitants of ceded territory—Rights of, recognised by treaties effecting cession-Enforcement of-Jurisdiction as to. See CESSION OF TERRITORY -- INHABITANTS OF CEDED TERRITORY-TREATIES EFFECTING CESSION.

(1924) 51 I. A. 357 (360-1) = 48 B. 613

#### Civil Courts-Jurisdiction of.

-(See also JURISDICTION - BRITISH INDIAN COURTS).

-Act of State-Legality of-Inquiry into. See ACT OF STATE-LEGALITY OF.

-Caste Panchayat-Power of-Control of-Jurisdiction. See LIBEL - CASTE PANCHAYAT - RESOLUTION (1917) 44 I. A. 192-39 A. 561.

-East India Company-Sovereign powers of-Acts done in execution of-Propriety of-Jurisdiction to inquire into. See EAST INDIA COMPANY-SOVEREIGN POWERS (1859) 7 M. I. A 476 (531).

-Indian Legislature-Legislation by-Validity of-Jurisdiction to decide on-Points for consideration in case of. See Indian Legislature-Position and powers (1878) 5 I. A. 178 (1934) = 4 C. 172 (180-1).

Portion of claim not cognizable by Civil Courts -Rejection of whole plaint in case of-Propriety. See C. P. C. OF 1908, S. 9-PORTION OF CLAIM, ETC.

(1879) 6 I. A. 120 (121) = 2 M. 62 (66-7).

Saranjam-Resumption by Government of-Right or validity of-Inquiry into. See SARANJAM-RESUMP-TION OF. (1892) 20 I. A. 50 = 17 B. 431.

-Saranjam and inam-Mixed estate of, held on political tenure-Resumption and re-grant of - Government's power of-Jurisdiction to inquire into. See SARANJAM-POLITICAL TENURE. (1892) 20 I. A. 50 (68-9)=

17 B. 431 (456). Saranjam or Jaghir-Grant of, on death of holder-Government's decision as to-Review of. See SARANJAM -GRANT OF, ON DEATH OF HOLDER.

(1892) 20 I. A. 50 (68) = 17 B. 431 (456).

Sovereigns - Engagements between, founded on treaties-Enforcement of-Jurisdiction as to.

### JUBISDICTION-(Contd.)

Civil Courts-Jurisdiction of-(Contd.)

Municipal courts have no jurisdiction to enforce engagements between Soverigns founded upon Treaties (126). (Sir Barnes Peacock). RAJAH SALIG RAM P. SECRETARY OF STATE FOR INDIA. (1872) Sup. I. A. 119= 12 B. L. R. 167-18 W. R. 389-3 Sar. 191-

2 P. R. 1872 = 2 Suth. 726

#### Concurrent jurisdiction—Court of.

-Meaning of .

As to what is a court of concurrent jurisdiction, it is material to notice that there is in India a great number of courts, that one main feature in the Acts constituting them is that they are of various grades with different pecuniary limits of jurisdiction, and that by the Code of Procedure a suit must be instituted in the court of the lowest grade competent to, try it. For instance, in Bengal, by the Bengal Civil Courts Act, No. 6 of 1871, the jurisdiction of a Munsif extends only to original suits in which the amount or value of the subject-matter in dispute does not exceed Rs. 1,000. The qualifications of a Munsif and the authority of his judgment would not be the same as those of a District or of a Subordinate Judge, who have jurisdiction in Civil suits without any limit of amount. In their Lordships' opinion it would not be proper that the decision of a Munsif upon (for instance) the validity of a will or of an adoption in a suit for a small portion of the property affected by it should be conclusive in a suit before the District Judge or the High Court for property of a large amount the title to which might depend upon the will or the adoption. It is true that there is an appeal from the Munsif's decision, but that upon the facts would be to the District Court and not the High Court. And that the decision should be conclusive would be still more improper as regards many other of the various Courts in India, the qualifications of whose judges differ greatly. By taking concurrent jurisdiction to mean concurrent as regards the pecuniary limit as well as the subject-matter this evil or inconvenience is avoided (203-4). (Sir Richard Couch ) MISIR RAGHOBARDIAL D. RAJAH SHEO BAKSH SINGH. (1882) 9 I. A. 197=9 C. 439 (444.5)= 12 C. L. R. 520 = 4 Sar. 395 = R & J.'s No. 70,

#### Consultative jurisdiction of Court.

-Instance of-Income Tax Act of 1918, S. 51-Decision of High Court under. See INCOME-TAX ACTS
-INCOME-TAX ACT OF 1918, S. 51—CASE STATED (1923) 50 I. A. 212=47 B. 724. UNDER.

#### Contract.

-Breach of -- Improper procuring of -- Compensation for-Suit for-Jurisdiction to entertain. See CIVIL PRO-CEDURE CODE OF 1908, Ss. 19 AND 20-CONTRACT.

(1926) 31 C. W. N. 174.

-Particular description of-Contract of-Jurisdiction over-Statute imposing restriction on-Statute prohibiting contract-Repeal of statute-Enforceability of contract-Effect on-Distinction between two cases. See CONTRACT -Enforceability of. (1889) 16 I. A, 233 (237-8)= 17 C. 291 (297).

#### Criminal case.

-Jurisdiction in. See CRIMINAL CASE-JURISDIC-TION IN.

### Criminal Jurisdiction-Native state-Bailways in.

-Jurisdiction of British Courts on-Offence in British territory-Offender at a Station on a railway in Nizam's Dominions-Arrest of-Legality. See NATIVE STATE-RAILWAYS IN-CRIMINAL JURISDICTION, ETC. (1897) 24 I. A. 137 = 25 O. 20.

### Debt-Suit to recover.

-Cause of action-Jurisdiction-Debt contracted at Hyderabad and debtor and sureties all resident there-Jurisdiction of Secunderabad Court to entertain suit. See DEBT.-SUIT TO RECOVER-JURISDICTION TO ENTER-(1925) 53 I.A. 58 = 53 C. 88. TAIN.

### Decree-Fraud in obtaining.

-Setting aside of decree on ground of-Suit for-Jurisdiction to entertain-Court different from that by which decree was passed-Jurisdiction of. See ADMINIS-TRATION SUIT-HIGH COURT.

(1905) 32 I. A. 193 (201) = 33 C. 180 (191-2).

### Dwelling within.

-(See also JURISDICTION-RESIDENCE OF DEFEN-DANT).

-Meaning of, in cl. 12 of Letters Patent (Madras).

Where the question was whether the defendant in a suit instituted in the High Court of Judicature at Madras on its original side was when it was so instituted "Dwelling" within its jurisdiction within the meaning of S. 12 of the Letters Patent, and it appeared that, prior to the institution of the suit, the defendant had taken up his abode with his wife and family in a hired house in Madras, meaning to remain there several months, and was actually living there when the suit was instituted, held that he could not be heard to say that he was not dwelling within the jurisdiction of the High Court (139). (Lord Macnaghten). SRINIVASA MOORTY v. VENKATAVARADA IYENGAR.

(1911) 38 I. A. 129 = 34 M. 257 (267-8) = 15 C. W. N. 741 = 13 Bom. L. B. 520 = (1911) 2 M. W. N. 375 = 14 C. L. J. 64 = 10 M. L. T. 263 = 8 A. L. J. 774 = 11 I. C. 447 = 21 M. L. J. 669.

## Ecclesiastical Courts in England.

-Jurisdiction of-Nature of-Civil or religious. See ECCLESIASTICAL COURTS IN ENGLAND-JURISDICTION (1856) 6 M. I. A. 348 (387) OF.

# English Equity Courts-Decrees of-Alteration of

-Jurisdiction as to.

The Courts of Equity may correct the decrees made while they are in minutes; when they are complete they can only vary them by re-hearing; and when they are signed and enrolled they can no longer be re-heard, but they must be altered, if at all, by appeal (216). (Lord Brougham.)
RAJUNDER NARAIN RAE v. BIJAI GOVIND SING. (1839) 2 M. I. A. 181=1 Moo. P. C. 117=1 Sar. 175

#### Exercise of.

## CONDITION IMPOSED BY STATUTE FOR.

-Compliance with-Necessity-Omission-Effect. Wherever jurisdiction is given to a Court, by an Act of Parliament, or by a Regulation in India, and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise (155). (Sir John Patteson.) NUSSER-WANJEE PESTONJEE D. MUR MYMOODEEN KHAN WUL-LUD MEER SUDROODEEN KHAN BAHADOOR. (1855) 6 M. I. A. 134.

Waiver of, by consent of parties—Permissibility.

See BOMBAY REGLS.—PUNCHAYAT REGULATION (1855) 6 M. I. A. 134 (161). VII OF 1827, S. 3 (1).

### JURISDICTION-(Contd.)

Exercise of-(Contd.)

IRREGULAR EXERCISE—ARSENCE OF JURISDICTION -DISTINCTION.

-See also UNDER-IRREGULARITY-ILLEGALITY.

-Decree of competent Court, in irregular exercise of its jurisdiction-Setting aside of-Suit tor-Maintainability.

A challenge of the method of the exercise of the jurisdiction of a Court, can never in law justify a denial of the existence of such jurisdiction. The former has reference to the merits of the case. The familiar principle is laid down in a series of cases, of which the judgment of Lord Hobhouse in Malkarjun r. Narahari is not a very remote example. Their Lordships cannot countenance the laying aside of all that has happened in previous litigations, the allowing of a process to become final, and the institution of a fresh suit, the object of which is to declare that, although in terms it was applicable to a particular subject of the King-Emperor who was a party to the proceedings, still, upon a new application to Courts of justice, a different result should be reached, and it should be decided that the proceedings and decree did not apply to him (176). (Lord Shaw.) RAJWANT PRASAD PANDE P. RAM RATAN GIR.

(1915) 42 I.A. 171 = 37 A. 485 (494-5) = 20 C.W.N. 35 = (1915) M. W. N. 73 = 2 L. W. 671 = 18 M. L. T. 173 =

17 Bom. L. R. 754 = 13 A. L. J. 937 = 20 I. C. 849 = 29 M. L. J. 165.

-Execution Proceeding-Award in, of relief obtainable only by fresh suit. See CIVIL PROCEDURE CODE OF 1908, S. 47-EXECUTION PROCEEDING-SEPARATE SUIT-RELIEF OBTAINABLE, ETC.

(1875) 2 I. A. 219 (233). -Procedure prescribed for exercise of jurisdiction-Non-compliance with-Effect. See CIVII. PROCEDURE

CODE OF 1908, SS. 39, 41 AND 50.

(1928) 55 I. A. 227 = 3 Luck. 114. -Review-Grant of. See CIVIL PROCEDURE CODE OF 1908-O. 47, R. 4-REVIEW-GRANT OF-JURISDIC-(1876) 3 I. A. 221 (229) = TION AS REGARDS. 2 C. 131 (141).

IRREGULAR EXERCISE—ACQUIESCENCE IN, OR SUBMISSION TO—EFFECT—OBJECTION SUBSEQUENT TO SUCH EXERCISE—MAINTAINABILITY.

-There are numerous authorities which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit (145). (Lord Watson.) (1886) 13 I A 134 = LEDGARD P. BULL, 9 A. 191 (203) = 4 Sar. 741,

-Mesne Profits-Assessment of, by local inquiry-Decree directing-Assessment without such inquiry-Acquiescence in. See MESNE PROFITS-ASSESSMENT OF-LOCAL INQUIRY-ASSESSMENT BY.

(1881) 8 I. A. 197 (208-9) = 8 C. 178 (191-2).

-Their Lordships would unfeignedly deplore a state of procedure which enabled the appellants to take their chance of success before the assistant referee at such a cost in time and money and then, after they had lost the day, to contend that the matter never should have gone before him at all (95). (Lord Sumner.) AHMED MUSAJI SALEJI v. (1915) 42 I. A. 91= HASHIM EBRAHIM SALEJI. 42 C. 914 (924) = 17 M. L. T. 312=

(1915) M. W. N. 485 = 2 L. W. 377 = 19 C. W. N. 449 = 21 C. L. J. 419=17 Bom. L. R. 432=

13 A. L. J. 540 = 28 I, C. 710 = 29 M. L. J. 70,

Exercise of-(Contd.)

IRREGULAR EXERCISE - ACQUIESCENCE IN, OR SUBMISSION TO- EFFECT-OBJECTION SUBSE-QUENT TO SUCH EXERCISE-MAINTAINABILITY -(Cont.).

See C. P. C. OF 1908, Ss. 39, 41 AND 50. (1928) 55 I. A. 227 - 3 Luck. 114.

IRREGULAR EXERCISE-DECREE PASSED BY COMPETENT COURT IN.

-Setting aside of -Suit for -- Maintainability. Sec JURISDICTION-EXERCISE OF-IRREGULAR EXERCISE -ABSENCE OF JURISDICTION.

(1915) 42 I.A. 171 (176) = 37 A. 485 (494-5.)

PROCEDURE PRESCRIBED FOR-NON-COMPLIANCE WITH.

-Irregularity or Illegality. 5ac C. P. C. OF 1908, SS. 39, 41 AND 50, (1928) 55 I.A. 227 3 Luck. 114. -Waiver of-Effect of-Estoppel by reason of. Sci-C. P. C. OF 1908, SS, 59, 41 AND 50.

(1928) 55 I. A. 227 - 3 Luck. 114.

#### Extraordinary jurisdiction.

-Meaning of. See HIGH COURT-JURISDICTION OF -ORDINARY JURISDICTION.

(1889) 16 I.A. 156 (162) = 13 B. 520 (533)

#### Facts essential to.

-Determination of -If itself a question of jurisdiction. See CERTIORARI-WRIT OF-JURISDICTIONAL FACTS. (1922) 31 M.L.T. 163 (183) P.C.

-Determination of - Inferior and superior courts-Powers of. See CERTIORARI-WRIT OF-JURISDIC-TIONAL FACTS. (1922) 31 M. L. T. 163 (183) P.C. -Existence of-Onus of Proof of.

In a suit instituted in the Court of the Subordinate Judge at Meerut by the sons of one of the deceased sons of a testator against A, one of the surviving sons of the testator, and the then manager of the estate under the terms of the will of the testator, for an account of A's management of the joint estate and for payment to plaintiffs of their share of the rents and profits, held, that, under S. 5 of C. P. C. of 1859, it lay upon the plaintiff to show that either the cause of action arose, or the defendant at the time of the commencement of the suit was dwelling, within the limits of the jurisdiction of the Meerut Court, within the meaning of that enactment (204). (Sir James W. Celvile.) ORDE v. SKIN-(1880) 7 I. A. 196-3 A. 91 (100)=

7 C. L R. 295-4 Sar. 178-3 Suth. 788. Foreigner-Jurisdiction over.

Carrying on by him of business within local limits through agent if by itself confers.

In a suit brought in a British Indian Court on a judgment by default obtained in Pondicherry by the plaintiff against the defendant in a suit on a promissory note, both courts in India apparently assumed that the question of jurisdiction turned on S, 17 of C. P. C. of 1882, and that although the defendant was a foreigner, and although the cause of action arose in a foreign country, and although the defendant did not personally reside within the local limits of the jurisdiction of any court in British India, and was not even temporarily in Arcot when sued there, yet he could be sued in the Arcot court if he carried on business through an agent in the local limits of that courts' jurisdiction.

Their Lordships observed that that assumption appeared to require more attention than it had received (227). (Lord Lindley.) ANNAMALAI CHETTY v. MURUGASA CHETTY.

(1903) 30 I A. 220 = 26 M. 544 (552) = 7 C.W.N. 754 = 4 Bom. L. B. 494 = 8 Sar. 523 = 13 M. L. J. 287. JURISDICTION-(Contd.)

#### High Court.

-Jurisdiction of. See UNDER HIGH COURT.

Independent Prince-Lands of, in British India.

Jurisdiction in respect of-Tipperah Raj.

The suit was to recover a very valuable zemindary, being that part of the royal possessions of the Rajah of Tipperah which lies within the Indian Territories of the British Crown. The Rajah of Tipperah, though in respect to these lands subject to the laws and Courts of British India, is in fact an independent Prince with a considerable territory known as the Tipperah Hills, and as the title to the zemindary and to the Raj is the same, the dispute respecting the former involves a question of the right of succession to the Musnud or Throne of the independent Principality. Their Lordships will deal with the question between the parties as if the litigation were between two ordinary subjects of the Crown upon a disputed title to lands within the jurisdiction of the Indian courts (534-5.) (Lord Chelmsford.) NEEL-KISTO DEB BURMONO :: BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 = 12 W.R.P.C. 21 = 3 B.L.R. P.C. 13 = 2 Suth. 243 = 2 Sar. 523.

### Independent States-Transactions between-Propriety of.

- Jurisdiction to accide.

The transactions of independent states between each other are governed by other laws than those which Municipal courts administer; such courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make (529). (Lord Kingsdown.) SECRETARY OF STATE IN COUNCIL OF INDIA P. KAMA-CHIE BOYE SAHABA. (1859) 7 M.I.A. 476=

13 Moo. P.C. 22=7 W.R. (Eng.) 722=4 W.R. 42= 1 Suth. 373=1 Sar. 684.

#### Indian Legislature-Legislation by-Validity of.

-Jurisdiction to inquire into-Points for consideration in such cases. See INDIAN LEGISLATURE -POSITION, ETC.

(1878) 5 I. A. 178 (193-4) = 4 C. 172 (180-1).

### Insolvency-Dividend-Creditors' receipt of-Injunction restraining.

Suit by assignee for-Jurisdiction of Insolvency court and of other courts to entertain. See INSOLVENCY-DIVI-DEND -CREDITORS' RECEIPT OF - INJUNCTION RES-TRAINING. (1843) 2 M.I.A. 383 (389).

### Law-Protection of-Person enjoying.

-Obedience of, to that law-Duty as regards. See JURISDICTION-PROTECTION OF LAW.

(1835) 3 Knapp. 348 (369).

### Mortgage -Suit to enforce-Jurisdiction of Br. Indian Court to entertain.

-Part of mortgaged property situated in place to which C. P. C. does not apply. See C. P. C. OF 1908, S. 17-MORTGAGE-SUIT TO ENFORCE.

(1919) 46 I.A. 151 (156-7)= 42 M. 813 (820)

#### Native State.

-See (1) JURISDICTION-BRITISH INDIAN COURT -NATIVE STATE AND (2) NATIVE STATE.

### Ordinary jurisdiction.

-Meaning of. See HIGH COURT-JURISDICTION OF-ORDINARY JURISDICTION.

(1889) 16 I.A. 156 (162) = 13 B. 520 (533).

### Partition suit-Preliminary decree in-Enquiry directed by-Non-appearance of plaintiff at.

-Dismissal of suit on ground of - Jurisdiction-Proper order in such a case. See C. P. C. OF 1908, O. 17. R. 2 -Partition suit. (1924) 51 I.A. 321 (325) = 4 P. 61.

#### Partnership Contract—Balance resulting from-Suit by one partner against another for.

-Jurisdiction-Contract at one place-Business intended to be, and in fact, carried on principally at another.

The suit was brought by the appellants in the Zillah Court of Agra to recover from the respondents the balance due to the former by the latter in respect of a partnership transaction between them.

The partnership contract was entered into at Ruttom, situated in a Native State, but it was for the establishment of a partnership which was to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. Muttra was the central place of business; at Muttra and the partnership books were kept; at Muttra the partners would have recourse to those books for the purpose of ascertaining the state of the transactions between them.

Held, that if there was a cause of action arising out of the balance resulting from those partnership transactions, that cause of action arose at Muttra, and that the Zillah Court of Agra had jurisdiction to entertain the suit. (Lord Chelmstord.) LUCKMEE CHUND P. ZORAWAR MULL.

(1860) 8 M. I A. 291 = 1 W. R. 35 P. C. = 1 Suth. 425=1 Sar. 763.

### Place of suit-Rule general as to.

-Defendant's residence at time of suit.

The general rule is that the plaintiff must sue in the court to which the defendant is subject at the time of suit (" Actor sequitur forum rei"); which is rightly stated by Sir Robert Phillimore to " be at the root of all international and of most domestic, jurisprudence on this matter" (185). (Earl of Schorne.) SINDAR GURDYAL SINGH P. RAJAH (1894) 21 I. A. 171=6 Sar. 503= OF FARIDKOTE. 22 C. 222 (237-8) = 112 P. R. 1894 = 4 M.L.J. 267.

#### Plea of absence of.

ABATEMENT TO JURISDICTION—BAR OF—PILEAS IN. APPEAL-MAINTAINABILITY FOR FIRST TIME IN. PRIVY COUNCIL APPEAL—MAINTAINABILITY IN. SCOPE OF-ONE REASON ASSIGNED FOR PLEA-OTHER REASONS IN SUPPORT OF IT-CONSIDERA-TION OF.

SECOND APPEAL-MAINTAINBILITY IN-WAIVER OF-TRANSFER OF SUIT TO ANOTHER COURT -CONSENT TO, AFTER RAISING PLEAS—EFFECT.

ABATEMENNT TO JURISDICTION—BAR OF—PLEAS IN JURISDICTION-ABATEMENT -Distinction. (1849-50) 4 M. I. A. 353 (375). TO.

APPEAL-MAINTAINABILITY FOR FIRST TIME IN. -See RELIGIOUS ENDOWMENT ACT OF 1863, S. 10 -ORDER UNDER-APPEAL FROM-HIGH COURT-(1887) 14 I. A. 160 (166-7)= JURISDICTION, ETC. 11 M. 26 (35-6),

-Fact basis of plea-Proof of necessary-Evidence to prove fact-Permission to adduce-Grant of.

Where the question whether the ordinary Civil Courts had jurisdiction over a suit or not depended upon proof of a particular fact, and the High Court before which the point as to the want of jurisdiction was taken for the first time by as to the want of jurisdiction was taken for the ground that no the appellant, held against the plea on the ground that no technical proof had been given of the fact on which the in suit and the amount or value of the subject-matter, could

#### JURISDICTION-(Contd.)

Plea cf absence of-(Contd.)

APPEAL-MAINTAINABILITY FOR FIRST TIME IN-(Contd).

question depended, their Lordships in appeal observed that under sanction of costs the appellant might have been granted leave by the High Court to lead additional evidence to prove that fact, (Lord Duncdin.) SECRETARY OF STATE FOR INDIA r. MAHARAJAH OF TIPPERA.

(1916) 43 I. A. 303 (308-9) = 44 C. 328 (343) == 20 M. L. T. 549 = (1917) M. W. N. 25 = 18 Bom. L. R. 1027 = 14 A. L. J. 1205 = 21 C. W. N. 291 = 5 L. W. 570 = 25 C. L. J. 425 = 38 I. C. 379.

-Mortgage suit-Sale of lands situate in place to which C. P. C. inapplicable-Decree for-Jurisdiction of British Indian Court to pass-Objection to. See C. P. C. (1919) 46 I. A. 151 (156-7) = OF 1908, S. 21. 42 M. 813 (820).

#### PRIVY COUNCIL APPEAL-MAINTAINABILITY IN.

-Facts on which plea based either admitted or proced. Their Lordships are bound to take notice of an objection to the jurisdiction, however late in the day It may be raised if it be that on the facts admitted or proved it is manifest that there is a defect of jurisdiction. (Lord Phillimore.) RAMLAL HARGOPAL P. KISHANCHAND.

(1923) 51 I. A. 72 (81) = 51 C. 361 = A. I. B. (1924) P. C. 95 - (1924) M. W N. 79 = 7 N. L. J. 62 = 19 L. W. 549 = 34 M. L. T. 62 = 20 N. L. B. 33 = 22 A. L. J. 386 = 26 Bom. L. R. 586 = 28 C. W. N. 977 = 83 I. C. 531 = 46 M. L. J. 628.

Mortgage-Suit to enforce-Decree for sale in-Objection to, on ground of lands being situate in District to which C. P. C. does not apply. See C. P. C. OF 1908, (1919) 46 I. A. 151 (156-7) = 42 M. 813 (820). S. 21. Plea mer ruled by trial court and not raised before High Court-Plea going to root of case.

The objection to the jurisdiction of the Court, which was urged in the court but was over-ruled by it, was however not enumerated amongst the grounds of appeal, and was not renewed before the High Court. It was, however, renewed before their Lordships on the hearing of this appeal As the proceedings before their Lordships disclose the grounds on which this objection rests, and as, if valid, it would apply to the whole litigation from its inception to its close, rendering all the proceedings null and void ab initio, their Lordships entertain the objection (108-9.) (Lord Justice Giffard.) BRETT v. ELLAIVA. (1869) 13 M. I. A. 104 = 12 W.R. P. C. 33 - 2 Suth. 54 - 2 Sar. 492.

Plea taken before trial court but not raised before High Court or on appeal to Privy Council and raised only in argument before Privy Council-Plea necessarily presenting itself in argument.

At the hearing before the trial Judge an issue was raised as to the jurisdiction of the Court of Bhagalpore to entertain the suit (to enforce a mortgage), and this point has again been raised in the argument before their Lordships, Seeing that it is a question of jurisdiction, and depends on no disputed facts, their Lordships are of opinion that they cannot decline to entertain it, although it is not specifically raised on the appeal, more especially as it necessarily presented itself in the argument (204-5). (Lord Moulton.) MAHA PRASAD P. RAMANI MOHAN SINGH,

(1914) 41 L.A. 197 = 42 C. 116 (136) = 18 C. W. N. 994 = 1 L. W. 619 = 20 C. L. J. 231 = 16 M. L. T. 105=(1914) M. W. N. 565= 16 Bom. L. R. 824 = 25 I. C. 451 = 27 M. L. J. 459.

Plea technical and devoid of merits.

Plea of absence of-(Contd.)

PRIVY COUNCIL APPEAL-MAINTAINABILITY IN-

only have been heard by a first class Sub-Judge in the exercise of his special original jurisdiction was, without objection by the defendant, heard and decided in plaintiff's favour by that Judge in the exercise of such jurisdiction. There were High Court; but neither in the written statement, nor in the issues, nor even in the memorandum of appeal to the District Judge or to the High Court, was it even suggested that the suit was not properly brought in the court of the First Class Sub-Judge, to be there heard and decided by him in the exercise of his special original jurisdiction. For the first time in the appeal to His Majesty in Council the defendant objected that the suit was not properly instituted in the Court of the Sub-Judge in question, having regard to the provisions of the Court Fees Act and the Suits Valuation Act,

Held that such an objection which, when analysed, rested on no sort of merit, but on the most technical of technicalities, could not be allowed to be raised at such a late stage. (Sir Lawrence Jenkins.) RACHAPPA SUBRAO JADHAY F.

SHIDAPPA VENKATRAO JADHAV. (1918) 46 I. A. 25 (31·2) = 43 B. 507 (517) = 24 C. W. N. 33 = 17 A. L. J. 418 = 25 M. L. T. 298 = 29 C. L. J. 452 = 21 Bom. L. R. 489 = 10 L. W. 274 = 50 I. C. 280 = 36 M. L. J. 437.

SCOPE OF -ONE REASON ASSIGNED FOR PLEA-OTHER REASONS IN SUPPORT OF IT-CONSIDERATION OF.

Propriety of -Duty of court.

The appeal was from a judgment of the Supreme Court of Bombay on its Ecclesiastical side overruling a protest against

its jurisdiction.

The suit in the Supreme Court was one for restitution of conjugal rights. The parties were Parsees, natives of the island of Bombay, and there resident. The wife brought the suit. The husband, in a protest, after the libel was given in, denied the jurisdiction of the court, and contended that it was incompetent to take cognizance of such a suit. The especial reason assigned for the incompetency of the court to exercise jurisdiction was, that the parties to the suit were not British subjects within the meaning of the Charter granting the Supreme Court Ecclesiastical jurisdiction, and the general averment of incompetency, no doubt, had reference to that reason. It was, therefore, argued before their Lordships that the protest against the jurisdiction should be confined to the particular objection assigned.

Their Lordships over-ruled the contention, observing: We think that in a case of this description, when the question substantially is, whether the court has jurisdiction to entertain the suit, or to state the case more accurately, whether from the particular nature of the subject-matter this case is not excepted from the general ecclesiastical jurisdiction conferred by the Charter, it is our duty to look at the whole record, and give judgment accordingly. If it be apparent on the face of the record that the suit is not maintainable, we think that there is enough in the protest to require us to express our opinion, though that protest may not have been intended to direct our attention to more than one particular objection (386). (Dr. Lushington.) ARDASUR CURSETJEE P. PEROZEBOVE.

(1856) 6 M. I. A. 348 = 4 W. R. 91 = 10 Moo. P. C. 375 = 1 Suth. 265=1 Sar. 548.

SECOND APPEAL-MAINTAINABILITY IN-

-Plea held against in first court and not raised in appeal - Defendant's liability depending upon it.

In a case in which the question was whether a British Indian Court or the Court of a Native State had jurisdicJURISDICTION-(Contd.)

Plea of absence of - (Contd.)

SECOND APPEAL-MAINTAINABILITY IN-(Contd). tion to entertain a suit, their lordships observed that they would not have upheld the contention that the defendants were precluded from raising the question because, though the question was decided against the defendants by the first Court, they did not raise it in the first appellate an appeal to the District Court and a second appeal to the Court, and only raised in the second appellate Court (61). (Lord Blanesburgh), BANSILAL ABIRCHAND v GHULAM MAHBUB KHAN. (1925) 53 I.A. 58 = 53 C. 88 =

23 L.W. 3 = A.I.R. (1925)P.C. 290 = 24 A.L.J. 48 = 43 C.L.J. 1=(1926) M.W.N.108= 27 Punj. L.R. 1 P.C. = 28 Bom. L.R. 211= 92 I.C. 760 = 49 M.L.J. 806.

WAIVER OF-TRANSFER OF SUIT TO ANOTHER COURT-CONSENT TO, AFTER RAISING PLEA-EFFECT.

-Plea raised in transferred Court also.

A suit for damages for the alleged infringement of certain exclusive rights secured to the plaintiff by three patents was instituted in the Court of the Subordinate Judge at Cawnpore on 2-2-1882, while under S. 22 of the Indian Patent Act XV of 1859, it ought to have been instituted in the Court of the District Judge of Cawnpore. On the 15th of February, 1882, the defendant personally signed, alongwith the plaintiff and his pleader, a petition praying the District Judge to withdraw the case from the Court of the Subordinate Judge under S. 25 of Civil Procedure Code of 1877, and to try the suit in his own Court. On the same day an order was made in the District Court in these terms:- "That the case be transferred from the Subordinate Judge's Court to the file of this Court, and the date will be fixed hereafter." The District Judge had no power to make that order, either under S. 25 of Civil Procedure Code of 1877 or otherwise. In his written statement, filed in answer to the plaint, before the District Judge of Cawnpore, the defendant pleaded that the Judge had no jurisdiction to entertain the suit, in respect it had not been regularly brought into Court. The question was whether the defendant did, in point of fact, waive all objection to the competency of the suit, and engage that the cause should be tried on its merits by the District Judge. The argument as to waiver really rested upon the single fact that the defendant personally concurred with the plaintiff and his pleader in petitioning the District Judge to transfer the suit, in terms of S. 25 of the Civil Procedure Code.

Held, that such a consent to a transfer did not operate as a waiver of the defendant's preliminary pleas or of any of his pleas (146).

The grounds of that petition had nothing to do with want of jurisdiction in the lower Court, but were ordinary grounds of convenience, which would justify the removal of a suit to the higher Court from the lower, assuming it to have been properly instituted there. consent to the transfer of the suit is professedly and in substance nothing more than a consent that the preliminary and other pleas of the defendant shall be disposed of by another than the Subordinate Judge (146). (Lord Walton). LEDGARD P. BULL. (1886) 13 I. A. 134= 9 A. 191 (203-4)=4 Sar. 741.

Protection of law-Person enjoying-Obedience of, to that law-Duty as regards.

Maxim "Protectio trahit subjectionem; et subjectio trahit protectionem"-Applicability.

P was under the protection of the British laws, and consequently owed obedience to them, according to the

#### Protection of law-Person enjoying-Obedience of, to that law-Duty as regards-(Contd.)

well-known maxim of law, "Pretectio trahit subjectionem; et subjectio trahit protectionem" (369). (Mr. Justice Bosanguet). POONEAKHOTY MOODELIAR P. THE KING.

(1835) 3 Knapp 348=1 Sar. 76.

#### Question as to.

-Importance and nature of-Native State-Subject of-Jurisdiction of British Indian Court over-Question as to-Liability or non-liability of defendant depending upon it. See JURISDICTION-BRITISH INDIAN COURT -NATIVE STATE-SUBJECT OF. (1925) 53 I A. 58= 53 C. 88.

-Statute-Question depending upon-Remedy to aggrieved party-Existence or otherwise of-Consideration of-Propriety of. STATUTE-INTERPRETATION-JURIS-(1849-50) 4 M.I.A. 353 (378). DICTION.

### Residence of defendant-Place of.

-- (See also JURISDICTION-DWELLING WITHIN).

-Permanent dwelling place on the plains-Residence on the hills during a portion of the year for health or pleasure-Residence in case of.

A man, who has a permanent dwelling-place on the plains, will not the less dwell there, according to the proper construction of the word within the meaning of S. 5 of Civil Procedure Code of 1859, because for health or pleasure he is passing the hot season on the hills. The residence on the hills is, in such a case, more or less of a temporary character like that of a man in England who lives in a house of his own at a watering-place during a portion of the year (205). (Sir James W. Calvile).

ORDE v. SKINNER. (1880) 7 LA. 196 3 A. 91 (99 102)=7 C. L. B. 295=4 Sar. 178=

3 Suth. 788. -Will-Manager under-Account against-Suit for. by beneficiaries under will-Residence of manager in

case of.

The suit was by the grandsons, sons of a deceased son, of a testator against A, one of the surviving sons of the testator and the manager of his estate under the terms of his will, for an account of the management of the joint estate and for payment to plaintiffs of their share of the

rents and profits. The suit was brought in the Sub-Court of Meerut, within whose jurisdiction the testator had a large estate known by the name of Bilaspure. At the time the suit was brought, the defendant actually resided at Mussuri, a bill station, where he had a private house, in which he resided during the whole of the hot weather. The testator had also considerable landed and other property at Delhi and other places annexed for all civil purposes, to the Punjab, and notably an estate in the District of Hissar, of which the chief station was at Hansi. During the cold weather the defendant travelled through the estate, sometimes putting up at Hansi, sometimes at Delhi, and sometimes at Bilaspur, in one of the houses which had been maintained at the expense of the estate. The head office of the estate was at Hissar, in the Punjab.

The will of the testator showed that the testator contemplated that Bilaspur might be the principal place of residence of his family; and the evidence showed that an establishment of some kind was kept there, and that the defendant himself, though travelling for the most part during the cold weather about the estate, occasionally resided therefor periods of time more or less considerable. The defendant himself, in his written statement, stated that the accounts were lying for inspection by the sharers in the estate in the manager's office, which would remain at Bilas-

#### JURISDICTION—(Contd.)

#### Residence of defendant-Place of-(Contd.)

pur for a stated period. No particular place for rendering the accounts had been fixed either by contract or prac-

Held, reversing the High Court, that the defendant at the commencement of the suit so dwelt at Bilaspur, within the meaning of S. 5 of Civil Procedure Code of 1859, as to make himself subject to the jurisdiction of the Meeru; Court (205-6).

Quacre whether the defendant might not have also such a dwelling-place at Hansi as would subject him to the juris-

diction of the Courts of the Punjab (205).

Quaere whether he was also subject to the jurisdiction of the Meerus Court by reason of the cause of action having arisen within the local limits of its jurisdiction (206). (Sir James IV. Colvile). ORDE r. SKINNER.

(1880) 7 I.A. 196-3 A. 91 (99-102)= 7 C.L.R. 295 = 4 Sar. 178 = 3 Suth. 788.

#### Restitution of conjugal rights.

-Suit for-Civil Courts-Jurisdiction of, to entertain. See RESTITUTION OF CONJUGAL RIGHTS.

#### Revenue.

#### Statute.

-- Conditions imposed by, for exercise of jurisdiction--Compliance with-Necessity - Waiver of, by consent of parties - Permissibility - Effect. See JURISDICTION-EXERCISE OF-CONDITIONS IMPOSED BY STATUTE FOR. (1855) 6 M.I.A. 134.

---Contract of particular description-Jurisdiction of Court over-Statute imposing restriction on-Statute prohibiting contract-Repeal of statute-Effect of, on enforceability of contract-Distinction between two cases. See CONTRACT-ENFORCEABILITY OF.

(1889) 16 I.A. 233(237-8)=17 C. 291 (297).

-- Coart in which suit instituted-Jurisdiction of-Deprivation by statute of, during pendency of suit-Effect. See CALCUTTA RENT ACT III OF 1920-OPERATION OF. (1927) 54 I A.152 (156) = 54 C. 508.

-Interpretation of-Jurisdiction depending upon-Remedy to plaintiff-Existence or otherwise of-Consideration of-Propriety. See STATUTE-INTERPRETATION-(1849-50) 4 M. I. A. 353 (378). JURISDICTION.

#### Subordinate Courts-Jurisdiction of-Judicial notice of.

-Daty of Superior Courts to take. See SUPREME COURT OF BOMBAY-NATIVE COURT-JURISDICTION. (1829) 1 Knapp. 1 (58).

Suit-Court in which, instituted-Jurisdiction of-Deprivation by statute of, during pendency of Suit.

-Effect. See CALCUITA RENT ACT. III OF 1920-OPERATION OF. (1927) 54 I. A. 152 (156) = 54 C. 508.

#### Supreme Court.

-Jurisdiction of. See SUPREME COURT.

#### Territorial jurisdiction.

-Nature and extent of-Persons, property, immoveable and moveable-Status or succession-Questions of.

All jurisdiction is properly territorial, and extra territorium jus dicente, impune non paratur." Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over

#### Territorial jurisdiction-(Contd.)

territory (185). (Earl of Schorne.) SIRDAR GURDYAL SINGH P. RAJA OF FARIDKOTE. (1894) 21 I. A. 171= 22 C. 222 (238) = 112 P. R. 1894 - 6 Sar. 503 -

4 M. L. J. 267.

#### Testamentary jurisdiction.

 High Court—Testamentary jurisdiction of — Nature of-English Law-Applicability. See HIGH COURT-JURISDICTION OF-TESTAMENTARY JURISDICTION.

(1905) 32 I. A. 244 (258) - 33 C. 116 (129-30).

Supreme Court-Original nature of jurisdiction of-Subsequent change in. See SUPREME COURT-TESTA-MENTARY JURISDICTION. (1905) 32 I. A. 244 (257-8)-33 C. 116 (129).

### Trespass-Action of-Plea of " not guilty."

-- Juriseliction of Court-Objection to, if included in plea. See TRESPASS-ACTION OF-PLEA OF "NOT GUILTY.'

(1849-50) 4 M. I. A. 353 (371-2, 375, 376, 378).

#### Usurpation of.

-Evidence-Decision without, in case of admitted jurisdiction-Effect. See CERTIORARI-WRIT OF-IN-FERIOR COURT-JURISDICTION-USURPATION.

(1922) 31 M. L. T. 163 (178-9) P. C.

-Order made in-Appeal from-Right of.

Their Lordships are unable to agree with the Chief Justice that if a Judge of the High Court, makes an order under a misapprehension of the extent of his jurisdiction, the High Court, have no power by appeal, or otherwise, in setting right such a miscarriage of justice (17). (Sir Robert P. Col-HARRISH CHUNDER CHOWDERY P. KALI SUN-DARI DEBIA. (1882) 10 I.A. 4-9 C. 482 (493 4)-12 C. L. B. 511 -4 Sar. 407.

Wrong exercise of-Distinction-Jurisdiction to entertain case admitted-Decision without evidence in case of -Effect. See CERTIONARI - WRIT OF-INFERIOR COURT-JURISDICTION-USURPATION OF.

(1922) 31 M. L. T. 163 (178-9) P. C.

### Valuation for purposes of.

(CASES UNDER CIVIL PROCEDURE CODE, OF 1908-S. 110, PARA 1-SUBJECT-MATTER OF APPEAL-VALUE

-Attached property-Claim to-Disallowance of-Suit by claimant under O. 21, K. 63, Civil Procedure Code, on. See CIVIL PROCEDURE CODE OF 1908, O. 21, R. 63-SUIT UNDER-VALUE OF, ETC.

(1907) 35 I. A. 22 (26-7) - 35 C. 202 (207).

-Mortgage suit - Decree in-Appeal against, by person claiming under title paramount-Valuation of Sci CIVIL PROCEDURE CODE OF 1908, S. 110, PARA. 1-SUBJECT-MATTER OF APPEAL-VALUE OF-MORTGAGE (1916) 43 I. A. 187 (190) = 38 A. 488 (493) DECREE.

### Will-Manager under-Account against-Suit by beneficiaries for.

-Jurisdiction to entertain. See JURISDICTION --RESIDENCE OF DEFENDANT-PLACE OF-WILL. (1880) 7 I. A. 196 (205-6) = 3 A. 91 (99-102).

### Wrong as well as right.

-Jurisdiction to decide.

A Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the 18 W. B. 81=2 Suth. 29=1 Sar. 552=Savestra 253 N

#### JURISDICTION-(Contd.)

Wrong as well as right-(Contd.)

moveables within the territory; and in questions of datus I course prescribed by law for setting matters right; and if or succession governed by domecil, it may exist as to persons that course is not taken, the decision, however wrong, domiciled, or who when living were domiciled within the cannot be disturbed (225), (Lord Hobbouse.) MALKARJUN NARAHARI. (1900) 27 I. A. 216 = 25 B. 337 (347) =
 5 C. W. N. 10 = 2 Bom. L. R. 927 = 7 Sar. 739 = 10 M.L.J. 368.

#### JURISPRUDENCE.

-Rule of . in new cases.

The rule of jurisprudence in new cases was stated by Lord Wensleydale thus : " This case is in some sense new, as many others are which continually occur, but we have no right to consider it because it is new as one for which the law has not provided at all; and because it has not yet been decided to decide it for ourselves, according to our judgment of what is right and expedient. Our common law system consists in the applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents, and for the sake of attaining uniformity, consistency, and certainty, we must apply those rules where they are not plainly unreasonable and inconvenient to all cases which arise; and we are not at liberty to reject them and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as reasonable and convenient as we ourselves could have devised. It appears to us to be of great importance to keep this principle steadily in view, not merely for the determination of this particular case, but for the interests of law as a science" (68-9). (Mr. Justice Willes.) JUTTENDROMOHUN TAGORE T. GANENDROMOHUN (1872) Sup. I. A. 47=9 B. L. B. 377= TAGORE. 18 W. B. 359 = 3 Sar. 82 = 2 Suth. 692

### JUSTICE-ADMINISTRATION OF.

Fairness in-Necessity-Government and its subjects Centest between.

Some of the irregularities which have taken place are of a character which we think it may be useful to bring to the attention, not only of the Courts in India, but of the authorities at home, who, we are very sure, are desirous that justice should be administered in these Courts, fairly and indifferently, between themselves and their subjects (297). (Mr. Pemberton Leigh.) DOUGLAS v. COLLECTOR OF BENARES. (1852) 5 M. I. A. 271=1 Suth. 231= 1 Sar. 434.

-Purity-Freedom from suspicion-Necessity.

The administration of justice must be kept most pure, and free from suspicion (159). (Dr. Lushington,) WILLIAM PATRICK GRANT, In rc. (1850) 7 Moo. P. C. 141.

-Substance and merits of case-Regard for-Courts duty.

It is of the utmost imporrance to the right administration of justice in the Indian Courts, that it should be constantly borne in mind by them that by their very constitution, the Courts in India are to decide according to equity and good conscience; that the substance and merits of the case are to be kept constantly in view; that the substance and not the mere literal wording of the issues is to be regarded; and that if, by inadvertence, or other cause, the recorded issues do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment, for the decision of the real points in dispute. (Lord Justice Knight Bruce.) HUNOOMAN-PERSHAD PANDAY v. MUSSUMAT BABOOEE MUNRAJ KOONWAREE. (1856) 6 M. I. A. 393 (410-1)=

### JUSTICE, EQUITY AND GOOD CONSCIENCE. Applicability of rules of.

The general principles of justice equity, and good conscience are to be invoked only in cases " for which no specific rules may exist". (Sir Montague E. Smith.) RAM COOMAR COONDOO v. CHUNDER CANTO MOOKERJEE. (1876) 4 I. A. 23 (50·1) = 2 C. 233 (261) = 3 Sar. 654 = 3 Suth. 361

-In Bengal the Courts of Justice, in cases where no specific rule exists, are to act according to justice, equity, and good conscience (121). (Sir Barnes Peacock.) ROBERT WATSON & CO. P. RAM CHAND DUTT.

(1890) 17 I. A. 110=18 C. 10 (22)=5 Sar. 535.

-Skinner family-Will of-Construction of-Applicability to. See WILL-SKINNER FAMILY. (1913) 40 I. A. 105 (114.5) = 35 A. 211 (224)

-Courts of India are directed by the several charters to proceed where the law is silent in accordance with justice, equity, and good conscience. (Lard Phillimore.) MAHA-RAJA OF JEVPORE v. RUKMINI PATTAMAHADEVI.

(1919) 46 I. A. 109 (118) = 42 M. 589 (598) = 26 M. L. T. 16=(1919) M. W. N. 271 = 23 C. W. N. 889 = 21 Bom. L. R. 655 = 17 A. L. J. 552=10 L. W. 381=29 C. L. J. 528= 50 I. C. 631 = 36 M. L. J. 543.

## English Law-Application of, under that head

-The expression "equity and good conscience" is generally intepreted to mean the rules of English law if found applicable to Indian society and circumstances (%). (Lord Hobbonse.) WAGHELA RAJSANJI P. SHEIKH MAS-(1887) 14 I. A. 89 = 11 B. 551 (561) =

-Fraudulent transfer-Law as to. See TRANSFER OF PROPERTY ACT, S. 53-ENGLISH LAW. (1883) 11 I. A. 10 (17-8) = 10 C. 616 (624).

Qualifications of, and retrictions on, such law-

Application without-Propriety.

To apply and adopt a rule of English law under the head of justice, equity, and good conscience, and yet reject its qualifications and restrictions, would be scarcely consistent with justice (323). (Lord Kingulown.) VARDEN SETH SAM D.LUCKPATHY ROYJEE LALLAH.

(1862) 9 M. I. A. 303-1 Suth 483-Marsh. 461 = 1 Sar. 857.

### KABULIYAT.

-Meaning and Nature of.

A Kabuliyat predicates a patta. The Kabuliyat, as its name implies, is a mere acknowledgment, an engagement by the tenant to carry out the terms of the patta (152-3). (Mr. SRINATH RAI P. PRATAP UDAI NATH Amcer Ali.) (1923) 28 C. W. N. 145 a 33 M. L. T. 408 = (1923) M. W.N. 702 = SARI DEO. A. I. B. 1923 P. C. 217.

## KAMAVISHI—LAND ENTERED AS.

Land entered as Kamavishi is land which for some reason Meaning of. or other has come under the management of the Government or its assignee for the purpose of collecting the revenue, but which has not been incorporated with the Khalsat land, which is the absolute property of the Government or its assignee (388). (Sir John Wall MADHAVRAO v. SHRINIVAS LINGO. LAXMANRAO (Sir John Wallis.)

(1927) 54 L A. 380 = 51 B. 830 = 27 L. W. 642 = 46 C. L. J. 393 = 39 M. L. T. 527 = 29 Bom. L. B. 1484 = A. L. B. 1927 P. C. 217 =

#### KANCHANS.

#### Adoption among.

-Effect of-Woman adopted into another family-Inheritance to property of-Law governing.

The suits related to the inheritence of a woman named B. She and the persons who claimed to be entitled to her estate belonged to the tribe of Kanchans. In that tribe the business of brothel-keeping and prostitution was carried on by families or communities who were recruited by adoption.

B left her own family to be adopted by one D, who was the head of another establishment of the same kind. She joined D's establishment, and on D's death became its head, took the property there, and increased it by her own earnings. The question was as to the devolution of the property possessed by B at her death.

Held, that B was not by the adoption severed from her natural family and that her property, however, acquired,

devolved according to Mahomedan Law (201).

It seems to their Lordships impossible to say that such customs as are proved in this case to exist among the Kanchans are not contrary to the policy of the great religious community to which the Courts have found that all the parties belong (202). (Lord Hobkouse.) GHASITI AND (1893) 20 I. A. 193 = NASRI JAS P. UMRAO JAN. 21 C. 149 = 6 Sar. 370 - 52 P. R. 1893.

-Girls-Adoption of-Legality of-Effect.

In the tribe of Kanchans, the adoption of girls is permitted. According to Kanchan custom a girl so adopted becomes completely severed from her own natural family. Omagee, whether according to the custom the girl acquires by the adoption a right of inheritance (200). (Lord Hobbouse.) GHASITI AND NANHI JAN P. UMRAO JAN.

(1893) 20 1. A. 193 = 21 C. 149 = 6 Sar. 370 = 52 P. R. 1893.

#### Custom among.

-In the tribe of Kanchans the business of brothelkeeping and prostitution is carried on by families or communities who are recruited by adoption (198). Each family or community live a coenolitical, quasi-corporate life in the family brothels. All the members, including males, are entitled to food and raiment from the business, the males living a life of idleness at the expense of the females. There is no such thing as separate or individual succession upon death. All the members succeed jointly. No division or partition is allowed, for that would break up the establishments, and the witnesses say that the lamp should be kept burning in the house. A member of a family brothel who leaves it does so with only her clothes on her back and nothing more. The body is recruited by adoption. A girl is brought in as the adopted daughter of a female member of the institution, and the girl thus adopted is regarded as having ceased to belong to her own family (200). (Lord Hobbouse.) GHASITI AND NANHI JAN P. UMRAO JAN.

(1893) 20 I. A. 193 = 21 C. 149 = 6 Sar. 370 = 52 P. R. 1893.

#### Inheritance.

-Woman adopted into another family-Inheritance to property of-Law governing. See KANCHANS-ADOP-TION AMONG-EFFECT OF.

### KABNAM-OFFICE OF.

#### Appointment to.

-Basis of, since Madras Acts 11 of 1894 and 111 of 1895-Hereditary right-Personal fitness.

Eligibility, whether for nomination to the office of Kurnam by the proprietor of a village under S. 10 of Madras Act II of 1894 or by the Collector under S. 10 of Madras Act III of 1895, is a matter personal to the 53 M. L. J. 475. nominee. Accordingly since those Acts in Madras the

#### KARNAM-OFFICE OF-(Contd.)

Appointment to-(Contd.)

Karnam of the village occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family (250-1). (Lord Show.) VENKATA JAGANNADHA 2. (1921) 48 I. A. 244= VEERABHADRAYYA-44 M. 643 (650) = 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16 = 30 M. L. T. 14 = 26 C. W. N. 302 = (1922) P. C. 96 = 61 I. C. 667 = 41 M. L. J. 1.

#### Emoluments of-Lands constituting.

-Partibility of.

The emoluments of the office of Karnam in the shape of lands follow the office. ex necessitate. Otherwise, the holder of the lands might be some person other than the holder of the office (255). (Lord Shaw.) VENKATA JAGANNADHA e. VEERABHADRAYYA. (1921) 48 I. A. 244 = 44 M. 643 (655) = 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16=30 M. L.T. 14=26 C. W. N. 302=

(1922) P. C. 96 = 61 I. C. 667 = 41 M. L. J. 1. --- Enfranchisement of and issue of inam title deed to holder of office-Effect - Partition of lands-Claim by

other members of family to-Maintainability.

When Karnam service lands are enfranchised, quit-rent is imposed in lieu of the service, and an inam title-deed is granted confirming the lands to the holder of the office, his representatives and assigns, to hold or dispose of as he or they might think proper, the enfranchisement must be given full effect to and is not subject to be eviscerated or altered by any claim for partition or division by other members of the family. (Lord Shaw.) VENKATA JAGANNADHA VEERABHADRAYYA. (1921) 48 I. A. 244 -

44 M. 643 = 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16 = 30 M. L. T. 14 = 26 C. W. N. 302 = (1922) P. C. 96 = 61 I. C. 667 = 41 M. L. J. 1.

Lands held as appurtenant to the office of Kurnam should continue to go with that office and should accordingly be impartible (250-1). (Lord Shrae.) VENKATA JAGAN-(1921) 48 I. A. 244 = NADHA D. VEERABHADRAYYA. 44 M. 643 (650) = 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16 = 30 M. L. T. 14 = 26 C. W. N. 302 =

#### Hereditary right to.

(1922) P. C. 96-61 I. C. 667-41 M. L. J. 1.

-Existence of -Nature of.

A hereditary right in a karnam or his family can only. at the utmost, be said to constitute a certain spes among persons within the area of selection of those eligible for the office. But it is not even so limited. The power of selection rests with the administrative officials, who alone are judges of the eligibility of the karnam for the time being (255). (Lord Shaw,) VENKATA JAGANNADHA :: VEERA-(1921) 48 I. A. 244 = 44 M. 643 (655) == BHADRAYVA. 14 L. W. 59 = (1921) M. W. N. 401 = 34 C. L. J. 16 = 30 M, L. T. 14 = 26 C. W. N. 302 = (1922) P. C. 96 = 61 I. C. 667 - 41 M. L. J. 1.

#### KASBAITS.

-Grassias and Mewassies-Tenures of-Distinction. See GRASSIAS. (1915) 42 I. A. 229 (248) = 39 B. 625 (660 1).

#### KATHIAWAR.

#### British Crown.

-Political control over province of-Nature and extent of-History of.

Prior to the year 1802 Kathiawar consisted of a large number of states, independent of one another, each governed by its own Chief, but paying tribute in part to the Peshwa and in part to the Gaikwar of Baroda. By treaties of 1802

#### KATHIAWAR-(Contd.)

British Crown-(Contd.)

and 1817 the Peshwa's rights were ceded to the East India In 1820 the Gaekwar's rights were ceded.

What the nature of the power of the Peshwa and of the Gaikwar was regarded as matter of right, and what therefore they ceded to the East India Company was the subject of frequent and anxious inquiry on the part of the Board of Directors and the Government of Bombay; but no satisfactory result has ever been arrived at. The control of the British Indian Government over Kathiawar has been in operation without controversy for a very long series of years. And the nature and character of that control must be ascertained from the manner in which, and the principles upon which, it has, in fact, been exercised.

Their Lordships after tracing the history of this control (Vide 1. 1. R. 33 C. 245 (248), concluded.

During the period which has hitherto been under consideration (i.e., up to 1864), and in subsequent years, the political control exercised over Kathiawar has been very complete, but it has been exercised in different degrees in different classes of Kathiawar states. (Sir Arthur Wilson.) HEMCHAND DEVCHAND v. AZAM SAKARLAL CHHOTAMIAL. (1905) 33 I.A. 1 = 33 C. 219 (245-248)= 10 C. W. N. 361 = 8 Bom. L. R. 129 = 3 A. L. J. 250=

3 C. L. J. 395=1 M. L. T. 115=9 Sar. 5= 16 M. L. J. 115.

-Relation of province to-Control of British Crown mer it.

Kathiawar is not, as a whole, within the King's domi-

Many and various as have been the forms of intervention by the British Indian powers in the affairs of Kathiawar, and large as has been the political control exercised over the provice, any assertion of territorial sovereignty has been No legislative power over it has ever been claimed. The intervention has never been carried further than was judged necessary, in the emergency, for the maintenance of peace, good order, and security. The position of the Chiefs has always heen respected; and, at least in the case of the more important among them, many of the functions commonly regarded as attributes of sovereignty have been preserved to them. The form adopted in establishing and regulating tribunals in the province has been that which was regular and appropriate, if it was not British territory, but quite irregular and inapplicable, if it was (Sir Arthur Wilson.) HEMCHAND DEVCHAND P. AZAM SARKARLAL CHHOTAM LAL

(1905) 33 I.A. 1 = 33 C. 219 (252-3)= 10 C. W. N. 361 = 8 Bom. L. R. 129= 3 A. L. J. 250 = 3 C. L. J. 395 = 1 M. L. T. 115 = 9 Sar. 5=16 M.L.J. 115.

#### Judicial Administration in.

-History of. (Lord Selborne) DAMODHAR GOR-DHAN P. DEORAM KANJI. (1876) 3 I. A. 102 (145-7)= 1 A. C. 322=1 B. 367 (454-5)=25 W. R. 261= 3 Sar. 543.

-System of-History of-System at present-Courts in province and appeals therefrom-Political and civil cases -Distinction. (Sir Arthur Wilson). HEN DEVCHAND v. AZAM SAKARLAL CHHOTAM LAL-

(1905) 33 I.A. 1=33 C. 219 (249.51, 254)= 10 C. W.N. 361 = 8 Bom. L.R. 129 = 3 A.L.J. 250= 3 C. L. J. 395=1 M. L. T. 115=9 Sar. 5= 16 M. L. J. 115.

#### Political administration in.

-History of. (Lord Selborne). DAMODAR GORDHAN DEVORAM KANJI. (1876) 3 I.A. 102 (144-6)= 1 A. C. 322=1 B. 367 (453-4)=25 W.B. 261= 3 Sar. 543.

### KATHIAWAR-(Contd.)

### Political Agent's Court in-Privy Council Appeal from.

-Special leave for-Grant of Appeal to Governor of Bombay in Council - Failure to prefer-Effect.

Where the Governor in Council of Bombay to whom an appeal lay from the Court of the Political Agent at Kathiawar had dismissed an appeal over-ruling the contentions which were precisely similar to those raised by the petitioner, held that the latter was entitled to ask for special have without previously appealing to the Governor-in-Council of Bombay. MAUN BHAGWANJI KANJI P. DAR-BAR SHRI VALA JASA RUKHAD.

(1903) 13 M. L. J. 154.

### Tribunals in-Decisions of.

-Appeal to Governor of Bombay in Council from-Decision in-Privy Conneil Appeal from-Right of.

Two suits were instituted in the Assistant Political Agent's Court in Kathiawar, one to enforce a mortgage, and the other to redeem a mortgage. The first was disposed of as a civil case, and the second as a political one, because in it a talukdar above the fourth class was a party. The suits were taken on appeal to the Political Agent and from him to the Governor of Bombay in Council.

Held that in both cases the action of the tribunals in Kathiawar, and of the Governor in Council on appeal from those tribunals was a purely political and not judicial action, and that no appeal lay to His Majesty in Council in

such a case.

Kathiawar is not, as a whole, within the King's dominions, and the particular territories out of which these appeals arise have not been shown to be in a different position in this respect from the Province generally. Further, in both cases alike the action of the tribunals in Kathiawar and of the Governor in Council on appeal from those tribunals is purely political and not judicial action (See Arthur Wilton.) HEMCHAND DEVCHAND P. AZAM (1905)33 I.A. 1= SARKARLAL CHHOTAM LAL.

33 C. 219 (252-4)=10 C.W.N. 361= 8 Bom. L.R. 129=3 A.L.J. 250=3 C.L.J. 395= 1 M. L. T. 115=9 Sar. 5=16 M. L. J. 115.

### KATTUBADI GRANT.

-Nature of -- Resumability of . Kattubadi grants are resumable (133). (Dr. Luchington.) UNIDE RAJAHA RAJE BOMMARAUZE BAHADUR P. PEMMASAMY VENKATADRY NAIDOO. (1858) 7 M. I. A. 128=4 W. R. 121=1 Suth. 300= 1 Sar. 637,

## KAYAM TARAM THIRWA.

-Meaning of.

Kayam taram thirtus means permanent classification money-assessment. (Sir Andrew Scoble.) SEENA PENA REENA SEENA MAYANDI CHETTIAR D. CHOCKALINGAM (1904) 31 I. A. 83=27 M. 291 (297)= 8 C. W. N. 545=8 Sar. 587=14 M. L. J. 200. PILLAL.

#### KHALARI.

"Khalari" is salt land (184). (Sir Robert P. Collier.)
SECRETARY OF STATE FOR INDIA v. RANI ARUNDMOVI DEBI. (1881) 8 I. A. 172 = 8 C. 95 (107-8) = 4 Sar. 281.

### KHALSAT.

-Unalienated lands - Jaghir village-Meaning of

word when used in reference to.

The term "Khalsat" means when applied to (unaliena-ted) lands 'those of which the revenue remains the property of Government not being made over in jaghir or inam to any other parties. When used in regard to a jaghir village, it

#### KHALSAT-(Contd.)

means land which is absolutely the property of the jaghirdar not being made over in inam to any other parties (388). Wallis.) LAXMANRAO MADHAVRAO v. (Sir John (1927) 54 I.A. 380 = SHRINIVAS LINGO.

51 B. 830 = 27 L. W. 642 = 46 C. L. J. 393 = 39 M. L. T. 527 = 29 Bom. L. R. 1484 = A. I. R. 1927 P.C. 217 = 53 M. L. J. 475.

#### KHANDAN.

-Meaning of.

The word "khandan" ordinarily refers to the group of descendants who constitute the family of the progenitor. (Lord Atkinson.) BHAIYA SHER BAHADUR v. BHAIYA (1913) 41 I.A. 1= GANGA BAKHSH SINGH.

36 A. 101 (122) = 18 C. W. N.401 = 15 M. L. T. 169 = (1914) M. W. N. 184 = 19 C. L. J. 277 =

16 Bom. L.R. 306 = 17 O.C. 68 = 12 A.L.J. 188 = 22 I.C. 293 = 26 M. L. J. 291.

-Sec also HINDU LAW-WILL-WORDS IN.

#### KHIRAJ.

-Meaning of.

Khiraj means assessment to the Government (109), RAJA LEELANUND SINGH (Mr. Pemberton Leigh.) BAHADOOR P. GOVERNMENT OF BENGAL.

(1855) 8 M. I. A. 101 = 1 Suth. 248 = 4 W. R. 77 (P. C.) = 1 Sar. 505.

### KHORPOSH GRANT.

- Duration of -Minerals-Grantee's right to-Presumption-Terms of grant not known.

It remained only to say what could be presumed as to the nature of a Khorposh grant the existence of which is not disputed, but of the terms of which there is no direct evidence. Both the Courts in India held that the most that could be assumed as to the duration of such a grant was that it was for the life of the grantee. They further held that such a grant, regarding it as one for the life of the grantee, could not be presumed to be more than a grant of rents and profits, and could not be presumed to carry with it a right to open mines and remove minerals, which are a portion of the soil. In these conclusions their Lordships concur (191). (Sir Arthur Wilson.) TITURAM MUKERJI 7. COHEN. (1905) 32 L. A. 185 = 33 C. 203 (217) = 2 C. L. J. 408 = 9 C. W. N. 1073 = 7 Bom. L. R. 920 = 3 A. L. J. 59 = 8 Sar. 908 = 15 M.L.J. 379.

#### KHOT.

-Forests-Proprietorship of soil-Timber-Kight to -Agreement between khot and Government - Construction.

In the suit out of which the appeal arose the plaintiff claimed against the conservator of Forests in the Presidency of Bombay and the Sub-Collector of Kolaba in the Tanna Zillah, a three-fourths share of the proceeds of certain teak and izaili timber which he alleged was cut down by the Government in the village of Pigode. The plaint stated that the plaintiffs' share in the village of Pigode was acquired by him as the proprietor thereof, and he stated that it was his watani (hereditary) khoti and izafati (village). The principal question was whether he was the proprietor of the soil of three-fourths of the village, and as such proprietor entitled, as he alleged, to three fourths of the jungle, including teakwood as well as izaili.

The plaintiffs' rights under the izafati title depended upon two sunnuds, one dated in 1653, and the other in 1722. The effect of the first document was held to be simply to give the grantee as the Collector of the revenue certain perquisites arising out of the dues, and to convert that right, which was then a mere personal right with reversion to the sovereign, into an hereditary right which was to descend to his children and to his children's children. The sunnud of

#### KHOT-(Centd.)

1653 was held to give no proprietary right in the village, no interest in the soil, and no right to the timber. As the sunnul of 1722 was also held not to convey any interest in the soil, and was held merely to give a certain right to certain cesses or dues as the perquisites of the grantee as the Collector of the Government revenue, their Lordships held that plaintiffs' izafati rights did not give him the right of proprietorship (58-9).

As regards plaintiffs' right to the proprietorship of the soil and to the timber upon it, by virtue of his khoti, it appeared that an express agreement was entered into on the part of the Khot that he would preserve all the trees in the Government reserves, and that he would preserve the teakwood trees that might be growing in the village in places other than the survey numbers.

Held, that the plaintiff could not in the face of that agreement, whatever his rights might have been as a Khot, maintain that he had the proprietary title to the threefourths of the whole jungle (forest) of the village, including teakwood as well as inferior wood (61).

Held, affirming the High Court, that the plaintiff's suit ought to be dismissed with costs. (Sr. Barnes Peaceck.) NAGARDHAS SANBHAGYADAS P. THE CONSERVATOR OF FORESTS AND THE SUB-COLLECTOR OF KOLABA.

(1879) 7 I.A. 55=4 B. 264=4 Sar. 89=3 Suth. 700.

- Proprietorship of soil-Right of.

Without expressing any opinion that no Khot is or can be the proprietor of the soil, it is sufficient to say that it is clear that the proprietorship of the soil is not vested in every Khot (60). (Sir Barnes Peaceck.) NAGARDHAS SAN BHAGYADAS?. THE CONSERVATOR OF FORESTS AND SUB-COLLECTOR OF KOLABA. (1879) 7 I. A. 55 = 4 B. 264 (272) = 4 Sar. 89 = 3 Suth. 700.

### KHUDKASHT.

- Penning of Bihar.

The term Khudkasht is in common use in this part of Bihar as a synonym of Sir. Khudkasht literally means "one's own cultivation" (180). (Mr. Ameer Ali.) RAJA DAKESHWAR PRASAD NARMN SINGH P. GULAB KUAR. (1926) 53 I. A. 176-5 Pat. 735-7 P. L. T. 483-A. I. R. (1926) P. C. 60-97 I. C. 217.

### KUCH BEHAR FAMILY—BAIKUNTHPUR BRANCH

--- Origin and history of. (Sir Richard Couch).
FANINDRA DEB RAI KAT v. KAJESWAR DASS.
(1885) 12 I. A. (72.7) = 11 C. 463 (471.2) = 4 Sar. 610.

#### KUDI MIRAS.

PERMANENT TENANCY — PRESUMPTION OF — KUDI-MIRAS. (1923) 51 I. A. 83 (99) = 47 M. 337.

#### KUMRIS.

#### KUNJPURA RAJ.

-Crigin of. See HINDU LAW-IMPORTIBLE ESTATE
-KUNJPURA RAJ. (1912) 39 I. A. 85 (89-90).

#### ACHES.

BENAMI.

DEED-CONSIDERATION FOR-SUIT TO RECOVER.
DEED-SUIT TO SET ASIDE.

DEMURRER-DEFENDANT PLEADING.

HINDU LAW-WIDOW-ALIENATION BY-REVER-SIONER'S SUIT TO RECOVER PROPERTY SUBJECT OF.

LIMITATION-PERIOD OF, ALLOWED BY LAW,

#### LACHES-(Contd.)

LONG POSSESSION-CLAIM AGAINST.

MERCANTILE TRANSACTION.

MESNE PROFITS.

PARTY GUILTY OF.

PRACTICE OF, IN INDIA IN COUNTRY CASES.

PRESUMPTION ADVERSE FROM.

RELEASE-BILL BASED ON.

SPECIFIC PERFORMANCE.

#### Benami.

——Suit raising question of—Institution of—Laches in regard to—Effect. See BENAMI—LACHES IN INSTITUT-ING, ETC.

#### Deed-Consideration for- Suit to recover.

 Laches in instituting—Presumption adverse from— Recital of receipt of consideration in deed. Src DEED— CONSIDERATION FOR—SUIT TO RECOVER.

(1844) 3 M. I. A. 347 (357-8).

#### Deed-Suit to set aside.

----Laches in instituting-Presumption adverse from.

See DEED-SETTING ASIDE OF-SUIT FOR-LACHES IN

INSTITUTING.

#### Demurrer-Defendant Pleading.

-Lacker when effectual in favour of.

It is unquestionably true that there are cases in which length of time, the lapse of time appearing on the Bill since the right to sue arose, may be effectual in favour of defendants on a demurrer; but such cases, especially when the bar is not statutory must be perfectly clear (13) (Lord funtice Knight Bruce). SREEMUTHY BRINDASOONDERY DOSSEE : ROODERPERSAUD MOOKERJEE.

(1857) 7 M. I A. 4=1 Sar. 587.

# Hindu Law—Widow—Alienation by—Reversioner's suit to recover property subject of.

Delay in instituting—When not a ground for adverse inference. See HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR—DELAY IN INSTITUTING.

(1914) 18 C. W. N. 718 (722).

### Limitation-Period of, allowed by Law.

-Culting down of, on ground of laches-Permissibility.

The laches of a party in taking steps to enforce his rights would be a circumstance entitled to great weight in a case in which there is a substantial conflict of evidence touching the right sought to be enforced. But the laches of parties cannot estop them from asserting their right, if it exists, and where the question is one of title, the right to assert that title must be determined by the law of limitation as it stands. No court of justice would, therefore, be justified in diminishing the period allowed by the law for the assertion of that title on the ground of the taches of the party in the prosecution of his rights (54). (Sir Jamti W. Celvile). JUGGERNATH SAHOO v. SYEU SHAH MAHOMED HOSSEIN. (1874) 2 I. A. 48 = 14 B. L. B. 386 = 23 W. B. 99 = 3 Sar. 419 = 3 Suth. 61.

Long possession-Claim against.

Possession - Long Possession - Long

#### Mercantile transaction.

——Suit upon—Laches in case of—Propriety. St. LACHES—PRACTICE OF, IN INDIA, ETC. (1924) 52 I. A. 126 (130) = 52 C. 408.

#### Mesne Profits.

-RIGHT TO-LACHES-Effect of. See MESNE PROFITS
-RIGHT TO-LACHES-EFFECT OF.

LACHES-(Contd.)

#### Party guilty of.

Onus on. See Possession-Long possession. (1871) 2 Suth. 525 = 17 W. R. 108.

-Responsibility of, for loss of evidence and other difficulties in the case.

The suit was to recover possession of certain mouzahs included in a Mokurary Istimrary lease under which the defendants claimed to hold the mouzahs. The lease in question was of the year 1795. The grant according to the plaintiff was to H alone, and for life only, in which case the tenure terminated in or about 1819, when H died. The suit was instituted only in 1851. The defendant's case was that the grant was to H and his brothers jointly, and to their respective heirs. The question for decision was which version of the nature of the tenure was correct.

Held that the plaintiff had been guilty of great laches in the assertion of his alleged rights, and that the difficulties (if any) which arose from the loss of evidence, and the other consequences of lapse of time, ought, in justice, to fall on him (25). (Lord Justice Knight Bruce). MUSSAMUT KHOOB CONWUR v. BABOO MOODNARAIN SINGH.

(1861) 9 M. I. A. 1=1 W. B. 36 (P. C.)=1 Suth. 465= 1 Sar. 813.

### Practice of, in India in country cases.

It is familiar enough that in country cases all over India claimants intentionally defer the commencement of suits till they are all but time-harred-a practice so deeply rooted, that it is useless to protest against it, but it is with equal surprise and regret that their Lordships notice the extension of this evil practice to mercantile transactions in Calcutta. (130). (Lord Sumner.) SARAJMULL NAGORE-MULL P. THE TRITON INSURANCE CO., LTD.

(1924) 52 I. A. 126 = 52 C. 408 = 23 A. L. J. 105 = (1925) M. W. N. 257 = 6 L. R. P. C. 66 = 27 Bom. L. R. 770 = 29 C. W. N. 893 =

A. I. B. (1925) P. C. 83 = 86 I. C. 545 = 49 M. L. J. 136

Presumption adverse from.

Some presumption usually arises against those who slumber on their rights (600). (Sir Robert P. Collier.) SHAM CHAND BYSACK P. KISHEN PROSAND SARMA

(1872) 14 M. I. A. 595 = 18 W. R. 4 = 2 Suth. 587 = 3 Sar. 113.

Apart from any bar of limitation which the delay in the institution of a suit may entail, the reluctance, or, at any rate, prolonged failure of the plaintiffs to assert their claim in the Civil Courts until long after the urgent necessity of such action had been pressed upon them, imposes upon the Court the clear and imperative duty of cautious reserve before accepting their contention (803). (Sir Lawrence Jenhint.) DAKAS KHAN v. GHULAM KASIM KHAN.

(1918) 45 C. 793 = 24 M. L. T. 271 = 28 C. L. J. 441 = 20 Bom. L. B. 1068 = 26 P. L. B. 1919 = 1 P. W. B. (Bev.) 1919=9 L. W. 558=48 I.C. 473.

-Churs-Claim to-Presumption greater in case of. If some presumption usually arises against those who slumber on their rights, it is the stronger when applied to rights of this description (churs formed in the course of a river), the subject-matter of which is in a constant state of change, and the proof of which is rendered more than usually difficult by lapse of time (600). (Sir Robert P. Collier.) SHAM CHAND BYSACK D. KISHEN PROSAUD SARMA.

(1872) 14 M. I. A. 595 = 2 Suth. 587 = 3 Sar. 113 = 18 W. B. 4.

-Hindu females-Inapplicability to.

She does not appear to have preferred any claim to it during the elder son's lifetime; but no inference unfavourable to her subsequent claim should be drawn from that circumstance alone, as Hindu females are often ignorant of to the demurring defendant to insist upon the same ground

LACHES-(Contd.)

Presumption adverse from-(Contd.)

and unable to assert their rights. (Lord Cairns.) SRI GAJAPATHI RADHIKA PATTA MAHA DEVI GARU P. SRI GAJAPATHI NILAMANI PATTA MAHA DEVI GARU.

(1870) 13 M. I. A. 497 (510-1) = 14 W. R. P. C. 33 = 6 B. L. R. 202 = 2 Suth. 365 = 2 Sar. 601.

Hindu Law-Joint family-Partition-Suit for, See HINDU LAW--JOINT FAMILY-PARTITION-SUIT FOR -DELAY IN INSTITUTING.

(1928) 56 M. L. J. 435 (440).

- Mesne profits-Claim to. See MESNE PROFITS-RIGHT TO-LACHES.

-Rent sale under Bengal Regulation 8 of 1819-Suit to set aside.

The suit is brought to set aside the sale of a Putnee Talook, which took place as long ago as 1849. There was considerable delay, even in the institution of the former suit to set aside that sale, which was not brought till the year 1856. The case is obviously one in which it was the duty of the Courts below, as it is the duty of their Lordships, to look closely to the right of the appellants, the plaintiffs in the suit, to impeach proceedings which took place so long ago, and under which so many fresh rights may have accrued (169). (Sir James II' Colvile.) WATSON & CO. v. COLLECTOR OF RAJ SHAHYE. 3 B. L. R. 48=

(1869) 13 M. I. A. 160 - 12 W. R. P. C. 43 = 2 Suth. 269 = 2 Sar. 500.

-Subject-matter of claim in a constant state of change -Presumption greater in case of. Sre Laches-Pre-SUMPTION ADVERSE FROM-CHURS.

(1872) 14 M. I. A. 595 (600).

-Weight of-Evidence strong and satisfactory in favour of delinquent.

In a suit to recover a sum of money recited in a deed to have been paid, on the ground that it had not in fact been so paid, Arld that the delay in the institution of the suit was undoubtedly a circumstance deserving of consideration, and that it was a circumstance of some weight but not of any great weight when the evidence in, and the facts of, the case were strong to prove non-payment (357-8).

It may have been that the plaintiff was prevented from instituting the suit sooner by delusive and evasive promises made from time to time (358), (Mr. Baron Parke.) CHOWDRY DEBY PERSALLS, CHOWDRY DOWLUT SINGH, (1844) 3 M. I.A. 347=6 W.B. 55 (P.C.)=1 Suth. 161 = 1 Sar. 288

### Release-Bill based on.

Demurrer for want of equity-Maintainability.

Disputes arose in a joint Hindu family, and a suit was brought in 1810 in the Supreme Court to ascertain the ress pective rights of the members of the family in the joinestate. In 1811, a compromise was entered into by two of the defendants, members of the family, and the plaintiffi who executed a release to them. The litigation of the sut, continued, and in 1820, these two defendants were allowed by the Court to rely upon the release, and the plaintiff to impeach it, but it did not appear that the release had ever been the subject of adjudication. In 1853, the cause wat heard upon further directions, when a considerable sum was found to be due to the then plaintiff, by one of these defendants, setting up the release, which was charged by the bill not to have been at issue in the previous litigation, a demurrer was filed for want of equity, and allowed by the Supreme Court. Such demurrer over-ruled upon appeal, as it was not clear by the bill that the length of time from the date of the release operated as a bar to the relief sought, so as to allow of such a demurrer. Liberty, however, was allowed LACHES-(Contd.)

Release-Bill based on-(Contd.)

of defence by answer, and no costs given. (Lord Justice Kinglet Bruce.) Skeemuthy Brindsbondery Dossee e. Rooderpersaud Mooreejee.

(1857) 7 M. I. A. 4-1 Sar. 587.

#### Specific Performance

——Right to—Laches in instituting suit—Effect of. See SPECIFIC PERFORMANCE—RIGHT 10—LACHES IN IN-STITUTING SUIT.

#### LAKHIRAJ LANDS.

WHAT ARE.

HEREDITARY AND TRANSMISSIBLE ESTATE IN.

LAW RELATING TO.

PERMANENT SETTLEMENT—LAND HELD RENT-FREE UNDER SUBSISTING SANAD AT TIME OF—TREAT-MENT AS LAKHIRAJ OF.

RENT-PAYING LANDS—CLAIM FALSE TO, AS BEING LAKHIRAJ.

RESUMPTION SUIT BY GOVERNMENT—DEFENCE CLAIM TO HOLD SUIT LAND AS LAKHIRAJ IN.

REVENUE-ASSESSMENT TO.

VOIDABLE TENURE COMPRISING MOKE THAN 100 BEEGHAS-RESUMPTION OF-LIMITATION.

ZEMINDARY-LANDS WITHIN-ZEMINDAR'S RIGHT IN REGARD TO.

#### What are.

There was another class of lands called Lakhiraj, which, by reason of a special exemption in a royal grant, or by having been legally devoted to religious uses, or by other means, had become or were claimed by their owners to be free from khiraj or assessment to the Government (109), (Mr. Pemberton Leigh.) KAJA LEELANUND SINGH BAHADOOR v. GOVERNMENT OF BENGAL.

(1855) 6 M. I. A. 101=1 Suth. 248=4 W. R. 77 P. C. = 1 Sar. 505.

### Hereditary and transmissible estate in.

- Title to-Proof of-Quantum.

In the year 1836, upon the death of Tegum Sumroo, the Government of India resumed her pergunnah of Badshapur Jarma, lying on the west bank of the Jumna river, the revenue whereof was Rs. 79,000 and odd. It was claimed by the Begum's heirs as an " Altumgah Jageer," i.e., a grant under the royal seal. To try the right of the Government to effect that annexation the suit out of which the appeal arose was brought on behalf of Mr. Dyre Sombre, claiming as heir of the Begum Sumroo, and represented by the appellants before their Lordships. The appellants did not claim merely a Zemindary interest in the lands. They claimed to hold them rent free; that is, free from assessment to Government revenue. The question for decision was whether they had established by trustworthy evidence the title to the suit estate on a rent free tenure (capable of passing to Mr. Dyre Sombre by the deed of gift, or subsequent will of the Begum Sumroo.

Weighing the direct evidence in favour of the Sunnuds, weak and suspicious as it was, against the presumption arising from the non-production of the original sunnud, and the failure to account for it; and against the still stronger presumption arising from the acts, representations, and conduct of the Begum in her lifetime, their Lordships came to the conclusion that the appellants failed to establish the title which they set up (31.2)

To decree in favour of a title to an hereditary and transmissible lakhiraj estate on evidence so untrustworthy, would be contrary to the long established practice of the Courts in India, and such a decision would be a dangerous precetime in.

#### LAKHIRAJ LANDS-(Contd.)

Hereditary and transmissible estate in—(Contd.)

dent (32). (Lord Hatherley, L. C.) FORESTER v. SECRETARY OF STATE FOR INDIA. (1872) Sup. I. A. 10=

12 B. L. R. 120=18 W. R. 349=3 Sar. 1=

1 P. R. 1872=2 Suth. 628.

#### Law relating to.

Perpetual settlement—Provinces embraced by—Law in. (Sis James W. Colvile). HURRYPUR MOOKHO-PADHYA v. MADUB CHUNDER BABOO.

(1871) 14 M. I. A. 152(164-168) = 20 W. R. P. C. 459 = 8 B. L. R. 566 = 2 Suther. 484 = 2 Sar. 713

Permanent settlement—Land held rent—free under subsisting sanad at time of—Treatment as Lakhiraj of.

—Presumption of—Title on which Lakhiraj land of sthat extent held—Validity of—Questioning of—Right of Government and of Zemindar. Six PERMANENT SETTLEMENT—LAND HELD RENT-FREE, ETC.

(1870) 13 M. I. A. 438 (457).

#### Rent-Paying lands-Claim faise to, as being Lakhiraj.

- Greenments' right in case of Resumption-Ejectment-Suits for.

If the holders of rent-paying lands assert a ground less claim to hold them free of rent, as Lakhiraj, that claim would not destroy their proprietary right in the lands themselves, but simply subject their owners to liability to be sued in a resumption suit, the object of which is, not to obtain a forfeiture of the lands, but to have a decree against the rent-free tenure, involving the measurement and assessment of the lands, and the liability of the person in possession, if he wishes to retain possession, to pay the revenue so assessed (300). (Lord Romilly). Gunga Gobind Mundal v. Collector of the 24 Pergannahs.

(1867) 11 M. I. A. 345=I Suther. 676=7 W. B. 21= 2 Sar. 284.

#### Resumption suit by Government—Defence claim to hold suit land as lakhiraj in.

- Onus of Proof in case of Quantum of Proof.

The Regulations touching ordinary resumption suits by Government cast upon the person who claims to hold land lakhiraj, or free from assessment to Government revenue, the burden of establishing a title recognised by law as sufficient to give that exceptional immunity, and require very stringent proof in such cases (19).

Regulation II of 1819, by its 28th section provides that an ancient sunnud shall not be treated as sufficient proof of its contents on the faith of its seal, or without confirmatory evidence. And S. 3 of Regulation 14 of 1825; also shows the high degree of proof required. Nor are such provisions unreasonable, since every grant of this kind implies a perpetual alienation in favour of some individual, and his heirs, of a portion of the land revenue (the impost, if impost it is to be called, which immemorial custom has made the most natural and tolerable to the natives of India), and thus operates not only in derogation of the rights of future governments, but to the injury of the subject, on whom the incidence of taxation for the necessary purposes of Government will be the heavier, in proportion as the public revenue is wasted by such alienations (19). (Lord Hatherley, L.C.) FORESTER F. SECRETARY OF STATE FOR INDIA.

(1872) Sup. I. A. 10=12 B. L. R. 120=18 W. B. 349= 3 Sar. 1=1 P. R. 1872=2 Suth. 628.

### Revenue-Assessment to.

Government's right of-Limitation-Bar by-Ples
of-Privy Council Appeal-Maintainability for first

## LAKHIRAJ LANDS-(Contd.)

Revenue-Assessment to-(Contd.)

The point that the right of the Government to assess the villages in suit was barred by cl. (2), S. (2) of Regulation II of 1805, by reason of 60 years having elapsed since the right of Government to assess the lands had accrued, was not raised in the Courts below, and was not distinctly stated in the printed cases before the Privy Council. The point arose incidentally in the course of the discussion at the hearing of the appeal before the Privy Council. The question was whether it ought to be allowed to be raised or not. It was suggested, as an objection to the point being allowed to be raised, that there might be circumstances which were not known to their Lordships, which might prevent the application of a law which apparently was distinctly applicable to the case.

Held, over-ruling the objection, that the point must be

allowed to be raised (510).

Now, in the first place, the proceedings in the case were not proceedings in a regular suit. There were no pleadings, and, therefore, it would be rather hard to bind the parties by an objection of so technical a nature, especially if on investigation it is found to have a valid ground of defence (509). (Mr. Pemberton Leigh). MAHARAJA DHEERAJ RAJA MAHATAB P. THE GOVERNMENT OF BENCAL. (1849-50) 4 M. I. A. 466=1 Sar. 385.

-Government's right of -Limitation - Bar of by non-

exercise of right for 60 years -Bengal Regl. 11 of 1805-

S. 2, cl. (2)-Applicability.

In a case in which the appellant, the Raja of Burdwan, claimed the exemption of 18 villages in his Zemindary from assessment to the Government revenue, as being Lakhiraj lands, held that the right of the Government to assess the villages in question was barred by the clause (2) Section 2. of Regulation II of 1805, by reason of 60 years having elapsed since the right of Government to assess the lands had accrued (508-10).

It appears to their Lordships that the claim would be barred by the lapse of 60 years in this case, unless the case can be taken out of the operation of the Regulation of Limi-

tation upon the ground stated in the argument.

It was said that the limitation which is contained in the Regulation of 1805 does not apply, because it refers to Courts of Civil Justice; that is very true, but it is quite clear, that the principle of that Regulation would be rendered wholly nugatory, unless it were extended to the case which is now before their Lordships, in which the Collector's Court must be considered for this purpose a Court of Civil Justice. There is, therefore, nothing in that ground of exception (508-9). (Mr. Pemberton Leigh). MAHA RAJA DHEERAJ RAJA MAHATAB P. THE GOVERNMENT OF BENGAL (1849 50) 4 M I.A. 466 = 1 Sar. 385.

-Liability for-Exemption from-Claim to-Exidence-Decennial and Permanent settlement-Exclusion or

omission of land at lakkiraj from-Effect.

Under Regulation XIX of 1793, the exclusion or omission from the Decennial and Permanent Settlement, of lands, as Lakhiraj, is of no weight, as evidence of title to exemption of such lands from assessment to Government revenue. The effect of such exclusion is simply to reserve such cases for inquiry, according to the directions of the Regulations, whether there is a lawful exemption or not (496). (Mr. Baren Parke). MAHA RAJA DHEERAJ RAJA MAHATAB P. THE GOVERNMENT OF BENGAL. (1849-50) 4 M. I. A. 466 = 1 Sar. 385

- Liability for-Exemption from-Claim to-Onus of

Under Regulation 14 of 1825 the general presumption is Proof of. to be in favour of the liability of Lakhiraj land to Govern ment revenue, and the claimant of Lakhiraj is to establish

## LAKHIRAJ LANDS-(Contd.)

Revenue-Assessment to-(Contd.)

his claim, not by inferences and presumptions, but by the positive proof required by the Regulations (497). (Mr. Barou Parke). MAHA RAJA DHEERAJ RAJA MAHATAB . THE GOVERNMENT OF BENGAL.

(1849-50) 4 M. I. A. 466 = 1 Sar. 385

- Liability for-Exemption from-Claim to-Prin ciple of decision in case of.

On a claim to the exemption of lands in a Zemindary from assessment to the Government revenue, as being Lakhiraj lands, the duty of the Court is to decide upon the claim according to the express provisions of the Regulations of the East India Government bearing upon the subject. It must consider whether such proofs of exemption, or right to exemption, as those Regulations require, have been given. The Court is not at liberty to decide the case upon the same principle of long and quiet enjoyment, on which the Court should act if a claim for some similar right or exemption were before it, in an English Court of Justice, without express statutory regulations for the conduct of the inquiry (493-4). (Mr. Baren Parke.) MAHA RAJA DHEERAJ RAJA MAHATAB T. THE GOVERNMENT OF BENGAL,

(1849.50) 4 M. I. A. 466-1 Sar. 385.

-liability for-Exemption from-Claim to, based ongrant prior to 12-8-1765-Proof of Bengal Regula-tion XIX of 1793 and XIV of 1825.

By the Regulations XIX of 1793 and XIV of 1825 proof is required from a person claiming lands to be exempt from assessment to Government revenue, as being Lakhiraj lands, of a grant made by some one, of lands, to hold in Lakhiraj, and by hereditary right, prior to the 12th of August, 1765, and that possession was hone fide taken under it, or an enjoyment of lands, as such, and descendible to heirs at and since that time (497).

The claim of the appellant was to the exemption of lands, consisting of 18 villages, in his Zemindary, from assessment to the Government revenue, as being Lakhiraj lands. The question was whether the appellant's title by a grant made prior to the 12th of August, 1765, had been made out,

Held that it had not been, first, because the grantee in Lakhiraj, B, was not proved ever to have been bona fide in possession after the grant; recordly. T, the grantor, afterwards, and before the 12th of August, 1765, was admitted to have got back the property (whether by purchase or not, or for a full consideration, did not appear), and was sued for the arrears of a charge upon it made by him to the said B, in 1762, which became subsequently the subject of a suit, in 1792, by his heir against the heir of T; so the heirs of the grantor and not of the grantee, remained in posse s'on; thirdly, the grant was stated by the appellant's vakil, to have been made to M, who was the managing Dewan in the name of B, and such a grant bore with it the strongest suspicion of being a fraudulent contrivance, to deprive the ruling power of its lawful share of the revenue, and to be exactly such a transaction, as it was the avowed object of the Regulation to defeat (497-8).

If the deed had been made bona fide, the grantee proved to have been in possession, and the grantor proved to have bona fide purchased afterwards from him the property for a valuable consideration, and so acquired all its rights, the heirs might have been entitled (498). (Mr. Baron Parke.) MAHA RAJA DHEERAJ RAJA MAHATAB P. THE GOV. (1849-50) 4 MIA. 466= ERNMENT OF BENGAL.

-Liability for-Exemption from-Claim to, based on ratification and confirmation by Government-Proof of-Attachment of lands for arrears of recenue and release thereof by order of Governor General in Council as being Lakhiraj-Effect.

#### LAKHIRAJ LANDS-(Contd.)

#### Revenue - Assessment to-(Contd.)

The claim of the appellant, the Raja of Burdwan, was to the exemption of the turuf of Tajpoor, consisting of 18 villages, in his Zemindary, from assessment to the Government revenue, as being Lakhiraj lands. The question was whether the claim could be supported on the ground that it had been ratified and confirmed by the Government.

In the year 1795 the Zemindaries of the then Raja of Burdwan were attached, and the collection of the revenue derivable from them, was made by the officers of Government. The suit villages, then in possession of the wives and sisters of the Maharaja were attached at the same time. Sometime after the attachment of the zemindary, the title deeds of the villages were deposited in the Collector's office, and a reference of the case was made to the Governor-General in Council. In 1795, in consequence of an order made by the Governor-General in Council, the Maharaja was again put in charge of his zemindary lands, and the papers of the zemindary delivered to him, and the title-deeds of Tajpoor, etc., ordered to be returned to Maharanees.

Held that the claim could not be supported on the ground that it had been ratified and confirmed by the Government by the transactions in 1795 (500).

The transactions in 1795 clearly do not fall within the terms of the Regulation, which does not give the power of confirmation to be exercised in that manner; and we cannot help thinking, that it would be a strange thing to hold that this order, which, in truth, is the only evidence of enjoyment offered on the claimant's part, and which, by the Regulation, has no direct effect, in establishing the exemption, should yet be sufficient evidence for the claimant of everything necessary to give him a title (500-1). [Mr. Baren Parks.] MAHA RAJA DHEERAJ RAJA MAHATAB. THE GOVERNMENT OF BENGAL.

(1849-50) 4 M. I. A. 466 = 1 Sar. 385.

Liability for - Exemption from Claim to, on ground of enjoyment of land as lakhiraj at and from 12-8-1765-Proof A-Onus - Quantum - Hereditary succession-Exidence of Bengal Regulations XIX of 1793 and XIV of 1825.

The next ground on which the claim (of the exemption of lakhiraj land from assessment to Government revenue) is rested, is that of enjoyment, at and from the 12th of August, 1765, as Lakhiraj, which would be a good title, irrespective of the deed (of grant prior to 12th of August, 1765).

Now by the terms of Regulations (XIX of 1793 and XIV of 1825), the claimant is to prove this, and the reason he is called upon to give such proof, is, there being a strong presumption against the validity of such titles (as appears by the recitals in the Regulations themselves), and in order to guard the Government against the frauds of its own officers. It is not enough then for a claimant to say, "you, the Government, could prove the payment of the revenue, if any was paid, and I rely upon the absence of your evidence to make out any title and show that it was not paid." He must show his own title to exemption, and prove by some evidence on his part, that no revenue was collected, and must carry back that evidence to 1765. We should suppose that in the Collector's Cutchery for that District, evidence might be found of the receipt of the revenue, as far back, which might afford an inference of the non-payment for this property. It is clear, however, that the Regulations require the claimant to prove his possession, and it is presumed that the Government would not require a proof which could not reasonably be given, if the exemption was a just and fair one (498.9).

#### LAKHIRAJ LANDS-(Contd.)

#### Revenue-Assessment to-(Contd.)

Further, if the case is to rest on possession, there must be evidence, that it was an hereditary possession, or possession of exemption, descendible to heirs according to Regulation XIV of 1825 (500). Mere enjoyment in succession is, by the express terms of the Regulations, not enough (500).

Held, on the evidence in the case, that the appellant who claimed exemption from assessment to Government revenue of certain lands in his zemindary, as being Lakhiraj lands, had failed to establish his claim on the ground of enjoyment, at and from the 12th of August, 1765, as Lakhiraj (500). (Mr. Baron Parke.) MAHA RAJA DHEERAJ RAJA MAHATAB 2: THE GOVERNMENT OF BENGAL. (1849 50) 4 M.I.A. 466=1 Sar. 385.

# Voidable tenure comprising more than 100 beeghas —Resumption of—Limitation.

- Gevernment-Zemindar-Resumptions by-Distinc-

Whatever doubts may at one time have existed, it became unquestionable, after the decision of this Committee in 4 M.I.A. 466, that the right of the Government to resume a voidable Lakhiraj tenure comprising more than 100 beeghas was subject to the sixty years' limitation; and that by parity of reasoning the right of a zemindar to resume a voidable Lakhiraj tenure, comprising less than 100 beeghas, was subject to the twelve years' limitation (167). (Sir James W. Coltsile.) HURRYHUR MOOKHOPODHYA 1. MADUB CHUNDER BABOO. (1871) 14 M.I.A. 152=

20 W. R. (P.C.) 459 = 8 B.L.R. 566 = 2 Suth. 484 = 2 Sar. 713.

#### Zemindary—Lands within—Zemindar's right in regard to.

--- Resumption and re-assessment - Enhancement of rent.

If the lands, in respect of which enhancement of rent is claimed, are alleged to be Lakhiraj lying within the plaintiff's eemindary, the appropriate remedy of the latter is by a suit for resumption and re-assessment. (274) (Sir James W. Colvile.) RAJAH SUTTOSURRUN GHOSAL v., MOHESH CHUNDER MITTER. (1868) 12 M.I.A. 263=

11 W. R. (P.C.) 10 = 2 B.L.B. (P.C.) 23 = 2 Suth. 180 = 2 Sar. 420.

#### LAMBARDAR.

——Office of - Nature of, and fitness for. See HINDU LAW-INHERITANCE-PRIMOGENITURE-CUSTOM OF - EVIDENCE-LAMBARDAR. (1896) 23 I. A. 147=19 A. 1 (14).

#### LAND.

## Agreement to give, free of rent whenever required.

Validity-Perpetuity-Rule against.

If the case be regarded in another light, namely, an agreement to grant in the future whatever land might be selected as a site for a temple—as the only interest created would be one to take effect by entry at a later date, and as this date is uncertain, the provision is obviously bad as offending the rule against perpetuities, for the interest would not then vest in present, but would vest at the expiration of an indefinite time which might extend beyond the expiration of the proper period (380). (Lord Buckmaster.) MAHARAJ BAHADUR SINGH v. BALCHAND.

(1920) 48 I.A. 376 = 2 Pat. L.T. 131 = (1921) M. W. N. 157 = 3 U.P.L.B. (P.C.) 29 = 14 L.W. 254 = 61 I.C. 702,

Agricultural purposes—Land held for.

Meaning of. See AGRA TENANCY ACT OF 1901:

(1924) 51 I. A. 281 (287) = 46 A. 831.

LAND-(Contd.)

## Building erected on another's

Owner of land standing by and not preventing party building from doing to-Estoppel from claiming building

by reason of - Condition.

The proposition that "If a man permits another to build upon his land, and, with the knowledge that the building is being erected, stands by and does not prevent the other from doing so, then, no doubt, equity comes in. and by the rules of equity, which in this respect are the same as the rules of law, he cannot eject that other person" is a loose and inadequate statement of the rule of equity. The proposition, if it were carefully supplemented, might possibly be made to apply to the case where the owner of land sees another person erecting buildings upon it, and knowing that such other person is under the mistaken belief that the land is his own property, purposely abstains from interference, with the view of claiming the building when it is (Lord Watson.) LALA BENI RAM v. KUNDAN (1899) 26 I. A. 58 (62-3) - 21 A. 496 (502) erected. 3 C.W.N. 502=1 Bom L R 400-7 Sar. 523. LALL.

There is not in the laws or customs of India any traces of the existence of an absolute rule of law that whatever is affixed or built on the soil becomes apart of it, and is subjected to the same rights of property as the soil itself (224). (Sir Lancelot Sanderson.) NARAYAN DAS KHETTEY : JATINDRA NATH ROY CHOWDHURY

(1927) 54 I.A. 218 - 54 C. 669 -1927 M.W.N. 461 = 102 I. C. 198 (2)= 29 Bom. L. R. 1143 = 46 C.L.J. 1

31 C.W.N. 965 = 8 Pat. L.T. 663 = 26 L.W. 848 A I.R. 1927 P.C. 135 = 26 A.L.J. 1 = 53 M.L.J. 158.

-Ownership of -Party building in possession of land as meretrespasser-Party building in possession of land under bona fide claim of right-Distinction.

There is no absolute rule of law in India that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself. As a general rule, a person who is in possession of the land of another under any bona fide title or claim of title, and who erects buildings or makes other such improvements thereon, is entitled either to remove the structure or the materials or to be paid the value thereof by the owner.

Quaere, whether the same right is available to a person who was in possession as a mere tresposser when he erected the building or made other such improvement. (Lord Carson.) VALLABHADAS NARANJI v. DEVELOPMENT OFFI-(1929) 56 I.A 259 - 53 B. 589 31 C. W. N. 785 = 27 A. L. J. 707 = CER, MADRAS.

31 Bom. L. R. 831 = 30 L.W 69 = 50 C. L. J. 45 = 117 I. C. 13 = (1929) M. W. N. 822 -A. I. R. 1929 P C. 163 - 57 M. L. J. 139.

Ownership of - Rights of parties-English and

According to the English law, buildings erected on the Mahomedan lates. land of another without that other's consent become attached to the land (130). Under the Mahomedan law, on the other hand, the land owner does not become entitled to the buildings. Under that law the person who erected the building will be directed to clear the land and restore it to the proprietor. If removal be injurious to the land, the proprietor of the land has the option of paying to the proprietor of the building a compensation equal to its value (134). (Lord Hobhouse.) SECRETARY OF STATE FOR FOREIGN AFFAIRS v. CHARLESWORTH, PILLING AND CO.

(1901) 28 L. A. 121 = 26 B.1 (15-6) = 8 Sar. 1.

Covenant running with.

Agreement creating. See LAND-PRESENT ESTATE (1920) 48 I. A. 376. OR INTEREST IN.

LAND-(Contd.)

District in which it is situate-Decision as to.

-Binding nature of, in subsequent suit. See C. P. C. OF 1908, S. 11-CASES UNDER-LAND.

(1872) 18 W.R. 182.

#### Government land-Canal constructed by private persons on.

-Proprietary right in canal acquired by them-Right to take possession and manage canal for so long as they thought necessary-Deed conferring, on Government. See CROWN-LAND OF-CANAL, ETC.

(1901) 28 I. A. 211 = 28 C. 693 (707-8).

-Rights acquired by--Proprietary right in land and right to have canal irrigated by water from Government river-Conditions-Expectations raised by Government to that effect. See CROWN--LAND OF-CANAL, ETC.

(1901) 28 I. A. 211 - 28 C. 693 (705-6.)

#### Owner of-Creation of interest in land in favour of third party.

Verbal agreement as to, or expectation as to, created or encouraged by landlord-Liability of landlord to make good-Conditions.

If a man under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a certain interest, takes possession of such land with the consent of the landlord, and upon the faith of such promise, or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. (Lord Mocnaghten.) AHMAD YAR KHAN P. SECRETARY OF (1901) 28 I.A. 211= STATE FOR INDIA. 28 C. 693 (705-6) = 5 C. W. N. 634 =

3 Bom. L. R. 799 - 38 P. R. 1902.

## Ownership of-Native ideas as to.

-Community-Individual-Rights of.

The true character of the native title to land throughout the Empire, including South and West Africa :-

With local variations the principle is a uniform one. The notion of individual ownership is foreign to native ideas. Land belongs to the community and not to the individual. The title of the native community generally takes the form of a usufructuary right, a mere qualification of a burden on the radical or final title of whoever is sovereign. Obviously such a usufructuary right, however difficult to get rid of by ordinary methods of conveyancing, may be extinguished by the action of a paramount power which assumes postession or the entire control of the land. (Viscount Haldane.) SOBHUZA II r. MILLER.

(1926) A.I.R. 1926 P.C. 131 (134)= 30 C. W. N. 961 - 99 I. C. 265.

## Present estate or interest in-Agreement creating.

-What amounts to-Covenant running with land-Agreement creating.

An agreement by a Raja provided "that, if the Sitambri Jain Society shall require any place on Parasnath Hill and below thereof for erecting Mandir and Dharmasala, and for doing repairs and making bricks for the said purpose; in that case, I and my beirs shall give for making mandir, dharmasala and bricks, land, stones from the hill and timber, free of costs, and if I and my heirs refuse to give, in that case, the Sitambri Jain Society shall take the same of its own power."

Held, that the agreement did not confer on the Society any present estate or interest in the site, and that the covenant did not, and could not, run with the land, and could not be enforced.

LAND-(Contd.)

Present estate or interest in—Agreement creating —(Contd.)

The agreement did not create in the Jains Society a grant in perpetuity of the Parasnath Hill. (Lord Buckmarter.) MAHARAJ BAHADUR SINGH P. BALCHAND.

(1920) 48 I. A. 376 = 2 Pat. L.T. 131 = (1921) M. W. N. 157 = 3 U.P.L.R. (P.C.) 29 = 14 L.W. 254 = 61 I.C. 702.

Soil of-Rent from-Government's right to.

— Transfer of proprietary right in land—Effect of, on Government's right to rent. See Crown—Land—Soil OF. (1867) 11 M.I.A. 345 (362, 363).

## LAND ACQUISITION ACT (X OF 1870).

——Ss. 39 and 40. Proviso—Compensation money— Apportionment of —Decision under S. 39 as to—Sust to contest correctness of —Maintainability.

Lands situated within the zemindary of the appellant and forming mal lands of his zemindary, were acquired under the provisions of the Land Acquisition Act of 1870. Under S. 14 of that Act the Collector made an award for the whole amount of the compensation. Disputes having arisen between the appellant and the occupiers of those lands with reference to the apportionment of the amount, the question was referred under S. 38 of the Act to a Judge, and he made a decision under S. 39 of the Act as to the proportion in which the compensation money was to be taken by the parties. The appellant, who was dissatisfied with the decision, did not appeal from it, but filed a suit for the recovery of the excess amount in deposit in the collectorate to which he alleged he was entitled out of the compensation amount.

Held, that the suit was unsustainable (93). (Sir Robert P. Collier.) RAJAH NILMONI SINGH P. RAM BUNDHOO ROY. (1881) 8 I. A. 90 = 7 C. 388 =

10 C. L. R. 393 4 Sar. 234.

S. 40. Proviso - Applicability and effect of.

The Proviso to S. 40 of the Land Acquisition Act of 1870 applies only to persons whose rights have not been adjudicated upon in pursuance of Ss. 38 and 39 of that Act, and it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act, to have that claim re-opened and again heard in another suit (92.3). (Sir Robert P. Collier.) RAJAH NILMONI SINGH r. RAM BUNDHOO ROY.

(1881) 8 I. A. 90 = 7 C. 388 (393) = 10 C. L. R. 393 = 4 Sar. 234.

-S. 40, Proviso-Necessity for.

Such a proviso as that in S. 40 of the Land Acquisition Act of 1870, which appears to have been hat a repetition of a provision in a previous Act in pari matiria, is necessary in this, as in almost all Acts of a similar character. It is necessary for the Government, or the person or company entitled to take property compulsorily, to deal with those who are in possession or ostensibly the owners; but it may happen, and frequently does happen, that the real owners, possibly being infants or persons under disability, do not appear, and are not dealt with in the first instance; and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation money (92). (Sir Robert P. Collier.) RAJAH NILMONI SINGH v. RAM BUNDHOO ROY.

(1881) 8 I.A. 90 = 7 C. 388 (393) = 10 C. L. B. 393 = 4 Sar. 234.

# LAND ACQUISITION ACT (I OF 1894).

Collector acquiring land—Conduct of Validity of award—Amount of compensation—Questions as to Bearing on,

### LAND ACQUISITION ACT (I OF 1894)-(Contd.)

The conduct of the Collector acquiring land under the Land Acquisition Act may be directly relevant to the question whether or no his award is valid. Its only relevance to the question of compensation is this—that it might have been found that the average of prices on which he relied was brought about by his own use of improper means (136). (Lord Hobbouse.) SECRETARY OF STATE FOR FOREIGN AFFAIRS 7. CHARLESWORTH, PILLING & CO.

(1901) 28 I. A. 121 = 26 B. 1 (17-8) = 8 Sar. 1.

Colourable attempt to obtain title under Act with out paying for land—What amounts to—Validity of acquisition in case of.

The suit property originally belonged to the appellant, the Maharajah of Dhurbangah. At a time when the appellant was a minor, under the care of the Court of Wards of the Province of Bengal, a declaration was published in the Calcutta Gazette. in accordance with S. 6 of the Land Acquisition Act of 1870, that the suit land was required to be taken by Government, at the expense of the Darbhanga Municipality for a public purpose. The Court of Wards for the District of Darbhanga was the Commissioner of Patna, and the representative of the Commissioner in Darbhanga was the Collector for the time being of Darbhanga, who was also cx officio chairman of the Darbhanga Municipality.

The manager of the appellant's estate appointed by the Court of Wards doubted his power to alienate raj land except for the purposes mentioned in S. 68 of Bengal Act IV of 1870. The Commissioner of Patna, however, sanctioned the making over of the land to the Municipality free of cost, for the construction of a public ghat, the Collector offering the manager one rupee compensation. The Collector never made an award under his hand fixing the amount of conpensation payable to the parties interested as required by the Land Acquisition Act; but he wrote to the manager offering him one rupee as compensation for the land in question. The Board of Revenue authorized the acceptance by the manager of the compensation of one rupee. The rupee was paid by the Collector, and the manager gave a receipt for it, describing it as a nominal compensation for the raj land taken up by the Darbharga Municipality. The land was thereupon taken possession of by the Municipality, a bathing ghat was erected upon a portion of it, and the rest was used by the Municipality as a market.

Held, that the land was not validly acquired by the Municipality, under the provisions of the Land Acquisition Act, and that the appellant was therefore, entitled to recover possession of the same from the Municipality (95).

The provisions of the Land Acquisition Act had not been complied with. The Collector made no inquiry into the value of the land. He was the chairman of the Municipality, and his sole object appears to have been to benefit the town, forgetting that, as the representative of the Court of Wards, it was his duty to protect the interests of the minor, and to see that the provisions of the Act were complied with. The offer of one rupee compensation was not in accordance with the duty of the Collector under Ss. 11 and 13 of the Act, and it would be altogether wrong to treat one rupee as the amount of compensation determined under S. 13 of the Act. The direction or suggestion to offer one rupee compensation was a colourable way of doing indirectly what it was seen could not be done directly, viz., the guardian making a present to the town of the land of his ward. The offer and acceptance of the rupee was a colourable attempt to obtain a title under the Land Acquisition Act without paying for the land (94-6). (Sir Richard Couch.) MAHA-RAJA LUCHMESWAR SINGH : CHAIRMAN OF THE DARBHANGA MUNICIPALITY. (1890) 17 I. A. 90=

18 C. 99 (105-6)=5 Sar. 654

## LAND ACQUISITION ACT (I OF 1894)—(Contd.)

-Compensation-Award fixing-Dispute as to compensation money raising question of title to land-Decision of-Procedures relating to-Distinction. See LAND ACQUISITION ACT OF 1894, S. 54-PRIVY COUNCIL APPEAL UNDER-RIGHT OF, BEFORE AMENDING ACT (1922) 49 I A. 129 (136-7)= OF 1921. 45 M. 320 (328-9).

Crown-Proceedings taken under Act by, under misapprehension of its rights-Effect of, on its right to minerals. See CROWN-MINERALS.

(1920) 48 I. A. 56 (67) = 44 M. 421 (431).

-Minor-Property of, under management of Court

of Wards-Acquisition under Act of.

Possession of land of a minor whose estate is under the management of the Court of Wards may be lawfully taken under the Land Acquisition Act, provided the provisions of the Act are complied with (95). (Sir Richard Couch.)
MAHARAJAH LUCHMESWAR SINGH v. CHAIRMAN OF THE DARBHANGA MUNICIPALITY.

(1890) 17 I. A. 90=18 C. 99 (105)=5 Sar. 564.

-S. 3 (a)-Permanently fastened-Meaning of-Machinery on land-Permanently fastened or temperarily attached to it-Test.

The epithet "permanently" in S. 3 (a) of the Land Acquisition Act of 1894 is used as an antithesis to "tem-

porarily."

Proceedings were taken under the Land Acquisition Act as to land of which the respondents were tenants, and upon which there was certain machinery. The machinery constituted an oil-mill plant which had been installed in the premises by a previous tenant about 25 previously. It consisted of a boiler, an engine with water heater, 112 ghannies, a forge, and a lathe. The boiler stood on masonry and was built round almost to the top with masonry walls, having flues at the top and sides. engine was fixed to a masonry foundation by bolts, plates, and nuts. The heater was placed on a foundation without bolts, but was connected with the engine. Each ghanny consisted of a revolving mortar on an iron pedestal with a connected pestle; the pedestal was fixed by bolts to a foundation of wood embedded in masonry. The machinery could be removed for the purpose of repairs, on in the case of the boiler, for statutory inspection.

Held that the said attachments were anything but temporary and fell absolutely within the word "permanently." and that the machinery was therefore "land" within the meaning of S. 3 of the Land Acquisition Act of 1894. (Viscount Dunedin.) SECRETARY OF STATE FOR INDIA

v. TARAK CHANDRA SADHUKHAN.

(1927) 54 I. A. 187 = 54 C. 682 = 29 Bom. L. R. 953 = (1927) M. W. N. 436 = 45 C. L. J. 589 = 31 C. W. N. 950 = 39 M. L. T. 63 = 103 I. C. 366 = 4 O. W. N. 735 = 26 L. W. 872 A. I. R. 1927 P. C. 172-53 M. L. J. 99.

-8. 6-Declaration under-Date of-Notifications, prior and subsequent, latter purporting to cancel former -Effect. See LAND ACQUISITION ACT, 1894, S. 23-LAND-DATE FOR ASCERTAIN-MARKET-VALUE OF ING-DECLARATION UNDER S. 6.

(1929) 56 I. A. 210=7 R. 227.

-Declaration under-Government's possession of acquired land prior to-Nature of-Not that of mese trespasser. See LAND ACQUISITION ACT OF 1894, S. 23 LAND - GOVERNMENT IN MARKET-VALUE OF (1929) 56 I. A. 259 = 53 B. 589. POSSESSION, ETC.

-8. 11-Award under-Nature and binding charac-

The "award" made by the Collector under S. 11 of the Land Acquisition Act of 1894 is merely a decision (binding | treated as settled-Reference of-Propriety,

LAND ACQUISITION ACT (I OF 1894) -(Contd.) S. 11-(Contd.)

only on the Collector) as to what sum shall be tendered to the owner of the lands; and, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court (101). (Lord Robertson.) EZRAT. SECRETARY OF STATE (1905) 32 I. A. 93= FOR INDIA IN COUNCIL.

32 C. 605 (628-9)=1 C. L. J. 227-9 C. W. N. 454= 7 Bom. L. R. 422=2 A L.J. 771=8 Sar. 779.

-Inquiry into value of land under-Administrative and net judicial proceeding.

Appellant's objection is based and defends upon the theory that the inquiry by the Collector under S. 9 of the Land Acquisition Act as to the value of the land assumed to be "needed" was a judicial proceeding, and that the rules of judicial proceedings apply. The argument of the appel-lant starts from the word "award" (which is used to describe the conclusion of the Collector), and has nothing else to support it. When the sections relating to this matter are read together, it will, however, be found that the proceedings resulting in this "award" are administrative and not judicial (100-1). (Lord Robertson.) EZRA v. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1905) 32 I. A. 93 - 32 C. 605 (628-9) = 1 C.L.J. 227 = 9 C. W. N. 454 - 7 Bom. L. R. 422 - 2 A. L. J. 771 -8 Bar. 779.

-Inquiry into value of land under-Information obtained behind back of oconer-Use of-Propriety.

The remaining question relates to the second inquiry under S. 9 of the Act, which is as to the value of the land now assumed to be " needed". Shortly stated, the objection of the appellant, the owner of the land, is that the Collector who conducted the inquiry and made the "award" availed himself of information supplied to him without the knowledge of the appellant, and not disclosed at the inquiry. It is not suggested that there was in the proceedings anything corrupt or fraudulent, and the objection is based and depends upon the theory that the inquiry by the Collector was a judicial proceeding, and that the rules of judicial proceedings apply.

The inquiry is not a judicial proceeding, the rules of judicial proceedings do not apply to such an inquiry and the objection taken is, therefore, unsustainable (101).

It is, to say the least, perfectly intelligible that the expert official charged with the duty of fixing value should be possessed of all the information in the hands of the department, and should at the same time avail himself of all that is offered at the inquiry, his ultimate duty being, not to conclude the owner by his so-called award, but to fix the sum which in his best judgment is the value and should be offered. It is not implied in this observation that the Collector would be precluded by anything in the statute from inviting at the inquiry the criticism of the owner or any information he had in his hands if he thought that in the circumstances this would advance knowledge; but this is for his discretion (101). (L. rd Robertson.) EZRA P. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1905) 32 I. A. 93 = 32 C. 605 (628-9) = 1 C. L. J. 227 = 9 C. W. N. 454 = 7 Bom.L.B. 422 = 2 A. L. J. 771 =

-8.16-Incumbrance-Right of passage if included in. "Incumbrance" in S. 16 of the Land Acquisition Act of 1894 includes a right of passage (315). (Viscount Haldane.) BOMBAY CORPORATION D. GREAT INDIAN PENINSULA (1916) 43 I. A. 310=41 B. 291 (297)= RAILWAY.

21 C. W. N. 447 - 25 C. L. J. 209 - 21 M. L. T. 1 -(1917) M. W. N. 83 - 15 A. L. J. 63 -19 Bom. L. B. 48 = 38 I. C. 923.

-S. 18-Reference under-What amounts to-Claim

#### LAND ACQUISITION ACT (I OF 1894)-(Contd.) S. 18-(Contd.)

S. 15 of the Land Acquisition Act of 1870 says that if the Collector considers that further inquiry as to the nature of the claim should be made by the Court, or if he is unable to agree with the persons interested as to the amount of compensation to be allowed, he shall refer the matter to the determination of the Court in manner after appearing.

In a case in which land of the appellant, who was then a minor and whose estate was under the management of the Coart of Wards, was ostensibly taken under the provisions of the Land Acquisition Act, the Collector paid, and the manager of the estate under the Court of Wards accepted, on 19-8-1875, one rupee, describing it as a nominal compensation for the raj land taken up. A reference to the Civil Court was made by the Collector on 7-2-1876, months after the rupee had been paid and accepted. That acceptance as compensation was stated in the reference, and it was also stated that all the claimants for compensation except four had agreed to the Collector's award, and accepted the compensation tendered to them. Then facts were set forth as to the four claimants, and the amounts of compensation tendered to them. The document then concluded: 'As they have refused to accept this compensation, and as it appears to the officiating Collector that their claims are preposteroasly high and there is no chance of their coming to terms, the matter is referred to the District Judge for decision under Ss. 15 and 18 of the Land Acquisition Act.

Held that that could not be held to be a reference of a claim to compensation by the manager of the Darbhanga estate, his claim being treated as settled, and that the High Court erred in holding that on that reference the whole matter was open to the District Judge, and that he could inquire whether or not the consent of the manager was binding on the minor (90.7). (See Richard Couch.) MAHARAJA LUCHMESWAR SINGH : CHAIRMAN OF THE DARBHANGA MUNICIPALITY. (1890) 17 I A. 90

18 C. 99 (106) 5 Sar. 564.

-Reference under - Jurishetton of Civil Court in-Nature of and limits upon- Ss. 20 and 21 of Act-Effect-"Matter" referred to- Determination or source deration of matter other than-jurnitation as to.

The jurisdiction of the Court under the Land Acquisition. Act I of 1894 is a special one and is strictly limited by the terms of Ss. 18, 20 and 21 thereof. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to deter mine or consider anything beyond it, as, for instance, an objection to the measurement of the land. (Sir George Legito.) RAI PRAMATHA NATH MULLICK BAHADUR SECRETARY OF STATE FOR INDIA IN COUNCIL (1929) 57 I.A. 100 = 34 C. W. N. 289 = 51 C. L. J. 154

121 I. C. 536 - 32 Bom. L. R. 522 = 1920 A.L.J. 126 = A. I. R. 1930 P. C. 64=58 M. L. J. 223.

 S. 21—Compensation—Assessment of—Rusis of— Price accepted by cher owners of adjacent lands acquired at same time-Assessment on sole basis of-Propriety. See LAND ACQUISITION ACT OF 1894, S. 23-MARKET. VALUE OF LAND-DETERMINATION OF-BASIS PROPER (1929) 57 M. L. J. 81

-S. 23-House-Lessor of, under lease terminable only at option of lessee-Compensation to-Assessment of -Basis of, See LEASE-COLLEGE OR SCHOOL-CARRY-ING ON OF. (1929) 57 M.L.J. 493.

## Market value of land.

-Contract binding between parties interested as to

## LAND ACQUISITION ACT (I OF 1894)-(Contd.) S. 23-Market-value of land-(Contd.)

The foundation of the appellant's case rests on the assertion that when once proceedings for compulsory acquisition under the Land Acquisition Act have been set on foot, the interested parties (the owner and the acquiring party) cannot come to any binding agreement regulating the amount of the purchase price. There is nothing whatever in the Land Acquisition Act itself to negative any such right. If the parties before the institution of the proceedings contemplated by that Act chose to agree, they were perfectly competent to do so and there is nothing whatever in the words of the Act to suggest that this power is thereby taken away The Act certainly does not directly affect such a result, nor can their Lordships ascertain any reason why the fact that compulsory powers have been invoked in order to secure property from unwilling vendors, should be regarded as denuding all parties of rights they possessed before the proceedings began. Parties, who were competent before the proceedings to agree what they thought was the right price for the property, remain competent after the proceedings and an agreement so made is capable of being enforced in the courts in the ordinary way.

The fact that the interested parties have entered into a binding contract as to the price will not effect the jurisdiction of the Collector to determine what in his view the price should be. (Lord Buckmaster.) FORT PRESS CO. 1. BOMBAY CORPORATION. (1922) 49 I. A. 331 (334-5)=

46 B. 767 (770 1) = 16 L.W. 654 = 31 M. L. T. 225 = (1922) M. W. N. 798 =

24 Bom. L R. 1228 - 36 C.L.J. 539 = 27 C. W. N. 418= A. I. R. 1922 P. C. 365 = 68 I. C. 980 = 43 M.L.J. 419.

-Date for ascertaining-Declaration under S.6-Award-Dates of-Change in condition of land between-Effect of.

By Ss. 13 and 24 of the Land Acquisition Act of 1870, the market value of the land at the time of the awarding of compensation is to be taken into consideration. S. 25 points to the time when the land is acquired as the time for ascertaining its value. Independently of that provision, it would lead to very strange and capricious results if changes in the condition of the land between the time when it was taken and the actual conclusion of the award were to increase or to lessen its value. The time of awarding compensation must be construed as meaning the time of compensationthe time at which the right to compensation attaches.

Portions of land, which had been used as public roads for upwards of half a century, were taken for a public purpose under the Land Acquisition Act, 1870, for a dock. Held that, assuming the plaintiffs to have made out an absolute title thereto, they were under the Act entitled only to compensation, and that the land as road had no market value within the meaning of Ss. 13 and 24 at the date of its acquisition for a public purpose. Held further that the fact that by the time when the compensation was awarded the roads had been broken up and the land belonged absolutely to the plaintiffs, free from the burden of the roads and capable of being used for any purpose, could not increase or lessen its value. (Lord Hothouse.) MANMATHA NATH MITTER F. SECRETARY OF STATE FOR INDIA-(1897) 24 I.A. 177 = 25 C. 194 = 1 C.W.N. 698 =

7 Sar. 226. -Date for ascertaining-Declarations prior and subsequent under S. b-Latter purporting to cancel former -Date in case of.

On 31-5-1922 the Government published a declaration under S. 6 of the Land Acquisition Act, 1894, that the price of land acquired-Binding nature of Effect of. October, 1923, they published another declaration under S. 6, specifying the same land belonging to them, but at the

## LAND ACQUISITION ACT (I OF 1894)-(Contd.) S. 23-Market-value of land-(Contd.)

same time, or announcing that the former declaration was cancelled.

Held, reversing the High Court (appellate side), that the only notification which gave right to take the appellants' land was the second notification, and that therefore its date was the date for ascertaining the market value of the land within the meaning of S. 23 sub-section 1, clause 1, of the Land Acquision Act. (Viscount Dunedin.) MA SIN P. COLLECTOR OF RANGOON.

(1929) 56 I. A. 210 = 7 R. 227 = 33 C.W.N. 612 = 27 A. L. J. 577 = 31 Bom. L. R. 753 = 49 C. L. J. 523 = 30 L. W. 16=1929 M. W. N. 448=116 I. C. 599= A. I. R. 1929 P. C. 126 = 56 M. L. J. 795.

-Decision of Indian Courts as to-Privy Council's interference with-Conditions.

It is impossible to conceive anything more inconvenient than that a court in this country should be called upon to review the determination of arbitrators as to the value of a piece of land in India-a mere question of fact-without the advantage of any local knowledge or the privilege of seeing the witnesses, or even the opportunity and the interest of viewing the property (201). (Lord Macnaghten.) RANGOON BOTATOUNG CO., LTD. 2. THE COLLECTOR OF RANGOON. (1912) 39 I.A. 197-40 C 21 (28)-16 C.W.N. 961 - 16 C.L.J. 245 -

(1912) M.W.N. 781 - 12 M.L.T. 195 - 16 I. C. 188 -14 Bom. L. R. 833 - 10 A. L. J. 271 - 23 M. L. J. 276.

This is an appeal against the valuation which has been made of the property over which a right of pre-emption was claimed. Now this Board will not interfere with any question of valuation unless it can be shown that some item has improperly been made the subject of valuation, or excluded therefrom, or that there is some fundamental principle affecting the valuation which renders it unsound. On the mere question of value of admitted items their Lordships will not interfere. In the present instance the case lodged by the respondents complains only of the character of the valuation as a valuation and does not attempt to impeach it on any of the grounds to which reference has been made. Their Lordships cannot therefore interfere in such a case (263-4). (Lord Buckmaster.) CHARAN DAS v. AMIR KHAN. (1920) 47 I. A. 255-CHARAN DAS D. AMIR KHAN. 48 C. 110 (118) = 3 P. W. R. 1921 - 25 C.W.N. 289 = 18 A. L. J. 1095 = 22 Bom. L. R. 1370 = 56 I. C. 606 = 28 M. L. T. 149 = 39 M. L. J. 195.

-It has been repeatedly laid down by the Board that they will not interfere with judgments of the courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached, unless there is something to show, not merely that, on the balance of evidence, it would be possible to reach a different conclusion, but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle, or because some important point in the evidence has been overlooked or misapplied.

Held, that this principle was applicable to an appeal brought under S. 26, sub-S. 2 of the Land Acquisition Act of 1921 (Amending the Act of 1894) in which the sole question was as to the amount of compensation to be awarded to the appellant for property acquired under the Act (135). (Lord Buckmaster.) NARSINGH DAS v. SECKETARY OF STATE FOR INDIA IN COUNCIL. (1924) 52 I. A. 133-6 Lah. 69 = 23 A. L. J. 113 = 6 L. B. P C. 64 = 2 Q. W. N. 137 = 27 Bom. L. B. 783 = 29 C. W.N. 822 =

26 P. L. R. 205 = A. I. B. 1925 P. C. 91 = 86 I. C. 556 = 48 M. L. J. 386.

#### LAND ACQUISITION ACT (I OF 1894)-(Contd.) S. 23-Market-value of land -(Contd.)

-Appeals in valuation cases will be entertained by the Board only on questions of principle. Errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, are matters that can and will be dealt with on appeal by this Board, but when a difference of opinion has occurred between two Indian Courts upon the number of rupees per yard to be allowed for a plot of land, as to which their Lordships can form no opinion of their own, it would be alike unprofitable and impracticable to embark on a comparison of the decisions of these courts. In cases relating to the acquisition of land the whole matter, both of fact and law, is a proper subject of appeal in India, for their local knowledge and experience enable the learned judges to form useful judg-ments upon the whole case. (Lord Summer.) NOWROJI RUSTOMJI WADIA 2, GOVERNMENT OF BOMBAY

(1925) 52 I A. 367 (368-9) = 49 B. 700 = 23 A.L.J. 803-20, W. N. 691-42 Lah. L. J. 143-27 Bem. L. R. 1140 = 6 L. R. P.C. 154 = 23 L.W. 46 - 30 C. W. N. 386 - A. I. R. 1925 P. C. 211 -90 I. C. 48 - 49 M. L. J. 233.

-In appeals involving questions of valuation, the decree complained of will not be interfered with by their Lordships unless some erroneous principle has been invoked or some important piece of evidence has been overlooked or m'sapplied. (Lord Blancsburgh.) ATMARAM BHAGWANT GHADGAY P. COLLECTOR OF NAGPUR

(1929) 25 N. L. R. 68 - 31 Bom. L. R. 728 -27 A. L. J. 249 = 33 C. W N. 458 = 29 L. W. 496 = 6 O. W N. 417-114 I C. 587-49 C. L. J. 398-A. I. R. 1929 P C. 92-57 M. L. J. 81.

-In an appeal against the reduction by the High Court of the amount allowed by the District Judge as compensation for land acquired under the Land Acquisition Act. 1894, keld, that, as the questions involved were ones of valuation and not of principle, the Privy Council must, in accordance with the usual practice of the Board, decline to speculate as to the proper amount to be awardeded under such circumstances. (Lerd Carson.) VALLABHADAS NARANJI ». DEVELOPMENT OFFICER, BADRAS

(1929) 56 I. A. 259 = 53 B. 589 = 33 C. W. N. 78 = 27 A. L. J. 707 = 31 Bom. L. R. 834 - 30 L. W. 69 = 50 C. L. J. 45-117 I. C. 13 = (1929) M. W. N. 822= A. I. R. 1929 P.C. 163 = 57 M. L. J. 139.

-Decision of trial judge as to-Variation in appeal of-Privy Council's offirmance of

Where, on an appeal from an award made by the special judge in a case arising out of proceedings under the Land Acquisition Act, the High Court reviewing the earlier awards and comparing the prices realised on sale of land in the neighbourhood, having regard to the special advantages of, and drawbacks to, their respective situations, and having heard the evidence of experts on both sides, came to the conclusion that the total compensation due to the claimants ought to be increased, their Lordships afarmed the decision of the High Court. (Lord Collins.) SECRETARY OF STATE FOR INDIA 2. INDIA GENERAL STEAM NAVIGATION AND (1909) 36 I. A. 200 = 36 C. 967 = RAILWAY CO.

10 C. L. J. 281 = 14 C. W. N. 134 - 4 I. C. 448 = 11 Bom. L. B. 1197 = 19 M. L. J. 645.

-Decision of trial judge as to-Variation in appeal of-Propriety-Conditions.

In a case in which, on the question of the compensation payable for land acquired under the Land Acquisition Act, the Zanzibar Court (the lower appellate Court) differed from the Vice-Consul (the trial judge), their Lordships accepted the valuation of the Vice-Consul as being more conso-

## LAND ACQUISITION ACT (I OF 1894)-(Contd.)

S. 23-Market-value of land-(Contd.)

nant to the evidence, and as based on sounder principles than that of the Zuzzikar Court.

The Vice Consul had, for such an inquiry as this, more than the usual advantages of a Court of first instance; for, besides examining the witnesses, he knew the locality and visited the spots in dispute. Moreover, the Vice Consul explains much more fully than does the Zanzibar Court the mode in which he deduces his values from the evidence; and the values he brings out are not at nearly so great a distance from those which he examines.

It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sugarity. In such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for guesswork; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at (139). (Lord Hobboun). SECRETARY OF STATE FOR FOREIGN AFFAIRS 2. CHARLESWORTH. PILLING & CO. (1901) 28 I. A. 121-26 B. 1 (20 1)= 8 Sar. 1.

——Determination of—Basis proper of—Price accepted by other owners of adjacent lands acquired at same time if a—S. 21—Effect.

In a case in which the lands of several different owners were acquired under the Land Acquisition Act, all of them, except the appellant, accepted the Collector's award. The appellant did not do so and had the valuation of his land referred to the Court under S, 18 of the Act. The District Judge carefully addressed himself to all the considerations pertinent to the appellant's own lands, had due regard to the attitude of the other owners in not objecting to the Collector's award, and awarded to the appellant compensation on a certain basis. The appellate Court reversed his judgment, ignoring all the considerations pertinent to the appellant's own lands and founding itself exclusively on the evidence as to the price accepted for the other plots. That evidence, when analysed, however, showed, that the lands of the different owners were not of a uniform value for any purpose and that the fact that the other owners had accepted the Collector's award was very unreliable as a basis of the true value even of their own land,

Held that the appellate Court had, in reversing the District Judge, acted on a wrong principle, and that its judgment must be set aside and that of the District Judge restored.

It is hardly too much to say that the appellate Court, in its exclusive reliance upon the artitude of the owners other than the appellant, were within as ace of ignoring the probabition imposed upon them by S. 21 of the Land Acquisition Act and of extending the range of the inquiry beyond the statutory limit thereby set. (Lord Blanchurgh.) ATMARAM BHAGWANT GHADGAY 2: COLLECTOR OF NAGPUR.

(1929) 25 N. L. R 68 = 31 Bom. L. R. 728 = 27 A. L. J. 249 = 33 C. W. N. 458 = 29 L. W. 496 = 6 O. W. N. 417 = 114 I. C. 587 = 49 C. L. J. 398 = A. I. R. 1929 P. C. 92 = 57 M. L. J. 81.

Determination of Conditions of Ss. 23 and 24 of Act as to-Binding nature of Same as those under English law.

Courts are bound by the terms of the Land Acquisition Prior to an Act, which deals, in Ss. 23 and 24, with the considerations entitled to.

LAND ACQUISITION ACT (I OF 1894) -(Contd.) S. 23-Market-value of land-(Contd.)

that are to be taken into account in determining the value of land. Practically the statutory conditions are just what has been laid down as the law in this country. (Viscount Dunodin.) VALLARHDAS NARANJI P. THE COLLECTOR.

(1929) 33 C. W. N. 449 = 29 L. W. 694 = (1929) M. W. N. 376 = 31 Bom. L. R. 683 = 115 I. C. 730 = 49 C. L. J. 497 = A. I. R. 1929 P. C. 112 = 56 M. L. J. 750,

- Determination of Object for which land taken-Effect on value of land due to-Consideration of-Propriety.

In ascertaining the value of the land taken under the Land Acquisition Act, the Court is to take into consideration the market value of the land at the date of the publication of the declaration under S. 6, and is not, on the one hand, to give more because the object for which it is taken is likely to increase its value, nor, on the other land, to give less because the same object is likely to increase the value of the owner's remaining land. This excludes for both parties speculations on the effects which the object for which the land is taken may produce on prices, except to the extent to which it is shown that such speculations had actually entered into the market price of the sort of land taken by the date of the publication of the declaration (134, 141, 143). (Land Hobbouse.) SECRETARY OF STATE FOR FORFIGN AFFAIRS r. CHARLESWORTH, PILLING & CO.

(1901) 28 I.A. 121 = 26 B. 1 (16, 22-3, 24) = 8 Sar. 1.

The value of property compulsorily acquired is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired (135). (Lord Buckmaster.) NARSINGH DAS v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1924) 52 I. A. 133

6 Lah. 69 = 23 A. L. J. 113 = 6 L. R. P. C. 64 = 2 O.W. N. 137 = 27 Bom. L. R. 783 = 29 C. W. N. 822 = 26 P. L. R. 205 = A. I. R. 1925 P. C. 91 = 86 I. C. 556 = 48 M. L. J. 386.

—An owner of lands acquired under the Land Acquisition Act is entitled to the value to himself of the property
in its actual condition at the time of expropriation with all
its then existing advantages and with all its future possibilties, excluding only any advantage due to the carrying out of
the scheme for the purposes for which the property was
being acquired. (Lord Blanchurgh.) ATMARAM BHAGWANT GHADGAY :. COLLECTOR OF NAGPORE.

(1929) 25 N. L. R. 68 = 31 Bom. L. R. 728 = 27 A. L. J. 249 = 33 C. W. N. 458 = 29 L. W. 496 = 6 O. W. N. 417 = 114 I. C. 587 = 49 C. L. J. 398 = A. I. R. 1929 P. C. 92 = 57 M. L. J. 81.

- Evidence of Sale of other land in neighbourhood 15 months before Value of

Sale of other land in the neighbourhood, with similar advantages, nearly 15 months before, is cogent evidence as to the market value of land acquired by Government under the Land Acquisition Act, when nothing is shown to have happened which materially affected the value of the land between the date of such sale and the Government's declaration for acquisition. (Lord Carson.) GULAM HUSSEIN AHMED T. LAND ACQUISITION OFFICER, SOUTH SALSEITEE. (1928) 31 Bom. L. R. 241 = 114 I. C. 9 = 29 L. W. 507 = 56 M. L. J. 127.

Government in possession of land acquired prior to notification under S. 6—Building erected on land by it prior to such notification Value of Owner if land of contilled to

## LAND ACQUISITION ACT (I OF 1894)—(Contd.)

S. 23-Market-value of land-(Contd.)

Land, which was in occupation and the property of the appellant, was, along with other land, acquired by the Government under the Land Acquisition Act, 1894, by a notification under S. 6 of that Act, which was served only on 4-11-1920. The Government, however, managed to take possession of the lands so acquired sometime previously and erected buildings thereon. On a reference made under S. 18 of the Act the Courts below refused to allow the value of the building erected by the Government upon the appellant's land to be considered in assessing the amount of compensation to be paid to the appellant, held, that he was only entitled to compensation for the occupation of the land by the Government before the notification of 4-11-1920, and awarded such compensation in the form of interest on the value of the land computed from the date when the Government took possession.

Held, affirming the Courts below that, as the Government were in a position by law at any moment to regularise their position by a notification under S. 6 of the Act they must be considered to have been in possession, prior to that notification, "not as mere trespassers" but under such a colour of title that the buildings erected by them on the land ought not to be included in the valuation as having become the property of the landowner, and that the justice of the case was met by holding that the appellant was entitled to compensation for the occupation of the lands by the Government before the notification of 4—11—1920. (Lord Carton.) VALLABHADAS NARANJI c. DEVILOPMENT OFFICER, BADRAS. (1929) 56 I. A. 259—

53 B. 589 = 33 C. W. N. 78 = 27 A. L. J. 707 = 31 Bom. L. R. 834 = 30 L. W. 69 = 50 C. L. J. 45 - 117 I. C. 13 = 1929 M. W. N. 822 = A. I. R. 1920 P. C. 163 = 57 M. L. J. 139.

Granite quarries and temples and sculpture-Land containing-Lease by wanter of right of quarrying over portions of property-Valuation of land in case of Method at

In proceedings under the Land Acquisition Act of 1870 for the acquisition of a plot of land containing granite quarries besides ancient temples and sculpture. the District Judge found that the only evidence available to him of the value of the ownership was a lease by which the owner, the value of the property for five years, at the rent af Rs. 140 a year. He found that at the same rate a right of quarrying over the whole area might command a rent of Rs. 200. On that sum he allowed twenty-five years' purchase, bringing out the sum of Rs. 5,000 as the value of the stone.

On appeal the High Court thought that the District Judge had awarded too much in respect of the Zemindar's rent. They thought that the basis of calculation should be the actual rent of Rs. 140 instead of the estimated rent of Rs. 200; and that instead of 25 years only 15 should be allowed. That cut down the market value to Rs. 2,100.

Held, dissenting from the High Court, that the District Held, dissenting from the High Court, that the District Judge was right in estimating a rent for the whole of the lands, instead of the rent actually received for part, and lands, instead of the rent actually received for part, and that, as regards the number of years' purchase, though 25 that, as regards the number of years' purchase, though 25 years seemed large, no cause had been shown for departing years year

Land absolutely worthless in itself but having potentiatity of being used for salt works-Valuation of, as waste land-Permissibility.

## LAND ACQUISITION ACT (I OF 1894)—(Contd.) S. 23—Market-value of land—(Contd.)

In determining, under Ss. 23 and 24 of the Act, the value of Land, which is absolutely worthless in itself but which has a potentiality of being used for salt works, the owner is entitled to the market value of that potentiality. Where, therefore, it was found by the High Court that in order to establish salt works it was necessary to lay out a large sum of money and to do a great deal of construction, and that in one case some people had spent 7 lakhs of rupees on salt works and had not made them pay at all, held, that the High Court was right in drawing the inference that it would not pay anybody to pay for land of that ort, even if they were going to construct salt works upon it, more than the value as waste land. (Viscount Dunedin.) VALLABH-DAS NARANJI 7. THE COLLECTOR.

(1929) 33 C. W. N. 449 - 29 L. W. 694 = (1929) M. W. N. 376 - 31 Bom. L. R. 683 -115 I. C. 730 - 49 C. L. J. 497 - A.I.R. 1929 P. C. 112 -56 M.L.J. 750.

-Temples and carrings on land if have a.

In proceedings under the Land Acquisition Act of 1870 for the acquisition of a plot of land containing granite quarries besides ancient temples and sculpture, the High Court, in assessing the compensation payable, held that the temples and carvings had no market value.

Their Lordships concurred in the view of the High Court observing: "It is highly improbable that they should have any" (87). (Lord Hobb.nic.) SECRETARY OF STATE FOR INDIA IN COUNCIL v. SHANMUGARAYA MUDALIAR. (1893) 20 I. A. 80 = 16 M. 369 (377) = 6 Sar. 296.

— Workmen employed on land—Loss of carnings of— Compensation for—Award to owner of land of—Legality of

In proceedings under the Land Acquisition Act, 1870 for the acquisition of a plot of land containing granite quarries, one of the learned Judges of the High Court, in assessing the compensation payable, held that the District Judge had erred in omitting to notice the evidence as to the actual profits earned by the persons who worked the quarties. He referred to evidence shewing that there were about 46 persons in the village who earned their livelihood by stone -quarrying; and, calculating their annual profits at Rs. 100 a piece, he concluded that the amount of profits of which the claimants would annually be deprived might be set down at Ks. 4,600. On that amount he allowed ten years' purchase, and so brought out a sum of Rs. 46,000, which he said was the damage sustained by the persons interested by reason of the acquisition injuriously affecting their property or earnings. The other learned Judge agreed as to the amount of compensation awarded by his colleague, but not in his reasoning. He said that no question arose with respect to loss of earnings under clause 3 of S. 24 of the Act. But he added that the only way of ascertaining the market value was to take the aggregate of the profits or earnings derived from the land and to capitalise it.

Held that, in including the earnings of the quarrymen, whether directly as earnings injuriously affected, or indirectly as swelling the market value, and the estimated loss of those earnings, as an element in the compensation, the High Court had introduced an erroneous principle (88).

No compensation is tendered by the Collector or ordered by the Act, except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market value of the land. But no compensation is given to persons not interested in the land, on the ground that their earnings may be affected by the change of ownership, or in deed on any ground. The 46 quarrymen are no more inter-

#### LAND ACQUISITION ACT (I OF 1894)—(Contd.) S. 23—Market-value of land—(Contd.)

ested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the Zemindar, who is interested. The market value of a property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner; it may be expense to him. And the award of the High Court has the extraordinary result of putting a large sum into the pocket of the Mudaliars (the owners) on the ground that some of their nighbours will be injured by losing their employment (889). (Lord Hobboure.) SECRETARY OF STATE FOR INDIA IN COUNCIL 2. SHANMUGARAYA MUDALIAR.

(1893) 20 I. A 80 = 16 M. 369 (378 9) = 6 Sar. 296. —S. 23 (2)—15 for cent, on market value—Award

in addition of-Necessity.

It is pointed out that the award does not give the additional 15 per cent, on the market value, which is directed by S. 42 of the Land Acquisition Act of 1870 to be paid by the Collector. According to the exact terms of the Act the award is only to ascertain the market value, and then the Act itself imposes a further obligation on the Collector to pay the 15 per cent. The effect is the same whether the award is silent about the added percentage, or expressly includes it (86). The Collector must pay 15 per cent, on the sum awarded according to the provisions of S. 42 of the Act before he can make his title perfect (89). (Lard Hobbouse.) SECRETARY OF STATE FOR INDIA IN COUNCIL 1: SHANMUGARAYA MUDALIAR.

(1893) 20 I. A. 80 = 16 M. 369 (376-7) = 6 Sar. 296.

S. 27—Costs—Payment by Collector—Order for. S. 33 of the Land Acquisition Act of 1870 directs that, where the sum awarded exceeds the sum tendered by the Collector, the costs shall be paid by the Collector (86). (Lord Hobbiotic). SECRETARY OF STATE FOR INDIA IN COUNCIL P. SHUNMUGARAYA MUDALIAR.

(1893) 20 I. A. 80 = 16 M. 369 (376) = 6 Sar. 296. Sections 31 and 32.

Compensation—Apportionment of—Building errected on land by third party and removeable by him at pleasure of owner of land—Compensation to owner of.

Land on which stood trees and structures was acquired under the Land Acquisition Act I of 1894. The structures consisted of a residential house. Plaintiff became owner of the land by reason of a purchase at a sale thereof held under Bengal Act XI of 1859. The ownership of the building on the land did not, however, vest in him by virtue of his purchase, and it continued to vest in the defendants, whose predecessor in interest had put up the building. The total amount of the award made in respect of the holding acquired was Rs. 14,569. The sum awarded in respect of the land and trees, and the additional compensation under S. 23, Sub-S. 2, was Rs. 2,181 and the amount in respect of "Structures" and the additional compensation was Rs. 12,388.

Held that, in assessing what portion of the compensation money awarded in respect of the house should be paid to the defendants, it was necessary to consider what would have been the position and the respective rights of the parties after the sale, if no acquisition had taken place under the Land Acquisition Act; and that the following matters must be taken into consideration:—

After the sale the plaintiff would have been the owner of the land and the defendants would have been the owners of the house. The plaintiff would have had the right to call upon the defendants to remove the house. If the defendant did remove the house, the value to them would be small, and in the ordinary course would be no more than what has been called "demolition value"—namely, the value of

## LAND ACQUISITION ACT (I OF 1894)—(Contd.)

Sections 31 and 32-(Contd.)

the materials less the cost of removal; and if the defendants did not remove the house they would lose it.

There is, however, the possibility that (if the land had not been acquired under the Land Acquisition Act) the owner of the land would not have desired or required the removal of the house, and he might have been willing to pay to the defendants, the owners of the house, more than the mere demolition value of the house. In other words, the owner of the land would be a possible purchaser, who might be willing to give more for the house than any one else, as he was the owner of the land.

It is also to be remembered and taken into consideration that if the defendants were called upon to remove the house they would be entitled to a reasonable time for such removal and that during such time the plaintiff would be kept out of enjoyment of the land (225-6). (Sir Lancelot Sanderson). NARAYAN DAS KHETTRY 7. JATINDRA NATH ROY CHOWDHURY. (1927) 54 I. A. 218 = 54 C. 669 = 26 A. L. J. 1 = (1927) M.W N. 461 = 102 I. C. 198 (2) = 29 Bom. L. R. 1143 = 46 C. L. J. 1 = 31 C.. W. N. 965 = 8 Pat. L. T. 663 = 26 L. W. 848 = A. I. R. 1927 P. C. 135 = 53 M. L. J. 158.

Compensation—Appointment of—Life interest— Remainder subject to—Persons entitled to—Apportionment between.

In the case of land taken under the Land Acquisition Act, it was found that the respondent was entitled to a lifeinterest in it, and that the appellant was entitled to the land subject to such life interest.

Meld that in such a case the division of the compensation money into halves—one half to be paid to the appellant, and the other half to the respondent—was a very reasonable way of dealing with it (70). (Lord Hebhoute). SRI BRAJA KISORA DEVU GARU P. SRI KUNDANA DEVI PATTA MAHADEVI. (1899) 26 I. A. 66 = 22 M. 431 (455) =

1 Bom. L. R. 287 = 3 C. W. N. 378 = 7 Sar. 528. 9 M. L. J. 157.

Compensation—Person in exclusive use and occupation of land at time of its acquisition—Prima facie title of —Rival claimant—Onus on.

In the case of a land compulsarily acquired by Government for public purposes (as, for instance, under the Land Acquisition Act) the prima facie title to the compensation money is with the person in whose exclusive use and occupation the land was at the time when it was taken by the Government and the onus lies upon a third party claiming such compensation money to establish that he had a better title. (Lord Warrington of Clyffe). MANCHE AMEGE AKUE v. MANCHE KOJO ABADIO IV.

(1927) 107 I. C. 347 = 47 C. L. J. 337 = 30 Bom. L. R. 755 = A. I. R. (1927) P. C. 262,

Compensation-Right to-Members of public-

None of the provisions of the Land Acquisition Act of 1894 relating to compensation cover the case of members of the public, who naturally do not come within the provision for compensation contained in S. 11 of the Act (315). (Viscount Holdane). BOMBAY CORPORATION v. GREAT INDIAN PENINSULA RAILWAY. (1916) 43 I. A. 310=

41 B. 291 (297) = 21 C. W. N. 447 = 25 C. L. J. 209 = 21 M. L. T. 1 = (1917) M. W. N. 83 = 15 A. L. J. 63 = 19 Bom. L. B. 48 = 88 I. C. 923.

——Hindu widow—Maintenance of—Land assigned by her adopted son for—Acquisition of—Compensation money paid in respect of—Adopted son's right in. See HINDU LAW—ADOPTION—ADOPTED SON—ADOPTIVE MOTHER —MAINTENANCE OF. (1879) 6 I. A. 196 (210)=

9 M. 91 (103)

## LAND ACQUISITION ACT (I OF 1894)-(Contd.)

The view that an order under S. 32 of the Land Acquisition Act of 1894 may appropirately be deemed as an integral part of the award made by the court is based upon a misapprehension as to the meaning of the award. The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment wher the sum has been deposited in Court under S. 31, Sub.-S. 2 the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away when the piece of land was represented by a sum of money paid into Court (137). (Lord Buckmaster.) RAMACHAN-DRA RAO D. RAMACHANDRA RAO

(1922) 49 I.A. 129 = 45 M. 320 (330) = 20 M. L. T. 154 = 26 C. W. N. 713 = 35 C. L. J. 545 = 20 A. L. J. 684 = 16 L.W. 1 = (1922) M. W. N. 359 = 24 Bom. L. B. 963 = A. I. B. 1922 P. C. 80 = 67 I. C. 408 = 43 M. L. J. 78

-- 8, 34 Interest on compensation money Owner's right to, from date of dispossession.

In a case in which property is compulsorily acquired by the Government or a public body under a statute corresponding to the Land Acquisition Act, 1894, the owner is, in the absence of any indication in the statute to the contrary, entitled to interest upon the compensation amount from the date on which he is deprived of possession.

The right to receive interest takes the place of the right to retain possession. (Lord Warrington of Clyffe.) INGLE-WOOD PULP AND PAPER COMPANY v. NEWBRUNSWICK ELECTRIC POWER COMMISSION. (1928) 28 L. W. 753 = 111 I. C. 261 = A. I. B. 1928 P. C. 287.

- 3. 40-Enquiry under-Notice of, to owner of land
-Necessity-Omission to give-Effect-Theory of section.

The general scheme of the Land Acquisition Act of 1894 is this: There is, first, to be an inquiry by a Government Officer into the questions—(1) Whether the proposed acquisition is needed for the construction of some work, and (2) whether such work is likely to prove useful to the public.

The objection of the appellant, the owner of the lands acquired under the Act, is to the procedure under the first inquiry, and his contention is that he ought to have received, and did not receive, notice of that inquiry, and that it was conducted behind his back.

The section prescribing that inquiry is S. 40. Now, upon the face of this enactment, there is no provision requiring or implying the presence or the knowledge of the owner of the land. The theory of the section would seem to be that the Government, through its officer, is to direct its attention to public interests, and it is significant that neither promoter on the one hand, nor possible objector on the other, is mentioned in the section. This does not imply that the officer is to disregard the existence of adverse rights, and the word "needed" implies thiz. But the standpoint is that of public interest, and the Government is given control of the inquiry, for this is all that is meant by his being empowered to appoint time and place; and all this derives the more significance from the fact that the Act, both in this stage and in the subsequent inquiry into value, takes

## LAND ACQUISITION ACT (I OF 1894)-(Contd.)

Section 40-(Contd.)

the initiative out of the hands of the promotor and puts it in the hands of the Government (98.9).

That the nature of the first inquiry is no sense litigious and that the owners of the land are purposely ignored, as parties, is strongly shown by the anxious provisions made as regards the second inquiry, for which (S. 9) "public notice" is to be given calling for claims for compensation and requiring all persons interested in the land to appear at a time and place specified (99).

The appellant's objections to the first inpuiry are, therefore, ill-founded (100). (Lord Robertson). EZRA v. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1905) 32 I. A. 93 = 32 C. £05 (626 8) = 1 C. L. J. 227 = 9 C. W. N. 454 = 7 Bom. L. R. 422 = 2 A. L. J. 771 = 8 Sar. 779.

——S. 54—Dispute as to compensation money raising question of title to land—Decision of—Res-jadicata in civil suit as regards title to the land.

A ghatwal of a large estate sued to eject the defendants from a subordinate tenure within the ambit of his ghatwali estate, claiming the right to resume that tenure at will. The defendants claimed to hold a ghatwali tenure, from which they could not be dispossessed on the payment of a fixed rent.

The plaintiff's father had, during his lifetime, brought a suit against the husband of the defendants, claiming against him the whole of the compensation money which had been paid into Court by the Fast India Railway Co. in respect of land included in the suit subordinate tenure, which had been taken by the Company, the defendants' husband claiming a share in that money. Pending that suit, the defendants' husband died, and the defendants were substituted for him. In that suit a decree was passed in appeal in favour of the plaintiff's father awarding to him the whole of the compensation money on the ground that the defendants' husband had no valid right to any portion of the lands taken and was merely a tenant at will.

Held, that the decision in the prior suit was res judicata in plaintiffs' favour under S. 13 of C. P. C. of 1877 (196).

The very question in this cause, viz., whether the defendants held a permanent tenure, or whether the plaintiff was entitled to resume it at pleasure was directly and substantially in issue between the parties, and has been finally decided between them (196). (Lord Monkroell.) TEKAIT RAM CHUNDER SINGH v. SRIMATI MADHO KUMARI.

(1885) 12 I.A. 188 = 12 C. 484 (491-3) = 4 Sar. 666.

R, a Hindu, died, having executed a deed of settlement of all his moveable and immoveable properties, inter alia, in favour of his junior wife, T. A portion of the land so given, and then in the possession of T, was acquired by the Government under the Land Acquisition Act. The usual proceedings for determining the amount of compensation took place, and no dispute arose as to the award, but a question did arise as between the adopted son of R and T as to the character and extent of the estate that she took under the deed of settlement. If she took absolutely, the money could be divided forthwith; but if she took a limited interest, her share would have to be invested. The dispute was, under S.31, sub-S. (2) of the Act, accordingly referred to the District Court of Tanjore which held that the widow had an absolute estate. On appeal, however, the High Court held that she took only a widow's estate and directed the District Judge to pass order under the provisions of S. 32 of the

Held, reversing the High Court, that the decree of the High Court in the land acquisition proceedings rendered the question of title a res judicata in a suit between the parties LAND ACQUISITION ACT (I OF 1894)—(Contd.)
Section 54—(Contd.)

to the dispute in the said proceedings and those claiming under them. (Lard Buckmaster.) RAMACHANDRA RAO. (1922) 49 L. A. 129 (137-8) - 45 M. 320 (330 1) - 30 M.L.T. 154 - 26 C. W.N. 713 = 35 C. L. J. 545 - 20 A. L. J. 684 - 16 L.W. 1 - (1922) M. W. N. 359 - 24 Bom. L. R. 963 - A.I.R. (1922) P.C. 80 - 67 I.C. 408 - 43 M.L.J. 78.

S. 54-Privy Council Appeal under.

NATURE AND SCOPE OF.

-Amending Act of 1921-Appeal under.

In an appeal to the Privy Coam if under S. 2b, sub-S. (2) of the Land Acquisition Act of 1894 (Amending Act of 1921) the matter must be considered and determined in the same manner as if it were a judgment from a decree in an ordinary suit (135). (Levil Buckmarter.) NARSINGH DAS 7. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1924) 52 I.A. 133 – 6 Lah. 69 – 23 A.L.J. 113 = 6 L.R.P.C. 64 – 2 O.W.N. 137 – 27 Bom. L. R. 783 = 29 C. W. N. 822 – 26 P. L. R. 205 = A I.R. 1925 P.C. 91 – 86 I. C. 556 – 48 M. L. J. 386.

-The Land Acquisition Amending Act of 1921 declares awards under the Land Acquisition Act, 1894, to be decrees, so as to bring them within the general rules as to appeals to this Board, but it does not prescribe any special mode, in which they are to be treated. This Board has found it necessary to limit the extent of the inquiry, in order to save the parties costly and fruitless litigation. Just as in cases where there are concurrent findings of fact in the Indian Courts, it has long been the general rule of the Board not to allow such findings to be re-opened here, so it has now been settled that this Board will not review the decree of an Indian Appellate Court merely upon questions of value. Where their Lordships have neither the materials nor the experience on which to found an opinion of their own, in a matter where the opinions of competent Courts in India differ (and a fortiers where they concur) it is not their practice to interfere, as an appellate tribunal, unless there appears to be error in law or miscarriage of justice. (Lord Summer.) NOWROJI RUSTOMJI WADIA P. GOVERNMENT OF BOMBAY. (1925) 52 I.A. 367 (369-70)=

49 B. 700 = 23 A. L. J. 803 = 2 O.W.N. 691 = 42 C.L.J. 143 = 27 Bom. L. R. 1140 = 6 L. R. P.C. 154 = 23 L.W. 46 = 30 C. W. N. 386 = A.I.R. 1925 P.C. 211 = 90 I. C. 48 =

49 M. L. J. 233

RIGHT OF, BEFORE AMENDING ACT OF 1921.

A special and limited appeal is given by the Land Acquisition Act of 1894 from the award of "the Court" to the High Court. No further right of appeal is given. Nor can any such right be implied.

In proceedings under the Land Acquisition Act of 1894, the Collector, who made his award, referred the matter to the Court under the provisions of the Act at the instance of the appellants. Two Judges of the Chief Court of Lower Burma sat as "the Court" and also as the High Court to which an appeal is given by the Act from the award of "the Court", and dismissed the reference.

Held, that an appeal to the Privy Council as of right from the award of the Chief Court was incompetent.

The contention that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to the Privy Council as if it were a decree of the High Court made in the course of its ordinary jurisdiction held to be note about

LAND ACQUISITION ACT (I OF 1894)—(Contd.) S. 54—Privy Council Appeal under—(Contd.)

(201). (Level Macnaghten.) RANGOON BOTATOUNG CO.; LTD. v. THE COLLECTOR OF RANGOON.

(1912) 39 I. A. 197-40 C. 21=16 C. W. N. 961= 16 C. L. J. 245=(1912) M. W. N. 781= 12 M. L. T. 195=14 Bom. L. R. 833= 10 A. L. J. 271=16 I. C. 188=23 M. L. J. 276.

In an ex parte petition for special leave appeal to His Majesty in Council from a judgment of the High Court of Bombay delivered under S. 54 of the Land Acquisition Act varying the judicial assessment of the Court below, the point was whether an appeal lay under clause 39 of the Letters l'atent in non-appealable cases under the Land Acquistion Act. The case of Rangeon Botatoung Co. v. The Collector of Rangeon, which had decided that no appeal lay from the High Court in a land acquisition case, was sought to be distinguished on the ground that in that case the appeal was from the Chief Court of Bombay and there was no provision similar to clause 39 of the Letters Patent applicable to the case. Their Lordships observed that the ground of the decision in that case was that the decision in a land acquisition case was an award and not an ordinary decree of the Court and refused special leave to appeal. SPECIAL OFFICER, SALSETTE BUILDING SITES P. DASA-BHAI BEZANJI. (1913) 20 I. C. 763 = 17 C. W. N. 421.

- Dispute as to compensation money raising question of title to land-Decision of Appeal from.

Under the Land Acquisition Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that necessary for fixing the amount of the compen sation and this is described as being an award. an appeal from that award or of any part of the award is given to the High Court. The case in L. R. 39 I. A. 197 decided that in those circumstances the appeal so given was the only one open to the parties, and that even if appealed against, the award still retained its characteristics and was incapable of further appeal. The argument which succeeded in that case emphasizes the distinction between an award and a decree, and the judgment mentions this in terms by stating that the appellants, although admitted to the High Court, could not have the right to vary an award made under an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in course of its original jurisdiction. ther this judgment nor any other judgment of this Board affects the question of an appeal on the totally different procoedings that arise when there is a dispute as between the persons claiming compensation involving a difficult question of title. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be (136-7). (Lord Buckmaster.) RAMACHANDRA RAO P. RAMACHANDRA RAO.

(1922) 49 I. A. 129 = 45 M. 320 (328 9)= 30 M.L.T. 154 = 26 C.W.N. 713 = 35 C. L. J. 545 = 20 A. L. J. 684 = 16 L.W. 1 = (1922) M.W.N. 359 = 24 Bom. L.R. 963 = A.I.R. 1922 P. C. 80 = 67 I. C. 408 = 43 M. L. J. 78

VALUATION OF PROPERTY—DECISION OF INDIAN COURTS AS TO.

in the course of its ordinary jurisdiction held to be untenable

——Interference with—Conditions. See LAND ACQUISITION ACT OF 1894, S. 23—MARKET—VALUE OF
LAND—DECISION OF INDIAN COURTS AS TO.

#### LANDLORD AND TENANT.

(See also under LEASE.)

ABWAB.

ADVERSE POSSESSION.

AGRICULTURAL HOLDING—RENDERING OF LAND IN. UNFIT FOR AGRICULTURAL PURPOSES.

CHUR LAND DEMISED-ACCRETION OF NEW CHUR

CO-SHARER LANDLORDS.

DENIAL OF LANDLORD'S TITLE.

DILUVION-LAND SUBJECT TO-PUTNI TENURE OF -PORTION OF LAND SUBMERGED-RIGHT TO, ON RE-FORMATION in situ-ABANDONMENT BY PUTNI-DAR OF.

EJECTMENT SUIT BY LANDLORD.

ESTOPPEL.

FORFEITURE OF TENANCY—DENIAL OF LANDLORD'S TITLE-FORFEITURE BY.

KABULIVAT.

LANDLORD.

NOTICE TO QUIT.

PERMANENT TENANCY.

RELATION OF, BETWEEN ZEMINDAR AND JOTEDAR-DECREE ESTABLISHING.

RENT.

RIVAL LANDLORDS.

TENANCY AT WILL.

TENANCY FOR TERM.

TENANT.

#### Abwab.

-Addition to rent of-Long use or custom cannot validate. (Lord Sinha.) RANI CHATTRA KUMAR DEVI (1927) 54 I. A. 432=7 Pat. 134= v. BROUCKE.

26 A. L. J. 19=32 C. W. N. 260=47 C. L. J. 90= 8 Pat. L. T. 813=I. L. T. 40 P. 1=106 I. C. 171= 27 L. W. 736 = A. I. B. 1927 P. C. 250 = 54 M.L.J. 293.

-Nature and origin of. See ABWAB.

#### Adverse Possession.

-Higher right-Acquisition by tenant of-Assertion of such right in judicial proceeding without any judicial determination thereof-Possession and payment of rent continued as before - Effect.

The simple assertion of a proprietary right in a judicial proceeding connected with the land in dispute which ex hypothesi was unfounded at the date when it was made, cannot by the mere lapse of six or twelve years, convert what was an occupancy or tenant-title into that of an underproprietor. Their Lordships are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands. Such a judgment might have very far-reaching results and would almost certainly lead to a flood of litigation. It is notorious that in actions for rent or enhancement of rent or for ejectment the persons in possession are prone to maintain rights which they do not possess, and if for any reason no judicial determination is arrived at, but the parties continue on the original footing, the mere lapse of so short a period as six or 12 years (which might be amply explained on other grounds) would deprive the landlord of his proprietary rights unless in the meantime he had brought a declaratory suit to settle once and for all the terms on which possession was held. The case might be different if, in addition to the judicial assertion by the tenant there had been any change in the money payment which he thereafter made to his landlord. (Lord Salvesen.) pancy right by. See RYOTWARI TENURE.

LANDLORD AND TENANT-(Contd.)

Adverse possession-(Contd.)

MOHAMMAD MURTAZ ALI KHAN 2. MOHUN SINGH.

(1923) 50 I. A. 202 = 45 A. 419 = 21 A. L. J. 757 = 26 O. C. 231 - 33 M. L. T. 321 = 9 O. & A. L. B. 901 = 10 O. L. J. 383 = A. I. B. 1923 P. C. 118 = 19 L. W. 283 = 39 C. L. J. 295 = 28 C. W. N. 840 =

74 I. C. 476 = 45 M. L. J. 623.

-See also Lamitation-Adverse Possession-UNDER-PROPRIETARY RIGHT. (1929) 58 M. L. J. 226. -Life-tenant-Perpetual or hereditary tenure-Notice of claim to held under-Effect.

A mere notice by a person holding for his life that he claimed to be holding on a perpetual or hereditary tenure would not make his possession adverse within the meaning of the Limitation Act so as to bar a suit for possession on the expiration of the life tenancy. (Lord Datey.) MAHA-RANI BENI PERSHAD KOERI P. DUDH NATH ROY.

(1899) 26 I. A. 216 (224) = 27 C. 156 (166) = 4 C. W. N. 274 = 7 Sar. 580.

Makal held in thika-Thikadar's failure to collect rent from tenant-Effect of, against proprietor.

In the case of a Mahal held in thika, the lessee collecting the rents and paying a fixed sum to the proprietor, the failure of the thikadar to collect the rent from any individual tenant will not create adverse possession against the proprietor. (Mr. Ameer Ali.) JAGDEO NARAIN SINGH BALDEO SINGH. (1922) 49 I. A. 399 (412)= 2 Pat. 38 (51·2) = 32 M.L.T. 1 = (1923) M. W. N. 361 = 27 C. W. N. 925 = 36 C. L. J. 499 = 3 Pat. L. T. 605 = A. I. R. 1922 P. C. 272=71 I. C. 984=45 M.L.J. 460. Occupancy right-Acquisition by adverse possession of. See OCCUPANCY RIGHT.

Permanent tenancy- Acquisition by tenant by adverse possession of.

No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands. (Sir John Edge.) NAINAPILLAI MARAKAYAR V. RAMANATHAN CHEITIAR. (1923) 51 I. A. 83 (99) = 47 M. 337 =

A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 =

10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

-See also WATAN-WATAN LANDS-TENANT. (1923) 50 I. A. 255 (264) = 47 B. 798 (809). -Perpetual tenure-Tenant under-Adverse possession

against-Effect against landlord of.

Semble a landlord, who has granted a perpetual tenure, is not bound to institute a suit to eject a trespasser taking wrongful possession of the land comprised in the tenure, with the result that, if he does not do so, the trespasser acquires a title by limitation against him as well as against the tenant. (Lord Salvesen.) KATYAYANI DEBI v. UDOY (1924) 52 I. A. 160 (164) = KUMAR DAS. 52 C. 417 = 23 A. L. J. 751 = 6 L. R. P. C. 140 =

30 C. W. N. 1 = A. I. B. 1925 P. C. 97 = 88 I. C. 110.

-Rent-Non-payment or discontinuance of payment of-Effect.

Mere non-payment of rent or discontinuance of payment of rent does not, by itself, create adverse possession as between landlord and tenant. (Mr. Ameer Ali.) JAGDEO NARAIN SINGH P. BALDEO SINGH.

(1922) 49 I.A. 399 (412) = 2 Pat. 38 (52) = 32 M.L.T. 1=(1923) M. W. N. 361=27 C.W.N. 925= 36 C. L. J. 499=3 Pat. L. T. 605= A. I. R. 1922 P. C. 272=71 I.C. 984=45 M. L. J. 460.

-Ryotwari Pattadar-Under-ryots of-Claim to occu-

Adverse possession-(Contd.)

-Tenant who might claim by-Possessien of-Not adverse to landlord.

The possession of the tenant is in law the possession of the landlord or superior proprietor, and it can make no difference whether the tenant be one who might claim adversely to his landlord or not. Indeed in such a case it may be thought that the adverse character of the procession is placed beyond controversy. (Lord Direct.) SHERLIARY OF STATE FOR INDIA IN COUNCIL P. KRISHNAMONI GUPTA. (1902) 29 I. A. 104 (114) - 29 C. 518 (534)

6 C. W. N. 617-4 Bom. L. R. 537-8 Sar. 269. -Trespance-Real owner taking load from-Possession as lessee of, for 12 years-Effect of Title of trespes-

ser and of real owner.

Alluvial land which at one time formed part of the plaintiff's permanently-settled estate, was subsequently, after diluvion and re-formation, adjudged to be an accretion to khas mehals belonging to Government. The plaintiffs took from the Government i/aras of such land and accretion and thereby elected and agreed to hold the same, not as part of their Zemindartes, but as a part of the khas mehals of the Government, and to pay the jummas reserved by the sparas on that footing. The Government thus held possession continuously for more than 12 years. Held, that a suit brought thereafter by the plaintiffs for the recovery of such land from the Government was barred by limitation.

It may at first sight seem singular that parties should be barred by lapse of time during which they were in physical possession and estopped from disputing the title of the Government. But the possession of the tenant is in law the possession of the landlord or superior proprietor, and it can make no difference whether the tenant be one who might claim adversely to his Lindford or not. Indeed in such a case it may be thought that the adverse character of the possession is placed beyond controversy. On the expiration of the first ijara settlement for ten years the estoppel cause to an end, and the plaintiffs might have asserted their title against the Government. But they preferred to renew their itarias from year to year. (Lord Diver). SECRETARY OF STATE FOR INDIA IN COUNCIL :: KRISHNAMONI GUPTA.

(1902) 29 I. A. 104 (114) = 29 C. 518 (534) = 6 C. W. N. 617 - 4 Bom. L. R. 537 - 8 Sar. 269.

Agricultural holding- Rendering of land in. unfit for agricultural purposes.

-What amounts to-Question as to-Fact or Law, See BENGAL ACTS-TENANCY ACT, 1885, S. 23.

# Chur land demised-Accretion of new chur to.

-Havaldori tenure-Land held on-Accretion to-Measurement of, by landlord on notice, execution of retarale " dank kabuliyet" by tenant in respect thereof within time fixed, and possession thereof to be taken by landlord in defoult-Precisions for-Measurement incorrect but bona fide by landlord on notice-Tenents' failure to object to measurement or to execute kabuligat-Landlord's suit to recover accretion actual - Maintainability.

The plaintiff was the superior owner of certain chur land which was held by the defendants in Hazaldari tenure. The rights of the parties were determined by a pottah and kabuliyat which were executed in 1859. The plaintiff sued to recover khas possession of certain land which, since that pottah and kabuliyat were executed, had accreted to the chur of the defendants.

The kabuliyat, in the first place, fixed a certain rent for the land then in existence, and provided, with reference to alluvion and diluvion, that the chur should be measured from time to time, on notice, and that unless the defendants should give a separate " daul kabuliyat for the land found to be accreted, the plaintiff should take possession of it.

## LANDLORD AND TENANT-(Contd.)

Chur land demised-Accretion of new chur to-(Contd.)

The plaintiff alleged that he did cause such a measurement to be made in 1875 on notice to the defendants, that as a result of that measurement the defendants were found to be in possession of a certain extent of accreted land, and that as they had not given a separate "daul kabuliyat" for the same, it had, under the agreement between the parties,

It was found that the measurement had been made on notice to the defendants, and bona fide, but that it was incorrectly made

The High Court held that although the measurement of the plaintiff was in some material respects defective and wrong, nevertheless the conduct of the defendants was such that they must be deemed to have been in default in not filing a daul kabuliyat, as they ought to have done; and that they, having made no objection at the time, or indeed until the action was brought, to the measurements of the plaintiff, could not then be allowed to defeat his action on the ground of the measurement being defective.

Their Lordships affirmed this judgment.

The defendants were in default; the plaintiff baving made a measurement which is not impeached on the ground of fraud-if it had been, the case would have been different -last a bona fide measurement, in pursuance, as he believed and intended, of the agreement between the parties, it was the duty of the defendants, if they objected to it, to have stated their objection; but they having made no objection at the time, or indeed until the action was brought, it is to late for them to say that he had no cause of action, although they are entitled to ask the Court to decide what the amount of property is which the plaintiff is entitled to recover. (Sir Robert Collier.) ALIMUDDI v. KALI KRISHNA TAGORE. (1884) 10 C. 895.

-Measurement and settlement of excess land and extcution of kabuliyat in respect thereof-Provision for-Landlord's right in case of.

A kaladiyat, dated 23rd April, 1850, executed by the then tenants, under a howaldari tenure, of certain lands comprised in " the chur so the estate of M." forming part of the Zemindary belonging to the respondent, contained the follow-

ing stipulations :-

If a new chur accretes contiguous to the aforesaid howala and as hakiat of the aforesaid (torn), and no revenue is assessed thereon by the Government, then, when the said char becomes fit for cultivation, a fresh measurement shall be made of the land of the said chur and of the aforesaid howla; and, after a deduction of the aforesaid 13.6-16 gundahs of land, we shall pay rent at the rate of Rs. 27-7 for the excess of land up to five drones, and at the sard (prevailing) pergunnah rates for lands exceeding that quantity. If we fail to do so, the rent will be realised according to the law for the realisation of rent, with interest on lapsed instalments according to the demands of the town of the said pergunnah; or at the close of the year, you will serve on the spot, and on some conspicuous place in the mahakuma (bead-quarters) of any hakim, an itlanama (notice) to our address, requiring us to take a settlement of the said excess land, and to file a kabuliyat, and fixing the time at fifteen days; if, thereupon, we do not appear before you and take a settlement and fix a kabuliyat, you will settle the said excess land with others."

Held that, under the terms of the kabuliyat, the proprietor was not precluded from bringing his suit for (1) a measurement of the excess land and delivery to him of khas possession thereof, or (2) assessment of the rent of the excess land payable under the kabuliyat, without taking any preliminary step, in order to have an authentic measurement

Chur land demised-Accretion of new chur to-(Contd.)

made, and the rent assessed; but that in that case, he could not put the tenants to their election between paying rent and giving up possession until both those things had been done judicially (120-1). (Lord Watton.) RAMCOOMAR GHOSE P. KALI KRISHNA TAGORE.

(1886) 13 I. A. 116 = 14 C. 99 (106) -4 Sar. 737.

Measurement and settlement of excess land and exccution of new kabuliyat in respect thereof-Provision for-Tenant's failure to take settlement and to execute mes kabuliyat-Landlord's suit for khas possession of needy accreted chur-Maintainability-Measurement of new chur by landlord with and without due notice to temant-Cases of-Distinction.

A kabuliyat, dated 23rd April, 1850, executed by their tenants, under a howaldari tenure, of certain lands comprised in "the chur to the east of M," forming part of the Zemindary belonging to the respondent, contained the

following stipulations :-

"If a new chur accretes contiguous to the aforesaid howla, and as kakiat of the aforesaid (torn), and no revenue is assessed thereon by the Government, then, when the said chur becomes fit for cultivation, a fresh measurement shall be made of the land of the said chur and of the aforesaid 13 6-16 gundahs of land, we shall pay rent at the rate of Rs. 2-7-7 for the excess of land up to five drones, and at the sara (prevailing) pergunnah rates for lands exceeding that quantity. If we fail to do so, the rent will be realised according to the law for the realisation of rent, with interest on lapsed instalments according to the demands of the towai of the said pergunnah; or at the close of the year, you will serve on the spot, and on some conspicuous place in the mahakuma (headquarters) of any hakim, an itlanama (notice) to our address, requiring us to take a settlement of the said excess land, and to file a kabuliyat, and fixing the time at fifteen days; if, thereupon, we do not appear before you and take a settlement and fix a kabuliyat, you will settle the said excess lands with others."

At the commencement of the year 1876, a new chur accreted to the howla in question, which was to a large extent composed of land fit for cultivation, The respondent alleged that, in April of that year, a new measurement of the original howla and of the accreted chur was made by his servants under his instructions. The measurement was made without intimation to the appellants, the registered tenants of the howla, and in their absence. The respondent thereafter, on 28th March, 1878, caused a notice to be served on the appellants setting forth the fact of measurement, intimating the precise amount of the increased rent due in respect of the excess land, according to the rates specified in the kabuliyat, and requiring the appellants to appear, either before himself or his principal officer, within fifteen days from service, "and file a kabuliyat for the said quantity of land and for the said amount of rent; otherwise after the expiry of the said fixed period, under the terms of the said kabuliyat, I shall take khas possession of the land in excess of the said Dr. 16-2-9 gandahs of land, for the purpose of settling the same with others.

The appellants paid no attention to the notice, and thereupon the respondent instituted the suit out of which the appeal arose, praying (1) that the Court should direct a measurement of the excess land and give him khas possession thereof; or otherwise, (2) that the Court should, in the event of its declining to give him possession, assess the rent of the excess land payable under the kabuliyat.

Held, that the measurement of 1876, without intimation to the appellants, coupled with the peculiar terms of the notice of March, 1878, was not per se sufficient to entitle the respondent to insist on his claim for khas possession

### LANDLORD AND TENANT-(Contd.)

Churland demised-Accretion of new chur to-(Contd.)

of the excess land, as ascertained by the Court; but that he was entitled to have a decree fixing the extent of the excess land, and assessing the rent payable for it, in terms of the kalsuliyat of 1850. On ascertainment of the precise extent of excess land for which rent was payable, and also the precise amount of the increased rent, it would be in the option of the respondent, either to realise the rents in terms of law, or to serve a fresh notice in terms of the kabuliyat of 1850; and, if the appellants did not come in and make a settlement and file a new kabuliyat, he would then be entitled to khas possession of the excess land which had accreted to the original howla (121-2).

If the respondent had given the appellants full notice of his intention to make a new measurement, so as to enable them to be present, if they saw fit, at the time it was made, that would have cast upon them the duty of appearing before him within fifteen days after the notice was served; and if they had failed to appear within that period, the Court, if satisfied that the measurement was made in good faith, would probably have held them precluded by their own laches from objecting to it. But the respondent gave them no intimation of his intention to measure; and, in the notice which he served, he did not require them, in terms of the kabuliyat of 1850, "to take a settlement of the excess land, 'and to file a kabuliyat,' but called upon them within 15 days to "file a kabuliyat for the said quantity of land, and for the said amount of rent." The difference between these two requisitions is not one of form merely, but of substance. What the deed of 1850 contemplates is that after a measurement has been made, within the knowledge of the tenants, and to which they ought therefore to be prepared to state specific objections, they may be required to come in and say whether they are or are not willing and ready to take a lease of the excess land. It does not contemplate that the new kabuliyat must of necessity be executed within the fifteen days. It is obvious that, after the tenants have come in, and have agreed to take a lease of the excess land, they and the proprietor may differ both as to the precise extent of the land and as to the rent to be paid for it; and in that case their difference must be settled by the Court (120). (Lord Watson). RAMCOOMAR GHOSE v. KALI KRISHNA (1886) 13 I.A. 116-14 C. 99 (106-7)= TAGORE. 4 Sar. 737.

-Rent payable for excess land-Rate of-Pergunnah rates- No evidence of-Effect.

A kabuliyat, dated 23rd April, 1850, executed by the then tenants, under a howaldari tenure of certain lands comprised in "the chur to the east of M," forming part of the semindary belonging to the respondent, contained the fol-

lowing stipulations :-

"If a new chur accretes contiguous to the aforesaid howla, and as hakiat of the aforesaid (torn), and no revenue is assessed thereon by the Government, then, when the said chur becomes fit for cultivation, a fresh measurement shall be made of the land of the said chur and of the aforesaid howla; and, after a deduction of the aforesaid 13-6-16 gundahs of land, we shall pay rent at the rate of Rs. 2-7-7 for the excess of land up to five dropes, and at the sara (prevailing) pergunnah rates for land exceeding that quantity. If you fail to do so, the rent will be realised according to the law for the realisation of rent, with interest on lapsed instalments according to the demands of the towzi of the said pergunnah; or at the close of the year, you will serve on the spot, and on some conspicuous place in the mahakuma (headquarters) of any hakim, an itlanama (notice) to our address, requiring us to take a settlement of the said excess

Chur land demised-Accretion of new chur to-(Contd.)

land, and to file a kabuliyat, and fixing the time at fifteen days; if, thereupon, we do not appear before you and take a settlement and fix a kabuliyat, you will settle the said excess lands with others.

At the commencement of the year 1870, a new chur accreted to the howla in question, which was to a large extent composed of land fit for cultivation. The respondent alleged that, in April of that year, a new measurement of the original howle and of the accreted chur was made by his servants under his instructions. The measurement was made without intimation to the appellants, the registered tenants of the howla, and in their absence. The respondent thereafter caused to be served on the oppellants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabaliyat for the said amount of land and rent, or that he would take khas possession. The appellants paid no attention to the notice, and thereupon the respondent commenced the suit out of which the appeal arose, praying (1) that the Court should direct a measurement of the excess land and give him khas possession thereof; or otherwise, (2) that the Court should, in the event of its declining to give him possession, assess the rent of the excess land payable under the kabuliyat.

The Sub-Judge found on measurement that a certain quantity of land had accreted, but dismissed the suit, even as regards the prayer for assessment of the rent of the excess land on the ground that the respondent had failed to

prove pergunnals rates.

The evidence on both sides clearly showed that there was not at the date of suit, and probably never was, any such thing as a fixed scale of rents for lands like those within the

pergunnah.

Held, differing from the Sub-Judge, that that circum stance did not warrant the conclusion that no pergunnah rate had been proved, but that it led to the inference that the parties to the kabuliyat must have contemplated payment of a fair rent, to be computed according to the average of rents paid by the tenants of similar lands within the pergunnah, due regard being had to the nature of the tenure (120-1.) (Lord Watson.) RAMCOOMAR GHOSE P. KALI KRISHNA TAGORE. (1886) 13 I. A. 116=

14 C. 99 (107) = 4 Sar. 737.

#### Co sharer Landlords.

-Rent-Arrears of-Share of each co-sharer in-Suit separate by him for-Right of-Agreement establishing Effect of. See BENGAL ACTS-TENANCY ACT OF 1885, S. 188-CO-SHARER LANDLORDS -RIGHT OF EACH (1907) 35 I. A. 73 (77) = 35 C. 331 (344).

-Rent-Arrears entire of-Suit by one or some for. making others defendants-Maintainability.

It is a general rule derived from the general principles of legal procedure that a sharer, whose co-sharers refuse to join him as plaintiffs, can bring them into the suit as defendants, and sue for the whole rent of the tenure. (Sir Arthur Wilson.) PRAMADA NATH ROY P. RAMANI KANTA ROY. (1907) 35 I. A. 73 (77) = 35 C. 331 (344) =

3 M. L. T. 151 = 7 C. L. J. 139 = 12 C. W. N. 249 = 10 Bom. L. R. 66 - 18 M. L. J. 43.

-Rent in arrear is a debt. The right to recover a debt arises under the general law. A suit for arrears of rent may be brought by one joint landlord making the other joint landlords defendants (6). (Lord Macnaghten.) JATINDRA NATH CHOWDHRI P. PRASANNA KUMAR BANERJEE (1910) 38 I. A. 1=38 C. 270 (277)=

13 C.L.J. 51 = 15 C. W. N. 74 = 9 M. L. T. 1 = (1911) 2 M. W. N. 119 = 13 Bom. L. R. 1 = 8 A. L. J. 1=8 I. C. 842=21 M. L. J. 92.

#### LANDLORD AND TENANT-(Contd.)

Co-sharer Landlords-(Contd.)

-Rent-Arrears entire of-Suit by one or some for, making others defendants - Maintainability-Agreement establishing right of each sharer to sue separately for his Share of sent-Effect. See BENGAL ACTS-TENANCY ACT OF 1885. S. 188. (1907) 35 I.A. 73 (77-8)= 35 C. 331 (344-5).

-Rent-Enhancement of-Suit by one or some of, making others defendants-Maintainability. See BENGAL ACTS-TENANCY ACT OF 1885, S. 188-CO-SHARER LANDLORDS-ENHANCEMENT OF RENT.

(1910) 38 I. A. 1(5)=38 C. 270 (276-7).

#### Denial of landlord's title.

-Estoppel against tenant as to. See EVIDENCE ACT, S. 116.

-Forfeiture of tenancy by. See LANDLORD AND TENANT-FORFEITURE OF TENANCY.

Diluvion-Land subject to-Putni tenure of-Portion of land submerged-Right to, on re-formation in situ-Abandonment by putnidar of.

Exidence.

The dowl kabuliat executed by a putnidar in respect of a patni tenure situated within the appellants' Zemindari contained the following covenant: "If the land be found to be more on measurement by nat prevalent according to the custom of the pargana, I shall separately pay the rent thereof at this rate; if it be found to be less, I shall get remission therefor." The reason for the approximate The reason for the approximate statement of the area and the particular provision regarding the variation of the rent in certain probabilities was due to the fact that a strong tidal river flowed close to the boundaries of the patni taluq.

Subsequent to the lease additional land was found upon measurement to be in the patnidar's possession and the Zemindars obtained a decree in the Revenue Courts for increased rent on that ground. Later, considerable parts of the lands having been washed away by the action of the river, the patnidars obtained, under the provisions of S. 19 of the Bengal Act VIII of 1869, a proportionate remission

of rent. On the diluviated lands re-appearing and admittedly re-forming in situ, held, that the patnidars had not abandoned their rights to such lands on their re-formation in situ, and that the Zemindars were entitled to rent, but not

to khas possession, in respect thereof. There is nothing to show that, by claiming or accepting remission of rent in respect of lands washed away from time to time by the action of the river, the patnidars abandoned, or agreed to abandon, their rights to such lands on their re-formation in ritu. The diluviated lands formed part of a permanent, heritable, and transferable tenure; until it can be established that the holder of the tenure has abandoned his right to the submerged lands it remains intact. (Mr. Ameer Ali.) ARUN CHANDRA SINGH v. KAMINI KUMAR BARDHAN. (1913) 41 I.A. 32=41 C. 683=22 I.C. 317=

(1914) M. W. N. 175=18 C. W. N. 369= 15 M. L. T. 182=12 A. L. J. 243=19 C. L. J. 272= 16 Bom. L. R. 323 = 26 M. L. J. 251.

#### Ejectment suit by landlord.

-Maintainability-Estoppel. See LANDLORD AND TENANT-ESTOPPEL.

Tenants different of different lands-Single suit against-Propriety-Evidence applicable to case of one of tenant-Use against landlord of, as regards different tenant Objection to-Waiver of. See C. P. C. of 1908, Or. 2 (1919) 47 I. A. 76 (86-7)= R. 3-LANDLORD.

43 M. 567 (578).

#### Estoppel.

-Alienation by tenant pending ejectment suit by landlord-Landlord's right to dispute-founder of alsence in

suit on application by landlord-Effect.

In a suit in ejectment brought by the plaintiffs against D the High Court, on appeal, held that D was a raiyat of the suit lands, and dismissed the suit on the ground that no notice to quit had been given to him as required by the Bengal Tenancy Act, 1885. Plaintiffs appealed from that decree to the Privy Council. Pending that appeal  $D_2$ interest in the said lands was sold to M and C, and a notice of such sale was served upon the plaintiffs. The plaintiffs thereupon applied to have M and C added as respondents in the Privy Council appeal, their application for the purpose, however, expressly stating that they did not admit the validity of the sale to M and C. M and C were accordingly added as respondents to the Privy Council appeal, and in that appeal the decree of the High Court was eventually affirmed.

Held, reversing the courts below, that the plaintiffs were not, by reason of their having filed the position to have M and C added as respondents, estopped from contesting the

validity of the sale to them (727).

M and C were obviously added with the object of further litigation after the determination of the Privy Council appeal being, if possible, avoided. M and C in their own interests accepted the position of added respondents to the appeal and did not disclaim all interest in the litigation and in the lands in question (727). (Sir John Edge.) DAMODAR NARAYAN CHAUDHURY P. MITTER. (1922) 27 C. W. N. 461 = 4 Pat. L. T. 199 =

21 A. L. J. 365 = 16 L. W. 692 = 69 I. C. 134 = A. I. R. 1922 P. C. 349 = 4 U. P. L. R. (P.C.) 108 = 31 M. L. T. 205 - 44 M. L. J. 723.

-Building by tenant on lands demised-Acquiescence by laudlord in-Claim by him subsequently to eject tenant

-Maintainability.

The mere erection by a tenant of permanent structures upon the land let to him, in the knowledge of and without interference by his lessor, will not suffice to estop him in equity from suing to eject the tenant. To raise a plea of equitable estoppel, the tenant must show that the conduct of the owner, whether consisting in abstinence from interfering or in active intervention, was sufficient to justify the legal inference that the parties had by plain implication contracted that the right of tenancy under which the tenant originally obtained possession of the land should be changed into a perpetual right of occupation. (Lord Watsen.) LALA BENI RAM v. KUNDAN LALL.

(1899) 26 I. A. 58 (63) = 21 A. 496 (503 4) = 3 C. W. N. 502 = 1 Bom. L. R. 400 = 7 Sar. 523. -Building erected by tenant on faith of representation of permanent tenure-Ejectment suit subsequent by

landlord-Maintainability.

The lessee under a registered lease deed granted for the purpose of erecting buildings, putting up presses, etc., for trading, being doubtful as to whether the tenure erected by the lease was a permanent tenure, applied to the lessors for express permission for the purpose of erecting a structure on the land denised. The then agent of the lessors wrote a letter to the lessee in which he stated that the registered lease was a permanent lease, and that under it the lessee was entitled to erect buildings, as the lease distinctly stated, but that there was no fixity of rent. On the faith of that letter the lessee erected permanent buildings upon the demised land. In a suit subsequently brought by the lessor to evict the lessee, held that, whether or not the lease was in its inception a permanent lease, the lessor was estopped from questioning the permanency of the tenure (186),

## LANDLORD AND TENANT-(Contd.)

Estoppel-(Costd.)

The statement in the letter is a statement of fact and not a mere expression of opinion. It amounts to a distinct representation that the lessee had under the lease a fixity of tenure, at a varying rent, and the lessor is estopped from putting forward any plea inconsistent with that representation. Such an estoppel does not create a new contract. It merely gives effect to the representation that induced the lessee to act as he did (186-7). (Mr. Ameer Ali).) FORBES (1925) 52 I. A. 178 = 4 P. 707 = P. RALLI. 49 M. L. J. 48 = 6 Pat. L. T. 404 =

A. I. R. 1925 P. C. 146 = 23 A. L. J. 548 = 27 Bom. L.R. 860 = 41 C. L. J. 543 =

(1925) M. W. N. 453 = 30 C. W. N. 49 = 87 I. C. 318 = 2 O. W. N. 514 = 6 L. R. P. C. 119.

-Denial of landlord's title by tenant- Estoppel as regards. Say EVIDENCE ACT, S. 116.

-Expenditure of money on land by third party taking possession of land under verbal agreement for certain interest in land or expectation of such interest created or encoaraged by landlord. Landlord's duty to give effect to promise or expectation in case of, See LAND-OWNER OF-CREATION OF INTEREST IN LAND, ETC.

(1901) 28 I. A. 211 = 28 C. 693 (705-6).

-Har of landlerd-Title of-Tenant's right to dispute- Payment of rent by tenant to heir.

S, wislow, executrix of f, sued to recover from the appellant the rent at an enhanced rate for one year of a separate 10 annas share of lands held by the appellant under a lease which was perpetual and heritable, but the rent of which was liable to be enhanced under the provisions of Bengal Act VIII of 1869. J. who was the owner of the 10 annas share, married S, and after his death, she adopted a son to him, named N, who married the respondent, and was dead at the date of the hearing of the appeal to the Privy Council.

The plaint stated that the plaintiff had the title to and the possession of the 10 annas share, which, by a partition of the Zemindari, was recorded as No. 122 in the Collectorate of the District, and that the defendant had been paying to the plaintiff the old rent. The defendant resisted the suit on the ground that the plaintiff had no right to bring the suit. The allegation in the plaint that the defendant had been paying the old rent to the plaintiff was not, however, denied

Held, that the defendant could not, therefore, dispute the plaintiff's title, and that he could only shew that it had expired, and that therefore the plaintiff was not entitled to any rent (27). (Sir Richard Couch.) RAJA SURJA KANT ACHARYA P. RANI HEMANTA KUMARI DEBI.

(1892) 20 I.A. 25 = 20 C. 498 (503) = 6 Sar. 279.

-Permanent tenancy-Landlord's right to dispute-Acknowledgment of such tenancy by him — Estoppel by reason of. See LANDLORD AND TENANT—PERMANENT TENANCY-PROOF OF-ACKNOWLEDGMENT, ETC. (1919) 46 I.A. 131-47 C. 1.

### Forfeiture of tenancy—Denial of landlord's title-Forfeiture by.

-English law as to-Tortious conveyance- Forfeiture by-English law rule as to-Applicability of, in India.

Under the English law a tenant will forfeit his holding if he denies his landlord's title in clear, unmistakeable terms whether by matter of record, or by certain matters in pair.

As to forfeiture by matter in pais, under the English law this occurred when the tenant purported to make a tortious conveyance the result of which was to give to the feoffee a greater estate than be himself had in the land. This rule

Forfeiture of tenancy—Denial of landlord's title— Forfeiture by—(Contd.)

was never applicable in India, and an "innocent conveyance" never operated in England as a cause of forfeiture and it has never been held so to operate in India. (Lora Phillimore.) MAHARAJA OF JEVPORE 7. RUKMINI PATTAMAHADEVI. (1919) 46 I.A. 109

42 M. 589 (598-9) - 26 M.L.T. 16 (1919) M.W.N. 271 - 23 C.W.N. 889 -21 Bom L.R. 655 - 17 A.L.J. 552 - 10 L.W. 381 -29 C.L.J. 528 - 50 I. C. 631 - 36 M.L.J. 543.

Favourable tenancy-Claim to more-Failure to establish-No forfeiture by reason of.

Quaere, whether in a case in which the tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeiture, (Lord Phillimore.) MAHARAJA OF JEVFORE 7. RUKMINI PATTAMAHADEVI. (1919) 46 I.A. 109—

42 M. 589 (597-8) - 26 M. L.T. 16 = (1919) M.W.N. 271 - 23 C.W.N. 889 = 21 Bom. L. R. 655 = 17 A L.J. 552 = 10 L.W. 381 -29 C.L.J. 528 = 50 I.C. 631 = 36 M.L.J. 543.

-Law as to, before T. P. Act and since.

Under the law of India there are circumstances in which a repadiation by a tenant of his landlord's title will work a forfeiture. This law is not ancient Indian law, but has been adopted by the courts from the law of England, and is now embodied in S. 111 of the T. P. Act. This statutory provision is not retrospective, but it is in substance the placing in a statutory form of the rule of law which had been already adopted by the Courts of India, (f. ed. Phillimore.) Maltaraja Of Jevfore r. Rusmini Pattamahadevi. (1919) 46 I.A. 109 =

42 M. 589 (597-8) = 26 M. L. T. 16 = (1919) M. W. N. 271 = 23 C. W. N. 889 = 21 Bom. L. R. 655 = 17 A. L. J. 552 = 10 L. W. 381 = 29 C. L. J. 528 = 50 I. C. 631 = 36 M.L.J. 543

Lease for term - Tenant under - Dispute of character of tenant by No forfeiture by reason of

A tenant under a lease for a term does not, disputing his character as tenant, forfeit the lease. (Lord Phillimore,) MAHARAJA OF JEYPORE P. RUKMINI PATTAMAHADEVI. (1919) 46 I. A. 109 = 42 M. 589 (600) =

36 M.L.J. 543 = 26 M.L.T. 16 = 21 Bom. L R 655 = 17 A. L. J. 552 = 10 L. W. 381 = 29 C. L. J. 528 = 50 I. C. 631.

Rent and service—Tenure on condition of payment of former and of rendering of latter—Refusal to render service—When no forfeiture by reason of

A pargana within the appellant's Zamindari was held under an hereditary patta and muchilika of 1877, which provided that the holder should pay an annual rent of Rs. 15,000, and should attend the Zamindar at the Dashara Darbar with 500 paiks for service. The holder in 1904 refused in writing to pay rent at the agreed rate or to attend at the darbar, alleging that the pargana was an independent Zamindari subject only to a rent of Rs. 2 200 a year:—

Held that no forfeiture was incurred since there was no denial of title by matter of record before the suit, and the service refused was a subsidiary consideration and, on the evidence of a merely ceremonial character. (Lord Phillimore.) MAHARAJA OF JEYPORE P. RUKMINI PATTA-MAHADEVI. (1919) 46 I.A. 109 = 42 M. 589 (601 2) = 26 M.L.T. 16 = (1910) M.H. V.

### LANDLORD AND TENANT-(Contd.)

Forfeiture of tenancy—Denial of landlord's title— Forfeiture by—(Contd.)

21 Bom. L. R. 655 - 17 A. L. J. 552 = 10 L. W. 381 = 29 C. L. J. 528 = 50 I.C. 631 = 36 M. L. J. 543.

Rule as to-Applicability of to leases from year to

The reason why a tenant from year to year may, when he has denied his landlord's title, he ejected without notice, is not because the denial or disclaimer works a forfeiture. The holding being from year to year subject to the mutual will of landlord and tenant to determine it on giving the usual six months' notice, evidence of a disclaimer is evidence of an election to put an end to the tenancy and supersede the necessity for such notice. (Lord Phillimore.)

MAHARAJA OF JEYPORE 2. RUKMINI PATTAMAHADEVI

(1919) 46 I. A. 109 = 42 M. 589 (599) = 26 M. L. T. 16 = (1919) M. W. N. 271 = 23 C. W. N. 889 = 21 Bom. L. R. 655 = 17 A.L.J. 552 = 10 L. W. 381 = 29 C. L. J. 528 = 50 I. C. 631 =

36 M. L. J. 543.

Suit-Denial of title in-No forfeiture by, which ran be taken advantage of in that suit itself.

Denial of the landlord's title in a suit will not work a forfeiture of which advantage can be taken in that suit because the forfeiture must have accrued before the suit was instituted. (Lord Phillimore.) MAHARAJA OF JEY-PORE 2. RUKMINI PATTAMAHADEVI.

(1919) 46 I. A. 109 = 42 M. 589 (598) = 26 M. L. T 16 = (1919) M. W. N. 271 = 23 C.W.N. 889 = 21 Bom. L. R. 655 = 17 A. L. J. 552 = 10 L. W. 381 = 29 C. L. J. 528 = 50 I. C. 631 = 36 M. L. J. 543.

-Il acer of - Landlord's right of.

A Zemindar, or landlord, may waive a forfeiture, and may treat a tenancy or interest as continuing which his tenant repudiates, or in respect of which he has incurred a forfeiture (450). (Lord Chelmsford.) MAHARAJA RAJUNDER KISHWAR SINGH BAHADOOR v. SHEOPURSUN MISSER. (1866) 10 M. I. A. 438=

5 W.R. (P. C.) 55 = = 1 Suth. 628 = 2 Sar. 174.

### Kabuliyat.

Deed itself a, or merely creating a right to obtain a
 Test- Registration—Necessity.

The question was whether or not an ikrar was inadmissible for want of registration. The District Judge held that it was inadmissible, because it operated to create or declare an interest, and came under clause (b) of S. 17 of the Registration Act III of 1877.

The terms of the document were that the tenants conjointly promised that they would sign and have registered kalsulyats in respect of rents at the rates mentioned for the old lands which they had, and for the excess land, if any was found on measurement.

Midd that the ikrar did not come under clause (b), but under clause (b) of S. 17, as a document merely creating a tight to obtain another document, which would, when executed, create or declare an interest (238). (Sir Richard C. mch.) PERTAB CHUNDER GHOSE v. MOHENDRA PURKAIT. (1889) 16 I.A. 233=17 C. 291 (297)=5 Sar. 444.

Prior arrangement—Deed merely reciting, or creating new arrangement—Test. Sα BENGAL REGULATIONS
—PUTNI TALUOS REGULATIONS OF 1819, S. 3(3)—
RENT. (1905) 33 I.A. 30=33 C. 140.

Registered kabuliyat—Enforceability of—Representations some or one of which untrue—Execution on faith of —Effect.

26 M.L.T. 16 = (1919) M.W.N. 271 = 23 C W.N. 889 The appellant sued the respondents to recover rent, cesses, and interest due under a registered kabuliyat. The

Kabuliyat-(Contd.)

kabuliyat after the agreement to pay the rent contained these words: "If you (the plaintiff) or your heirs require the land you and they will take khas possession of it. I (the tenant) and my heirs shall never have occupancy right to the said lands;" and towards the end a clause that if the rent was unpaid the tenants should at the pleasure of the plaintiff and of his heirs be ejected from the land, and it should be his and his heirs' khas property.

The tenants objected to the condition that khas possesssion might be taken at will; but they were told that the condition was inserted not with a view to its being enforced but merely with the object of inducing the tenants to remain under the influence of the Zemindar. Similarly with reference to the clause empowering the landlord to take khas possession if rent were not paid by the end of the year. It appeared that the landlord represented that clause to be a penalty clause and that the law was to that effect. The statement of the effect of the law was admittedly a misrepresentation.

Held that the kabuliyat was not the real agreement between the parties, and that the plaintiff could not suc

upon it (238).

Where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a Court of Equity, considered as having been obtained fraudulently. If such a representation had not been made, the tenants might have refused to sign the kabuliyat. Further, if there is any stipulation in the kabuliyat which the plaintiff told the tenants would not be enforced, they cannot be held to have assented to it, and the kabuliyat is not the real agreement between the parties (237-8). (Sir Richard Canch.)
PERTAB CHUNDER GHOSE P. MOHENDEA PURKAIT.
(1889) 16 I. A. 233-17 C. 291 (296-7)=5 Sar. 444.

-- Unenforceable kabuliyat-Suit for rent on foot of -Kabuliyat different not referred to in plaint and not intended to be final agreement-Decree on foot of-Propriety. See LANDLORD AND TENANT-RENT-SUIT FOR-KABULIYAT UNENFORCEABLE.

## Landlord.

-Ex-landlord if included in. See CALCUITA RENT ACT OF 1920-LANDLORD AND TENANT IN. (1928) 55 I. A. 344 = 55 M L.J. 464 (469).

-Rival landlords-Property in possession of tenant-Claims to-Suit by one landlord against another for declaration of title-Maintainability-Specific Relief Act, S. 42.

Under the Bengal Land Registration Act (VII of 1876) registration of ownership was refused on the application of two rival purchasers of the same property, and a reference concerning them was made to the High Court under S, 55. One purchaser then sued the other claiming a decree declaratory of his title, under conveyances made to him in 1890 by a Mahomedan widow, since deceased, and ly assignees and lessees from her of parts of her interest in the property. He alleged that a hibs-bil-cauz, executed by her in 1858 to her son-in-law for no substantial consideration, was nothing more than a benami transfer, after which she had remained the owner with her tormer title. On that hiba, however, the defence was founded, the defendant averring that it was a real conveyance by the widow, and that through the son-in-law, from whose sons the defendant had purchased the property, the latter had obtained a good title. Neither party was or had ever been in actual physical possession of any part of the property, which had been let to tenants. An objection taken to the form of the

## LANDLORD AND TENANT-(Contd.)

Landlord -(Contd.)

suit was overruled by the Courts below. Held, that the Courts were right in so doing (226). (Lord Hobbouse.) NIRMAL CHUNDER BONNERJEE +. MAHOMED SIDDICK.

(1898) 25 I. A. 225 = 26 C. 11 (14) = 7 Sar. 383.

-Rival landlords-Suit by one of, against tenant in possession under Magistrate's order-Decision in, of title of rival claimants-Propriety-Other landlord impleaded in suit and question of title fully fought out-Effect.

The lands, which were the subject of the suit, were three separate holdings forming part of the Government Khas Mehals in the Twenty-Foor Pergunnahs. The appellant claimed the suit lands under a purchase thereof by his assignor under a sale held under Pengal Regulation XI of 1796. A was the registered tenant of the lands, and the sale was held in pursuance of proceedings taken against him under the said Regulation. The respondents insisted that d was a member of a joint Hindu family of which they were the other members, that the lands in suit were joint family property, and that the sale relied upon did not affect their interests in them. One G claimed to be a lesses of the suit lands under a lease granted by A and the re-pundents, and, owing to a dispute between G and the appellant's assignor, a Magistrate's order was possed declaring G to be in possession of the suit lands, and directing appellant's assigner to a civil suit.

Appellant, who obtained a transfer of his assignor's interest, thereupon instituted a suit for possession of the suit londs. The suit was originally instituted against G only. By supplemented plaint the respondents were made parties to it. The issues settled in the case related to the bona fide nature of the lease set up by G and to appellant's title to respondent's share of the suit lands. The trial Judge held that the lease was merely colorable and that the appellant was, as between him and G, entitled to possession, He further held that the question of title between appelbut and respendents could not be properly tried in the suit, and that respondent's remedy was to sue to set aside the sale to the extent of their interest, making the Government a party to the suit. G and the respondents appealed against that decision, but the former died pending his appeal, which, not having been reviewed, was struck off. The appellate Court overruled the objection that the suit had come to an end with the lessee's interest, on the ground that there was a distinct issue of title joined between appellant and respondents and made a decree in their favour, reducing the interest of the appellant in the lands to the fractional share of A.

Held, that the appellate Court was right in determining the question of title between the appellants and the respondents and that its decree was correct.

The appellant had by supplemental plaint made the respundents parties to the suit, though under a kind of protest that it was unnecessary to do so; and this issue of title had been raised and joined between them. The only difficulty in the case is, that the lease of G, who was put forward as he tenant in possession, has been pronounced by the trial Judge to be simply colorable, and that the appellate Court has not dealt with his finding on that point. Considering, however, that as between G and the respondents the lease constituted the relation of landlords and tenant, and that the intervention of the landlords to defend rested on privity of title; and further, that the effect of the proceedings in the Magistrate's Court was to determine that the appellant was out of possession, and to cast upon him the burden of recovering possession by proof of a good title, and that he has failed to do so except to the extent admitted by the appellate Court, their Lordships think that the decree

Landlord-(Contd.)

under appeal is correct (240-1). (Sir James Celvile.) JUG-GOMOHUN BUKSHEE P. R. M. CHOWDRY.

(1867) 11 M.I.A. 223-7 W.R. (P.C.) 18= 1 Suth. 673 - 2 Sar. 246.

-Rival landlords-Tenant of one of, and other landlord-Criminal proceedings between-Razinama filed in-Admissibility of, against that tenant's landlord to show character of enjoyment. See EVIDENCE-DEED-Inter fartes-DEED NOT. (1878) 6 I. A. 33 (41-2)= 4 C. 633 (640).

Tenant-Allegation of right to certain tenure by-Declaration of title free trom-Sait for-Maintainali-lity-Consequential relief-Landlord not entitled to any -Specific Relief Act, S. 42,

Held that a suit by a Zemindar against a number of his ryots for a declaration of his mal title by setting aside the false bromuttur title alleged by the defendants was not maintainable by virtue of the provisions of S. 15 of Civil Procedure Code of 1859.

The suit is one to set aside, not any deed nor any act, but a mere allegation of the defendants that they had a certain tenure. The Zenandar was not entitled to relief in the shape of an order giving him possession, inasmuch as he was in receipt of the rents and profits, and he sought for and could obtain no other description of possession than that which he had. He could not obtain relief by an order directing an enhancement of rent, inasmuch as the cognizance of suits for the enhancement of rent is confined to the Revenue Courts, and a certain procedure is assigned to claims of that kind in those Courts. The declaration sought for by him is really no more than this, that he should have his title, whatever it was as a Zemindar, free from the allegation of the defendants that they had some other title. He cannot obtain relief in the shape of merely setting aside an assertion, an assertion which may have been merely by word of mouth. No relief could, therefore, have been granted to the plaintiff even if he had prayed for it. (Sir Robert P. Collier.) RAJAH NILMONY SINGH P. KALLY CHURN BATTACHARJEE, (1874) 2 I. A. 83 = 14 B. L. R. 382 = 23 W. R. 150 = 3 Sar. 447 =

-Tenants different holding different parcels of land-Single suit against-Evidence applicable to case of one tenant-Use against landlord of, as regards different tenant -Objection to-Waiver of, See CIVII. PROCEDURE CODE OF 1908, O. 2, R. 3-LANDLORD.

(1919) 47 I.A. 76 (86-7) = 43 M. 567 (578).

## Notice to quit.

CONSTRUCTION OF.

-Maxim -Ut res magis valeat quam perent-Applicability of. See LANDLORD AND TENANT-NOTICE TO QUIT-VALIDITY OF-TEST.

(1918) 45 I.A. 222 (225) = 46 C. 458 (471).

#### SERVICE OF.

-Agent of tenant duly authorized-Service on-Destruction of notice by him without principal's knowledge -Sufficiency of service in ease of.

Service of a notice to quit upon or delivery to an authorized agent would be good service or delivery to the principal though in fact the notice was destroyed by the agent, and never was seen or heard of by the principal (231). (Lord Atkinson.) HARIHAR BANERJI P. RAM-SASHI ROY. (1918) 45 I. A. 222 = 46 C. 458 (482-3) =

23 C. W. N. 77 = 29 C. L. J. 117 = 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L.T. 159 = 21 Rom. L. R. 522 = (1919) M. W. N. 471 = 48 I. C. 277 = 35 M. L. J. 707.

## LANDLORD AND TENANT-(Contd.)

Notice to quit-(Contd.)

SERVICE OF-(Contd.)

- Joint tenants-Service on one of-Presumption of service on all from,

In the case of joint tenants, each is intended to be bound, and service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants (230). (Lord Atkinson.) HARIHAR BANERJI v. RAMSASHI ROY. (1918) 45 I. A. 222=

46 C. 458 (480) = 23 C. W. N. 77 = 29 C. L. J. 117= 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L. T. 159 = 21 Bom. L. B. 522=(1919) M. W. N. 471= 48 I.C. 277 = 35 M. L. J. 707.

Personal service on tenant-Service on member of his family or his servant-Mede of.

S. 106 of the Transfer of Property Act only requires that a notice to quit should be tendered or delivered to the party intended to be bound by it either personally or to one of his family or servants at his residence, or, if such tender or delivery be not practicable, affixed to a conspicuous part of the property. The personal tender or delivery may take place anywhere; the vicarious tender or delivery must take place at the residence of the person intended to be bound by the notice (230). (Lord Atkinson.) HARIHAR BANERJI RAMSASHI ROY. (1918) 45 I. A. 222=

46 C. 458 (480) = 23 C. W. N. 77 = 29 C. L. J. 117= 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L T. 159 = 21 Bom. L. R. 522=(1919) M. W. N. 471= 48 I. C. 277 = 35 M. L. J. 707.

Registered letter with acknowledgment-Notice by -Posting of -Acknowledgment signed on behalf of tenant by person not his authorised agent-Sufficiency of service in case of.

It is an entire mistake to suppose that the addressee must sign the receipt for a registered letter himself, or that he cannot do so by the hand of another person, or that if another person does sign it on the addressee's behalf the presumption is that it never was delivered to the addressee himself mediately or immediately. For instance, if a servant in the addressee's house saw a notice handed in by the postman carried to the addressee and handed to him, that servant could certify that it was delivered to his master. and could, if requested by the master, sign the receipt on the latter's behalf, though he was not the agent of the master authorized to take delivery on his, the master's, behalf (230-1). (Lord Atkinson.) HARIHAR BANERJI r. RAMSASHI ROY.

(1918) 45 I. A. 222 = 46 C. 458 (482-3)= 23 C. W. N. 77 = 29 C. L. J. 117 = 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L. T. 159 = 21 Bom. L.B. 522 = (1919) M. W. N. 471 = 48 I. C. 277 = 35 M. L. J. 707.

#### VALIDITY OF.

-Area of holding-Mis-statement as to, in Schedult to notice-Body of notice clear as to what was intended-

The appellants had for some time held possession, as tenants from year to year, of land in a village, known as the jamma of Nidhi Ram at an annual rental of Rs. 25. A notice to quit was served upon them, which distinctly stated that the land of which possession was required was the land standing in the name of Nidhi Ram, bearing the yearly jamma of Rs. 25, and for which the appellants had been paying rent and taking receipts. The boundaries of the land given in the notice to quit covered the entire area held by the appellants. In the schedule to the notice, however, there was a mistatement as to the area of the land of which possession was demanded, the extent being stated to be less than it really was,

Notice to quit-(Contd.)

VALIDITY OF-(Contd.)

Held, that the erroneous statement in the schedule to the notice of the contents of the jamma did not pre.lominate over the description given of it in the earlier portion of the notice, and that the notice was a good notice to quit the holding in its entirety, whatever its area might be (229.30). (Lord Atkinson.) HARIHAR BANERJI P. RAMSASHI ROY. (1918) 45 I. A. 222 = 46 C. 458 (479-80)

23 C. W. N. 77 = 29 C. L. J. 117 = 9 L. W. 148 = 16 A. L J. 969 = 25 M. L. T. 159 = 21 Bom. LR. 522 = (1919) M. W. N. 471 - 48 I. C. 277 = 35 M. L. J. 707.

Portion of holding-Notice to quet only.

A notice requiring a tenant to quit only a portion of the holding of which he is tenant is bad and ineffective in law (229). (Lord Atkinson.) HARTHAR KANERJI : RAM-(1918) 45 I A. 222 - 46 C. 458 (479) = SASHI ROY. 23 C. W. N. 77 = 29 C. L. J. 117 - 9 L. W. 148 -

16 A. L. J. 969 - 25 M. L. T. 159 - 21 Bom. L.B. 522-(1919) M. W. N. 471 - 48 I. C. 277 - 35 M. L. J. 707.

-Test-Construction of notice to quit-Maxim-Ut res magis valent quam pereat-Applicability of.

A notice to quit is merely the formal expression of the landlord's will that the tenancy of his tenant shall terminate

Both under the English law and under the Indian law, notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances; and, further, they are to be construed, not with a desire to find faults in them which would render them defective, but to be construed ut res magis valent quam percut (225). (Lord

Atkinton.) HARIHAR BANERJI F. RAMSASHI ROV. (1918) 45 I. A. 222 = 46 C. 458(471) = 23 C. W. N. 77 = 29 C. L. J. 117 = 9 L. W. 148 = 16 A. L. J. 969 = 25 M. L. T. 159 = 21 Bom. L. R. 522 =

(1919) M.W.N. 471 = 48 I. C. 277 = 35 M. L. J. 707.

#### Permanent tenancy.

(Under this head are included all cases under perpetual tenure and under perpetual and hereslitary tenure. See also LEASE-PERPETUAL LEASE.)

ADVERSE POSSESSION-ACQUISITION BY TENANT OF

SUCH TENANCY BY.

ADVERSE POSSESSION AGAINST TENANT UNDER. INCIDENTS OF-PURCHASER OF TENURE-RIGHTS

LANDLORD'S RIGHT TO DISPUTE.

LIFE TENANT-ASSERTION OF PERPETUAL OR HERE-

DITARY TENURE BY.

PLEA OF-ONUS OF PROOF OF. .7.2 PRECARIOUS TENANCY OR-FINDING AS TO.

PRESUMPTION OF.

PROOF OF.

RENT OF.

ADVERSE POSSESSION-ACQUISITION BY TENANT OF SUCH TENANCY BY.

-See LANDLORD AND TENANT-ADVERSE POS-SESSION-PERMANENT TENANCY.

ADVERSE POSSESSION AGAINST TENANT UNDER.

-Effect on landlord of. See LANDLORD AND TENANT-ADVERSE POSSESSION-PERPETUAL TENURE.

#### LANDLORD AND TENANT-(Contd.)

Permanent tenancy- (Contd.)

INCIDENTS OF-PURCHASUR OF TENURE-RIGHTS OF.

-The lease as it expressly bears, is permanent and transferable and at a fixed rent. The tenant under such a lease virtually becomes the proprietor of the surface of the lands subject only to the payment of the stipulated rent, and the lessor and succeeding landlords have no interest in the lands except in so far as they form a security for payment of the rent. When the rent falls into arrear the landlord's only remedy is to bring the tenure to sale by public auction on the execution of a decree for payment of rent. The purchaser of the tenare acquires title to the lands on the terms of the original lease unaffected by any incumbrances created by previous tenants, incumbrances as defined by S. 161 of the Bengal Tenancy Act. 1885. (Lord Salveson.) KATVANI DEBLE, UDOY KUMAR DAS.

(1924) 52 I. A. 160 (1634) - 52 C. 417 -23 A. L. J. 751 = 6 L. R. P. C. 140 - 30 C. W. N. 1 88 I. C. 110 A. I. R. 1925 P. C. 97.

LANDLORD'S RIGHT TO DISPUTE.

-Estoppel by reason of acknowledgment of such tenancy. See LANDLORD AND TENANT-PERMANENT TENANCY-PROOF OF-ACKNOWLEDGMENT OF ETC.

(1919) 46 I. A. 131 - 47 C. 1.

LIFE TENANT-ASSURTION OF PERPETUAL OR HEREDITARY TENURE BY.

-Effect. See LANDLORD AND TENANT-ADVERSE Possession-Life tenant.

(1899) 26 I. A. 216 (224) - 27 C. 156 (166).

PLEA OF-ONUS OF PROOF OF.

-Oudh Estate-Villages comprised in-Resumption of-Suit by talekdar for-Plea in-Admission by defendant of (1) plaintiff being talukdar and (2) of payment of rent to him. See OUDH ESTATE-VILLAGES COMPRISED IN-RESUMPTION OF-SUIT BY TALUKDAR FOR.

(1884) 12 I. A. 52 (57, 59-60) - 11 C. 318 (327-8, 331). Tenant-Plea by, in landlord's suit to eject him,

The Maharajah of Darbhanga sued the Government of India for possession of a village of which the latter had been in possession since 1798. During the whole of that time, and for long before, the village was admittedly part of the milkiat, that is, of the Zemindary or proprietary estate of the Durbhanga Raj. The Government had made to the Rajah, in some shape or other, either as a matter of account or as a matter of actual payment, one uniform payment for 80 years before the dispute arose, and they claimed to be perpetual tenants at fixed rent. They contended that the true inference from the facts was that there was a binding agreement for a perpetual tenancy by them under the Darbhanga Raj and that otherwise the Rajah would not have gone on for such a number of years accepting a payment which had come to be very far below the value of the land, unless he was bound by an agreement of that kind.

Held that, being admitted by tenants of the Darbhanga Raja, the Government had to shew why the landlord might not recover his property; and they could only do that by proving that there was some agreement between them and their landlord that they should have something more than the ordinary tenancy at will from year to year (11).

It is not the business of the plaintiff to explain the possession; it is the business of the defendants to shew that it leads to the inference of a perpetual tenancy (11). (Lord Hobbouse.) SECRETARY OF STATE FOR INDIA 2. MAHA-RAJAH LUCHMESWAR SINGH,

(1888) 16 I. A. 6=16 C. 223 (231-2)= 5 Sar. 275. It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, (1924) 52 I. A. 160 (164) = 52 C. 417. sets up a defence that he has a right of permanent tenancy

Permanent tenancy-(Cont.)

PLEA OF-ONUS OF PROOF OF-(Contd.)

in the lands, the onus of proving that he has such a right is upon the tenant. (Sir John Edge.) NAMNAPILLAI MAR-KAYAR P. RAMANATHAN CHETTIAR

(1923)51 I.A. 83 (89) = 47 M. 337 = A.I.R. 1924 P.C 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. I. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

See also under Occupancy RIGHY.

PRECARIOUS TENANCY OR-FINDING AS TO.

PRESUMPTION OF.

-Kudimiras-Use of, in rent receipts-Presumption from-Propriety.

Their Lordships are not certain what in Tanjore "kudimiras" means. No doubt by itself "miras" generally means a proprietor of some kind, and "kudi" by itself appears to mean a house, a village, a town, an inhabitant, or a tribe.

Held that "kudimiras" in certain receipts passed to the tenants who claimed a right of permanent occupancy in the lands in respect of which those receipts were passed to them might have been a description of the tenant as the proprietor of a house in the abadi of the village, or that it might have been a misdescription, and that a presumption of right of permanent occupancy could not be made from the fact that the receipts used that expression. (Sir John Edgy.)

NAINAPILLAI MARKAYAR P. RAMANATHAN CHETTIAR. (1923) 51 I. A. 83 (99) = 47 M. 337 =

A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 =

Long enjoyment coupled with payment of rent—Presumption from—Propriety—Origin of tenancy shown at a rent twice increased and paid down to date of suit—Effect. See LEASE—OUDH TALUKDAR.

(1884) 12 I. A. 52 (66) = 12 C. 318 (337-8)

Long enjoyment at uniform rent payment—Presumption from—Propriety—Origin of things known—
Possession explicable in other ways.

In an action of ejectment brought by a landlord against his tenant it appeared that the latter had admittedly been in possession of the suit land for a period of 80 years at a uniform rate of payment which was very far below the value of the land. The tenant contended that the true inference from the facts was that there was a binding agreement for a perpetual tenancy between him and the landlord.

Held, that there would be strength in the argument if the origin of those things could not be found out, but that the argument lost its force as the origin was known and as the possession was not difficult to explain in other ways (11). (Lord Hobboure.) SECRETARY OF STATE FOR INDIA P. MAHARAJAH LUCHMESWAR SINGH. (1888) 16 I.A. 6

16 C. 223 (231-2) = 5 Sat. 275.

Religious endowment—Debutter land of—Presumption in case of—Propriety.

To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a shebait and is not therefore presumable. In the case, therefore, of land which was debutter at the time the tenancy originated, the presumption of a permanent tenancy is not permissible. (Sir John Edge.) NAINAPILLAI MARKAYAR 2. RAMANATHAN CHETTIAR. (1923) 51 I. A. 83 (97 8) = 47 M. 337 = A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 =

## LANDLORD AND TENANT-(Contd.)

Permanent tenancy - (Contd.)

PRESUMPTION OF-(Contd.)

34 M.L.T. 10=(1924) M.W.N. 293=28 C.W.N. 809= 10 O. & A. L. B. 464=82 I. C. 226=46 M. L. J. 546.

POSSESSION—LONG AND OUIFT POSSESSION—LAWFUL TITLE TO SUPPORT—PRESUMPTION OF.

Temple lands—Presumption in case of, from (1)
use of word "kudimiras" in tenants' receipts and (2) sales
or mortgages by tenants to knowledge of temple officials—
Propriety.

Where, in a suit brought on behalf of a temple to recover lands of the temple in the possession of tenants, the latter pleaded that they had a permanent right of occupancy in the suit lands, their Lordships declined to presume a permanent right of occupancy in the tenants from (1) the fact that in some receipts given by servants of the temple tenants had been described as "kudimiras," and (2) the fact that tenants had to the knowledge of officials of the temple sold or mortgaged such interests as they had in the lands. (Sir John Edge.) NAINAPILLAI MARKAYAR P. RAMANATHAN (1923) 51 I. A. 83 (100) = 47 M. 337=

A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

PROOF OF.

Acknowledgment of such tenure by landlord-Estoppel against him by reason of.

The respondent's predecessors in title were invited by the appellant's precedessors about 1859 to occupy for building purposes land in a suburb of Delhi. No document showing the terms of the occupancy was extant nor was there any reliable oral testimony of what passed at the time. But it has found that from 1859 onwards a uniform rent had been paid, that in some of the receipts given by the landlord the word "permanent" was applied to the rent paid, that the tenants had erected substantial buildings without objection by the landlord, that they had sold and mortgaged part of the properties, and that the properties had passed by succession:—

Held that a finding that the tenancy was permanent at a fixed rent was justified, and that its validity was not affected by the fact that there was no permanent settlement in the Punjah.

In a suit brought by the appellant against the respondents to recover possession of the land, and for a declaration that the respondents were tenants at will.

Held that the courts below were justified in finding that the tenancy was a permanent tenancy at a fixed rent and that, there being nothing to show that a permanent tenancy was a legal impossibility in the Punjab, the validity of the finding was not affected by the fact that there was no permanent settlement in the Punjab.

An inference as to a fact to be drawn from facts depends on a mental process which is the same all the world over.

In the above case several sale-deeds of superstructure houses on the suit plot by the plaintiff's predecessors were produced in which there was a distinct acknowledgment that the houses themselves were held by the tenant in virtue of a permanent tenancy.

Held that that would be an estoppel against the plaintiffs.

(Lord Dunedin.) AFZAL-UN-NISSA 7. ABDUL KARIM.

(1919) 46 I. A. 131 = 47 C. 1 = 30 C. L. J. 182 = 26 M. L. T. 55 = 11 L. W. 176 = (1919) M. W. N. 494 = 23 C. W. N. 966 = 21 Bom. L. R. 891 = 81 P. R. 1919 = 29 P. W. R. 1919 = 17 A. L. J. 608 = 50 I. C. 749 =

36 M. L. J. 580.

Permanent tenancy-(Contd.)

PROOF OF-(Contd.)

-Evidence insufficient for.

The question was whether a tenancy of land created in or about the year 1871 was a permanent tenanty or a mere tenancy at will.

Held, affirming the High Court, that no permanent ten-

ancy had been established (186).

The three outstanding things which deeply impressed their Lordships in arriving at the above conclusion were as

The first was a sale deed of 23 8-1885—the only transaction of the kind that took place-by which the then proprietor of the tenant firm sold the firm's entire interest in the amla then erected on the demised land and in the land itself. The assurance of the amla was absolute, the vendor's covenants for title were unqualified. As to the land, however, the vendees were to be responsible for loss or damage which might be caused to them in case the owner of the land raise ed a dispute or set up a claim against them, the yearder was

to have no concern therewith.

Up to March, 1904, the rent paid for the land by the tenants had been Rs. 12-8 per mensem. In January, 1905, the landlord sued the tenants to recover arrears of rent at the enhanced rate of Rs. 25 per mensem; and that suit was decreed. In the written statements filed by the then tenants in that suit, no proper allegation of a permanent tenancy, was, however, set up. The only plea there set up was that the landlord could not eject the tenants so long as the defendants' building on the demised land existed, and an oral agreement at the time of the erection of the said building that the then rent of Rs. 12.8 was not to be enhanced so long as the building to be created was in existence. That was all.

Thirdly, the continued payment of the enhanced rent of Rs. 25 per mensem even since the decree in the 1905 suit. (Lord Blaneshurgh.) DHANNA MAL P. MOTI SAGAR.

(1927) 54 I. A. 178 (185.6) = 8 Lah. 573 = 39 M. L. T. 161 = 26 L. W. 634 = 28 Punj. L. B. 658 = 25 A. L. J. 959 = 29 Bom. L. R. 870 = 31 C.W.N. 677 = 101 I. C. 355 = A. I R. 1927 P. C. 102 = 52 M. L. J. 663

-Long possession at uniform rent payment-Transfers by tenant recognised by landlord-Rent received by landlord from transferees.

In a suit by a landlord to eject his tenant, the question was whether the tenant was a mere tenant at will, or whether he had a tenure of a permanent character and was

not liable to be evicted at will. It appeared that the tenure or holding, whatever might be its nature, had been in existence for about 80 years, and probably much more, when the suit was instituted, that the rent was an almost nominal one, and had never been enhanced, though the value of the holding, as measured by its sale price, had greatly increased; that it had been sold again and again by kohalas purporting to convey an absolute interest; that it had passed by will; and that the rent had been accepted from the new tenants after such devolu-

Held that from those facts only one inference was possible, namely, that the tenant held a permanent tenure.

The Courts below, however, held that that inference was excluded on two grounds:—(1) two kobalas filed in the case, executed by tenants in possession of the land in favour of their successors, expressly recited that the transferee, on paying the expenses, etc., of the Maharajah Bahadur, and on causing the expunction of the transferor's name, should take a pattah in his name; and (2) the landlord had not been proved to have assented to the several transfers of the

## LANDLORD AND TENANT-(Contd.)

Permanent tenancy-(Contd.)

PROOF OF-(Centd.)

holding, and the receipt by him of the rent of the holding from the transferees in their own names was not a sufficient recognition of the transferee as tenant, because the dakhilas acknowledging such receipts did not expressly describe the transferee as tenant of the holding.

Held further, with regard to ground No. 1, that the view of the Courts below as to the effect of taking a new pattah was inconsistent with the elecisions of the Board; and with regard to ground No. 2, that as the dakhilas described the rent paid as the rent of the holding, and the person paying as occupier of the holding, and as paving on his own account, the receipt of rent was quite a sufficient recognition of the transferee as tenant. (Sir Arthur Wilson.) NABA-KUMARI DEBI 2. BEHARI LAL SEN. (1907) 34 I A. 160 =

34 C. 902 = 2 M. L. T. 433 = 6 C. L. J. 122 = 11 C. W. N. 865 = 9 Pom. L. R. 846 = 4 A. L. J. 570 = 9 Sar. 255 - 17 M. L. J. 397.

-Long possession at uniform rent payment-Transfort by tenant recognized by landlord-Mortgage taken by landlord himself from tenant-Rent receipts-Description of tenant as tenant at will in, not brought home to tenant.

In a suit by the plaintiffs to eject the defendants, who had a ryoti holding within the plaintiff's property, the question was whether, as alleged by the plaintiffs, the holding from which he sought to eject the defendants was a mere tenancy at will, or whether it was, as alleged by the defendants, a "maurasi moborrari jama", that is, a permanent, heritable, and transferable jama holding. The District Judge, on appeal, found as a fact upon the evidence that the defendant's holding had existed for a considerable number of years, that it was created somewhere in 1845. that it had been held ever since at a fixed permanent rent, that the heritable, transferable right of the defendants had been recognised by the plaintiffs' predecessor in title; and that the plaintiffs' father himself had taken a mortgage of the holding or part of it on the basis that it was a permanent, transferable, heritable holding. It also appeared that in certain rent receipts granted to the defendants by the plaintiffs or their prodecessor, the words "tenant-at-will" appeared distinctly indicating the character of the tenancy; but there was nothing to show that the defendants or their predecessors consented to the insertion of those words in the rent receipts or that they even knew of it. The District Judge dismissed the suit, holding that the defendants had made out their case.

Held by their Lordships that the facts found by the District Judge justified the inference drawn by him from them, and that the said inference was not relutted by the words "tenant-at-will" in the rent receipts. (Mr. Ameer Ali.) SURENDRA NATH ROY 2. DWARKA NATH CHAKRAVAR. (1919) 50 I. C. 856= 24 C. W. N. 1= (1919) M. W. N. 811. THY.

#### RENT OF.

-Abatement of-Tenant's right to-Encroachments illegal by third parties on lands included in holding-Failure of tenant to protect himself against.

The appellant was the purchaser at a sale in execution of a decree for arrears of rent of the rights of a tenant under a lease which was permanent and transferable and at a fixed rent. Some six years prior to the appellant's purchase, her husband had taken possession without title of a portion of the land leased, and had continued to hold possession of it. notwithstanding certain efforts by the previous tenant to eject him. The appellant did not, after her purchase, take steps to eject him, but allowed him to continue in possession, so as to enable him and his heirs to acquire by limitation

Permanent tenancy-(Contd.)

RENT OF-(Contd.)

an absolute right as against the appellant to continue in possession.

Hdd that the appellant was not entitled, in a question with the landlord, to an abatement of rent in respect of the land so acquired by her husband and his heirs.

The duty of a tenant under a perpetual tenure such as the one in question is to protect himself against illegal encroachments by others on the lands of which he has the exclusive possession. If he fails to do so he cannot prejudice the landlord's claim for rent. (Lord Salvesen.) KATYAYANI DEBI v. UDOV KUMAR DAS.

(1924) 52 I. A. 160 (164-5) – 23 A. L. J. 751 – 52 C. 417 – 6 L. R. P. C. 140 – 30 C. W. N. 1 = 88 I. C. 110 – A. I. R. 1925 P.C. 97.

- Astement of Tenant's right to claim Agreement depriving him of Volidity of against auction purchaser of tenure.

Quaters, whether an agreement by way of compromise between a landlord and his tenant under a perpetual tenare that the latter should not be entitled to apply for abatement of rent on any ground whatever in respect of the area then found to be in his occupation would necessarily be binding on a purchaser of the tenure at an auction sale. (Lord Salvesen.) KATYAYASI DEBLE, UDOY KUMAR DAS.

(1924) 52 I. A. 160 (166) = 52 C. 417 = 23 A. L. J. 751 = 6 L. R. P. C. 140 = 30 C. W. N. 1 = 88 I. C. 110 = A. I. R. 1925 P. C. 97.

- Enhancement of Landlord's right of Ahandonment of Lease-Construction.

The material part of a pottah granted by a Zemindar in 1870 was as follows: - "This pottah is granted in respect of the abovementioned mouzah and the aforesaid jotes by fixing the annual rent thereof at Rs. 418-9-15 gundas in the company's coin as per details in the schedule, and you also submit a kabuliyat of your own accord. You shall pay the rent year after year according to the kistibundi given in the schedule below. Should you make default in payment of the kists, you shall pay the rents in arrear with interest according to law. You and your sons and grandsons, etc., in succession, will remain in enjoyment and possession by keeping the boundaries intact as they have been from before. All profits and losses shall be yours, and you shall on no account be competent to pray for a reduction of the rent. You shall abide by the survey and settlement of rent to be made by me when necessary. If you should make any plea of payment unsupported by dakhitas, the same shall be rejected. You shall not do any improper act, and should you do any, you shall be answerable for it. Should any new tax he imposed by Government, you shall pay the same separately in addition to the rent mentioned in the pottah."

Held, affirming the District Court and the High Court, that, on the true construction of the pottah, though the tenure created by it was a perpetual and hereditary one, ment of the rent (51-2).

There are no terms used in the pottah from which it can be inferred that the landlord abandoned his right to enhancement, whilst the express provision that the rent would not be reduced seems to negative any such construction (52). (Lord Carson.) KRISHNENDRA NATH SARKAR F. KUSUM KAMINI DEBL.

31 C. W. N. 514 = 25 L. W. 631 = 45 C. L. J. 305 = (1927) M.W.N. 41 = A. I. R. 1927 P.C. 20 = 52 M. L. J. 412

#### LANDLORD AND TENANT-(Contd.)

Permanent tenancy -(Contd.)

RENT OF-(Contd.)

- Enhancement of Permissibility.

Once it was settled that the original bargain was for a permanent tenancy at a fixed rent all question of enhancement was necessarily gone unless such a proceeding was authorized by statute. (Lord Duncdin.) AFZAL-UN-NISSA T. ABDUL KARIM.

(1919) 46 I. A. 131 = 47 C. 1 (5) = 30 C.L.J. 182 = 26 M. L. T. 55 = 11 L.W. 176 = (1919) M. W. N. 494 = 23 C. W. N. 966 = 21 Bom. L. B. 891 = 81 P.R. 1919 = 29 P. W. R. 1919 = 17 A. L. J. 608 = 50 I. C. 749 = 36 M. L. J. 580.

The fact that the tenure created by a pottah is a perpetual and hereditary one does not in law involve that the rent specified is therefore fixed in perpetuity (50). (Lord Carnow.) KRISHNENDRA NATH SARKAR 2. KUSUM KAMINI DEBI. (1926) 54 I. A. 48 = 54 C. 166 = 100 I. C. 93 = 31 C.W.N. 514 = 25 L.W. 631 = 45 C. L. J. 305 = (1927) M. W. N. 41 = A. I. B. 1927 P.C. 20 = 52 M. L. J. 412

An enhancement of rent is entirely inconsistent with the notion of a permanent tenancy (186). (Lord Blantiburgh.) DHANNA MAL 2: MOTI SAGAR.

(1927) 54 I. A. 178 = 8 Lah. 673 = 39 M.L.T. 161 = 26 L. W. 634 = 28 Punj. L. R. 658 = 25 A. L. J. 959 = 29 Bom. L.R. 870 = 31 C. W. N. 677 = 101 I. C. 355 = A. I. R. 1927 P.C. 102 = 52 M. L. J. 663.

#### Pottah.

CHUNDER DUTT F. JUGESH CHUNDER DUTT.

(1873) 19 W. B. 353 = 2 Suth. 836 (839) = 12 B. L. B. 229 = 3 Sar. 249.

—Meaning of—Landlord and tenant—Parties already in relation of—Written engagement between—Word if confined to. See MADRAS ACTS—RENT RECOVERY ACT, S. 3—POTTAH—MEANING OF.

(1879) 6 I. A. 170 (174-5)= 2 M. 67 (73).

## Relation of, between Zemindar and Jotedars— Decree establishing.

-What amounts to-Construction of decree.

The suit lands were admittedly dense jungle until, in 1828, or later, some of the defendants' predecessors began to cultivate them. In 1844, the Revenue authorities, treating them as illam or unsettled lands which were at the disposal of Government not having been included in any permanently settled estate, assessed them to revenue; but the plaintiffs' predecessors succeeded in getting the Revenue Authorities in 1852 to reverse that decision and to recog nise that those lands formed part of their permanently settled estate. The defendants' predecessors, however, preferred the position of raiyats holding directly under Govern ment and were unwilling to be included in the plaintiffs' zemindari. Accordingly, plaintiffs' predecessors instituted in 1854 a suit against defendants' predecessors for possession and mesne profits. The pleadings in that suit showed that the suit was not instituted and was not fought out on the footing that there was any subsisting relation of landlord and tenant between the parties. The Court in that suit held that the lands sued for formed part of the permanently settled estate of the plaintiffs' predecessors and passed a decree, which, after awarding to the then plaintiffs possession and past and future mesne profits of the lands, provided that so long as the then defendants were ready and willing to pay rents legally according to the rates prevailing in the

Relation of, between zemindar and Jotedars-Decree establishing-(Conta.)

village they should not be ousted from their right as joic-

Held, that the portion of the decree providing for the defendants' predecessors continuing to own their right as jotidars so long as they were ready and willing to pay the rents specified could not be read as establishing the relation of landlord and tenant between the parties, but was to be read as giving the plaintiff a decree for possession with past and future mesne profits, subject to the condition that so long as the defendants were willing to pay rent at the specified rates to the plaintiffs they should not be ousted from their rights as jotedars.

It is clear that under the decree the defendants were only to be entitled to the right of jotedar if they were ready and willing to pay rent to the semindar. (Sir John Wallis.)

KUMAR GOPIKA RAMAN ROY P. ATAL SINGH. (1929) 27 A. L. J. 246 - 33 C. W. N 463 -49 C.L.J. 327 - 19 L.W. 674 - 10 Pat. L. T. 301 -114 I. C. 561 - A.I.B. 1929 P.C. 99 - 56 M.L.J. 562.

#### Rent.

ABATEMENT OF. ACTUAL RENT. ALTERATION OF-LIABILITY TO. APPORTIONMENT OF. ARREARS OF. CO-SHARER LANDLORDS. DECREE FOR-MEANING OF. ENHANCEMENT OF. FIXED RENT. FIXITY OF, IN CASE OF HEREINTARY TENURE.

GOVERNMENT REVENUE PAVABLE BY TENANT IN ADDITION TO RENT IF.

ILLEGAL IMPOSITION OR.

MESNE PROFITS-CLAIMS FOR-JOINDER OF, IN ONE

OCCUPATION RENT-IMPLIED CONTRACT AS TO. PERMANENT FIXING OF ADMITTEDLY DUE-QUES-

TION AS TO.

PERMANENT TENANCY. PERPETUAL TENURE OR PERPETUAL AND HEREDI-

TARY TENURE. POSSESSION-GOVERNMENT'S RIGHT TO, IN CASE OF

RENT-PAYING LANDS. RECOVERY OF-LANDLORD'S POWERS OF-WEAKEN-

SALE FOR, OF PROPERTY WHICH HAD CEASED TO BELONG TO TENURE-HOLDER - SUIT BY REAL OWNER FOR RECOVERY OF PROPERTY AND FOR MESNE PROFITS-LIABILITY FOR MESNE PROFITS

SUIT FOR-KABULIYAT UNENFORCEABLE-SUIT ON FOOT OF - KABULIYAT NOT REFERSED TO IN PLAINT AND NOT INTENDED TO BE FINAL AGREE-MENT-DECREE ON FOOT OF.

SUSPENSION OF PAYMENT OF.

## ABATEMENT OF.

-Diminution of area of holding-Abatement on ground of-Tenant's right to. See BENGAL ACTS-TEN-ANCY ACT OF 1885, SS. 52, 179. (1920) 48 I.A. 39 = 48 C. 473.

-Perpetual tenure-Rent of-Abatement of-Tenant's right to. See LANDLORD AND TENANT-PERMANENT TENANCY-RENT OF-ABATEMENT OF.

#### LANDLORD AND TENANT-(Contd.)

Rent-(Contd.)

#### ACTUAL RENT.

Meaning of. See BENGAL ACTS-TENANCY ACT OF 1885, S. 74-WORDS-ACTUAL RENT.

(1927) 54 I. A. 432 (437) - 7 Pat. 134.

#### ALTERATION OF-LIABILITY TO,

-Prenumption-Contract excluding-Words necessary for-Mokurrarce or other words having same effect.

Prima facie the rent payable by a tenant is liable to enhancement on the application of the landlord or to reduction on the application of the tenant, unless either of them has precluded himself by contract from claiming such enhancement or reduction respectively. The word usually employed in creating a fixed rent in perpetuity is the word "mokurrari," though the absence of such word is not conclusive if other words are found in the grant which clearly show that such a rent was intended to be created (51). (Lord Carson.) KRISHNENDRA NATH SARKAR P. KUSUM KAMINI (1926) 54 I. A. 48 = 54 C. 166 = 100 I. C. 93 =

31 C. W. N. 514 = 25 L. W. 631 - 45 C. L. J. 305 -(1927) M. W. N. 41 - A. I. B. 1927 P.C. 20 = 52 M. L. J. 412.

#### APPORTIONMENT OF.

-Indian Law-English Apportionment Act -- Applicability-Older English Lato-Applicability and basis of.

The English Apportionment Act of 1870 provides that after its passing, all rents, annuities, and other periodica payments in the nature of income are, unless it is expressly stipulated that no apportionment is to take place, to be considered as, like interest on money lent, accruing from day to day; and shall be apportionable in respect of time accordingly. But this Act does not apply in India, nor do any of the earlier English Apportionment Acts.

The older English law on the subject is traceable to the two propositions, that an entire contract cannot be apportioned, and that under such an instrument as, for instance, a lease with a reservation of periodically payable rent; the contract for each portion is distinct and entire. The rule, however, while applicable to periodical payments becoming due at fixed intervals, did not apply to sums accruing de die in diem. It did not, for example, apply to annuities or to delets. The distinctions drawn were often fine. But, however clear the principle which governed the character of proprietary and contractual rights, it was always open to a testator or settlor, with full power of disposition, to exclude its practical consequences. He had only to say that it was his intention that the person entitled to the fixed sum, payable only after the determination of the intermediate title, should account to those in whom that intermediate title was vested or their representatives. Such an expression of intention had, at least, the effect of creating a trust in equity, and might, in certain cases, be operative at law by giving a special character to the title to the periodical payments. It had the effect of making the question, in most instances, one merely of construction of the instrument.

Both parties to the appeal conceded that the old law in England applied to a case in which the question was whether there was applicable, under Indian law, any principle of apportionment which applied to rents and periodical payments, such as rents and profits from land, and the dividends and income arising from shares carrying income periodically payable, such as were specified in the schedule to an inter view settlement by a l'arsee. (Viscount Haldane.) PHIROZSHAW BOMANJEE PETIT D. BAI GOOLBAI.

(1923) 50 I. A. 276 (279-81) = 47 B. 790 (795-6) = 18 L. W. 940 = 33 M. L. T. 372 = (1923) M. W. N. 616 = A. I. B. 1923 P. C. 171 = 26 Bom. L. R. 76 = 28 C. W. N. 882 = 76 I. C. 929 = 47 M. L. J 79.

Bent-(Contd.)

APPORTIONMENT OF - (Cont.)

-Rent and posite of land and removable property-Dividends on there's - Opportunitiest of Advisor increases beneficiaries-Intention as to-Settlement deci-Construction of Words arrang or worming "-I'de of, anth reference to income-Effect.

By an interview settlement a Parsee settler conveyed a large amount of property to trustees on trust (interalia) to receive the rents and profits, and, after making certain other payments, to make over the balance of income to the settlor himself during his life. After his death, the trustees were to realise certain sums, and, within thirteen months, after the settlor's death, out of the balance of income from what remained, accraing within the first thirteen months, to pay to bis widow, from time to time and in such sums as she should reasonably require and the state of the income should permit the total sam of Rs. 80,000 for purposes mentioned. The trustees were then to divide the remainder of the balance of such income arising or accruing during the first thirteen months after the settlor's death, amongst his widows. J. and D, in equal shares; the capital and income, after the thirteen months, were, subject to the trusts stated, to go to other beneficiaries under the trust deed as therein provided. The settled property consisted of land and immoveables specified in the first schedule to the deed; shares, bonds, and securities specified in the second; and outstanding debts due to the settlor in the third.

Held that, in the absence of clear and specific directions in the deed of settlement, there could not, as between the settlor and the beneficiaries who took beneficially the income for 13 months after his death and those beneficially entitled to the income subsequently, be any apportionment in regard to the rents and profits from land, and the dividends and income arising from shares carrying income persodically payable, such as were specified in the second schedule to the deed.

The character of payments such as those directed is prima facie discontinuous at common law. No doubt, the settlor could have given directions which would have modified this character, or at least, have deprived it of the consequences arising from its discontinuity. But such directions would have had to be c'ear and unambiguous in order to have had the result of varying the rights defined by the general law. There is no such distinctness in direction in the present deed as would have been required to have this effect. The words " arising or accraing " in the deed in reference to the income are not sufficient for the purpose. (Viscount Haldane.)
PHIROYSHAW BOMANJEE PETIT :: BAI GOOLBAL.

(1923) 50 I. A. 276 (281-2)=47 B. 790 (796-7)-18 L. W. 940 = 33 M. L. T. 372 (1923) M. W. N. 616 = A. I. R. (1923) P. C. 171 - 26 Bom. L. B. 76 = 28 C. W. N. 882 - 76 I. C. 929 - 47 M. L. J. 79.

ARREARS OF.

ACT OF 1908-ART. 110. (1903) 31 LA. 17 = 27 M. 145.

-Co-sharer landlords-Suit by one or some of. See LANDLORD AND TENANT--CO-SHARER LANDLORDS.

-----Decree for---Grant in appeal of, in suit for enhancement-Propriety-Right to enhance found against See LANDLORD AND TENANT-RENT-ENHANCEMENT OF -SUIT FOR-RIGHT TO ENHANCE ETC.

(1873) 19 W. R. 141 (145).

-Enhanced rate of Arrears at Smit for Declaration of liability of tonure to enhancement-Decree for-Validity of-Notice to enhance not proved-Effect.

In a suit to recover arrears of rent at enhanced rates, when the question of the liability of the tenure to enhance

## LANDLORD AND TENANT-(Contd.)

Rent-(Contd.)

ARREARS OF - (Could.)

ment has been put in issue and fully tried, a decree may be given declaring the tenure liable to enhancement, though notice to enhance is not proved. NUFFER CHUNDER PAUL CHOWDRY :: JONATHAN POULSON.

(1873) 2 Suth. 798-19 W. R. 175=12 B. L. B. 53=

-Enhancement of -- Suits for -- Distinction. See LAND-LORD AND TENANT-RENT-ENHANCEMENT OF-ARREARS OF.

-Establishment of title-Suit for both-Misjoinder of causes of action-Suit when not bad for.

The appellant, a zemindar, sued (1) for possession of certain mouzahs, as forming part of his zemindary, (2) to set aside a summary award which upheld the respondent's right under an alleged Bhakee Birt tenure, and (3) to recover arrears of rent under a lease deed and kabooliyat, alleged by him to have been granted to the respondent of the mouzahs in question. The rent secured by the lease and kabooliyat falling into arrear, the appellant had instituted a summary suit against the respondent in the Deputy Collector's Court to recover the arrears due. The respondent denied that he was lessee of the Mouzahs, or had taken any lease, or executed a kabooliyat, and set up a title to the Mouzahs as having for a long time been ancestral, and purchased as Bhasce Birt by his ancestors; and that the acmindar had no right to diminish or enhance the registered jusama. The Deputy Collector being of opinion that the execution of the kabooliyat was doubtful, dismissed the summary suit. Hence the suit.

Held that the suit was not bad for misjoinder of causes of

The question here relates to unity of title, and connection and dependence between the claims of the plaintiff. The plaintiff's title is one; it is his proprietary right as Zemindar. We must look to the plaintiff's admitted title as Zemindar and to the interference with such title by an established tenure of this kind, to learn what is meant by the term "possession". The Mouzahs are part of the plaintiff's Zemindary the plaintiff is the assessed proprietor under the Decennial Settlement. The defendant claims that which would, if established, be a dependent tenure, the Zemindar being his immediate superior in the holding. All the distinct portions of the plaintiff's claim flow from, support, and have relation to and connection with his proprietary title, which prima facic entitles him to the collections. The farming lease supports it, the rent payable under that lease supports it, and the removal of the adverse title would confirm it (448-9).

If a groundless claim to Bhakee Birt tenure were preferred by a person in possession under a title to an inferior right derived from the Zemindar, it would certainly be competent to the Zemindar, if the claim amounted to a repudiation or worked a forfeiture of the existing interest, to sue for the restoration of possession, and the quitting of the claim also, because the limitation of his demand to that of possession would keep alive an adverse claim, and would also multiply suits (449.50). A Zemindar, or landlord, may waive a forfeiture, and may treat a tenancy or interest as continuing which his tenant repudiates, or in respect of which he has incurred a forfeiture. Consequently the mere inclusion of a claim for rent in a suit of this nature cannot make the suit multifarious unless it could be treated as multifarious if it insisted on the repudiation or forfeiture (450). As the Courts in India have the divided jurisdiction of a Court of Law and a Court of Equity substantially united in one Court, a claim for rent in arrear, and a claim to remove clouds on the title to demise raised by the tenant, seem to

Rent-(Contd.)

ARREARS OF- (Cont f.)

be unobjectionable (451). (Lord Chelmsford.) MAHA RAJAH RAJUNDER KISHWAR SINGH BAHADUR - SHEO-(1866) 10 M. I. A. 438= PURSUN MISSIR. 5 W. R. 55 = 1 Suth. 628 = 2 Sar 174.

-Nature of -A debt. (Lord Macnaghten.) JATINDRA NATH CHOUDHRI P. PRASANNA KUMAR BANERJEE

(1910) 38 I. A. 1 (6) = 38 C. 270 (277) = 13 C. L. J. 51 = 15 C. W. N. 74 = 9 M. L. T. 1 – (1911) 2 M. W. N. 119 = 13 Bom. L. R. 1 = 8 A. L. J. 1=8 I. C. 842=21 M. L. J. 92.

-Sale for -- Formalities prescribed by statute for-

Failure to comply with-Effect.

The inadvertent omission by a zemindar of one of the formalities prescribed by Bengal Regulation VIII of 1819 does not render all the proceedings taken by him inoperative. or constitute his selling of his tenure an act of trespass.

(Sir James W. Colvile.) MUSSUMAT RANGE SURNO MOYEE v. SHOSHEE ROKHEE BURMONEA

(1868) 12 M. I. A. 244 (2534)=11 W. R. P. C. 5= 2 B. L. R. P. C. 10 = 2 Suth. 173 = 2 Sar. 424.

-Sale for-Zemindar's right of-Istemerar sanad created before 1793 and granting mourahs to grantee and his descendants to be held on fixed and absolute jama -Sale

of.

The mouzahs in suit were held under Sunnuds created before 1793 which gave them by way of internrar to 11. and his descendants on a fixed and absolute jumma. The Sunnuds did not by any special terms empower the Zemindar to sell the tenure itself for arrears of rent free from incumbrances. It was contended that the Zemindar nevertheless had that power as an incident to the tenure.

Held that it was not shown that, by any known law or usage, Zemindars had the power to sell tenures of the kind in question for arrears of rent, as a right inherent in or incident to the tenure, or that any such power rightfull/ existed, unless by special stipulation, independently of the Regulations (340). (Sir Montague Smith.) FORBES v. BABOO (1871) 14 M. I.A. 330 = LUCHMEEPUT SINGH. 10 B. L. B. 139 P. C. = 17 W. R. 197 =

2 Suth. 554 - 3 Sar. 27. Suit for-Co-sharer landlords-Suit by some only of

-Maintainability, See LANDLORD AND TENANT-RENT -SUIT FOR-PARTIES-CO-SHARER LANDLORDS.

-Suit for-Limitation. See LIMITATION ACT OF 1908-ART. 110. -Suit for-Maintainability- Sale prior for same

arrears-Setting aside of-Suit for -Pendency of-Effect. Their Lordships must dissent from the statement of the Judges of the High Court to the effect that the appellant (Zemindar) might have sued for arrears of rent pending the proceedings to set aside the sale of the Putnee (the rent of which was in arrears) for the very same arrears under Bengal Regulation VIII of 1819. It is clear that, until the sale had been finally set aside, appellant was in the position of a person whose claim had been satisfied; and that her or a person whose claim had been satisfied; and that her suit might have been successfully met by a plea to that effect. (Sir James W. Colvile.) MUSSUMAT RANEE SURNO MOYEE v. SHOSHEE MOKHEE BURMONEA.

(1868) 12 M. I. A. 244 (253 4) = 11 W. R. P. C. 5= 2 B. L. R. P.C. 10 = 2 Suth. 173 = 2 Sar. 424.

-Suit for-Nature of -Account-Later items of long Suit for-Nature of-Distinction-Limitation applicable to two cases-Distinction.

A sult to recover arrears of rent may, in some sense, be likened to the action to recover the later items only of a of a right to raise the rent previously paid to the plaintiff

LANDLORD AND TENANT-(Contd.)

Rent-(Contd.)

ARREARS OF-(Contd.)

long account, which have become due within six years, although the Statute of Limitations has barred the demand for the earlier items. The distinction, however, between such an action and a suit for arrears of rent, is obvious; the items of an account are independent of each other; each represents a distinct contract or a distinct debt. But the right to recover reat for the last six or seven years, depends on a possession founded on a grant avoided by the Regulation, which possession has been one and entire in character through the whole sixty years (218-9). (Sir John Coleridge.) MUSSUMUT CHUNDRABULEE DEBIA v. LUCKHIA DEBIA CHOWDRAIN. (1865) 10 M. I.A. 214=

5 W. R. 1=2 Sar. 119=1 Suth. 602.

CO-SHARER LANDLORDS.

-Arrears of rent-Enhancement of rent. See LAND-LORD AND TENANT-CO-SHARER LANDLORDS.

DECREE FOR- MEANING OF.

-Decree obtained by person who has parted with property in which tenancy is situate if a rent decree. See BENGAL ACTS-TENANCY ACT OF 1885-S. 65.

(1914) 41 I. A. 91 - 41 C. 926 (939-40).

ENHANCEMENT OF.

-Arreary of -Suits for-Distinction

A suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed, and it is founded entirely upon different principles. To a suit for enhancement it would be no har to plead that all arrears according to the original rate had been paid (145). SOORASOON-DEREE DABEA 7. GOLAM ALI. (1873) 19 W. R. 141 = 15 B. L. R. 125 = 2 Suth. 794.

-There is a great distinction between a suit to enhance and a suit to recover arrears of rent at the rate originally fixed. It is founded entirely upon different principles, To a suit for enhancement it will be no bar to plead that all arrears according to the original rate have been paid (200). (Sir Barnes Peacock.) HURRONATH ROY P. GO-BIND CHUNDER DUIT. (1875) 2 I. A. 193 =

15 B. L. R. 120 = 23 W. R. 352 = 3 Sar. 466 = 3 Suth. 116.

-Co-sharer landlords-Suit by one or some only of, for enhancement. See LANDLORD AND TENANT-CO-SHARER LANDLORDS.

-Liability of tenure to-Declaration of-Decree for -Grant of, in suit to recover arrears at enhanced rate-Propriety-Notice to enhance not proved. See LANDLORD AND TENANT-RENT-ARREARS OF-ENHANCED RATE. (1873) 19 W. R. 175.

-Permanent tenancy or perpetual and hereditary tenare- Rent of-Enhancement of. See LANDLORD AND TENANT-PERMANENT TENANCY-RENT OF-ENHAN-CEMENT OF.

-Froceeding for-Defences open in.

On an ordinary proceeding for the enhancement of rent against a person admitted to be in occupation of the lands, it is open to the defendant to contest either the right to enhance at all, or the reasonableness of the rent claimed, or both; without, however, admitting the reasonableness of the rent claimed if he expressly contests only the right to enhance (329). (Sir James Colvile.) KHOJAH ASSANOOLLAH P. OBHOY CHUNDER ROY, (1870) 13 M. I. A. 318= 13 W. B. P. C. 24 = 2 Suth. 306 = 2 Sar. 535.

-Right to-Basis of.

A claim to enhance rent assumes the existence of some right of occupation in the actual tenants (defendants), and

## LANDLORD AND TENANT-((cut.))

Rent-(Could.)

ENHANCEMENT OF-(Contd.)

(the Zemindar) (455.) (See Richard Kimbershy.) Banco DHUNPUT SINGH & GOOSLAN SINGH.

(1867) 11 M. I. A. J33 - 9 W. R. P. C. 3 -2 Suth. 92 - 2 Sar. 309.

-Right of-Suit by sharer in Leminstery to establish -Maintainability-Discretion of Court - Dismissal of prior suit for enhancement on ground of plaintiff having no semindary title.

K, a sharer in a zeminuary, having been unsuccessful in proceeding against the holder of a sub-tenure to enhance its rent, and doubt having been thrown on his semindari title. brought a suit to establish his right of enhancement.

Held, that the suit was not open to the objection that the plaintiff did not seek consequential relief, because it was necessary for the plaintiff to establish his right to a share in the remindary title in the Civil Court in order that he enight try his claim to enhance in the special forum in which he was compelled by statute to bring an enhancement suit (171).

Held further, that, even if there was a discretion to entertain the suit, it was not unsoundly exercised by the Court below (171).

In his last suit for enhancement of rent, the plaintiff had been unsuccessful on the ground that he had not any remindari right in the suit villages, and he was therefore obliged to come to the civil Court to have that right declared. Issues had been joined in the suit, and, if his suit had been dismissed thereafter, the decree would have been a bar to his right to recover even his proportionate share of the rent (171). (Sir James IV. Coloile.) SADUT ALI KHAN C. KHAJAH ABDOOL GUNNEE. (1873) Sup. I A. 165 -11 B.L.R. 203 = 19 W.R. 171 = 3 Sar. 229 - 2 Suth. 785.

-Sub-tenure-Rent of lands held under a-Enhance. ment of-Right of-Conditions.

The right to enhance the rent of lands held under a subtenure implies a right to vary the terms of the sub-tenure. and to set it aside, if that title to enhance be disputed on grounds inconsistent with the obligations of such a dependent tenure (209). (See James W. Colvide.) RAJAH SUTTOSURRUN GHOSAL v. MOHESH CHUNDER MITTER.

(1868) 12 M.I.A. 263 = 11 W.R. P.C. 10 = 2 B. L. R. P. C. 23 = 2 Suth. 180 = 2 Sar. 420.

-Suit for-Maintainability-Denial of title of landlord-Effect of.

A suit for enhancement implies such a privity of title or tenure existing between the parties, that a claim to some rent is legally inferrible from it. Where, therefore, the landlord's title is denied and the right of another landlord set up, the proper remedy of the landlord is by a suit in the nature of an ejectment (274). (Sir James W. Colvile.) RAJAH SUTTOORSURRUN GHOSAL : MOHESH CHUN-DER MITTER.(1868) 12 M.I.A. 263 = 11 W.R. P.C. 10 = 2 B.L.R.P.C. 23 = 2 Suth. 180 = 2 Sar. 420.

-Suit for-Onus on plaintiff in-Quantum of Proof Decree declaring proper rout passed shortly before suit-Effect.

In a suit by the mother of the then Zamindar of a taluk for enhancement of rent, a decree was made in 1821, in terms of a compromise enhancing the rent from Rs.1,600 to Rs. 2,000. A subsequent suit in which rent was claimed at Rs. 3,200, was finally decided in 1862, the compromise being thereby set aside and the liability of the taluk to enhancement finally established. The Ameen's report which fixed the rent payable at Rs. 8,124, was not, however, made until 1869. In a suit to recover rent at Rs. 8,124 for the year 1871-2, the Subordinate Judge gave a decree for

## LANDLORD AND TENANT-(Contd.)

Rent-(Contd.)

ENHANCEMENT OF- (Contd.)

a decrease in the amount of cultivable land. On appeal, the High Court gave a judgment which passed by the previous litigation and the decree of 1869. The judges of the High Court ignored the fact that the plaintiff was starting upon the foundation of an enhanced rent which had been found two or three years before the commencement of the suit, and which established a prima facie case of the rent properly payable by the talukdar. They thought the other evidence adduced by plaintiff was insufficient to establish a case for enhanced rent.

Held, by their Lordships, reversing the judgment of the High Court, that even if the case had been rested altogether on a new enquiry into the prevailing rates, the judges of the High Court were not right in peremptorily dismissing from their consideration the whole of the evidence on the part of the plaintiff as of no weight.

The evidence was of that kind which would be naturally given in cases of that description. But in the case before their Lordships it was supported by what had been founded as the proper rent in 1869 (Sir Montague E. Smith.) RANI SURUT SOONDARI DEBYA P. PRAN GOBIND MOZOOM-DAR. (1879) 3 Suth. 651 = Bald. 280=

5 C.L.R. 262 = 3 I.J. 477.

-Suit for-Onus on plaintiff in-Ryot holding land at same rent for 20 years before suit-Bengal Landlord and Tenant Procedure Act (VIII of 1869)-S. 4-Effect.

Where, in a suit for enhancement of rent, it appeared that the rent on which the land was held by the ryot had not been changed for a period of 20 years before the commencement of the suit, held that, under S. 4 of Bengal Act VIII of 1869, the burden lay on the plaintiff to show that the rent had been varied since the time of the perpetual settlement or that it was fixed at some later period, and that he had failed to discharge that onus. (Sir James Colvile.) RAJAH NILMONEY DEO BAHADOOR P. MODHOO SOODUN ROY. (1878) 3 Suth. 547=Bald. 164.

-Suit for-Right to enhance found against-Decree in appeal for arrears of rent originally fixed-Permissi-

Where, in a suit for enhancement of rent the plaintiff was found not entitled to enhance the rent, the plaintiff in the appeal to the Privy Council contended that he was entitled to recover rent at the rate originally fixed.

Held, that the plaintiff was not entitled in that suit to a decree for any alleged arrears.

No issue was raised, nor could an issue have been properly raised in this suit as to whether the rent for 1272 at the rate specified in the Kabuliyat had been paid or satisfied (145). SOORASOONDEREE DABEA v. GOLAM ALL

(1873) 19 W.R. 141 = 15 B.L.R. 125 = 2 Suth. 794

-Zemindar-Sub-tenure-Rent of-Enhancement of -Suit for-Road cess returns rendered under Bengal Cess Act of 1880 - Collection papers-Non-production by defendant of-Presumption adverse from. See EVIDENCE ACT -S. 114, ILL. (g)-ZEMINDAR-RENT OF SUB-TENURE (1903) 30 I. A. 177 (181) = 30 C. 1033 (1042-3).

Zemindar-Suit by-Basis of.

A suit to enhance rent proceeds on the presumption that a zemindar holding under the Perpetual settlement has the right, from time to time, to raise the rents of all the rentpaying lands within his zemindary, according to the pergun nah or current rates, unless either he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemp Rs. 5,062-15-6 a re-measurement of the taluk having shown also assumes that the defendant has some valid tenure of

Rent-(Contd.)

ENHANCEMENT OF -- (Contd.)

right of occupancy in the lands which are the subject of the (Sir James W. Colvile.) BAMASOONDARY suit (262). DASSYAH v. RADHIKA CHOWDHRAIN

(1869) 13 M. I. A. 248=13 W. R. (P.C.) 11= 4 B. L. R. 8=2 Suth. 293=2 Sar. 524.

Zemindar-Suit by-Onus of proof in-Law prior to Bengal Act X of 1859.

Before the modification of the law by Act X of 1859, the zemindar, in a suit for enhancement of rent, was undoubtedly relieved from much of the burden of proof, which would have laid upon him in an ordinary suit, and to shift it upon the defendant (260-1). (Sir James W. Colvile.)
BAMASOONDARY DASSYAH v. RADHIKA CHOWDHRAIN. (1869) 13 M. I. A. 248 = 13 W. B. (P. C.) 11 =

4 B.L.R. 8 = 2 Suth. 293 = 2 Sar. 524.

-Zamindar-Suit by-Onus of proof in-Talcoks under S. 51 of Bengal Regulation VIII of 1793-Raiyati and other under-tenures-Suits in respect of - Distinction.

With regard to the onus of proof in a sait by a Zemindar for enhancement of rent, Regulation VIII of 1793 does not apply an uniform rule to all tenures and rights of occupancy. It may be broadly said that it divides them into two great classes, viz., Talooks within the meaning of its 51st section; and Royalty and other under-tenures for which If it be conceded provision is made by the 49th section. that the law casts upon those who claim the benefit of the latter section the whole burden of proving that their land has been held at a fixed rent for a period commencing at least twelve years before the date of the Decennial Settlement, it is clear that the 51st section is more favourable to the holders of Talooks within its meaning, by imposing upon the Zemindar the burden of showing that he is entitled to raise the rent either by special custom, or by contract, or by reason of certain specified conduct on the part of the Talookdar (201). (Sir James W. Colvile.) BAMASOON-DARY DASSYAH D. RADHIKA CHOWDHRAIN.

(1869) 13 M.I.A. 248 = 13 W.B. (P. C.) 11 = 4 B.L.R. 8 = 2 Suth. 293 = 2 Sar. 524.

-Zemindar-Suit by-Tenure on which lands held-Evidence showing-Non-production by zemindar of-Presumption adverse from. See EVIDENCE ACT, S. 114, ILL. (g)-ZEMINDAR-KENT.

(1869) 13 M. I. A. 248 (269).

-Zemindar-Suit by, against persons claiming to have been Shikmy tolookdars from before Decennial Settlement and to have held at a fixed rent-Issue proper in-Tenure of defendant-Issue as to - Necessity-Rent-Fixed or variable-Issue as to, not enough.

In every suit for enhancement of rent, the nature of the tenure is a material question, irrespective of the question whether the rent is fixed or variable, since upon the former question depends the extent and nature of the proof which

the plaintiff is bound to give (263).

In the present suit (to enhance the rents of certain lands held by the appellants within the Zemindary of which the respondent is the owner of a share) the respondent has come into Court treating the appellants as ryots, having a right of occupancy in certain lands at a variable rent. set up by the appellants was that they were Shikmy Talookdars; that they and their ancestors had become so many years before the Decennial Settlement; and that they held the Talook at a fixed rent. In this state of things, it is obvious that the issue settled by the Principal Sudder Ameen is, viz., "Whether the Mehal in dispute is liable to enhancement or not, is not, sufficiently pointed," because in order to determine not only that issue, but also the mode

#### LANDLORD AND TENANT-(Contd.)

'Rent-(Contd.)

ENHANCEMENT OF-(Contd.)

of trying it, it is necessary to determine the preliminary question, whther the tenure of the appellants was or was not a Talook within the meaning of S. 51 of Bengal Regulation VIII of 1793 (263-4). (Sir James W. Colvile.) BAMASOONDARY DASSYAH v. RADHIKA CHOWDHRAIN.

(1869) 13 M.I.A. 248 = 13 W.R. (P. C.) 11 = 4 B.L.R. (P.C.) 8=2 Suth. 293=2 Sar. 524.

-Zemindar - Zemindary-Lands within-Suit for enhancement in respect of -Kudemee tenure which had existed more than 12 years before Decennial Settlement-Lands being held under-Defence of-Onus of proof in case of.

In a suit by a Zemindar to enhance the rent of the defendants who held land within the Zemindari, the latter claimed an exemption from enhanced rent in respect of the land on the ground that it was held on a kudemee tenure which had existed more than 12 years before the Decennial Settle-

Quare as to the onus of proof in such a case (353).

Held that assuming that it lay upon the defendants to establish their claim to exemption, he had sustained the burden of proof cast upon him, and established a case which entitled him to be exempted from enhancement. RAM CHUNDER DUTT v. JUGESH CHUNDER DUTT.

(1873) 19 W.B. 353 = 12 B.L R. 229 = 2 Suth. 836 (837)=3 Sar. 249.

-Zemindar-Zemindary-Mal assets of-Property included in-Rent of-Enhancement of - Right of-Tenant disputing-Onus on.

The respondent was the Zemindar of Jeypore, which had been permanently settled with his grandfather, in 1803, under Madras Regulation XXV 1802. The deed of permanent property by which the property in the zemindary was then assured to the respondent's grandfather showed on the face of it that the Zemindary then included Pergunnah S, and admittedly a specific sum of money was then assessed upon that pergunnah as part of the Government revenue payable in respect of the whole Zemindary.

The appellant was the holder of 6 taluks, constituting or forming part of Pergunnah S, and the suit out of which the appeal arose was brought by the respondent, as Zemindar, against the appellant, treating him as under-tenant, to enhance the rent of those taluks.

Held that, as it appeared that the Zemindary included the pergunnah in question amongst its mal assets or revenuepaying lands, it lay upon the appellant, as defendant in the suit, to establish the grounds on which he disputed the Zemindar's claim to an enhanced rent (389-90). SRI KRISHNA DEVU MAHARAJULUNGARU D. SRI RAM-CHANDRA DEVU MAHARAJULUNGARU.

(1870) 5 M. J. 689.

-Zemindar - Zemindary - Villages forming part of-Grant of subject to payment of revenue- Revenue paid by Zemindar himself-Enhancement of rent on ground of -Right of.

Even if a grant by a Zemindar of villages forming part of his Zemindary and constituted into a sub-tenure or dependent talook be a grant of the villages subject to the payment of the Government revenue due in respect thereof, and the Zemindar may have paid the Government revenue on account of the tenant, his right to recover what he has so paid could not enter into a suit for enhancement of rent, but would be a matter for which he must seek his remedy in a Civil Court (173.4). (Sir James W. Colvile.) SADUT ALI KHAN v. KHAJEE ABDOOL GUNNEE.

(1873) Sup. I.A. 165=11 B.L.B. 208= 19 W. B. 171=3 Sar. 229=2 Suth. 785.

Rent-(Contd.)

ENHANCEMENT OF-(Contd.)

Zemindari-Execution purchaser of-Resenue sale purchaser of -Rights of - Distinction.

The purchaser of a Zemindari at a sale held in execution of a decree obtained by a mortgagee thereof can have no higher title to enhance the rent of the ryots than he would have had if he had been a purchaser from the former Zemindar. The sale was not for Government revenue, and the title of the purchaser under it was no higher or better than it would have been under a conveyance direct from the Zemindar (353). RAM CHUNDER DUIT P. JUGHESH CHUNDER DUTT. (1873) 19 W. R. 353

12 B. L. R. 229 - 2 Suth. 836 - 3 Sar. 249.

FIXED RENT.

-Rent liable to enhancement under certain conditions if may be a.

It should be remarked that a rent may be a fixed rent though liable under certain conditions to be enhanced (203). (Sir Barnes Peacock.) HURRONATH ROY D. GORIND

CHUNDER DUTT. (1875) 2 I. A. 193 = 15 B.L.R. 120 = 23 W.R. 352 = 3 Sar. 466 = 3 Suth. 116.

FIXITY OF, IN CASE OF HEREDITARY TENURE.

-What amounts to-Sum certain-Meaning of-Effect-Variableness of jama normal condition. See TENURE-HEREDITARY TENURE-RENT-FIXITY OF. (1869) 13 M. I. A. 270 (275).

GOVERNMENT REVENUE PAVABLE BY TENANT IN ADDITION TO RENT IF.

-See BENGAL REGULATIONS -- PUTNI REGULA-TION OF 1819, S. 3 (3)-RENT. (1905) 33 I. A. 30 = 33 C. 140.

ILLEGAL IMPOSITION OR.

-Test. See BENGAL ACTS-TENANCY ACT OF 1885, S. 74-RENT OR ETC. (1927) 54 I.A. 432 (436) = 7 Pat. 134.

MESNE PROFITS-CLAIMS FOR-JOINDER OF. IN ONE SUIT.

-Permissibility.

As the title to mesne profits supposes a wrong, and the title to rent proceeds on contract, the union of such causes of action would be contrary to principle (451). (Lerd Chelmsford.) Maharajah Rajundur Kishwar Singh BAHADOOR : SHEOPURSUN MISSER.

(1866) 10 M. I. A. 438 = 5 W. R. (P. C.) 55 = 1 Suth. 628 = 2 Sar. 174.

OCCUPATION RENT-IMPLIED CONTRACT AS TO.

-Presumption of -Rebuttal-Conditions.

When one occupies the house of another with his permission there is prima facie an implied contract to pay an occupation rent. But this implication may be rebutted by showing the circumstances under which possession was taken, e.g., that the house was lent to the occupier or that he was a care-taker (204). (Lord Davy.) AGA MAHOM-ED JAFFER BINDANEEM P. KOOLSOM BEE BEE

(1897) 24 I. A. 196 = 25 C. 9 (19) = 1 C. W. N. 449 = 7 Sar. 199 = 7 M. L. J. 115.

PERMANENT FIXING OF ADMITTEDLY DUE-QUESTION AS TO

-Presumption of lost grant if applicable to case of. See GRANT-LOST GRANT-PRESUMPTION OF-RENT ADMITTEDLY DUE (1854) 5 M. I. A. 467 (497).

PERMANENT TENANCY.

-Rent of. See LANDLORD AND TENANT-PER MANENT TENANCY-RENT OF.

LANDLORD AND TENANT-(Contd.)

Rent-(Contd.)

PERPETUAL TENURE OR PERPETUAL AND HEREDITARY TENURE.

-Rent of. See LANDLORD AND TENANT-PER-MANENT TENANCY-RENT OF.

Possession-Government's richt to, in case OF RENT-PAYING LANDS.

—In the case of rent-paying lands, the Government has a title to the rent or jumma. By whatever it be called, the right and title is to the rent substantially; it does not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership (359-th), 362). (Lord Romilly.) GUNGA GOBIND MUNDUL P. COLLECTOR OF THE TWENTY-FOUR PER-GUNNAHS. (1867) 11 M. I. A. 345=

7 W. R. (P. C.) 21=1 Suth. 676=2 Sar. 284. RECOVERY OF-LANDLORD'S POWERS OF-WEAKENING OF.

-Propriety.

Their Leadships do not desire by this judgment to weaken any powers that Zemindars may, by law, possess to enforce payment of their rents (344). (Sir Montague Smith.) FORBES v. BABOO LUCHMEEPUT SINGH.

(1872) 14 M. I. A. 330=10 B. L. R. 139 (P. C.)= 17 W. R. 197 - 2 Suth. 554 = 3 Sar. 27.

SALE FOR, OF PROPERTY WHICH HAD CEASED TO BELONG TO TENURE-HOLDER-SUIT BY REAL OWNER FOR RECOVERY OF PROPERTY AND FOR MESNE PRO-

FITS-LIABILITY FOR MESNE PROFITS IN. Proceedings taken by landlord with knowledge of real owner's rights. See MESNE PROFITS-LIABILITY FOR -ZEMINDAR. (1872) 14 M. I. A. 330 (344-5).

SUIT FOR-KABULIYAT UNENFORCEABLE-SUIT ON 1 OOT OF-KABULIYAT NOT REFERRED TO IN PLAINT AND NOT INTENDED TO BE FINAL AGREEMENT-DECREE ON FOOT OF.

Propriety.

Plaintiff-appellant, a Zemindar, sued his tenants to recover rents, cesses and interest to the amount of Rs. 1,640. Thesuit was founded upon a registered kabuliyat, dated 21-6-1881, executed by the 1st defendant, R, for himself and as guardian of three minor defendants (two of whom

were the 1st and 2nd respondents). The Subordinate Judge held that "the terms were so extortionate and hard', and that there was such a surrender by R without adequate consideration of all previously acquired rights, and an acceptance in their place of such "an unconscionable bargain", and such apparent want of proper legal advice, that R was not bound by the kabuliyat. He further held that R, whether guardian of manager, had no power to bind the other members of the family as the contract was not for their benefit. He, how ever, admitted in evidence an ikrar or agreement executed on 25-4-1880 by A, the father of the minors and the uncle of R, who died in April or May, 1881, and who was the karta or manager of the family, and by other tenants, by which he said they agreed to pay Rs. 2-12 per bigha. And he made a decree for rent according to the ikrar of 144 bighas, 9 cottahs and odd, considering that the defendants were not proved to be bound by the area mentioned in the plaint. The ikrar was, however, clearly not the kabuliyat described in the plaint, and the evidence of the plaintiff himself shewed that it was not intended to be the final agreement.

Held, that the ikrar could not be sued upon as an agree ment to pay the rent claimed, which the Subordinate Judge held it to be (238). (Sir Richard Couch.) PERTAB CHUNDER GHOSE P. MOHENDRA PURKAIT.

(1889) 16 I.A. 233 = 17 C. 291 (297) = 5 Sar. 444

Rent-(Contd.)

#### SUSPENSION OF PAYMENT OF.

-Grounds-Land demised-Failure to deliver portion of-Suspension claimed on ground of - Kent fixed at lump sum for whole land-Rent fixed at so much per acre or bigha-Distinction.

The doctrine of suspension of payment of rent, where the tenant has not been put in possession of part of the subject leased, has been applied where the rent was a lump rent for the whole land leased treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or bigha. (Lord Salveson.) KATYAYANI DEBI v. UDOY KUMAR DAS.

(1924) 52 I. A. 160 (166) = 52 C. 417 = 23 A. L. J. 751=6 L. R. P. C. 140=30 C. W N. 1= 88 I.C. 110 = A. I. R. 1925 P. C. 97.

#### Rival landlords.

-See LANLORD AND TENANT-LANDLORD-RIVAL LANDLORDS.

#### Tenancy at will.

-Agreement creating-Ejectment of tenant-fandlord's right of -- Defences open to tenant.

Disputes arose between the Indian Government and an adjacent proprietor, M. S., respecting a piece of alluvial land gained by accretion, of which M. S. was then in possession. The Indian Government required the land for public improvements. After some correspondence Letween the Government and M. S., an agreement was entered into, by which M. S. undertook to relinquish all claim to the proprietary right, and to rent the land from the Government, upon condition of the latter allowing him to remain in possession until the projected public improvements rendered it necessary for him to vacate the land. Possession was given to Government, M. S. holding the land from the Government at a fixed rent, and undertaking to quit possession at a month's notice. Improvements in the neighbourhood having been made by the Government, and M. S. being dead, notice to quit was served on M. S.'s representatives, who refused to quit on the ground that the improvements were not such public improvements as were contemplated by the correspondence and agreement. In ejectment by the Government, held :-

First, that M. S. was under the agreement, a mere

tenant at will.

Second, that ejectment was maintainable by the Government for recovery of the land, and that M. S.'s representatives had no defence at law to the action. (Lord Chelmsford.) SREEMUTTY ANUNDOMOHEY DOSSEE P. DOE DEM THE EAST INDIA CO.

(1859) 8 M. I. A. 43 = 13 Moo. P. C. 162 = 1 Suth. 383 = 4 W. R. 51.

-Determination of -Mode of -Ejectment suit -Insti-

tution of, if itself a. A tenancy at will is determinable by the mere bringing of an ejectment (65). (Lord Chelmsford.) SREEMUTTY ANUNDOMOHEY DOSSEE v. DOE DEM THE EAST INDIA (1859) 8 M. I. A. 43=13 Moo P. C. 162= 1 Suth. 383=4 W. B. 51.

## Tenancy for term.

-Exiction of tenant at expiry of term-Landlord's right of-Madras Presidency.

Where a tenancy in the Presidency of Madras commences under a terminable contract, there is nothing to prevent the landlord from ejecting the tenant at the end of the term from the lands which had been let to him. (Sir John Edge.) NAINAPILLAI MARKAYAR D. RAMANATHAN (1923) 51 I. A. 83 (98) = 47 M. 337 = CHETTIAR.

#### LANDLORD AND TENANT-(Contd.)

Tenancy for term-(Contd.)

A. I. R. 1924 P. C. 65=22 A. L. J. 130= 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

#### Tenant.

(See also LANDLORD AND TENANT -- LAND-LORD.)

-Ex-tenant if a. See CALCUTTA RENT ACT OF 1920 -LANDLORD AND TENANT.

(1928) 55 M. L. J. 464 (469).

Trees illegally cut by-Compensation for-Measure of. See MADRAS ACTS-ESTATES LAND ACT, S. 12-TREES ILLEGALLY CUT BY RYOT. (1926) 53 I. A. 74 (81-2)= 49 M. 335.

#### LAND TENURES.

-See TENURES-LAND TENURES.

#### LANKA

Meaning of.

A lanka not only includes islands more generally known as churs, but also accretions to the banks of rivers. (Lord Holhouse.) SRI BALUSU RAMALAKSHMAMMA v. COLLEC-(1899) 26 I A. 107 (109) = TOR OF GODAVERY. 22 M. 464 (467) = 3 C. W. N. 777 = 1 Bom. L. R. 696 = 7 Sar. 534.

#### LAW.

#### Administration of - Court's duty.

-Policy-Topics of - Consideration of Propriety. (1926) 30 C. W. N. 961. See COURT-POLICY.

#### Admission on point of.

-Estoppel by reason of.

A party is not bound by an admission of a point of law and is not precluded from asserting the contrary in order to obtain the relief, to which, upon a true construction of the law, he may appear to be entitled. (Mr. Justice Willes.) JUTTENDROMOHAN TAGORE v. GANENDRO-MOHAN TAGORE. (1872) Sup. I. A. 47 (71)=

9 B. L. R. 377 = 18 W. R. 359 = 3 Sar. 82 = 2 Suth. 692.

-See TITLE-ADMISSION AGAINST, ON ETC. (1861) 8 M. I. A. 400 (418-9).

-See also under HINDU LAW - ADOPTION-ADOPTED SON-STATUS OF.

#### Ancient law of country-Change of.

Methods of.

If the ancient law of the country has been modified by any later rule, having the force of law, that rule must be founded either on positive legislation, or on established practice (568). (Lord Chelmsford.) PATTABHIRAMIER v. VENKATAROW NAICKEN. (1870) 13 M. I. A. 560 = 15 W. B. 35 = 7 B. L. B. 136 = 2 Suth. 410 =

## 2 Sar. 623.

Application of-Court's duty-Hardship of case.

-Consideration of-Power and propriety of. It would be the duty of their Lordships to apply the law without regard to the inconveniences resulting from their doing so, or to the hardship resulting therefrom. RAJAH DEBENDRO NARAIN ROY D. COOMAR CHUNDERNATH (1873) 2 Suth. 863 = 20 W. B. 30.

-See LEGAL RIGHT-ENFORCEMENT OF. (1865) 10 M. I. A. 252 (266).

-The High Court have made some remarks with regard to the hardships of the case. Their Lordships have no power to deal with them (142). (Sir Barnes Peacock.) POORUN SINGH D. GOVERNMENT OF INDIA. (1875) 3 Suth. 141. LAW-(Contd.)

Application of-Court's duty-Hardship of case-(Contd.)

—A Court can only decide the questions between the parties according to law, and it is outside its province to deal with any question of hardship.

Held, it was for the Government, not for their Lordships, to say whether the Government should insist on a title acquired by limitation in consequence of a decision in the collectorate under an erroneous impression of the law. (Lord Datey.) SECRETARY OF STATE FOR INDIA IN COUNCIL 2: KRISHNAMONI GUPTA.

(1902) 29 I. A. 104 (116-7) - 29 C. 518 (536) = 6 C. W. N. 617 - 4 Bom. L. B. 537 - 8 Sar. 269.

——See also (1) ARGUMENTUM AB INCONVENIENTI and (2) STATUTE—PROVISIONS OF—APPLICATION OF— HARDSHIP OF CASE.

# Application of strict principles of—Relaxation thereof—Question as to.

- Circumstances to be considered in case of.

It should always be remembered that in all cases we must look at the circumstances of the case before us, in order to see whether or not the principles of law are to be strictly applied to the case, or whether there can be any relaxation of what are supposed to be the strict principles of law (481). (Sir John Patteron.) HAINES P. EAST INDIA CO. (1856) 6 M.I.A. 467 = 4 W.R. 99 = 11 Moo. P.C. 39 = 1 Suth. 274.

## Crown-Obedience to law of.

——Duty as to. See CROWN—LAW. (1915) 20 C. W. N. 457 (461-2).

## Decision of Court as to-Statute enacting-Effect of

——Distinction. See COURT—DECISION OF—EFFECT. (1920) 47 I. A. 213 (221) = 48 C. 30 (42).

# Decision not inter partes on question of.

——Effect of. See C. P. C. OF 1908, S. 11—CASES UNDER—LAW. (1881) 8 I. A. 229 (243) = 8 C. 302 (308).

## Declaration of.

A Court of Justice only declares the law and does not make it (152). (Lord Hobbense.) SRI BALUSU GURU-LINGASWAMI v. SRI BALUSU RAMALAKSHMAMMA.

(1899) 26 I. A. 113 = 22 M. 398 (430) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

(Lord Atkinson.) BALAKRISHNA UDAYAR : VASU-DEVA AIYAR. (1917) 44 I. A. 261 (271) = 40 M. 793 = 22 C.W.N. 60 = 22 M. L. T. 45 = 26 C.L.J. 143 =

15 A. L. J. 645 = 2 Pat. L.W. 101 = 19 Bom. L.R. 715 = (1917) M. W. N. 628 = 6 L. W. 501 = 40 I. C. 650 = 33 M.L.J. 69.

Reservation of rights acquired under different view of law Declaration with Court's power of.

A Court of Justice cannot, as the Legislature can, declare it with a reservation of titles acquired under a different view of it (152). (Lord Hobboure.) SRI BALUSU GURULINGASWAMI v. SRI BALUSU RAMALAKSHMAMMA.

(1899) 26 L A. 113 = 22 M 398 (430) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67. LAW-(Contd.)

Duty in-Test.

——Profession or calling of person not a. See DUTY. (1922) 31 M. L. T. 104 (106) (P.C.).

## Equity-Indian Courts.

---- Jurisdiction of.

Courts in India have the divided jurisdiction of a Court of Law and a Court of Equity substantially united in one Court (451). (Lord Chelmsford.) MAHARAJAH RAJUNDER KISHWUR SINGH BAHADOOR v. SHEOPURSUN MISSER.

(1866) 10 M. I. A. 438 5 W. R. (P. C.) 55

(1866) 10 M. I. A. 438 = 5 W. R. (P. C.) 55 = 1 Suth. 628 = 2 Sar. 174.

Estate-Quality of-Alteration by law of.

— Permissibility of. See ESTATE—QUALITY OF. (1881) 8 I. A. 99 (115) = 3 M. 290 (303)

Evidence on point of-Failure to receive.

- Reversal of decree in appeal on ground of. Su P. C.
- APPEAL - DECREE UNDER - REVERSAL OF - GROUNDS
- Law. (1835) 5 W. R. 100 (P. C.) = 1 Suth. 25 (287).

### Facts hypothetical—Law applicable to— Opinion upon.

Expression of Improper (Sir Edward V. Williams.) NAWAB SIDHEE NUZUR ALLY KHAN P. RAJAH OJOODHYARAM KHAN.

(1864) 10 M. I. A. 540 (562) = 5 W.R. (P.C.) 83= 1 Suth. 635 = 2 Sar. 198.

#### Ignorance of.

--- Effect.

It may be that the people had not notice of this law, but then it cannot be said that nobody is bound by a law until he has notice of it. There are many occasions on which people do not actually know what the law is, and yet they are bound by it. SHEO SINGH P. MUSSAMUT MIRIAM BEGUM. (1872) 8 M.J. 69.

Their Lordships are not to be taken to mean that ignorance of the law would excuse improper action, where the facts were or ought to have been known (122). (Lord Summer.) PELLWORM In the matter of THE STEAM-SHIP. (1922) 31 M. L. T. 117 (P. C.).

#### Liability in.

-Basis of.

In systems not regulated by a Code or by legislation of decisions equivalent to a Code, there can be no liability without proof of fault or negligence, mere ownership or control cannot be enough to infer liability (38). (Lord Duncdin.) CITY OF MONTREAL v. WALT AND SCOTT, LTD. (1922) 32 M. L. T. 36 (P. C.).

Fault or negligence when basis of.

Fault or negligence consists in the breach of a duty and what that duty is will vary according to circumstances (38).

(Lerd Duncdin.) CITY OF MONTREAL v. WALT AND SCOTT LTD. (1922) 32 M. L. T. 36 (P.C.).

#### Object and scope of.

—1.aw only seeks to lay down broad rules for the Government of human conduct applicable to all classes of persons (135). (Mr. Baren Parke.) DOOLUBDASS PETTAMBERDASS v. RAMLOLL THAKOORSEYDASS.

(1850) 5 M. I. A. 109 = 7 Moo. P. C. 239 = Perry O. C. 232 = 1 Sar. 403.

#### Policy of.

-- Ascertainment of -- Mode of.

The policy of the law is to be collected from its whole body, and not from a detached portion of it (547). (Sir Edward Williams.) NAWAB IMDAD ALLY KHAN T. MUSSUMAT MOHUNDEE BEGUM.

(1867) 11 M. I.A. 517= 10 W. R. (P. C.) 25= 2 Suth. 98=2 Sar. 315= R. & J.'s No. 7 (Oudh) LAW-(Contd.)

Policy of-(Contd.)

-Court's concern with. See COURT-POLICY. (1926) 30 C. W. N. 961.

## Positive law-Extension by analogy of.

Permissibility.

S. 33 of Regulation X of 1793 seems to apply only to estates of which possession has been taken by the Court of Wards. The disqualified persons under the Regulation are the owners of estates of which the Court of Wards has taken charge. We cannot extend positive law by analogy (75). (Per Sir James W. Colvile in the course of the argument.) JUMOONA DASSYA CHOWDHRANI P. BAMASOONDARI DASSYA CHOWDHRANI.

(1876) 3 I.A. 72=1 C. 289 (291) = 25 W.R. 235= 3 Sar. 602 = 3 Suth. 222.

## Protection of-Person enjoying

Obedience of, to that law-Duty as regards. JURISDICTION-PROTECTION OF LAW. (1835) 3 Knapp. 348 (369).

#### Reform of-Indian legislature taking lead of English in.

-Improbability of. See Indian Legislature-(1916) 43 I. A. 164 (170-1)= LEGAL REFORM. 40 B. 630 (637).

## Representation erroneous as to.

Estoppel by reason of. See HINDU LAW-ADOP. TION-ADOPTED SON-STATUS OF-RIGHT TO DISPUTE -ESTOPPEL-VALIDITY OF ADOPTION IN LAW.

## Representation of, or of fact.

Test—Effect — Distinction. See under HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF. (1892) 19 I.A. 203 (218) = 20 C. 296 (313-4).

# Right given by--Denial of-Remedy for.

-Existence of-Presumption.

If the law which regulates the relations of the parties gives to one of them a right, and that right be denied, the denial is a wrong; and unless the contrary be shown by authority, or strong arguments, it must be presumed that for that wrong there must be a remedy in a Court of Justice (606). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM v. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. B. (P. C.) 3= 2 Suth. 59 = 2 Sar. 259

## Rule of liability, and distinction protecting from liability, both equally arbitrary created by.

Distinction entitled to same weight as rule in case

When the law creates a rule of liability and a distinction, both equally arbitrary, the distinction which protects from liability is entitled to as much weight as the rule which imposes it. (Sir Montague Smith.) MOLLOW, MARCH & CO. v. THE COURT OF WARDS.

(1872) Sup. I.A. 86 (102) = 10 B. L. B. 312 = 18 W. B. 384 = 3 Bar. 168 = 9 Moo. P.C. (N.S.) 214 = 2 Suth. 715.

# Thing forbidden by-Doing of, by indirect means.

-Permissibility.

A man cannot be allowed to do by indirect means what is forbidden to be done directly (72). (Mr. Justice Willes.) JUTTENDROMOHUN TAGORE D. GANENDROMOHUN TAGORE. (1872) Sup. I.A. 47 = 9 B. L. B. 377 = 18 W.R. 359 = 3 Sar. 82 = 2 Sutb. 692.

#### LAW-(Contd.)

Transfer of property amounting to evasion of.

-Transfer permitted by it not a. See PROPERTY-TRANSFER OF-LAW-EVASION OF.

(1867) 11 M.I.A. 517 (546).

#### LAW-REPORTING.

-Facts of case-Statement of-Necessity.

That report is one of the large number contained in the Weekly Reporter which are uscless or misleading because the facts of the case are not stated (122). (Lord Hobkouse.)
GIRIS CHUNDER LAHIRI v. SHOSHI SHIKHARESWAR (1900) 27 I. A. 110 = 27 C. 951 (965)= 4 C. W. N. 631.

#### LEASE.

(See also LANDLORD AND TENANT AND T. P. ACT-CHAPTER RELATING TO LEASES.)

ADDITIONAL LAND-COVENANT BY LESSOR TO GRANT.

AGREEMENT BETWEEN LESSOR AND LESSEE COLLA-TERAL TO LEASE-REGISTRATION-NECESSITY. AGRICULTURAL LEASE.

AMBIGUITY IN-PURPOSE OF LEASE AND STATUS OF LESSEE-ISSUE AS TO-REFERENCE TO ATTEN-

DANT CIRCUMSTANCES IN CASE OF. AREA CONVEYED UNDER-ALTERATION OF, BY LESSOR OR HIS AGENT-LESSEE'S CONSENT TO.

ASSIGNMENT OF. COLLEGE OR SCHOOL-CARRYING ON OF-LEASE OF

HOUSE FOR. CONTRACT CREATED BY-TENANCY OF ORDINARY KIND-IJARA OR FARMING LEASE.

CONTRACT FOR SALE OF INTEREST UNDER-TIME IF OF ESSENCE OF.

CONTRACT TO GRANT.

CONTRACT TO TAKE.

COVENANTS IN.

DENIAL OF LESSOR'S TITLE.

DISQUALIFIED PROPRIETOR.

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ESTATE CONVEYED UNDER.

ESTATE HELD IN COMMON-SHARE OR PORTION OF -CERTAIN SPECIFIED MOUZAHS IN-LEASES OF ---DISTINCTION.

ESTATE OF INHERITANCE.

FIRM OF INDIVIDUALS-LEASE TO-SANCTION FOR -LIMITED COMPANY OF SAME MEN-GRANT OF LEASE TO.

FORFEITURE OF.

FRAUD IN OBTAINING.

FRESH ARRANGEMENT BY.

HOLDING OVER BY LESSEE UNDER, OR HIS HEIRS. LEASE FOR TERM.

LESSEE.

LESSOR-ASSIGNMENT BY, OF CLAIMS "NOW DUE, OWING OR PAYABLE".

MEMORANDUM OF PRIOR AND COMPLETED TRANSAC-TION MERELY OR.

MINERALS.

MINING LEASE.

MOCURRARY IJARA POTTAH.

MOCURRARY ISTIMRARI LEASE.

MOCURRARY LEASE.

MORTGAGE OR.

OIL WELL SITE-LEASE OF, WITH CONDITION OF PAYMENT OF ROYALTY ON OIL WON-NATURAL GAS EMITTED FROM WELL-LESSEE'S RIGHT TO. OUDH TALUKDAR.

PERMANENT LEASE.

PERPETUAL LEASE.

#### LEASE-(Contd.)

POSSESSION AND MESNE PROFITS-SUIT FOR-PRO-PERTY SUBJECT OF-LESSEE pendente lite OF-PRO-FITS OF PROPERTY CARRIED AWAY BY-DAMAGES

RECLAMATION LEASE.

REGISTERED DEED OF-CANCELLATION OF, IN CER-TAIN EVENTS-DEED HAVING EFFECT OF-GENUINENESS OF.

RELIGIOUS ENDOWMENT-LEASE OF PROPERTY OF. RELINQUISHMENT OF.

RENEWAL OF.

RENT DUE UNDER.

RESUMPTION BY LESSOR (GOVERNMENT) OF, FOR PUBLIC PURPOSE-PROVISION FOR.

REVENUE DUE ON VILLAGES LEASED-PAYMENT BY LESSEE OF SUM NAMED AS AND FOR-PROVISION FOR.

SUB-LEASE.

SURRENDER OF.

FERM OF-COMMENCEMENT OF-"HEREAFTER"-MEANING OF, IN LETTER CONTAINING AGREEMENT TO GRANT LEASE-EVIDENCE.

TERMS OF.

TERMINABLE LEASE.

TRANSFER OF.

TREES ON LANDS DEMISED.

VOID IN CERTAIN EVENTS-PROVISO IN LEASE MAKING IT.

VOID OR VOIDABLE LEASE.

VOIDABLE LEASE-AVOIDANCE OF,

YEAR OF LETTING.

ZEMINDAR.

ZURPESHGI LEASE.

## Additional land-Covenant by lessor to grant.

Covenant to grant at proper rate-Assignment by lence of-Validity-Purchaser of additional land with notice of covenant if bound by.

A lease of 51 beeghas of land within a mouzah was as follows: "A piece to cover in all 51 beeghas is leased to you under this pottah, for quarrying coal, building stores, for garden, for orchard, for road making, and for other uses . . you are to quarry coal, and till garden and erect building, and so on and pay the above rent every year and month; and you will carry on your factory according to use and wont. If you take possession, according to your requirements, of extra land over and above this pottah, we shall settle any such lands with you at a proper rate."

Quare, whether the contract as to the extra land was one which the lessee or his heirs could assign to any one, so as to entitle the person to whom he assigned it to require the lessors to settle the land with him at a reasonable rate

Quare also, whether purchasers from the lessors of the adjoining land, with notice of the contract, were bound by it (112). (Sir Barnes Powerk,) New Beerrhoom COAL CO. D. BOLARAM MAHATA. (1880) 7 I. A. 107= 5 C. 932 (935) = 7 C.L.B. 247 = 4 Sar. 145 = 3 Suth. 737. Purpose for which such land might be required by

lessee-Purpose of lease itself or different purpose.

A lease of 51 beeghas of land within a mouzah was as follows: "A piece to cover in all 51 beeghas is leased to you, under this pottah, for quarring coal, building stores, for garden, for orchard, for road making, and for other uses. You are to quary coal, and till garden and erect building, and so on; you will carry on your factory according to use and wont. If you take possession, according to your requirements, of extra land over and above this pottah, we shall settle any such lands with you at a proper rate."

LEASE-(Contd.)

Additional land -Covenant by lessor to grant-(Contd.)

should require additional land for the purpose of carrying out the objects for which the lease was granted, then the lessors would settle as much of the adjoining land with them as might be necessary for the purpose of such requirements (113).

Their Lordships repelled the contention of the plaintiffs, the assignees of the agreement from the lessee, that the intention of the parties was that the lessee or any one to whom he might assign the agreement should be at liberty to take the whole of the mouzah for any purpose whatever, whether for quarrying coal or not (112-3). (Sir Barnes Peacock.) NEW BEERBHOOM COAL CO. v. BOLARAM MAHATA. (1880) 7 I. A. 107 = 5 C. 932 (935-6)= 7 C. L. R. 247 = 4 Sar. 145 = 3 Suth. 737.

#### Agreement between lessor and lessee collateral to lease-Registration-Necessity.

-Payment to lessor-Provision in agreement for-Money not charged on immoveable property.

On 4-7-1895 the then Raja of Ramnad executed a reversionary lease of portions of his Zemindary in favour of R. The lease defined the rights and obligations of both parties; a counter-part of the lease was executed; and both lease and counter-part were duly registered.

During the negotiations for the lease it was agreed between the Raja and R that, in consideration of his obtaining the lease, R' should pay to the Raja a sum of Rs 500 a month for a period of ten years from July, 1895. On 9-7-1895, the arrangement with regard to the payment of Rs. 500 a month was put in writing in the form of a letter addressed by R to the Raja. The sum agreed to be paid was not made a charge on any property.

In a suit brought to recover instalments of the sum of Rs. 500 in arrears, it was contended that the agreement for the payment of that sum was void in law as not being in writing registered, and that proof could not be given of the existence of such oral agreement.

Held, over-ruling the contention, that the agreement was not affected by S. 92 of the Evidence Act; and that there was nothing in the Registration Act or in the Transfer of Property Act which required that it should be registered as

part of the lease.

The agreement for the payment of Rs. 500 a month for ten years from July, 1895, is in no way inconsistent with the lease of the 4th of that month. Its provisions form no part of the terms of the holding under the lease; their effect will be exhausted some years before the lease takes effect. The payment bargained for is no charge on the property; it is not rent nor recoverable as rent, but a mere personal obligation collateral to the lease. (Sir Arthur Wilson.) SUBRAMANIAM CHETTIAR v. ARUNACHELLAN CHETTIAR. (1902) 29 I. A. 138 (145-6)=

25 M. 603 (611)=6 C. W. N. 865=4 Bom. L.R. 839= 8 Sar. 316=12 M.L.J. 479.

Agricultural lease.

-Lease amounting to an.

A tenancy for the purpose of realization of rent from the cultivating tenants is governed by the provisions of the Transfer of Property Act .- Per High Court. (Lord Sham.) RAJA SATYA NIRANJAN CHAKKAVARTY D. SURAJUBALA (1929) 33 C. W. N. 865 = A.I.B. 1930 P.C. 13.

Ambiguity in-Purpose of lease and status of lessee—Issue as to—Reference to attendant circumstances in case of. -Permissibility.

Held that the true construction of the contract with lease-deed was to be cultivated by the lessee's personal agency regard to the extra land was, that if the lessee or his assigns and the lease was at best equivocal, held that the Courts LEASE-(Contd.)

Ambiguity in-Purpose of lease and status of lessee-Issue as to-Reference to attendant circumstances in case of - (Contd.)

below were perfectly right to look to the attendant circumstances to judge of the purpose for which the lease was acquired and to determine the status of the defendant (72). (Mr. Ameer Ali.) DEBENDRA NATH DAS P. BIBHU-DENDRA BHRAMARBAR ROY.

(1918) 45 I.A. 67 = 45 C. 805 (815) = 22 C.W.N. 674 = 5 Pat. L.W. 1 = 16 A.L.J. 522 = 23 M. L. T. 384-(1918) M. W. N 379-27 C.L.J. 543 = 20 Bom. L.R. 743 = 45 I.C. 411 = 35 M. L. J. 214.

Area conveyed under-Alteration of, by lessor or his agent-Lessee's consent to.

-Necessity-Absence of-Effect.

P, the owner of a mouza, granted in January, 1895, a lease of 212 bighas therein to the predecessor in title of the defendants. In April, 1895 he granted another lease of 175 bighas directly to the west, and contiguous to the first plot, to the predecessor in title of the plaintiffs. the leases were registered, and they were clear as to the identification of the plots conveyed thereunder. In 1900 P directed a person to divide the land of the said mouzah (which by that time had been entirely leased to various proprietors) amongst certain persons among whom were the lessees under the leases of January and April 1895. The division made by that person allotted to the lessee under the lease of January, 1895, the predecessor in title of the defendants, a portion of the plot included in the lease granted to the predecessor in title of the plaintiffs. The defendants encroached upon the said portion, and claimed title to the same as against the plaintiffs. There was, however, no evidence that the then lessees of the various plots in the mouzah were informed that the alleged partition made by the said person in 1900 was an arbitrary parcelling out of the land of the mouzah according to the acreages leased without regard to the boundaries prescribed in the leases already granted.

Held that the rights of the parties could not be affected by the said division and that the defendants could not base a title thereon to the portion encroached upon as against the plaintiff's claim based on the registered lease under

which they claimed.

In order to affect the rights of the parties by the division set up it would have to be shown that all the then lessees entered into an agreement that the plots so marked out should be substituted for those granted under the respective leases and there is admittedly no evidence of any such agreement or indeed of any agreement at all. (Lord M. ulton.) DEBENDRA NATH GHOSH v. NEW TETTURYA COAL CO., (1920) 24 C.W.N. 746. LTD.

#### Assignment of.

-Lease for term-Assignment of. See LEASE - LEASE FOR TERM-ASSIGNMENT OF.

-Liabilities under lease-Indemnity to lessee against

-Assignee's liability for.

Under an agreement of lease between the lessor and the lessee for a term of 20 years, the lessee went into possession of the demised premises. Subsequently, the defendant entered into a contract with the lessee to take over the benefit and burden of the said agreement of lease.

Held that the defendant was, in consequence, bound to indemnify the lessee against all liabilities under the agreement of lease, and was liable to reimburse the lessee all sums which the latter might thereafter have to pay as rent to the lessor under the agreement of lease. (Lord Shaw.)

LEASE-(Contd.)

Assignment of-(Contd.)

WEARNE BROTHERS, I.TD. P. RUSSA ENGINEERING (1928) 7 R. 144-49 C.L.J. 516-WORKS, LTD. 115 I.C. 724 - A.I.R. 1929 P.C. 189.

-Rent-Lessee's liability for-Effect on-Non-exoneration of-Covenant amounting to - Construction of losse deed.

The material clauses of a lease deed were as follows :-

You" (the lessees) " shall not be competent to transfer this ijara right in any way by gift, sale, etc.; or to surrender it; and if you do so, the same shall not be binding on me. You together with your beirs shall remain bound to pay duly the rent and munafa of this ijara so long as I shall live. I shall be competent all along to recover my fixed munafa from you and your heirs and to that no objection shall be entertained to the effect that you are not in possession of the ijara right or that the same has been transferred or surrendered by you."

'Notwithstanding (the aforesaid provision), if, on account of the intricacies of the law, any transfer made by you becomes in any way binding (on me) then you and your heirs shall remain bound to pay the fixed amount of rent so long as the transferee will not furnish security in proper quantities of immovable properties to be fixed by me for the due payment of the fixed rent and this shall in no way be

varied.

Held that, on the true construction of the lease deed, the lessees could not exonerate themselves from the liability on their personal covenant under the lease to pay the rent reserved by transferring their interest thereunder to a third party, and that the fact that notice of the transfer was given to the lessor by the transferee as well as by the transferors

did not affect the liability of the lessees.

The proper construction of the provision in the lease that, if the transfer was held to be binding on the lessor the lessees would be bound to pay the rent only so long as the transferee did not furnish security, is that, under the terms of the contract, the lesser would not be bound to recognise any transfer but would be entitled to hold the original lessees liable for the rent, but, if, on account of some legal technicality, it is held that the lessor would be bound to recognise the transferce then there is that provision that even in that case the lessees would be bound to gay the rent unless security is offered. The provision does not mean that whenever the lessees choose to transfer the leasehold interest, the lessor would be bound to fix the security for the due payment of the rent which the transferee would be required to give and the original lessees would be exonerated from their personal liability to pay the rent -Per High Court. (Lord Show.) RAJA SATYA NIRANJAN CHAKRA-VARTY P. SURAJA BALA DEVI. (1929) 33 C.W.N 865= A.I.R. 1930 P.C. 13.

-Sub-lease or-Deed by lessee-Construction of. Held that, on the true construction of a deed executed by a lessee, it was an assignment of his rights and interests in his lease and that it was not a mere under-lease. (Lord Warrington ) LEWIS PUGH D. ASHUTOSH SEN.

(1928) 56 I.A. 93 (99) = 8 Pat. 516 = 31 C.W.N. 323 = 6 O W.N. 151 = 27 A.L.J. 170 = 10 Pat. L. T. 155 = 29 L.W. 449 = 114 I.C. 604 = 49 C.L.J. 415 = 31 Bom L.B. 702 = A.I.B. 1929 P.C. 69 = 56 M.L.J. 517.

College or School -Carrying on of-Lease of house for.

-Cessation of use of house for purposes of college or school within meaning of lease-What amounts to. See LEASE-COLLEGE OR SCHOOL-CARRYING ON OF-LEASE OF HOUSE FOR-TERMINATION, ETC.

(1929) 57 M.L.J. 493.

LEASE-(Contd.)

College or School—Carrying on of—Lease of house for—(Contd.)

Termination by lessor of, on cessation of use of house for that purpose—Power of—Cessation of use of house for purposes of college or school within meaning of lease—What amounts to—Land Acquisition Act. S. 23—House—Lessor of, under lease terminable only at option of lessee—Compensation to—Assessment of—Basis of.

A lease made in the year 1887 between the predecessor in title of the appellants and one K' commenced with the recital that K had taken a lease of the house described therein. and that it was necessary for him to secure a house for a long period, with the object of removing the insufficiency of accommodation and confirming the stability of a school and college which had been established thereon. The lease then recited that the lessors were agreeable, according to the lessee's proposals, to keep the house on lease to the lessee as long as he liked. It went on to stipulate for a monthly rental of Rs. 140 and that the lessee should not be entitled to give up the house before he prepared a house of his own for the school, and that the lessors should not be entitled to take hold of the house unless the lessee gave up the same of his own accord. After the execution of that lease, the lessee carried on a school and college for some twenty years and in the year 1907 he executed an indenture of trust by which he conveyed the lease and certain other properties to trustees, in order that they might carry on the college and school. In 1908 the school was removed to another site. The college continued to be carried on for the time being on the site leased. At some date between 1908 and 1910 the land adjoining the property demised was acquired by the trustees, and upon the land so acquired a new building was erected for the use of the college. The land, the subject-matter of the lease of 1887, was thereafter used partly as a hostel for students at the college, partly for superintendent's building. for a dining room, for lavatory accommodation and for a house for the lodge-keeper. That state of affairs continued from 1910 to 1920, the trustees continuing to pay the monthly rent to the lessors. In 1920, by Act XVI of that year, the Indian Legislative Council enacted that the property comprised in the lease should be transferred to and vested in and held by the Governor of Bengal in Council. Some time in that year after the passing of the said Act but before it had actually come into force, the Government determined to acquire the freehold interest in the land.

On a question arising as to the nature of the appellants' interest in the land and the amount of compensation to be paid to them, held that, on the true construction of the lease, the lease was determinable only at the option of the lessee and that the lessors were not entitled to determine it upon the lessee ceasing to carry on a college or school there.

Held further that even otherwise the fact that the physical site of the college buildings was at the date of suit upon adjoining land and that the demised land was being used for purposes of the college other than the actual teaching in a class room would not be such a cessation of the use of the land for the purposes of a college as to entitle the lessors to determine the lease.

Hell also that the High Court was right in holding that the value of the right existing in the lessors of the land was established by capitalizing the monthly rent. (Lord Chancellor.) RAKHAL CHANDRA BASAK v. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1929) 27 A. L. J. 411 = 33 C. W. N. 669 = A. I. R. 1929 P. C. 113 = 30 L. W. 831 = (1929) M. W. N. 415 = 118 I. C. 271 = 57 M. L. J. 493. LEASE-(Contd.)

Contract created by—Tenancy of ordinary kind—Ijara or farming lease.

-Tes

Held. on the construction of a lease of lanka lands by a Zemindar, that the contract created by it was not a contract of tenancy of an ordinary ryot, and that the lessess were ijaradars or middlemen (389.91). (Lord Atkinson.) SURI-SETTI BUTCHAYYA v. PARTHASARATHY APPA ROW.

(1921) 48 I. A. 387 = 44 M. 856 (859-60) = 14 L. W. 168 = 26 C. W. N. 785 = 69 I. C. 1 = A. I. R. 1922 P.C. 243 = 41 M. L. J. 669.

Contract for sale of interest under—Time if of essence of.

Presumption—Evidence to rebut. See CONTRACT ACT, S. 55—LEASEHOLD INTEREST. (1915) 43 I. A. 26 (33)=40 B. 289

Contract to grant.

Additional land—Contract to grant. See LEASE—ADDITIONAL LAND.

Contract of special character not requiring registration—Test, See CONTRACT—COMPLETED CONTRACT— PROPOSAL AND COUNTER-PROPOSAL.

(1874) 1 I. A. 124.

——Court of Wards—Property vested in manager under—Lease of—Contract for, by Officials of Lieutenzot-Governor—Specific performance of—Possibility in law of. See Chota Nagpur Encumbered Estates act of 1876—Property Vested in Manager under.

(1924) 51 I. A. 208 (217)=3 Pat. 625.

- Enforceability of Condition precedent to Payment of a debt by lessor if a Non fulfilment of Effect.

A contract that a lessor should not be required to execute a promised lease until he had paid off a debt attaches a condition precedent to the obligation to execute the lease which condition must be fulfilled before he could be compelled to do so. (Lord Atkinson.) SRIMATI GIRIBALA DASI T. KALI DAS BHANJA. (1920) 33 C. L. J. 57

25 C. W. N. 320 = (1920) M. W. N. 653 = 22 Bom. L. R. 1332 = 29 M. L. T. 1 = 57 I. C. 626 = 39 M. L. J. 329 (337.8).

Loan-Contract to accept, and to grant lease-

The suit was brought by the appellant for specific performance of an agreement whereby the respondent agreed to accept a loan of Rs. 40.000 from him, and to grant him a lease of the respondent's Zemindary for 19 years. The original Court declared for the plaintiff. The High Court reversed that decree. On appeal to their Lordships they reversed the High Court and restored the trial judge. They also held that if the plaintiff desired to have an account of the profits of the property during the time he had been kept out of possession, he had a right to that, he on his part accounting for the rents which would have been due from him (232). (Lord Hobboure.) GREGSON v. RAJAH SRI SRI ADITYA DEB. (1889) 16 I. A. 221 = 17 C. 223 (233)

Loan to be advanced within time fixed—Contract in consideration of—Time within which loan to be advanced if of essence of contract. See Contract Act, S. 55—LEASE—CONTRACT TO GRANT IN CONSIDERATION OF, ETC. (1860) 8 M. I. A. 170 (189-90).

—Specific performance of —Decree for —Condition of —
Date of commencement of term—Certainty as to—Necessity.

Specific performance of an agreement to grant a lease cannot be decreed unless that agreement either expressly or impliedly to be granted fixes the date from which the term is

Contract to grant-(Contd.)

to run. (Lord Atkinson.) SRIMATI GIRIBALA DASI P. (1920) 33 C. L. J. 57 = KALI DAS BHANJA. 25 C. W. N. 320 = (1920) M W. N. 653 =

22 Bom. L. R. 1332 = 29 M. L. T. 1 = 57 I. C. 626 = 39 M. L. J. 329 (334).

#### Contract to take.

Premises in occupation of tenants-Godown to be erected on-Lease of-Contract to take-Eviction of tenants and erection of godown-Time fixed for-If of essence of contract. See CONTRACT ACT-S. 55-LEASE OF GO-(1907) 17 M. L. J. 454. DOWN, ETC.

#### Covenants in.

Additional land—Covenant to grant—Assignment of -Validity of-Purchaser of additional land with notice of covenant if bound by. See LEASE-ADDITIONAL LAND. (1880) 7 I.A. 107 (112) = 5 C. 932 (935).

-Additional land-Covenant to grant-Purpose for which such land might be required-Purpose of lease itself or different purpose. See LEASE—ADDITIONAL LAND. (1880) 7 I.A. 107 (112-3) = 5 C. 932 (935-6).

-Assignment by lessee-Covenant against. See LEASE -LEASE FOR TERM-ASSIGNMENT OF.

-Performance by lessee of-Surety for-Discharge of -Sale of lesse's interest and purchase thereof by stranger

-Effect. Where the sureties undertook liability for the performance by a lessee of the conditions of the lease, held that the fact that the lessee's interest was sold in execution and purchased by a stranger did not have the effect of releasing the debtor or his sureties from liability to perform the covenants and conditions of the lease agreed upon by them. (Sir John Edge.) KALI CHARAN P. ABDUL RAHMAN. (1918) 23 C.W.N. 545 (548) = 10 L.W. 34 = 1 U.P.L.R. (P.C.) 53 = 50 I.C. 651.

-Performance by lessee of-Surety for-Interest in lease if has.

It was said that N could not have any interest in the lease, because he was a surety for the due performance of the obligations contained in it by the lessee. We have no doubt that N had an interest for any injury to which he was entitled to compensation (333). (Mr. Pemberton Leigh.) RAJAH BURRODA KANT ROY :: RAM TUNNOO (1848) 4 M. I. A. 321=7 W. R. 51 P.C.= 1 Suth. 191 = 1 Sar. 355.

-Renewal of lease-Covenant for. See LEASE-RE-

NEWAL OF.

-Validity of-Portion of moura-Lease of-Covenant in, restraining lessor from leasing remaining portion to

others-What amounts to-Validity of.

A lease of 51 beeghas of land within a mauza was as follows:--" but of the remainder, a piece not to comprise crop-bearing land, that is to say, a piece of land quite uncultivable and waste land, a piece to cover in all 51 beeghas is leased to you under this pottah, for quarrying coal, build-ing stores, for garden, for orchard, for roadmaking, and for other uses . You are to quarry coal, and till garden and erect building, and so on, and pay the above rent every year and month; and you will carry on your factory according to use and wont . . You will build a factory according to any plan you choose, and possess the same. Within that aforesaid mouzah we will not give a pottah to any factory person;" that is to say, "we shall not let (literally, give settlement) to anybody."

Quaere whether the clause " we shall not let (literally, give settlement) to anybody" was really a contract not to give a pottah to any person whatever, or was only a contract not to give a pottah to any other factory person (112).

LEASE -(Contd.)

Covenants in-(Could.)

SemMe if it was a contract not to give a pottah to any person whatever, the contract might be bad as being in restraint of alienation (112). (Sir Barnes Peacock). NEW BEERBHOOM COAL CO. 2., BOLORAM MAHATA.

(1880) 7 L A. 107 = 5 C. 932 (935) = 7 C. L. R. 247 = 4 Sar. 145 = 3 Suth. 737.

#### Denial of lessor's title.

-Forfeiture of lease by. See UNDER LANDLORD AND TENANT.

#### Disqualified proprietor.

-Lease by predecessor of. See COURT OF WARDS-LEASE BY PREDECESSOR OF WARD.

#### Essential Characteristic of.

-The essential characteristic of a lease is that the subject is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of the user disappear. (Sir Lancelet Sanderson.) RAJAH BEJOY SINGH P. SURENDRA NARAYAN SINGH.

(1928) 55 I.A. 320 = 56 C. 1 = 48 C. L. J. 268 = 111 I. C. 345=(1928) M. W. N. 841=33 C. W. N. 7= 26 A. L. J. 1233 = 28 L. W. 855 = A. I. R. 1928 P. C. 234 - 13 R. D. 30 = 10 Pat. L. T. 66 = 55 M. L. J. 456 (462).

#### Estate Conveyed under.

HEREDITARY INTEREST DURING CONTINUANCE OF LEASE, LEASE BEING TERMINABLE, HOWEVER, AFTER ONE YEAR, BY LESSOR (GOVERNMENT).

In 1788 the Government granted what was called a mokurruri lease to M. The kabuliyat of the lease signed by M was as follows:—" Whereas I have obtained a lease of mouzah T from 1196 Fusli, at a jumma of Sicca Rs.400, I do acknowledge and give in writing that I shall continue to pay the rent of the mouzah aforesaid at the said jumma, year after year, according to the kabuliyat and the kistbundi. If any one establish his Zemindary (proprietary) right in respect of the said mouzah in his own name before the authorities, I shall continue to pay, year after year, to him or his heirs, the 'malikana' (proprietary allowance) thereof at the rate of Rs. 10 per cent. on the jumma aforesaid, in addition to the Government revenue." there was the following clause: " If the present officers of the British Government, or any authority who may come hereafter, do not accept my mokurruri lease to be hereditary, I acknowledge that this kabuliyat is only for one year, thereafter it shall be cancelled."

It appeared that, though the Government had undoubtedly the power to put an end to the lease at the end of one year, they did not in fact do so but allowed the lease to go

on without putting an end to it.

Held that, although the lease was not perhaps properly a mokurruri, as practically the Government could enhance the rent, it must be regarded, as long as it went on, as an hereditary lease, a mourussi pottah, and that the interest of the lessee thereunder, during its continuance, was an hereditary interest (226-7). (Sir Montague E. Smith). BABOO LEKHRAJ ROY D. KUNHYA SINGH.

(1877) 4 I.A. 223 = 3 C. 210 (212-3)= 3 Sar. 758 = 3 Suth. 453.

LESSOR'S INTEREST HEREDITARY BUT TERMINABLE.

-Duration of lease till lessor's interest lasted or for life of lessee only.

The material parts of a lease or pottah granted by C to N were in these terms: "The engagement and agreements of the pottah on the kabuliyat of N, lessee of mouzah / are as follows :- "Whereas I have let the entire rents of the mouzah aforesaid,"-describing what he had lett,-

Estate Conveyed under-(Contd.)

LESSOR'S INTEREST HERED/TARY BUT TERM!NA-BLE-(Contd.)

"at an annual uniform jumma of Sicca Rs, 606, without any condition as to calamities, from the beginning of 1215 Fusli to the period of the continuance of my mokurrari." Then it was required that the lessee should cultivate, " and pay into my treasury the sum of Sioca Rs, 606, the rent of the mouzah aforesaid, for the period aforementioned, according to the intalments year after year." Then there was this provision, "If hereafter the authorities desire to make a settlement of the property at that time, he shall pay the jumma thereof separately according to the Government Settlement." It concluded, "Hence these few words are written and given as a pottah to continue during the term of the mokurruri, that it may be of use when required. The annual jumma malguzari, including the malikana, Rs. 606,"

It appeared that the lease by the Government under which C held the lands was an hereditary lease, a mourussi pottah and that his interest under it was an hereditary interest, which was liable to be, but was not in fact, determined by

the Government.

Held that, the evident intention of the parties being that the grant should enure during the term of C's interest there was no reason why, upon the construction of the pottah in question, it should be held to be limited to the life of A' (227).

The duration of the term is capable of being definitely ascertained by reference to the interest which the grantor himself has in the property (227). (Sir Montague E Swith.) BABOO LEKHRAJ ROY D. KUNHYA SINGH.

(1877) 4 LA 223 = 3 C. 210 (212-3) = 3 Sar. 758 = 3 Suth 453.

LIFE ESTATE TO A AND, AS TO ONE-HALF OF PROPERTY GRANTED, TO HIS CHILDREN AND DESCENDANTS AFTER HIS DEATH.

Grant of-Alienation by grantee or descendants-Restriction on-Effect-Person unborn at date of pottah-Right to take under it. See DEED-CONSTRUCTION OF-ESTATED CONVEYED-LIFE ESTATE TO A. ETC.

(1901) 28 I.A. 152 (157) - 28 C. 720 (733 4).

MOCURRARY LEASE OR MOCURRARY ISTIMRARY LEASE.

Estate conveyed by. See LEASE-MOCURRARY LEASE-MOCURRARY ISTIMRARY LEASE,

PERMANENT LEASE TERMINABLE ON NON-PAYMENT OF RENT-YEARLY TENANCY.

-The question was whether, on the true construction of a document called a rent-note and dated 22-2-1824, it created only a tenancy from year to year, or whether it created a permanent lease, which could only be terminated by non-payment of rent.

Held that the terms of the document and the circumstances of the case justified the conclusion that the document was intended to record a transaction by which a permanent

right to occupy was conferred upon the grantees.

Their Lordships think that the terms of the document which may not be satisfied if the tenancy were one from year to year, coupled, with the fact that notwithstanding the low rent, which was never changed, the property has been in fact dealt with by the lessees on three separate occasions in 1872, in 1883, and in 1900, by being subleased for substantial periods of years at increased rents, a circumstance which it is not unreasonable to assume must have come to the knowledge of the lessors at some time or another, and that no dispute has arisen as to their right to make such grants or to remain in occupation until the present time, is sufficient

LEASE -- (Contd.)

Estate Conveyed under-(Contd.)

PERMANENT LEASE TERMINABLE ON NON-PAYMENT OF RENT-YEARLY TENANCY-(Contd.)

22-2-1824 was intended to record a transaction by which a permanent right to occupy was conferred upon the lessees, Lord Buckmaster.) BAWA MAGNIRAM SITARAM D. KASTURIBHAI MANIBHAL (1921) 49 I.A. 54 (58)=

46 B 481 (486) = 26 C.W.N. 473 = 20 A.L.J. 371= 35 C.L.J. 421 = 24 Bom. L. R. 584 = 30 M.L.T. 268= (1922)) M.W.N. 319 = A.J.R. 1922 P.C. 163= 66 I.C. 162 = 42 M.L.J. 501.

PERMANENT TENANCY-YEARLY TENANCY.

-Clavadas mirasidars-Description of lessees as-Effect.

One of two persons, through whom the respondents claimed, acquired rights in certain lands under permanent leases granted by the manager of a temple in 1813 and 1820. In 1831, the lessee and the other person from whom the respondents derived title petitioned the Collector, under whose management the temple then was, for a lease of the land for one year. No reference was made in the petition to the former leases and the petitioners described themselves as Purakudis. In 1832, they executed a muchilika and security bond to the Collector, who sanctioned the lease to them in 1833. In those documents they described themselves as Ulavadai mirasidars, but there was nothing else to indicate their claims to a permanent tenure. In a suit by the manager of the temple in 1892 to recover possession of the lands the respondents set up the defence that they held on a permanent tenure and were not liable to be ejected. The High Court held that it was not sufficiently proved that the tenancy under the leases of 1813 and 1820 was ever determined, that the transaction evidenced by the muchilika was a confirmation of the former leases and not a new lease, and that the respondents held the lands on a permanent tenure. In support of their conclusions the learned Judges attached much importance to the description of the applicants, in the muchilika and security bond, as Ulavadai mirasidars.

Held by their Lordships that the question, whether the respondents had a permanent tenure or not, was under the circumstances of the case to be decided on the contract sanctioned by the Collector in 1833 and that under that they obtained nothing more than a yearly tenancy.

The words "Ulavadai Mirasidars" do not have a well-established meaning and it would be extremely unsatisfactory to rest the decision on those words (92). (Sir Andrew Scolle.) SEENA PENA REENA SEENA MAYANDI CHETTIAR :: ('HOCKALINGAM PILLAL

(1904) 31 I. A. 83 = 27 M. 291= 8 C. W. N. 545 = 8 Sar. 587 = 14 M. L. J. 200.

PERMANENT TENURE-ESTATE FOR LIFE-ESTATE POUR AUTRE VIE.

Zemindar-Pottah granted by.

R. a brother in-law of S. had been together with other members of his family the holder of a jote within a Zemindari, including the suit lands. It was a patrimonial property held before him by his ancestors for some generations. The Zemindar sued R and the other jotedars for enhancement of rent, and succeeded in establishing the right to enhance the rent to such an extent that the jotedar declined to hold the property on those terms, and accordingly relinquished it. Thereupon a re-settlement was made with R, contracting in the name of S, of a portion of the property which had been relinquished, and at a much lower rent than the enhanced rent. The pottah, which embodied the re-settlement recited the above facts, and proceeded: to justify them in saying that the memorandum signed on the above land and jumma you appeared through your When I caused notice to be given for the settlement of

Estate Conveyed under-(Contd.)

PERMANENT TENURE-ESTATE FOR LIFE-ESTATE POUR AUTRE VIC-(Contd.)

mookhtar, and applied for a pottah of the land and jumma. Your application is approved; and after deducting certain quantities, a portion of land amounting to 1.785 trighas is granted "at a fixed rent" of Rs. 618. There was a further provision that if any loss arose from inundation and so forth the tenant should continue to pay the rent, and then followed the provision :- "Over and above the said rate at which I have fixed the rent and granted this portah neither I nor my heirs shall upon any account enhance the rent of the said land and jumma, or allow it to be enhanced "

Upon R's death, he was succeeded in the possession of the property by his widow as guardian of his minor son, and the son upon attaining his majority took possession himself. The Zemindars recognised that possession They asserted and confirmed the legality of the possession of R's widow on behalf of the minor as succeeding to R, and they further on several other occasions more especially referred to, in 1865, when it would appear that S really was dead, brought suits for rent against R's widow and his son, treating the son as

succeeding to the father.

Held that the intention of the parties to the pottah was to create a permanent tenure, and not an estate for life or an estate pour autre vie for the life of S (166). ROBERT WATSON & CO. p. MOHESH NARAIN ROV.

.(1875) 3 Suth. 159 = 24 W. R. 176.

PERMANENT TENURE AT VARVING RENT.

-A lease deed, which was in English, ran as follows:-"That whereas land is required by A, agent of . . ., for the purpose of erecting buildings, putting up presses, etc., for trading, I, R, Manager for F, agree to give a lease for four bighas of land to the aforesaid A for the above purpose from year to year at an annual rental of Rs. 45 per bigha or total annual rental of Rs. 180."

Quaere, whether in its inception the lease created a permanent tenure save and except as to the rate of rent (186).

(Mr. Ameer Ali.) FORBES v. RALLI.

(1925) 52 I.A. 178 = 4 P. 707 = 6 Pat. L.T. 404 = A. I. R. (1925) P.C. 146 = 23 A.L.J. 548 = 27 Bom, L. B. 860 - 41 C.L.J. 543 -(1925) M.W.N. 453 = 30 C.W.N. 49 = 87 I.C. 318 = 2 O.W.N. 614 = 6 L R. P.C. 119 = 49 M L J. 48.

PERPETUAL TENANCY-LIFE TENANCY.

Mocurrary ijara pottak.

On the 21st of November, 1798, G, the predecessor in interest of the respondent, granted to R, the father of one of the appellants, a pottah of a mouzah forming part of G1 pergunnah in the terms following:—
"The stipulation of pottah granted on receipt of kabuliyat

to R, mokurruri ijardar of mouzah Bhalwana, on behalf of

G, is to the effect and purport following:

"Whereas the mokurruri ijara pottah of the said mouzah is granted from 1206 F.S., at a consolidated jumma specified helow, inclusive of malikana, subject to no objection or excuses on the score of calamities of weather, together with fisheries and fruit trees; with the exception of abkari and toddy gunjas, bazars, kants, all sayer mothurfa (taxes levied on professions), lakheraj lands, covered by sunnuds and not covered by sunnuds, rosum of rosumdars, daily allowances of rozanadars, and chandas of chandadars; the above-named person should make cultivation and improvement, pay the above amount year after year, as per kistbundi, in full, into the treasury of this sircar (Rajah), raise no objection whatever on the score of drought, inundation, hailstorms, deaths and desertions, but himself bear the losses arising therefrom. In addition to the above jumma, whatever profits

LEASE-(Contd.)

Estate Conveyed under-(Contd.)

PERPETUAL TENANCY-LIFE TENANCY-(Contd.) may be derived from salutary improvement in cultivation by him shall belong to the mokurvuridar, the Sircar having nothing to do with the same. In case of non-payment of instalments agreeably to the kistbandi, month after month, the mutsuddis of the Sircar shall have authority to realise the arrears by sale of the goods and chattels of the abovenamed, to send sazawal or attaching officer to the said village and make and receive the collections. The expenses of entertaining sazawal, tehsildar, and others shall be borne by the above-named. He should keep the tenants of the said village satisfied and contented by his good treatment, and make collections from the tenants according to order of Government, agreeably to pottahs of nukdi and bhowli lands to be granted to them, and never demand any sum in excess. He should not in any way commit oppression on tenants, so that they may be able to stand to their engagements, and he should not oust them until the determination of their leases. He should grant receipts to the tenants upon payment of rent. He should not give a single span of land in the said village without asking permission and without consent of the huzoor, nor resume any previously granted without the orders of the huzour. Should the said lakheraj lands be hereafter resumed under orders of the huzoor, and the huzoor be pleased to make a settlement of the rent thereof with the ticca mokurraridars, then the above-named shall pay the rent thereof according to the settlement to be made by the huzoor. He should not suffer a single span of the land on the limits and boundaries to pass and to be included in the boundary of others. Should it so happen, he should of his own accord inform the Sircar of it, have the matter settled with the aid of the Sircar, and maintain and preserve the boundaries and limits of the said mouzah. He should not allow thieves and padders to settle within the estate leased to him. God forbid! Should anyhody's property be robbed and plundered, he should trace out the thieves and robbers with the property, and produce them before the thanadar or the district authority. Should the thanadar apprehend the robbers and apply to him for aid, he shall forthwith afford assistance to him. He should bring without fail to the notice of the huzoor whatever property may be found belonging to dead psrsons, or that is deserted or lying buried under ground, without heirs to claim it. He should act in strict conformity with the orders already passed or to be hereafter passed by the huzoor for regulating settlement of rent with tenants and malguzars of all classes, and should never raise any excuse or objection whatsoever. He should not demur or put forward any excuse in this, and should act up to the above."

The pottah then stated the rent payable by the grantce. Held, affirming the High Court, that, upon a consideration of the object of the pottah and its language and provisions, as well as the surrounding circumstances, the intention to grant a perpetual lease did not sufficiently appear (40). (Sir Richard Couch.) MUSSUMAT BILASMONI DASI P. RAJAH SHEO PERSHAD SINGH.

(1882) 9 I. A. 33 = 8 C. 664 = 11 C. L. R. 215 = 4 Sar. 325.

POTTAH-MEANING OF.

-Hereditary interest if necessarily imported by.

Their Lordships cannot accede to the argument that a Pottah must frima facie he assumed to give an hereditary interest, though it contains no words of inheritance. "Pettah" is only a generic term which embraces every kind of engagement between a Zemindar and his under-tenants. or Ryots (463-4). (Sir Richard Kindersley.) BABOO DHUNPUT SINCH P. GOOMAN SINGH.

(1867) 11 M. I. A. 433 = 9 W. B. P. C. 3= 2 Suth. 92 = 2 Sar. 309.

#### Estate Conveyed under- (Contd.)

WIFE-LEASE BY ZEMINDAR TO.

-Lease to her and her heirs, or to her and her son, lease ceasing to operate in event of son predeceasing her. SW LEASE-ZEMINDAR-WIFE. (1889) 17 C. 686.

#### WORDS.

-Ba-farrandan-Effect of. See LEASE-ESTATE OF INHERITANCE-GRANT OF, (1885) 12 I. A. 205 (214) -12 C. 117 (126).

-Generation to Generation-Meaning and effect of. See LEASE-ZEMINDAR-RECLAMATION LEASE ETC. (1867) 11 M. I. A. 433 (464-5).

-See LEASE-ZEMINDAR-ILLEGITDATE DAUGH-TER. (1872) 3 I. A. 92 (97-8) = 1 C. 391 (398).

-See Lease-Mocurrary istimbari lease, -Including all interests therein-Weth all rights-

Meaning and Effect of.

The expression "including all interests therein" does not in rease the corpus of the subject of the lease. In Girdhari Singh v. Megh Let Pandey (L. R. 44 I. A. 246 at 250), it was held that the expression "with all rights", which was amplified as meaning "with all right, title, and interest," only gave expressly what might otherwise quite well have been implied, eve., that the corpus being once ascertained, there will be carried with it all rights appurtenant thereto, including not only possession of the subject itself, but, it may be, of rights of passage, water or the like which enure to the subject of the lease and may even be derivable from outside properties. (Sir Lancelot Sanderson.) BIJOY SINGH P. SURENDRA NARAYAN SINGH.

(1928) 55 I. A. 320 = 48 C. L. J. 268 - 111 I. C. 345 = (1928) M.W.N. 841 = 33 C.W N. 7 = 26 A. L. J. 1233 = 28 L. W. 855 = A. I R. 1928 P. C. 234 =

55 M. L. J. 456 (462).

"Istimrari Mocurrari"-Effect of. See LEASE-ESTATE OF INHERITANCE—GRANT OF.

(1885) 12 I. A. 205 (214) = 12 C. 117 (126). -Mocurrary-Effect of. See LEASE-ZEMINDAR-RECLAMATION LEASE ETC.

(1867) 11 M. I. A. 433 (464-5). -See Lease-Estate of inheritance-Life INTEREST. (1887) 15 C. 342. -Naslan bad Naslan-Effect of See LEASE-ESTATE OF INHERITANCE. (1885) 12 I.A. 205 (214) =

-Pottah-Effect. See LEASE-ESTATE CONVEYED 12 C. 117 (126). -РОТТАН. (1867) 11 M. I. A. 433 (463 4).

"Ulavadai mirasidars"-Description of tenants as. See LEASE -ESTATE CONVEYED UNDER-PERMANENT TENANCY - YEARLY TENANCY-ULAVADAI MIRASIDARS. (1904) 31 I. A. 83 (92)=27 M. 291.

Estate held in common-Share or portion of-Certain specified mouzahs in-Leases of-Distinction.

ACT OF 1897—S. 99—LEASE OF SHARE OR PORTION (1927) 54 I. A. 196 (202-3) = 54 C. 586.

Estate of Inheritance -Grant of-Expression - Istimrari mokurrari if sufficient of itself

On 29--8-1850, the then holder of an impartible estate granted a pottah to his son-in-law of certain mouzahs which were part of the zemindary. The pottah contained the words "istimrari mokurrari," but did not contain any other words showing that the grant was intended to be perpetual. The grantee did not point to any circumstances showing an intention to grant a perpetual estate, but relied solely upon | ESTATES ACT OF 1876, S. 17 AND R. 16.

LEASE-(Contd.)

Estate of Inheritance-(Contd.)

Held that, in view of the customary meaning of the words "istimrari mokurruri." as established by the decisions, they did not convey an estate of inheritance in the particular case (214). (Sir Richard Couch.) TOOLSHI PERSHAD (1885)12 I.A. 205= SINGH P. RAM NARAIN SINGH. 12 C. 117 (126) = 4 Sar. 646.

Grant of-Expressions-Istimrari Mokurraru-Sufficiency of-Ba farzandan-Naslan bad naslan-Necesity

The words "istimrari mokurrari" in a pottah do not for se convey an estate of inheritance, but the decisions do not establish that such an estate cannot be created without the addition of such words as "ba farzandan" (including children or descendants) or "naslan bad naslan" (from generation to generation). The other terms of the instrument, the circumstances under which it was made, or the subsequent conduct of the parties, might shew the intention with sufficient certainty to enable the Courts to pronounce that the grant was perpetual (214). (Sir Richard Couch.) TOOLSHI PERSHAD SINGH F. RAM NARAIN SINGH.

(1885) 12 I.A. 205 = 12 C. 117 (126) = 4 Sar. 646.

-Life interest-Grant of-Words-Mocurrari-Un of-Effect.

The suit was to recover possession of a mouzah of which a mokurrari lease had been made in 1853 to one T. The defendants alleged that the tenancy was hereditary, and the question for decision was whether the lease created a hereditary interest or an interest only for the life of T.

The circumstances of the case were as follows:-

The mouzah in question was formerly a ghatwali tenure. Therefore by its nature it was in fact a hereditary tenure. and the ghatwals or their descendants could not be ejected. The ghatwali estate was sold for arrears of Government revenue in 1838, and was purchased by the predecessor of the plaintiff in the suit out of which the appeal arose. The purchaser brought suits to set aside encumbrances, and amongst others, the ghatwals were sued. T was one of those tenants who were seed for the setting aside of his tenure. He pleaded that he was a ghatwal. The suit, however, was to set aside the sunnud on which his title was based, and there was no admission, nor was there any finding, that T was a ghatwal at all. He compromised the suit, and permitted a decree against him on the condition of receiving the suit lease.

The High Court held, affirming the court below, that the lease enured only for the life of T. They observed: There are no words whatever in this pottah which would import any hereditary interest, and it has been held fre-quently that the word "mokurrari" alone does not import anything more than fixed rent. It was contended that the tenure having been held by T and his predecessors for a long series of years, it is not likely that he would, without consideration, consent to give up his position altogether and take a lease for his own life. But it is quite possible that he felt that his case was a precarious one, and that it would be better than having a decree ousting him from this tenure, to enter into a compromise by which he could secure his tenancy for his own life."

Their Lordships concurred in the construction put upon the pottah by the High Court (Sir Barnes Peacock.) PARMESWAR PERTAB SINGH P. PADMANUND SINGH.

(1887) 15 C. 342=5 Sar. 128.

Firm of individuals-Lease to-Sanction for-Limited Company of same men-Grant of lease to.

See CHOTA NAGPUR INCUMBERED

(1915) 42 I. A. 97(101-2)=42 C. 1029 (1041).

#### Forfeiture of.

——Denial of lessor's title—Forfeiture by. See Under LANDLORD AND TENANT.

#### Fraud in obtaining.

Presumption of Low rent-Lease obtained from manager at.

No presumption of fraud in obtaining a lease arises from the mere fact of the lease having been obtained from the manager of an estate at an unusually low rate of rent.

ADMINISTRATOR GENERAL OF BENGAL v. ANUNDO (1874) 2 Suth. 959=
21 W. R. 425=4 Sat. 823.

## Fresh arrangement by.

—— Confirmation of existing one—Test. See LANDLORD AND TENANT—POTTAH—CONFIRMATORY POTTAH.

Recital of existing arrangement—Test. See BENGAL REGULATIONS—PUTNI TALUQS REGULATION OF 1819. S, 3 (3) A—RENT. (1905) 33 I. A. 30 = 33 C. 140.

## Holding over by lessee under, or his heirs.

HEIRS OF LESSEE—HOLDING OVER BY— RECEIPT OF RENT BY LESSOR FROM.

-Position of heirs in case of-Liability to exiction-

A Mahomedan Zemindar had two wives, but no children by either. He had, however, by a Mahomedan lady of the Sheeah sect four illegitimate children, S (a daughter) and the respondent being two of them. Six days after the birth of S, he granted a mouzah at an annual rent of 301 six a rupees to her on mokurrari lease "from generation to generation". S died at an early age in the lifetime of her father. Her mother who had been in possession ever since the grant continued in such possession up to her death in 1860. During her life and for years afterwards the rent was received by the Zemindar and after his death in 1858 by his two widows as his heirs. In 1865, the widows, alleging that they had only recently discovered the death of S, claimed to resume the mouzah, and brought the suit out of which the appeal arose for that purpose. Their case was that the grant to S having failed, the beirs of the grantor were entitled to resume.

Semble though the parties in possession could not be treated as trespassers, and the perception of rent created some species of tenancy, such perception of rent did not amount to a re-grant and was not of itself a sufficient answer to the plaintiff's claim to resume. (Sir fames W. Colvile.)

RANEE SONER KOWUR OR RANEE ASMEDH KOWUR P. RANEE SONER KOWUR OR RANEE ASMEDH KOWUR P. MIRZA HIMMUT BAHADOOR.

The grantee of a village from a Zemindar under a grant made in lieu of maintenance died childless, having previously executed a permanent pottah in respect thereof to the defendant. The grant being only one for life, the defendant's tenure came to an end at latest on the death of the grantee. The defendant was, however, left in possession by grantee. The defendant was, however, left in possession by the grantor's successor, paying the same rent as that fixed by the pottah. That successor was succeeded by his son P, who allowed the defendant to remain in possession at his former rent.

Held, on his accession P might have resumed the village or have made a fresh grant either on the terms of the pottah or otherwise, or have allowed the defendant to remain in possession, paying a rent. But as the pottah was void as against him, and not voidable only, the mere receipt of rent by him, though of the same amount as that fixed by the pottah, would not have the effect of confirming the pottah

LEASE-(Contd.)

Holding over by lessee under, or his heirs-(Contd.)

HEIRS OF LESSEE—HOLDING OVER BY—RECEIPT OF RENT BY LESSOR FROM—(Contd.)

in its entirety. Whatever was the interest which the pottah purported to grant, the defendant was in fact a mere tenant at will of P, and could not set up the pottah against him, except for the purpose of showing the amount of his rent. (Lerd Darcy.) MAHARANI BENI PERSHAD KOERI P., DUDH NATH ROY. (1899) 26 I. A. 216 (221)

27 C. 156 (162-3) = 4 C. W. N. 274 = 7 Sar. 580.

——Tenancy between them and lessor—Agreement as to — Exidence establishing—Agreement to the contrary within the meaning of S. 110 of T. P. Act—Facts establishing.

The proprietor of an estate leased two villages appertaining to the same under a "mokurrari istimrari" lease, dated 31-12-1865. The lease was a lease for the life of the original lessors, both of whom died about 1891, having, in 1879, assigned their interest in the villages to one S. Subsequent to the said lease, the lessor gave a usufructuary mortgage to one N, who was in possession of the two villages from 1891-2 to 1897-8. N, the mortgegee, obtained decrees for rent against the original lessees, and S, the assignee, which were duly satisfied by them or their successors in interest. After the mortgage came to an end in about 1898 no rent was paid by S, or the defendants, his successors in interest, to the original lessor or to anyone else. S continued in possession of the villages until his death in 1915, and thereafter the defendants, his heirs, continued in possession. In 1920, the plaintiff, the succe-sor in interest of the original lessor, sued the defendants for possession of the villages, alleging that the nature of the tenancy was a holding over by S and his successors upon the terms of the original lease, except as to duration; that, by reason of S. 116 of the T. P. Act, it became a tenancy from year to year; that it remained in existence till 1915, when notice to quit was given, and that the suit was therefore not barred.

The evidence showed that the position between the original lessor and the defendant's predecessor-in-title was as follows:—On the one hand, the original lessor was asserting that the grant to the original mokurraridars conveyed a life-interest only, and that after 1891, the date of the death of the original lessees, the predecessors of the defendants had no right to be in possession of the lands; on the other hand, the mokurraridars and their assignees were claiming that the lease was of a permanent heritable character, and that that was the position up to 1903, when S endeavoured to get his name entered as the holder of a permanent tenure, and the proprietor refused, and would only agree to give marfatdari receipts, which S declined to adopt, with the result that S remained in possession without paying any

rent.

Held that, so far from being in agreement as to a tenancy, the parties were at arm's length, and, after the termination of the lease for lives, there was no recognition by the plaintiff or his predecessor-in-title so as to constitute the defendants or their predecessors in title tenants, as alleged by the plaintiff, and that the evidence showed, on the other hand, that the then proprietor of the estate refused to recognise

the defendants' predecessors as his tenants.

The heirs of a lessee under a lease for life, who continued in possession after the death of the original lessee, claimed a permanent right and endeavoured to establish it by getting the landlord to accept rent and give a receipt in their name. The landlord received the rent, but protected himself by giving receipts in the names of the original lessees. This state of things went on for a number of years, when the heirs, or one of them on their behalf, demanded receipts in their own name, and the landlord refused to give such receipts and no more rent was paid.

Holding over by lessee under, or his heirs - (Could.)

HEIRS OF LESSEE-HOLDING OVER BY-RECEIPT OF RENT BY LESSOR FROM-(Contd.)

Held that the parties in paying and accepting rent after the expiration of the lease for lives were acting without prejudice to their respective contentions, and that it would have to be held that there was an "agreement to the contrary" which would prevent the application of S. 116 of the T. P. Act. (Sir Lancelet Sanderson.) KUMAR KAMAKSHVA NARAYAN SINGH & RAM RAKSHA SINGH.

(1928) 55 I. A. 212 7 Pat 649 - 32 C. W. N. 897 48 C. L. J. 69 - 9 Pat. L. T. 501 - 28 L. W. 41 -109 I. C. 663 - 30 Bom. L. R. 1361 -A. I. R. 1928 P.C. 146 - 55 M. L. J. 882.

-Lessee under permanent lease by mohunt of mutt-Holding over by-Rent from-Receipt by succeeding mohant of-Effect of Tenancy created by. See HINDU LAW -RELIGIOUS ENDOWMENT -- MUTI -- MORUNT OF --PROPERTY OF MUTT-PERMANENT LEASE OF-RENT DUE UNDER. (1921) 48 I. A. 302 (327-8) = 44 M. 831 (855).

#### Lease for term.

ASSIGNMENT OF.

DISPOSSESSION WRONGFUL OF LESSEE DURING PE-RIOD OF TERM.

LOAN TO LESSOR-PROCURING BY LESSEE OF-LEASE IN CONSIDERATION OF-TERMINATION OF, BEFORE EXPIRY OF PERIOD, BY REPAYMENT OF LOAN.

RENEWAL OF-COVENANT FOR.

RENEWAL OF-RIGHT TO-PRESUMPTION.

SUB-LEASE BY LESSEE UNDER,

TERMINATION OF BY DEATH OF LESSEE BEFORE EXPIRY OF TERM

TERMINATION OF, BY LESSOR.

#### ASSIGNMENT OF.

-Covenant against-Assignment in breach of-Effect of-Forfeiture if occasioned.

Quacre, whether a covenant in a lease that the lessees "shall have no power" to assign has merely the effect of rendering such assignments void, and cannot occasion a breach by the lessees "of the covenants, conditions, agreements herein contained and on their part to be kept observed and performed according to the true intent and meaning of these presents" so as to involve a forfeiture. (Sir John Wallis.) HUNSRAJ P. BEJOY LAL SEAL

(1929) 57 I. A. 110 = 1980 A.L.J. 131 = 51 C.L.J. 120 = 34 C. W. N. 342 = 31 L. W. 309 = 32 Bom L. R. 550 = 122 I. C. 20 = A. I. R. 1930 P. C 59 =

58 M. L. J. 293 (300). -Covenant against-Sub-lease-Power of-Reservation of-What amounts to-Lease deed -Construction of.

One of the covenants in a lease deed provided that the lessees should be at liberty or should have full power and authority to underlet the demised land and the buildings, etc., to be erected and built by them. Another of the material covenants provided that they should have no power save amongst themselves as provided in the lease to assign, transfer or in any way to alienate their right, title and interest upon the demised land and the buildings to be erected by them thereon.

Held, on a construction of the lease deed, that the covenant against assignment was clearly subject to the express power to underlet and that there was, in the lease, no contract to the contrary within the meaning of S. 108 (j) of T. P. Act. (Sir John Wallis) HUNSRAJ v. BEJOY LAL SEAL. (1929) 57 I. A. 110 = 1930 A. L. J. 131 = 51 C. L. J. 120 = 34 C. W. N. 342 = 31 L. W 309 =

32 Bom. L.R. 550 = 122 I.C. 20 = A.I R. 1930 P. C. 59 = 58 M. L. J. 293 (299-300).

LLASE-(Contd.)

Lease for term-(Contd.)

ASSIGNMENT OF-(Contd.)

-Sub-lease for entire term if an. See LEASE-LEASE FOR TERM-SUB-LEASE BY LESSEE UNDER-ENTIRE (1923) 33 M.L.T. 433 (435) (P.C.). TERM.

Sub-lease for unexpired residue of term it an. See LEASE-LEASE FOR TERM- SUB-LEASE BY LESSEE UNDER-ASSIGNMENT OF TERM IF A.

(1929) 58 M.L.J. 293.

DISPOSSESSION WRONGFUL OF LESSEE DURING PERIOD OF TERM.

Damages fer-Assessment of-Principle-Lessor-Dispossession by.

In a suit brought by the respondents against the appellant to recover damages for the loss alleged to have been sustained by the former through the wrongful act of the appellant consisting in the ouster of the respondents from certain leases for a term of 10 years in which they alleged themselves to have been interested under a grant made by the ancestors of the appellant. the question was as to the principle upon which the damages had to be assessed.

Held, varying the Court below, that, in computing the value of the lease, no allowance ought to be made for the supposed profit rent of Rs. 11,792, but that allowance ought to be made for one-half of any increased rent which had been secured by the lessee before the eviction, and also for any excess of the sum allowed to the lessor for expenses of management, beyond the necessary expenses of collection; and that regard ought also to be had to the chance of any increase of rent which the lessee might have fairly expected to receive.

Their Lordships agreed with the Court below in thinking that the respondents could not claim a share of the profits made by the new lease granted by the appellant, because such profits were not made, and it did not appear that they could have been made by the original lessees.

There being no means of fixing the amount of damages assessed upon the above principles, their Lordships fixed a gross sum by way of damages (335-8). (Mr. Pemberton Leigh.) RAJAH BURRODA KANT ROY v. RAM TUNNOO (1848) 4 M.I.A. 321 = 7 W.R. (P.C.) 51= BOSE. 1 Suth. 191 = 1 Sar. 355.

-Damages for-Lessor's liability for-Lessee under

new lease-Dispossession by. Where, in a case in which the lessee under a lease for a fixed term of years died before the expiry of the term, the lessor, during the period of the term, granted a fresh lease to other persons, who entered upon the possession of the leased property and thereby dispossessed the heirs of the deceased lessee for the remainder of the term, held, that the Court below was right in making the lessor responsible for

the loss caused to the heirs of the deceased lessee (276-7).

The lessor is the original and moving cause of all the loss which has befallen the heirs of the deceased lessee. Without due regard to the contract he bad entered into, and whilst that contract was still subsisting, the lessor demised to the new lessees the leased property for an increased rental. He has, therefore, by his own acts, and through the medium of others whom he empowered to act, violated his own engagements, and thereby occasioned great loss to the heirs of the deceased lessee. For this loss he has justly been made responsible (276-7). (Dr. Lushington.) MAHARAJA TEJ CHUND BAHADOOR D. SREE KANTH GHOSE.

(1844) 3 M.I.A. 261 = 6 W.R. 48 = 1 Suth. 152 = 1 Sar. 278.

-Damages for-Measure of.

Where, before the expiry of the term for which a lease was granted, the lessee was dispossessed by lessees under new lease granted by the lessor at an increased rent, and the new lessees remained in possession for the remainder of

Lease for term-(Contd.)

DISPOSSESSION WRONGFUL OF LESSEE DURING PERIOD OF TERM-(Contd).

the term, held, in a suit for damages brought by the old lessee, that he was entitled to damages for the period of his dispossession according to the increased rent which the new lessees undertook to pay (277). (Dr. Lushington.) MAHA-RAJAH TEJ CHUND BAHADOOR v. SREE KANTH GHOSE.

(1844) 3 M.I.A. 261 = 6 W.R. 48 = 1 Suth 152 = 1 Sar. 278.

-Remedy of lessee in case of - Possession-Injunction -Specific performance-Suits for-Lessor-Dispossession

by-Lease not an executory contract.

Where a lease of a Zemindary entitled the lessee to possession of the same, held that, if that possession was usurped by the lessor, the remedy of the lessee was to bring ejectment, and that it was not enough for him to bring a suit for an injunction to restrain the lessor from collecting the revenue of the Zemindary leased, against the terms of his own authority to the plaintiff (395-6).

Held further that the High Court was not right in treating the suit for injunction as one for specific performance, because, according to the opinion of the High Court itself, the lease was not an executory contract (396). (Lord KAMALA NAICKEN D. PITCHACOUTTY Chelmsford.) (1865) 10 M.I.A. 386 = 2 Sar. 147. CHETTY.

Damages for-Suit for-Surety for lessee becoming partner with him subsequent to lease-Right of-Lessor-

Dispossession by.

The appeal arose out of an action brought by the respondents against the appellant to recover damages for the loss alleged to have been sustained by the former, through the wrongful act of the appellant. The wrong complained of was the ouster of the respondents from certain leases in which they alleged themselves to have been interested under a grant made by the ancestors of the appellant.

The lease was for a term of ten years. One N was the lessee under the lease, and the predecessor in interest of the respondents first became a surety for the due performance by the lessee of the obligations contained in the lease, and

afterwards became a partner with the lessee.

It was contended that the predecessor in interest of the · respondents was no party to the contract with the lessor,

and therefore could not sue for any breach of it.

Held that the answer to the contention was that the suit was not founded in contract, but in a wrong alleged to have been done by the appellant in depriving the respondents of property in which they had a valuable interest (333). (Mr. Pemberton Leigh.) RAJAH BURRODA KANT ROY & RAM (1848) 4 M.I.A. 321 = TUNNOO BOSE. 7 W.R. P.C. 51 = 1 Suth. 191 = 1 Sar. 355.

LOAN TO LESSOR-PROCURING BY LESSEE OF-LEASE

IN CONSIDERATION OF—TERMINATION OF, BEFORE EXPIRY OF PERIOD, BY REPAYMENT OF LOAN.

-Lessor's right of.

It was said that this was a mere mortgage transaction, which the mortgagors had a right to terminate by payment of the mortgage money. This does not appear to us to be the exact nature of the transaction. N engaged to procure a loan in consideration of having a beneficial lease for ten years; he did procure the loan, and his interest could not be defeated by paying off what was due to the lenders (333). (Mr. Pemberton Leigh.) RAJAH BURRODA KANT ROY (1848) 4 M.I.A. 321 = v. RAM TUNNOO BOSE. 7 W.R. P.C. 51 = 1 Suth. 191 = 1 Sar. 355.

RENEWAL OF-COVENANT FOR. -What amounts to. See CESSION OF TERRITORY-

AGREEMENT BETWEEN NEW SOVEREIGN, ETC. (1915) 42 I.A. 229 = 39 B. 625.

LEASE-(Contd.)

Lease for term-(Centd.)

RENEWAL OF-COVENANT FOR-(Contd)

Nature of -- Covenant running with land -- Analogy between it and.

Covenants for renewal of a lease are covenants to create new rights and cases bearing upon the apportionment of rent or referring to covenants for repairs are not pari materia with covenants to renew. (Lord Carson.) SECRETARY OF STATE FOR INDIA P. VOLKART BROS.

(1928) 55 I.A. 423 = 51 M. 885 = 1928 M.W.N. 754 = 111 I.C. 404 = 26 A.L.J. 1229 - 33 C.W.N. 33 =

30 Bom. L.B. 1578 - 28 L.W. 803 - 48 C L.J. 431 = A.I.R. 1928 P.C. 258 - 55 M.L.J. 646 (650).

-Period of renewal-No provision in lease for-Effect.

Where a lease for a term contained a provision for a renewal of the lease after the expiration of the term fixed but nothing was said in the lease, as to the duration of the new lease held, that a term for a longer period than the original term could not reasonably be implied (169). (Sir Barnes Peacock.) JARDINE, SKINNER & CO. P. RANI SURAT SOONDARI DEBL

(1878) 5 LA. 164 - 3 C.L.R. 140 = 3 Sar. 847 -Bald. 168 - 3 Suth. 550.

-Rent to be faid on removal - Rate of, to be fixed atcording to measurement of land to be made at the time and according to productive powers of land-Measurement of land ex parte-Determination of rate of rent-Lessor's right of.

Where a lease for a term provided that the tenants were to be entitled at the expiration of the term fixed to a renewal of the leave at a rest to be fixed according to the measurement of the land to be made at that time, and to the productive powers of the land, held, that the lessor had no right to measure the lands in the absence of the tenants, or herself to determine finally the rent at which the lease should be renewed.

If the rent at which the lessor offered to renew the lease were too high, the tenants were not bound to accept it; but in that case it lay upon them to take measures to compel the lessor to renew at a proper rate, having regard to the stipulations of the lease (16970). (Sir Barnes Peacock.) JARDINE, SKINNER & CO., P. RANI SURAT SOONDARI DEBL. (1878) 5 I.A. 164 = 3 C.L.R. 140 = 3 Sar. 847 = Bald. 168 = 3 Suth. 550.

-Rights of parties under-Failure of tenant to obtain renewal-Ejectment suit by lessor-Maintainability.

An ijara for a term of five years provided that, upon the expiration of the term of five years, the ijaradars were entitled to a renewal of the lease of the land leased at a rent to be fixed according to the measurement of the land to be made at that time and to the productive powers of the land.

Held that in point of law the agreement contained in the pottah to grant a renewal did not create or vest in the ijara-

dars a fresh term of years (168).

The agreement merely gave the ijaradars a right to a renewal of the lease, and to compel the landlord to renew it if she should attempt to turn them out of possession at the expiration of the term. It also gave the landlord a right to the land, and to let it to others if the ijaradars should refuse to accept a pottah and execute a kabuliyat within two months after the rent to be paid during the renewed term should have been duly ascertained and fixed as per the provisions of the clause for renewal (168-9). (Sir Barnes Pea-(ock.) JARDINE SKINNER & CO. s. RANI SURAT SOON-DARI DEBI. (1878) 5 I. A. 164 = 3 C. L. B. 140 = 3 Suth. 550 = Bald. 168 = 3 Sar. 847.

-Specific performance of-Assignee of portion of premises demised-Right of, as regards entire property demised or the part in his possession.

Lease for term- (Contd.)

RENEWAL OF-COVENANT FOR-(Contd.)

A lease of land for a term of 99 years at a stated yearly rent contained, inter alia, the following covenant:—

"That he the said F" (the lessee) "his heirs, executors, administrators or assigns fulfilling the covenants and agreements hereinbefore contained and on his part to be performed and yielding and paying at the end and expiration of the aforesaid term of 99 years into the United Company," (the lessors) "their successors or assigns, the full and just sum of 100 pagodas current money of Fort St. George, then this leave shall and may be renewed for a further term of 99 years upon such terms and conditions as shall be judged reasonable".

At the date of the expiry of the term fixed by the lease, the respondents were in possession of only a small portion of the lands demised, and they instituted the suit out of which the appeal arose against the lessors for a declaration that they were entitled to a renewal for 99 years of the term granted by the said lease as regards the whole of the property demised, or, alternatively, as regards the part retained by the respondents and specific performance of the covenant for renewal. The owners of the remainder of the demised premises were not parties to the suit, nor did they make any claim to such renewal.

Held that the respondents could not, under the circumstances, claim a renewal of the lease in respect of the small plot in their possession.

The covenant in the lease was clearly a covenant to renew the lease in question: "then this lease shall and may be
renewed, etc." That must mean the lease as a whole, including the subject-matter of the demise, which is the parcels
as set out in the lease. Moreover, the lease is to be renewed
"upon such terms and conditions as shall be judged reasonable"—a provision which is plainly applicable to the premises as a whole and might easily vary if applied to specific
portions held under varying conditions and circumstances. It
was contended that as the lessees under the lease were entitled to assign portions of the premises the covenant for
renewal would attach to each assignce holding his past in
physical severalty, but no authority for such a proposition in
a claim for specific performance has been cited.

Held further that the alternative claim to get a renewal of the whole plot was, under the circumstances, existing at the termination of the lease, untenable. (Lord Carron.) SECRETARY OF STATE FOR INDIA IN COUNCIL F. VOLKART BROS. (1928) 55 I. A. 423 = 51 M. 885 =

1928 M. W. N. 754 = 111 I. C. 404 = 26 A L. J. 1229 = 33 C. W. N. 33 = 30 Bom. L. R. 1578 = 28 L. W. 803 = 48 C. L. J. 431 = A. I. R. 1928 P. C. 258 = 55 M. L. J. 646.

RENEWAL OF-RIGHT TO-PRESUMPTION.

Onus of proof.

Prima facie a lease for a term does not import any right to a renewal of it. On the contrary, it prima facie implies that the lessee's right to the premises demised ends with the term (245). (Lord Atkinson.) SECRETARY OF STATE FOR INDIA v. BAI RAJBAI. (1915) 42 I. A 2929

39 B. 625 (657) = 19 C. W. N. 1087 = 23 C. L. J. 1 = 13 A. L. J. 953 = (1915) M. W. N. 563 = 18 M. L. T. 179 = 2 L. W. 731 = 17 Bom. L. B. 730 = 30 I. C. 303 = 29 M. L. J. 242.

SUB-LEASE BY LESSEE UNDER.

--- Assignment of term if a.

In India a sub-lease by a lessee for the unexpired residue of the term does not operate as an assignment of the term and is not a breach of a covenant against assignment. (Sir John Wallis.) HUNSRAJ v. BEJOY LAL SEAL. (1929) 57 I.A. 110 = 1930 A.L.J. 131 = 51 C.L.J. 120 =

LEASE-(Contd.)

Lease for term-(Conta.)

SUB-LEASE BY LESSEE UNDER-(Contd).

34 C. W. N. 342 = 31 L. W 309 = 32 Bom. L.R. 550 = 122 I.C. 20 = A.I.R. 1930 P.C. 59 = 58 M. L. J. 293.

Assignment of term if a-Law applicable to deter minution of question of-English law-Transfer of Proterty Act. S. 108 (j).

The question whether or not a sub-lease by a lessee for the unexpired residue of the term operates as an assignment of the term must be decided in accordance with the law, not of England, but of India. That law is to be found in S. 108 (j) of the T.P. Act and, though founded on English law, and drafted in the first instance by eminent lawyers in England, it has only applied the English law in so far as it was considered applicable to India. (Sir John Wallis.) HUNSRAJ 7. HEJOV LAL SEAL. (1929) 57 LA. 110=

1930 A.L.J. 131 = 51 C L.J. 120 = 34 C.W.N. 342 = 31 L.W. 309 = 32 Bom. L.R. 550 = 122 I.C. 20 = A.I.R. 1930 P.C. 59 = 58 M.L.J. 293.

- Entire term-Sub-lease for-Assignment or transfer if a.

A lessee, who intended to sublet the property leased to two gentlemen, carried out his intention by a lease to them for the whole of his own term of 10 years, with covenants in precisely the same terms as those in the lease to himself. The only difference was that a larger rent was payable to him.

Hild, that such a sub-demise for the entire term of the sub-lessor amounted to an assignment or transfer (435).

The reasons for treating an under-lease of an entire term were given in Beardman v. Wilson. No doubt the sub-lessor may contract with his sub-lessee in a fashion which is analogous to that of a demise. But so far as the property in his term is concerned he has none left after he has made what is really a transfer (435). (Viscount Haldane.) HERBERT HALLEN: BENJAMIN SPAETH.

(1923) 33 M. L. T. 433 P. C-

Joint tort-feasor with sub-lessee under-Lessee's liability to lessor as-Conditions-Evidence required. Su LEASE-LESSEE-JOINT TORT-FEASOR WITH ETC.

(1928) 56 I. A. 93 (101-3)=8 Pat. 516

Power of —Covenant against assignment if subject to .

—Lease deed—Construction of. See LEASE—LEASE FOR TERM—ASSIGNMENT OF.

(1929) 58 M. L. J. 293 (299-300)

Transfer or not - Question as to-Determining for tor in case of.

It was argued for "the lessor that the sublease by him could not have operated as a transfer inasmuch as it was not in the form required by the ordinance for a transfer. The point is not, however, of any importance, inasmuch as it is the contract between the sublessor and his sublessees, and not the estate which passed, which is the determining factor (437). (Viscount Haldane.) HERBERT HALLEN v. BENJAMIN SPAETH. (1923) 33 M. L. T. 433 (P.C.)

-Validity of.

In India a lessee as sub-lessor can create a sub-lease for the unexpired residue of the term with the same incidents as any other sub-lease. (Sir John Wallis.) HUNSRAJ B. BEJOY LAL SEAL. (1929) 57 I.A. 110=

1930 A.L.J. 131 = 51 C.L.J. 120 = 34 C.W.N. 442 = 31 L.W. 309 = 32 Bom. L.R. 550 = 122 I:C, 20 = A.I.R. 1930 P.C. 59 = 58 M. L. J. 293.

TERMINATION OF, BY DEATH OF LESSEE BEFORE EXPIRY OF TERM.

Bengal—General principles of law in.

Held that the continuance of a lease, granted for a term of years, for the remainder of that term to the heirs of the

Lease for term - (Contd.)

TERMINATION OF, BY DEATH OF LESSEE BEFORE EXPIRY OF TERM-(Contd.)

tenant, deceased, was not at variance with the established customs under which such property was held in Bengal.

It is not averred nor proved that the subsistence of the lease for its full term, although the original lessee should die during the currency, is an unusual occurrence in Bengal; nor is it said that the maintenance of such lease would be productive of injury to the community. So far from being detrimental to the just rights of property or due cultivation of soil, a holding which enables the lessee to expend his capital in the improvement of his farm, without the prospect of the due reward being lost to his heirs in case of his own death before the expiration of the term, cannot be otherwise than beneficial (274-5). (Dr. Luthington.) MAHARAJAH TEJ CHUND BAHADOOR P. SREE KANTH GHOSE.

(1844) 3 M.I.A. 261 = 6 W. R. (P.C.) 48-1 Suth. 152-1 Sar. 278.

-Hindu Law rule as to.

In the case of a lease for a term of seven years granted by the appellant, it was found that, according to the general principles of construction applicable to the grant, the prime facie construction of the grant was that it was for a fixed term of seven years, and that it did not terminate with the death of the original lessee. The question was whether that prima facie construction was contrary to the Hindu law.

Held, that there was nothing either in the text-books of Hindu law or in the decided cases opposed to that prima facie construction (273-5). (Dr. Lushington.) MAHA-RAJAH TEJ CHUND BAHADOO D. SREE KANTH GHOSE. (1844) 3 M.I A. 261 = 6 W.R. (P.C.) 48 = 1 Suth. 152 = 1 Sar. 278.

Psesumption.

The question was whether a lease of a pergunnah for a term of seven years granted by the appellant terminated with the death of the original lessee, or survived, during the remainder of the term, to his heirs and representatives.

The lease was not in writing, but the terms thereof appeared from a notification addressed by the appellant to The notification all the native officers of the pergunnah. was as follows: - 'The mehal in question has been given in farm to N" (the lessee) "from 1210 to 1216 B. S. (1803-4 to 1809-10), for a period of seven years; he will receive petitions and kabooleats, and take possession and transact business according to rule. You will attend upon him and cultivate the soil, pay rent, render papers, and not act contrarily in any way.

Held that, according to the general principles of constauc tion applicable to the grant, the lease did not terminate with the death of the original lessee but survived, during the remainder of the term, to his heirs and representatives (273).

With respect to the construction of the grant, it is contended, on behalf of the appellant, that it contains no words which would necessarily import a continuance of the interest after the death of the grantee, and this may possibly be true. But, on the other hand, the lease is for the fixed term of seven years, and there are no expressions which point to any earlier determination of the interest. The prima facie meaning, then, is continuance for seven years; and had there been any intention on the part of the grantor to have affixed any limitation, he ought to have done so by the insertion of qualifying terms. Had such been the intention of the parties, nothing could have been easier than to have added the words "provided the grantee so long live," and if the party having full power to engraft this qualification omits to do so, the general principles of law would be opposed to any implied presumption (273.) (Dr. Luthington.) MAHARAJAH TEJ CHUND BAHADOOR P. SREE

LEASE-(Contd.)

Lease for term -- (Contd.)

TERMINATION OF, BY DEATH OF LESSEE BEFORE EXPIRY OF TERM-(Contd.)

KANTH GHOSE. (1844) 3 M. I. A. 261 = 6 W. R. (P. C.) 48=1 Suth 152=1 Sar. 278.

-Question as to-Law governing-Hindu law and not general principles-Applicability of-Onus of proof.

The question was whether a lease for a term of seven years granted by the appellant terminated with the death of the original lessee, or survived, during the remainder of the term, to his heirs and representatives. Their Lordships were of opinion that, according to the general principles of construction applicable to the grant, the prima facie construction of the lease was that it was for a fixed term of seven years and that it did not terminate with the death of the original lessee. The appellant, however, contended that the transaction was one governed by the Hindu law and that the prima facie construction was contrary to that law.

Held, that the onus of proving the law lay necessarily upon the appellant, who sought to show that the contract should be governed, not by general, but by particular rules (273). (Dr. Luskington.) MAHARAJAH TEJ BAHADOOR P. SREE KANTH GHOSE. (1844) 3 M. I. A. 261 =

6 W. R. (P.C.) 48=1 Suth 152=1 Sar. 278.

TERMINATION OF, BY LESSOR.

-Right of-Lease in consideration of lessee procuring loan for lessor-Termination of, before expiry of term, by repayment of loan. See LEASE-MORTGAGE OR.

(1848) 4 M. I. A. 321 (333).

Validity of-Justification of, on ground different from that on which termination originally made-Permisability.

I he question was whether the appellant was justified in terminating a lease for ten years granted by his predecessor in interest and in dispossessing the lessee thereunder before the expiry of the term. The lease was in fact annulled on the ground that the lessee had failed to provide the security required by the Court of Wards on behalf of the

In a suit brought by the surety for and partner of the lessee for damages for the wrongful ouster, held that the appellant could not seek to justify the annulment of the lease on a different ground, namely, that the revenue was in arrear at the time when the lease was attached, and that there was power under the lease in that case to recover possession of the estate (333-4). (Mr. Pemberton Leigh.) RAJAH BURRODA KANT RGV :: RAM TUNNOO BOSE. (1848) 4 M.I.A. 321 = 7 W. R. (P.C.) 51 = 1 Suth 191 = 1 Sar. 355.

Lessee.

ASSIGNMENT BY. DISPOSSESSION WRONGFUL OF HEIRS OF-HOLDING OVER BY HOLDING OVER BY JOINT TORT-FEASOR WITH HIS SUB-LESSEE LEASE FOR TERM MINERALS PROPERTY DEMISED RICHTS OF-CHALLENGE OF SUB-LEASE BY SURETY FOR TREES ON LAND DEMISED ASSIGNMENT BY.

-See LEASE-ASSIGNMENT OF. DISPOSSESSION WRONGFUL OF.

-See LEASE-LEASE FOR TERM-DISPOSSESSION WRONGFUL, ETC.

Lessee-(Contd.)

HEIRS OF-HOLDING OVER BY.

—Receipt of tent by lessor from—Effect of. Sα LEASE—HOLDING OVER BY LESSEE UNDER, OR HIS HEIRS—HEIRS OF LESSEE.

#### HOLDING OVER BY.

(1921) 48 I. A. 302 (327-8) = 44 M. 831 (855).

JOINT TORT-FEASOR WITH HIS SUB-LESSEE.

--- Liability to lesser as-Conditions-Evidence requis-

Mining rights in a coal area acquired by P, a lessee, were by him assigned to B, who in his turn assigned them to D. In a suit brought by the original lessor seeking to make P jointly liable with B and D, respectively, for their (B's and D's) wrongful working of the mines, held that P's liability really depended upon the question whether he was a joint tort-feasor with B and D respectively, and that neither the fact that he was their lessor in the proper sense of the term-nor that he "encouraged" the wrong doers, whatever that might mean, would be sufficient by itself to support a finding that he was a joint tort-feasor. (Lord Warrington.) Lewis Pugh P. Ashutosh Sen

(1928) 56 I. A. 93 (101.3) = 8 Pat 516 = 31 C.W.N. 323 = 6 O. W. N. 151 = 27 A. L.J. 170 = 10 Pat. L. T. 155 = 29 L. W. 449 = 114 I. C. 604 = 49 C. L. J. 415 = 31 Bom. L. B. 702 = A. I. B. 1929 P. C. 69 = 56 M. L. J. 517.

LEASE FOR TERM.

#### MINERALS.

- Right to. Sie MINERALS-LEASE,

#### PROPERTY DEMISED.

—Executation of soil of, for making bricks—Right of —Zemindar—Muffasil Patni Taluk Lease according to Regulation VIII of 1819 by—Lessee under. See ZEMINDAR—LEASE BY—MUFFASIL PATNI TALUQ LEESE, ETC. (1928) 55 M. L. J. 456.

- Possession of Decree to lessee for Reservation in, of redemption right of lessor Necessity Lease merely security for loan advanced and to be advanced by lessor.

In a suit brought by a lessee under a registered lease deed to recover possession of the property leased, their Lordships were of opinion that the transaction operated merely as a security for the money advanced, and agreed to be advanced to the lesser. While decreeing possession to the lessee, their Lordships, therefore, declared that the decree was to be without prejudice to the claim for redemption (if any) to which the lessor might be entitled, and to any question which might be raised as to the amount actually advanced to the lessor by the lessee (401-2). (Lord Chelmstord.) KAMALA NACKEN: PITCHACOUTTY CHETTY.

(1865) 10 M. I. A. 386 = 2 Sar. 147.

Personant of Interference with, independently of lesser and in derogation of his rights-License's right of. The right to interfere with the

The right to interfere with the possession of a tenant under a formal lease, independently of the lessor, and in derogation of his rights, is not one of the natural incidents of a mere licence, which carries no legal or equitable interests in the soil (296). (Lord Shaw, ALARIE JOSEPH SEGUIN P. ANNA THERESA BOYLE.

(1922) 31 M L. T. 289 (P. C.) VESSEE UNDER.

LEASE-(Contd.)

Lessee-(Contd.)

PROPERTY DEMISED-(Contd.)

Possession of—Lessor's wrongful interference with.

See LEASE—LEASE FOR TERM—DISPOSSESSION, ETC.

Possession of - Suit for - Cancellation of registered lease deed-Deed by lessee to lessor effecting-Plea by lessor of-Onus of proof of.

The suit was by the respondent, the lessee under a registered lease deed. to obtain undisturbed possession of the Zemindary granted to him by the appellant under the said lease deed. The lease was dated 17 9-1851. The appellant, inter alia, set up an agreement of 25-11-1851, executed in his favour by the respondent to the effect that if the respondent should fail to pay the rest of the amount promised to be paid in consideration of the execution of the lease deed within five days, he would return the lease and bond, and receive back the amount advanced by him. The appellant alleged that the respondent failed to pay the money within the said time, and promised to return the lease, etc.

Held that the onus of displacing the respondent's case by proof of the genuineness of the deed of 25—11—1851 rested upon the appellant, and that he ought to be able to show that the evidence he produced was unsuspicious and satisfactory (396). (Lord Chelmsford.) KAMALA NAICKEN PATCHACOUTTY CHETTY. (1865) 10 M.LA. 386=

2 Sar. 147.

—Use of, by lessee or his assigns, in a way not contemplated by lease—Injunction restraining—Suit fer—Lesser's eight of—Lease granted in accordance with terms of Regulation VIII of 1819—Effect.

In the event of the lessee or his assigns using the subject of the lease in a way not contemplated by the lease, the lessor has the right to sue for an injunction restraining such user, and the fact that the lease was made in accordance with the terms of Regulation VIII of 1819 is no bar to his right to do so. (Sir Lancelet Sanderson.) RAJAH BEJOY SINGH F. SURENDRA NARAIN SINGH.

(1928) 55 I.A. 320=56 C. 1=48 C.L.J. 268= 111 I.C. 345=(1928) M.W.N. 841=33 C.W.N. 7= 26 A.L.J. 1233=28 L.W. 855=A.I.R. 1928 P.C. 234= 55 M.L.J. 456 (462).

RIGHTS OF - CHALLENGE OF.

-Proceedings for-Parties-Lessor and lessee necessary parties.

The right of the lessee under a lease should not be allowed to be challenged and no material step leading to it should be taken by a court, unless the contracting parties are convened before it (298.)

In the present case a mandamus is asked and the case has proceeded to judgment granting it without either the lesses or the lessor, having been made parties to these proceedings. It is in any view plain to the Board that no final judgment should have been reached without all parties having been called (298-9). (Lord Shaw.) ALARIE JOSEPH SEGUIN ANNA THERESA BOYLE. (1922) 31 M.L.T. 289 (P.O.)

Stranger's right of Lessor himself having no such right.

It would be a curious circumstance if, the lessee having against the lessor an indefeasible right, his right could nevertheless be challenged by another party who was no party to the contract but a late arrival on the ground, and the only result of whose challenge would be, when given ultimate effect, to accomplish that dispossession of the lessee which even the lessor himself could not legally achieve (298.) (Lord Shaw.) ALARIE JOSEPH SEGUIN v. ANNA THERESA BOYLE. (1922) 31 M.L.T. 289 (P.C.)

SUB-LEASE BY.

See LEASE—LEASE FOR TERM—SUB-LEASE BY

Lessee-(Contd.)

SURETY FOR.

-Discharge of-Sale of lessee's interest and purchase thereof by stranger-Effect. Se: LEASE-COVENANTS IN -PERFORMANCE BY LESSEE OF.

( 918) 23 C.W.N. 545 (548.).

—Dispossession wrongful by lessor of lessee—Damages for-Suit for-Right of-Surety becoming partner with lessee subsequent to lease-Effect. See LEASE-LEASE FOR TERM- DISPOSSESSION WRONGFUL OF LESSEE BEFORE EXPIRY OF TERM-DAMAGES FOR-SUIT FOR.

(1848) 4 M.I.A. 321 (333).

Interest in lease if has, See LEASE-COVENANTS IN-PERFORMANCE BY LESSEE OF.

(1848) 4 M.I.A. 321 (333).

## TREES ON LAND DEMISED.

-Right to.

A lessee must ground his title to trees, and the right to cut them down, either upon this, first, that it is a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or, fourthly. under the express terms of the lease (313.4). (Lord Cairus.) RUTTONJI EDULJI SHET P. COLLECTOR OF (1867) 11 M.I.A. 295 = 10 W.R. (P.C.) 13-TANNA. 2 Sar. 292.

Lessor—Assignment by, of claims "now due owing or payable."

-Payment accruing after date of deed of -Assignee's right to. See ASSIGNMENT-CONSTRUCTION OF DEED (1902) 29 I.A. 138 (146-7) = 25 M. 603 (612). OF.

## Memorandum of prior and completed transaction merely or.

Test-Registration-Necessity.

Held differing from both the courts below that the memorandum relied upon was a lease and not merely a memorandum relating to a previous and completed transaction by which the tenure-holder had obtained possession of the lands, and that, being unregistered, it was inadmissible in evidence. (Mr. Amar Ali.) PORT CANNING AND LAND IMPROVEMENT CO. D. KATYANI DEBI

(1919) 46 I. A. 279 (281-2) = 47 C. 280 (285-6) = 17 A.L.J. 1061 = (1920) M.W.N. 160 = 53 I.C. 522 = 11 L.W. 296 = 24 C.W.N. 369 = 22 Bom. L.R. 437 = 32 C.L.J. 1=37 M.L.J. 578.

#### Minerals.

-Lessee's right to. See MINERALS-LEASE.

#### Mining lease.

-Construction-Minerals-Title to-Warranty of-What amounts to-Absence of such warranty-Breach of contract by lessor - Damages in case of - Measure of.

The respondent was in possession under a putni of certain brahmottar lands which were understood to contain valuable minerals. The minerals could belong to either the Rajah of C or P, from whose estate the brahmottar lands had originally been taken, or to the Crown. But the respondent might assert a title to the minerials. The plaintiff-appellant, who was in the coal business and was wishful to obtain the right to work that field, offered to take the same on lease, and the respondent accepted the offer and took the earnest money, but afterwards refused to grant the lease. The agreement between them contained, inter alia, the following clause: "If ever any dispute over title arises with the Rajah of C. or any one else, then you shall remain liable for the same; you shall give me all necessary papers, etc. for the establishment of your title as they may be required by me."

LEASE-(Contd.)

Mining lease-(Contd.)

In a suit by the plaintiff for damages for breach of contract, held that, in face of the clause set out above, it was impossible to construe the contract as one in which the respondent warranted the mineral as conveyed, and that all that the plaintiff, if the contract was implemented, was to get was the chance of either fighting the Rajah, of the success of which there was very little prospect, or, by having secured the surface rights, being in a position to hamper the Rajan in letting to anyone else, and consequently impelling him to grant fair terms to the plaintiff himself.

Held further that, inasmuch as that chance was all that the plaintiff was deprived of by the breach, the exact valuation of such a chance was impossible, and the plaintiff had led no evidence to make approxinate valuation easy, the High Court acted rightly in awarding Rs. 5,000 as damages. (Viscount Dunedin.) RAMESWAR BAZAZ P. RANI SHYAMA (1926) A.I.R. 1926 P.C 37 = SUNDARI DEBI. 99 I.C. 757 = (1926) M.W.N. 525.

-Contract to grant- Breach of-Damages for-Measure of—Title to minerals—Warranty of—Absence of.

See LEASE—MINING LEASE—CONSTRUCTION.

(1926) A.I.R. 1926 P.C. 37.

- Royalty in excess of amount covered by stamp on-Right to-Deficient stamp duty and penalty paid-Effect, See STAMP ACT OF 1899-SS. 35 PROVISO (a) AND 26,

(1924) 51 I.A. 332=4 Pat. 34.

-Surrender of -Lesse's right of, on six mouths' notice and on payment of all arrears of royalties-Time for payment-Expery of six months after notice-Royalties not paid in time-Waiter by landlord-Landlord's suit for regulties treating lease as subsisting-Maintainability.

Appellant made a grant to the respondent company of coal, land, and mining rights in certain mauzas for a term of 999 years. By clause 1 certain royalties were fixed for each ton of coal, and by clause 2 it was provided that the royalties mentioned should be payable quarterly. By clause 3 a certain minimum royalty was provided, which after the second year obliged the lessees to pay " an annual minimum royalty" of Rs. 13,904 until the expiration of the term, with a provision that if the royalties paid under the earlier clause were found on taking the accounts at the end of each year to be less than the minimum royalty, the lessees should be bound to make up the loss and pay the sum of Rs. 13,904 in full within the two months of the following year. By clause 6 power was given to the lessees to take the necessary surface land for the purpose of carrying on the colliery business at a certain fixed rent per bigha, and this rent was to become due at the end of each Bengali year. By clause 9 a right was given to the lessees to surren'er the term, the words of the clause being :- "That, if you so wish, you shall be entitled to surrender all or any of the mauzahs hereby leased out to you by giving me six months' written notice, which you shall be competent to give me Ly a registered letter and paying the minimum royany for the said Six months, i. c., half of the annual minimum royalty. But I shall not accept any surrender for a portion of any of the mauzas, neither shall you be entitled to surrender so long as any rent or royalty remains unpaid. Instead of relinbuishing all the mauzas settled, you will be able to relinquish any one or more of those mauzas, by giving six months' notice in writing in the above manner. If you surrender any one or more of the mauzas in this way, you shall be bound to pay the whole of the minimum royalty for all the mauzas leased out as fixed in clause 3 for the remaining mauzas, i.e., you shall not be entitled to get a proportionate reduction in the minimum royalty of Rs. 13, 904 fixed as above for surrendering one or more than one mauza in the above way "

Mining lease-(Contd.)

On May 11, 1912 the respondents gave six months' notice |of their intention to surrender all the villages. The appellant's manager requested that a formal deed of surrender should be executed. On May 22, 1913, the deed not having been yet tendered or the amount due ascertained, the appel lant denied that the surrender was effectual on the grounds that the notic: did not expire at the end of the Bengali year, generation to generation " would make the grant one of a and that the amount due had not been tendered.

In a suit subsequently brought by the appellant for the royalties on the basis that the lease was subsisting, held-

(1) that the right to give notice under clause 9 could be

exercised at any time;

(2) that that clause did not require that the amount due should be tendered when the notice was given, and that, the appellant's manager having requested that the surrender should be by deed, the payment had not to be made until the deed was tendered; and

(3) that the lease had been terminated and the suit was therefore unsustainable. (Lord Buckmarter.) RAJA DURGA PRASHAD SINGH P. TATA IRON AND STEEL CO., LTD. (1918) 45 I.A. 275 = 46 C. 552 =

23 C.W.N. 466 = (1919) M.W.N. 287.

## Mocurrary ijara pottah.

Estate conveyed under-Perpetual tenancy-Life tenancy. See LEASE-ESTATE CONVEYED UNDER-PER-PETUAL TENANCY. (1882) 9 I.A. 33-8 C. 664,

## Mocurrary istimrari lease.

-Duration of-Lease to A alone, and for life only-Lease to A and his brothers jointly and to their heirs-Evidence.

The question was whether a modurnary intimears leave of property made in 1795 was a grant to H alone, and for life only, or to him and his brothers jointly, and to their respective heirs. The deed of grant was in an altered condition, and its original condition was one of the chief points in dispute in the case. H had two brothers; and some time in 1806 or 1807 a partition of the property comprised in the Sanad was made between the three, by or with the sanction of their father. That transaction must have been known to the grantor, or to persons who would soon have made it known to him. If died in or about the year 1819; and even after that the tenure continued to be enjoyed by some of the members of his family. In 1839, the lessor granted to the plaintiff, his son, a Teeka lease of his interest in certain mouzahs, including those comprised in the mokurrari lease to H; and the mouzahs included in the mokurrary lease to If where then treated as being still subject to a subsisting mokurrari tenure. The plaintiff knew of the partition between H and his brothers, if not when he took the Toeka lease, at least when he took proceedings in 1841 for recovery of arrears of rent due under the Mokurrery tenure. And yet the very form of his proceedings recognised that partition, and admitted the subsisting right of mocurraridars, though long after the death of II, and at a time when he was hostile to them. In 1840, the lessor died, I aving two sons, the plaintiff and another They made a partition of his estate, and the suit property fell to the share of the plaintiff. On that occasion it was again treated as held by a subsisting mokurreri tenure.

Held that the case must be decided by the presumptions arising from the above mentioned acts and conduct of the parties during a long series of years, and that the weight of the evidence, independently of the disputed Sanad, was in favour of the view that the grant was to H and his brothers jointly, and to their respective heirs (25). (Lerd Justice Knight Bence.) MUSSAMUT KHOOB CONWUR :. BABOO MOODNARAIN SINGH. (1861) 9 M. I. A. 1=

1 W R. (P.C.) 36=1 Suth. 465=1 Sar. 813.

LEASE-(Contd.)

Mocurrary istimrari lease-(Contd.)

Mocurrari istimrari lease solely and simply-Addition of words " from generation to generation" in-Tenures created in cases of.

Under a grant of a Meeurrary Istimrari lease of property to L, solely and simply, the tenure will determine with the life of L. The addition of words importing "from perpetual lease to L and his heirs (12). (Lord Justice Knight Bruce.) MUSSAMUT KHOOB CONWUR v. RABOO MOODNARAIN SINGH. (1861) 9 M. I. A. 1=

1 W. R. 36 (P. C.)=1 Suth. 465=1 Sar. 813.

-Mocurrary Istimeasi lease to a person "together with his externe brothers from generation to generation" Estate conveyed under,

A grant of a Mocurrary Istimrari lease of property to L" together with his uterine brothers from generation to generation" is a grant to L and his brothers jointly, and to their respective heirs (12-3). (Lord Justice Knight Bruce.) MUSSAMUT KHOOB CONWUR P. BABOO MOODNARAIN (1861) 9 M.I.A. 1=1 W.R. (P. C.) 36= 1 Suth 465 = 1 Sar. 813

-Zemindari-Lease carved out of-Death of lessee without heirs-Escheat-Right of, of Zemindar and of Government. See ESCHEAT-ZEMINDAR.

(1876) 3 I. A. 92=1 C. 391.

#### Mocurrary Lease.

-Ser (1) LEASE-PERPETUAL LEASE AND (2) LEASE-ZEMINDAR.

#### Mortgage or.

-In a suit brought by the respondent to recover posses sion of the property leased under a registered lease deed executed in his favour by the defendant-appellant, their Lordships, while decreeing possession to the respondent, observed: "It may be at least questionable, whether the transaction did not operate merely as a security for the money advanced, and agreed to be advanced and whether the Zemindar (appellant) would not have been entitled to redeem (401.2). (Lord Chelmisford.) KAMALA NAICKEN P. PITCHACOUTTY CHATTY.

(1865) 10 M. I. A. 386=2 Sar. 147. Oil well site-Lease of, with condition of payment of royalty on oil won-Natural gas emitted from well-Lessee's right to.

-Liability for royalty for use of-Construction of

Lats - T. P. Act. S. 108 (e) - Effect.

The appellant was before the year 1912 in possession of oil weil sites in Upper Burma. By a grant of April of that year, after reciting the fact that the appellant was in possession of the well site in question, the Government granted to the appellant a right to win and get earth oil from the said well site in such manner as he or his assignees might think ht, and to dispose of all earth oil to be gotten therefrom subject to the payment of a royalty to the Government.

By an indenture, dated 5-6-1918, the appellant granted a lease to the respondents for a period of 25 years. The lease recited that the appellant was the owner of certain oil well sites including the suit one and that he had obtained from the Government a grant of the right to win oil from the said oil well sites; and it proceeded to declare that the appellant thereby leased to the respondents his oil well sites and the right to win the oil therefrom for a period of 25 years from the date thereof. By clause 2 the indenture provided that during the period of the lease the said oil well sites and the grants for the same should be made over to the possession of the lesseesand the usa id possession shold not be withdrawn by the lessor. After the execution of the indenture, the respondents proceeded to sink wells for the

Oil well site-Lease of. with condition of payment of royalty on oil won-Natural gas emitted from well-Lessee's right to-(Contd.)

purpose of obtaining oil upon the suit site as well as others included in the lease. No oil in any commercial quantity was obtained but gas came from the well so drilled, and the respondents gave up the search for oil and by pipes were able to enclose the gas and use it for their own purposes in and about the neighbourhood of the site. After that had been going on for some six years, the appellant instituted a suit claiming compensation for three years' user of the gas so taken.

Held, that the appellant was not entitled to the compensation claimed, because (1) oil did not include gas, and (2) the lease, upon its true construction, was not merely a lease of the right to win oil from the site, and the appellant never having had property in the gas at any material date, the respondents, who had dug the well and who took the gas as it came out of the well, were entitled to reduce it into

possession and use it.

The indenture in terms expressly recites the owner-hip of the sites and of the grant as being two separate things and proceeds in its terms expressly to lease to the respondents both the sites and the right to win oil therefrom and to transfer to the respondents the sites as well as the grant of the right to win oil from them. In their Lordships' judgment the respondents were from the date of that indenture in possession of the site itself and not merely holders of the Government grant In those circumstances it seems to their Lordships clear that unless it can be said that the gas was always the property of the appellant, it never became his property at any material date. The view that gas under the soil before it had been tapped or released was the property of the appellant cannot be reconciled with the well-known authorities as to underground water not flowing in any defined channel. No doubt it is true that the gas could be reduced into possession, and when reduced into possession it became the property of the person who had so reduced it. But in this case the gas was not reduced into possession by the appellant but by the respondents.

Held further that there was nothing inconsistent with the terms of S. 108, sub section (o) of the T. P. Act in the use of gas which was necessarily set free by reason of the sinking of the oil well for the respondents' own purposes without doing any damage or any injury to the property lessed. (Lord Hailtham L. C.) U PO NAING P. BURMA OH. Co., (1929) 56 I. A. 140 = 7 R. 157 =

33 C W. N. 545 = 29 L. W. 690 = 1929 M. W. N. 378 = 115 I. C. 705 = 31 Bom. L B. 750 = 49 C L J. 527 = A. I. R. 1929 P. C. 108.

#### Oudh Talukdar.

-Lease by, granting village "as a Zemindari village" -Tenure created by -Perpetual underproprietary right. A lease granting land to the defendant was in these

terms :-

"Executed by R, talookdar of Pergunnah....Further, 1 have made over Mouzah B as a Zemindari village to S.... the jama of it is Rs. 553 of the Current Queen's Coin. Having arrived at this item in respect of the Pergunnah, I have given a lease. He may take possession of the village, cause to plough and sow, settle and cause to settle, keep the tenants satisfied. It must be carried out according to the writing. There will be no variation. The document bears the seals of Raja R and of Raja H, and an indorsement in the handwriting of the latter, "Patta correct, jama to vary according to pergunnah custom. He may obtain Rs. 200

Held that the document created a perpetual under-proprietary right in the village. (Lord Davey.) RAJA RAM-

LEASE-(Contd.)

Oudh Talukdar-(Contd.)

PAL SINGH P. BALBUHDDAR SINGH.

(1902) 29 I. A. 208 (210) = 25 A. 1 (15) = 6 C. W. N. 849 = 4 Bom L. R. 832 = 8 Sar. 340.

Lease for life by-Binding agreement for.

The then Outh talokdar caused a notice of ejectment to be served upon the plaintiff, and the plaintiff presented a petition to the talukdar on that subject. On 20-8-1868, the talukdar wrote to the plaintiff stating :- "I have received your petition and become acquainted withthe particulars contained in it; but I have beard that you have filed an objection to notice of ejectment. Now, I don't want to oust you. I wish that the case may be decided and that there may be incurred no loss in consequence of the increase, which will be made by Government. Such a provision has been recorded in the settlement papers. You may rest assured of this, if you have filed an objection I will do nothing for you until you have withdrawn it. You should come to eie, and then I will myself decide the amount you should pay, and maintain you in possession as heretofore.'

Ifeld that the plaintiff was entitled to a sub-settlement for life upon the construction of the terms of that letter, and that the letter was as binding on his successor as it was upon himself. (Sir Barnes Peacock.) KRISHNA NUND MISR P. SUPERINTENDENT OF ENCUMBERED ESTATES. (1879) Bald. 278= MEHDOWNA.

R. & J's. No. 59 (Oudh) = 3 I. J. 482.

-Perpetual tenure of villages comprised in taluk-Plea of, in defence to suit far resumption by talukdar-Onus of proof in case of.

The plaintiff-respondent sought to resume his right as to two villages, N and G. His case was that B was the sanad holding talookdar of a taluka, which included the villages of N and G; that according to the sanad granted to him by Government under Act I of 1869, he possessed all proprictary powers over the said villages, and consequently he had made over in gift to plaintiff all his taluka under a deed of gift dated August, 1878; and that the defendant was lessee of the said villages under a lease for an undefined term at an annual jama of Rs. 1,628, the lease having been granted by B (the donor), whose successor plaintiff was under the deed of gift. The plaintiff further alleged that he had a right to resume possession; that he gave notice of his intention to resume; and that the defendant denied his

The defendant's case was an admission that he had paid rent, and that the plaintiff was the talookdar to whom he had paid it. The defendant rested his title to both villages on one and the same grant, in perpetuity, at a rent to be varied at a certain percentage according to the Government

Held, that the admission made by the defendant prima facie imported the relation of landlord and tenant, which carried with it the right to resume possession on proper notice to quit; that the onus lay on the defendant to defeat that right by proving the grant relied upon by him; and that he had entirely failed to prove it (57 59, 60). (Lord THAKUR ROHAN SINGH P. THAKUR Fit: Gerald.) (1884) 12 I. A. 52= SURAT SINGH. 11 C. 318 (327-8, 331) = 4 Sar. 590.

-Perpetual tenure of villages comprised in taluk-Plea of, in defence to suit for resumption by talukdar-Presumption of such tenure from long enjoyment-Propriety-Origin of tenancy shown at a rent twice increased and paid down to date of suit.

The plaintiff sought to resume his right as to two villages. His case was that B was the sanad holding talookdar of a taluka, which included the suit villages; that according to the sanad granted to him by the Government under Act I of 1869, he possessed all proprietary powers over the said

Ou dh Talukdar-(Contd.)

villages, and consequently he had made over in gift to plaintiff all his taluka under a deed of gift dated August, 1878; that the defendant was lessee of the said villages under a lease for an undefined term at an annual jama of Rs. 1,628, the lease having been granted by B (the dunor) whose successor the plaintiff was under the deed of gift. The plaintiff alleged that he had a right to resume possession; that he gave notice of his intention to resume; and that the detendant denied his right.

The defendant's case was an admission that he had paid rent, and that the piaintiff was the talookdar to whom he had paid it. The defendant rested his title to both villages on one and the same grant, in perpetuity, at a rent to be varied at a certain percentage according to the Government revenue. The defendant alleged that he held the villages under a grant for ever at a rent varying only with the amount of the Government revenue.

The District Judge, while holding there was no evidence of any grant, and the evidence entirely failed, said that he still came to the conclusion that time and undisputed enjoyment had ripened the holding of the defendant into a species of ownershin; and again, that the defendant had acquired by prescription a holding such as to entitle him to all under

-proprietary right.

Held that such propositions were wholly inapplicable to a case in which the origin of the tenancy was shewn at a rent twice increased, and paid down to the commencement of the suit (66).

In such a case, length of enjoyment coupled with the payment of rent can give no greater force to defendant's right than it originally possessed (66). (Lord Fitz Gerald.) THAKUR ROHAN SINGH :: THAKUR SURAT SINGH.

(1884) 12 I. A. 52 = 11 C. 318 (337-8) = 4 Sar. 590.

Permanent lease.

See Lease—Perpetual lease.

Perpetual lease.

——(See also under LEASE — ESTATE CONVEYED UNDER AND UNDER LEASE—OUTH TALOOKDAR.)

Alienation if a. See WATAN—WATAN LANDS—

ALIENATION OF-PERMANENT LEASE IF AN.

(1923) 50 I. A. 255 (258) 47 B. 798 (801).

-Conveyance in fee simple-Distinction.

A mocurrari (or permanent) lease is not tantamount to a conveyance in fee simple. Because at the present day a conveyance in fee simple leaves nothing in the grantor, it does not follow that a lease in perpetuity here (India) has any such result. The law of this country does undoubtedly allow of a lease in perpetuity. A man who, being owner of land, grants a lease in perpetuity carves a subordinate interest out of his own, and does not annihilate his own interest. This result is to be inferred by the use of the word 'lease', which implies an interest still remaining in the lessor. A lessee under such a lease is not a purchaser. (Sir Andrew Scolle.) ABHIRAM GOSWAMI: SHYAMA CHARAN NANDI.

(1909) 36 I.A. 148 (166-7) = 36 C. 1003 (1014-5) = 10 C. L. J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 = 6 A. L. J. 857 = 4 I. C. 449 = 19 M. L. J. 530.

Effect—Lessor's interest—No annihilation of.

A man, who being the owner of land, grants a lease in perpetuity, carves a subordinate interest out of his own and does not annihilate his interest. This result is to be inferred from the word "lease," which implies an interest still remaining in the lessor. (Sir Lancelot Sanderson.) RAJAH BEJOV SINGH DUDHORIA T. SURENDRA NARAYAN (1928) 55 I. A. 320 = 56 C. 1 =

48 C. L. J. 268 = 111 I. C. 345 = 1928 M. W. N. 841 = 33 C. W. N. 7 = 26 A. L. J. 1233 = 28 L. W. 855 =

LEASE-(Contd.)

Perpetual lease-(Contd.)

A. I. R. 1928 P. C. 234 = 13 B. D. 30 = 10 Pat. L. T. 66 = 55 M.L J. 456 (461).

-Forfcitability of.

Whether the Transfer of Property Act applies or not, a lease in perpetuity is forfeitable, notwithstanding that it is permanent. (Sir Andrew Scoble.) ABHIRAM GOSWAMI DESCRIPTION OF THE STANDARD CHARAN NANDI.

(1909) 36 J. A. 148 (167)=36 C. 1003 (1015)= 10 C. L. J. 284=14 C. W. N. 1=

11 Bom. L. R. 1234=6 A. L. J. 867=4 I. C. 448= 19 M. L. J. 530.

In India a lessor is expressly empowered to grant a lease in perpetuity, and is not obliged for that purpose, as in England, to grant a lease for lives, or for a term, with a covenant for perpetual renewal. Leases in perpetuity are expressly included in the definition of "lease" in S. 105 of the T. P. Act. (Sir John Wallis.) HUNSRAJ v. BEJOY LAL SEAL. 1930 A.L.J. 131 = 51 C.L.J. 120 =

34 C.W.N. 342=31 L.W. 309=57 I.A. 110= 32 Bom. L B. 550=122 I.C. 20=A.I.B. 1930 P.C. 59= 58 M. L. J. 293.

Life grant—Grantee under—Permanent lease by—
Validity of—Suit by grantor for declaration of invalidity of

Necessity. Six Limitation Act of 1908, ART 91.

(1899) 26 I.A. 216 (223.4) = 27 C. 156 (165.6).

Nature of —Transfer if a. See MADRAS REGULATIONS—PERMANENT SETTLEMENT REG. XXV OF 1802.

S. 8—TRANSFER. (1861) 8 M. I. A. 327 (338).

Notice to quit—Tenancy determinable by — Evi-

dence.

In 1797, N, the ancestor of the appellant, granted to S. the ancestor of the respondents, a lease, expressed in the terms of a pious gift, of certain lands at village C to be held by him and his heirs from generation to generation, subject to an annual quit-rent of Rs. 50, and in 1800 other lands in the same village were also granted to S to be held with the lands formerly granted on payment of a quit-rent increased by Rs. 100, which was reduced shortly afterwards to the extent of Rs. 50.

In 1802 the Permanent Settlement was introduced and the villages of C. M and B were included in the assets of the Zemindari.

Early in 1802 A' conferred upon S lands in the village of M in lieu of those held by him in the village of C, and in 1811 he conferred on him the village of B, to be held in lieu of the lands in the village of M at a quit-rent of Rs. 45 by the grantee and his heirs from generation to

generation "for the satisfaction of Sri."

A' died leaving large debts. On receipt of the news of his death, the Board of Revenue directed the Governor's agent, who was in charge of the Zemindary, to adopt all measures in regard to resumption of inams and shrotriems to which it would be legal and proper for the late Raja's successor to have recourse. In anticipation of such instructions, the agent had in 1845 issued orders for the attachment of all lands conferred by the late Raja subsequently to the permanent settlement, whether agraharams (grant's made to Brahmins), mokashas or other inams. The Government, however, made it a condition of the attachment that the collections derived from the attached lands should be repaid to the inamdars to whom the attached inams might themselves be restored. Village B was one of such attached inams.

In 1850, during the dispossession, A, one of the sons of S, took a lease of village B for three years at an annual rent of Rs. 650. On the termination of that lease, the then Maharajah, the appellant's father, directed his agent to collect

Perpetual lease -(Contd.)

from the ryots of that village the quit-rents then existing, and a quarter of the entire assessment, and payments were made on that footing up to 1863, the village still being regarded as attached. The dispute relating to the propriety on the resumption was still subsisting, and it was probable that a settlement was delayed by the provision which the Government had made for the protection of the inamdars, that the income of any inam appropriated for the liquidation of arrears of revenue in the Zemindary should be repaid from the treasury of the Zemindar on the restoration of the inam.

In 1863, the eldest sons of the two sons of S each presented to the appellant's father a petition respecting the moiety of the village which (at a partition made previously between the sons of S) had fallen to his branch of the family. Upon those petitions, the Maharajah issued an order to each of the petitioners which differed from the grant made in 1811 only in the amount of the rent. The order directed the Tana Amin to put the attached lands in the possession of the petitioner from the current fusli, subject to a stated Kattubadi, and the pelitioner to take possession of the same, pay the said Kattubadi duly every year, and be bound by the Circar orders. Thereupon each of the petitioners executed sanads engaging to pay the rent and act up to the orders of the Circar," and they were put in possession of the village.

The Maharajah died in 1879, and was succeeded by the appellant. In 1881 the appellant called on the respondents to execute fresh engagements, undertaking to pay such rent as he might fix, and on their refusal notice was given them to quit the village on 1--7-1881, which they refused to do. The question for decision was whether the tenancy could be determined by the notice to quit.

The High Court held that the arrangement in 1863 resulted in a confirmation of the original grant of 1811 on terms more favourable to the Zemindar, that if the arrangement was to be regarded as a new grant it was intended to be the grant of an estate in all respects save the amount of quit-rent similar in tenure to that which had been created by the grant of 1811, namely, a tenure in perpetuity.

Held that the latter was the correct view but, that, in either view, the appellant had no power to determine the tenancy by the notice to quit (42). (Sir Richard Couch.) MAHARAJAH MIRZA SRI ANANDA Þ. PIDAPARTI SURIA-9 M. 307 (318-9) = 4 Sar. 696. NARAYANA SASTRI.

-Rent of-Fixity of-Presumption of-Enhancement of rent-Suit for-Onus of proof in.

Where in a suit for the enhancement of the rent of a tenure held under the plaintiff by the defendant it is admitted that the tenure is a permanent, heritable, and transferable tenure, there is a presumption in favour of the tenant and the onus is on the plaintiff to show that the tenure is

wanting in the characteristic of fixity of rent. Where it was expressly stated in the books of the plaintiff that the tenure should not be liable to rent for the first four years, and that after that it was to carry rent on a progressive scale until in 1298 it reached one rupee one anna, and there was no reference to further enhancement by operation of law, held, that the clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent of the tenure so long as it lasted. (Mr. Ameer Ali.) PORT CANNING AND LAND IMPROVEMENT (1919) 46 I. A. 279 (283)= CO. v. KATYANI DEBI. 47 C. 280 (287.8)=17 A.L.J. 1061=

(1920) M.W.N. 160 = 53 I. C. 522 = 11 L. W. 296 = 24 C. W. N. 369 = 22 Bem. L. B. 437 = 32 C. L. J. 1 = 37 M. L.J. 578.

LEASE-(Contd.)

Possession and mesne profits-Suit for-Property subject of-Lessee pendente lite of-Profits of property carried away by-Damages for.

Decree-holder's suit for-Maintainability. Damages-Possession and mesne profits.

(1922) 49 I. A. 220 (223) = 1 Pat, 581 (586-7).

Reclamation lease.

(See also LEASE-ZEMINDAR-RECLAMATION LEASE,

Clearing conditions in-Fulfilment of-What amounts to-Jungle land in Sunderbans - Cutting of timher not sufficient-Extinction of stumps necessary.

Under a lease of the 7th December, 1900, the Government gave an occupancy right for forty years from April. 1901, of jungle land included in Saugor Island, Sunderbans. Under the third clause of this lease one-eighth of the entire area leased was to be cleared and to be in a fit state for cultivation at the end of the fifth year, and at any time after the expiration of the fifth year the Sunderbans Commissioner or other officer appointed by the Government or any person authorised by him might enter on the land and cause it to be measured for the purpose of ascertaining whether the condition had been fulfilled. The fourth clause provided that on failure to comply with the above clearing condition, the lessees should be liable at the discretion of the Government to the forfeiture of all rights in land under the lease or to an annual penalty. The Government, if the lease was determined, was to have the right of immediate re-entry,

The Government having determined the lease on the ground of non-fulfilment of the clearing conditions, the lessees instituted a suit for a declaration that the forfeiture

was invalid.

The trial Judge found that it was not proved that the lessees had broken the clearing conditions, and on that ground decreed the suit. The Court of Appeal held that the trial Judge had laid undue stress on jungle cutting alone. They held that the stumps had to be extracted also before the land could be fit for cultivation, and reversed the decree below largely on the ground that that was proved not to have been done.

Their Lordships concurred in the view taken by the

Court of Appeal.

The Sunderbans is by nature a swampy jungle covered with trees. The soil is alluvial soil, formed by deposit from the Ganges, at whose mouth it is. The Government had, for a long time past, been taking steps to re-claim it, and to convert the jungle from being the mere home of wild beasts into rice tracts. For this purpose it was necessary not only to cut down the trees but to take out their stumps, and improvement leases were being granted on terms, such as those in the lease in question, which should secure that this was done. It is therefore, plain that the obligations in the lease to clear and to put into a fit state for cultivation, extended to the extraction of these stumps as well as to the cutting down of the timber. (Viscount Haldane.) NABAR KUMAR DAS p. RUDRA NARAYAN (1923) 28 C. W. N 589 = (1923) P. C. 95 = (1923) M. W.N. 622 = 33 M. L T. 309 (P.C.) = 10 O. & A. L. B. 521 = 77 I. C. 141 =

45 M. L. J. 438 (441). -Forfeiture of, on non-fulfilment of clearing conditions in regard to a stated portion of area leased-Measurement of land by lessor's representative to find out area reclaimed-Provision for-Effect-Right to measure at discretion of representative or duty to measure condition precedent to forteiture.

Under a lease of 7-12-1900 the Government gave an occupancy right for forty years from April, 1901, of jungle land included in Saugor Island, Sunderbans. Under the

Reclamation lease-(Contd.)

third clause of this lease one-eighth of the entire area leased was to be cleared and to be in a fit state for cultivation at the end of the fifth year, and at any time after the expiration of the fifth year, the Sunderbans Commissioner or other officer appointed by the Government or any person authorised by him might enter upon the land and cause it to be measured for the purpose of ascertaining whether the condition had been fulfilled. The fourth clause provided that on failure to comply with the above clearing condition, the lessees should be liable at the discretion of the Government to the forfeiture of all rights in land under the lease or to an annual penalty. The Government, if the lease was determined, was to have the right of immediate re-entry.

On the 12th April, 1906, the then Settlement. Officer who had taken over the duties of the Commissioner in the Sunderbans, an office which had been abolished, visited the property leased. He went to the property and looked at it with the aid of his binoculars both when he landed and subsequently from a boat. He however, took no measurements. He reported to the Collector that the clearing conditions had not been fulfilled and that the lease should be

determined.

The lease having been forfeited in pursuance of the report of the Settlement Officer the lessees instituted a suit for a declaration that the forfeiture was invalid. The Sub-Judge who decreed the suit, relied largely on the carcumstances that S did not take measurements,

Held that the Sub-Judge was wrong in thinking than an obligation to measure the land was imposed by the lease.

There was no obligation to measure imposed by the lease. There was a right, if the representative of the Government thought proper, to enter and take measurements, but no What the Settlement Officer had to determine, as a matter of fact, was simply whether one-eighth of the entire area leased had been cleared and put into a state fit for cultivation within the stipulated time. (Viscount Haldane.) NABA KUMAR DAS v. RUDRA NARAYAN JANA.

(1923) 28 C. W. N. 589 = (1923) P. C. 95 = (1923) M. W. N. 622 = 33 M. L. T. 309 (P. C.) = 10 O &A.LB. 521 = 77 I.C. 141 = 45 M.LJ. 438 (441-2).

-Swampy land-Lease of, for limited term-Trees on land demised-Lessee's right to cut and carry away, for

The plaintiff-appellant was a lesssee under a lease granted to him by the Acting Collector of the District of Tanna of the Village of G. He complained that, contrary to the terms of that lease, the Government did not allow him to fell unassessed trees in the village, or to apply them to his own use,-that is to carry off the trees from the ground on which they grew, and to dispose of them to his own use. And he claimed damages against the Government for prohi-

biting him from cutting the trees.

The lease was for a term of 99 years, and the object with which it was applied for and granted was the reclaiming certain swampy land, and forming salt pans and salt balty fields, together with such incidental advantages as might be obtained from the use of the waste land as it then stood in the village. The claim of the appellant was not to cut certain trees for the purpose of clearance or cultivation, not to cut certain trees for the purpose of repairs or consumption on the ground of which the appellant was lessee, but to sell to a timber merchant the whole of the trees, large and small, upon the land, to be cut and carried away by him for his own purposes.

Held, upon the construction of the lease, that the appellant could only cut trees growing on the land demised for the purpose of clearance and cultivation, or for repairs; but that he had no right to fell and carry away for sale unassessed forest timber growing on the demised lands. (Lord

LEASE-(Contd.)

Reclamation lease-(Contd.)

Cairns.) RUTTONJI EDULJI SHET D. COLLECTOR OF TANNA (1867) 11 M. I. A. 295=10 W. R. P. C. 13=

-Waste lands if included in.

In 1792, shortly after the Decennial Settlement of a Zemindary had been completed, but before that Settlement had been declared perpetual, the then Zemindar granted lands within the Zemindary to A, at an annual rent under a Pottah. The Pottah was addressed to A as "Moostagar" (Farmer) of Mouzah C, and the operative part of it was as follows :- "Inasmuch as, in accordance with your application, the lands of the villages in the said forests have been assessed with a rental of 101 rupees, everything being consolidated, and a Pottah granted to you, it is required that you will in all confidence have the lands of the said forests occupied by Purbuttea and other Ryots, and keep paying to the Sircar the rent year by year, according to this Pottah; and whenever you may be summoned for the purpose of hunting, you will attend accompanied by all the Purbattes.

Held that the Pottak covered, not only the lands then in cultivation, but also the forest land which the grantee was to settle and reclaim by bringing Purbutteas and other Ryets upon them (462-3). (Sir Richard Kindersly.) RABOO DHUNPUT SINGH v. GOOMAN SINGH.

(1867) 11 M. I. A. 433 = 9 W. R. P. C.3 = 2 Suther 92= 2 Sar. 309.

Registered deed of-Cancellation of, in certain events-Deed having effect of-Genuineness of.

Presumption as to Lessee's suit for possession based on lease deed-Defence neither setting up deed of cancellation at once nor mentioning it specifically but introducing it at last stage and even then only incidentally-Effect.

The plaintiff-respondent sued to recover possession of the property leased to him under a registered lease deed, executed by the defendant-appellant in his favour. The defendant, inter alsa, set up an agreement executed in his favour by the plaintiff to the effect that if he should fail to pay the balance of the advance made payable by the lease deed within 5 days, he would return the lease deed and take back the amount actually advanced. The question was as to the genuineness of the agreement set up by the defendant.

There was no distinct allusion to such a document in the defendant's answer, but certain vague and doubtful expressions were relied upon, as showing that it must have been in existence at that time, although not specifically

mentioned.

Held that the conduct of the defendant rendered the genuineness of the agreement very improbable (400).

The object of the suit was to obtain a decree to enable the plaintiff to collect all the revenue of the property leased to which he claimed to be entitled under the lease granted to him by the defendant. If the defendant's case founded upon the document in question was a true one, he had a short and conclusive answer to the plaintiff, and it is not unfair to presume that it would at once have been brought forward. If the document in question had been in exis-tence at the time of his answer, it is most unaccountable, that he should have left this complete answer to the plaintiff's case to the last stage of his pleadings, and even then have introduced it almost incidentally as part of a narrative of the transactions between them (400). (Lord Chelmsford.) KAMALA NAICKEN D. PITCHACOUTTY CHETTY.

(1865) 10 M. I. A. 386 = 2 Sar. 147. -Presumption as to-Non-registration of deed-Effect.

The plaintiff-respondent sued to recover possession of the property leased to him under a registered lease-deed, dated 17-9-1851, executed by the defendant-appellant in his favour.

Registered deed of-Cancellation of, in certain events-Deed having effect of-Genuineness of -(Contd.)

The defendant, inter alia, set up an agreement of 25-11-1851 executed in his favour by the plaintiff to the effect that If he should fail to pay the balance of the advance made payable by the lease deed within five days, he would return the lease and take back the amount actually advanced. The question was as to the genuineness of the agreement set up by the defendant. The lease-deed was registered, but the agreement was not.

Held that the non-registration of the agreement in question was a circumstance worthy of remark in considering

its genuineness (398).

Although the agreement might not have been one which it was absolutely necessary to register, yet when a lease was recorded which so seriously affected the interests of the lessor, it might have been expected that an instrument which five days after its execution had actually put an end to the lessee's right to the lease, would have been placed upon the register as a matter of ordinary prudence and precaution (398). (Lord Chelmsford.) KAMALA NAICKEN P. PIT-CHACOOTTY CHETTY. (1865) 10 M.I.A. 386-2 Sar. 147.

Religious Endowment—Lease of property of.

—See Under Hindu Law—Religious Endow-MENT & MAHOMEDAN LAW-RELIGIOUS ENDOWMENT.

Relinquishment of.

Provision for-Nature, object, and effect of-Retention by tenant of partion of area purported to be relinquished Validity of relinquishment in case of.

A mukurrari pottah contained provisious enabling the lessees, whenever they liked, to tender istafa (resignation) of the whole or any portion of the lands settled under the pottah and stipulating that, if such istafa be made, the lessees were to get a deduction in the rents at the rate of Rs. 6 per bigha for the extent relinquished and that, with the exception of such deduction, all the other terms and conditions of the pottah should remain in force. In pursuance of those provisions, the lessees executed, and presented to the lessors, a deed of relinquishment, which contained an intimation that from 1863, the lessees would only remain in possession of 565 bighas of land, out of the lands settled, and would be liable only for the jamma due for that extent and that the lessors were at liberty either to settle the relinquished lands and their jamma with others or to retain their khas possession. Notwithstanding the deed of relinquishment, the lessees continued to remain in possession of 35 bighas in addition to the 565 bighas. In a suit brought by the lessors for the total rent due under the mokurrari pottah ignoring the deed of relinquishment, held that, as the lessees did not surrender the whole of the area they had purported, under the deed of relinquishment, to surrender, the relinquishment was invalid and they remained liable for the whole of the rent due under the Mokurrari pottah, though the extent of the lands not so surrendered was very small in proportion to that which they had purported to sur-

Quare: whether, if the terms of the mokurrari pottah had admitted of approximate equivalents for the total area professed to be surrendered to tenants would have been liable for the rent for the entire area settled by the pottah.

The right of relinquishment is a privilege given to the tenants, by means of which they may restrict the lease and establish their tenure upon agnew basis, or may extinguish the lease altogether; and the tenants cannot avail themselves of that privilege to any extent unless they strictly observe the conditions which are either expressed or are plainly implied in the lease itself. In so far as it concerns the power of relinquishment, the scheme of the contract embodied in the (suit) lease is exceedingly simple.

LEASE - (Contd.)

Relinquishment of-(Contd.)

The istafa, or, in other words, the resignation made by the tenants, which, by the plainest implication, must contain a precise statement of the area to be so relinquished, is to form the basis of future relations between the contracting parties; and in order to fix for the future the rents which the tenants are liable to pay and the lessor is bound to accept, the lease contemplates that no step shall be necessary beyond measurement of the area surrendered, and deduction of an amount calculated at the rate of Rs. 6 per bigha for such area from the original rent. The view of the High Court that the istafa tendered may be qualified or restricted, not by the tenants making a new surrender, which would be within their competency, but by their simply continuing to hold possession of part of the area which they had surrendered, would defeat the plain intention of the contracting parties. (Lord Watson.) RAM CHURN SINGH r. RANI-(1898) 25 I. A. 210= GUNJE COAL ASSOCIATION. 26 C. 29 = 2 C. W. N. 697 = 7 Sar. 399.

-Registered instrument for-Necessity-Consideration for surrender-Receipt of, and relinquishment of persension-Sufficiency of.

A mokurruridar granted a dur-mokurruri lease of part of his holding. The dur-mokurruri lease was afterwards surrendered for good consideration, ikramamas to that effect were executed but not registered. The High Court, on the ground that there was no valid reconveyance of the dur-

effectual.

Held, reversing the High Court, that a formal reconveyance was not necessary (167).

mokutruri lease, held that the relinquishment was not

The receipt of the money and relinquishment of possession was sufficient (167). (Sir Richard Couch.) IMAMBANDI BEGUM P. KAMLESWARI PERSHAD.

(1886) 13 I. A. 160-14 C. 109 (119)-4 Sar. 732. Renewal of.

See LEASE-LEASE FOR TERM-RENEWAL OF.

Rent due under.

ABATEMENT OF.

-Agreement for -Consideration for -Necessity-Registered deed-Rent due under.

Where, in a suit for arrears of rent due under a registered kabuliyat, the defendants in supporting their claim to an abatement of rent, relied upon an unregistered agreement by the lessor purporting to reduce the rent, held that, the agreement was, for want of registration, inadmissible in evidence to vary the terms of the kabuliyat and that the same was without consideration and was not enforceable. Held, further, that the fact that the lessor had for some years accepted a reduced rent was consistent with the reduction having been a mere voluntary and temporary abatement (230). (Sir John Edge.) DURGA PRASAD SINGH v. RAJENDRA NARAYAN BAGCHI. (1913) 40 I. A. 223 = 41 C. 493 (506) = 18 C. W N 66 = 21 I. C. 750 =

(1914) M. W. N. 1 = 15 M. L. T. 68 = 19 C. L. J. 95 = 16 Bom. L. R. 42 = 26 M. L. J. 25.

-Claim to-Proof of-Onus-Registered lease deed-Rent due under.

In a suit for arrears of rent due under a registered kabuliyat, it is for the defendants (lessees) to make out a case, if they have one, for an abatement of the fixed rent.

Where the lessees failed to prove what was the area in fact contained in the boundaries specified in the schedule to the kabuliyat, or that of which they had been given possession, held that, they failed to discharge the onus which lay on them. (Sir John Edge.) DURGA PRASID SINGH D. RAJENDRA NARAVAN BAGCHI. 41 C. 493 (512-3)=

(1913) 40 I A. 223 (234-5)=18 C. W. N. 66= 21 I. C. 750 = (1914) M. W. N. 1 = 15 M. L. T. 68 = 19 C. L. J. 95 = 16 Bom. L. R. 42 = 26 M. L. J. 25.

Rent due under-(Contd.)

APPORTIONMENT OF, ON GROUND OF DEFICIENCY IN EXTENT-LESSEE'S RIGHT OF.

-Lease a speculative transaction and taken with knowledge of defect in title-Effect.

It might possibly be an answer to a lesse's claim for apportionment of the rents reserved on the ground of deficiency in extent that the lessee was fully aware at the time of the execution of the lease that the lessor was not entitled to the whole of the land leased, and that the lease was taken as a speculation, but such a case would require to be very clearly proved (127) (Sir Richard Couck.) IMAM-BANDI BEGUM :: KAMLESWARI PERSHAD.

(1894) 21 I. A. 118 = 21 C. 1005 (1017-8) - 6 Sar. 446.

-Letsee's knowledge of defect in title at time of taking lease-Bar of right by reason of-Plea of-Prity Council appeal - Maintainability for first time in.

In a case in which the lessee claimed to be entitled to an apportionment of the rent reserved on the ground that she was obliged to sue for possession of the land leased and obtained a decree for possession of only a portion of the land, the question whether the lessee was not entitled to an apportionment by reason of her knowledge that the lessors were not entitled to the whole of the land leaved was not raised by the issues, nor was any evidence offered upon it.

Held that the question ought not to be allowed to be raised in the appeal to the Privy Council (127) (Sir Richard Couch.) IMAMBANDI BEGUM : . KAMLESWARI PERSHAD. (1894) 21 I. A. 118 = 21 C. 1005 (1017) = 6 Sar. 446.

-Possession never given to him-Possession of part of property only obtained by him by suit-Effect.

The appellant was the lessee under two mokurruri leases of certain shares in certain mouzahs. The respondent was the son of the purchaser of an entire mahal, of which the leased shares of the mouzahs were parts, at an auction sale for arrears of Government revenue. By the terms of S. 54 of Act X1 of 1859 (B. C.), the respondent's father acquired the mahal, subject to all incumbrances, and with only the rights which were possessed by the previous owner or owners.

Disputes arose between the appellant and the respondent's father, and the appellant accordingly brought a suit against the respondent's father and others to establish her rights to the shares in the mouzahs comprised in the leases, of part of which shares she said she was absolutely dispossessed, and of the other part that the respondent's father had denied her mokurruri right. That suit went up to the Privy Council, and by the judgment of their Lordships a decree was given to the appellant for possession as lessee of portions only of the land comprised in her leases, and the question whether she was bound to pay the whole of the rent reserved by the leases or was entitled to an apportionment was expressly left open. Possession of what was decreed was given to the appellant.

In a suit subsequently brought by the appellant against the respondent for the recovery of mesne profits for three years of the portion of land decreed to her, the respondent claimed to set off against the appellant's claim the whole rent reserved by the mokurruri leases for the three years. The appellant offered to pay such an amount of the rent reserved as was proportionate to the share of which she had obtained possession. It was either admitted or found that the appellant did not enter into possession under the mokurruris. The question was whether, in the circumstances of the case, the appellant was entitled to the apportionment claimed by her.

Held that the appellant was entitled to the apportion-

ment claimed (126),

LEASE-(Contd.)

Rent due under-(Contd.)

APPORTIONMENT OF, ON GROUND OF DEFICIENCY IN EXTENT-LESSEE'S RIGHT OF-(Contd.)

As the appellant did not prove that she entered into possession under the leases and was then dispossessed, there was, not an eviction in the proper sense of the word. But, when the appellant was obliged to bring a suit to obtain possession, and succeeded in obtaining only a part of what was granted in mokurruri, and was precluded by the result of the suit from having possession of a substantial and the larger part, she was in a similar position to having been evicted from that part, and there is the same equity for an apportionment as in a case of eviction (126). (Sir Richard Couch.) IMAMBANDI BEGUM r. KAMLESWARI PERSHAD. (1894) 21 I. A. 118 = 21 C. 1005 (1016-7) = 6 Sar. 446.

LESSEE'S LIABILITY FOR-EFFECT ON, OF TRANFER BY THEM.

-- Non-exoneration from liability-- Covenant in lease for-What amounts to. See LEASE-ASSIGNMENT OF-RENT. (1929) 33 C. W. N. 865.

J.IABILITY FOR-DUR-PUTNEE-ASSIGNMENT OF-ASSIGNOR'S LIABILITY TO PUTNIDAR FOR RENT IN CASE OF.

Sale of durputni to enforce liability-Right of.

Until the assignment of a dur-putni has been registered, or the assignee has been accepted by the putnidar as his tenant, the assignor is not discharged from liability for rent, and such liability may be enforced by the sale of the durputni taluk in execution of a decree against him for the rent (905). LUCKHINARAIN MITTER P. KHETTRO PAL SINGH ROY. (1873) 2 Suth. 903 = 20 W. B. 380 = 13 B. L. R. 146 = 3 Sar. 273.

#### Payment of.

-Evidence-Receipts adduced in evidence falu-Other evidence if may be accepted.

In a case in which the question was whether, as alleged by the defendant, he paid to the plaintiff the rent due under a lease for particular faslis, the defendant stated that he received receipts for the payments made by him which, however, were lost, and also let in other evidence in proof of his plea of payment, held that, though the story as to the receipts might be false, it was quite compatible with the fact that the money had been paid (20). (Lord Hobkouse.) RAMESWAR KOER P. BHARAT PERSHAD SAHL

(1899) 4 C. W. N. 18.

-later fasti-Payment for-Proof of-Presump

tion from, of payment for earlier fashi. Evidence of payment of rent due under a lease for a later

fasli, though not conclusive, as to the payment of all previous rents, aids the evidence in favour of that conclusion-(Lord Hobbouse.) RAMESWAR BHARAT KOER P. PERSHAD SAHL (1899) 4 C. W. N. 18 (21-2).

-Proof prima facie of - Evidence to rebut.

In a case in which the question was whether defendant paid to the plaintiff the rent due under a lease for particular faslis, held that the defendant gave evidence of payment sufficient to throw back again on the plaintiff the onus of proving that her rents were still due (22). (Lord Hobboust.) RAMESWAR KOER D. BHARAT PERSHAD SAHL (1899) 4 C. W. N. 18.

REMISSION OF-LESSEE'S RIGHT TO.

-Lease of Zemindary and unexpired portion of lease for term.

A Zamindar granted his zamindary by pottah, or lease as a putnee talook, at a fixed annual rent. Adjacent to the demised lands were other lands called Bheel Bhurruttet

Rent due under-(Contd.)

REMISSION OF-LESSEE'S RIGHT TO-(Contd.)

lands, to which the Zamindar had only a temporary interest, but which lands were included in the pottah. The Bheel Bhurruttee, lands were afterwards resumed by the Government under Beng. Reg. II, 1819, and assessed separately from the Zamindary, the jumma being paid by the lessee for a period of nine years. Held, in a suit brought by the lessee against the lessor's representative for remission of the rent paid on the resumed lands out of the fixed annual rent, that, by the terms of the pottah, the Bheel Bhurruttee lands were not included in the fixed annual rent.

" In addition to the Zamindary, which the Zamindar held in perpetuity, there were certain lands which were added by accretion to the Zamindary, which he held for a term of ten years at a jumma rent, with a right of renewal, more or less defined, but at all events with some preferential rights. In that state of things he sells (grants in putnee) his Zamindari and says nothing about the other lands. What does he sell? He sells, of course, the interest he had; he sells the perpetual interest in the lands he held in perpetuity, and he sells the interest he had in the lands, he was to hold for ten years, for the remainder of the term. At the time the sale is made, there were only ten months of that term to run. At the expiration of the ten months, the purchaser asks a renewal of the term. He has the right of renewal, or the right of throwing up the lands, but he has no contract or engagement with the vendor that will run for his benefit; but he makes a renewal by which he engages to pay a certain rent, and continues to pay that rent to the Government for nine years and then he institutes a suit for the purpose of obtaining repayment of what he has thus paid, insisting that he was entitled to it, and asking to have it deducted out of the rent which he had engaged to pay to the Zamindar. Their Lordships are satisfied that there is no ground for the claim," (because the renewal was his own act, and the sale included the unexpired term only). (Lord Kingsdown.)
PRAMATH ROY CHOUDHRY P. RANEE SURNOMOYE (1863) 9 M.I.A. 435 = 2 Sar. 22.

RESUMPTION BY GOVERNMENT OF PART OF LANDS
LEASED AND RE-SETTLEMENT THEREOF WITH
LESSOR OR HIS HEIRS—RENT PAYABLE
BY LESSEE IN CASE OF.

Rent fixed by lease or rent fixed by re-settlement— Lease itself contemplating such resumption and providing for it—Effect of rent in case of such resumption—Bengal Rent Settlement Act of 1879—S. 10—Effect.

In 1867 Raja B, from whom appellant's title was derived executed a pottah, creating, in favour of the respondent, an estate of permanent grant tenure in mouzah P, which included along with other chucks, the chuck K in dispute. The annual rent to be paid for the whole of the lands was Rs. 2.300. It was known at the time of the pottah that the Government had right to resume, and was likely to resume some part of the lands, and a claim was, therefore, inserted in the pottah providing for a proportionate abatement of the rent fixed if any part of the lands granted should be resumed by the Government.

In 1882 the Government did in fact resume, inter alia, the chuck K in dispute. The Government did not, however, take khas possession of chuck K, but granted it in temporary settlement to the heirs of Raja B, he being then dead. The period of settlement was 20 years from 1884, 1904 being "the year fixed for the expiry of settlement in the Presidency Division"; and the rent fixed for chuck K was

Rs. 850. The theory of the plaint, which was filed on 13-4-1897, was that the effect of those settlement proceedings was that the respondent became liable to the owner of K for the

LEASE-(Contd.)

Rent due under-(Contd.)

RESUMPTION BY GOVERNMENT OF PART OF LANDS LEASED AND RE-SETTLEMENT THEREOF WITH LESSOR OR HIS HEIRS—RENT PAVABLE BY LESSEE IN CASE OF—(Contd.)

rent fixed in the settlement. Accordingly, the plaint ignored entirely the pottah of 1867, and rested the liability of the respondent on the settlement alone; and the appellant maintained his right to sue alone (he being purchaser of chuck only), without the action being sued by the owners of the other lands which formed parts of the ganti tenure of 1867, and for which the lump annual sum of Rs. 2,300 was the rent.

The respondent pleaded his ganti right of 1867, as constituting his title to the chuck \( \Lambda' \); and with reference to the demand for Rs. 850, he said that he did not hold any jami-jumma at a rent of Rs. 850-2-4 appertaining to chuck \( \Lambda' \) subordinate to the plaintiffs, and that he (defendant) did not bind himself by any engagement or pay rent regarding such jami-jumma either to the plaintiffs or to their predecessors, and that he was not bound to pay rent as above to the plaintiffs.

Held, affirming the High Court, that the defence of the respondent was well founded.

The settlement proceedings of 1884 cannot be held to have altrogated the rights of that respondent under the pottah, so long as the Raja R, and his heirs were themselves in a position to let him have the lands. In fact, the resumption by Government did not disturb the possession either of the Rajah's heirs or of the respondent. The mere fact of resumption cannot be held to have brought to an end the rights of the respondent under the pottah, for the pattah itself recognises the precarious nature of the grantor's title and provides against the loss of possession should that be the resuli (163-4.)

If it had seemed good to the Government to take the land into their own khas possession, or to settle it on strangers to the contract with the respondent, then the recorded rent would have been the rate of payment by that respondent. But the lands having been settled on the heirs of Raja B, who granted the pottah, the Bengal Rent Settlement Act of 1879 does not interfere with the contractual rights of the sabordinate holder. Now, the period of the settlement being still current, the ganti right still subsists and the respondent is only liable for the rent payable under the pottah (164), (Lord Robyrtson.) PRIA NATH DAS T. RAM TARAN (1903) 30 I.A. 159 = 30 C. 811 = 7 C.W.N. 601 = 8 Sar. 497.

Resumption by lessor (Government) of, for public purpose—Provision for.

---- Public nature of purpose-Lessor's view as to---

Where a lease granted by the East India Company contained a power of resumption in favour of the lessor if "the company, their successors or assigns, shall, for any public purpose, be at any time desirous to resume possession of the premises granted," and the Government gave notice of resumption for what they alleged to be a public purpose, held that prima facie the Government were good judges of what a public purpose was.

They (the Government) are not absolute judges. They cannot say "Sic volo sic jubeo," but at least a court would not easily hold them to be wrong (47). (Lord Dunedin.) HAMABAI FRAMJI PETIT 2. SECRETARY OF STATE FOR INDIA. (1914) 42 I.A. 44 = 39 B. 279 (295)=

17 Bom. L. B. 100 = 13 A.L.J. 113 = 21 C.L.J. 134 = (1915) M W.N. 603 = 17 M.L.T. 80 = 2 L.W. 191 = 19 C.W.N. 305 = 27 I.C. 26 = 28 M.L.J. 179.

Resumption by lessor (Government) of, for public purpose - Provision for - (Contd.)

--- Residence for Government Officials if a public purpose within meaning of.

The first appellant was lessee under the Government as successors of the East India Company under a lease, which contained a power of resumption in favour of the lessor if "the company, their successors or assigns, shall, for any public purpose, be at any time desirous to resume possession of the premises granted" upon certain terms as to notice and compensation.

The second appellants were holders of land under G svernment in virtue of a sanad which declared the ground given in occupation was to be "at any time resumable by Government for public purposes" upon certain terms as to notice and compensation.

The Government in both cases gave notice to resume because they wanted the ground in order to erect dwellinghouses, which they could offer to Government Oriolals at adequate rents for their private residence. Suitable houses for Government servants were not easily obtainable in Bombay; though obtaining quarters of some kind was not an impossibility.

Held that such a scheme was a "public purpose" within the meaning of the contracts contained in the lease and the sanad, and that the Government was entitled to resume for such a purpose.

Their Lordships cannot agree with the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. The phrase must inchale a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitality concerned" (47). (Lord Dunsdin, lands at Franch Petit c. Secretary of Statt for India. (1914) 42 I. A. 44 39 B. 279 (294-5) = 17 Bom L. R. 100 = 13 A. L. J. 113 = 21 C. L. J. 134 = (1915) M. W. N. 603 = 17 M. L. T. 80 = 2 L. W. 191 = 19 C. W. N. 305 = 27 I. C. 26 = 28 M. L. J. 179.

Revenue due on village leased—Payment by lessee of sum named as and for—Provision for.

-Separate registration and sub-assessment of village -Lesse's liability in case of.

At the time of the grant of a village of a Zemindar, the village was not assessed separately, and provision had to be made for the grantee bearing his proper share of Government revenue. The deed of grant, accordingly, declared that the grantee was to pay "every year to the Circar as peishcush Rs. 3500". In the very next paragraph, however, the deed clearly contemplated and provided for the separate registration of the village and payment by the proprietor of the village to the collector of the peishcush which the collector was to fix.

On a question arising as to whether on the true construction of the deed of grant the grantee was bound to pay a definite annual sum of Rs. 3500 to the holder of the Zemindary, or whether his liability was satisfied by paying direct to the Government the sum due to them from time to time as the revenue demandable by them in respect of the village from its owner, held that the sum of Rs. 3,500 was provisionally fixed as a sum sufficient to cover the proportionate amount of the Government revenue attributable to the village, but that the intention was that when the separation was effected it should be a final and complete separation, and that thenceforth the proprietors of the village should only be liable for the burthens properly incident to the property, and should discharge those burthens in the ordinary way by LEASE-(Contd.)

Revenue due on village leased—Payment by lessée of sum named as and for—Provision for—(Contd.) direct payment to the Collector. (Lord Macnaghten) Fischer 2. Secretary Of State for India in Council. (1898) 26 I. A. 16 (31) = 22 M. 270 (285) = 3 C. W. N. 161 = 7 Sar. 459.

Sub lease.

——S& LEASE—ASSIGNMENT OF & LEASE—LEASE FOR TERM—SUB-LEASE ETC.

Surrender of.

-----See Lease-Relinquishment of.

Term of - Commencement of -" Hereafter" -Meaning of. in letter containing agreement to grant lease -- Evidence.

-Document of even date referred to in letter-

A leder written by N to H on 21st November, 1903, ran as follows:—On my assuring you that I would lease out after my purchase of the 4 annas share of the estate No. 381, permanently to you and your brothers, at an annual jumma of Rs. 840, including the Government revenue and road and public cess, you requested B to execute the conveyance of his share in the said property in my name, according to the terms and conditions of the agreement executed by him in your favour on the 15th day of Bhadra, 1308 B. S. In consideration whereof I do hereby promise and agree to execute a permanent ijara hereafter. I have this day issued notices to the tenants of the said mahals to pay their respective rents, etc., to you as my ijaradars.

Meld that the word "hereafter" as used in the letter meant after the date of the letter, i.e., after the 21st November, 1903, but that so read the letter could not mean that N should have all time from and after its date to perform his contract, and that it must, in its proper construction as it stood, mean that he should execute the lease within a reasonable time from that date (337).

Held further that a notice of even date addressed by N to the tenants, being referred to in the letter from N to H, could be looked at and considered to see what was intended to be the date of the commencement of the term of the lease (Lord Atkinson.) SRIMATI GIRIBALA DASI v. KALI DAS BHANJA. (1920) 33 C. L. J. 57

25 C. W. N. 320 = (1920) M. W. N. 653 = 22 Bom. L. R. 1332 = 29 M. L. T. 1 = 57 I. C. 626 = 39 M. L. J. 329 (335).

Terms of.

Application for lease general—Answer to, specifying conditions described in lease itself—Terms in case of.

Where, though the application for a lease was general, the answer to it was specific and clear, and was that a lease would be granted on "the following conditions", which were described in the lease itself, held that the answer determined the contract, and the only contract, between the parties (310). (Lord Cairns.) RUTTONJI EDULJI SHET v. COLLECTOR OF TANNA. (1867) 11 M. I. A. 295 = 10 W. R. P. C. 13 = 2 Sar. 292.

Evidence of Notification by lessor to officers of property leased setting out terms Value of.

The question was whether a lease for a term of 7 years granted by the appellant terminated with the death of the original lessee, or survived, during the remainder of the term, to his heirs and representatives. The lease was not in writing, but the terms of the agreement appeared from a notification addressed by the appellant to all the native officers of the pergunnah leased.

should discharge those burthens in the ordinary way by Held that such an acknowledgment coming from the appellant was, as against him, conclusive evidence of the

Terms of-(Contd.)

terms of the agreement (272). (Dr. Lushington.) MAHA-RAJAH TEJ CHUND BAHADOOR 2. SREE KANTH GHOSE. (1844) 3 M. I. A. 261=6 W. R. 48 P. C.=1 Suth. 152= 1 Sar. 278.

-Express terms-Custom if can control.

In a case in which a lessee under a written lease hased his right to cut timber upon a custom, held quaere whether any evidence of custom could be allowed to control the express stipulations in the lease-deed (314). (Lord Cairns.) RUTTONJI EDULJI SHET v. COLLECTOR OF TANNA. (1867) 11 M. I. A. 295 = 10 W. R. P. C. 13 = 2 Sar. 292.

#### Terminable lease.

-Meaning of. See BENGAL ACTS-RENT ACT OF 1859-S. 15-APPLICABILITY.

(1867) 11 M. I. A. 433 (467).

Transfer of.

-See Lease (1) Assignment of & (2) Lease for TERM-SUB-LEASE, FTC.

Trees on land demised.

 Lessee's right to. See LEASE—LESSEE—TREES. Void in certain events-Proviso in lease making it. -Voidable when means. See STATUTE-DISABLING (1864) 10 M. I. A. 123 (145-6.) STATUTE. Void or Voidable lease.

An ex facie regular lease, followed by possession, and impeachable only upon extrinsic grounds, is, as between the parties to it, not void, but voidable (296). (Lord Shate.) ALARIE JOSEPH SEGUIN 2. ANNA THERESA BOYLE.

(1922) 31 M. L. T. 289 (P. C.)

## Voidable lease-Avoidance of.

-Election to treat, as valid-Conduct amounting to-Receipt by party entitled to avoid of rent due under lease if. See HINDU LAW-WIDOW-LEASE BY-INVALID (1897) 24 I. A. 164 = 25 C. 1. LEASE.

-Lessor's right of.

Where the lessees under a voidable lease are willing to continue in possession and to comply with its stipulations, it is the privilege of the lessor to determine whether they shall be permitted to do so or not (296). (Lord Shaw.) ALARIE JOSEPH SEGUIN P. ANNA THERESA BOYLE. (1922) 31 M. L. T. 289 (P. C.)

-Lessor's right of-Lapse of time-Change of lessee's position on faith of lease-Effect-Maxim. Kes non Surut

integrae-Applicability.

It may be added upon the question of the voidability of the lease that the present would be a singularly clear case in which such voidability would not even be open to the Crown (lessor) itself. Res non surut integrae. It seems perfectly plain that the lease not being itself void, but voidable on just cause shown by the lessor, any attempt by the Crown brought to declare it void, and brought twenty years after possession had been taken, after payment of rent and royalties had been made, and after great expenditure upon the subject of the lease by the lesser, such an attempt could not be successfully maintained (297). (Lord Shate.) ALARIE JOSEPH SEGUIN D. ANNA THERESA BOYLE. (1922) 31 M.L.T. 289 (P.C.).

-Persons other than lessor-Right of.

Where a lease is merely voidable, the title of the person seeking to avoid it is not a general one in the public, and such a title is not in fact extended to any one except (1) those who are in contract relations; or (2) those who have, by convention between those who are so, a title to challenge; or (3) those upon whom by statute a right of challenge is conferred (297). (Lord Shaw.) ALARIE JOSEPH SEGUIN v. ANNA THERESA BOYLE. (1922) 31 M.L.T. 289 (P.C.) Condition as to calamities has been granted as a mokurraree

LEASE -(Contd.)

Year of letting.

-Bengali year or year commencing from date of

In September, 1862, S took over a then existing tenancy of an estate; and on November 10, 1862, he gave to the Deputy Collector a kabuliyat which, so far as is material, was as follows:-"This deed of kabuliyat is executed by S to the following effect: That I have got a permanent mourasi patta in respect of lands measuring . . . . acknow-ledging as yearly rent thereof at Company's Rs. 20-12 annas 4 pies. I shall pay the rent year by year. Accordingly on receiving a patta I execute this Kabuliyat. November 10,

Held, on a construction of the kabuliyat, that the letting was for the Bengali year, and not, as the High Court had held, a yearly letting from November 10. (Sir John Edge.) MAHOMED SOLAIMAN 2. BIRENDRA CHANDRA SINGH.

(1922) 50 I.A. 247 (252 3) - 50 C. 243 (249 50) = 32 M.L.T. 115 - 27 C.W.N. 749 = 37 C.L J. 561 = A. I. R. 1922 P.C. 405 = 74 I.C. 906 - 44 M.L.J. 388.

Zemindar.

CHUR LAND WITHIN ZEMINDARY-IJARA SETTLE-MENT OF.

ILLEGITIMATE DAUGHTER-MOCURRARY LEASE TO-ESTATE CONVEYED UNDER.

MAL VILLAGES IN ZEMINDARY - LEASE OF.

MOCURRARY ISTIMBARI LEASE CARVED OUT OF ZEMINDARY-DEATH OF LESSEE WITHOUT HEIRS-ESCHEAT.

MOCURRARY LEASE-LESSEE UNDER-MINERALS. MCCURRARY LEASE IN PERPETUITY AT VIXED RENT BY-PROOF OF-ONUS.

MOFFUSIL PATNI TALUQ LEASE. ACCORDING TO PRO-VISIONS OF REGULATION VIII OF 1819-ESTATE CONVEYED UNDER.

PUTNI LEASE BY - LESSEE UNDER-MINERALS. POTTAH GRANTED BY-ESTATE CONVEYED UNDER.

RECLAMATION LEASE OF LANDS WITHIN ZEMINDARY GRANTED IMMEDIATELY AFTER DECENNIAL SET-TLEMENT- MOCURRARY ISTIMRARI TENURE IF CREATED BY.

VILLAGES IN ZEMINDARY.

WIFE-LEASE TO-ESTATE CONVEYED UNDER.

CHUR LAND WITHIN ZEMINDARY—IJARA SETTLEMENT OF.

-Occupancy right-Ijaradar's right to. See BENGAL ACTS-RENT ACT X OF 1859-S. 6.

(1920: 48 I.A. 49 (56) = 48 C. 460.

ILLEGITIMATE DAUGHTER-MOCURRARY LEASE TO -ESTATE CONVEYED UNDER.

-Generation to generation-Meaning and Effect.

A Hindu Zemindar, having an illegitimate family by a Mahomedan lady domiciled in his house, executed a mokurraree pottah of a mouzah belonging to his Zemindary in the name of one of the infant daughters of that family, S, reserving to himself a certain rent charge out of the same. The

grant was in these terms :-

"Whereas the mouzah aforesaid original with dependency on a uniform annual jumma of Rs. 301 Sicca from 1248 Fuslee, with the 'malwajhat' all kinds of grain, the fisheries, forests, tanks, fountains, ponds, the 'khod kosht' lands, the barren and productive trees, and all the appurtenances thereto, excepting the Zemindary, 'Salamee' (presents) the Bishen Barab, Sheopereet Neyaz Durgah (torn in the original) lands, the abkaree, palmjuice go-downs; the cost of embankment, assistance for the construction of houses and brickbuilt and mud walls, the village expenses being all borne by the mokurrarcedar in all without any objection.

Zemindar-(Contd.)

ILLEGITIMATE DAUGHTER— MOKURRARY LEASE TO—ESTATE CONVEYED UNDER—(Contd.)

lease from generation to generation. It is required that considering yourself the fixed mokurrarectar of the mouzah aforesaid, you shall make proper cultivation and regularly pay the mokurraree rent year after year, crop after crop, and instalment after instalment into my treasury. The gain or loss shall be yours. You shall not bring any objection as to drought, inundation, hail, and other calamities of the soil and the seasons. You shall make such settlements and use such exertions as will increase the cultivation more than before. You shall further give strict injunction to your amlah and lessees that they do not allow thieves and highway robbers to reside within their boundaries, and (form in the original). Hence these few words are executed as a mokurraree pottah from generation to generation, that it may be of use when required."

Held that the grant was clearly intended to create an absolute and hereditary mokarraree tenure, inasmuch as it contained the essential words "generation, to generation" which in documents of that kind had always been considered

to have that effect (97).

Their Lordships do not find in the particular document any special terms which would distinguish it from a grant of an ordinary mokkurraree istimraree tenure (97-8). (Sir James W. Colvile.) RANEE SONET KOWAR P. MIRZA HIMMUT BAHADOOR. (1876) 3 I.A. 92—

1 C. 391 (398) = 25 W.R. 239 = 3 Sar. 608 = 3 Suth. 258 = 11 M.J. 149.

MAL VILLAGES IN ZEMINDARI—LEASE OF.
—Grantee under—Minerals—Right to. See MINERALS
—LEASE—ZEMINDARI—MAL VILLAGES IN.

(1910) 37 I.A. 136 = 37 C. 723.

MOKURRARY ISTAMBARY LEASE CARVED OUT OF ZEMINDARY—DEATH OF LESSEE WITHOUT HEIRS—

#### ESCHEAT.

—Right of, of Zemindar and of Government. Scr ESCHEAT—ZEMINDAR. (1876) 3 I.A. 92=1 C, 391. MOKURRARY LEASE—LESSEE UNDER—MINERALS. —Right to. Sc. MINERALS—LEASE—ZEMINDAR—MOKURRARY LEASE BY.

# MOKURRAREE LEASE IN PERPETUITY AT FIXED RENT BY—PROOF OF—ONUS.

----Suit by Zemindar to recover lands alleging terminable leases found to be false.

Plaintiff, a Zemindar, sued to recover possession of certain lands appertaining to his Zemindary from the defendants. The plaintiff's case was that the defendants held under a ticca lease from 1851 to 1860, and that, consequently, after the expiration of the lease they had wrongfully held on. The defendants set up an old mokurruree grant under which they claimed to hold in perpetuity upon the payment of a fixed rent of Rs. 13 per annum.

Held that the onus of proof of a mokurruree grant lay entirely upon the defendants, that they were not relieved from that burden of proof even if the plaintiff had failed to prove the kabuliyats, set up by him and that on the evidence the High Court had rightly decided that the defendants had made

out their case.

The grant itself, though perhaps not proved in the most satisfactory manner, still purported to be an ancient grant and came from the proper custody. It is to a certain extent verified by the other evidence in the case, by the evidence which the defendants gave of long-continued possession, carrying that possession back a great deal further than the plaintiff had admitted, in fact, to the time of the grant itself and even beyond it; and further, by the proof that the an-

LEASE-(Contd.)

Zemindar-(Contd.)

MOKURRARY LEASE IN PERPETUITY AT FIXED KENT BY-PROOF OF-ONUS-(Contd.)

cestors of the defendants were relations of the ancestors of the plaintiff; and that other grants of the same description had been made to other members of the family (254). TE-KAETNEE GOURA COOMAREE v. MUSSAMAT SAROO COOMAREE. (1873) 19 W. B. 252=2 Suth. 806.

MOFFUSIL PATNI TALUQ LEASE ACCORDING TO THE PROVISIONS OF REGULATION VIII OF 1819— ESTATE CONVEYED UNDER.

---Property in the soil-Leasehold interest only-Word'
"Including all interests therein" in lease-Meaning and
effect of.

Under the terms of a putni lease granted by the predecessor-in-title of the plaintiff, a Zemindar, eight tarafs, with the exception of the grantor's Brahmottar and other Lakhiraj properties, constituting the entire Zemindary, including all interests therein, and Julkar, Bankar, Fulkar, Beels and Thik, were settled with the 1st defendant's predecessor, at the annual jama of Rs. 11,000, exclusive of certain charges and expenses therein specified; a premium of Rs. 11,000 was paid in respect of the lease. The grant to the lessee was described as a "Muffasil Patni Taluk lease according to the provisions of Regulation VIII of 1819".

The lease provided for the payment of the rental by certain specified instalments, and that, on breach of the instalments, the Zemindar should, according to the provisions of Regulation VIII of 1819, realise by attachment and sale of the putni interest the arrears, together with interest for de-fault of instalment and costs. It contained further provision that in the event of non-realisation of the said rents, interest and costs by the sale of the putni interest, the same might be realised by the sale of the lessee's moveable and immoveable properties. The lease contained the following clause :- "I shall not cut the trees myself, nor shall allow anybody else to cut them. In the case of cutting down trees other than timber trees and non-fruit-bearing trees. I shall give you information beforehand, and, on obtaining a letter, shall cut them down. And without a sanad signed by you. I shall not excavate a tank myself, nor shall permit anybody else to do so". The lease provided that the lessee should possess and enjoy the patni mahal down to sons and son's sons, etc., on payment of the rents thereof.

Held that, on the true construction of the lease, (1) there was no transfer of the property in the soil and the intention of the parties was that the grantee should be a leaseholder only, and (2) the grantee had no right to use the lands leased for making bricks and causing substantial damage thereto.

The expression "including all interests therein" in the lease does not increase the corpus of the subject of the lease. (Sir Lancelot Sanderson.) RAJAH BEJOY SINGH DUDHORIA F. SURENDRA NARAYAN SINGH. (1928) 55 I. A. 320=48 C. L. J. 268=111 I. C. 345=(1928) M. W. N. 841=

33 C. W. N. 7 = 26 A. L. J. 1233 = 28 L. W. 855 = A. I. B. 1928 PC 234 = 56 C. 1 = 55 M. L. J. 456,

PUTNI LEASE-LESSEE UNDER-MINERALS.

PUTNI LEASE BY—LESSEE UNDER.

POTTAH GRANTED BY—ESTATE CONVEYED UNDER.

—Permanent tenure—Estate for life—Estate pur autre

zie. See Lease—Estate conveyed under—PermaNENT TENURE. (1875) 24 W. B. 176.

RECLAMATION LEASE OF LANDS WITHIN ZEMINDARY GRANTED IMMEDIATELY AFTER DECENNIAL SETTLEMENT—MOKURRARY ISTIMRARI TENURE IF

Zemindar-(Contd.)

RECLAMATION LEASE OF LANDS WITHIN ZEMIN-DARY GRANTED IMMEDIATELY AFTER DECENNIAL SETTLEMENT-MOKURRARY ISTIMRARI TENURE IF CREATED BY-(Contd.)

Zemindary had been completed, but before that Settlement had been declared perpetual, the then Zemindar granted lands within the Zemindary to .1, at an annual rent, under a Poltah, which ran as follows:-"Inasmuch as, in accordance with your application, the lands of the villages in the said forests have been assessed with a rental of 101 rupees, everything being consolidated, and a Pottak granted to you, it is required that you will in all confidence have the lands of the said forests occupied by Purbutter and other Ryots, and keep paying to the Sircar the rent year by year, according to this Pottah; and whenever you may be summoned for the purpose of hunting, you will attend accompanied by all the Purbutte-

Held that, on the true construction of the Pottah, it could not, taken by itself, be held to have granted a Mecurrary-is-

timrary tenure (463).

It does not contain the term "Mocurrery", or any equivalent words from which an obligation on the part of the grantor never to raise the rent is fairly to be inferred; nor does it contain the expression "from generation to generation" or other like words importing that the tenure, whether the rent was to be fixed or variable, was to be hereditary. Again, it is not probable that the Zemindar would, immediately after the completion of the Decennial Settlement, grant a perpetual tenure at a fixed rent, except upon special grounds and adequate consideration, of which there is no proof. Further, the transaction on the face of it a grant of lands partly cultivated but chiefly waste, with the object on the part of the grantee, of bringing the latter into cultivation; and if, on the one hand, it is improbable that the grantee should undertake such an obligation without some fixity of tenure, and some assured and permanent interest in the lands, it is, on the other hand, equally improbable that the grantor should part for ever with all his interest in the improvable value of his lands (464-5). (Sir Richard Kindersley.) BABOO DHUN-PUT SINGH P. GOOMAN SINGH. (1867) 11 M.I.A. 433-9 W. . R P. C. 3 = 2 Suth. 92 = 2 Sar. 309.

## VILLAGES IN ZEMINDARY.

-Lease of-Payments made to village officers by lessee under-Release by Government of Zeminolar's liability for -Benefit of -Right to-Zemindar's or lesse's-Peisheush

payable by Zemindar raised in consequence.

In 1894, the Raja of Ramnad granted a lease of certain villages appertaining to his estate to the defendant. In 1894, the state of affairs was this. The grain on the estates was all brought to the granary. It was then divided. The cultivating tenants got 52 p.c. of the grain. That left 48 p.c. undisposed of. Of this, 9 p.c. was appropriated to pay the village officers, and 3 p c. was appropriated for various charities. That left 36 p.c. which the Raja kept for his own use In 1911 the Government relieved the Raja from the charge of paying the village officers. They, however, raised the peishcush payable by the Raja obviously on the assumption that the Zemindar was the person who benefited by the relief afforded. The question for decision was whether, on the true construction of the lease-deed (the materials portion of the lease is set out in their Lordship's judgment) the Raja or the defendant was entitled to the amount which prior to 1911 had been handed over to the village officers.

Held, reversing the High Court, that the Raja and not the

defendant was entitled to the said amount.

The High Court thought that the case was analogous to cases where, a conveyance having been made of lands under to the Zemindar. The appellant's case was that the lease, certain bardens, if from any extraneous cause the burdens under which the respondent held was a terminable lease,

LEASE-(Contd.)

Zemindar-(Contd.)

VILLAGES IN ZEMINDARY—(Contd.)

disappear, the benefit accrues to the grantee of the lands and not to the grantor. Their Lordships do not read the lease in this sense. They have come to the conclusion that the 9 p.c. was not conveyed to the Cowledar, that the ac facto handing over of the grain by him was really done ad hor as an agent for the Zemindar, and therefore the claim of the Cowledar to have a proprietary right in the 9 p.c. under a personal obligation to pay the village officers, is quite unfounded in the circumstances. (Viscount Dunedin.) RAJA OF RAMNAD P. (1927) 29 Bom. L. R. 1400= MUTHANAN SERVAL

104 I. C. 337 = 39 M. L. T. 258 - 46 C. L. J. 231 = (1927) M. W. N. 713 = A. I. B. 1927 P.C. 206 = 53 M. L. J. 289.

-Mocurrarytenure in-Plea of, in Zemintar's suit for possession thereof-Onus of Proof of.

A Zemindar has as such a prima facic title to the gross collections from all the mouzahs within his Zemindary, and it lies upon the party seeking to defeat that right to prove

the grant of an intermediate tenure.

Appellant, a Zemindar, sued inter alia, to recover possession of two mourahs forming part of his Zemindary "in reversal of an allegation of Mocurrary, and proceedings of the Deputy-Collector and Collector," alleging that he had made over the suit villages, or their produce, to M, the predecessor in interest of the defendants, "in lieu of allowance," for his rendering service, and that subsequently he (appellant) discharged M from his service for bad faith whereupon his tenure determined. The defendants pleaded that M held the villages under a Moccurery (i.e. an hereditary tenure at a fixed rent) granted by the appellant as a reward for past services.

Held, that the onus lay upon the defendants to prove that they held the suit villages under a perpetual and hereditary tenure at a fixed rent and they could not rely upon the defects in the appellant's case (331-2). (Sir James W. Colvile.) RAJAH SAHIR PERHLAD SEIN 7. DOORGA (1869) 12 M. I. A. 286 = PERSHAD TEWAREE. 12 W. B. P. C. 6-2 B. L. R. P. C. 111-2 Suth. 225= 2 Sar. 430.

-Perpetual lease of-Claim to-Onus of proof in case of .

The respondent's suit was to establish a claim to hold in perpetuity, at a fixed rent, certain villages forming part of the appellant's Zemindary. The appellants denied that the respondent held the villages in question under a perpetual lease, and alleged that the deeds produced by the respondent in support of his claim were forgeries, and that he really held them under terminable leases, which had in fact terminated.

Held, that the onus was on the respondent, who was the laintiff, to prove his case (332). (Lord Kingsdown.) VENCATASWARA VETTIAPAH NAICKER P. ALAGOO MCOTTOO SERVAGAREN. (1861) 8 M. I. A. 327 = MCOTTOO SERVAGAREN. 4 W. R. 73-1 Suth. 440-1 Sar. 788.

-In a suit brought by the respondent to establish a claim to hold in perpetuity, at a fixed rent, certain villages forming part of the appellant's Zemindary, the respondent's case was that in order to secure certain antecedent rights of his ancestors, without disturbing the grant of the Zemindary to the appellant's ancestor, an agreement was made in the year 1805, between the respondent's ancestor and the then Zemindar, by which it was settled that the respondent's ancestor and his descendants should hold the suit villages on a Cuttoogootaga lease, or, in other words, should hold them in perpetuity at a low fixed rent payable

Zemindar-(Contd.)

VILLAGES IN ZEMINDARY-(Confi.)

which had in fact terminated.

Meld, affirming the Coarts below, that the respondent had established his case, (Lord Kingadoson.) VECATASWARA VETTIAPAH NAICKER 2. ALAGOO MOOTTOO SERVAGAREN. (1861) 8 M. I. A. 327 4 W. R. 73 = 1 Suth. 440 - 1 Sar. 788.

WIFE--LEASE TO-ESTATE CONVEYED UNDER.

Lease to tofe and her heirs or to teife and her son, lease ceasing to operate in event of son predeceasing her.

A Zemindar granted an ijara, dated 17th February, 1843, of villages situated within his Zemindari for a hundred and twenty five years to his wife // in these words:—' The ijara is granted to you for the performance of poors acts. At present you have a son, f, and if other sons or another son be horn, and if during the term of the ijara you die, then they will in equal shares enjoy the profits down to the end of the ijara."

J died in 1883 and his mother II died in 1884. But J

left a son, A.

The question was whether, on the true construction of the ijara, it was a grant to H and her sons, not being intended for the benefit of any heirs more distant than those specified, and when J died and H died, it ceased to operate, or, whether the ijara was to H and her heirs.

Held, affirming the High Court, that, on the true construction of the ijara, it was a grant to H and her heirs,

In their judgment the High Court say :- "There is nothing in the lease which would go to show that it was the intention of the grantor to limit it to a shorter period. In this case it seems to us that the reference to the sons was made in order to indicate that the ijara was not to come to an end on the death of H. Even if these words were not used, the lease, under its terms, would have descended to the heirs of II, but it was probably thought necessary to make that point clear; and in order to make it clear the last condition, that the ijara should continue to the benefit of the son or sons of H, was inserted." In this case the widow had no daughters, and it is stated that the only issue was the son who was named. The High Court have put the proper construction upon the document (Sir Rarnes Potosk) GOBIND LAL ROY D. HEMENDRA NARAIN ROY CHOWDHRY. (1889) 17 C. 686-5 Sar. 497. Zurpeshgi lease.

- Claim under-Onus of proof of Defendants anction-purchasers of mortgaged property subsequent to lease-Delay in suing.

Plaintiff sued in 1886 for a decree for payment of primipal and interest and realisation of the decree by sale, or, in the alternative, for possession of the property claiming title under a Zurpeshgi lease of 1874. The respondents-defendants were persons who had "purchased the mortgaged property at auction on account of a debt contracted subsequent to the plaintiff's lien." Admittedly the plaintiff never got pussession under the suit lease nor any sums due thereunder.

Held, that it was incumbent on the plaintiff in a contest with the respondents to give satisfactory proof of the truth and reality of the original transaction, and some reasonable explanation of the delay in suing (523). (Lord Macnaghten.) GOSSAIN DALMIR PURI v. MOONSHI GOPI NATH.

(1893) Bald. 521.

Lessee under-Right and title of-Execution sale of -Decree on lease for possession and mesne profits-Lessee's right to mesne profits under-Execution purchaser's right to-Decree on lease neither attached nor sold.

A, who had on 23-12 1851 obt: ined a Zur-i-pe-sphee mortgage of certain properties, including mouzah K, obtained

LEASE-(Contd.)

Zurpeshgi lease-(Contd.)

on 2nd June, 1860 a decree against B for the recovery of possession of the said Mouzah K included in his Zur-i-peshgee lease and of the amount of mesne profits from fusli 1262 to the date of recovery of possession. Prior, however, to any proceedings taken to execute this decree, A's interest in the Zur-i-peshgee lease was attached and sold on 7-12-1874 in execution of a simple money decree obtained against him. The sale certificate described the property sold as "the right and title" (of the judgment debtor) "under the deed of Zur-i-peshgee lease, dated 23-12-1851 in respect of 15 mouzahs," including mouzah K. On an application by 4 to execute the decree dated 2nd June 1860 so far as related to the recovery of the mesne profits awarded by it, held that the right to the said mesne profits up to 7-12-1874 did not pass to the purchaser at the execution sale held on that date and that A was entitled to execute the decree so far as related to such profits.

The decree obtained by A was not sold, and presumably was not attached; what was sold is that which appears on the certificate, namely, the right and title under the Zur-i.peshgee deed, and the right of the judgment-debtor is declared to have become extinct only from 7-12-1874. This being all that was sold, their Lordships think that the right to the mesne profits under the decree dated 2.6-1860 was not the subject of sale. It was no more the subject of sale than any profits of the estate which the mortgagee had received prior to that sale would have been. The title to the mesne profits is derived from the decree. The defendants in that suit were wrong doers, and the action was brought by the mortgagee against them as wrong doers. The right to the mesne profits, therefore, depends wholly upon the decree; and if the decree had been sold, the purchaser, as assignee of the decree, would, no doubt, have been entitled to them. But what was actually sold was the existing rights of the judgment-debtor under the Zur-i-peshgee lease. (Sir Montague Smith.) GUNESH LAL TEWAREE v. SHAM NARAIN.

(1880) 6 C. 213 = 6 C. L. B. 533 = 3 Suth. 773 = 4 Sar. 161.

Possession and mesne profits on—Decree for—Execution sale of right and title of lessee under lease—Mesne profits due under decree if passes under—Decree not attached or sold. See EXECUTION SALE—PURCHASER AT—RIGHT OF—ZUR-I-PESHGI LEASE. (1880) 6 C. 213. LEGAL ORIGIN.

Presumption of. See GRANT-LOST GRANT-PRESUMPTION OF.

——See also Possession—Long and Quiet Posses-Sion—Lawful title for.

LEGAL PERSONAL REPRESENTATIVE.

—-Meaning of. See STATUTE 6TH OF GEO. IV. C. 85—S. 5. (1846) 3 M. I. A. 435 (445).

—Negligence—Death caused by—Damages for—Legal representative—Right to sue of. See NEGLIGENCE—DEATH CAUSED BY. (1922) 32 M. L. T. 205 (207) P.O.

#### LEGAL PRACTITIONER.

ABANDONMENT OF QUESTION OF FACT BY.
ADMISSION BY.

APPEAL.

APPOINTMENT OF—SUPREME COURT OF BOMBAY.
ARBITRATION—CONSENT TO.

ATTORNEY-SOLICITOR-ADMISSION OF-SUPREME

COURT OF BOMBAY-POWER OF.

ATTORNEY—SUSPENSION OR REMOVAL OF. AUTHORITIES—CITATION OF

BARRISTER—BRIEF HANDED OVER AT FIXED FEE BY ANOTHER BARRISTER TO.

CLERK-ACTS OF-RESPONSIBILITY FOR.

COMPROMISE BY.

CONSENT UNDER MISTAKE OF FACT-URDER MADE

CONTEMPT OF CIVIL COURT.

CONTESTING PARTIES-EMPLOYMENT OF SAME PRAC-TITIONER BY.

CONTRACT NOT TO PRACTISE FOR A TIME.

CRIMINAL CHARGE AGAINST.

EMINENT COUNSEL-PLEA NOT TAKEN IN NUMBER OF CASES BY.

EVIDENCE OF -ADMISSIBILITY.

EXAMINATION AS WITNESS OF -NECESSITY.

EXECUTION APPLICATION—PRESENTATION OF.

FEES TO BE ALLOWED TO.

FRAUD OR WANT OF FAIR DEALING-IMPUTATION TOWARDS ANOTHER PARTY OF.

HOPELESS CASE-WITHDRAWAL FROM.

ISSUE-ABANDONMENT OF-POWER OF.

JUDGMENT-DEBTOR - PRACTITIONER FOR-TRANS FER OF DECREE OBTAINED BY, BENAMI IN NAME OF HIS OWN WIFE-SALE IN EXECUTION OF.

LOCAL VISIT-SUGGESTION BY COURT OF-CONSENT TO.

MISCONDUCT.

NOTICE TO-EFFECT ON CLIENT OF.

PARTNERSHIP WITH FELLOW PRACTITIONER.

PRIVY COUNCIL APPEAL.

PURDANASHIN-PRACTITIONER EMPLOYED BY.

SOLICITOR UNDERTAKING CAUSE-DUTY OF.

SUB-POENAS-ALTERATION OF.

VAKIL-ADMISSION OF, TO PRACTISE BEFORE PRIVE COUNCIL AS AGENT.

## Abandonment of question of fact by.

-Effect on client of-Appeal-Client if can rely up-

on point in.

In a suit instituted by the appellants, the three sons of S. deceased, claiming through their father as heirs of one 6 (on the death of his widow) to recover possession of the suit property forming G's estate, the plaintiffs had, at the hearing, examined several witnesses and given in evidence several pedigrees which, in the opinion of the Subordinate Judge, proved that G and S were descended from one common ancestor, were only seven degrees removed from that ancestor, and that the plaintiffs were, through S, heirs of G. A decree was accordingly made in favour of the plaintiffs-

On appeal by the defendant, the Court below dismissed the plaintiff's suit, observing in its judgment, "The oral evidence to prove the pedigree in the plaint is thus, in my opinion, of as little value as the documentary evidence on which the plaintiffs relied, and at the hearing of the appeal practically no attempt was made to support the finding of the Subordinate Judge. The only contention was that, accepting the pedigree filed by the appellant," (defendant)

"the plaintiffs are heirs of G."

Held, in the circumstances of the case, that the plaintiffs were not by the statement quoted above in the judgment of the Court below estopped from endeavouring to sustain on the appeal to the Privy Council the finding of the Subordinate Judge. (Lord Alkinson). KALKA PARSHAD v. (1908) 35 I.A. 166 (172-3)= MATHURA PARSHAD.

30 A. 510 (521-2) = 4 M.L.T. 380 = 13 C.W.N. 1= 8 C.L.J. 447=10 Bom. L.B. 1088=5 A.L.J. 701= 11 O.C. 362=1 I. C. 175-18 M. L. J. 424.

#### Admission by.

-Binding character against client of - Admission made with due authority.

The admission and consent of a vakil made with due authority will bind his client though not present at the time

#### LEGAL PRACTITIONER-(Contd.)

Admission by-(Contd.)

of making it. Otherwise, it would not be safe to see any Agent or Counsel, without letting the parties themselves appear in the most trifling matter. The Court must in all such cases see the parties themselves, if they are not to be bound by their Agents (258 9). N.B .- The admission in this case related to the amount of mesne profits. (Lord Broagham). KAJUNDER NARAIN RAE :: BIJOY GOVIND SING. (1839) 2 M. I. A. 253=1 Sar. 253.

-Law-Erroncous admission on point of -Effect.

An erroneous admission of counsel on a point of law is not binding on his client, and does not preclude him from

claiming his legal rights.

In this case the appellant's counsel admitted before the High Court that the mere receipt of rent from a person holding land under a pottah which is void, and not merely voidable, against the person receiving operates in law as a confirmation of the pottah. Their Lordships held that this admission was erroneous in point of law and did not preclude the appellant's counsel on appeal to their Lordships from asserting the correct position of law. (Lord Davey). MAHARANI BENI PERSHAD KOERI DUDH NATH ROY.

(1899) 26 I. A. 216 (221) = 27 C. 156 (162-3) = 4 C. W. N. 274=7 Sar. 580.

-Recital in indement as to - Appeal questioning

correctness of -Maintainability-Conditions.

Where in a case in which the judgment of the High Court recited an admission by the appellant's pleader vitally affecting the appellant, the appellant failed to call the attention of the Judges to the matter while it was still fresh in their minds, and questioned the correctness of the recital in his appeal to the Privy Council solely on the strength of the amdavit of a person who said that he was present at the trial, that he would certainly have noticed any such admission, that such admission was not made, and that the appellant's pleader was, owing to the lapse of time, unable to recall whether he made the admission or not, held that, after such a lapse of time, that was wholly insufficient (529-30). (Lord Buckmaster.) MADHU SUDAN CHOWDHRI E. CHANDRABATI CHOWDHRAIN. (1917) 42 I.C. 527= 21 C.W.N. 897=(1917) M.W.N. 518=6 L. W. 437.

-Recital mistaken in judgment as to-Duty of aggricool party in case of.

Where the judgment of the High Court recited an admission by the appellant's pleader vitally affecting the appellant, held that it was the duty of the appellant, if the recital was mistaken, to cause his pleader to call the attention of the High Court to such mistake, while the matter was still fresh in the minds of the Judges (529-30). (Lord Buckmaster.) MADHU SUDAN CHOWDHRI v. CHANDRABATI (1917) 42 I.C. 527 = 21 C.W.N. 897 = CHOWDHRAIN. (1917) M. W. N 518 = 6 L. W. 437

#### Appeal.

- Agreement restraining right of -V alidity as against died of.

In this case it appeared that, in consideration of the High Court deciding the appeal before them upon one point only that is, the validity of the Mookternamah, the counsel for the appellant stated to that Court that he would not appeal from the decision as to the validity of the Mookternamah. The result of that agreement was this, and a very important result to the parties, that by obtaining the decision upon the validity of the Mookternamah alone, the case became a case not decided against B, the party in whose right the appellant was suing. If the case had been heard by the High Court, and upon appeal the merits had been gone into. and the whole matter determined upon as in a suit by B and others, B and the persons claiming under him would not

Appeal-(Contd.)

have been precluded from appealing to the Privy Council. but might, on the other hand, have had two successive decisions against them upon questions of fact going to the merits of the case. But confining it to the decision upon the Mookternamah, it was really substituting a non-suit for an adverse verdict, leaving it open to B and the appellant himself, if he could get a new and genuine document in his favour, to bring a fresh suit.

Heli that it was clearly a valid agreement on the part of

Counsel not to appeal (207).

There was really very good and sufficient consideration for such an agreement on the part of Counsel, as part of the conduct of the case (204). (Lord Justice James) MOONSHEE AMEER ALL P. MAHARANEE INDERHIL (1871) 14 M. I. A. 203 - 9 B. L. R 460 = 2 Suth. 479 - 2 Sar. 731.

-Ex parte hearing of-Citation of anthornies in-Duty as to.

Where an appeal is heard exparte it is the duty of counsel to bring to the notice of the Board adverse as well as favourable authorities. (See Lawrence Jonisms.) DEONAN-DAN PRASHAD r. JANKI SINGH. (1916) 44 I.A 33 (34)=

44 C. 573-15 A. L. J. 154-21 C. W. N. 473 = (1917) M. W. N. 255 =

1 Pat. L. W. 234 - 25 C. L. J. 259 = 21 M. L. T. 240 = 5 L. W. 526 = 19 Bom. L. R. 410 = 39 I. C. 346 = 32 M. L. J. 206.

## Appointment of -Supreme Court of Bombay.

-Authority of, to regulate appointment of its even practitioners-Restriction of by Charter and Letters Patent constituting that Court-Validity.

It is not said that the Charter and Letters Patent constituting the Supreme Court at Bombay could not restrict the authority of that Court to regulate the appointment of its own practitioners, whatever it may be, for that would be a proposition utterly untenable (439). (Dr. Lushington.) MORGAN & LEECH. (1841) 2 M. I. A. 428 =

3 Moo. P. C. 368 = 2 Suth. 428 = 1 Sar. 215

## Arbitration-Consent to.

-Binding nature of, on client. See ARBITRATION-CONSENT TO-LEGAL PRACTITIONER.

(1859) 7 M. I. A. 441 (473-4).

Attorney or Solicitor-Admission of-Supreme Court of Bombay-Power of.

-Charter and Letter of 1823-Rule made under-Validity- Conditions.

On 13-11-1834, the Supreme Court at Bomhay made and published an order providing for the admission as an Attorney or Solicitor of any person who should produce a certificate of his having served a regular clerkship of three years to an Attorney or Solicitor of one of the Supreme Courts in India, and also a certificate of his good character and ability signed by the master with whom he should have served his clerkhip in India, and also by one of the principal officers of the Supreme Court at the Presidency where such clerkship should have been served.

Held that the rule was not a valid and legal rule and that the Court had no power to admit as an attorney a person possessing only the qualification specified in it. (Dr. Lushington.) MORGAN v. LEECH.

(1841) 2 M.I.A. 428 = 3 Moo. P. C. 368 = 2 Suth. 428 = 1 Sar. 215.

## Attorney—Suspension or removal of.

-Power of High Courts in India as to.

In this case one of the Judges of the High Court observed

#### LEGAL PRACTITIONER-(Contd.)

Attorney-Suspension or removal of-(Contd.)

it reasonable (even though such a case might not, according to the reports of cases in England, have seemed as yet to have been judicially recognised by the Superior Courts of Westminster as a cause of punishment) remove or suspend from practice an attorney of the Court." (85-6).

Their Lordships observed that they were not aware of such special authority as would authorise the striking of the appellant off the Rolls of the High Court, where such a step would not be sanctioned by the practice of the Courts in England (88). (Lord Justice Wood.) STEWART, In the matter of A. (1868) 1 B. L. R. 55 P. C. ¬ 10 W. R. 43 P. C.

#### Authorities-Citation of.

-Ex parte hearing of appeal-Duty in. See LEGAL PRACTITIONER- APPEAL-Ex parte HEARING OF.

(1916) 44 I. A. 30 (34) = 44 C. 573.

Barrister-Brief handed over at fixed fee by another barrister to.

-Exacting of higher fee from client by former in case of -Mirconduct if a.

When a Barrister hands over his brief to another barrister at a fixed fee, the former does not thereby entirely go out of the case. The handing over of the brief is not tantamount to a transfer of the case to the second barrister, so as to make it exclusively his own case. He merely holds the brief for the first Barrister at the fee agreed upon between them, and he would be guilty of most unprofessional misconduct if he were to take the opportunity, whilst "devilling" for another Barrister, of going behind that Barrister's back and extorting a higher fee from the lay client. (Level Warrington of Clyffe.) MACAULEY P. JUDGES OF THE SUPREME COURT OF SIERRA LEONE.

(1928) 28 L. W. 958 = 110 I. C. 321 (2)= 97 L. J. P. C 60=5 O. W. N. 805= 29 Cr. L. J. 689 (2) = 29 Punj. L. B. 422= (1928) M. W. N. 431 = A. I. R. 1928 P. C. 264= 55 M. L. J. 296.

#### Clerk of-Acts of-Responsibility for.

Representation of party before Court-Misrepre sentation as to-Responsibility for.

Where a solicitor induced the court and the opposite party to believe that he appeared for a respondent for whom me did not in fact appear and the court was thus led to pronounce judgment against that respondent in the belief that

he was represented, the Judicial Committee held that, whatever might have been the solicitor's personal knowledge of the proceedings he was responsible for the acts of his clerks, and could not be acquitted of, to say the least, gross care lessness in allowing the appeal to be conducted as it was PERTAB (1/5). (Sir James Celvile.) MAHARAJAH NARAIN SINGH P. MAHAKANEE SUBRAU KOER Ex parts, TRILOKIANATH. (1878) 5 I. A. 171 = 4 C. 184 (187-8)

3 Sar. 840 = 3 Suth. 553.

Client.

-Compromise by, under mistake or ignorance of rights-Correction of mistake, though not expressly asked -Duty as regards.

A professional man acting for clients, and taking part in onnection with the execution of a compromise directly arising out of the matter in which he is employed, is board to warn his clients if they are acting in ignorance of the nature of what they are doing while he is in a position to inform them, or under a mistake as to their rights which be ould correct, even though not expressly asked by them on the subject (226).

The order convicting the appellant was set aside by their "that the powers of the High Court could, if they thought Lordships on the ground that the documents which he had

Client-(Contd.)

attested and in relation to which he was alleged to have been guilty of professional misconduct were shown to be valid and deliberately accepted compromises of conflicting claims to an estate dependent upon an issue of doubtful fact as to its being joint or separate and that in reference to that issue the appellant had not actual or special means of knowledge while the parties were not under any mistake. (Sir Arthur Wilson.) LUBECK, AN ADVOCATE, In re.

(1905) 32 I. A. 217 = 7 Bom. L. R. 891 =

15 M. L. J. 432.

Death of -Informing Court of -Duty as to.

A practitioner who appears for several respondents, one of whom dies before the hearing of the appeal, owes a clear duty to the Court to bring to its notice if he is aware of it the fact that one of the respondents for whom he has entered appearance is dead and no longer represented by him. (Sir John Wallis.) MAHOMED. WAJID ALI KHAN P. (1928) 56 I.A. 80 = 51 A. 267 = PURAN SINGH.

33 C. W. N. 318=49 C. L. J. 141=27 A. L. J. 85= 29 L, W. 423=(1929) M. W. N. 220=114 I C. 601= A. I. B. 1929 P. C. 58 = 56 M.L.J. 304.

-Gift from-Validity of-Onus of proof of. See FIDUCIARY RELATIONSHIP-PERSONS IN-GIFT OB-(1927) A. I R. 1927 P.C. 148 (150). TAINED BY.

-Will of-Benefit under. See UNDER HINDU LAW -WILL-BENEFIT UNDER.

-Will of -Practitioner appointed executor and taking benefit under-Duty of-Independent person to write or prepare will-Duty to see to client having.

In a case in which a Solicitor, who was appointed executor and who received a benefit under a will, was found himself to have written or prepared the will, their Lordships observed:-It would, no doubt, have been more prudent and business-like to have obtained the services of some independent witness who might have been trusted to see that the testator fully understood what he was doing, and to have secured independent evidence that clause 26 in particular (the clause which conferred the benefit on the Solicitor) was called to the testator's attention. Their Lordships must not

be understood as throwing the slightest doubt on the principles laid down in Foulton v. Andrew (L. R. 7 H. L. 448). and other similar cases (163). (Lord Duvey.) BAI GUNGA-(1905) 32 I. A. 142= BAL P. BHUGWANDAS VALJI. 29 B. 530 (563) = 9 C. W. N. 769 =

7 Bom. L R. 854 = 3 A. L. J. 68=8 Sar. 813=15 M. L. J. 271.

#### Compromise by.

ADVOCATE ADMITTED AS SUCH BY APPROPRIATE COURT IN INDIA AND DERIVING HIS GENERAL AUTHORITY FROM BEING BRIEFED IN A SUIT-COMPROMISE OF SUIT BY - IMPLIED AUTHORITY

COUNSEL FOR OTHER SIDE-DECISION OF-AGREE-

MENT TO ABIDE BY. INTERLOCUTORY APPLICATION-PRACTITIONER RE-

TAINED FOR AN. PLEADER-COMPROMISE OF SUIT BY.

PURDANASHIN-PRACTITIONER EMPLOYED BY.

SUIT-COMPROMISE OF.

VAKALATNAMAH OR OTHER EXPRESS WRITTEN AUTHORITY-PRACTITIONER DERIVING HIS AUTHO-RITY FROM.

VAKIL-COMPROMISE OF SUIT BY.

#### LEGAL PRACTITIONER-(Contd.)

Compromise by - (Contd.)

ADVOCATE ADMITTED AS SUCH BY APPROPRIATE COURT IN INDIA AND DERIVING HIS GENERAL. AUTHORITY FROM BEING BRIEFED IN A SUIT-COMPROMISE OF SUIT BY-IMPLIED AUTHORITY AS TO.

Basis and nature of - Not an appenage of other.

The implied authority of Counsel briefed on the trial of a suit to compromise the same is not an appanage of office, a dignity added by the Courts to the status of burrister or advocate-at-law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. (Lord Atken.) SOURENDRA NATH MITRA 7. (1930) 34 C.W N. 453 = TARUBALA DASI.

(1930) A.L.J. 489 - A. I. R. 1930 P.C. 158 = 58 M. L. J. 551.

-Express instructions of elecut to the contrary-Effect

The implied authority of coansel briefed on the trial of a suit to compromise the same can always be counter-manded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the instructions of his client, his remedy is to return his brief. (Lord Atkin.) SOURENDRA NATH (1930) 34 C. W. N. 453= MITRA P. TARUBALA DASI. 1930 A.L. J. 489 - A.I.R. 1930 P.C. 158 - 58 M.L.J. 551.

-Same as that of advocates in England, Scotland, und Ircland-Grounds on which authority implied.

The power to compromise a suit is inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocates of England, Scotland and Ireland, apply in equal measure to India. It is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client, to make possible the duties imposed upon the advocate by his acceptance of the cause of his client. The advocate is to conduct the cause of his client to the utmost of his skill and understanding. He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that; he must make the final decision whether evidence is to be given or not on any question of fact; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise; one point is given up that another may prevall. But in addition to these duties, there is from time to time thrown upon the advocate the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liability. Often the decision must be made at once. If further evidence is called or the advocate has to address the Court the occasion for settlement will vanish. In such circumstances, if the advocate has no authority unless he consults his client, valuable opportunities are lost to the client. On such grounds as these advocates in England, Scotland and Ireland have long been considered to have an implied power to settle a suit in which they have received a brief, Their Lordships are unable to see why the above considerations should not apply to an advocate in India, whose duties to his client in the conduct of a suit in no wise differ from those of advocates in England, Scotland and Ireland. There are no local conditions which make it less desirable for the client to have the full benefit of an advocate's experience and judgment. Their Lordships desire to confine their decision on this point to the case of advocates, whatever their qualifications, admitted as such by the respective appropriate Courts in India, who derive their general authority

Compromise by- (Cond.)

ADVOCATE ADMITTED AS SECH BY APPROPRIATE COURT IN INDIX AND DURINING HIS GENERAL AUTHORITY FROM BLING BRIEFED IN A SUIT—COMPROMISE OF SUIT BY—IMPLIED AUTHORITY AS TO.—(Cond.)

from being briefed in a suit on behalf of a disut. (Lord Atkin.) SOURENDRA NATH MILRA - TARVEALA DASI. (1930) 34 C.W.N. 453 - 1930 A.L.J. 459 = A.I.R. 1930 P.C. 158 - 58 M.L.J. 551.

COUNSEL FOR OTHER SIDE—DECISION OF— AGREEMENT TO ARIDE BY.

- - Express authority for - Normity.

Semble: —Express authority from the client is necessary to entitle counsel to commit the fortunes of his client to the determination of the counsel for the other size. (L-rd Shaw.) JAGATPUT SINGH v. PURAN CHAND NAHATTA. (1944) 26 Bom. L. R. 772—(1924) M. W. N. 646 = 35 M. L. T. 136 = 20 L. W. 571 =

A. I. R. 1924 P. C. 200 = 10 O. & A. L. R. 1011 = 83 I. C. 380 = 47 M. L. J. 136 (143-4).

INTERLOCUTORY APPLICATION—PRACTITIONER RETAINED FOR AN,

--- Compromise of suit by-Power of.

It does not appear to be necessary to decide whether a brief to appear upon an interlocutory application such as this (an application for the appointment of a receiver) could of itself confer authority upon counsel so briefed to sealle the whole action. It is obvious that briefs on some interrocutory applications could not obviously confer such authority. In other applications, and especially in motions for a receiver in a partnership suit, or on motions for an injunction, it has been common practice in this country (England) for counsel to settle the whole suit, but whether they derive their authority solely from the brief on the motion may be open to question.

Held, on a consideration of the whole course of the proceedings and the communications of the parties both with their own counsel and with one another, that it was the intention to place counsel, who had been briefed to appear on behalf of the defendant in a suit and support an interim application filed by her for the appointment of a receiver, in the same position and to arm him with the same authority as though he had received the brief to conduct the entire suit. (Lord Atkin.) SOURENDRA NATH MITRA 2. TARUBALA DASI. (1930) 34 C.W.N. 453.

1930 A.L.J. 489 - A.I.R. 1930 P.C. 158 = 58 M.L.J. 551.

## PLEADER-COMPROMISE OF SUIT BY.

Power of -Special authority - Necessity.

A pleader, who does not hold and has not filed in the suit before the Court his client's general power of-attorney authorizing him generally to compromise suits on behalf of his clients, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his client's vakalatnama giving him authority to compromise the suit before the Court. (Sir John Edge.) SOURINDRA NATH MITRA : HERAMBA NATH BANDO-PADHAYA. (1923) 33 M. L. T. 294 (P. C.) =

L. R. 4 P. C. 133 = (1923) M. W. N. 734 = A.I.B. 1923 P. C. 98 = 84 I. C. 721 = 45 M. L. J. 453 (455-6).

PURDANASHIN-PRACTITIONER EMPLOYED BY.

----Compromise by, See LEGAL PRACTITIONER-PURDANASHIN,

#### LEGAL PRACTITIONER-(Contd.)

Compromise by-(Contd.)

SUIT-COMPROMISE OF.

- Adjustment of, whelly or in part-Lawful compremix effecting-Cener's duty to record, and to pass decree on foot of - C. P. C. 1908, O. 23 R. 3.

In a case in which an advocate who had been briefed on the trial of a suit compromised the same, held that as no injustice of any kind was established, and as it was established that the suit had been adjusted either wholly or in part by a lawful compromise, it was the duty of the Court to record the agreement and pass a decree in accordance therewith. (Lord Atkin.) SOURENDRA NATH MITRA v. TARUBALA DASI. (1930) 34 C.W.N. 453=

1930 A.L.J. 489 = A.I.R. 1930 P.C. 158 = 58 M.L.J. 551.

—Advocate admitted as such by appropriate Court in India and deriving his general authority from being briefed in a suit—Implied authority of. See LEGAL PRACTI TIONER—COMPROMISE BY—ADVOCATE ETC.

——Interlocutory application—Practitioner retained for an—Compromise of suit by—Power of, See LEGAL PRACTITIONER—COMPROMISE BY— INTERLOCUTORY APPLICATION. (1930) 58 M. L. J 551.

——Pleader--Compromise by-Special authority-Necessity. See Legal Practitioner-Compromise By-Pleader. (1923) 45 M. L. J. 453 (455-6).

 Purdanashin—Practioner employed by—Authority of. See LEGAL PRACTITIONER—PURDANASHIN.

—Vakalatnamah or other express written authority— Practitioner deriving his authority from—Power of. Sat LEGAL PRACTITIONER—COMPROMISE BY—VAKALAT-NAMAH ETC.

-Validity of Points to be considered in determining
-Enforcement of compromise by Court-Power and day
as to.

An agreement to compromise a suit must be established by general principles which govern the formation of contracts, though there are special rules governing its enforcement by the Courts which arise out of its intrinsic nature. If the agreement purports to be concluded on behalf of one or both the parties by their respective legal advisers, the first two questions that arise, as on the formation of any contracts by agents, are:—

1. Had the agent, the actual authority of his principal,

express or implied, to conclude the contract?

 If no actual authority, had he ostensible authority so as to bind his principal against the other party, relying on ostensible authority?

An agreement to compromise a suit, however, almost necessarily involves recourse to the further jurisdiction of the Court in which the suit is brought to effectuate the terms of the compromise. And in several cases in English law the Courts have refused to enforce the agreement of compromise where it has been established that the legal adviser had in fact no actual authority to seitle, or acted under some serious misunderstanding, so that to allow the other party to act upon an ostensible authority would be to impose upon the Court an exercise of jurisdiction which would in fact work substantial injustice. Hence there may arise a third question:—

3. Will the Court where the suit is compromised give

effect to the terms agreed?

The questions in issue have, in a case arising in India, to be determined in accordance with the law in India, and it by no means follows that implications of authority which are readily inferred in other countries ought to be established in the conditions which prevail in India. (Lord Alkin.)

SOURENDRA NATH MITRA 7. TARUBALA DASI.

(1930) 34 C.W.N. 453=1930 A.L.J. 489= A.I.B. 1930 P.C. 158=58 M. L. J. 551

Compromise by-(Contd.)

SUIT-COMPROMISE OF-(Conid).

-Vakil-Compromise by-Power-of attorney conferring-What amounts to, See LEGAL PRACTITIONER-COMPROMISE BY-VAKIL.

(1922) 17 L. W. 481 (484).

VAKALATNAMAH OR OTHER EXPRESS WRITTEN AUTHORITY-PRACTITIONER DERIVING HIS AUTHORITY FROM.

-Implied authority of, to compromise.

Quacre. Whether the legal representative in Court of a client deriving his authority from an express written authority, such as a vakalatnama, has implied authority to compromise a suit for the conduct of which he is engaged.

Different considerations may well arise in such cases, and their Lordships express no opinion on the point, (Lord Atkin.) SOURENDRA NATH MITRA P. TARUBALA DASL (1930) 34 C.W.N. 453 = 1930 A.L.J. 489 =

A.I.R. 1930 P.C. 158 = 58 M. L. J. 551.

## VAKIL-COMPROMISE OF SUIT BY.

-Power-of-attorney conferring-What amounts to.

A vakil appointed under a power-of-attorney authorising him to argue the case, to inspect the records, execute documents and deposit and withdraw monies and do all such other acts, the same to be accepted and satisfied as acts done by the party himself, is not endowed with power or authority to compromise the suit he is thus retained to argue. (Lord Atkinson.) SRIMATI SARAT KUMARI DASI P. AMULLYADHAN KUNDH.

(1922) 17 L. W. 481 (484) = A.I.R. 1923 P. C. 13 = 32 M. L. T. (P.C.) 137 = 37 C. L. J. 501 = 25 Bom. L. R. 548 = 72 I C. 632 = (1923) M. W. N. 392.

# Consent under mistake of fact—Order made on.

-Setting aside of-Conditions.

On procsedings taken for setting aside an order marle with the consent of an advocate given under a mistake of fact, held, that serious and substantial injustice to the clients must be shown to result from letting the consent order stand. (Lord Sumner.) JAMNABAI P. FAZALBHOV HEP-(1923) 18 L W. 437 (439)= A.I.B. 1923 P.C. 184 - 33 M.L.T. 376 (P.C.) = TOOLA.

26 Bom. L. B. 189 = 40 C.L.J. 272 = 77 I.C. 355 = 47 M. L. J. 164.

## Contempt of Civil Court.

-Warrant for detention of defendant-Refusal by Civil Court-Obtaining warrant from Criminal Court in

Where a plaintiff who has been refused a warrant for the case of. detention of the defendant by a Civil Court straightway starts a criminal process on the same subject-matter, and, by means of allegations to which the Civil Court attached no credit, obtains his warrant from a different Court, almost as a matter of course, he undoubtedly runs several risks of a serious character. He is not however, restricted by law to a single form of remedy. He may pursue all the legal remedies appropriate to his grievance, and his conduct does not necessarily involve any punishable contempt of the Civil Court, whatever may be its other consequences (Lord Robson.) In the matter of TAYLOR. (1912) 16 C. W. N. 386 = 9 A. L. J. 676 =

16 C. L. J. 639 = 14 Bom. L. B. 471 = 12 M. L. T. 106 = (1912) M. W. N. 683 = 13 Cr. L. J. 440 = 15 I. C. 72 = 23 M. L J. 194 (198).

### LEGAL PRACTITIONER-(Contd.)

Contesting parties-Employment of same practitioner by.

Propriety.

The worst and most dangerous of all economies is the employment of the same solicitor by all the contesting parties (343). (Lord Atkinson.) SACHINDRA NATH ROY v. MAHARAJ BAHADUR SINGH. (1921) 48 I. A. 335 = 49 C. 203 (212) = L. R. 3 P. C. 174 =

A.I.R. 1922 P. C. 187 = 30 M. L. T. 96= 24 Bom L. R. 659 = (1922) M. W. N. 338 = 4 U. P. L. R. (P. C.) 57 = 74 I. C. 660 = 26 C.W.N. 859.

#### Contract not to practise for a time.

-Validity-Breach of-Injunction restraining Grant of-Practitioner both a barrister and a selicitor-Partnership between such practitioners-Validity.

In Shanghai the two branches of the legal profession (Barrister and Solicitor) are amalgamated. The appellant and the respondent, who were called to the Bar of England, were admitted to practise and practised as duly qualified legal practitioners at Shanghai. They agreed to carry on the practice of law in partnership together. Sometime after, the appellant desired to return to England and executed a deed by which he agreed not to practise at Shanghai for a period of five years in return for a sum of money renouncing all his rights in the said partnership.

On his re-commencing to practise in breach of the agreement, an injunction was issued by the Shanghai Court restraining him from breaking his engagement,

Held that the Court had jurisdiction to so restrain him.

There is no reason why a person who carries on both branches of the profession and is a legal practitioner in Shanghai should not enter into an agreement not to practise for a reasonable time. (Lord Macnaghten.) NOEL CHAR-LES MINCHIN HOME P. JOHN CHARLES EDWARD (1912) 19 I. C. 822 - 17 C. W. N. 215. DOUGLAS.

#### Criminal charge against.

-Charge in nature of-What amounts to-Precision in statement and strictness in proof of-Necessity for-Absence of-Charge when defective by reason of.

Where the charge against a legal practitioner ran as

follows:-"That in suit No 126 of 1926, in the Court of the Sub-Judge, Agra, you made an unfair use of your position as legal adviser of the Agra United Mills, Ltd. and forced the mills to agree to give you a fee of Rs. 12 000. That you did nothing for the mills except file your vakalatnama,

Held that it was framed in vague terms, giving no indication of the real gravamen of the charge.

The charge is in the nature of a criminal charge. It is one which demands precision in statement and strictness in proof. (Lord Tomlin.) ASHARFI LAL v. JUDGES OF THE HIGH COURT OF JUDICATURE AT ALLAHABAD. (1929) 32 Bom. L B. 556 - 34 C.W.N. 432 =

1930 A.L.J. 134 - 7 O.W N. 264 - 1930 Cr. C. 205 = A.I.R. 1930 P.C. 60 - 58 M.L.J. 483.

#### Eminent counsel-Plea not taken in number of cases by.

Maintainability of -Inference as regards.

Where a long series of cases ranging over a long period of time when parties were represented by eminent counsel are decided in a way where, if a plea which was evident had been taken and upheld, the decision would have been the other way, there arises an irresistible conclusion that the plea was not taken because it was felt to be had. (Lord Dunctin.) RAJA BRIJ NARAIN RAI v. MANGLA PRASAD (1923) 51 I.A. 129 (138) = 46 A. 95-21 A. L. J. 934 = 19 L. W. 72 = 33 M.L.T. (P.C.) 457 = 28 C. W. N. 253 = A. I. R. 1924 P. C. 50 =

Eminent counsel-Plea not taken in number of cases by- (Confd.)

(1924 M. W. N. 68 = 1 P.LR. 1924 = 10 O. & A.L.R. 82 26 Bom. L.R. 500 = 5 Pat L.T. 1 = 41 C. L. J. 232 = 2 Pat. L. R. 41 - 11 O. L. J. 107= 77 I. C. 689 = 46 M. L. J. 23.

#### Evidence of - Admissibility.

-Practitioner appearing for party in cause in which his evidence is tendered-Effect. See MALICIOUS PROSE-CUROX-ACHON TUR- EVIDENCE-LIBRAL PROCEE TRINER, ETC. (1909) 14 C. W. N. 86 (93).

## Examination as witness of-Necessity.

- Litigation-Commonise of-Consent of party to-Issue as to. See COMPROMISE SUIT-COMPROMISE OF -CONSENT OF PARTY TO. (1922) 17 L. W. 481 (493).

## Execution application - Presentation of

-Validity-Decree-holder's authorised agent-Pleader appointed by. Sc. C. P. C. of 1908, O. 3 RR. I and 2. .(1921) 48 I. A. 534 = 44 M. 736.

## Fees to be allowed to.

-Appeal only as repards-Right of.

In an appeal from an order awarding mesne profits, the appellants contended that the Court below erred in directing the payment of double fees to the vakils employed in the

Their Lordships held that there was no ground for altering the decision of the court below in that respect observing: " It is a charge which the Court would be disposed to support rather than to after, for this reason, that it could not be made the sole and substantive ground of appeal itself, because it comes under the head of costs; undoubtedly, if there is a good ground of appeal independently of that point, the Court will take it into consideration; it is part of the costs of defending the title in fact" (200). (Lord Brougham.) RAJUNDER NARAIN RAI v. BIJAI GOVIND SING. (1839) 2 M. I. A. 253-1 Sar 253

-Preliminary point-Dismissal of suit on--Reversal in appeal of -Crois awarded on-Pleader's fee recoverable under-Decree dismissing suit ultimately awarding to defendant costs of suit generally. S.v. COSTS-PRELIMIN-ARY POINT. (1883) 10 I. A. 113 (117) = 9 C. 797.

## Fraud or want of fair dealing - Imputation towards another party of.

Propriety of

When counsel feel no doubt as to the hopelessness of the case of their client, and when it is perfectly clear that there can be but one judgment in the matter, and more especially when the case cannot be maintained, except by imputing fraud or the want of fair dealing towards another party, counsel are bound to withdraw from the case (242). (Lord Chilmsford.) RAJAH BURODACANT ROY :: COM-MISSIONER OF THE SOONDERBUNS.

(1868) 12 M. I. A. 242 2 Sar. 419. Hopeless case-Withdrawal from

-Duty as to

It is undoubtedly the duty of Counsel as long as any reasonable doubt exists upon which they may ask for the judgment of the Court, to maintain the case of their client; but when they feel no doubt, and when it is perfectly clear that there can be but one judgment in the matter, and more especially when the case cannot be maintained, except by imputing fraud or the want of fair dealing towards another party, counsel are bound to withdraw from the case. (Lord Chelmsford.) RAJAH BURODACANT ROY :. THE COMMISSIONER OF THE SOONDERBUNS.

(1868) 12 M. I. A. 242 - 2 Sar. 419.

#### LEGAL PRACTITIONER-(Contd.)

Issue-Abandonment of-Power of.

Impartibility of citate by family custom-Issue as

A vakil's general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press. So held, where the issue abandoned was as to the impartibility by family custom of a Zemindary partition of which was sought in the suit. (Sir Andrew Scoble.) RAJA BOMMADEVARA VENKATA NARA-SIMHA NAIDU v. RAJA BOMMADEVARA BHASHYAKARLU (1902) 29 I.A. 76 (79-80) = 25 M. 367 (377)= 6 C.W.N. 641 = 4 Bom. L.R. 543 = 8 Sar. 258.

Judgment debtor-Practitioner for-Transfer of decree obtained by, benami in name of his own wife Sale in execution of.

-Leave to wife to bid at-Grant of-Propriety. See C.P. C. OF 1908, O. 21. R. 72-PLEADER OF JUDGMENT-DERTOR, ETC. (1923) 51 I. A. 24 (27-8)=51 C. 299.

-Purchase by wife at, after obtaining leave to bid-Validity of transfer and of purchase-Leave to bid obtained and purchase made without disclosing fact of her being mere binamidar.

A person, who had acted as pleader for the mortgagors in a suit to enforce the mortgage, obtained a transfer of the decree therein benami in the name of his wife. Thereafter, he allowed his wife to get leave to bid, without informing the court that she was a mere benamidar for himself, and then to purchase the property at the execution sale. At the time of the said sale the pleader had long ceased to be pleader, the mortgagors were represented by other pleaders, and there was no suggestion that any knowledge he had obtained while he acted as pleader was in any way conducive to his action in buying the property through his wife at the execution

In a suit by the mortgagors for declarations of the invalidity of the transfer of the decree and of the execution parchase, hild, that the pleader's obtaining a transfer of the decree benami in the name of his wife vitiated the transfer of the decree, and that his allowing her to obtain leave to nid, without disclosing the fact that he was the real transferee of the decree, and then to purchase, vitiated the sale also.

Had the purchase at the execution sale been open and above board by the pleader the result might, in the circums tances of the case, have been different. (Lord Dunedin.) NAGENDRABALA DASI r. DINANATH MAHISH.

(1923) 51 I.A. 24 - 51 C. 299 = A.I.R. 1924 P.C. 34= (1924) M.W.N. 155 = 22 A.L.J. 177 = 19 L.W. 349 = 33 M.L.T 472=10 O. & A.L.R. 408= 26 Bom L.R. 515=2 Pat. L.R. 96=29 C.W N. 491= 81 I.C. 752 = 46 M.L J. 532.

Local visit-Suggestion by court of-Consent to.

-Scope and effect of -Decision of case based on impression formed by Court from such visit and without considering evidence in the case-Propriety. See APPEAL -LOCAL VISIT. (1907) 34 I.A. 115 (124)= 31 B. 361 (392).

#### Misconduct.

ACTS AMOUNTING OR NOT AMOUNTING TO. ALLAHABAD LETTERS PATENT.

BRIBERY-ADVICE TO CLIENT TO HAVE RECOURSE

CHARGE OF PROBABILITIES OF CASE CONSIDERA-TION OF, BY JUDGES OF FACT.

CRIMINAL OFFENCE-CONVICTION OF-REMOVAL FROM ROLL ON GROUND OF.

DEED.

Misconduct-(Contd.)

FIRST INQUIRY INTO-MATTERS COMING TO KNOW-LEDGE OF COURT ON-CHARGES NEW ON BASIS OF.

PUNISHMENT FOR.

REPRESSION OF-INDIAN COURT'S POWER OF-WEAKENING OF.

SUBORDINATE COURTS.

SUSPENSION (OR REMOVAL) FROM PRACTICE ON GROUND OF.

ACTS AMOUNTING OR NOT AMOUNTING TO.

Barrister to whom brief handed over by another barrister at fixed fee-Extorting of higher fee from client by. See LEGAL PRACTITIONER—PARRISTER.

(1928) 55 M. L. J. 296.

-Bribery-Advice to client to have recourse to. Scr. LEGAL PRACTITIONER—MISCONDUCT—BRIBERY.

-Cheating client out of subject-matter of suit and

obtaining it himself.

There can hardly be any misconduct on the part of a legal practitioner more serious than the use of the position in which be stands to his client to the disadvantage of the

client and the advantage of himself.

Where, in a case in which a legal practitioner took advantage of his position of trust in order to cheat his client out of the subject-matter of the suit, and obtain it for himself, the Court below made an order suspending him from practice for three years, held, that the order went as far in the direction of mercy as it could go. (Sir Arthur Wilson.) CHANDA SINGH, In the matter of

(1910) 14 C. W. N. 521 - 11 C. L. J. 438 -7 M. L. T. 412 = 6 I.C. 269 - 12 Bom L.R. 425 11 Cr. L. J. 303 = (1910) M. W. N 107 = 10 P.W R.(1915) Cr. = 20 M. L. J. 447.

Criminal offence-Conviction of, See LEGAL PRAC-TITIONER-MISCONDUCT-CRIMINAL OFFENCE.

-Deed-Conduct in regard to. See LEGAL PRACTI-TIONER-MISCONDUCT-DEED.

-Exclusive retainer in favour of one party - Acceptance of brief from his opponent during continuance of-Acceptance of brief after first determining retainer-Effect.

Appellant, a pleader, was standing counsel of the Agra Mills, Ltd, for over six years under an agreement not to give advice or to conduct cases against the Mills, and obtained an increment to his retainer on the express undertaking that he would not appear for Messrs. John, who were the trustees for the debenture-hobiers in the said Mills. At a time when his exclusive retainer in favour of the Company was still running, appellant made himself responsible for the filing of the plaint in the said debenture holder's suit and accepted a brief from the plaintiffs in that suit.

Held that, in doing so, appellant acted in violation not only of the principles which govern the conduct of a legal adviser, but of the ordinary principles of good faith as between man and man, and that his conduct was irregular in form and improper in substance, and was " grossly improper conduct in the discharge of his professional duty" within the

meaning of S. 13 of the Legal Practitioners Act. Appellant's conduct would not have been justified in the circumstances of the present case even if the retainer had been first determined. (Lord Tomlin.) ASHARFI LAL to. JUDGES OF THE HIGH COURT OF JUDICATURE AT ALLAHABAD. (1929) 32 Bom. L R. 556 = 34 C. W. N. 432 = 1930 A. L. J. 134 = 7 O. W N. 264 = 1930 Cr. C. 205 = A.I.B. 1930 P.C. 60 = 58 M. L. J. 483.

Fraudulent act-Irregular conduct-Distinction-

Liability in two cases.

If the High Court had found upon sufficient evidence that the appellant, a barrister, had advised Mrs S, his client, to

## LEGAL PRACTITIONER-(Contd.)

Misconduct-(Contd.)

ACTS AMOUNTING OR NOT AMOUNTING TO-(Contd.)

make the indorsements on the Bills as Administratrix, knowing that she had no title, or a doubtful title, to obtain the grant of letters of administration, for which an application was then pending, their Lordships would have felt the sentence upon the appellant ought to be confirmed. But the finding of the High Court negatives that knowledge; and upon this finding of the High Court, their Lordships feel that, although in this matter the appellant has been guilty of a grave irregularity, which, in their opinion, is well deserving of censure, he has been acquitted of having acted with the malus animus which is a necessary ingredient in every fraudulent act, and, therefore, that his conduct, though censurable, does not bear the character which the heavy sentence passed upon him would stamp upon it (287-8). (Sir James II', Colvile.) NEWTON :. JUDGES OF THE HIGH COURT, NORTH WESTERN PROVINCES.

(1871) 14 M.I A. 267 = 10 B. L. R. 88 = 17 W. R. (P C.) 35 = 2 Suth. 505 = 3 Sar. 15.

-Improprieties grave which Court cannot overlook-Suspension for-Propriety.

Where the evidence showed that, in his professional capaity, the appellant, a legal practitioner, was guilty of grave improprieties which the Court could not overlook when the matter was regularly brought under its notice, held, that such conflact amounted to " reasonable cause " for suspending a certificated pleader within the meaning of S. 13 of the Act XVIII of 1879. (Lord Watson.) QUARRY, In re.

(1890) 17 I. A. 199 = 13 A. 93 = 10 A. W. N. 231 = 5 Sar. 638.

-Libel on judget-Publication of, in necespaper of which practitioner both editor and publisher-Attempt by him to vindicate professional conduct in court-Suspension from practice for-Distinction between capacity of editor and of adswate-Propriety.

The petitioner, an Advocate of the High Court of Allahahad, published an article in a periodical of which he was both the editor and publisher. The article was a libel re-flecting not only upon Richards, J. before whom petitioner conducted a criminal case and with whom he had an altercation therein, but other judges of the High Court in their jedicial capacity and in reference to their conduct in the discharge of their public duties. The question was whether the publication of such alibel constituted "reasonable cause" within the meaning of S. 8 of the Letters Patent for the suspension of the petitioner from practice under the powers conferred by the Letters Patent.

Held that it did (45),

Having regard to the fact that in this case a contempt of Court was undoubtedly committed by an advocate in a matter concerning himself personally in his professional character, their Lordships agree that there was "reasonable cause" for the order suspending the petitioner from practice (45)

Held further that, as the whole controversy arose from the mishehaviour of the petitioner as an advocate conducting a case before the Court, and the contempt of which he was properly found guilty was committed in the attempt to vindicate his professional conduct in a publication for which he was solely responsible, the petitioner could not object to the order of suspension by drawing a distinction between "his capacity as an advocate and his capacity as an editor" (45-6). (Sir Andrew Scoble.) S. B. SARBADHICARY, In re.

(1906) 34 I. A. 41 = 29 A. 95 = 2 M. L. T. 1 = 5 C. L. J. 130 = 11 C. W. N. 273 = 9 Bom. L. R. 9 = 4 A. L. J. 34 = 5 Cr. L. J. 152 = 9 Sar. 173 = 17 M. L. J. 74.

Misconduct-(Contd.)

ACTS AMOUNTING OR NOT AMOUNTING TO-(Cant. I).

-Litigation subsequent relating to or arising out of prior litigation-Appearance for opponent in.

It is improper for a legal practitioner who has asted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute. Such conduct is, to say the least of it, open to misconception, and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation. This is a matter which concerns the honour of the profession (240). (Sir John Edgy.) MARY LILIAN HIRA DEVI D. KUNWAR DIGBIJAI SINGH.

(1917) 42 I. C. 236 = 21 C. W. N. 1137 = 1917 M. W. N. 636-7 L. W. 133.

--- Lean application drafted on behalf of client-Misstatement as to purpose of loan in.

The gist of the offence imputed to the appellant, a Barrister, in respect of this transaction was reduced to this, erathat he, knowing that a portion of the moneys to be received by his client from a creditor. Firm was to be employed in payment of his fees, drafted for his client a letter calculated to induce the firm to believe that that advance was sought for a different purpose. As a matter of fact the creditor Firm declined to advance the loon; and there was no complaint whatever on the part of any person concerning that letter.

Held, that the drafting of the letter could not be taken to constitute such grave professional misconduct as would justify any part of the severe sentence passed against the appellant (283).

The appellant's client did want money for the purposes stated in the letter. Such an application does not imply any undertaking that the money if advanced is to be earmarked; is not to be mixed with the general funds of the debtor; and that no part of it is to be withdrawn, even temporarily, and applied to a purpose other than the one stated (283). (Sir James W. Celvile.) NEWTON :. JUDGES OF THE HIGH COURT, NORTH-EASTERN PROVINCES.

(1871) 14 M I. A. 267 = 10 B. L. R. 88 = 17 W. R. (P. C.) 35 = 2 Suth. 505 = 3 Sar. 15.

-Negligent management of practitioner's own office-Failure to apply client's money for purpose for which it

Under Rule 95 of the Appellate Side Rules of the Madras High Court, pleaders are responsible to the Registrar fer all translation and printing charges incurred by him on their behalf under those rules. To that extent a vakil must cooperate in the conduct of the suit wifh the Registrar and with the Court under those regulations (192).

Vakils have the other general function, applicable not only to the Bar in general, but to solicitors at large, that they must in the conduct of all suits entrusted to them, cooperate with the Court in the orderly and pure administra-

tion of justice (192-3).

Where a vakil was negligent in the management of the appeal entrusted to him and of his client's affairs which caused the procedure of the Court to be the very opposite, of what such procedure should be, ziz., first responsible, secondly, orderly, and thirdly, pure, i.e., in not seeing that the client's money that was duly received by him was paid by his clerks into the Court in proper time for the printing of the records, and that they properly represented matters relating to the case to the client, held affirming the decision of the High Court that there was reasonable cause for the suspension of the vakil for a period of six months under section 10 of the Letters Patent even though the vakil himself be acquitted of direct and personal fraud in the case. (Lord Shaw). KRISHNASAMI AIYAR, In re.

#### LEGAL PRACTITIONER-(Contd.)

Misconduct-(Conta.)

ACTS AMOUNTING OR NOT AMOUNTING TO-(Contd.) (1912) 39 I. A. 191 = 35 M. 543 = 12 M. L. T. 396 = (1912) M. W. N. 963=16 C. W. N. 1081= 13 Cr. L. J. 680 = 14 Bom. L. R. 1079=

16 C. L. J.634 = 16 I. C. 328 = 23 M. L. J. 114.

-Soliciting work for remuneration.

A Vakil of the High Court signed and sent a letter to another vakil of that Court, who practised in the District Courts subordinate thereto. The purport of the letter, which was one of several printed forms prepared for circulation to vakils practising in the mofussil, was to the effect that the vakil to whom it was addressed could easily send his client's cases, "civil and criminal" to the writer who would conduct them in that Court, and "as a remuneration," the fees paid by the clients would be shared between the writer and the vakil who would send the cases. Held, concurring in the view of the High Court, that the letter was within S. 36 of the Legal Practitioners Act, 1879 (198). (Lord Merris). PARBATI CHARAN CHATTERJI, In re.

(1895) 22 I. A. 193=17 A. 498 (510)=6 Sar. 635. Tax unpopular - Payment of Organised resistance to. S. 13, sub-S. (f) of the Legal Practitioners Act of 1879 is not confined to acts done in a professional capacity.

Petitioner, a pleader, was bound over by a Sub-Divisional Magistrate to keep the peace for a period of one year, and that order was confirmed by the District Magistrate and by the Court of the Judicial Commissioner. The offence which he had committed was connected with an agitation against payment of the Mahar Baluta, and it appeared that in the course of such agitation he did not confine himself to protests, however vehement, against the tax, or against its injustire, but that he urged an organized resistance to payment, and attempted to establish a system which would have impeded and might have defeated its recovery with grave danger to public peace. These considerations led to his being convicted as above referred to. He was also directed by the Court of the Judicial Commissioner to appear before that Court to show cause why he should not be dealt with under S. 13 of the Legal Practitioners Act. On enquiry, that court cancelled petitioner's sanad until such time as the petitioner would satisfy by his future conduct that he was fit for readmission.

Held that the circumstances set out above were sufficient to found jurisdiction under S. 13, sub-S. (/) of the Legal Practitioners Act, and that no leave to appeal ought to be granted in the case. (Lord Buckmatter,) SHANKER GANESH DAHIR D. SECRETARY OF STATE FOR INDIA.

(1922) 49 I. A. 319 = 49 C. 845 = 31 M. L. T. 192 (P.C.) = A.I.R. 1922 P. C. 351 = 18 N. L. R. 176 = 37 C. L. J. 136 = 25 Bom. L. R. 131 = 27 C. W. N. 343 = 69 I. C. 367 = L. R. 4 P. C. 36 = 18 L. W. 59= (1923) M. W. N. 528 = 44 M. L. J. 32.

#### ALLAHABAD LETTERS PATENT.

-Ss. 7 and 8-Member of English bar admitted at advocate of High Court-Misconduct of-Jurisdiction of High Court to deal with.

Held that a member of the English bar who had been admitted as an advocate of the High Court of Judicature at Allahabad became thereupon subject to the disciplinary jurisdiction of that Court, and that that Court had jurisdiction, under Ss. 7 and 8 of the Letters Patent, and the rules framed thereunder, to deal with him for allegged misconduct (43). (Sir Andrew Scoble.) S. B. SARBABHICARY, In re. (1906) 34 I. A. 41 = 29 A. 95 (106) =

2 M. L. T. 1=5 C. L. J. 130=11 C. W. N. 273= 9 Bom. L. R. 9=4 A. L. J. 34=5 Cr. L. J. 152= 9 Sar. 173=17 M. L. J. 74.

Misconduct-(Contd.)

ALLAHABAD LETTERS PATENT-(Contd.)

-S. 8-Reasonable cause within meaning of-What

Their Lordships will not attempt to give a definition of "reasonable cause" or to lay down any rule for the interpretation of S. 8 of the Letters Patent (Allahabad) in this respect. Every case must depend on its own circumstances. It is obvious that the intention of the Crown was to give a wide discretion to the High Court in India in regard to the exercise of this disciplinary authority. The rules of the Court, framed under that section, indicate the precautions taken by the Court itself to secure that the powers shall not be used capriciously or oppressively, and there is no reason to apprehend that the just independence of the Ear runs any risk of being impaired by its exercise. On the other hand, it is essential to the proper administration of justice that unwarrantable altacks should not be made with impunity upon judges in their public capacity (45). (Sir Andrea Scoble). S. B. SARBADHICARY, In re.

(1906) 34 I, A. 41 = 29 A. 95 = 2 M. L. T. 1 = 5 C. L. J. 130 = 11 C W. N. 273 = 9 Bom. L R. 9 = 4 A. L. J. 34 = 5 Cr. L. J. 152 = 9 Sar. 173 = 17 M. L. J. 74.

-S. 8, Rr. 2 and 197 of -Advocate - Misconduct of-Charge of -Bench of High Court competent to deal with.

Rule 197 of the rules framed under S. 8 of the Letters Patent (Allahabad) provides for cases in which the Chief Justice and judges may, for good cause, and without charge or trial, suspend or remove from the roll of the Court any advocate of the Court, and is inapplicable to cases where there is a charge and a trial. Rule 2 of the said rules is the one applicable to cases in which there has been a charge and a trial (43-4). (Sir Andrew Scoble.) S. B. SARBADHI-(1906) 34 I. A. 41 = 29 A. 95 (106 7) = CARY, In re. 2 M. L. T. 1=5 C. L. J. 130=11 C. W. N. 273= 9 Bom. L. R. 9 = 4 A. L. J. 34 = 5 Cr. L. J. 152 = 9 Sar. 173 = 17 M. L. J. 74.

BRIBERY-ADVICE TO CLIENT TO HAVE RECOURSE TO-

Charge of -Proof of -Quantum.

The appellant, a barrister and an advocate, was charged with gross professional misconduct in that, whilst employed as an advocate for the prosecution in an abduction case, he suggested or hinted to the prosecutor that he should bribe an expert witness to induce him to give evidence which would

be favourable to the prosecutor.

There was no direct evidence that the appellant in fact advised the prosecutor to attempt to bribe the expert witness, and the only evidence in support of the charge was the report of the appellant's leader in the abduction case of (1) a hurried conversation lasting some half minute, as to the greater part of which he could not remember the words used, and as to the rest of which the words deposed to were innocent or otherwise according to the context; and (2) a whispered conversation between two barristers in Court, whilst one of them was on his legs examining a witness. Held that such evidence was quite insufficient to support

the grave charge made against the appellant (64). (Lord

Davey.) BOMANJEE COWASJEE In re.

(1906) 34 I. A. 55=34 C. 129 (148)=2 M. L. T. 96= 5 C. L. J. 123 = 11 C. W. N. 370 = 9 Bom. L. R. 3= 5 Or. L. J 50 = 4 L. B. R. 27 = 9 Sar. 188 = 17 M. L. J. 67.

Evidence of-Client's statements to third parties about alleged advice in practitiones' absence—Evidence of those persons as to—Admissibility. See EVIDENCE ACT, (1906) 34 I. A. 55 (63) = 34 C. 129 (147). S. 155 (3).

#### LEGAL PRACTITIONER-(Contd.)

Misconduct-(Contd.)

CHARGE OF-PROBABILITIES OF CASE-CONSIDERATION OF, BY JUDGES OF FACT.

-Permissibility.

In a case in which a barrister and an advocate was charged with gross misconduct in that he advised his client to bribe an expert witness to induce him to give evidence which would be favourable to the client, held, that it was permissible for judges of fact to consider the probabilities, to consider whether, in view of the practitioner's standing and experience, it was probable that he would have given such advice (64). (Lord Datey.) BOMANJEE COWASJEE, In re. (1906) 34 I. A. 55=34 C. 129 (148)=

2 M. L. T. 96-5 C. L. J. 123-11 C. W. N. 370-9 Bom. L. R. 3=5 Cr. L. J. 50=4 L. B. R. 27= 9 Sar. 188 - 17 M. L. J. 67.

CRIMINAL OFFENCE-CONVICTION OF-REMOVAL FROM ROLL ON GROUND OF.

-Order of-Privy Council appeal from-Maintainability. See Under this Very Sub-head.

(1899) 26 I. A. 242 = 22 A. 49.

Proceedings for - Charge or trial - Necessity

An advocate convicted of a criminal offence might properly be suspended or removed from practice under R. 197 of the rules framed under S. 8 of the Letters Patent (Allahabad) without further charge or trial (44). (Sir Andrew Scolle.) S. B. SARBADHICARY, In re.

(1906) 34 I. A. 41 = 29 A. 95 = 2 M. L. T. 1 = 5 C. L. J. 130 = 11 C. W. N. 273 = 9 Bom. L. R. 9 = 4 A. L. J. 34 = 5 Cr. L. J. 152 = 9 Sar. 173 = 17 M. L. J. 74.

-Proceedings for-Inquiry in-Necessity-Questioning of legality of consiction in-Permissibility-Order of removal-Privy Council appeal from-Right of.

A conviction of forgery followed by a sentence of two years' rigorous imprisonment is sufficient without further inquiry to justify the court in removing a vakil from the roll of vakils and cancelling his certificate. In proceedings taken for the purpose of so removing him the vakil is not entitled to go behind the conviction in order to show that he had committed no offence at law.

An appeal does not lie to Her Majesty in Council against an order so removing the vakil as it would be indirectly an appeal from the conviction. (Sir Richard Couch.) RAJEN-(1899) 26 I. A. 242= DRA NATH MUKERJEE, In rr.

22 A. 49 = 3 C. W. N. 736 = 1 Bom. L. R. 708 = 7 Sar. 556.

#### DEED.

-Alteration after execution of -Purpose of alteration honest-Purpose dishonest-Distinction.

The alteration of a deed after execution is never a thing to be lightly regarded. Honesty of purpose without due knowledge of the law will not save it from being in many cases a mischievous act. Where, however, the knowledge is not defective and the purpose is dishonest, the conduct is pessimi exempli (1134). (Lord Sumner.) SOLICITOR, (1922) 31 M. L. T. 107 (P. C.). In the matter of. -Alteration dishonest of, after execution-Punishment for-Quantum of.

A solicitor who altered a deed after its execution with a view to evading the penalty for stamping it out of time held to have been rightly found guilty of dishonesty in a matter of professional conduct. The order of the Court below striking him off the rolls for such conduct held not to be unduly severe in the circumstances of the case. (Lord Sumner.) SOLICITOR, In the matter of

(1922) 31 M. L. T. 107.

-Fact-Deed inconsistent with-Preparation of,

Misconduct -(Contd.)

DEED-(Contd.)

Their Lordships in no way sanstion the propriety of deeds being prepared by solicitors, which on the face of them are inconsistent with fact (88). (Lord Justice Wood.) STE-WART, In the matter of. (1868) 1 B. L. R. 55 (P. C.) = 10 W. R. (P. C.) 43=5 Moo. P. C. (N. S.) 187=

L. R. 2 P.C. 88 = 37 L J P. C. 25 = 16 W. R. 1000 (Eng.)

Recitals untrue-Deed with-Preparation knowingly-Charge of-Onns in case of-Frandulent motive net alleged-Effect.

In a case in which an attorney was charged with misconduct in that he knowingly prepared a conveyance containing untrue recitals of the transaction between the parties thereto, and attested the deed, and a receipt for consideration-money which, to his knowledge, was never paid, or intended to be paid, one of the learned Judges of the High Court observed that it was incumbent upon the attorney to show not merely that it was not certain after all that the act was not an innocent one rather than a fraud, but that he was bound to go farther, and show consincingly that he was in fact acting innocenly in the matter, and with no fraudulent motive or motives of misconduct (85).

Quaere as to the correctness of the view so taken of the solicitor's duty, namely, that of showing coavincingly the

absence of fraudulent motive (87).

Held that when fradulent motive had not been alleged by any complainant, such a rule could scarcely be applied if the explanation offered was not simply incredible (87). (Lord Justice Wood.) STEWART, In the matter of

(1868) 1 B. L. R. 55 (P. C.) - 10 W. R. (P. C.) 43 = 5 Moo. P. C. (N. S.) 187 - L. R. 2 P. C. 88 -37 L. J. P. C. 25 16 W. R. 1000 (Eug).

-Residul untrue-Ded with-Preparation of know ing'y-R.m.; al from roll for-logality of-Intention to defrand-dbiener et.

The appeal was against an order of the High Court of Judicature in Bengal, whereby a rule nin calling upon the appellant to show cause why his name should not be struck off the Roll of Attorneys and Proctors of the Court was made absolute; and it was ordered that his name should be struck off accordingly. The charge alleged against him by the rule nisi was that of misbehaviour in inserting in a deed a false recital, as to the consideration, knowing the same to be false, and in attesting the execution of the deed with such false recital, and also in signing his name as a witness to the receipt of the consideration-money therein mentioned, knowing that no consideration had passed, or was intended to pass

Held, upon the evidence, that the irregularity was wholly unconnected with any intention to defraud, and that the order complained of ought, therefore, to be discharged

Their Lordships are of opinion that the preparation of the deed of conveyance containing an untrue statement of the transaction, and the attesting of the deed and a receipt for consideration money which was never paid, would be circumstances of great, perhaps over powering weight, as evidence of guilty contrivance against a solicitor, cognizant of the actual facts, in the event of such a deed, upon or soon after its execution, being used as an instrument of fraud. They are further of opinion that any solicitor may very properly be called upon by the Court before whom such a deed shall have been produced, to explain the circumstances attending its preparation and execution. But, if this explanation be given, if it be supported by evidence, if no counter-evidence be offered, if no fraudulent use of the instrument complained of has ever been made or attempted. and no person complained of any injury directly or in-

## LEGAL PRACTITIONER-(Contd.)

Misconduct-(Contd.)

DEED-(Contd.)

directly caused by it-we think that, however objectionable the practice may be of permitting, for any reason whatever, a deliberate mis-statement of fact upon the face of a deed, yet such practice, unfortunately, by no means unfrequent, cannot be considered sufficient in itself to warrant the striking of the practitioner off the Rolls (86-7). (Lord Junite Wood.) STEWART, In the matter of.

(1868) 1 B. L. R. (P.C.) 55=10 W. B. (P.C.) 43= 5 Moo. P. C. (N. S.) 187 = L. R. 2 P. C. 88= 37 L. J. P. C. 25 = 16 W. R. 1000 (Eng).

FIRST INQUIRY INTO-MATTERS COMING TO KNOW-LEDGE OF COURT IN-CHARGES NEW ON BASIS OF.

-Framing of on the instant and without further netice-Propriety.

Their Lordships cannot but regret that the learned Judges of the High Court, acting on letters which came to their knowledge in the course of the first inquiry against the appellant, a barrister, should have thought fit, on the instant and without further inquiry, to frame new charges against the appellant, and thus assume the functions of Accuser and Judge. A very strong and clear case may arise, in which such a course would be justified. But the inconvenience of it is great (278). (Sir James W. Colvile.) NEWTON P. JUDGES OF THE HIGH COURT, NORTH-WESTERN PRO-VINCES. (1871) 14 M.I.A. 267=10 B.L.B. 88=

17 W.R. (P.C.) 35 = 2 Suth 505 = 3 Sar. 15. PUNISHMENT FOR.

-Appeal from-Questions in.

In a case in which a legal practitioner has been punished by the Court below for dishonesty in a matter of professional conduct, there are two questions to be considered (1) whether the practitioner was guilty, as the court below found that he was, of dishonesty in a matter of professional conduct ?-this is a pure question of fact; (2) was the course which was taken of striking him off the rolls, one of excessive severity under the circumstances ?-this is a question largely of discretion. Whatever view might be taken on the second, it could not affect the first (112). (Lord Summer.) SOLICITOR, In the motter of a.

(1922) 31 M.L.T. 107 (P.C.)

-Discretion of Court below as to-P C's interference

In a case in which the High Court found that the appellant, a legal practitioner, was guilty of professional miscooduct, they suspended him from office for twelve months. On the Privy Council being asked to inferfere with the quantum of punishment awarded by the High Court, their Lordships declined to interfere, observing :- "It must be borne in mind that the Court which awarded that penalty were in a much better position than this Board to estimate the degree of punishment which, in the whole circumstances of the case, and in the interests of the profession and of the public ought to follow such misconduct on the part of one of its pleaders. Their Lordships cannot, in a case like the present interfere with the decision of the Court below unless it is clearly shown that the quantum of punishment was unreasonable and excessive. They are unable to come to that conclusion." (Lord Watson.) QUARRY, In rt.

(1890) 17 I.A. 199=13 A. 93=10 A.W.N. 231= 5 Sar. 638.

-In this case their Lordships affirmed the order of the Court below striking a solicitor off the rolls for dishonesty in a matter of professional conduct, observing: The question whether the order was one of excessive severity under the circumstances is a question largely of discretion. In the judgments of the court below no haste or even animus is pointed out or even suggested. The case received full con-

Misconduct-(Contd.)

PUNISHMENT FOR-(Contd.)

sideration. The Court did not hesitate to facilitate proceedings in which their conclusion might be reviewed (113). (Lord Sumner.) A SOLICITOR, In the matter of.

(1922) 31 M.L.T. 107 (P.C.)

Elements to be considered-Bona fide belief in lega-

lity of act if one of.

It is not an unimportant element in the consideration of the punishment that should be meted out to a legal practitioner who has violated the provisions of S. 36 of the Legal Practitioners Act of 1879 that he did not wilfully violate the Act but considered that he did not come within it. (Leed Morris.) PARBATI CHARAN CHATTERJI In re.

(1895) 22 I.A. 193 (198) = 17 A. 498 (511) = 6 Sar. 635.

-Small communities without professional organisation-Large communities with such organisations-Cases

of-Distinction.

In an appeal relating to the conduct of a solicitor in such a community as Post of Spain it is necessary for their Lordships to bear in mind how greatly the conditions, under which the Court below exercised its disciplinary functions, differ from those which prevail in this country. A small community is one in which a solicitor is relatively a conspicuous person; in which the professional body is limited in number, and is therefore less able to overbear by the sheer weight of its probity the misdoings of a single member of it. The lay public may require, and certainly will benefit by the steady pressure of authority i | keeping its legal advisers to the line of their duty and the court which exercises that authority, must largely depend on the high standard observed by its officers, not being assisted by the presence of the professional organisation which exists in this country. It is for the judges of the court in the first instance to consider the form in which they ought to assert their disciplinary power over their officers, as it is also to consider the time and the circumstances under which to exercise that power of readmitting a repentent offender. It follows that English analogies are not always closely applicable in such cases, and that their Lordships must strongly rely on the local know-ledge and the judicial discretion of the Court whose order is under appeal (113). (Lord Sumner.) SOLICTIOR, In the (1922) 31 M.L.T. 107 (P.C.) matter of a.

REPRESSION OF-INDIAN COURTS' POWER OF-WEAKENING OF.

-Privy Council's reluctance as to.

Their Lordships are very unwilling to weaken the hands of the Courts of India in repressing professional misconduct and maintaining a high standard of honour amongst those who are admitted to practise before them (288). (Sir James W. Colvile.) NEWTON t. THE JUDGES OF THE HIGH COURT, NORTH-WESTERN PROVINCES.

(1871) 14 M.I.A. 267 = 10 B.L.R. 88 = 17 W.R. (P. C.) 35 = 2 Suth 505 = 3 Sar. 15.

SUBORDINATE COURTS.

-Complaint to High Court by-Inquiry and punishment by High Court on-Power and propriety of.

The District Judge of Allyghur forwarded to the High Court a report of the proceedings in his court on an application made by the appellant, a Barrister, on behalf of one Mrs. S for letters of administration to the estate of her deceased son, imputing improper conduct to the appellant in that matter and submitting to the court whether such conduct was becoming a Barrister. On the receipt of that communication the High Court passed an order, calling upon the appellant to answer the matters stated in the District Judge's letter and report, whereby it had been brought to the notice of the court that the appellant had been guilty of grossly

LEGAL PRACTITIONER-(Contd.)

Misconduct-(Contd.)

SUBORDINATE COURTS--(Contd.)

improper con-luct in the matters referred to by the District Judge.

On appeal to the Privy Council from orders of suspension passed by the High Court in pursuance of the inquiry made on foot of the District Judges' Report and Letter it was objected that the Judges improperly placed themselves in the anomalous position of being at once Accusers and Judges, and that they ought to have committed the conduct of the proceedings against the appellant to some third person. The Judges, however, stated that they had not the means of placing the conduct of the further proceedings in the hands of a third party.

Held that the omission to do so was not a fatal objection

to the subsequent proceedings (278).

Whether the High Court would not have acted more regularly if it had placed the conduct of the further proceedings against the appellant in the hands of a third party, is another question (278). (Sir James W. Colvile.) NEW-TON D. THE JUDGES OF THE HIGH COURT, NORTH-WESTERN PROVINCES. (1871) 14 M.I.A. 267=

10 B.L.R. 88 = 17 W.R. (P.C.) 35 - 2 Suth. 505 =

Jurisdiction to inquire into misconduct of.

If it becomes known to an officer presiding in a Subordinate Court that one of the practitioners before that Court has been guilty of professional conduct, it would be within the scope of his duties to take steps for the purpose of having that matter adjudicated upon. That would properly take place under S. 14 of the Legal Practitioners Act, No. 18 of 1879 (1:7-8). (Sir James Hannen.) SOUTHE-KUL KRISHNA RAO In the matter of,

(1887) 14 I.A. 154 = 15 C. 152 (157).

-Misconduct before-High Court's power to deal with. on report by these Courts.

The High Courts in India exercise poculiar powers of superintendence and control over the Subordinate Courts, and the proceedings therein. It was, their Lordships apprehend, in the regular course of practice that the District Judge should make the report which he did make of the proceedings in his own court; and that he should complain. if he had ground of complaint, to the High Court of the supposed mala praxis of a practitioner over whom he had no direct power; but who, by virtue of being an Advocate on the Rolls of the High Court, had the right of appearing in the Lower Court; and their Lord-hips are of opinion that the High Court was perfectly justified in taking action on that report and complaint by calling upon the appellant to explain his conduct (277-8) (Sir James W. Colvile.) NEWTON P. THE JUDGES OF THE HIGH COURT, NORTH-WESTERN PROVINCES.

(1871) 14 M.I.A. 267 = 10 B.L.R. 88 = 17 W.R. (P.C.) 35=2 Suth. 505=3 Sar. 15.

SUSPENSION (OR REMOVAL) FROM PRACTICE ON GROUND OF,

Opportunity to practitioner to defend himself before -Giving of-Necessity

A legal practitioner cannot be dismissed or suspended under S. 14 of the Legal Practitioners Act of 1879 without his having been allowed, under S. 40 of that Act, an opportunity of defending himself before the authorities suspending or disn.issing him (159.) (Sir James Hannen.) SONTHEKUL KRISHNA RAO, In the matter of.

(1887) 14 I.A. 154 = 15 C. 152 (158).

Order of-Setting aside of-Grounds-Opportunity to practitioner to defend himself-Omission to give-If by itself a ground.

Misconduct-(Contd.)

SUSPENSION (OR REMOVAL) FROM PRACTICE ON GROUND OF-(Cont.)

Where the court below made an order directing that the petitioner a legal practitioner, be struck of the rolls without allowing him an opportunity of defending himself, held, that the order was in that respect irregular, and that it must be set aside, and the petitioner be re-tored to the roll (159). (Sir James Hannen.) SOUTHEKUL KRISHNA RAO. (1887) 14 I.A. 154 = In the matter of.

15 C. 152 (158). -Suspension-Order of -- Prity Council appeal from -Special lower for-Court below acting within its jurisdiction-Order hard on pure finding of fact-Doubt as to correctness of court below-Grant of lowe on more ground

Where the court below acts within its jurisdiction and the order is based on a pure finding of fact, leave will not be granted on the mere ground of there being a doubt about the correctness of the court below. (Sir James H'. Colvile.) QUARRY /u re. (1879) 7 I.A. 6=2 A. 511-4 Sar. 99.

Suspension-Order of - Privy Council appeal from -Special lowe for-Grant of-Application made after

expiry of period of suspension.

Application for special leave to appeal against an order of the High Court suspending petitioner for three months from practising as a vakil. Application made long after the ex-piry of the period of suspension. It appearing that in making the order the High Court acted within its jurisdiction and came to a correct conclusion upon the evidence. held that the fact that the application for special leave was made after the expiry of the period of suspension was in itself some ground for rejecting the application.

If the effect of the order of the High Court had been to inflict upon the character of the appellant a lasting stigma. and there had been a clear miscarriage of justice shown, the fact that the period of suspension had expired would alone have not induced their Lordships to refuse the application for special leave. (Sir James W. Celvile.) QUARRY, In (1879) 7 I.A. 6 = 2 A. 511 = 4 Sar. 99.

## Notice to-Effect on client of.

Mortgage-Power of sale in-Sale in pursuance of-Conditions in-Depreciatory character of-Notice to purchaser of-Solicitor employed to prepare conveyance-Notice to-Effect-Contract of sale concluded before his employment. See MORTGAGE-POWER OF SALE-SALE IN PURSUANCE OF. (1907) 34 I.A. 179 (184-5)= 31 B. 566 (581).

-Mortgage on behalf of elient-Practitioner taking -Infancy of mortgagor-Netice of.

On 20-7-1895 the respondent executed a mortgage in favour of B, a money-lendor carrying on business at Calcutta and elsewhere, to secure the repayment of a sum with interest on some houses belonging to the respondent. At that time the respondent was an infant; and he did not attain the age of majority until the month of September following. Throughout the transaction B was absent from Calcutta, and the whole business was carried through for him by his attorney, K, the money being found by D, the local manager of B. It was found by both the courts below that, when he took the mortgage, A' had notice that the respondent was an infant. Both the courts below held that the knowledge of A' must be imputed to B.

Held that the courts below were obviously right (121),

B was absent from Calcutta, and personally did not take any part in the transaction. It was entirely in charge of A whose full authority to act as he did is not disputed. He stood in the place of B for the purposes of this mortgage;

## LEGAL PRACTITIONER-(Contd.)

Notice to-Effect on client of-(Contd.)

and his acts and knowledge were the acts and knowledge of his principal (121). (Sir Ford North.) MOHORI BIBEE 2. DHURMODAS GHOSE. (1903) 30 I.A. 114= 30 C. 539 (545)=7 C.W.N. 441= 5 Bom.L.R. 421 = 8 Sar. 374.

## Partnership with fellow practitioner.

-Validity. See LEGAL PRACTITIONER-CONTRACT NOT TO PRACTICE FOR A TIME. (1912) 19 I.C. 822.

#### Privy Council Appeal.

-Appellants separate-Counsel two for each set of-Arguments by-Replies separate-Allowance of, owing to conflict of interest. (Lord Campbell.) JEWAJEE 7.
TRIMBUKJEE. (1842) 3 M.I.A. 138 (152)= 6 W.R. P.C. 38 = 1 Suth. 141 = 1 Sar. 257.

-Respondents in same interest-Appearance for, and engagement by-Procedure in case of. WOOMATARA DEBIA F. UNNOPOORNA DASEE.

(1872) 11 Beng.L.R. 158 (170)= 18 W.R. 163 = 2 Suth. 653 = 3 Sar. 144.

## Purdanashin-Practitioner employed by

Authority of lady to compromise of suit by-Proof of-Quantum.

The question was whether a purdanashin lady, who was the defendant in a suit, had authorised the compromise of the suit made by her advocate. It appeared that she was fully and continuously advised upon the whole proceedings by her son in-law and his father. It further appeared that she was kept fully informed throughout of all the various stages of the negotiations, and was fully and intelligently aware that her advocate was clothed with authority to compromise the suit on her behalf, and was in fact exercising his authority in the manner afterwards complained of by

Held, dissenting from the High Court, that the lady must be held to have known and approved the agreement made on her behalf. (Lard Atkin, SOURENDRA NATH MITRA TARUBALA DASI. (1930) 34 C.W.N. 453 at

1930 A.L.J. 489 = A.I.R. 1930 P.C. 158 =

58 M.L.J. 551.

-Authority ordinarily implied in such employment if deemed to be conferred on-Proof of agency-Further inquiry at to-Necesity.

Querre, whether a purdanashim lady who by a free and intelligent act of her own employs a professional agent in a particular transaction is not deemed to confer upon him all the authorities which are ordinarily implied in such employment, so that no further inquiry as to proof of agency is required. (Lord Atkin.) SOURENDRA NATH MITRAT. TARUBALA DASI. (1930) 34 C.W.N. 453=

1930 A.L.J. 489 = A.I.R. 1930 P.C. 158=

58 M.L.J. 551.

-Compromise by-Consultation prior with client-Necestity.

A legal practitioner fails in his duty towards his client, a purdanashin lady, if he compromises the suit in which he acts for her, without ever seeing her, without speaking to her in reference to the compromise, and without having any communication with her touching it. (Lord Atkinson. SKIMATI SARAT KUMARI DASI 7. AMULLYADHAN KUNDU. (1922) 17 L.W. 481 (491)=

A.I.R. 1923 P.C. 13 = 32 M.L.T. (P.C.) 137= 37 C.L.J. 501 = 25 Bom.L.B. 548=

72 I.C. 632=(1923) M.W.N.399.

# LEGAL PRACTITIONER -(Contd.)

# Solicitor undertaking cause—Duty of.

Duty to carry it to conclusion.

It is the duty of a solicitor, who has once undertaken to conduct a cause, to carry it to a conclusion, and he cannot refuse to do that duty by reason of the client not having complied with any application that may have been made to

In an appeal in which .I was solicitor for the appellant, the decree below was reversed, with costs to be paid by the respondent to the appellant. Her Majesty's order was in conformity with the recommendation of the Judicial Committee; but it could not be issued by reason of A's delay in bringing in his bill of costs for the appellant, that bill of costs requiring to be lodged for taxation.

Held that A ought to take prompt measures for completing the order. (Lord Westbury.) A SOLICITOR Sin the (1870) 4 B.L.R. 29 - 2 Sar. 533. matter of.

# Subpoenas-Alteration of.

-Conviction of forgery for-Legality of.

Where a practitioner substitutes for the names in two subpoenas two other names he cannot, in the absence of evidence to defraud or other sinister motive, be convicted of forgery. At the most he should be taken to have committed an irregularity for which some pecuniary penalty on his part was an adequate punishment. (Lord Robson.) TAY-(1912) 16 C.W.N. 386-LOR, In the matter of. 9 A. L. J. 676 = 15 C. L. J. 639 =

14 Bom. L. R. 471 = 12 M. L. T. 106 = (1912) M. W. N. 683=13 Cr. L. J. 440= 15 I. C. 72 = 23 M. L. J. 194 (199).

# Vakil-Admission of, to practise before Privy Council as agent.

-Jurisdiction of Privy Council as to-Vakil not admitted as solicitor in England or in India.

Petitioner was a vakil in the Calcutta High Court, but he had not been admitted as a solicitor anywhere, in England or India. He applied to be admitted as agent to practise in the Privy Council, upon his subscribing the declaration prescribed by the Order of Her Majesty in Council of the 30th of March, 1870, "to be observed by proctors, solicitors, agents, and other persons admitted to practise before Her Majesty's honourable Privy Council.

Held that it was not within the power of the Judicial Committee to admit the petitioner to practise before them

as an agent. The two sections of the said order in council which shewed what is the mode of admission and the classes to be admitted are the second and third; and those only apply either to solicitors or others practising in London, and to solicitors admitted by the High Courts in India or the colonies respectively. The question is whether those sules 2 and 3 are axhaustive of the classes to be admitted, or they only specified what should be done in the case of those two classes, and left an undefined class called "agents", who were to be admitted at the discretion of the committee. Mr. Taylor's case is exactly in point, and it decides that rules 2 and 3 are exhaustive of the classes to be admitted. (Lord Hobhouse.) TWIDALE'S PETITION, In re.

(1888) 16 I. A. 163 = 16 C. 636 = 5 Sar. 336. LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

For all cases see under LEGAL PRACTITIONER.

# LEGAL PRECEDENTS.

(See also DECISIONS.)

-Absence of-Weight due to-Privy Council appeal

in criminal case-Right of-Question as to. The question was whether there existed on behalf of the Crown a prerogative right of appeal even in matters of criminal jurisdiction.

### LEGAL PRECEDENTS -(Contd.)

Their Lordships observed: It is of no small importance to bear in mind that, notwithstanding the numberless instances in which an application for leave to appeal in a criminal case might have been made to the Queen in Council, in no instance whatever, of any grievance, however great, at any time, has any attempt ever been made to apply to Her Majesty for leave to appeal in a criminal case (192-3). (Dr. Lushington.) QUEEN r. JOYKISSEN MOOKERJEE.

(1862) 9 M. I. A. 168-1 W. R. P. C. 13-1 Moo. P. C. (N. S.) 272-1 Suth. 481-1 Sar. 660.

-Absence of in case of common occurrence-Presamption from. See SUIT-RIGHT OF-PRESUMPTION. (1876) 4 I. A. 23 (50) = 2 C. 233 (260-1).

-Decisions-Understanding and application of-Points to be contidered in case of.

To understand and apply a decision of the Board or of any Court it is necessary to see what were the facts of the case in which the decision was given, and what was the point which had to be decided (168). (Str John Edge.)
HARI BAKHSH v. BAHU LAL. (1924) 51 I. A. 163=
5 Lah, 92=22 A. L. J. 254-A. I. R. 1924 P. C. 126=

34 M. L. T. 70 = 28 C. W. N. 953 = 20 L. W. 406 = (1924) M. W. N. 650 = 26 Bom. L. R. 1108 = 10 O. & A. L. R. 1471 - 83 I.C. 918 - 47 M. L. J. 938.

# LEGAL PROCEDURE.

Sor PRACTICE—PROCEDURE.

### LEGAL PROCESS.

-Abuse of-Party responsible for-Liability of, for costs of proceedings though no formal party thereto. See COSTS-SUIT-PERSON NOT PARTY TO.

(1876) 4 I. A. 23 = 2 C. 233.

2 Sar. 202.

-Execution of-Resistance to-Tendency as to-Checking of-Necesity.

It is important in India to check any tendency to resist the execution of legal process (574). (Sir James W. Colvile.) MUDHUN MOHUN DOSS P. GOKUL DOSS.

(1866) 10 M. I. A. 563 = 5 W. R. (P. C.) 91= 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

Misuse of-Consequences of-Responsibility for. It is important to maintain the principle that they who misuse legal process are responsible for the consequences of that misuse (574). (Sir James W. Colvile.) MUDHUN MOHUN DOSS P. GOKUL DOSS. (1866) 10 M. I. A. 563 = 5 W. B. (P. C.) 91 - 1 I. J. N. S. 269 - 1 Suth. 644 -

### LEGAL REFORM.

——Indian Legislature taking lead of English in—No improbability in. See INDIAN LEGISLATURE—LEGAL REFORM. (1916) 43 I. A. 164 (170-1) = 40 B. 630 (637)

### LEGAL REPRESENTATIVE.

APPEAL -PLAINTIFF -APPELLANT - DEATH OF-SUBSTITUTION OF DEFENDANT AS HIS LEGAL REPRESENTATIVE.

APPEAL REVIVED AT INSTANCE OF-SCOPE OF.

DEAD PLAINTIFF-SUIT OF-DISMISSAL FOR DE-FAULT OF-RESTORATION OF, AT INSTANCE OF LEGAL REPRESENTATIVE.

DECREE-WRONG LEGAL REPRESENTATIVE-DECREE PASSED ON IMPLEADING ONLY OF.

DECREE AGAINST.

DEFENDANT DECEASED-LEGAL REPRESENTATIVE

XECUTION SALE-WRONG LEGAL REPRESENTATIVE -SALE-ON IMPLEADING ONLY OF.

HINDU LAW-JOINT FAMILY-FATHER PARTY-DEFENDANT IN SUIT-SON JOINED AS LEGAL REPRESENTATIVE OF-LIABILITY OF.

### LEGAL REPRESENTATIVE-(Contd.)

HINDU LAW—WIDOW—ADOPTION OR ALIENATION BY—PRESUMPTIVE REVERSIONER'S SUIT TO SET ASIDE.

HINDU LAW-WIDOW-SUIT BY, OR AGMINST, ON BEHALL OF ESTATE.

MEANING OF.

OUDH ESTATE ENTERED IN LISTS 2 AND 3 OF ACT I OF 1869—SUCCESSION TO—WINOW CLAIMING UNDER CL. (7) OF S. 22 OF ACT.

PERSON CLAIMING UNDER—BINDING ADJUDICATION AGAINST LEGAL REPRESENTATIVE—TITLE INCON-SISTENT WITH.

PERSON SUED AS—PARTY TO SUIT WITHIN S. 47 OF C. P. C. IF A.

RIGHT LEGAL REPRESENTATIVE — OMISSION TO IMPLEAD.

SEVERAL LEGAL REPRESENTATIVES—SUIT AGAINST. SUCCESSION TO ESTATE—SUIT BY NEARER CLAIMANT RELATING TO—DEATH OF PLAINTIFF PENDING.

TRESPASSER -POSSESSION OF PROPERTY WITH-PERIOD OF -MESNE PROFITS OF.

WRONG LEGAL REPRESENTATIVE-IMPLEADING ONLY OF.

### Appeal—Plaintiff appellant—Death of— Substitution of derendant as his Legal Representative.

Irregularity—Reversal of decree at instance of Legal
Representative on ground of—Substitution on his own application. See PRACTICE—PARTIES — PLAINTIFF-APPEL
LANT—DEATH OF. (1862) 9 M. I. A. 287 (302).

# Appeal revived at instance of-Scope of.

Personal claims of Legal Representative if can be advanced in. See Privy Council.—Appeal.—Revivor OF—Special Leave. (1894) 21 I. A. 163 (169) = 21 C. 997 (1004-5.)

Dead plaintiff—Suit of—Dismissal for default of— Restoration of, at instance of Legal Representative.

Inherent power as to. See C. P. C. OF 1908, O. 9, RR. 8 AND 9—DEAD PLAINTIFF. (1913) 40 I. A. 151 = 35 A 231

# Decree—Wrong Legal Representative—Decree passed on impleading only of.

——Validity against right Legal Representative of. See EXECUTION SALE—LEGAL REPRESENTATIVE.

### Decree against.

-Ands in his hands-Decree against-Nature of-

In a case in which a person was brought on record as the legal representative of a defendant who had died during the pendency of the suit, a decree was passed against the legal representative, which did not provide that he was to be personally liable, but declared that the decretal amount was to be realised by the sale of the property belonging to the deceased defendant and left in possession of the legal representative.

Held that the decree could not be treated as a decree against the estate of the deceased defendant, still less as one against that estate though not in the hands of the legal representative (21-2). (Lerd Phillimpre.) Maharaja of Dharbhanga P. Homeshwar Singh.

(1920) 48 I. A. 17 = (1921) M. W. N. 21 = 13 L. W. 546 = 33 C. L. J. 109 = 19 A. L. J. 26 = 6 Pat. L. J. 132 = 25 C. W. N. 337 = L. B. 2 P. C. 1 = 23 Bom. L. R. 721 = 59 I. C. 636 = 30 M. L. T. 189 =

# LEGAL REPRESENTATIVE -(Contd.)

Decree against-(Contd.)

Form of - Suit brought against deceased revived on his death against Legal Representative.

Where, pending a suit instituted against a person for a debt due from him, he dies and his son is brought on record as his representative, and the suit is revived as against hin, the decree in the suit ought to be against the con in his representative character; the decree in short ought to be against the estate of the father (515).

The decree ought clearly to bind the son only to the extent to which he had either possessed, or neglected to possess, the property of his father (518). (Mr. Pemberton Laigh.) BEEBEE TOKAI SHEROB P. BEGLAR.

(1856) 6 M. I. A. 510=4 W R. P. C. 87= 1 Suth. 259-1 Sar. 577,

- Form of Suit to recover money from out of aucts of deceased in his hands-Decree in.

In a suit to recover money from out of the assets of the deceased debror in the hands of the defendant, his legal representative, held that that the decree should simply declare the defendant's liability in his representative capacity, leaving the measure of his liability to be ascertained in execution proceedings, especially in a case where defendant did not admit possession of assets. The decree should not make the representative personally liable. (Lerd Hobbout.) HODGES v. DELHI & LONDON BANK, LTD.

(1900) 27 I. A. 168 - 23 A. 137 (151) = 5 C. W. N. 1 = 2 Bom. L R. 967 = 7 Sar. 167 = 10 M. L. J. 279.

Nature of Decree against estate of deceased or not-Test.

The decrees in two suits brought by a Rajah against the heirs of one K conclusively established that the large sum decreed was a debt due to the Rajah from the estate of K; that the sons and daughter of K were jointly and severally liable for that amount, but that, if execution were taken against them, they should be entitled to prove, if they could, that the property attached was neither an asset of their father, nor acquired with funds derived from him.

Held that the decree was not the ordinary decree against the estate of a deceased debtor. MAHARANEE INDERJEKT KOONWUR P. MUSSAMUT AMEERONISSA BEGUM.

Nature of—Heir-at-law in possession of property of deceased—Decree directing, to account for property for purpose of being applied for discharge (Albert decree)

pose of being applied for discharge of debts of deceased—
Charge on property if created by. See DECREE—CONSTRUCTION OF - CHARGE ON PROPERTY.

(1878) 5 TA ONLOGO A 4 G 409 (410)

(1878) 5 I.A. 211 (224) =4 C. 402 (410)

-Nature of -Personal decree or decree against audi in his hands - Construction of decree.

In a suit brought against a person for a debt due by him and revived, after his death, against his son and heir, the decree ran as follows:—"The sum which the plaintiff is entitled, therefore, to recover from the defendant (who is the heir) is Rs.......Payment must, therefore, be made by the defendant."

Held that the decree was one which seemed in its terms to imply a personal liability on the part of the son (515-6). (Mr. Pemberton Leigh.) BEEBEE TOKAI SHEROB E. BEGLAR. (1856) 6 M.I.A. 510 = 4 W.B. P.C. 87=

Personal decree—Objection to—Privy Council of peal—Maintainability for first time in.

M. W. N. 21 = 9 A. L. J. 26 = B. 2 P. C. 1 = M. L. T. 189 = 40 M. L. J. 1.

It is said that the decree is erroneous, because they made the party personally responsible, instead of making him responsible only to the amount of assets. But there was no such objection raised in the Court below. When the Zillah Court pronounced its judgment, and the present appellant appealed from it, he never made the objection that the ori-

# LEGAL REPRESENTATIVE-(Contd.)

Decree against-(Contd.)

ginal decree made him personally responsible, but he discussed it solely upon the general principle upon which he has discussed it here, for which he has laid no foundation in point of law; and it is too late now to call upon His Majesty in Council to reverse a decree pronounced 29 years ago, upon the ground that it made the party personally responsible, when he himself, up to that time, had never made any such objection. (Mr. Thomas Erskine.) MAHARAJAH GREES CHUND ROY v. SHUMBOO CHUND ROY.

(1835) 5 W.R. P.C. 98 = 1 Suth. 24 (25) = 1 Sar. 63.

—Suit against legal representative for debt of deceased —Decree imposing personal liability in—Validity—Decree

proper in such a case.

In a suit to recover a sum of money due by a deceased person from his two heirs in possession of his assets, the proper form of the decree to be passed against them is that the plaintiff do recover the whole amount against the defendants as representatives of the deceased, to be paid out of the property of the deceased (141-2). (Six Barnes Peacock.) MUSST. MULLEEKA v. MUSST. JUMEELA.

(1872) Sup. I.A. 135 = 11 B.L.R. 375 = 5 W.R. 23 = 3 Sar. 220 = III O.G. Sup. Vol. 82 = 2 Suth. 766.

# Defendant deceased-Legal Representative of.

\_\_ Defences open to.

Pending a suit to enforce a mortgage, the mortgagor died, and his son, in whose name the mortgaged property steod, was brought on record as his legal representative. The written statement filed by the mortgagor himself did not suggest that the mortgaged property belonged to his son, but dealt with the property as belonging to himself. The son, after he was brought on record, did not complain of the statement filed by his father, and did not set up a title in himself to the mortgaged property.

Held that, as the son was brought before the Court at a period of the suit which enabled him to being forward any claim which he had, he must, if he had intended to set up a title in himself to the property, have done so (277).

When the son became a party he was competent to assert all rights which he had, either in his individual or representative capacity (277). (Mr. Pemberton Leigh.) DOUGLAS v. COLLECTOR OF BENARES.

(1852) 5 M.F.A. 271=1 Suth. 231=1 Sar. 434.

Execution sale—Wrong legal representative—Sale on impleading only of.

Validity against right legal representative of. See EXECUTION SALE—LEGAL REPRESENTATIVE.

Hindu Law—Joint family—Father party defendant in suit—Son joined as legal representative of—Liability of.

—Nature and extent of—Bond by father to Court undertaking to account in execution proceedings for mesne profits not awarded by decree — Son if bound by. See HINDU LAW—JOINT FAMILY—FATHER — PARTY—DEFENDANT IN SUIT. (1875) 2 I.A. 219 (232).

Hindu Law—Widow—Adoption or alienation by— Presumptive reversioner's suit to set aside.

Legal Representative of plaintiff in. See HINDU
LAW-REVERSIONER - PRESUMPTIVE REVERSIONERWIDOW-ADOPTION BY-SUIT TO SET ASIDE-NATURE
OF. (1915) 42 I.A. 125 (131) = 38 M. 406 (413)

# Hindu Law - Widow-Suit by, or against, on behalf of estate.

Legal representative of window in. See HINDU LAW-WIDOW-SUIT BY, OR AGAINST, ON BEHALF OF ESTATE. (1863) 9 M.I.A. 539 (596).

### LEGAL REPRESENTATIVE-(Contd.)

Meaning of.

——-See C.P.C. OF 1908, S. 2 (11)—OBJECT OF. (1915) 42 I. A. 125 (131) = 38 M. 406 (413).

Oudh estate entered in Lists 2 and 3 of Act I of 1869—Succession io-Widow claiming under cl. (7) of S. 22 of Act.

——Suit by, against daughter's son claiming under cl. (4) of that section—Dismissal of—Appeal by widow against—Death of widow pending—Daughter's right to revive and prosecute appeal in case of. Sec. OUDH ESTATES ACT OF 1869, SS. 22 (4), (7) AND (11).

(1894) 21 I.A. 163 (168 9) - 21 C. 997 (1004 5).

Person claiming under—Binding adjudication against legal representative. Title inconsistent with.

-Setting up of -Permissibility.

S mortgaged property standing in the name of his son, G, alleging that he had himself purchased it with his own funds in G's name, and was entitled to it. Pending a suit on the mortgage, S died, and G was brought on record as his legal representative. G did not set up any title in himself to the mortgaged property, and a decree was made in the suit holding the mortgagee's claim to be established, and treating the property as that of S.

Pending the suit on the mortgage, the Collector seized the property as the property of G, who had become a defaulter and debtor to the Government, and sold it in order to

satisfy the demand against G.

In a suit brought by the mortgagee against the Collector claiming to be entitled to have the sale proceeds of the property in the hands of the Government applied in satisfaction of his mortgage debt, held, that it was not competent to the Collector to dispute the title of S to the property in question (296-7).

The Collector claimed under or in right of G, and as against him the mortgage was established upon the estate, as part of S's assets, by the decree in the mortgage suit (297). (Mr. Pemberton Lengh.) DOUGLAS v. COLLECTOR OF BENARES. (1852) 5 M.I.A. 271 = 1 Suth. 231 = 1 Sar. 434.

Person sued as -Party to suit within S. 47 of C. P. C. if a.

Personal liability of—Conditions. See C.P.C. OF 1908, S. 47—PARTY TO SUIT—REPRESENTATIVE CHARACTER. (1872) 11 B.L.R. 149.

Bight legal representative—Omission to implead.

— Decree and sale in execution thereof in case of—
Validity of. Secunder Execution Sale—Legal RePRESENTATIVE.

Several legal representatives—Suit against.

Decree in, apportsoning leability according to portion of assets in hands of each—Validity.

In a suit to recover a sum of money due by a deceased person from his two heirs in possession of his assets,

Held that a decree awarding the demand against the defendants in proportion to their appropriations, and rendering them personally liable to that extent in addition to the charge upon the assets of the deceased was erroneous (141-2).

The defendants were not liable except as representatives of the deceased. As representatives they were liable for the whole debt to the extent of the assets received and not duly administered by them respectively. It is not because an executor or heir has only three-fourths of the assets that he is liable only to three-fourths of the debt. He is liable to pay the whole debt so far as the assets in his hands will go (142). (Sir Barnes Peacock.) MUSSUMAT MULLEKA P. MUSSUMAT JUMEELA. (1872) Sup. I.A. 135 =

11 B.L.R. 375=5 W. R. 23=3 Sar. 220= III O.G. Sup. Vol. 82=2 Suth. 766.

### LEGAL REPRESENTATIVE - (Contd.)

Succession to estate-Suit by nearer claimant relating to-Death of plaintiff pending

Revival and prosecution of-Remoter claimant's right of-Unity of interest between persons in line of succession. See OUDH ESTATES ACT OF 1809, S. 22 (4), (7) AND (11)-ESTATE IN LISTS 2 AND 3.

(1894) 21 I. A. 163 (168 9) - 21 C. 997 (1004-5). Trespasser-Possession of property with-Period of -Mesne profits of.

-Liability of legal representative for. See MESNE PROFIES-LEGAL REPRESENTATIVE OF TRESPASSER.

(1911) 38 I.A. 112 (121) = 38 C. 603 (630-1).

Wrong legal representative-Impleading only of -Decree and sale in execution thereof in case of-

Validity against right legal representative of. See under EXECUTION SALE-LEGAL REPRESENTATIVE.

LEGAL REPRESENTATIVES SUITS ACT XII OF 1855.

S. 1-Applicability-Concersion-Suit to recover projectly or its value after-Death of defendant, a Hindu, pending-Cause of action if survives against his executors or administrators in case of-Probate and Administration Act of 1881, S. 89-Effect.

S. 1 of Act XII of 1855 does not apply to a suit to

recover property or its value after conversion.

In a suit brought by the plaintiffs in respect of a trespass into their coal mine, the plaintiffs claimed, inter alia, an enquiry as to the amount of coal cut and taken away by the defendant and damages in respect thereof. The original defendant (a Hindu) died after the institution of the suit and thereupon his legal representative was brought on record. He contended that the cause of action did not survive as against him, relying upon S. I of Act XII of 1855.

Held that S. I of the said Act was inapplicable to the case, and that in any event, the cause of action survived under S. 89 of the Probate and Administration Act, V of 1881, which applied to Hindus, against executors and administrators. (Lord Thankerton.) ADJAI COAL CO., LTD, v. PANNA LAI, GHOSH. (1930) 34 C.W.N. 483=

A.I.R. 1930 P.C. 113 = 58 M. L. J. 536

### LEGAL RIGHT.

-Acts of grace-Repetition of-Legal right not created by. See COURT-MORAL OBLIGATIONS.

(1915) 42 I. A. 229 (239) = 39 B. 625 (649).

-Basis of -Acts of grace-Repetition of-Effect. See COURT-MORAL OBLIGATIONS.

(1915) 42 I. A. 229 (239) = 39 B. 625 (649).

-Change in, without change of actual persession-

That a complete change of legal right may take place without any change in the actual possession may be seen from the case in 6 I. A. 63 [Vide 7 B. 452 (454).] (Sir Robert P. Collier.) NAWAB MALKA JAHAN SAHIBA D. DEPUTY COMMISSIONER OF LUCKNOW.

(1879) 6 I. A. 63 = 3 Sar. 244 = 3 Suth. 584 = Bald. 194 = R. & J's. No. 55.

-Decision on-Court's duty as to. See COURT-LEGAL RIGHTS. (1837) 1 M. I. A. 383 (403).

-Enforcement of-Court's duty-Inconcenience or

hardship-Consideration of-Propriety.

If such, however, be the legal rights of the appellant, no Court of Justice can refuse to give effect to them on the ground of any inconvenience or hardship which may result from allowing them (266). (Lord Kingsdozon.) MULKAH DO ALUM NOWABJ TAJDAR BOHOO D. MIRZA JEHAN (1865) 10 M. I. A. 252=2 W. R. (P. C.) 53= 1 Suth. 554 = 2 Sar. 106 = R. & J's. 2 (Oudh).

### LEGAL RIGHT-(Contd.)

-Exercise of-Injury caused by-Damages for-Liability for-Fletcher v. Rylands-Principle of-Statutory authority-Acts done under-Applicability to. See DAM-AGES-RIGHT-EXERCISE OF.

(1874) 1 I. A. 364 (384-5).

### LEGAL RULE.

Application of -Analogy-Reliance on mere-Deduction from logical apprehension of principle-Oriental and ovidental habits.

This anomaly proceeds largely from the occidental habit of relying on mere analogy in the application of legal rule instead of deducing the application from a logical apprehension of the principle as the best Eastern thinkers do (174). (Lord Summer.) AMAR NATH AND GOKUL CHAND V. FIRM OF HUKAM CHAND NATHU MAL.

(1921) 48 I. A. 162 = 2 Lah. 40 = 23 Bom. L. R. 671= 14 L. W. 435 = 2 P. L. T. 201 = 3 U. P. L. R. (P. C.) 12 = 19 A. L. J. 249 = (1921) M. W. N. 175 = 29 M. L. T. 258 = 25 C. W. N. 534 = 33 C. L. J. 355 = 60 I. C. 379 = 40 M. L. J. 327 (337).

### LEGISLATION.

-Dominion and Provincial legislation dealing with different subject-matters but covering particular caus-Conflict between as regards latter-Which prevails-Exception in section of Provincial Statute-Introduction of by reason of such conflict-Propriety.

The Railway Act of 1919 was a statute passed by the Dominion Parliament in exercise of its jurisdiction over that subject. The Workmen's Compensation Act is an Act passed by the Province of Manitoba in exercise of its jurisdiction. The two enactments deal with different subjectmatters, although the circumstances of a particular case may bring it within the scope of both enactments, in which case, if a conflict arises, it is the dominion legislation which prevails. But such conflicts arise only incidentally, and the fact that they do arise is not a legitimate ground for implying words of exception in one of the sections of the Provincial Statute, excluding from its application, cases in which the Dominion Act does not apply (224). (Mr. Justice Duff) AMELIA MCCOLL P. CANADIAN RY. CO.

(1922) 33 M. L. T. 219 (P. C.).

--- Indian Legislature-Legislation by. See INDIAN LEGISLATURE.

-Need for and lines of-Court's suggestions as to. See (1875) 2 I. A. 241 (255)= COURT-LEGISLATION.

-Penal Legislation-Enemy alien-Seizure and dir total by State of property of supposed-Legislation author

rining, not a penal one.

A legislation passed pursuant to a war policy and empowering a State to take possession and dispose of the property within the country of a supposed enemy alien cannot properly be said to be penal legislation within the meaning of the English authorities. (Viscount Haldane.) INGE (1927) 47 C. L. J. 263= NOHL P. WING ON & CO. 107 I. C. 352 = 30 Bom. L. R. 753

A. I. R. 1928 P. C. 83 (85).

-Power of - Delegation of - Commencement of legit lation-Period of-Fixing of-Leaving of, to external anthority-Effect.

Legislation which does not directly fix the period for its own commencement, but leaves that to be done by an external authority, may with quite as much reason be called incomplete, as that which does not itself immediately determine the whole area to which it is to be applied, but leaved this to be done by the same external authority. If it is an act of legislation on the part of the external authority so

# LEGISLATION-(Contd.)

trusted to enlarge the area within which a law actually in operation is to be applied, it would seem a fortiors to be an act of legislation to bring the law originally into operation by fixing the time for its commencement (193). (Lord (1878) 5 I. A. 178= Selborne.) QUEEN v. BURAH. (1878) 5 I. A. 178 = 3 Sar. 834 = 4 C. 172 (180) = 3 C. L. R. 197 = 3 Suth. 556.

-Privy Council-Appeal to-Right of, in regard to proceedings before Courts of Justice-Taking away of-Power of Indian Legislature as to. See Indian Legis-(1854) 5 M. I. A. 499 (508). LATURE.

-Responsible Government-Contract by minister involving provision of funds by Parliament-Sanction of Lieutenant-Governor-Necessity-Requirites of valid contract in such cases.

Under S. 3 of the Public Works Act of British Columbia (amended in 1914), it is only the Lieutenant-Governor-in-Council to whom power to enter into such a contract as that before them is given. The character of any constitution which follows, as that of British Columbia does, the type of responsible Government in the British Empire, requires that the sovereign or his representative should act on the advice of Ministers responsible to the Parliament, that is to say, should not act individually, but constitutionally. A contract which involves the provision of funds by Parliament requires, if it is to possess legal validity, that Parliament should have authorised it, either directly, or under the provisions of a statute.

Held therefore that the contract in the particular case was invalid because the Licutenant-Governor of the Province had not authorised it, and that the mere assent of the Ministers of the day to the contract could not, under a constitution, such as that of British Columbia, make the contract a legally binding one, (Viscount Haldane.) MACKAY P. ATTORNEY GENERAL BRITISH COLUMBIA.

(1922) 31 M. L. T. 87.

- Secretary of State in Council-Subject's right of suit against—Legislation taking away—Validity of Soc GOVERNMENT OF INDIA ACT OF 1858, S. 65—EFFECT (1913) 40 I. A. 48 = 40 C. 391

### LEGISLATURE.

Act of -Private praction - Act must prevail against. An Act of the Legislature must prevail against private praction (115). (Lord Dunedin.) SATYA NIRANJAN CHAK-RAVARTI v. RAM LAL KAVIRAJ. (1924) 52 L. A. 109 = 4 P. 244 = 6 P.L.T. 42 = 21 L.W. 289 = 29 C.W.N.725 = 27 Bom. L. R. 753 - 23 A. L. J. 712.

A. I. B. 1925 P. C. 42 = 86 I. C. 289 - 48 M. L. J. 328.

--- Court-Where legislature has stopped, the courts must stob.

The Code of Civil Procedure stops short of enacting that benamee transactions are unlawful. Their Lordships consider that where the Legislature has stopped, the Courts must stop (528). (Sir Montague E. Smith.) MUSSUMAT BUHUNS KOWUR D. LALLA BUHOOREE LALL

(1872) 14 M. I. A. 496 = 18 W. R. 157 = 10 B. L. B. 159 = 2 Suth. 575 = 3 Sar. 69.

- Functions of -Court's usurpation of -Instance.

In the case of a mortgage by conditional sale, the Chief Justice observed in the case in 9 B. H. C. R., p. 69: "The recognition of the right to redeem " (in the case of such mortgages) "was, having regard to the previous decisions of the Sudder Adawlut, perhaps somewhat a strong measure It had, however, for a long time previously been considered a desirable course to adopt, and eminent judges of the High Court, who had formerly been judges of the S. A., regretted that their predecessors had, for the most part, enforced the conditions forpurchase in gahan lahan mort-

### LEGISLATURE-(Contd.)

gages, as such a course had been found to promote most oppressive and grasping conduct on the part of moneylenders in the Mofussil."

With regard to the above remarks, their Lordships observed: It would be difficult to have a more candid admission of the assumption by the Court of the functions of the Legislature (253). (Sir James W. Celvile.) THUMBU-SWAMY MUDALLY & MAHOMED HOOSAIN ROWTHEN.

(1875) 2 I. A. 241 = 1 M. 1 (21) = 3 Sar. 531 = 3 Suth. 198,

-Functions of - Court's usurpation of -Propriety.

It appears to their Lordships that this action of the courts of the minor Presidencies is open to grave objection, because in so altering the existing law they usurped the functions of the Legislature (253-1). (Sir James W. Colvile.) THUMBU-SWAMY MUDALLY P. MAHONED HOOSAIN ROWTHEN.

(1875) 2 I. A. 241=1 M. 1 (22)=3 Sar. 531= 3 Suth. 198.

Indian Legislature. Sci Indian Legislature.

### LEGITIMACY.

(See also HINDU LAW-LEGITIMACY AND MAHO-MEDAN LAW-LEGITIMACY.)

-Course-Admission by, of co-heirship of ferson whose legitimacy in question-Admissibility of-Value of.

The question was whether the respondent's mothers, S and W, were the legitimate daughters of Z, a son of H, and whether the respondents were as such the heirs of their grandmother H. F was admittedly a grandson of H, being the son of Z by another wife.

Il's husband was in receipt of a wasika, a pension from Government. When he died a question arose as to who should succeed to it. A petition was presented by F, S and W, describing the deceased as their grandfather, and asking that his pension should be allotted to them.

Held that the petition was by necessary inference a statement by F, and a statement against his interest, that the title of S and W was as good is his own, and that the petition was admissible in evidence to prove the legitimacy of S and W (105). (Sir Arthur Wilson.) BAKER ALI KHAN v. (1903) 30 I. A. 94= ANJUMAN ARA BEGAM.

25 A. 236(248) = 7 C. W. N. 465 = 5 Bom. L. R. 410 = 8 Sar. 397.

-Inheritance-Right of hased on legitimacy of plaintiff-Issue raising-Illegitimacy of plaintiff-Right on foot of, if included-Parties treating it as not covered-Privy Council appeal-Claim for first time in-Maintainability.

The two appellants sued as widow and son of G, a Burman, to recover a half-share of his estate, alleging a lawful marriage between the first appellant and G, followed by cohabitation and the legitimate birth of the second appellant. The issue raised as to that point was as follows: "whether either or both of the plaintiffs are entitled to a share in the estate left by G? And, if so, to what share?"

Quare, whether the issue was susceptible of the construction that, even if there was no valid marriage between G and the first appellant, the second appellant, as the illegitimate son of G, was entitled under Buddhist law to a share in the inheritance, inasmuch as his mother lived with and ato out of the same dish as the deceased G.

Held that even if the issue was susceptible of the wider construction contended for (namely, that stated above), yet, as the parties, by their conduct of the case, had construed it in the narrower sense of assuming the existence of a marriage, and as the claim based on the wider construction had not been submitted to either of the courts below, their

### LEGITIMACY-(Contd.)

Lordships could not entertain that claim. (Lord Reduction.)
MA WUN DI F. MA KIN. (1907) 35 I. A. 41 (47) = 35 C. 232 (242) = 3 M. L. T. 93 = 7 C. L. J. 112 = 12 C. W. N. 220 = 10 Bom. L. R. 41 = 5 A. L. J. 63 = 14 Bur. L. R. 3 = 4 L. B. R. 175 = 18 M. L. J. 3.

### LETTERS OF ADMINISTRATION.

(See also ADMINISTRATOR.)

——Administrator under—Suit on behalf of estate of deceased by—Limitation—Starting point—Executor appointed under will of deceased—Suit by—Distinction. See LIMITATION ACT OF 1908, S. 17 (1)—LAW ENACTED BY. (1916) 43 I. A. 113 (120).

—Administrator under—Suit on hehalf of testator's estate by—Right of—Letters of Administrat'on—Grant of— Necessity. See ADMINISTRATOR.

(1916) 43 I. A. 113 (119).

-Administrator under-Surety for-Liability of, for misappropriation by administrator-Revocation subsequent of letters on ground of fraud-Effect.

Letters of Administration granted to C in 1902 were cancelled in 1904, on the ground that he had obtained them by fraud, and Letters of Administration with the will annexed were thereupon granted to the Administrator-General of Bengal. The appellant and another were two sureties in a bond conditioned for the due administration by C of the estate of the deceased. The bond executed by them was assigned to the Administrator-General, and he brought a suit against C and the sureties (appellant and another) for the recovery of the amount misappropriated by C in his capacity as administrator under the revoked Letters of Administration

Held that the sureties, though innocent of the fraud of C, were rightly held liable by the High Court.

So long as the letters of administration granted to C remained unrevoked, C, although a rogue and an imposter, was to all intents and purposes administrator. He, and he alone, represented the deceased. His receipts were valid discharges for all moneys received by him as administrator. As administrator he collected the assets belonging to the deceased, and he misappropriated the assets, which he so collected. For all his acts and defaults as administrator the appellant and his co-surety became and must remain liable. (Lord Macnaghten.) DEBENDRA NATH DUTT v. ADMINISTRATOR-GENERAL OF BENGAL.

(1908) 35 I. A. 109 - 35 C. 955 - 4 M. L. T. 21 = 12 C. W. N. 802 - 8 C. L. J. 94 - 10 Bom. L. B. 197 = 18 M. L. J. 367.

—Contested proceedings for—Reversionary character of a person in—Decision as to—Res judicata in subsequent civil suit if. See HINDU LAW—REVERSIONER—RELATIONSHIP OF—LETTERS OF ADMINISTRATION.

(1929) 58 M. L. J. 171.

—Grant of, by competent Court within province—Subsequent limitation of grant by High Court—Validity of— Effect of. See Succession Acr of 1865—Ss. 187, 3.

(1910) 21 M. L. J. 116.

—Grantee of Ejectment suit against, by opposite party—Onus of proof in—Order granting letters refusing to adjudicate upon rival claims—Effect. See Ejectment Suit—Succession—Rival Claimants to.

(1917) 44 I. A. 251 = 45 C. 1 (67).

# LETTERS PATENT.

Appeals under-C. P. C. of 1908-Orders and rules under-Applicability of.

Regulations uly made by orders and rules under the C. P. C. of 1908 are applicable to the jurisdiction exercisable

## LETTERS PATENT-(Contd.)

under the Letters Patent, except that they do not restrict the express Letters Patent appeal. (Lord Sumner) SABITRI THAKURAIN v. SAVI. (1921) 41 I. A. 76= 48 C. 481 (488)=(1921) M. W. N. 159=

33 C. L. J. 307 = 19 A. L. J. 281 = 23 Bom. L. B. 681 = 14 L. W. 362 = 60 I.C. 274 = 40 M. L. J. 308.

Appeals under—Right of—C. P. C. of 1908, S. 104
 Effect. See Letters Patent (Cal.), S. 15—Appeal Under.

# LETTERS PATENT (ALLAHABAD).

——See under LEGAL PRACTITIONER—MISCONDUCT —ALLAHABAD LETTERS PATENT.

# LETTERS PATENT (BOMBAY, 1865).

A surt, concerning land in Aden, was instituted in the Court o, the Political Resident there. The High Court of Judicature at Bombay, purporting to act under cl. 13 of the Letters Patent of 1800 (Bombay), made an order for the transfer of the suit for trial and determination by the High Court itself.

Held that, under Act II of 1884 of the Governor-General in Council, the Court of the Resident at Aden was subject to the superintendence of the High Court of Bombay within the meaning of cl. 13 of its Letters Patent, and that the High Court had, therefore, power to transfer the suit to itself under that clause. (Lord Macnaghten.) MUNICIPAL OFFICER, ADEN 7. HAJEE ISMAIL HAJEE ALLANA.

(1905) 33 I. A. 38 = 30 B. 246 = 3 C. L. J. 5= 3 A. L. J. 53 = 10 C. W. N. 185 = 8 Bom. L. B. 4= 1 M. L. T. 1 = 8 Sar. 901 = 16 M. L. J. 73.

- Removal of suit under-Power of-Condition of exercise of-Fransfer of suit-Power under Charter Ad of-Distinction.

The power of transfer contained in the Charter Act (24 & 25 Vict., c. 104) has nothing to do with the power of removal conterred by the Letters Patent, and the Letters Patent makes superintendence, not appellate jurisdiction, the condition of exercise of the power of removal. (Lord Marnaghten.) MUNICIPAL OFFICER, ADEN v. HAJER ISMAIL HAJEE ALLANA. (1905) 33 I. A. 38=

30 B. 246=3 C. L. J. 5=3 A. L. J. 53= 16 C. W. N. 185=8 Bom. L. B. 4=1 M. L. T. 1= 8 Sar. 901=16 M.L.J. 78.

—S. 36—Original side appeal—Difference of opinion between judges hearing—Procedure on. See C. P. C. of 1908, S. 98. (1921) 48 I. A. 181 (1845)= 45 B. 718 (7223).

——S. 39—Final judgment or order—Income-tax Act of 1918, S. 51—Decision under—Not such a judgment or order. See INCOME-TAX ACT OF 1918, S. 51—CASE STATED UNDER.

(1923) 50 I. A. 212 = 47 B. 724

\_\_\_\_\_\_Judgment—Meaning of. See JUDGMENT—MEAN-ING OF. (1925) 49 M. L. J. 25 (80).

——Original jurisdiction—Meaning of. See HIGH COURT—JURISDICTION OF—ORIGINAL JURISDICTION. (1923) 50 I. A. 212 (218) = 47 B. 724 (732).

Grant of—Discretion. See PRIVY COUNCIL—APPEAL
RIGHT OF—INTERLOCUTORY MATTERS.

(1923) 50 I. A. 212 (218-9)=47 B. 724 (789)

# LETTERS PATENT (CALCUTTA).

-S. 15-Appeal under-Right of-C. P. C. of 1908, S. 104-Effect.

-See C. P. C. OF 1908, S. 104-APPLICABILITY-LETTERS PATENT APPEALS. (1882) 10 I. A. 4 (17)= 9 C. 482 (494).

S, 588 of C.P.C. of 1882 enacted that appeals should lie in certain cases, which it enumerated, "and from no other such orders." This raised the question neatly, whether an appeal, expressly given by S. 15 of the Letters Patent and not expressly referred to in S. 588 of C. P. C. of 1882, could be taken away by the general words of S. 588 " and from no other such orders." The change in the wording of S. 104 of the Act of 1908 is significant, for it runs, "and, save as otherwise expressly provided . . . by any law for the time being in force, from no other orders." S. 15 of the Letters Patent is such a law, and what it expressly provides. namely, an appeal to the High Court's appellate jurisdiction from a decree of the High Court in its original ordinary jurisdiction, is thereby saved. (Lord Sumner.) SABITRI (1921) 48 I. A. 76= THAKURAIN v. SAVI. 48 C. 481 (488) =(1921) M. W. N 159 -

33 C. L. J. 307=19 A. L. J. 281=23 Bom. L. B. 681= 14 L. W. 362=60 I. C. 274=40 M. L. J. 308.

-Judgment-Privy Council decree-Execution of-Application for-Rejection of, by Judge of High Court -Order of, if a judgment within cl. 15. See PRIVY COUNCIL-APPEAL-DECREE IN-EXECUTION OF-APPLICATION FOR-REJECTION OF, ETC.

(1882) 10 I. A. 4 (16-7)=9 C. 482 (493)

-S. 36-Original side appeal-Difference of opinion equal between Judges hearing-Procedure on-Rule 26 of High Court Rules-Effect.

A suit instituted in the High Court in its ordinary original civil jurisdiction was dismissed by the trial Judge. On appeal to the High Court in its appellate jurisdiction, the Judges who heard the appeal were equally divided in opinion, Mr. Justice Markby being for affirming the decree below, while the Chief Justice was for reversing it. In fact, however, the decree below was affirmed. On appeal to their Lordships a preliminary objection to the decree was raised, that cl. 36 of the Letters Patent of the High Court was not applicable; and that under Rule 26 of the Rules made by the Judges of the High Court, judgment of affirmance of the decree of the Court below ought to have been entered.

Their Lordships declined to give any opinion of the question, being of opinion that it was their duty to hear and decide the case on the merits (229). (Lord Justice

Mellith.) MILLER v. BARLOW. (1871) 14 M. I. A. 209 - 2 Sar. 727 - L. B. 3 P. C. 733 -8 Moo. P. C. (N. S.) 127

-S. 41-Criminal matter-Appeal to Privy Council -Maintainability-Trial judge not reserving any question of law-Advocate-General granting certificate under cl. 26 of Letters Patent.

In an appeal from the High Court brought in a criminal matter under Art. 41 of the Letters Patent, it appeared that the Trial Judge reserved no question of law and the case came to the High Court on the certificate of the Advocate-General under cl. 26 of the Letters Patent. The Full Bench of the High Court, after full considertion of the point raised by that certificate, dismissed the accused's application under cl. 26. The accused thereupon preferred an appeal to the Privy Council under cl. 41 of the Letters Patent from the order of the High Court itself refusing to exercise its power to interfere with the trial and sentence.

Quaere whether under the circumstances of the case the appeal to the Privy Council under cl. 41 of the Letters

Patent was competent (57-8).

# LETTERS PATENT (CALCUTTA)-(Contd.)

Their Lordships observed that they must not be understood as giving any encouragement to appeals in criminal matters under Art. 41, where no point of law has been raised by the trial Judge (59.60). (Lord Sumner.) BARENDRA KUMAR GHOSH P. KING-EMPEROR.

(1924) 52 I. A. 40 = 52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 - 3 Pat. L. R. Cr. 1 = 6 L. R. P. C. Cr. 1-27 Bom. L. R. 148=

6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr.L.J. 431 = 26 P. L. R. 50 = A I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

### LETTERS PATENT (MADRAS).

S. 12-Contract-Money due under-Suit for-Jurisdiction-Defendant resident outside invisdiction-Contract in Madras and money payable in Madras-Leave to sue obtained.

In a suit for money alleged to be due under a contract for the sale and delivery of goods brought on the original side of the High Court of Madras, it appeared that the suit contract was made in the city of Madras, that it was agreed that the money payable under the contract was to be paid in the city of Madras, and that, the defendants being resident outside the limits of the jurisdiction of the Court, the High Court, under its Letters Patent, gave leave to the plaintiffs to bring the suit in the ordinary original civil jurisdiction of the High Court.

Held that the suit was within the cognizance of the High Court in its ordinary original civil jurisdiction (87). (Sir John Edge.) MAHOMED KHALLEEF SHIRAZI P. LA TANNERIES LYONNAISES. (1926) 53 I. A. 84=

49 M. 435 = 3 O. W. N. 568 = (1926) M. W. N. 495 = 24 L. W. 115-44 C. L. J. 67-28 Bom. L. R. 1391 -31 C. W. N. 1-A. I. R. 1926 P. C. 34-94 I. C. 767 = 51 M. L. J. 570.

-Dwelling within jurisdiction-Meaning of Sec JURISDICTION-DWELLING WITHIN-MEANING OF-3 CL. 12 OF LETTERS PATENT (MADRAS).

(1911) 38 I.A. 129 (139) - 34 M. 257 (267-8)

-S. 13-District Court suit transferred to High Court-High Court's powers in.

The powers of the High Court in dealing with suits transferred to it from the District Court under clause 13 of the Letters Patent, 1865, are confined to powers which but for the transfer might bave been exercised by the District Court (322). (Lord Parker.) BEASANT v. NARAYANIAH. (1914) 41 I. A. 314 - 38 M. 807 (820) =

16 M. L. T. 165 = (1914) M. W. N. 585 = 1 L. W. 520 = 18 C. W. N. 1089 = 20 C. L. J. 253 = 16 Bom. L. R. 626 = 12 A. L. J. 1155 = 24 I. C. 290-27 M.L.J. 30.

# LETTERS PATENT (NORTH-WESTERN PRO-VINCES, 1866).

-8. 27-Pending proceeding - Review petition-Reference directed to be made to High Court of Calcutta on difference of opinion-Creation of Allahabad High Court before reference made-Jurisdiction of latter Court to decree review petition.

In an appeal decided by the Sudder Adawlut of the North-Western Provinces, there was an application for review. The case was heard on review in 1865 before four judges, who were equally divided in opinion. By the law, as it then stood, the judges being equally divided in opinion the case was referred for the opinion of one or more judges of the High Court of Calcutta. No reference was, however, made to the High Court of Calcutta. Under the provisions of the Statute, 24th and 25th Vict., c. 104, the Crown, by Letters Patent, dated 17th March, 1866, abolished the Sudder Court at Agra, and erected instead a High Court

### LETTRES PATENT (NORTH WESTERN PRO- LIBEL-(Contd.) VINCES. (1866) - (Cont.)

for the North-Western Provinces. In August, 1860, the Chief Justice of the High Court for the North-Western Provinces re-heard the petition of review and made a decree.

Held that the Chief Justice had, by the 27th section of the Letters Patent, jurisdiction to hear and decide the

review petition.

No final decision having been given on review, the procoeding was a proceeding pending. Which was, therefore, to be decided by the new High Court of the North-Western Provinces (595-6). (Lord Justus Mallish.) MUSSUMAT OODEY KOONWUR 2. MUSSUMAT LABOO

(1870) 13 M. I. A. 585 - 15 W. R. (P. C.) 16 -6 B. L. R. 283-2 Suth. 388-2 Sar. 628

### LIBEL.

(See also DEFAMATION.)

-Caste funchagat - Resolution of - Publication by Chesother-Liability for - Express malice-Necessty-Irregularity in prising resolution-Effect-Caste panchayat-Jurisdiction of-Civil Court-Control of.

B was Chowdhri of a section of Hindu caste community of which G was a member, and, in the performance of his duty as Chowdhri, B published to other members of the caste a resolution which had been passed by the panchayat of his caste section suspending social relations with G's family. In an action for libel brought by G against B, it was contended that G had no proper notice of the meeting. of the Panchayat, and that in consequence the passing of the resolution was contrary to natural justice and B was not privileged in publishing it. Held that the occasion of the publication was privileged, that the privilege was not affected by any defect in the notice and that in the absence of proof of express malice the suit failed.

To defeat or rebut privilege, the law does not recognise anything short of actual or express malice in the publication of the matter which is charged to be libellous.

The question of the power of the civil courts to control the jurisdiction of caste bodies purporting to excommunicate or censure caste offenders discussed but not decided, (Mr. Ameer Ali.) GOBIND DAS & BISHAMBAR DAS.

(1917) 44 I. A. 192 - 39 A. 591 - 6 L W. 494 = (1917) M. W. N. 817 = 21 C.W. .N. 1113 = 19 Bom. L. R. 707 = 26 C L. J. 282 =

15 A. L. J. 629 = 2 Pat. L. W. 125 = 21 M. L. T. 132 = 40 I. C. 641 = 33 M. L. J. 103

-Character-Information injurious to-Publication of-Liability for - Law applicable - English law -American late-Absence of direct English authority-Rule to be applied in case of.

The question whether and under what circumstances a person is liable for the publication of information injurious to the character of another must be decided by English law. In the absence of English authority directly in point, recourse must be had to the principle on which the law in England on the subject is founded. American authorities, though entitled to the highest respect, are inapplicable (Lord Macnaghten.) MACINTOSH v. DUN.

(1908) 12 C. W. N. 1053=4 M. L. T. 1= 14 Bur. L. R. 225=11 I. C. 348=19 M. L. J. 20 (28).

-Character-Information injurious to-Publication of-Liability for-Principles governing-Volunteered communications-Communications made in answer to inquiry -Distinction.

The law considers the publication of information injurious to the character of another as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of

In such cases the occasion prevents the inference of malice. which the law draws from unauthorised communications. and affords a qualified defence depending on the absence of actual malice. It fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society and the law has not restricted the right to make them within any narrow limits.

Communications injurious to the character of another may be made in answer to enquiry or may be volunteered. If the communication be made in the legitimate defence of a person's own interest, or plainly under a sense of duty such as would be "recognised by English people of ordinary intelligence and moral principle" it cannot matter whether it is volunteered or brought out in answer to an enquiry. But in cases which are near the line, and in cases which may give rise to a difference of opinion, the circumstance that the information is volunteered is an element for consideration certainly not without some importance. (Lord Macnaghten.)
Macintosh r. Dun. (1908) 12 C. W. N. 1053=

4 M.L.T. 1=14 Bur. L. R. 225=11 I. C. 348= 19 M. L. J. 20 (25-6).

-Character-Information injurious to-Publication of-Liability for-Protection from-Principles under-

The underlying principle on which the protection afforded to a communication otherwise actionable is founded is "the common convenience and welfare of society"-not the convenience of individual or the convenience of a class-but 'the general interest of society." (Lord Macnaghten.) (1908) 12 C. W. N. 1053= MACINTOSH P. DUN.

4 M. L. T. 1=14 Bur. L. R. 225=11 LC. 348= 19 M.L.J. 20 (25-6).

-Contempt of court by publication of-Offence of-Punishment summary for-Jurisdiction-Offence amounting to defamation-Effect. See PENAL CODE, S. 499.

(1883) 10 I. A. 171 (177) = 10 C. 109 (130)

-Privilege-Malice rebutting - Actual or expens malice-Legal malice-Sufficiency of-Inference of legal malice when justified.

The trail Judge inferred what he calls "legal malice" from the failure of the defendant to give a sufficient personal notice to the plaintiff. Their Lordships do not anderstand what the learned Judge means by legal malice. defeat or rebut privilege, the law does not recognise any thing short of actual or express malice in the publication of the matter which is charged to be libellous. The inference of "legal malice" from the defendant's omission to do some thing more than he is by law bound to do is quite unwarranted. (Mr. Ameer Ali.) GOBIND DAS p. BISHAMBAR (1917) 44 I. A. 192=39 A. 561= 6 L.W. 494 = (1917) M. W. N. 817 = 21 C. W. N. 1113=

19 Bom. L. R. 707 = 26 C.L.J. 282 = 15 A.L.J. 629 2 Pat. L. W. 125 = 21 M.L.T. 132 = 40 I. C. 641 33 M.L.J. 103

-Trade Protective Society-Information as to posttion of businessmen supplied to subscribers for consideration-Volunteering information-Welfare of society if served by such business,

The plaintiffs were wholesale and retail iron-mongers in Sydney. The defendants carried on the business of a trade protective society "in almost all parts of the civilised world" under the name of "The Mercantile Agency." That bus ness consisted in obtaining information with reference to the commercial standing and position of persons in the State of New South Wales and elsewhere and in communicating his own affairs in matters where his interest is concerned. in response to specific and confidential inquiry made by

# LIBEL-(Contd.)

subscribers as and when they had occasion to require information.

In an action for libel brought by the plaintiffs and appellants against the defendants in respect of information given by the defendants to one of their subscribers concerning the standing of the plaintiffs, held-

(1) that the defendants were to be regarded as volunteers in supplying the information which they professed to have

at their disposal;

(2) that their motive in giving the information was self-

interest, and not a sense of duty;

(3) that those who engaged in such a business as the defendant's, touching so closely very dangerous ground. should take the consequences if they overstepped the law;

(4) that, however convenient it might be to a trader to know all the secrets of his neighbour's position, his "standing," his "responsibility," and whatever else might be comprehended under the expression "et cetera," yet even so, accuracy of information might be brought too dearly-at least for the good of society in general.

Judgment of the Full Court of New South Wales in favour of the defendants reversed and that of the trial Judge awarding damages to plaintiffs restored. (Lord Marmaghten.) MACINTOSH v. DUN. (1908) 12 C.W.N. 1053-

4 M. L. T. 1 = 14 Bur. L. R. 225 = 11 I. C. 348 = 19 M. L. J. 20.

# LICENSE.

-Licensee-Adverse possession against licensor-

Condition. A licensee cannot claim title only from possession, however long, unless it is proved that the possession was adverse to that of the licensor, to his knowledge and with his acquiescence, (Mr. Ameer Ali.) KODOTH AMLU NAIR v. SECRETARY OF STATE FOR INDIA

(1924) 51 I. A. 257 (266) = 47 M. 572 = 26 Bom. L. R. 639 - 20 L.W. 49 - (1924) M.W.N. 572 -35 M. L. T. 128 = A. I. R. 1924 P. C. 150 29 C. W. N. 365 = 80 I. C. 835 = 47 M. L. J. 35

## LIMITATION.

ACCOUNTS.

ADVERSE POSSESSION.

APPEAL.

ASSUMPSIT.

BAR OF.

CAUSE OF ACTION.

COMMENCEMENT OF-CONDITION.

COMPANY -- DIRECTORS OF.

DAMAGES FOR INJURY TO PERSON AND PROPERTY.

DEBT.

DISMISSED SUIT-DECLARATION OF TITLE IN.

EJECTMENT SUIT-DISMISSAL OF-DECLARATION OF

RIGHT OF PARTY IN.

ENGLISH STATUTE, 21 JAMES 1, C. 16.

EXECUTION OF DECREE—LAW APPLICABLE OF. EXEMPTION FROM LAW OF.

GENERAL AND PARTICULAR STATUTES RELATING TO.

HEREDITARY OFFICE-FEES INCIDENT TO. HINDU LAW-ADOPTED SON-ALIENATION PRIOR TO ADOPTION BY MANAGER OF ESTATE FOR ADOP-TIVE MOTHER-SUIT TO RECOVER PROPERTY SUB-

JECT OF.

HINDU LAW-WIDOW. IMMOVEABLE AND MOVEABLE PROPERTIES-SUIT

INTEREST-CLAIM TO-PRINCIPAL-CLAIM TO, BAR-RED,

# LIMITATION-(Contd.)

LACHES-CUTTING DOWN OF PERIOD ALLOWED ON GROUND OF.

LAKHIRAJ LANDS-REVENUE-ASSESSMENT GOVERNMENT'S RIGHT OF--LIMITATION.

LAKHIRAJ TENURE-VOIDABLE TENURE COMPRISING MORE THAN 100 DIGHAS- RESUMPTION OF,

LAW OF.

LAW OF, APPLICABLE.

MOVEABLE AND IMMOVEABLE PROPERTIES .-- SUIT

OUDH.

PLEA OF.

RELIGIOUS ENDOWMENT-MANAGER OF-ALIENA TION BY-SUCCESSOR'S SUIT TO RECOVER PROPER-TY SUBJECT OF.

REVENUE-ASSESSMENT TO-GOVERNMENT'S RIGHT

SPECIAL AND SELF-CONTAINED STATUTES-LIMITA-TION PRESCRIBED BY.

SUPREME AND EAST INDIA COMPANY'S COURTS.

SUSPENSION OF.

TENANTS IN COMMON.

TITLE GAINED BY-WAIVER OF.

UNASCERTAINED PROPERTY AWARDED UNDER COM-PROMISE-SUIT TO RECOVER.

### Accounts.

-Commissioner for taking-Limitation-Plea of-Jurisdiction to entertain-Plea not raised in pleadings or issues-Appointment by consent of parties. See ACCOUNTS -COMMISSIONER FOR TAKING-LIMITATION

(1874) 1 I. A. 346 (361-2). -Items later of long-Suit for-Limitation-Earlier items-Suit for, barred-Effect. See LANDLORD AND TENANT-RENT-ARREARS OF-SUIT FOR-NATURE (1865) 10 M. I. A. 214 (218-9).

-Suit for-Plea of limitation in-Order directing taking of accounts irre-pective of-Propriety, See AC-COUNTS-SUIT FOR -LIMITATION-PLEA OF

(1901) 28 I. A. 227 (236) = 24 A. 27 (41).

-Suit for-Taking of accounts-Order directing. irrespective of plea of limitation-Maintainability of plea in case of. See ACCOUNTS-SUIT FOR-LIMITATION. (1901) 28 I. A. 227 (236) = 24 A. 27 (41).

# Adverse Possession.

ACTS AMOUNTING TO.

ADVERSE POSSESSOR.

BAR BY-BENEFIT OF-RIGHT TO.

CHUKDARI RIGHT.

CO-HEIRS.

COLLECTOR ATTACHING AND TAKING POSSESSION OF PROPERTY TO SECURE GOVERNMENT REVENUE-POSSESSION OF, IF ADVERSE TO REAL OWNER.

CO-OWNERS.

CO-SHARERS.

CRIMINAL PROCEDURE CODE-S, 145.

CROWN. DECLARATION OF TITLE IN DISMISSED SUIT.

DECLARATION OF TITLE OF TRUE OWNER IN SUIT TO WHICH ADVERSE POSSESSOR PARTY.

DONOR AND DONEE.

EASEMENT.

EFFECT OF.

EJECTMENT SUIT-PLEA OF ADVERSE POSSESSION BY DEFENDANT IN.

EJECTMENT SUIT DISMISSED-DECLARATION OF RIGHT OF PLAINTIFF IN.

FAMILY, NOT INDIVIDUAL, OWNERSHIP-HEAD OF FAMILY IN CASE OF-POSSESSION EXCLUSIVE OF,

Adverse possession - (Contd.)

FATHER.

FINDING AS TO-FACT OR LAW.

FOREST LAND.

GHATWALLY TENURE.

HEIR.

HINDU LAW- ADOPTED SON.

HINDU LAW-JOINT FAMILY.

HINDU LAW-MOTHER-SON.

HINDU LAW-RELIGIOUS ENDOWMENT.

HINDU LAW-WIDOW.

INTERRUPTION OF.

JOINT TENANTS.

JUNGLE LAND.

LANDLORD AND TENANT.

LICENSEE.

LIMITED INTEREST-EXTINCTION OF-BENEFIT OF. MADRAS FOREST ACT OF 1882-AFFORESTATION PROCEEDINGS UNDER.

MINOR.

MORTGAGOR AND MORTGAGEE.

MOTHER-IN LAW'S PROPERTY-SON-IN-LAW'S POSSES-SION OF, DURING HER LIFETIME AND THAT OF HER DAUGHTER.

ONUS OF PROOF OF.

PLEA OF.

PORTION OF LAND-POSSESSION OF.

PRESUMPTION OF.

PRIVATE OWNERS-DISPOSSESSION OF ONE OF, BY ANOTHER.

PROOF OF.

QUESTION AS TO-FACT OR LAW.

RIGHT OF SUIT IN CASE OF.

SON-MOTHER.

STARTING POINT OF.

STATUTORY PERIOD-POSSESSION FOR LESS THAN.

SUBMERGENCE OF LAND SUBJECT OF.

SYMBOLICAL POSSESSION.

TACKING OF.

TENANTS IN COMMON.

TITLE GAINED BY-WAIVER OF.

TRESPASSER.

TRUSTEE.

UNDER-PROPRIETARY RIGHT.

WATAN LANDS.

ZEMINDAR.

### ACTS AMOUNTING TO.

·Forest land. See Possession-Jungle Land.

-Joint and separate estates-Distinction. See POS-SESSION-EXCLUSIVE POSSESSION,

(1918) 9 L. W. 123 (124).

——Jungle land. See Possession—Jungle Land.

-Nature of property-l'ses to which it was put by former owner and dispossesser.

To defeat a title by dispossessing the former owner acts must be done which are inconsistent with his enjoyment of the soil for the purposes for which he intended to use it and therefore it is necessary to look at the position in which the former owner stands towards the land as well as to the acts done by the alleged dispossessor. The degree of possession or dispossession that will do depends upon the nature of the property. An exclusive adverse possession for a sufficient period may be made out in spite of occasional acts done by the former owner on the ground for a specific purpose from time to time. Conversely acts which prima facie are acts of dispossession may under particular circumstances, fall short of evidencing any kind of ouster. (Lord Summer.)

## LIMITATION-(Contd.)

Adverse possession-(Contd.)

ACTS AMOUNTING TO-(Contd.)

KUMAR BASANTA ROY r. SECRETARY OF STATE FOR INDIA. (1917) 44 I. A. 104 (113.4)=44 C 858 (872)= 22 M. L. T. 310 = 21 C. W. N. 642 = 15 A. L. J. 398= 25 C. L. J. 487=1 Pat. L. W. 593= 19 Bom. L. R. 483 = 6 L. W. 117 = 40 I C. 337=

32 M. L. J. 505. Qualities of - Adequacy, continuity and exclusiveness Standing a title in " A", the alleged adverse possession of " B", must have all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession. (Lord Shaw.) KUTHALI MUTHAVAR v. KUN-HARANKUTTI (1921) 48 I. A. 395=

44 M. 883 (890-1) = 24 Bom. L. B. 669= 26 C. W. N 666 = 30 M. L. T. 42 =

(1921) M. W. N. 847 = 14 L. W. 721 = 66 I. C. 451 = A. I. R. 1922 P. C. 181 = 41 M. L. J. 650.

-Submerged land. See Possession-Submerged LAND.

### ADVERSE POSSESSOR.

-Constructive possession in favour of-Presumption of-Propriety. See Possession-Trespasser - Con-STRUCTIVE POSSESSION IN FAVOUR OF.

-Co-owners-Person in adverse possession against one of-Succession by, to share of that owner before statutory period-Effect of-No interruption of adverse possession by reason of. See CO-OWNERS-ADVERSE POSSES-SION AGAINST ONE OF. (1919) 46 I. A. 285 (292-3)= 43 M. 244 (252).

-Decree for possession against-Decree not executed -Effect.

In an action of ejectment brought in 1919, the question was whether the defendants had established a title to the property by adverse possession for over 12 years. It appear ed that the plaintiff's predecessor had in the year 1887 obtained (in effect) a decree entitling him to recover possession of the property, but that notwithstanding such decree the defendants and their predecessors continued in possession, and that nothing was done by the plaintiff's predectssors to disturb their (defendants') possession.

Held, that the suit was barred by reason of the adverse possession of the defendants and their predecessors exceeding the period of 12 years. (Lord Shaw.) KESHO PRASAD SINGH P. MADHO PRASAD SINGH.

(1928) 9 Pat. L. T. 483=28 L. W. 24=109 I. C. 818= 48 Lah.L.J. 104 = 30 Bom. L. B. 1372= A. I. R. 1928 P. C. 165 (1)=55 M. L. J. 251.

-Decree for possession against-Execution of-Delivery of possession, actual or symbolical in-Effect.

On the death of H, R, his daughter-in-law, and S, his daughter's husband, became entitled to his estate in equal moieties. S conveyed by a deed of gift two annas out of his eight annas share to plaintiff. Within the period allowed by the law of limitation for the purpose, S commenced a suit against Ms, who were in possession, for the whole of H's property. Pending that suit, J, who bad obtained a deed of sale from S, was substituted as plaintiff, and obtained a decree for an eight annas share. One of the defendants (R) appealed against the decree, and had it modified against her to a five annas share. The other defendants did not appeal, and the decree for eight annas became final as against them. J. executed the decree for 5 annas. In another suit B's title to two annas under the deed of gift from S was established against J. who afterwards sold to the defendants of the first suit the five annas which be had obtained, and all his right, title, and interest under the decree. Those defendants got possession of the two annas

Adverse possession-(Contd.)

ADVERSE POSSESSOR-(Contd.)

share which J ought to have held in trust for the plaintiff. In a suit by the plaintiff for the recovery of his two annas share, held, that the cause of action for the suit arose, at a period subsequent to the execution of the decree by J. and that the suit which was brought within 12 years therefrom was well within the period of limitation. (Sir Barnes Peacock.) GUNGA GOBIND MUNDUL D. BHOOPAL CHUN-(1872) 19 W. R. 101 = 2 Suth. 750= DER BISWAS. 8 M. J. 187 = 4 Sar. 781.

-Person in possession subsequent to, but not claiming from or through-Tacking of adverse presession by-Right of. See LIMITATION-ADVERSE POSSESSION-TACKING (1917) 44 I. A. 104 (114 5) = 44 C. 858 (874).

-Portion of land-Possession by him of-If and when amounts to possession of whole. See POSSESSION-POR-TION OF LAND.

-Real owner taking ijara from-Possession of real owner under ijara-Effect of, against trespasser. Sar LANDLORD AND TENANT-ADVERSE POSSISSION. (1902) 29 I. A. 104 (114) = 29 C. 518 (534).

-Rent of property -Payment of-Internation of

adverse possession by. K, a sharer in a Zemindari, having been unsuccessful in proceeding against the holder of a sub-tenure to enhance its rent, and doubt having been thrown on his Zemindari title, brought a suit to establish his right of enhancement. The holders of the tenure contended that, even if the Zemindari right had passed to him by purchase, he had never received rents, and his claim was barred by limitation. And with reference to a compromise, under which at the close of a former litigation, a certain amount had been paid to A' as mesne profits, it was argued that the last item of the rent of the sub-tenure, entering into that sum, must have accrued more than 12 years previously.

Held, that the payment of the sum within the twelve years was evidence of a recognition of title sufficient to exclude the notion of an adverse possession for more than 12 years (169-70), (Sir James W. Colvile.) SADUT ALL

KHAN P. KHAJEH ABDOOL GUNNEE.

(1873) Sup. I A. 165=11 B. L. R. 203= 19 W. R. 171 = 3 Sar. 229 = 2 Suth. 785.

-Tacking of possession of previous possessor by-Right of. See LIMITATION-ADVERSE POSSESSION-TACKING OF.

-Transferee from-Tacking of adverse possession by -Right of. See LIMITATION-ADVERSE POSSESSION-TACKING OF. (1891) 19 I. A. 48 (54) = 19 C. 253 (261). BAR BY-BENEFIT OF-RIGHT TO.

-Co-heirs-Bar of claim of some of-Benefit of-Other heirs-Party in possession-Right of. See Co-HEIRS-ADVERSE POSSESSION. (1914) 27 M. L. J. 89 (92)

-Limited interest - Extinction of - Benefit of - Remainderman's or reversioner's right to. See LIMITATION-

ADVERSE POSSESSION-LIMITED INTEREST. (1867) 11 M. I. A. 345 (361). -Person not entitled to possession whilst right and

remedy remained-Right of.

How can the extinction of the proprietary owner's right in favour of the party in possession, confer any right to pos-session simply on another person not having a title in remainder, if he had not a title to possession whilst the right and remedy remained ? (361). (Lord (Remilly.) GUNGA GOVIND MUNDUL P. COLLECTOR OF THE TWENTY-(1867) 11 M. I. A. 345= FOUR PERGUNNAHS. 7 W. B. P. C. 21=1 Suth. 676=2 Sar. 284.

LIMITATION-(Contd.)

Adverse possession—(Contd.)

CHUKDARI RIGHT.

-Adverse possession of, against Zemindar purchasing from Government-Evidence. See LIMITATION - AD-(1881) 5 I. J. 495. VERSE POSSESSION-ZEMINDAR.

-Har of claim of one or some of, by adverse possession-Penefit of-Right to-Other heirs-Party in posses-sion-Right of. See CO-HEIRS-ADVERSE POSSESSION.

(1914) 27 M. L. J. 89 (92).

COLLECTOR ATTACHING AND TAKING POSSESSION OF PROPERTY TO SECURE GOVERNMENT REVENUE-POSSESSION OF, IF ADVERSE TO REAL OWNER.

-Possession given up, and surplus proceeds paid ever by Collector to trespasser -- Effect of -- Latter if entitled to tack Collector's possession to his ston.

It is the duty of the Collector, who attaches and takes possession of property, in order to secure the Government revenue, to collect the rents from the ryots, and having paid the Government revenue and the expenses of collection, to pay over the surplus to the real owner. The Collector, by paying over the surplus to a person other than the real owner, does not give that person a title. Nor does the fact that the Collector gave up possession of the estate and paid over the surples proceeds to a person who is not the real owner show that he was holding for that person. And such a person, who does not claim through the Collector, cannot add to the period during which he was in adverse possession, the period of the possession of the Collector (102 3). (Sir Barnes Peacock.) RAO KARAN SINGH P. (1882) 9 I. A. 99 = RAJA BAKAR ALI KHAN. 5 A. 1 (7)=4 Sar. 382.

### CO-OWNERS.

JOINT ESTATE-FERRY ON-SETTING UP OF, ETC.

(1891) 19 I. A. 48 (56·7) = 19 C. 253 (263·4). -Adverse possession against one of-Devolution by inheritance of right of that owner on adverse possessor before statutory period-Effect of-No interruption of adverse possession by. See CO-SHARERS - ADVERSE POSSESSION AGAINST ONE OF.

(1919) 46 I. A. 285 (292 3)=43 M. 244 (252).

-Adverse possession by one of-What amounts to. See Possession-Exclusive possession. (1918) 9 L. W. 123 (124). \*

CO-SHARERS.

-Same as CO-OWNERS.

CRIMINAL PROCEDURE CODE-S, 145.

-Magistrate's order under-Possession for three years under-Effect. See BENGAL ACTS-AFFRAYS ACT IV (1879) 7 I. A. 73 (81). OF 1840.

CROWN.

-Adverse Possession against. See LIMITATION ACT OF 1908-ART, 149.

DECLARATION OF TITLE IN DISMISSED SUIT.

-Fresh starting point if supplied by. See LIMITA-TION -EJECTMENT SUIT-DISMISSAL OF. (1898) 25 I. A. 195 (208) = 21 A. 53 (69, 70).

-See also POSSESSION-SUBMERGED LAND.

(1929) 56 I.A. 305 = 57 M.L.J. 602.

DECLARATION OF TITLE OF TRUE OWNER IN SUIT TO WHICH ADVERSE POSSESSOR PARTY.

-Effect of -No interruption of adverse possession by. In a case in which a person purchased trust property in execution of a decree obtained against the then trustee for

Adverse possession -(Contd.)

DECLARATION OF TITLE OF TRUE OWNER IN SUIT TO WHICH ADVERSE POSSESSOR PARTY-(Contd.)

a personal debt of his, and was in adverse possession of such property, a decree was obtained against him by the trustee declaring that the property was trust property. and therefore ought not to have been seized. Held that the declaration by itself did not disturb or affect the quality of the purchaser's possession, and that it merely emphasised the fact that his possession was adverse. (Lord Buckmaster.) Subbanya Pandaram r. Mahamad MUSTAPHA MARCAYAR. (1923) 50 I. A. 295 (299)=

46 M. 751 (755-6) - 21 A. L. J. 730 -A. I. R. 1923 P. C. 175 = 25 Bom. L. R. 1275 18 L. W. 903 = 33 M. L. T. 285 = (1924) M. W. N. 65 28 C. W. N. 493 = 40 C. L. J. 20 = 2 Pat. L. R. 104 74 I. C. 492 - 45 M. L. J. 588.

DONOR AND DONEE.

-Income of property subject of gift-Receipt as of right by denor of substantial part of-Effect.

The receipt as of right by a donor of at least a substantial part of the income of the property the subject of the gift is a legal possession sufficient to relieve his claim to recover the property from the donce from the bar of time (236). (Lord Hobbouse.) NIRMAL CHUNDER BONNERSEE P. MAHOMED SIDDICK. (1898) 25 I.A. 225 = 26 C. 11 (24) = 7 Sar. 383.

EASEMENT.

-SA UNDER EASEMENT.

EFFECT OF.

-Extinction of title of real owner-Bar of his remedy.

If a person whose property has been encroached upon suffers his right to recover possession of the same to be barred by the Law of Limitation, the practical effect is the extinction of his title in favour of the party in possession (360-1). The effect of the adverse possession is not simply that the remedy is barred, but that the title is extinct in favour of the possessor (363). (Lord Romilly.) GUNGA GOBIND MUNDUL +. COLLECTOR OF THE 24 PERGUN. NAHS. (1867) 11 M.I.A. 345 - 7 W.R. 21 -1 Suth. 676 - 2 Sar. 284.

EJECTMENT SUIT-PLEA OF ADVERSE POSSESSION BY DEFENDANT IN.

-Onus of proof in case of-Possession long with defendant-Admission by plaintiff of. Sor EJECTMENT SUIT -Possession long with defendant- Admission BY PLAINTIFF OF-ONUS ON PLAINTIFF IN CASE OF-ADVERSE POSSESSION. (1860) 8 M.I.A. 199 (220 1).

-Onus of proof in case of-Possession long with defendant admitted-Plaintiff's title admitted by defendant-Quantum of proof required of plaintiff-Effect on. So: EJECTMENT SUIT-POSSESSION LONG WITH DEFEN-DANT-ADMISSION BY PLAINTIFF OF-ONUS ON PLAIN-TIFF IN CASE OF-PLAINTIFF'S TITLE ADMITTED BY DEFENDANT. (1906) 16 M.L J. 272 (273)

-Onus of proaf in case of-Possession long with defendant admitted-Plaintiff's title admitted by defendant-Documentary evidence consistent with defendant's possession for statutory period. See EJECTMENT SUIT-POS-SESSION LONG WITH DEFENDANT- ADMISSION BY PLAINTIFF OF—ONUS ON PLAINTIFF IN CASE OF— PLAINTIFF'S TITLE, ETC. (1899) 26 I A 210 (211-2)= 23 M. 10 (11 2.)

-Onus of proof of.

The onus of establishing property by reason of possession for a certain requisite period is upon the person asserting LIMITATION-(Contd.)

Adverse possession-(Contd.)

EJECTMENT SUIT-PLEA OF ADVERSE POSSESSION BY DEFENDANT IN-(Contd.)

possession. It would be contrary to all legal principles to permit the squatter to put the owner of the fundamental right to a negative proof upon the point of possession (204). (Lord Shaze,) SECRETARY OF STATE FOR INDIA P. CHELIKANI RAMA RAO. (1916) 43 I.A. 192= 39 M. 617 (631-2) = 20 C.W.N. 1311 = 20 M.L.T. 435=

(1916) 2 M.W.N. 224-4 L.W. 486-14 A.L.J. 1114= 18 Bom. L.R. 1007 = 35 I.C. 902 = 31 M.L.J. 324.

Onus of proof of-Rule as to-Limitation Act of 1859 and later Acts-Distinction.

Under the Limitation Act of 1859 (S. 1, cl. 12), a suit for possession of immoveable property must have been brought within twelve years from the time of the cause of action; and, when the cause of action arose upon an alleged dispossession, the burden was upon the plaintiff to show that he, or some one through whom he claimed, had actual possession within twelve years before the institution of the suit. Under Art. 145 of the Limitation Act of 1171, however, such a suit may be brought within 12 years from the time when the possession of the defendant, or of some person through whom he claims, became adverse tot he plaintiff. Under that Article, therefore, it is not for the plaintiff to prove that he was in possession within the period of twelve years; it is for the defendant to show that he had twelve years' adverse possession (102). (Sir Barnes Peacock) RAO KARAN SINGH P. RAJA BAKAR ALI KHAN.

(1882) 9 I.A. 99=5 A. 1 (6)=4 Sar. 382

Onus of proof of-Title of plaintiff proved-Effet. Where, in a suit for a strip of land plaintiff proves his title, the onus is on the defendant to prove that the plaintiff has lost it by reason of his, the defendant's, adverse possession (812). (Sir Robert P. Collier.) RADHA GOBIND ROY SAHER ROY BAHADOOR P. INGLIS.

(1880) 3 Suth. 809=7 C.L.R. 464=Bald. 377. EJECTMENT SUIT DISMISSED-DECLARATION OF RIGHT

OF PLAINTIFF IN. -Effect of-Fresh starting point for enforcement of such right if afforded by.

Quacre, whether a declaration of the rights of a person in an ejectment suit brought by him, which was dismissed, will supply a fresh starting point of limitation for a suit to enforce such rights (208). (Lord Holhouse.) SRI MAHANT

GOVIND RAO P. SITA RAM KESHO. (1898) 25 I.A. 195= 21 A. 53 (70) = 2 C.W.N. 681 = 7 Sar. 370.

-See also Possession-Submerged LAND (1929) 56 I.A. 305-57 M.L.J. 602,

FAMILY, NOT INDIVIDUAL, OWNERSHIP- HEAD OF

FAMILY IN CASE OF-POSSESSION EXCLUSIVE OF. Net adverse to other members of family. Where under the substantive law governing the parties,

there is no individual ownership in land, the title to which is vested in the family, and the head of the family for the time being is a quasi-trustee for the members thereof, no title to the land can be acquired under the Statute of Limitation by mere length of possession. The party in possession (that is, the head of the family) is, in contemplation of law, holding for and on behalf of the family, and not on his sole account. On his death, if one of his sons get into possession, he too must be deemed to have got in consistently with a rightful title, that is to say, on behalf of his brothers and sisters and the family generally. Exclusive possession by him does not, therefore, confer on him a title under the Statute of Limitations. (Viscount Haldane.) SUNMONU 2. DISU RAPHAEL. (1927) 47 C.L.J. 833=

107 I.C. 344 = 27 L.W. 824 = A.I.B. 1927 P.C. 270=

. 54 M.L.J. 394

Adverse possession-(Contd.)

FATHER.

-Adverse possession commenced during lifetime of-

Effect of, against his minor heir.

The suit was brought by the sons of a deceased Mahomedan by one of his wives claiming that the properties in dispute were part of the inheritance of their father, in which they were entirled to share. The defendants were the sons of the deceased by another of his wives, and the purchaser of the suit property from them. The defendants contended that the suit was barred by limitation. It was found that the defendants who were the sons of the deceased were put into possession of the suit property in the lifetime of the deceased and that they continued in possession ever since.

Held that, if during the lifetime of the deceased he was out of possession and his sons (defendants) in, time legan to run in their favour against him, and the minority of the plaintiffs (his heirs) would not give them further time to sue (45-6.) (Lord Hobbonse.) SVED ASHGAR ROZA P. (1893) 20 I.A. 38= SYED MEDHI HOSSEIN KHAN. 20 C. 560 (571).

-Daughter-Minor daughter-Possession of property of-Adverse to daughter if-Paternal grand-mother guardian of property of minor. See BURMESE BUDDHIST LAW -DAUGHTER-MOTHER'S INHERITANCE

(1928) 56 M.L.J. 244 (254.)

-Wife's property- Possession of- Adverse to his

children by her if and token.

Where a father is in possession, his children claiming as heirs of their mother will not be barred unless the father's possession has been adverse to the mother. (Sir Arthur Wilton.) MAULVI SAIVID MUHAMMAD MUNAWAR ALI (1905) 32 I.A. 86 (92-3) = v. RAZIA BIBI.

27 A. 320 (324) = 2 C L.J. 179 = 9 C.W.N. 625 = 2 A.L.J. 513=8 Sar. 788=15 M.L.J. 261.

FINDING AS TO-FACT OR LAW.

-See C. P. C. OF 1908-S. 100 - ADVERSE POSSES-

SION.

-Documents-Legal inference from-Findings based on, See HINDU LAW-WIDOW-ADVERSE POSSESSION BY-FINDINGS CONCURRENT AS TO. (1919) 46 I.A. 197 = 42 A. 152

FOREST LAND.

-See Possession—Jungle Land.

GHATWALI TENURE.

-Adverse Postession of-Evidence-Proceedings hetween plaintiff or defendants on one side and creditors on the

other-Value of. A ghatwal of a large estate sued to eject the defendants from a subordinate tenure within the ambit of his ghatwali estate on the ground that the tenure was at will only. The defendants claimed to hold a ghatwali tenure, from which they could not be dispossessed, on the payment of a fixed rent; and they set up the plea of limitation.

Held that Art. 144 of the Limitation Act of 1877 applied to the case, and that under that Article possession of the defendants or their predecessors in interest did not become adverse to the plaintiff or his predecessor in interest, till there was some definition or assertion of right by either

party (197).

It can scarcely be contended that immediately on the creation of the sub-tenure the possession of it became adverse when there was no dispute or conflicting claim. And proceedings either between plaintiff or between defendants on the one side and creditors on the other could not be taken to show an assertion of right by either plaintiff or defend-

LIMITATION-(Contd.)

Adverse possession—(Contd.)

GHATWALI TENURE—(Contd.)

ants, as against one another (197). (Lord Monkroell.) TEKAIT RAMCHANDER SINGH 7. SRIMATI MADHO (1885) 12 I.A. 188 = 12 C. 484 (493-4) = KUMARI. 4 Sar. 666.

-Ancestor-Adverse possession commenced during lifetime of-Effect against minor heir of. See LIMITATION -ADVERSE POSSESSION-FATHER-ADVERSE POSSES SION, ETC.

-Ancestor-Bar of claim of, by adverse possession-Effect against heir of.

Where the right of the owner of a Zemindary to sue for property appertaining to it is barred by the law of limitation, the right of his successor, who comes in, not under a new title, but by virtue of his right to succeed to his predecessor, is also burred. The successor has not a period of twelve years from the date of the establishment of his title in which to enforce that claim (341), (Sir James W. Colvile.) RAJAH SAHEB PERHLAD SEIN V. MAHARAJAH RAJEN-(1869) 12 M I. A. 292 = DER KISHORE SING,

12 W. R. P. C. 6=2 B. L. R. P. C. 111= 2 Suth. 225=2 Sar. 430.

HINDU LAW-ADOPTED SON.

-Adoptive father's family - Female members of - Possession of, if and when adverse to adopted son. See HINDU LAW-ADOPTION-ADOPTED SON -ADVERSE POSSES-SION AGAINST. (1924) 51 I. A. 182 (191) - 5 Lah. 200.

HINDU LAW-JOINT FAMILY.

-Female member of-Hushand of-Property owned by, together with joint family-Possession of, by joint family when adverse to husband of female member.

A', the eldest of three brothers constituting a joint Hindu family, purchased the whole of the suit mitta in his own name. The purchase was made with the family funds and the funds of one A, the busband of a sister of the three brothers, and A was therefore entitled to an undivided fourth share therein. On the death of the three brothers, the son of one of them, the defendant's husband, who had no authority to act as manager of A's fourth share, entered into possession of the whole estate which had been in the possession of the joint family, and exclusively enjoyed the rents and profits of the entire estate.

Held that it must be presumed that at least from the time when the defendant's husband took possession after the death of his surviving uncle the possession was adverse to A and persons claiming his one-fourth share through him, and that a suit brought more than 12 years after the date the defendant's husband took such possession was barred under Art. 144 of the Limitation Act of 1877 (154). (Sir Barnes PANTULU. (1886) 13 I. A. 147= Peacock.) RAMANNA PANTULU. 9 M. 482 (491) = 4 Sar. 728.

-Member of-Mortgage in favour of-Purchase of mortgaged property subsequently by another member from a stranger-Adverse possession-Plea by him of-Partition between the two members prior to date of purchase-Purchase with separate funds-Effect. See LIMITATION-ADVERSE POSSESSION-MORTGAGOR AND MORTGAGES. (1912) 34 I. A. 289 (294 5).

-Member deceased of - Daughter of - Adverse possession by surviving members against-Proof of-Bengal family-Married daughter in. See HINDU LAW-DAUGH-TER-BENGAL JOINT FAMILY, (1875) 2 J.A. 113 (123),

Adverse possession-(Contd.)

HINDU LAW - JOINT FAMILY - (Contd.)

-Members of -- Adverse possession between. See (1) HINDU LAW-JOINT FAMILY - MEMBERS OF-AD-VERSE POSSESSION BETWEEN (2) LIMITATION ACT OF 1908-ART, 127.

HINDU LAW-MOTHER-SON

-Residence of, along with mother in house exclusive right of residence in which bequeathed to her by her husband's will-Permissive or adverse. See HINDU LAW -WILL-WIFE-RESIDENCE FOR HER LIFE.

(1926) 53 I. A. 201 = 53 C. 948.

HINDU LAW-RELIGIOUS ENDOWMENT.

(See ALSO LIMITATION ACT OF 1908-ART 124.)

Hereditary office-Shebait and emoluments attached thereto-Adverse enjoyment of emoluments by person not competent to hold office-Effect of, against person entitled to office-Right to emoluments depending upon right to possession of office. See LIMITATION ACT OF 1908, ART. 124.

(1914) 41 I. A. 267 (273 4) = 42 C. 244 (251-2).

Hereditary office of shebait and emoluments attached thereto-Adverse possession of, against father-Effect of, on son claiming through father. See LIMITATION ACT OF 1908-ART, 124. (1899) 27 I. A. 69 - 23 M. 271.

-Idol-Property of-Adverse Possession of-Mohant of head mutt-Ekramamah by, conveying subordinate mutt and property to another-Possession held by latter under-Nature of. See HINDU LAW-RELIGIOUS ENDOWMENT -IDOI,-PROPERTY OF-ADVERSE POSSESSION OF.

(1910) 37 I. A. 147 - 37 C. 885.

-Kattalai properties-Management of - Right to-General and special trustees-Adverse personnen.

The plaintiff, the Pandara Sannadhi of the Tiruvadudurai Mutt, sued for the recovery of certain villages situated in the Madura district, alleging that he was hundar or trustee of the "Thanappa Mudali Kattalai," which was an endowment for the performance of certain ceremonies in a temple at Madura, that the suit villages formed part of that endowment, and that, therefore, as such trustee he was entitled to their possession. The defendants were the manager of the temple and the members of the temple committee appointed by the Government under Act XX of 1863. They pleaded, inter alia, that the suit was barred by limitation.

In the year 1849 the Government, which was undoubtedly then in possession of the villages in suit, handed them over to the manager of the temple at Madura (the appointment of whom was in their hands); from that time they were in the possession of such manager and the temple committee which was also appointed by Government; and the whole of the revenue from the villages had been used for the purposes of the endowment (including the expenses of the temple) according to the directions of the temple manager and the temple committee. The Pandara Sannadhi made no opposition to the villages being handed over as stated above. From 1849 forward the plaintiff had admittedly been out of possession of the suit villages.

Held that, if plaintiff had any right to claim possession in his suit, he undoubtedly had the same right in 1849, and that, as at the date of the suit, he had been out of possession of the suit villages for nearly 60 years, his claim was barred by the Indian Limitation Act (199). (Lord Meulton.) AMBALAYANA PANDARA SANNADHI v. MEENA-KSHI SUNDARESWARAI, DEVASTHANAM,

(1920) 47 I.A. 191 = 43 M. 665 (674) =: 28 M. L. T. 83 = (1921) M. W. N. 11 = 12 L W. 212 = 18 A. L. J. 594 = 56 I. C. 730 = 39 M. L. J. 50.

-Mutt-Mohunt of-Property of mutt-Permanent lease-Lessee under-Possession of, if adverse to succeeding | death.

### LIMITATION-(Contd.)

Adverse possession-(Contd.)

HINDU LAW--RELIGIOUS ENDOWMENT-(Contd.) mohunt-Rent paid by him to succeeding mohunt-Effect of. See HINDU LAW-RELIGIOUS ENDOWMENT-MUTT -MOHUNT OF-PROPERTY OF MUTT - PERMANENT LEASE OF-RENT DUE UNDER.

(1921) 48 I. A. 302 (327-8) = 44 M. 831 (855).

-Mutt-Property of-Possession of-Suit by head of mutt for, against persons claiming to be trustees or manggers of property and to be entitled to apply it for purposes of institution-Limitation-Adverse possession.

The suit was brought by the respondent " to declare that the defendants have no right to the village of Patharkudi, and that the plaintiff, as head of the mutt, is entitled to

the possession of the village."

The village was part of the property of the mutt. It had been long administered by the appellants who were Nagara Chettys. Broadly speaking, the contest in the case was between the head of the muth on the one hand, who claimed in virtue of his office to be entitled to the management and possession of the entire property of the muth; while, on the other hand, the appellants claimed that they were entitled as trustees or managers of the part of the property of the institution which was in suit to be continued in the possession and management thereof. The form of the action brought was a suit for possession instituted by the head of the muth, who did not have that possession, against the trustees or managers, who and whose predecessors for a period of 80 years had it.

Held, that the suit was excluded by the 12 years' limita-

In L. R. 10 1. A. 90 it was held that limitation applied to cases where the defended admitted he was a trustee, and the plaintiff, without proving misapplication, brought a suit more than 12 years after the cause of action arose, the object of the suit being to obtain control of the management. The present case is still stronger for the application of the rule of limitation, as the assertion is made not only of the right to management, but of the right of beneficial ownership (225). (Lord Shaw.) ARUNACHELLAM CHETTY D. VENKATACHALAPATHY GURUSWAMIGAL.

(1919) 46 I. A. 204 = 43 M. 253 = 24 C. W. N. 249 = 26 M. L. T. 479 = (1919) M. W. N. 850 = 10 L. W. 642 = 17 A. L. J. 1097 = 22 Bom. L. B. 457 = 53 I. C. 288 = 37 M L, J. 460.

-Shibait of-Office of-Adverse Possession of-Effect of, on right to emolument attached to office. See HINDU LAW-RELIGIOUS ENDOWMENT-SHEBAIT OF-OFFICE OF-EMOLUMENTS OF-LANDS FORMING.

(1899) 27 I. A. 69 (76-7) = 23 M. 271 (279)

### HINDU LAW-WIDOW.

-Adverse possession against. See HINDU LAW-WIDOW-ADVERSE FOSSESSION AGAINST.

-Adverse possession by. See HINDU LAW-WIDOW -ADVERSE POSSESSION BY.

-Life interest under compromise-Property held with -Alienation of -Possessien of alience under-If adverse to remainderman.

Under a deed of compromise between a Hindu widow and A', her husband's cousin, the widow was to have just as full an enjoyment of her interest in the property allotted to her by the compromise during her lifetime, as K was to have in his. She was free to alienate her interest, and an alienation by her thereof was perfectly good for her lifetime. She could not, however, alienate the property allotted to her in perpetuity, and an alienation by her was not to prevent K taking the property allotted to her immediately upon her

Adverse possession-(Contd.)

HINDU LAW-WIDOW-(Contd.)

While in possession of the property so allotted to her by the compromise, the widow conveyed to the ancestor of the appellant a portion of the said property. In a suit brought by K's representatives to recover from the appellant the property alienated to his ancestor, the question was whether limitation for the suit ran from the date of the alienation by the widow, or from the date of her death.

Held that the alienation being good for the widow's lifetime, there was no adverse possession until she died, and that the suit brought within 12 years of her death was not barred (213-4). (Sir Arthur Hobbouse.) MUSSUMMAT

DEREA SAHODRA P. ROY JUNG BAHADOOR.

(1881) 8 I. A. 210 = 8 C. 224 (229) = 6 I. J. 108 = 4 Sar. 294.

## INTERRUPTION OF.

——Adverse Possessor — Decree for possession against— Execution of — Delivery of possession, actual or symbolical, in—Effect. See LIMITATION—ADVERSE POSSESSION— ADVERSE POSSESSOR—DECREE FOR ETC.

(1872) 19 W. R. 101.

Adverse Possessor—Decree for possession unexecuted against—Effect of. See Limitation—Adverse Possession—Adverse Possessor—Decree for Possession Against. (1928) 55 M. L. J. 251.

Adverse Possessor - Ijara obtained by real owner from—Possession held by him under—Effect of. See LAND

LORD AND TENANT-ADVERSE POSSESSION.

(1902) 29 I. A. 104 (114) – 29 C. 518 (534).

—Adverse Possessor—Rent of property trespassed upon
—Payment of—Effect. See Limitation — Adverse
Possession—Adverse Possessor—Rent of Property, etc. (1873) Sup. I. A. 165 (169-70).

—Co-owners—Adverse possession against one of—
Interruption of—Devolution by inheritance of interest of that owner on adverse possessor before statutory period if operates as an. See CO-Sharers—Adverse Possesson AGAINST ONE OF. (1919) 46 I. A. 285 (292.3)

43 M. 244 (252)

an. See Limitation—Ejectment Suit — Dismissal of. (1898) 25 I. A. 195 (208) = 21 A. 53 (69, 70).

——Declaration of title of true owner in suit to which adverse possessor party if operates as an. See LIMITATION – ADVERSE POSSESSION—DECLARATION OF TITLE OF TRUE OWNER, ETC. (1923) 50 I. A. 295 (299) = 46 M. 751 (755-6).

Ejectment suit dismissed—Declaration of title in— Effect. See LIMITATION-ADVERSE POSSESSION—EJECT-MENT SUIT DISMISSED. (1898) 25 I. A. 195 (208) = 21 A. 53 (70).

-Real owner's possession sufficient for-Nature of.

Standing a title in " A," the alleged adverse possession necessary. of "B" must have all the qualities of adequacy, continuity, and exclusiveness which should qualify such adverse possession. But the onus of establishing these things is upon the adverse possessor. Accordingly when the holder of title proves that he too has been exercing during the currency of his title various acts of possession, then the quality of these acts, even although they might have failed to constitute adverse possession as against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging by possession the title which he holds (404). (Lord Shaw.) KUTTALI MOOTHAVAR & PERINGATI (1921) 48 I. A. 395 = KUNHARAN KUTTY. 44 M 883 (890-1)=14 L. W. 721=

### LIMITATION-(Contd.)

Adverse possession-(Contd.)

INTERRUPTION OF- (Contd.)

(1921) M.W.N. 847 = 30 M. L. T. 42 = L. R. 3 P. C. 9 = 24 Bom. L.B. 669 = A.I.R. 1922 P.C. 181 = 66 I.C. 451 = 41 M. L. J. 650

——Submergence of land trespassed upon—Effect of, during period of submergence. See POSSESSION—SUB-MERGED LAND.

----Symbolical possession—Interruption by. See Limitation—Adverse possession—Symbolical possession. (1917) 34 M. L. J. 97 (103).

### JOINT TENANTS.

——Adverse Possession between—English Law rule as to

—Applicability of, to sharers in unpartitioned agricultural
villages in India not holding their sharers as members of
joint family. See JOINT TENANTS—ADVERSE POSSESSION
BETWEEN. (1919) 46 I. A. 285 (292.3) =

43 M. 244 (252).

JUNGLE LAND.

-See Possession-Jungle Land.

LANDLORD AND TENANT,

——S<sub>K</sub> (1) LANDLORD AND TENANT—ADVERSE POSSESSION AND (2) LIMITATION—ADVERSE POSSESSION—UNDER-PROPRIETARY RIGHT.

### LICENSEE.

---- Remainder-man or reversioner entitled to.

(harre whether, on the extinction of the title of a person having a limited interest, a right to enter arises in favour of a remainderman or a reversioner (361.) (Lord Romilly). GUNGA GOBIND MUNDUL v. COLLECTOR OF THE TWENTY FOUR PERGUNNARS. (1867) 11 M. I. A. 345 = 7 W. R. P. C. 21 = 1 Suth. 676 = 2 Sar. 284.

MADRAS FOREST ACT OF 1882—AFFORESTATION PROCEEDINGS UNDER.

----Claim by adverse possession in-Onus in case of. See MADRAS-ACTS-FOREST ACT OF 1882

> (1916) 43 I. A. 192 = 39 M. 617. MINOR.

——Father of—Possession and management of minor's property by—Adverse to minor—If and when. See BURMESE BUDDHIST LAW—DAUGHTER.

(1928) 56 M. L. J. 244 (254).

—Heir a—Adverse Possession commenced during lifetime of father—Effect of. See LIMITATION—ADVERSE POSSESSION—FATHER—ADVERSE POSSESSION ETC.

(1893) 20 I. A. 38 (45-6) = 20 C. 560 (571).

### MORTGAGOR AND MORTGAGEE.

(N. B.) CASES, IF ANY, NOT FOUND UNDER THIS HEAD WILL BE FOUND UNDER MORTGAGE—MOPT-GAGOR AND MORTGAGEE—ADVERSE POSSESSION.

——Conditional sale—Mortgage by—Possession of mortgager under—Effect against mortgagee—Old and new notions of mortgage by conditional sale—Distinction.

As long as a transaction of conditional sale was one of sale conditional at first, and absolute at a certain period afterwards by lapse of time, unless, on the prior performance of a certain condition (e.g. payment of money), the title to the land was on that condition terminating in favour of the conditional purchaser, the same as that of any ordinary owner, and a possession frima facie irreconcilable with it, might well be deemed adverse from the date of the

Adverse possession-(Contd.)

MORTGAGOR AND MORTGAGEE-(Contd.)

completion of the perfect title in the buyer. But if the transaction be viewed, as it should now be regarded, as one redeemable at any time by the mostgagor, or those claiming under him in privity with his title as mortgagor, the possession of those who claim under the mortgagor, so long as they assert a title to redeem, and advance no other title inconsistent with it, must prima facie at least be treated as perfectly reconcilable with, and not adverse to, the title of the mortgagee, and the continuation of his lien on the thing pledged. It is by no means the essence of such a title that it should be accompanied by an actual continuing possession of the lands. The pledgee may, from various causes, he reluctant to assume possession of the pledge, or to shorten the period of its redeemable quality. So possession is adverse or not according to the title so set up. (Lord Kingsdown.) PRANNATH ROY CHOWDRY +. ROOKEA (1859) 7 M.I. A. 323 (353-4) = 4 W. R. 37 = 1 Suth. 367 = 1 Sar. 692.

-Equity of relemption-Execution purchaser of. benamidar for mortgagee-Exclusive possession by-Effect.

The question was whether a suit for redemption was barred by adverse possession for more than 12 years by the purchasers at execution sales of the equity of redemption.

The circumstances relied on as evidence of adverse possession were: that since the dates of the execution sales no accounts were demanded by or rendered to the mortgagors or their representatives, no payments of subsistence money which they were entitled to under the mortgage were made to them, and the parties after the sale ceased to cultivate the land and left the village, and renewed pattas were granted to nominees of the mortgagees.

It appeared, however, that in each case the nominal purchasers were the agents only of the mortgagees, or the firm of which they were members, who were the real purchasers, that as changes took place from time to time in the constitution of the firm, the mortgaged property as an asset of the firm was credited at an agreed figure in favour of an outgoing or against an incoming partner, and that there were no separate dealings with the equity of redemption as a distinct subject of property.

Held, that the possession had been that of the mortgagees throughout, and that the question at issue was exclu-

sively one between mortgagor and mortgagee (33), If the purchasers had been independent third parties, and accounts had been rendered and payments made by the mortgagees to them instead of to the mortgagors, the circumstances relied on would have been cogent evidence of adverse possession of the equity of redemption in favour of such third parties (32).

It is almost unnecessary to add that a renewal of the pattas or the making of a new settlement with Government in the names of nominees of the mortgagees did not alter the real title to the lands (33). (Lord Dascy.) KHIARIMAL t. DAIM. (1904) 32 I.A. 23 = 32 C. 296 (311.2) =

9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. R. 1 = 1 C. L. J. 584 = 8 Sar. 734.

-Exclusive possession by mortgagor—Effect.

As between mortgagor and mortgagee, neither exclusive possession by the mortgagee for any length of time short of the statutory period of 60 years, nor any acqueiscence by the mortgagor not amounting to a release of the equity of redemption, will be a bar or defence to a suit for redemption if the parties are otherwise entitled to redeem (33). (Lord Darry.) KHIARAJMAL P. DAIM. (1904) 32 I. A. 23=

32 C. 296 (312) = 9 C.W. N. 201 = 2 A. L. J. 71=

LIMITATION—(Contd.)

Adverse possession-(Contd.)

MORTGAGOR AND MORTGAGEE-(Contd.)

-Hindu Joint family-Member of-Mortgage in favour of-Purchase subsequent of property subject to, by another member from stranger-Plea of adverse possession by him ... Maintainability - Partition between brothers prior to purchase which was made with separate funds-Effect.

In a suit for redemption of a usufructuary mortgage of 1846, the defendant set up the defence that he purchased the mortgaged property from a person who had no title to convey the same and that his enjoyment thereof for over the statutory period conferred on him a title by adverse possession. It was found that the defendant was the son of the mortgagee under the suit mortgage, that at the date of the suit mortgage the defendant and his father formed a joint Hindu family governed by the law of the Benares School of the Mithakshara, that the defendant had, however, ceased to be joint in food and in business with his father prior to the date of his purchase of the suit property, and that the purchase was made by him with his separate and self-acquired funds,

Held, that the defendant was not, under the circumstances, precluded from setting up a title of adverse possession. (Str John Edge.) PARBATI v. MUZAFFAR ALI KHAN.

(1912) 34 A. 289 (294 5)=(1912) M. W. N 417= 11 M. L. T. 316 = 9 A. L. J. 450 = 15 C. L. J. 468= 14 Bom. L. R. 460 = 16 C. W. N. 913 = 15 I. C. 196= 23 M. L. J. 10

-Mort gagee's benamidar-Patta for mort gaged property in name of-Issue of Settlement with Government in name of-Effect.

It is almost unnecessary to add that a renewal of the pattas or the making of a new Settlement with Government in the names of nominees of the mortgagees did not alter the real title to the lands (33). (Lord Davey.) KHIARAJMAL c. DAIM. (1904) 32 I. A. 23 = 32 C. 296 (312) =

9 C. W. N. 201 = 2 A. L. J. 71 = 7 Bom. L. B. 1= 1 C. L. J. 584 = 8 Sar. 734

-Usufructuary mortgage-Dispossession of mort. gagee under, and adverse possession against him with tubsettlement-Effect against mortgagor of.

In a suit brought in 1887 to recover a village from a subsettlement holder thereof, it appeared that the plaintiff's ancestor had mortgaged the whole ilaka of which the village was part under the Mahomedan dynasty in 1854 and that after Lord Canning's confiscation the mortgagee obtained in 1860 a summary settlement of the Ilaka, and also a talookdari sunnud of another estate which was made to include the village in suit; that thereafter the plaintiff enforced in 1884 his right to redeem, which had been restored to him by Act XIII of 1866, and obtained possession of the whole ilaka except the village in suit; and that in 1866 the defendant obtained a consent decree in a sub-settlement suit against the settlement-holder of 1860, under which he obtained and ever since held possession of the said village. Held, that, whatever the effect of this decree upon the superior tenure, adverse possession under it bound all persons claiming interest in such tenure and accordingly the suit was barred by limitation. (Lord Hobbouse.) IMDAD HUSSAIN P. AZIZ-UN-NISSA. (1895) 23 I. A. 8= 23 C. 483=6 Sar. 669=6 M. L. J. 43.

-Usufructuary mortgage-Sale by mortgagor of property subject to, and subsequent dealings by him therewith in favour of others-Effect on mortgagee of.

Where property in the possession of a mortgagee is sold by the mortgagor to a third party, and is afterwards dealt with by him in favour of others, held, that the subsequent 7 Bom. L. R. 1=C. L. J., 584=8 Sar. 734. dealings could not be regarded as acts of ownership so as to

Adverse possession -(Contd.)

MORTGAGOR AND MORTGAGEE-(Contd.)

prove adverse possession, because the mortgagor never was in possession, the possession remaining in the mortgagor (373). (Lord Phillimore.) EHTISHAM ALI v. JAIMNA PRASAD. (1921) 48 I.A. 365-15 L. W. 104-

30 M.L.T. 132=9 O. L. J. 71-24 O. C. 272= 24 Bom. L. R. 675=A. I. R. (1922) P. C. 56= 27 C. W. N. 8=20 A. L. J. 961=64 I. C. 299.

MOTHER-IN-LAW'S PROPERTY-SON-IN-LAW'S POSSESSION OF, DURING HER LIFETIME AND THAT OF HER DAUGHTER.

living with their father.

The claim was as to the property of a deceased Mahomedan lady. The rival claimants were the son-in-law of the deceased, the appellant, and the respondents, the granddaughters of the deceased by her deceased daughter, the appellant's wife.

Held that possession of the property in dispute by the appellant, during the lifetime of his mother-in-law and of his first wife, was just as consistent with the title of his mother-in-law and of his own wife and of his daughters,

the respondents, as it was with his own (423).

As long as the grandmother and the mother survived, and as long as the daughters lived with the appellant, he would naturally and necessarily be in possession of this property (423). (Mr. Pemberton Leigh). KADIR BUKHSH KHAN v. MUSSUMATAIN FUSSERH-OON-NISSA.

(1853) 5 M.I.A. 413=1 Suth. 241.

### ONUS OF PROOF OF.

Ejectment suit—Defence plea of adverse possession in. See Limitation—Adverse possession—Ejectment suit—Plea of Adverse possession by Defendant in.

### PLEA OF.

Ejectment suit—Plea by defendant in—Onus of proof in case of. See Limitation—Adverse possession—
EJECTMENT SUIT—PLEA OF ADVERSE POSSESSION BY DEFENDANT IN.

Transferee from adverse possessor—Plea if available to. See LIMITATION—ADVERSE POSSESSION—TACKING OF.

PORTION OF LAND-POSSESSION OF.

Possession of whole if and when amounts to. See

# PRESUMPTION OF.

--- (See also LIMITATION-ADVERSE POSSESSION-

### PROPRIETY.

Possession capable of being lawful or unlawful.

If possession may be either lawful or unlawful, in the absence of evidence, it must be assumed to be the former (124). (Lord Buckmaster.) HARDIT SINGH v. GURMUKH SINGH. (1918) 9 L. W. 123 = 64 P.R. 1918 = 28 O.L.J. 437 = 58 P.W.B. 1917 = 24 M.L.T. 389 = 20 Bom. L. B. 1064 = 47 I. C. 626 =

\_\_\_\_\_See also CASES UNDER TITLE—PARTY WITH— POSSESSION BY—PRESUMPTION OF.

(1919) M. W. N. 1.

### LIMITATION-(Contd.)

Adverse possession-(Contd.)

PRIVATE OWNERS-DISPOSSESSION OF ONE OF, BY ANOTHER,

——Suit for dispossession in case of Kight of Government entitled to rent only—Right of.

A dispute between two private owners, whether as to boundaries or lands, cannot divest the title of either to possession in favour of the Government, if the latter have merely a rent or jumma. The title to sue for dispossession of the lands belongs, in such a case, to the owner whose property is encroached upon (360-1). (Lord Romilly.) GUNGA GOBIND MUNDAL 7. COLECTOR OF THE 24 PERGUNNAHS. (1867) 11 M.I.A. 345=
7 W.R. 21=1 Suth. 676=2 Sar. 284.

# PROOF OF.

——Forest land little capable of cultivation—Proof in case of. Src POSSESSION—JUNGLE LAND.

(1921) 48 I.A. 395 (398) = 44 M. 883 (886).

— Jungle land of considerable area—Proof in case of. See POSSESSION—JUNGLE LAND.

(1900) 27 I.A. 136 (140·1)=27 C. 943 (950·1).

——Nature of property—Uses to which it was put— Proof depending upon. S<sub>N</sub> LIMITATION—ADVERSE POSSESSION—ACTS AMOUNTING TO.

(1917) 44 I.A. 104 (113-4) - 44 C. 858 (872).

QUESTION AS TO-FACT OR LAW.

### RIGHT OF SUIT IN CASE OF.

——Private owner—Dispossession of one by another— Suit for dispossession in case of—Government entitled to rent only if entitled to maintain. See LIMITATION—AD-VERSE POSSESSION—PRIVATE OWNERS.

(1867) 11 M.I.A. 345 (360-1).

### SON-MOTHER,

—House bequeathed by father for exclusive residence of—Residence of son in, with mother—No adverse possession by reason of. See HINDU LAW—WILL—WIFE— RESIDENCE IN HOUSE FOR LIFE.

(1926) 53 I A. 201 = 53 C. 948.

### STARTING POINT OF.

——(See also LIMITATION—CAUSE OF ACTION).

Arrangement giving right to a portion of family property to a person—Suit by him to recover that portion—Starting point of limitution in case of—Refusal by person in possession to deliver up that portion. See MADRAS REGULATIONS—JURISDICTION OF CIVIL COURTS REGULATION II OF 1802, CL. 4. (1835) 5 W.B. 114 (P.C.)

— Decree denying plaintiff's title—Appeal against— Dispossession of plaintiff pursuant to decree in—Starting point in case of—First Court'e decree—Appellate decree— Dispossession—Date of.

Plaintiff, on 19.9-1873, surd the respondent (before the Privy Council) and others to recover a twelve annas share, and to eject the respondent from his possession of the lands in suit, on the allegation that they were mal or rent-paying lands to which plaintiff was entitled, and of which his step-brother, S, held possession in 1864, alleging them to be lakhiraj or rent-free lands and claiming to be entitled to them. Respondent contended that the suit lands were purchased by him in an execution sale as belonging to S as lakhiraj lands, that plaintiff had no title thereto, and that, as the lands had never been held by anybody as a rent-paying part of the Zemindary, the claim was barred by

Adverse possession-(Contd.)

STARTING POINT OF -(Cont.)

limitation. It appeared that, originally, plaintiff had a ten! annas share in the estate, his father had a two annas share, and his half-brother, S, a four annas share that their enjoyment of the property was, upto the year, 1839, ijmali or joint; that in 1839 a butwara (family arrangement) took place under which the different villages constituting the estate were divided, plaintiff taking solely certain villages as his ten annas share, and his father and S taking jointly certain other villages as representing their six annas share; and that on the death of his father in 1842, his two annas share also became vested in plaintiff. In 1856, 5's four annas share of the estate was sold in execution of a decree obtained against him by N and purchased by him (N). S resisted N's attempt to take possession and thereupon N instituted a suit in 1858 against, inter alia, S and plaintiff to enforce his rights. By the first judgment in that suit. dated 3-12-1860, it was decided not only that the four annas share had continued to be the property of S at the date of the execution, and had passed under the sale in execution, but further that the butwara, which had been pleaded by plaintiff, had not been proved against and was not binding on N, and that he was accordingly entitled to hold the four annas share of S purchased by him in ifmali enjoyment with plaintiff. S, but not plaintiff, appealed against the decree and his appeal was finally disposed of only on 19-6-1863. Execution was then taken out by A against S, and the heirs of N, who had died in the meantime, did not obtain constructive possession of 5's 4 annas till July 1864. S then set up a title to hold as lakhiraj the lands in question in the suit of plaintiff, which had formed part of the villages allotted by the butwara, as the six annas share, treating them as no part of the khalisha lands, his interest wherein had passed under the execution.

Held, the date on which A's herrs were put into posses sion, or at all events the date of the dismissal of the appeal was the earliest at which it could be said that the title of plaintiff to the relief which he sought in his suit accrued, and not 3-12-18(0), the date of the first judgment; and the suit, which was instituted within 12 years from the date of the Appellate judgment, was not barred under Art. 145 of the Limitation Act of 1871.

The effect of the decree in N's suit, in so far as it set aside the partition, was to give him a right to take from the plaintiff four annas of the rents of all the villages previously allotted to him, and to give to the plaintiff a corresponding equity or right to have the twelve annas of the rents of the villages which had formerly belonged to S. The plaintiff was not bound to assert this right in 1860, because S having appealed against the decree, there was of course a possibility of its being reversed or altered, and of N's suit being dismissed altogether. It was therefore uncertain against whom the right to receive the twelve annas share of the villages in question was to be asserted; nor did it follow that because the butwara or family arrangement had been declared to be of no effect as between N and the present plaintiff, it was of no effect as between the plaintiff and his brother who were co-defendants in A's suit. Again, no attempt was made by N to take out execution pending the appeal, and it may fairly be supposed that by arrangement between the brothers there was an agreement that the property should continue to be enjoyed as it had been under the partition. In these circumstances even if technically the lands now in question remained, pending the appeal, in S, there was no necessity or duty lying upon the plaintiff to assert his rights in those lands until A's heirs were put into possession, or at all events until the rights of the parties had been finally determined by the dismissal of the appeal. These considerations are alone sufficient to bring the plaintiff's ceedings-Stranger-Distinction,

LIMITATION-(Contd.)

Adverse possession-(Contd.)

STARTING POINT OF-(Contd.)

suit within the twelve years. There was no possession adverse to the plaintift before 1863 (4-5) (Sir James W. Celvile.) DEWAN MANWAR ALI v. UNNODA PERSHAD (1879) 7 I. A. 1=5 C. 644 (652-3)= 6 C. L. R. 71 = 4 Sar. 86 = 3 Suth. 697.

Decree in suit to which real owner not party adjudging lands to third party-Disposession of real owner by order of Court pursuant to. See BENGAL REGLS .- ZILLAH COURTS REGL. III OF 1793-S. 14-POSSESSION OF PROPERTY, ETC. (1866) 10 M. I. A. 476 (485-6).

-Unascertained property awarded under compromise -Suit to recover-Starting point in case of-Judicial atcertainment of property subsequently-Date of.

A decree of the year 1873 awarded to the appellant certain lands as belonging to the village A. Possession was given in September, 1876, the lands having been judicially ascertained but not demarcated. In 1877 he sued the respondent in the Civil Court for possession of alluvial lands as belonging to village R, and included therein some land already decreed to him belonging to village A, but the suit was dismissed. He then sued in the Revenue Courts, with the result that the exact lands adjudged under the decree of 1873 were demarcated and the respondent was found to be in possession of part thereof, but denied the jurisdiction of the Revenue Courts to oust him. In February, 1886, the appellant sued for possession of certain lands belonging to village A, and adjudged to him by the decree of 1873.

Held that the suit was not barred by limitation, as the land which accrued to the appellant under the compromise was not ascertained till the proceedings in 1876, and June 1876, was the very earliest time at which a right to recover the land in suit accrued to the appellant, and that was less than twelve years before the reception of the plaint (715). (Lord, Hobbonse.) MAHARAJAH JAGATJIT SINGHT. RAJAH SARABJIT SINGH. (1891) 18 I.A. 165= 19 C. 159 (171)=6 Sar. 80=R. & J's. No. 125.

STATUTORY PERIOD-POSSESSION FOR LESS THAN.

-(See ALL CASES COLIECTED UNDER POSSESSION -LONG POSSESSION).

-Disturbance of-Party attempting-Onus on. Su POSSESSION-LONG POSSESSION-DISTURBANCE OF.

-Ejectment suit against person in-Onus on plaintiff in case of. See EJECTMENT SUIT-POSSESSION LONG WITH DEFENDANT.

-Evidence of title against Crown if. See CROWN-TITLE AGAINST.

(1908) 35 I. A. 195 (205) = 36 C. 1 (19-20).

-Presumption from. See Possession-Long Pos-SESSION-PRESUMPTION FROM.

-Prima facie proof of title of adverse possessor if See Possession-Long Possession-Statutory PE KIOD-POSSESSION FOR LESS THAN-PRIMA FACIL ETC.

-Proof of -Effect of-Onus of proof of subsisting title if thrown on opposite party by. See LIMITATION ACT OF 1908-ART. 149-ADVERSE POSSESSION FOR LESS THAN STATUTORY PERIOD. (1916) 43 I.A. 192 (2034, 206)= 39 M. 617 (631-2, 633)

SUBMERGENCE OF LAND SUBJECT OF. -Interruption of adverse possession during period of See Possession-Submerged Land-Adverse posses SION OF.

# SYMBOLICAL POSSESSION.

-Interruption of adverse possession by-Party to Pr

Adverse possession-(Contd.)

SYMBOLICAL POSSESSION-(Cont t.)

Symbolical possession is sufficient to interrupt adverse possession where the person setting up adverse possession was a party to the proceedings in which the symbolical possession was ordered and given. (Lord Sumner). THA-KUR SRI RADHA KRISHNA P. RAM BAHADUR.

(1917) 23 M. L. T. 26 = 16 A. L. J. 33 = 7 L. W. 149 = 27 C. L. J. 191 = 22 C. W. N. 330 = (1918) M. W. N. 163 = 20 Bom. L. R. 502 = 4 P. L. W. 9 = 43 I. C. 268 = 34 M. L. J. 97 (103).

### TACKING OF.

Collector attaching and taking possession of property to secure Government revenue—Possession given up, and surplus proceeds paid over, by Collector to trespasser—Latter's right to tack Collector's possession to his own. See LIMITATION—ADVERSE POSSESSION—COLLECTOR, ETC. (1882) 9 I. A. 99 (102-3)=5 A. 1 (7)

- Right of Subsequent possessor not claiming from or through previous possessor but adversely - Effect.

A char which was found to be a re-formation in sitn of plaintiff's land was occupied for some years by Government. It was then claimed by defendants as their property and Government made over possession to them. In a suit by plaintiffs to recover possession, held that the defendants could not, to make out their plea of adverse possession, tack on the period of Government's possession to their own occupation.

The defendants do not derive their liability to be sued "from or through" the Revenue Authorities in any sense of the words within the meaning of §. 3 of the Limitation Act. They advanced a claim of their own adversely to the Revenue Authorities, which was rested on prior title and possession, and sought to put an end to conduct on the part of those authorities which, they asserted, was inconsistent with and an invasion of their own superior title. On investigation the Revenue authorities recognised and submitted to this adverse claim and withdrew from any enjoyment or occupation. If the defendants could make good now the claim which they made then, well and good; but they would succeed, not by reason of, but independently of, the Limitation Act. (Lord Summer.) KUMAR BASANTA ROY P. SECRETARY OF STATE FOR INDIA.

(1917) 44 f. A. 104 (114-5) = 44 C. 858 (874) = 22 M. L. T. 310 = 21 C. W. N. 642 = 15 A. L. J. 398 = 25 C. L. J. 487 = 1 Pat. L. W. 593 = 25 C. L. J. 487 = 1 Pat. L. W. 593 = 19 Bom. L. B. 483 = 6 L. W. 117 = 40 L. C. 337 = 32 M. L. J. 505.

-- Right of-Transferee from adverse possessor-Right

Where property, which is enjoyed by A adversely to B, the owner of the same, is transferred by A to C, and the facts show a continuity of enjoyment by A, which is not broken by C's purchase from nim, the plea of limitation or prescription is just as available for C as it would have been for A if his possession had continued unchanged (54). (Lord Hobboure.) MAHARAJAH SIR LUCHMESWAR SINGH BAHADUR v. SHEIK MANOWAR H. SSEIN.

(1891) 19 I. A. 48 = 19 C. 253 (261) = 6 Sar. 133.

TENANTS IN COMMON.

-See LIMITATION-TENANTS IN COMMON.

TITLE GAINED BY-WAIVER OF.

Transfer of possession to real owner-Effect. See LIMITATION-TITLE GAINED BY-WAIVER OF. (1875) 2 L A. 154 (156).

# LIMITATION-(Contd.)

Adverse possession-(Contd.)

TRESPASSER.

### TRUSTEE.

——Adverse possession against co-trustee—Acquisition by, of right of management by rotation. See TRUST— TRUSTEE—ADVERSE POSSESSION—CO-TRUSTEE.

(1903) 30 I. A. 77 (80) = 27 B. 353 (357).

Trust property—Adverse Possession of—Possibility of. See TRUST—TRUSTEE—ADVERSE POSSESSION—TRUST PROPERTY. (1897) 24 I. A. 10 (21)=19 A. 277 (291)

### UNDER-PROPRIETARY RIGHT.

Person not in fact entitled to Aquisition of right by adverse possession by Assertion of right in indicial proceedings and lapse of 6 or 12 years without assertion being successfully challenged if amounts to,

The respondent held certain land in a village appertaining to the estate of the appellant, an Oudh talukdar. As far back as the year 1891 the appellant issued a notice of ejectment under Ss. 54 and 55 of the Oudh Rent Act of 1886 against the respondent. The latter thereupon instituted proceedings under S. 108 of that Act to contest the said notice on the ground that he was not a tenant liable to ejection by notice under the Act but was an under-proprietor thereunder. In those proceedings final judgment was pronounced by the Board of Revenue in 1892 or 1893 cancelling the notice of ejectment on the ground that there was reasonable ground for supposing that the respondent was an under-proprietor and not a tenant subject to ejectment under the Act. The respondent continued in possession making to the appellant the same money payment as before, till 1913, when he instituted the suit out of which the appeal arose for a declaration that he was an under-proprietor.

It was proved that he was not in fact such, and the only question was whether he had become so by adverse posses-

Held, over-ruling the respondent's contention, that the simple assertion of a proprietary right in a judicial proceeding connected with the land in dispute which ex hypothesi was unfounded at the date when it was made, could not, by the mere lapse of 6 or 12 years, convert what was an occupancy or tenant title into that of an under-proprietor.

Their Lordships are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can, by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands Such a judgment might have very far-reaching results and would almost certainly lead to a flood of litigation. It is notorious that in actions for rent or enhancement of rent or for ejectment, the persons in possession are prone to maintain rights which they do not possess, and if, for any reason, no judicial determination is arrived at, but the parties contime on the original footing, the mere lapse of so short a period as 6 or 12 years (which might be amply explained upon other grounds) would deprive the landlord of his proprietary rights unless in the meantime he had brought a declaratory suit to settle once and for all the terms on which possession was held (208-9),

The case might have been different, if in addition to the judicial assertion by the plaintiff there had been any change in the money payment which he thereafter made to his land-lord (209). (Lord Salvesen.) MAHOMED MURTAZ ALI KHAN v. MOHAN SINGH. (1923) 50 I. A. 202=

45 A. 419=21A.L.J. 757=28 C.W.N. 840=

Adverse possession-(Contd.)

UNDER-PROPRIETARY RIGHT-(Confd.)

39 C.L.J. 295 - 33 M.L.T. 321 - 19 L.W. 283 = 26 O.C. 231 = 10 O.L.J. 383 = 74 I.C. 476 = A.I.E. 1923 P.C. 118 45 M L.J. 623.

-The respondents claimed to be under-proprietors. In 1893 an attempt was made to eject them from the suit holdings, and in those proceedings they asserted that their right was that of an under proprietor. Their exact position was, however, then left wholly undetermined. Thy persisted in that assertion until the institution of the proceedings out of which the appeal to the Privy Council arose, that is, for over the the statutory period. They completely failed to show that their original right was an under-proprietary right.

Held, reversing the Courts below, that the respondents had not acquired an under proprietary right by prescription.

The repeated assertion of under proprietary rights during the statutory period applicable for a Statute of Limitations cannot convert a title which was not that of under-proprietary tenant into that of under proprietary tenant merely by lapse of time. (Lord Buckmaster.) RAJA MAHOMED MUNTAZ ALI KHAN P. DHANNA SINGH.

(1929) 51 C.L J. 124 = 34 C.W.N. 375 = 121 I. C. 530 = 58 M. L. J. 226.

WATAN LANDS.

Adverse possession of. See WATAN-WATAN LANDS-ADVERSE POSSESSION OF.

ZEMINDAR.

Chukdari right-Acquisition by adverse possession of, against Zemindar purchasing from Government-Evidence. See ZEMINDAR-ADVERSE POSSESSION-CHUK-DARI RIGHT. (1881) 5 I. J. 495.

-Mocurraridar-Adverse possession by-Notice of tenur :- Necessity. See ZEMINDAR-ADVERSE POSSES-SION-MOCURRARIDAR. (1873) 19 W. R. 252 (254). Zemindari-Property admittedly part of-Adverse possession of-Plea by junior branch of-Proof of. Sec ZEMINDAR-ADVERSE POSSESSION-ZEMINDARI.

(1883) Bald. 480.

Appeal.

-Filing of-Date of, for purposes of limitation-Appeal memo, presented with deficient Court-fee-Deficiency in Court-fee subsequently made up-Date in case of. See C. P. C. OF 1908-S. 149.

-Law of limitation-Change of, subsequent to decree and pending appeal therefrom-Notice of-Appellate Court if bound to take. See BENGAL REGULATIONS-ZILLAH COURTS REGULATION III OF 1793-S. 18.

(1835) 5 W. B. 95 (P.C.)

-Law of limitation applicable to-Change of law subsequent to decree and pending appeal therefrom.

Quare, whether, where an Act of Limitation has been repealed, that repeal taking place at a period in a suit between its commencement and its final determination, is or is not to affect the decision on appeal, either confirming or reversing the original decree in the suit which took place at the time when that repeal had not been made. (Mr. Justice Botanquet.) LALL DOKUL SINGH P. LALL ROODER PUR-TAB SINGH. (1835) 5 W.R. 95 (P.C.) = 1 Suth. 20 (21) = 1 Sar. 879.

Assumpsit.

-Action of-Limitation-Cause of action.

In assumpsit, the breach of contract is the cause of action, and the statute runs from the time of the breach. even where there is fraud on the part of the defendant (69), (Lord Campbell.) EAST INDIA COMPANY v. ODITCHURN (1849) 5 M. I. A. 43=7 Moo. P. C. 85= 14 Jur. 253 = I Sar. 394. LIMITATION-(Contd.)

Bar of.

Benefit of-Right to. See LIMITATION-ADVERSE POSSESSION-BAR BY.

-Court's duty to take notice of, even in absence of plea. See LIMITATION-PLEA OF-NECESSITY.

-Exemption from-Grounds of-Plaintiff's duty to establish. See LIMITATION-EXEMPTION FROM.

-Litigation vain to save -Necessity.

It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not. (1) (Lord Hobbourge.) MUSSAMAT BASSO KUAR v. LAL DHUM SINGH. (1888) 15 I. A. 211 = 11 A. 47 (56)= 5 Sar. 260.

-(2) (Sir John Edge.) VENKATADRI APPA RAOR PARATHASARATHY APPA RAO.

(1925) 52 I. A. 214 (227)=48 M. 312= 23 A. L. J. 261 = 6 L. R. P. C. 82 = 27 Bom. L. B. 823 = (1925) M. W. N. 441=3 Pat. L. B. 208= 29 C. W N. 989 = A. I. R. 1925 P. C.105= 87 I. C. 324 = 48 M. L. J. 627.

-Plea of-Necessity. See LIMITATION PLEA OF -NECESSITY.

### Cause of Action.

-(See al LIMITATION-ADVERSE POSSESSION-STARTING PUINT.).

-Accruer of-Person capable of instituting suitexistence of -Necessity.

For the purposes of the English Statutes of Limitation time runs from the accruer of the cause of action, but a cause of action does not accrue unless there be some one who can institute the action (120). (Lord Parker.) MEYAPPA CHETTY P. SUBRAMANIAN CHETTY.

(1916) 43 L. A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N. 455=18 Bom. L. R. 642= 35 I. C. 323.

--- See also LIMITATION-RELIGIOUS ENDOWMENT. (1841) 2 M. I. A. 390 (422-3).

-See also UNDER S. 17 OF LIMITATION ACT OF 1908

-Prolongation of, by mere transfer of title.

A cause of action is not prolonged by mere transfer of title (353). (Lord Kingsdown.) PRANNATH ROY CHOWDRY (1859) 7 M. I. A. 323= r. ROOKEA BEGUM. 4 W.R. 37=1 Suth. 367=1 Sar, 692

### Commencement of-Condition.

-Person capable of suing-Existence of-Necessity-See LIMITATION-CAUSE OF ACTION-ACCRUER OF.

### Company-Directors of.

-Amount improperly paid by-Suit by liquidator for recovery of-Limitation. See COMPANY-DIRECTORS OF -AMOUNT IMPROPERLY PAID BY.

(1922) 32 M. L. T. 196 (203)

### Computation of.

-Date on which judgment, decree or order was pronounced-Exclusion of. See LIMITATION ACT OF 1908 (1869) 13 W. R. P. C. 17. S. 12 (1).

-Dates, native and English-Conflict between, in Patwari's report regarding mutation of names-Date for computation in case of. See EVIDENCE-DEATH-DATE (1902) 30 I. A. 27 (31) = 25 A. 143 (151).

-Words "after the date of the decree"-Meaning of See ADMIRALTY-VICE ADMIRALTY, ETC.

(1881) 8 I. A. 159 (162-3)=7 C. 547 (551)

## Damages for injury to person and property.

-Suit for, based on legal title-Limitation-Regl. XXXVI of 1802-Applicability-Statement in plaint that suit is founded on that Regl.-Effect-Suit tried in Court below as one upon title.

In a suit for damages for injuries inflicted by the defendant on plaintiffs and on their property, the plaint was really framed upon the legal title to redress, both for the injury to the person and for the injuries to the land, and for taking away personal property. The suit was also sub-sequently conducted as a regular suit. The plaint had, however, stated that the damages therein claimed in pursuance of and according to Regulation XXXII of 1802, which was to give redress to persons whose goods had been taken away without their producing a proof of their title, and which provided a period of 1 year after the injury sustained for a suit brought under that Regulation.

On appeal to the Privy Council against the decree of the Court below awarding compensation to the plaintiffs, it was contended that, as the suit had been brought beyond the period of 1 year provided by the Regulation, the decree

below was unsustainable.

Held, that the objection was wholly unavailing (512). The statement in the plaint that it was founded upon the Regulation was a mere superfluity (512). (Mr. Baron Parke.) RAJAH PEDDA VENCATAPPA NAIDOO BAHADUR

v. AROOVALA ROODRAPPA NAIDOO.

(1841) 2 M. I. A. 504 = 6 W. B. 13 = 1 Suth. 112 = 1 Sar. 224.

-Suit for-Limitation-Mode of payment insisted upon by debtor held to be unenforciable - Litigation as to-Time spent in-Debtor if can avail himself of.

It would be a lamentable state of the law if it were found that a debtor, who for years has been insisting that his creditor shall take payment in a particular mode, can, when it is decided that he cannot enforce that mode, turn round and say that the lapse of time has relieved him from paying at all. (Lord Hobbouse.) MUSSAMAT BASSOKUAR : (1888) 15 I. A. 211 = LAL DHUM SINGH. 11 A. 47 (56) = 5 Sar. 260.

# Defence.

Applicability to.

Where, in a suit to enforce an award or a family arrangement against a purdanashin lady, she pleaded its invalidity against her on the ground that her assent to it was procured by the fraud of a relation of hers, who was her adviser in the transaction and the plaintiff contended that limitation was a bar to her defence, held that the Indian Limitation Act did not apply to her defence. (Sir John Edge.) Skil KISHEN LAL D. MUSSAMAT KASHMIRO.

(1916) 20 C. W. N. 957 = 14 A. L. J. 1236 = (1916) M. W. N. 433=3 L. W. 528=34 I. C. 37= 31 M. L. J. 362 (374).

Dismissed suit—Declaration of title in.

Fresh starting point if furnished by. See LIMITA-TION-EJECTMENT SUIT-DISMISSAL OF (1898) 25 I. A. 195 (208) = 21 A. 53 (69-70).

Ejectment suit—Dismissal of—Declaration of rights of parties in.

Fresh starting point of limitation if furnished by. Quaere, whether a declaration in a dismissed suit can supply a fresh starting ground (208). (Lord Hobbouse.) SRI MAHANT GOVIND RAO v. SITA RAM KESHO. (1898) 25 I. A. 195=21 A. 53 (69-70)=

2 C. W. N. 681 = 7 Sar. 370.

LIMITATION-(Contd.)

English Statute, 21 James I. C. 16.

Applicability to India of.

The Statute of Limitations, 21 Jac. I., C. 16, extends to India (71). (Lord Campbell.) EAST INDIA COMPANY P. ODITCHURN PAUL. (1849) 5 M. I. A. 43= 7 Moo. P. C. 85 = 14 Jur. 253 = 1 Sar. 394.

-Pending action-Applicability to England and India.

There are repeated decisions in Westminster Hall that the Statute 9 Geo. IV, c. 14 applied to actions pending when it passed; and in India, it must have a like operation (71). (Lord Campbell.) EAST INDIA COMPANY ODITCHURN PAUL. (1849) 5 M. I. A. 43=

7 Moo. P. C. 85 = 14 Jur. 253 = 1 Sar. 324.

-Plea of limitation by defendant under-Necessity. It is now fully settled that the Statute of Limitations (21st James I) must be pleaded by a defendant in our Courts, if he means to take advantage of it. (Mr. Baron Parke.) VACHEREDDY CHINNA BASSAVAPPA r. YACHE-REDDY GOWDAPA. (1835) 5 W. R. 114 P. C.= 3 Suth. 41 (43) = 1 Sar. 84.

-Supreme Court-Civil actions in, between Hindus and Mahomolous-Applicability to.

The English Statute of Limitations, 21 James I. C. 16 has been adopted and acted upon by the Courts in India, and such adoption has been recognised and acted upon in civil actions in the Supreme Court between Hindus and Mahomedans as well as Europeans (249.50). (Sir John fervis.) HER HIGHNESS RUCKMABOYE 2, LULLOOBHOY (1852) 5 M. I. A. 234= MOTICHUND. 8 Moo. P. C. 4=1 Sar. 423.

S. 7-Beyond the seas-Meaning of.

The words of the Statute, 21 James I, C. 16, "beyond the seas" are in legal import and effect synonymous with the words "out of the territories" and out of the realm." (260). (Sir John Jervis.) HER HIGHNESS RUCKMABOVE #. LULLOOBHOY MOTICHUND.

(1852) 5 M. I. A. 234 - 8 Moo. P. C. 4 = 1 Sar. 423.

S. 7-Operation of -Exclusion from-Conditions. A plaintiff who during the period of prescription is resident out of the territories under the Government of the East India Company is within the express provision of S. 7 of the Statute, 21 James I, C. 16 and the Statute would be no bar to a suit brought by him. It is no answer to say, that he might sue or he sued during the whole time, by reason of a constructive inhabitancy, i.e., by reason of his carrying on business within the territories by a Gomastha, an inhabitant of Bombay, and subject to the jurisdiction of the Supreme Court of Bombay. That might probably give the Court jurisdiction, but will not prevent the express operation of S. 7. A plaintiff may be in England for 6 years, but, nevertheless, if he be in prison when the cause of action arises, during the whole period, he may sue when he comes out of prison, notwithstanding that he might have conmenced an action at any moment whilst he was in prison, if he had so thought fit. The words of S. 7 are express, and the plaintiff is within them (260). (Sir John Jervit.) HER HIGHNESS RUCKMABOYE P. LULLOOBHOY (1852) 5 M. I. A. 234= MOTICHUND. 8 Moo. P. C. 4=1 Sar. 423.

S. 7-Residence beyond the seas-What amounts to. A residence in India, but out of the territories under the Government of the East India Company, is, in legal import, a residence "beyond the seas" within the meaning of the Statute, 21 James I, C 16, S, 7 (250, 260) (Sir John Jervis.) HER HIGHNESS RUCKMABOYE v. LULLOOBHOY (1852) 5 M. I. A.234= MOTICHUND. 8 Moo. P. C. 4=1 Sar. 423.

### Execution of decree-Law applicable to.

Suit in which decree was passed -Law inapplicable to-Applicability of. See LIMITATION ACT OF 1871-APPLICABILITY-EXECUTION OF DECKEE.

(1881) 8 I. A. 123 (133 4) - 8 C. 51 (61).

### Exemption from law of

Grounds of -- Plaintiff's duty to establish. See C. P. C. OF 1908-O. 7, R. 6.

(1869) 12 M. I. A. 292 (337).

-See BENGAL REGULATIONS-ZILLAH COURTS REGL. III OF 1793-S. 14-SUIT INSTITUED AFTER. (1869) 12 M. I. A. 366 (377).

-Where, in a suit to recover possession of immoveable property, the plaint itself showed that as against the plaintiff the defendants had, at the institution of the suit, been by themselves and their predecessors in adverse possession of the suit property for more than 12 years, and the plaint itself accordingly disclosed a state of things to which Art. 144 of the Limitation Act was applicable, held, it would be the obligation of the plaintiff by the law of India, as it was by the law of England, to satisfy the Court that his action was not barred by lapse of time (33). (Lord Blanesburgh.) LAL CHAND MARWARI D. KAMRUP GIR.

(1925) 53 I. A. 24 = 5 P. 312 = 24 A. L. J. 105 = (1926) M. W. N. 203 – 7 P.L. T. 163 = 3 O. W. N. 335 = 43 C. L. J. 249 - 28 Bom L. R. 855 - 30 C. W. N. 721 = A. I. R. 1926 P. C. 9 = 93 I. C. 280 = 50 M. L. J. 289.

# General and Particular Statutes relating to.

-Repeal of latter by former -- Test. See RENGAL ACIS-RENTS ACT OF 1859-S. 32-RENT SUIT IN COLLECTOR'S COURT, ETC. (1872) 19 W. R. 5 (7).

## Hereditary Office-Fees incident to.

-Recovery of-Recovery of arrears of-Suit for-Limitation See BOMBAY REGULATION - ACKNOWLEDG-MENT OF DERTS, ETC. REGE, V OF 1872-S. 2.

(1837) 2 M, I. A. 23 (34).

# Hindu Law-Adopted son-Alienation prior to adoption by manager of estate for adoptive mother-Suit to recover property subject of.

-Limitation-Starting point. See HINDU LAW-ADOPTION -WIDOW-ADOPTION BY-ADOPTED SON UNDER-ALIENATION PRIOR TO ADOPTION BY MANA-GER. ETC. (1905) 32 I. A. 80 (85) = 32 C. 669 (678-9).

## Hindu Law-Widow.

-Alienation by-Property subject of -Reversioner's suit on her death to recover-Limitation-Law of, appli cable-Law in force at date of suit-Law in force when right accrued-Suit not barred under latter if barred by reason of former. See HINDU LAW-REVERSIONER-WIDOW -DEATH OF -POSSESSION OF LAST MALE OWNER'S PROPERTY OX-SUIT FOR-LIMITATION, ETC. (1875) 2 I. A. 113 (123).

Immoveable and moveable properties of husband-Suit for recovery of-Limitation as regards two kinds of properties-Cause of action same for both. See HINDU LAW-WIDOW-INHERITANCE TO HUSBAND-RIGHT OF-SUIT BY WIDOW AGAINST SURVIVING MEMBERS, (1903) 31 I. A. 10 = 31 C. 262 (272).

-Maintenance - Suit to enforce right of - Limitation - Policy of law. See HINDU LAW-WIDOW-MAINTEN-ANCE-SUIT TO ENFORCE RIGHT OF

(1879) 6 I. A. 114 (118) = 3 B. 415 (420).

### LIMITATION—(Contd.)

# Immoveable and moveable properties-Suit for

-Limitation for-When same as regards both kinds of properties. See LIMITATION ACT OF 1859, S. 1, Ct. 13 -IMMOVABLES AND MOVABLES-PARTITION OF-SUIT FOR. (1880) 7 I. A. 181 (193) = 5 B. 48 (60).

-See HINDU LAW-WIDOW -INHERITANCE TO HUSBAND-RIGHT OF-SUIT BY WIDOW AGAINST SUR-VIVING MEMBERS, ETC. (1903) 31 I. A. 10= 31 C. 262 (272).

Interest-Claim to - Principal-Claim to, barred.

-Effect-Special contract to pay interest at specified rate-Existence and absence of-Distinction between cases of. See INTEREST-CLAIM TO-LIMITATION BAR (1929) 30 L. W. 470.

Laches-Cutting down of period allowed on ground of.

Propriety. See LACHES-LIMITATION. (1874) 2 I.A. 48 (54).

Lakhiraj lands - Revenue - Assessment to-Government's right of-Limitation.

Bar by-Plea of-Privy Council appeal-Maintainability for first time in. See LAKHIRAJ LANDS-REVENUE -ASSESSMENT TO-GOVERNMENT'S RIGHT TO-LIMITA-TION-BAR BY-PLEA OF.

(1849-50) 4 M. I. A. 466 (509). Bar of, by non-exercise of right for 60 years-Bengal Reg. II of 1805, S. 2 (2)-Applicability. See LAKHIRAJ LAND-REVENUE-ASSESSMENT TO.

(1849-50) 4 M.I.A. 466 (508-10).

# Lakhiraj tenure-Voidable tenure comprising more than 100 bighas—Resumption of.

Limitation-Government - Zemindar-Resumption. by-Distinction. See LAKHIRAJ LANDS- VOIDABLE TENURE, ETC. (1871) 14 M.I.A. 152 (167).

Law of.

(See also under LIMITATION ACT )

-Exemption from-Grounds of-Plaintiff's duty to establish. See LIMITATION-EXEMPTION FROM LAW OF -GROUNDS OF.

-Intention of-Right of suit-Conferring of-Limitation to enforce existing right-Interposing of bar to.

The intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. (Sir Richard Couch.) HURRINATH CHATTERJI v. MOHUNT MOTHOOR MOHUN GOSWAMI.

(1893) 20 I.A. 183 (192) = 21 C. 8 = 6 Sar. 334. KHUNNI LAL P. GOBIND -(Mr. Ameer Ali.) (1911) 38 I.A. 87 (102)= KRISHNA NARAIN. 33 A. 356 (366) = 15 C.W.N. 545 = 8 A.L.J. 552=

13 Bom. L.R. 427=13 C.L.J. 575=10 M.L.T. 25= (1911) 1 M.W.N. 432 = 10 I.C. 477 = 21 M.L.J. 645.

-Nature of -Precedure-Law relating to.

It has become almost an axiom in jurisprudence, that a law of prescription, or law of limitation which is meant by that denomination, is a law relating to procedure having reference only to the lex fori (265). (Sir John Jerrit.)
HER HIGHNESS RUCKMABOYE 7. LULLOOBHOY MOTI-(1852) 5 M.I.A. 234 = 8 Moo. P.C. 45 CHUND. 1 Sar. 423.

-Object of-Honest purchaser-Protection of, from consequences of owner's neglect. See BENGAL REGULA-TIONS-LIMITATION REG. II OF 1805, S. 3-OBJECT OF (1842) 3 M.I.A. 1 (17)

Period allowed by-Cutting down of, on ground of laches-Power of. See Laches-Limitation. (1874) 2I.A. 48 (54)

### Law of, applicable.

 Appeal—Law applicable to—Change of law subsequent to decree and pending appeal therefrom. See LIMI-TATION-APPEAL-LAW OF LIMITATION APPLICABLE (1835) 5 W.R. 95 (P.C.)

-Execution of decree-Law applicable to-Suit in which decree passed—Law applicable to—Applicability of.

See LIMITATION ACT OF 1871—APPLICABILITY—EXE-(1881) 8 I.A. 123 (133-4)= CUTION OF DECREE. 8 C. 51 (61).

-Foreign country-Cause of action originating in-Law applicable to-Law of place in which suit is brought-Law of place in which cause of action arose.

While the courts of almost all civilised countries entertain causes of action which have originated in a foreign country and adjudicate upon them according to the law of the country in which they arose, yet such courts respectively proceed according to the prescription of the country in which it exercises its jurisdiction (266). (Sir John Jervis.) HER HIGH-NESS RUCKMABOYE P. LULLOOBHOY MOTICHUND.

(1852) 5 M.I.A. 234 = 8 Moo. P.C. 4 = 1 Sar. 423.

Law in force at date of suit -Law in force when right accrued-Suit not barred under latter if barred by reason of former. See HINDU LAW-REVERSIONER-WIDOW-DEATH OF - POSSESSION OF LAST MALE OWNER'S PROPERTY ON-SUIT FOR-LIMITATION LAW (1875) 2 I.A. 113 (123) APPLICABLE TO.

-Suit-Law applicable to. See LIMITATION-SUIT-LIMITATION LAW APPLICABLE TO.

Supreme and East India Company's Courts - Law applicable to. See LIMITATION-SUPREME AND EAST (1872) 14 M.I.A. 465 (484 5). INDIA, ETC.

# Moveable and immoveable properties-Suit for.

-Limitation - When same as regards both kinds of properties. See LIMITATION-IMMOVEABLE AND MOVE BLE PROPERTIES.

### Oudh.

-See OUDH-LIMITATION.

# Plea of.

ACCOUNTS-COMMISSIONER FOR TAKING.

AGREEMENT NOT TO TAKE ADVANTAGE OF, PENDING INQUIRY INTO DISPUTED CLAIM-INQUIRY NOT PE-SULTING IN SATISFACTION OF DEMAND.

AMENDMENT OF PLAINT TO AVOID.

APPEAL-MAINTAINABILITY IN.

ARBITRATOR.

JUDGMENT FOR DEFENDANT BASED ON.

MAINTAINABILITY OF-ESTOPPEL.

NATURE OF.

NECESSITY OF-COURT'S DUTY TO TAKE NOTICE OF

BAR IN ABSENCE OF PLEA.

PRIVY COUNCIL APPEAL - MAINTAINABILITY OF PLEA FOR JUST TIME IN.

ACCOUNTS - COMMISSIONER FOR TAKING.

-Jurisdiction of, to entertain plea. See ACCOUNTS-COMMISSIONER FOR TAKING-LIMITATION.

(1874) 1 I.A. 346 (359).

AGREEMENT NOT TO TAKE ADVANTAGE OF, PENDING INQUIRY INTO DISPUTED CLAIM - INQUIRY NOT RESULTING IN SATISFACTION OF CLAIM.

-Remedy of plaintiff in case of. There might be an agreement that, in consideration of an inquiry into the merits of a disputed claim, advantage should not be taken of the Statute of Limitations in respect of the time employed in the inquiry, and an action might be brought for breach of such agreement; but if to an action

## LIMITATION-(Contd.)

Plea of-(Contd.)

AGREEMENT NOT TO TAKE ADVANTAGE OF, PEND. ING INQUIRY INTO DISPUTED CLAIM-INQUIRY NOT RESULTING IN SATISFACTION OF CLAIM-

for the original cause of action the Statute is pleaded, upon which issue is joined-proof being given that the cause of action did clearly accrue before limitation time,-the defendant, notwithstanding any agreement to inquire, is entitled to the verdict. (Lord Campbell.) EAST INDIA COMPANY (1849) 5 M.I.A. 43 (69 70)= P. ODITCHURN PAUL. 7 Moo. P.C. 85 = 14 Jur. 253 = 1 Sar. 394.

Suit on original cause of action-Agreement if will

save limitation for.

Notwithstanding an agreement that, in consideration of an inquiry into the merits of a disputed claim, advantage should not be taken of the Statute of Limitations in respect of the time employed in the inquiry, the defendant is entitled to plead the Statute of Limitations to a suit brought on the original cause of action, and will be entitled to a verdict if the suit is brought after the expiry of the period allowed for the purpose (70). (Lord Campbell.) EAST INDIA COMPANY F. ODITCHURN PAUL. (1849) 5 M.I.A. 43 = 7 Moo. P.C. 85 = 14 Jur. 253 = 1 Sar. 394.

AMENDMENT OF PLAINT TO AVOID.

-See Practice-Pleadings-Amendment of-PLAINT-AMENDMENT OF-LIMITATION. APPEAL-MAINTAINABILITY IN.

-Plea not raised in court below.

In a case in which there was no allegation of adverse possession in the plaint, and no issue raised as to it before the courts below, their Lordships declined to allow the plaintiffs to set up before them for the first time a title by adverse possession (56). (Lord Hobbouse.) BABU RAM SINGH P. DEPUTY COMMISSIONER OF BARA BANKI.

(1889) 17 I.A. 54=17 C. 444=5 Sar. 486= R. & J's. No. 116.

--- Plea net raised in court below-Evidence required to meet plea.

Two of the Judges relied on another objection to the appellant's claim, eve., that it was barred by length of time. It is sufficient to say that the objection was not raised, and that the appellants, therefore, had no opportunity of meeting it, by evidence (413-4). (Mr. Pemberton Leigh.) MUSSUMAT IMAM BANDI v. HUR GOVIND GHOSE.

(1848) 4 M.I.A. 403 = 7 W. B. (P.C.) 67 = 1 Suth. 208 = 1 Sar. 371.

The suit was to recover possession of certain villages by redemption of a mortgage executed in 1863 by plaintiff's father. The defendant purchased the villages in 1904 from the Nawab of Rampur, to whom the mortgagees, acting as absolute owners, had mortgaged, and had subsequently sold them, in 1898 and 1903 respectively. On the hearing before the High Court the defendants for the first time raised the defence that they were entitled to succeed by reason of the provisions of Art. 134 of the Limitation Act of 1908. No evidence had been given in the Court below to support the plea, and such evidence must have included all the documents of mortgage and sale which had not been proved or printed. Nevertheless the learned Judges of the High Court came to the conclusion that, as there could be no doubt as to the material facts and as the necessary documents had been printed before in a case previously decided by the Privy Council they should allow the point to be argued.

Held, that the High Court ought not to have allowed the

point to be raised.

It appears to their Lordships to be highly irregular for any Court either to assume without the admission of all

Plea of-(Contd.)

APPEAL - MAINTAINABILITY IN-(Contd.)

parties that material facts are not in dispute or to preceed to draw inferences from those facts where no evidence of them has been placed before the Court. The position is not improved where the matter is mooted for the first time in an appellate Court on a point not taken before the trial Judge. Their Lordships would have felt a difficulty in permitting the respon tent to rely upon this ground before them were it not that before the Board the appellant consented to the question being raised on the materials before the High Court. (Lord Atkin.) SKINNER 7. NAUNIHAL (1929) 56 I. A. 192 (197-8) = 51 A. 367 = 27 A. L. J. 566-33 C. W. N. 761-31 Bom L. R. 851-30 L. W. 76-117 I. C. 22-50 C. L. J. 74-

A. I. R. 1929 P. C. 158 = 58 M. L. J. 604. -Plea not raised in Court below-Proceedings not in regular suit-Effect. See LAKHIRAJ LAND -REVENUE-ASSESSMENT TO-GOVERNMENT'S RIGHT OF-LIMITA-TION. (1849 50) 4 M. I. A. 466 (509).

·Plea raised in teriffen statement and in grounds of appeal but not made subject of issue nor raised at trial.

A plea of limitation was mentioned by the defendant in his written statement and in his grounds of appeal to the High Court, but before the trial Judge no issue was directed to bear upon the question, nor did the point appear to have been taken at the bar during the trial.

Held, that the point was not open on appeal to the

High Court. (Lord Tomlin.) VIRAVYA :. ADENNA. (1929) 32 Bom. L. B. 499 - 51 C. L. J. 136 - 31 L. W. 136 = 1930 M. W. N. 60 - 121 I. C. 205 = A. I. R. 1930P. C. 18 - 58 M L J. 245 (251). ARBITRATOR.

-Duty of, to give effect to plea. See LIMITATION ACT OF 1908, ARBITRATION PROCEEDINGS.

(1929) 56 I. A. 128 = 56 C. 1048.

Entertaining of plea-Jurisdiction as to. Sci ACCOUNTS-COMMISSIONER FOR TAKING-LIMITA-TION. (1874) 1 I. A. 346 (359).

JUDGMENT FOR DEFENDANT BASED ON.

Nature of.

A judgment for the defendant upon the plea that the action was not commenced in due time, seems of the same character as the judgments for default, disobedience, or departures from the prescribed rule of the Court (270). (Sir John Jerris.) HER HIGHNESS RUCKMABOVE ?. LULLOOBHOY MOTICHUND.

(1852) 5 M. I. A 234=8 Moo. P. C. 4=1 Sar. 423. MAINTAINABILITY OF-ESTOPPEL

-Defendant-Plea by-Judgment prior inter partes denying plaintiff's right to sue during period relied upon

by defendant-Effect.

A Hindu, subject to the Bombay Mithakshara law, died leaving several undivided sons. Within a year of his death in 1872, one of his sons brought a suit against his brothers for a partition of the family properties, moveable and immoveable. The defendants pleaded that the suit as to the moveable properties was barred under S. 1, cl. (13) of the Limitation Act of 1859, because the plaintiff had received no payment thereout since 1858,

It appeared that the plaintiff had, during the lifetime of his father, brought a suit in 1861 against the father and the defendants (his brothers) for a partition of the family moveable and immoveable properties, and that that suit had been dismissed, as regards the moveable properties, on the ground that the plaintiff had no right to compel his father in his lifetime to make a partition of moveable, though it might be ancestral, properties.

LIMITATION-(Centd.)

Plea of-(Conta.)

MAINTAINABILITY OF-ESTOPPEL-(Contd.)

Held, that the defendants were estopped by the proceedings in the suit of 1861 from setting up the statute as a bar

to the plaintiff's claim (193).

Their Lordships treat the order in the suit of 1861, whether founded on a correct or an erroneous view of the law, as an adjudication, binding on the parties to that suit, that the plaintiff was not entitled to sue in his father's lifetime for a partition of the moveable property and consequently could not assert his rights in that property until his father's death. It would be in the highest degree unjust to allow the defendants, who had for years the benefit of that judgment, to insist that it did not suspend the running of the Statute of Limitations because it was erroneous in point of law, and the plaintiff ought to have appealed from it (193). (Sir James W. Colvile.) LAKSHMAN DADA NAIK P. RAMACHANDRA DADA NAIK.

(1880) 7 I. A. 181=5 B. 48 (60)=7 C. L. R. 320= 4 Sar. 173 = 3 Suth. 778.

Execution of decree-Limitation bar to-Judgmentdebtor's plea of. See EXECUTION OF DECREE-LIMITA-TION-PLEA BY JUDGMENT-DEBTOR OF.

-Mortgage with possession-Redemption right of-Limitation bar to-Mortgagee's plea of. See MORTGAGE - USUFRUCTUARY MORTGAGE - REDEMPTION OF-RIGHT OF-LIMITATION BAR TO.

(1900) 27 I.A. 103 (108-9) = 27 C. 1004 (1012).

NATURE OF.

Technical plea merely when.

In a case where the right sought is one involving the dispossession of a perfectly lawful purchaser of property, it is not quite accurate to say that a plea that such a suit has not been brought within the proper period of time limited by the Limitation Act is a technical plea, if by a technical plea is meant a plea which asserts rights which have no merits for their support (261-2). (Lord Buckmaster.) CHARAN DAS P. AMIR KHAN.

(1920) 47 I. A. 255=48 C. 110 (115-6)= 3 P. W. R. 1921 = 25 C. W. N. 289 = 28 M. L. T. 149 = 18 A. L. J. 1095 = 22 Bom. L. B. 1370 = 56 I. C. 606 = 39 M. L. J. 195.

-Technical plea or plea on merits-Allowance of plea -Not a determination relative to any right arising out of contract, dealing, etc., between parties. See SUPREME COURT of BOMBAY - CHARTER OF DECEMBER 1823, Ss. 29, 37, (1852) 5 M. I. A. 234 (270).

NECESSITY-COURT'S DUTY TO TAKE NOTICE OF BAR IN ABSENCE OF PLEA.

-See MADRAS REGULATIONS-JURISDICTION OF CIVIL COURTS REGULALION II OF 1802, CL. 4-LIMITATION. (1835) 5 W. R. 114 (P. C.)= 1 Suth. 41 (43).

-English Statute 21 James I, C. 16-Necessity under. See LIMITATION-ENGLISH STATUE 21 JAMES I, c. 16-PLEA OF LIMITATION, ETC. (1835) 5 W. B. 114.

-Quarre whether the Regulation of limitations could or could not be made available without being pleaded (.20).
(Lord Justice Turner.) SALIGRAM v. MIRZA AZIM ALI (1864) 10 M.I.A. 114=2 Sar. 87= BEG. B. & J.'s No. 1.

 A judge in a suit upon a cause of action is bound to dismiss the suit, or to decree for the defendant, if it appears that the cause of action is barred by limitation (132). (Sir Barnes Peacock.) MUNGUL PERSHAD DICHIT v. GRIJA KANT LAHIRI CHOWDHRY. (1881) 8 I. A. 123= 8 C. 51 (60)=11 C. L. B. 113=4 Sar. 284.

Plea of-(Contd.)

NECESSITY-COURT'S DUTY TO TAKE NOTICE OF BAR IN ABSENCE OF PLEA-(Cont.d.)

The Court is bound to take notice of the plea of limitation, though no objection is made by the parties (Lord Macnagaten.) GHULAM JILANI P. MUHAMMAD. (1901) 29 I. A. 51 (60) = 29 C. 167 (185) = 6 C. W. N. 226 = 4 Bom. L. R. 161 = 25 P. R. 1902 = 8 Sar. 154 = 12 M.L.J. 77.

-Where an issue of limitation is not raised either by the pleadings or the evidence it is not obligatory on the Judge to direct it, though he may have a discretion so to do. (Sir Andrew Scoble.) RAJA BOMMADEVA VENKATA NARASIMHA NAIDU P. RAJA BOMMADEVARA BASHVA-(1902) 29 I. A. 76 (80)= KARLU NAIDU. 25 M. 367 (378)=6 C. W. N. 611-4 Bom. L. R. 543= 8 Sar. 258.

# PRIVY COUNCIL APPEAL-MAINTAINABILITY OF PLEA FOR FIRST TIME IN.

Defendant-Plaintiff's plea against.

The suit was by a person claiming to be the heir-at-law of a deceased Mahomedan against, inter alia, the respondent seeking to obtain possession of the real and personal estate of the deceased from the respondent, who, the plaintiff alleged, was not the wedded wife of the decased. It was found by the courts is low and their Lordships that the repondent was the weded wife of the deceased, and that she was entitled to dower under a deed of dower executed on her marriage. The plaintiff did not before the Sudder Ameen plead that the respondent's claim to dower was barred under S. 14 of the Regulation of Limitation III of 1793. He took the objection only in the Sudder Court and again before their Lordships.

Their Lordships observed : considering that it is an objection by the plaintiff against the defendant, that might perhaps be a ground for refusing to entertain it (228). (Lord Justice Knight Bruce.) AMEER OON-NISSA E. MOORAD-OON NISSA. (1855) 6 M. I. A. 211-1 Sar. 533.

-Documents-Construction of -Plea depending upon Their Lordships declined to allow the appellant to raise a plea of limitation, which was not raised in either of the courts below, and which was, if at all, raised only obscurely in the reasons appended to the appellant's case to the Privy Council, because it depended upon the construction of the kabuliyat in a respect not submitted to either court below (71 2). (Lord Summer.) TRICOMDAS COOVERJI BHOJA v. GOPINATH JIN THAKUR.

(1916) 41 I.A. 65 = 44 C. 759 (770)= 1 Pat. L.W. 262 = 19 Bom L.B. 450 = 21 M. L.T. 262 = (1917) M. W. N. 363 = 5 L. W. 654 = 21 C. W. N. 577 = 25 C. L. J. 279 = 15 A L J. 217 = 39 I.C. 156 = 32 M. L. J. 357.

Facts-Investigation of, necessary.

At the hearing of the Privy Council appeal the respon-dents raised a plea of limitation. The point was not taken at any time prior to the hearing before their !.ordships Board. It was not one of the issues settled by the court on the action, nor did the respondents mention it among the grounds of appeal from the decision of the Subordinate Judge. The point involved an inquiry into facts.

Held, under the circumstances, that it was too late to raise the point (257). (Lord Parker.) RAGHUNATH DAS 2. (1914) 41 I A. 251 =

42 C. 72 (834)=1 L. W. 567=16 M L T. 353= (1914) M. W. N. 747=18 C. W. N. 1058= 16 Bom. L. B. 814 = 20 C.L.J. 555 = 13 A.L.J. 154 = 24 I. C. 304 = 27 M. L J. 150.

-An attempt was made to raise a question of limitation, but this question was not raised in the Courts below or

### LIMITATION-(Contd.)

Plea of-(Contd.)

PRIVY COUNCIL APPEAL-MAINTAINABILITY OF PLEA FOR FIRST TIME IN-(Contd.)

in the appellant's case on this Privy Council appeal, nor are the facts upon which it depends fully before the Board. This plea, therefore, cannot be raised at this stage (27), (Viscount Care). MAHARAJ BAHADUR SINGH P. FORBES.

(1920) 48 1. A. 24 - 25 C. W. N. 366 (1921) M.W.N. 26 = 19 A.L.J. 101 = 23 Bom L.R. 727 = 13 L, W. 217 = 2 Pat, L T. 115 = 33 C. L. J. 176 = 6 Pat L. J. 129 = 59 I. C. 782 = 30 M. L. T. 187 = 40 M. L. J. 141.

-Lakhiraj land-Revenue-Assessment to-Government's right of-Limitation bar to. See LAKHIRAJ LAND -REVENUE-ASSESSMENT TO.

(1849-50) 4 M. I. A. 466 (509-10).

Religious Endowment-Manager of-Alienation by-Successor's suit to recover property subject of. -Limitation- Starting point-Appointment of inc-

cestor-Date of-If and schen. The plaintiff was the Sajjadanashin of the khankah or religious house, having been appointed as such by the Government, in whom vested the power of such appointment by Regulation XIX of 1810, in 1819, Within three years of his appointment he sued to recover villages approprinted by royal grant to the support of the khankah, plaintiff's father was the previous Sajjadanashin, and he, in the year 1807, transferred the suit villages to the defendant by a deed of conditional sale in consideration of an advance made to him. In 1810, the plaintiff's father, in consideration of a further advance, executed another instrument, purporting to convey the villages to the defendant absolutely. The plaintiff's father died more than 12 years before suit. Under Reg. XIX of 1810, until the date on which the plaintiff was appointed Sajjadanashin, the duty of protecting the endowment from misapplication rested with the Government. The duty of the Government in this respect was a public and perpetual duty within the meaning of S. 2 of Reg. II of 1805, which provided a period of 12 years for a suit instituted by or on behalf of the Government for the enforcement of any public rights or claims whatever.

Held that the suit was not barred by limitation (422-3). The plaintiff had no right of action against the defendant till his appointment in 1819, and the defendant could acquire no right against the Government, whose procurator the plaintiff was, at least until twelve years had elapsed from his appointment (422 3). (Mr. Justice Bosanguet.) JEWUN DOSS SAHOO D. SHAH KUBEER-OOD-DEEN.

(1841) 2 M. I. A. 390 - 6 W. R. 3 (P. C.) = 1 Suth. 100 = 1 Sar. 206.

### Revenue-Assessment of lands to-Government's right of.

-Limitation-Non-exercise of right for 60 years-Bar by. See Lakhiraj Land-Assessment of-Government's right of-Limitation.

(1849-50) 4 M.I.A. 466 (508-9)

### Special and self-contained statutes -Limitation prescribed by

-Exemption in favour of persons under disability-Implication by equitable construction of. See under LIMITATION ACT-GENERAL PROVISIONS OF.

### Suit.

DECREE IN-APPEAL FROM-LIMITATION LAW.

-Change of, subsequent to decree and pending appeal -Law applicable to appeal in case of. See LIMITATION -APPEAL-LAW APPLICABLE TO.

(1835) 5 W. B. 95 (P. C.).

Suit-(Contd.)

INSTITUTION OF—DATE OF, FOR PURPOSES OF LIMITATION.

— Court fee deficient—Plaint filed with—Deficiency subsequently made up—Date of presentation in case of, Sci. C. P. C. OF 1908, S. 149—PLAINT, ETC.

(1879) 6 I.A. 126 (135) 2 A. 241 (250).

-Filing of plaint-Date of, or date of its being numbered and registered.

The period of limitation ends on the day when the plaint is duly lodged by the complainant in a court of competent jurisdiction, not on the day when the suit is placed apon the file of the court most proper to try it, nor upon the day when the plaint is numbered and sent for decision; for if there be any delay in that process, it is the delay of the Court, and not of the plaintiff (94). (Lord Kingadown.) NARAGUNTY LUTCHMIDAVAMAH P. VENGAMA NAIDOO. (1861) 9 M. I. A. 66-1 W.R. 30 (P. C.) = 1 Suth. 460-1 Sar. 826.

# LIMITATION LAW APPLICABLE TO.

-Law in force at date of suit.

The plaint was filed on 9-9-1858, before the passing of the present Limitation Act XIV of 1859. The question of limitation must be determined according to the old law (121). (Sir Burnes Peacock). AMIRTOLALL BOSE P. RAJONEEKANT MITTER. (1875) 2 LA. 113-

15 B L R. 10=23 W R. 214=3 Sar. 430=

3 Suth. 94.

The question is whether the suit was in time or not. The Act bearing upon this matter, which was in force at the time of the institution of the suit, namely in 1874, is Act IX of 1871 (205). (Sir Robert P. Collier.) FAKHARUDDIN MAHOMED AHSAN CHOWDHRY 2. OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I. A. 197 = 8 C. 178 (188) = 10 C. L. R. 176 = 4 Sar. 270.

In a case in which the question was whether two suits were barred by limitation, their Lordships observed:—
The Limitation Act in force when these suits were commenced is Act IX of 1871, and it is on the construction of that Act that the question depends" (91). (Lord Hobbourg) JAGADAMBA CHOWDHRANI 7. DAKHINA MOHUN.

(1886) 13 I. A. 84 = 13 C. 308 (317) = 4 Sar. 715.

Unless there is a distinct provision to the contrary the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding. (Sir John Edge.) LAL SONI RAM P. KANHAIYA LAL. (1913) 40 I. A. 74 (82) = 17 C.W.N. 605 = 35 A. 227 (234) = 11 A. L. J. 359 = 13 M. L. T. 437 = (1913) M.W.N. 470 = 17 C.L.J. 488 =

13 Bom. L.R. 489 = 19 I. C. 291 = 25 M L.J. 131.

Law in force at date of sult—Law in force when right accrued. See HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR—LIMITATION, ETC.

(1875) 2 I. A. 113 (123.)

PAUPER—LEAVE TO SUE in forma pauperis— APPLICATION FOR—COURT-FEE PAID SUBSEQUENTLY ON.

Presentation of plaint in case of. See C. P. C. OF 1908, O. 33-LEAVE TO SUE in forma pauperis.

(1879) 6 I. A. 126 (134-6) = 2 A. 241 (250-1).

PAUPER SUIT-INSTITUTION OF.

SUIT. Date of. See C. P. C. OF 1908, O. 33—PAUPER (1861) 9 M. I. A. 66 (93.4.)

LIMITATION-(Centd.)

# Supreme and East India Company's Courts.

-Lates applicable to-Regulations-English Law. At the time of the passing of the Limitation Act of 1859 there were two distinct judicial systems-the one consisting of what had been the courts of the East India Company, and may here be called the Mofussil Court; the other, the courts established in the Presidency Towns and elsewhere by Royal Charter, and administering to all within their jurisdiction, subject to certain statutory exceptions and modifications, the law of England. The law of limitation which governed the former was to be found in the Regulation which had no force within the Presidency Towns; whilst the law of limitation which governed the latter consisted of the Statute of James the First, together with such other postions of the Statute Law of England applicable to the subject (if any) as had been introduced into India, and the general rules touching the effect to be given to lapse of time which depend on the decisions of the Courts in England (484-5). (Sir James W. Colvile.) KRISTO KINKUR ROY 2. RAJAH BURRODACAUNT ROY.

(1872) 14 M. I. A. 465=17 W. R. 292= 10 B. L.R. 101=2 Suth, 564.

# Suspension of.

-See Limitation Act of 1908-S. 14.

### Tenants in common.

 Collections separate made by one of—Accountability to the other for—Limitation.

Two owners of an estate in which they had equal shares having agreed to collect the rents through a collector appointed by the Court, appeared both of them to have collected and received sums in the mofussil from the local agent of the collector and sometimes from the tenants. The circumstances all went to show that their receipts were not receipts which could be alleged to be receipts by a tenant in common antagonistic to his other tenant in common, but that they were all part and parcel of a common arrangement by which the whole of the rents were to be received by the agent, or by the party acting under the authority or with the tacit assent of the agent, the separate collection of each party having to be dealt with as if received from the agent or Collector.

Held, that the statute of limitation could not apply to a claim by one of the owners against the other as for the collections made during twelve years previous to the institution of the suit, one party having received more one year and less the previous year, and that it would be absolutely necessary in taking the accounts from any date to see what the state of things was between them at that date. (Lord fusice Turner.) RANI KHAJURUNNISSA v. SYAD AHMED ROZA. (1871) 8 B. L. R. 93=

16 W. R. (P.C.) 1=2 Suth. 438=2 Sar. 677.

Ouster by one of—Acts amounting to, See JOINT TENANTS—TENANTS IN COMMON—OUSTER BY ONE OF—ACTS AMOUNTING TO. (1890) 17 I. A. 110 (120-1)=

18 C. 10 (21-2).

## Title gained by-Waiver of.

Possession to real owner—Transfer of—Effect.

In 11 W.R. (F.B.) p. 20, it was stated in the judgment of the High Court: "If a person who has gained a title by limitation waives that title in favour of the real owner, and gives up possession to him as the rightful owner, such act would probably be held to amount to a waiver of the right which he had gained by limitation, and to confer it upon the real owner" (156). (Sir Montague E. Smith.)

LOKHEE NARAIN ROY CHOWDHRY T. KALYPUDDO BANDOPADHYA. (1875) 2 I. A. 154=

23 W. B. 358=3 Suth. 122=3 Sar. 472.

# Unascertained property awarded under compromise-Suit to recover.

Limitation-Starting point of-Judicial ascertainment subsequent—Date of. See LIMITATION—ADVERSE POSSESSION-STARTING POINT OF-UNASCERTAINED (1891) 18 I. A. 165 (175) = PROPERTY, ETC. 19 C. 159 (171).

# LIMITATION ACT.

APPLICABILITY OF.

EARLIER ACT—RIGHT BARRED UNDER.

EQUITABLE CONSTRUCTION—APPLICATION OF ACT BY.

EQUITABLE CONSTRUCTION OF.

GENERAL PROVISIONS OF.

INTENTION OF.

INTERPRETATION OF,

LAW ENACTED BY-NATURE OF.

NATURE OF.

OBJECT OF.

PERIOD PRESCRIBED BY-CUTTING DOWN OF, ON GROUND OF LACHES.

REMEDY-BAR OF.

SUIT-ACT APPLICABLE TO.

# Applicability of

-Equitable construction-Strict words of Act-Raus

Cases arising under a statute of limitation ought to be decided upon the strict words of the statute, and not upon an equitable construction. LUCHMEE BUXSH ROV 2. RUNJEET RAM PANDEY. (1873) 2 Suth. 897 (898-9) = 20 W. R. 375 = 13 B.L.B. 177 = 3 Sar. 283.

-Status, race, etc., of parties-Consideration of-

Permissibility.

The applicability of particular sections of this general Statute of Limitation (Act XIV of 1859) must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit. The period of limitation within which the claim is barred must be fixed and uniform, by whomsoever that claim is preferred or resisted (52). (Sir James W. Colvile.) MAHARANA FATTEHSANGJI JASWATSANGJI 2. DESSAI KALLIANRAIJI HEKOOMUTRAIJI. (1873) 1 I. A. 34 = 21 W. R. 175 = 10 B.H.C.B. 281 = 13 B L.R. 254 = 3 Sar. 306.

-Suit not known at date of passing of Act. See L4M1-TATION ACT OF 1859-DIVORCE A' VINCULO.

(1872) Sup. I. A. 106 (111-2).

### Defence.

-Applicability of Act to. See LIMITATION-DE-(1916) 31 M.L.J. 362 (374). FENCE.

# Earlier Act-Bight barred under.

No revival of, by later Act.

By S. 1, cl. 13 of the Limitation Act of 1859, a suit for a share of joint family property not brought within 12 years from the date of the last participation in the profits of it would be barred (169).

A suit for such a share barred under the Act of 1859 is not revived by the Act of 1871, though the latter might have altered the law (169). (Sir Richard Couch.) APPA-SAMI ODAYAR D. SUBRAMANYA ODAYAR.

(1888) 15 I. A. 167 = 12 M. 26 (33) = 5 Sar. 255. -See LIMITATION ACT OF 1871, ART. 129-RIGHT

TO SET ASIDE ADOPTION BARRED UNDER. (1892) 20 I. A. 30 (38) = 20 C. 487 (497).

-Nothing in Art. 142 of Act IX of 1871 or of Art, 141 of Act XV of 1877 could lead to the revival of a right that TATION ACT-EQUITABLE CONSTRUCTION,

### LIMITATION ACT-(Contd.)

Earlier Act-Right barred under-(Contd.)

had already become barred (102). (Mr. Ameer Ali.) KHUNNI LAL P. GOBIND KRISHNA NARAIN,

(1911) 38 I A. 87 = 33 A 356 (366) = 15 C. W. N. 545 = 8 A.L.J. 552 = 13 Bom. L. R. 427 = 13 C L.J. 375 = 10 M.L.T. 25 = (1911) 1 M.W.N. 432 = 10 I. C. 477 = 21 M.L.J. 645.

-See LIMITATION ACT OF 1877, ART. 179-MORT-GAGE-DECREE FOR SALE-ORDER ABSOLUTE.

(1914) 36 A. 350 (353).

There is no provision in the Limitation Act of 1908 so retrospective in its effect as to revive and make effective a judgment or decree which before that date had become unenforceable by lapse of time (345). (Lord Atkinson.) SACHINDRA NATH ROY 2. MAHARAJ BAHADUR SINGH.

(1921) 48 I. A. 335 = 49 C. 203 (214) = L.R. 3 P.C. 174 = (1922) P. C. 187 = 30 M.L.T. 96 = 24 Bom. L. R. 659 = (1922) M.W.N. 338 =

26 C.W.N. 859 = 74 I. C. 660 = 4 U.P.L.R. P.C. 57. Equitable construction-Application of Act by.

- Permissibility. See LIMITATION ACT-APPLICA-BILITY OF-EQUITABLE CONSTRUCTION. (1873) 20 W. R. 375 = 13 B.L R. 177

# Equitable construction of.

-Permissibility-Exception in certain cases from provisions of Act-Implication by equitable construction of, See FORFEITURE ACT OF 1859, S. 20-PROVISO. (1874) 1 I. A. 167 (176).

### General provisions of.

-Applicability of, to special Acts prescribing special periods of limitation.

-See BENGAL REGULATIONS - LAND REVENUE ASSESSMENT (RESUMED LANDS) REGULATION III OF 1828, S. 13, CLS. 1 AND 2.

(1868) 12 M. I. A. 226 (238).

-LIMITATION ACT OF 1908, S. 14-APPLICABI-(1868) 12 M. I. A. 244 (253). LITY. — See Limitation ACT OF 1908—ART. 11 (1)— OR CLAIMANT. (1876) 3 I.A. 7 (24-5)= MINOR CLAIMANT.

1 C. 226 (242). -See FORFEITURE ACT IX OF 1859-S. 20, Pro-(1874) 1 I.A. 167 (176). VISO

### Intention of.

-Conferring of right of suit-Interposing of limitation har to enforcement of existing right. See LIMITATION-LAW OF-INTENTION OF-RIGHT OF SUIT.

(1893) 20 I. A. 183 (192) = 21 C. 8 and (1911) 38 I. A. 87 (102) = 33 A. 356 (366).

Interpretation of. -Delicate and intricate questions such as that of adop-

tion-Suits involving-Moderate time for bringing-Interpretation allowing only-Desirability of

It seems to their Lordships that the more rational and probable principle to ascribe to an Act whose language admits of it, is the principle of allowing only a moderate time within which such delicate and intricate questions as those involved in adoptions shall be brought into dispute, so that it shall strike at all suits in which the plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the defendant is in possession (95.) (Lord Hobbiouse). JAGADAMBA CHOWDHRANI P. DAKHINA (1886) 13 I. A. 84 = 13 C. 308 (321) = MOHUN.

-Equitable construction-Permissibility. See LIMI-

Interpretation of - (Contd.)

-Language of Statute-Plain meaning of-Adoption of-Narrate.

Statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. In constraing these statutes the ordinary rules of interpretation must prevail (899). LUCHMEE BUKSH ROY 2. RUNDET RAM PANDAY. (1873) 2 Suth. 897 = 20 W. R. 375-13 B. L. R. 177-3 Sar. 283.

-Statutes of Limitation. like all others, ought to receive such a construction, as the language, in its plain meaning, imports, (Six Judica Scotte.) ABHIRM GOSWAMI 7. SHYAMA CHARAN NANDL

(1909) 36 I. A. 148 (166)= 36 C. 1003 (1014) = 10 C. L. J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 - 6 A. L. J. 857 - 4 I. C. 449 -19 M. L. J. 530

-State decisi - Principle of - Applicability.

The question is one as to which there has been great diversity of opinion among the several High Courts in India for many years past, almost from the time of the passing of the Limitation Act of 1877. If there had been a uniform current of decision in India upon such an Act and for such a period of time, their Lordships would have been very slow to interfere. (Sir Arthur Wilson.) VASUDEVA MUDALIAR r. SRINIVASA PILLAL. (1907) 34 I. A. 186 (192) -

30 M. 426 (432) - 2 M. L. T. 333 - 6 C. L. J. 255 -11 C. W. N. 1005 - 9 Bom. L. R. 1104 - 4 A. L. J. 625 -17 M. L.J. 444.

-Uniformity of, in Indian Courts-Necessity.

The Limitation Act being one applicable to India generally must bear the same meaning everywhere. (Sir Arthur Wilson.) VASUDEVA MUDALIAR P. SRINIVASA PILLAL

(1907) 34 I A. 186 192) - 30 M. 426 (432) --2 M. L. T. 333 - 6 C. L. J. 255 - 11 C. W. N. 1005 -9 Bom. L. R. 1104 - 4 A. L. J. 625 - 17 M. L. J. 444.

# Law enacted by-Nature of.

Processual law, Sci LIMITATION-LAW OF-NATURE OF. (1852) 5 M. I. A. 234 (265).

### Nature of.

-Statutes of Limitation are in their nature strict and inflexible enactments. LUCHMEE BUKSH ROY P. RUN-JEET RAM PANDAY. (1873) 2 Suth. 897 (899)= 20 W. R. 375 - 13 B. L.R. 177 = 3 Sar. 283.

### Object of

Actionable claims - Suit upon - Premptitude in-Compelling of.

The object of a Limitation Act is persumably to compel people who have actionable claims to sue upon them with due promptitude, or to forfeit the right to do so at all (20). (Sir Arthur Wilson.) RAJAH RANGAYYA APPA RAO P. SRIKAMULU. (1903) 31 I. A. 17=27 M. 143 (150)=

8 C. W. N. 162 = 6 Bom. L. R. 241 = 8 Sar. 617 =

14 M. L. J. 1. -Honest purchaser-Protection of, from consequences of owner's neglect. See BENGAL REGULATIONS-LIMI-TATION REG, II OF 1805, S. 3-OBJECT OF.

(1842) 3 M. I. A. 1 (17).

State demands-Extinguishment of.

The object of the Legislature in passing Statutes of Limitation is to quiet long possession and to extinguish stale demands. LUCHMEE BUKSH ROY F. RUNJEET RAM PANDAY, (1873) 2 Suth. 897 (899)=20 W. R. 375= 13 B. L. R. 177 = 3 Sar. 283. LIMITATION ACT-(Contd.)

Period prescribed by—Cutting down of, on ground of laches.

-Power of. See LACHES-LIMITATION. (1874) 2 I. A. 48 (54).

### Remedy-Bar of.

-Right if barred also-No express words barring right as well as remedy-Effect. See LIMITATION ACT OF 1859 -REMEDY BARRED UNDER. (1873) 1 I. A. 34 (53-4).

# Suit-Act applicable to.

-Act in force at date of suit. See LIMITATION-SUIT-LIMITATION LAW APPLICABLE TO.

# LIMITATION ACT XIV OF 1859.

[N. B.-Whenever possible cases under this Act have been brought under the Act of 1908.]

# Divorce a Vinculo-Suit for.

Applicability of Act to.

The Limitation Act of 1859, after prescribing particular terms of limitation for certain actions, enacts by S. I, cl. (16), with respect to all suits and actions not before specifically provided for the term of six years shall apply, that is, six years from the time when the cause of action accrued. Their Lordships are of opinion that the provisions of that Act do not apply to suits for divorce a vinculo which at the time when it was passed were unknown in India. They are confirmed in the view which they have taken of the intention of the Legislature by the Limitation Act of 1871 which by S. I expressly enacts that its provisions shall not apply to suits under the Indian Divorce Act (111-2). (Sir Robert P. Collier.) HAY v. GORDON. (1872) Sup I. A. 106= 10 B. L. B. 301 = 18 W. B. 480 = 3 Sar. 185= 9 Moo. P. C. (N. S.) 102 = 2 Suth. 721.

### Drafting of.

-Inartificial. (Sir Barnes Peacock.) DELHI AND LONDON BANK :. ORCHARD. (1877) 4 I. A. 127 (135)= 3 C. 47 (57)=3 Sar. 721=3 Suth. 423.

### Limitation Act of 1871-Applicability-Suits instituted before 1-4-1873.

Application to execute decree in.

As regards suits instituted before the 1st of April 1873, all applications in them, including applications to execute a decree, are excluded from the operation of the Limitation Act of 1871, and are governed by the Act of 1859 (127). (Sir Richard Couch.) MINA KONWARI : JUGGUT SETANI. (1883) 10 I. A. 119 = 10 C. 196 (206) = 13 C. L. B. 385 = 4 Sar. 454.

### Object of.

-The object of the Limitation Act of 1859 was to carry out a recommendation made many years before by the Law Commissioners for India, by passing one general law of limitation applicable to all Courts in India (484). (Sir James W. Colvile.) KRISTO KINKUR ROY v. RAJAH (1872) 14 M. I. A. 465= BURRODACAUNT ROY.

17 W. B. 292=10 B. L. B. 101=2 Suth. 564.

The object of the Limitation Act of 1859 was to establish a general law of limitation in supersession both of the regulations which had governed those Courts, and of the English Statutes Which had regulated the practice of the Courts established by Royal Charter (24-5). (Sir James W. Colvile.) MUSSUMAT PHOOLBAS KOONWAR (1876) 3 I. A. 7= P. LALLA JOGESHUR SAHOY. 1 C. 226 (242) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

### Remedy barred under.

Right if also barred in case of.

Act XIV of 1859 contains no express words to bar the right as well as the remedy. (Sir James W. Colvile.)

Remedy barred under-(Contd.)

KALLIANRAIJI.

(1873) 1 I. A. 34 (53-4) - 21 W. R. 175= 10 Bom. H. C. R. 281 = 13 B. L. R. 254 = 3 Sar. 306

-S. 1, cl. 8-Rent of any buildings or lands-Meaning of.

The words "rent of any buildings or lands" in S. 1 of Act XIV of 1859 are sufficiently large in themselves to comprehend all lands, and the words " rent of lands " ought not to be confined to lands appurtenant to buildings. The words cannot be so limited, for Act XIV was a general law intended to have force throughout the British territories in India (7). (Sir Montague E. Smith.) UNNODA PERSAUD MOOKERJEE P. KRISTO COOMAR MOITRO.

(1872) 19 W. R. 5 = 15 B. L. R. 60 = 2 Suth. 740.

S. 1, cl. 13-Applicability -Brothers-Partition suit between, in respect of their original chares, and in respect of father's share which on his death had devolved on

them by survivorship.

Where, in a suit for a partition of family property brought by one of the sons of a deceased Hindu subject to the Bombay Mithakshara law against his (plaintiff's) undivided brothers, it appeared that the suit was to establish the right of the plaintiff as a co-parcener not only as to his original share in the joint estate, but also as to the moiety of the father's interest to which he became entitled on his father's death by right of survivorship, and to have a partition on that basis, their Lordships observed that they were not prepared to affirm that on the facts of the case before them the father might not be held to be "the person from whom the property alleged to be joint is said to have descended within the meaning of S. 1, cl. 13 of the Limitation Act of 1859 (191).

So far as the father's interest is concerned, the succession opened only on the father's death. Nor is it altogether clear upon the authorities how far the principle of inheritance as well as that of survivorship applies to such a succession by sons to their father (191). (Sir James IV. Colvile.) LAKSHMAN DADA NAIK r. RAMACHANDRA DADA (1880) 7 I.A. 181 = 5 B. 48 (58-9) :: NAIK. 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth. 778.

-Applicability-Mortgage by one member-Redemp tion of-Suit by another for, on ground of mortgaged pro-

perty being joint family property.

S. 13 of the Limitation Act of 1859, which speaks of suits for enforcing the right to share in any property moveable or immoveable, on the ground that it is joint family, property, deals with suits between one or some member or members of the joint family and some other members of the joint family complaining of what would be termed in England an ouster of some members by others, or of a failure by the member in occupation to account for profits, or to pay maintenance where it is due. The section has no application to a suit by the plaintiffs for redemption of a mortgage made by A on the ground that A was the member of a joint family, joint as regards the mortgaged property, and that they, the plaintiffs, were the other members of that joint family, and that the mortgage was made either with their previous approbation, or their subsequent assent (14).

The circumstance that it is not the whole of the members of the joint family, but only some who now come to recover their share of the property, does not make this a dispute in any way between members of the joint family as to the question of, whether the property is joint or not. It is merely a question of the title of the plaintiffs to redeem, and the question of joint or not joint property has only to be decided incidentally for the purpose of establishing that a payment in respect of their shares by the defendant,

# LIMITATION ACT OF 1859-(Contd.)

S. 1. Cl. (13)-(Contd.)

MAHARANA FATTEH SANGJI JASWATSANGJI P. DESSAI title as against strangers (14). (Lora Cairns.) RADANATH r. GISBORNE (1871) 14 M.I.A. 1=

15 W.R. (P.C.) 24 = 6 B.L.R. 530 = 2 Suth. 397 = 2 Sar. 636.

-Applicability of hirst part of, to joint family of father and sous-Mithakshara family-Dayabhaga family -Distinction.

Their Lordships agree as to the difficulty of applying this part of S. 1, cl. 13 of the Limitation Act of 1859 (275.) the portion of the clause relating to a suit " to enforce the right to share in any property moveable or immoveable, on the ground that it is joint family property") to a joint family consisting of a father and sons governed by the Mithakshara law, though such difficulty would not exist in the case of a like family governed by the law of Lower Bengal (191). (Sir James II', Colvile.) LAKSHMAN DADA NAIK P. RAMACHANDRA DADA NAIK.

(1880) 7 I.A. 181 = 5 B. 48 (58-9) = 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth 778.

-Immovables and movables-Partition of-Suit for -Limitation if same for both,

In a soit for a partition of family properties, moveable and immoveable, brought by a member of a joint Hindu family subject to the Bombay Mithakshara law against his brothers (the other members of the family), the defendants contended that, though the claim as regards the immoveable properties was not barred under S. 1, cl. (13) of the Limitation Act of 1859, the claim to the moveable properties was harred under that clause.

Quarry, whether the claim as to the moveable properties could thus be treated as distinct from that as to the immoveable properties of the family (193). (Sir James IV. Celvile.) Lahshman Dada Nak r. Ramachandra DADA NAK. (1880) 7 I.A. 181-5 B. 48 (60)= 7 C.L.R. 320-4 Sar. 173 = 3 Suth. 778.

-Immorable property-Partition of -- Suit for-Limitation-Plaintiff throughout in enjoyment of part thereof-Effect.

Where, in a suit for a partition of joint family property brought by a member of a joint Hindu family subject to the Mithakshara law of Bombay as against his brothers, it appeared that the plaintiff had all along been in the enjoyment of part of the immoveable property of the joint family. held that, so far as the immoveable property of the family was concerned, there was no ground for holding that the suit was barred under S. 1, cl. 13 of the Limitation Act of 1859 (192).

Quarre, whether a total exclusion from the joint family estate, as a whole, was necessary to lay the ground for the application of the statute at all (192-3). (Sir James W. Colvile.) LAKSHMAN DADA NAIK P. RAMACHANDRA (1880) 7 LA. 181 - 5 B. 48 (59-60)= DADA NAIK. 7 C.L.B. 320 = 4 Sar. 173 = 3 Suth. 778.

Language of-Not very clear.

The language of sub-S. 13 of S. 1 of the Limitation Act of 1859 is not very clear (118). (Sir Montague E. Smith.) NARAYANA RAO RAMACHANDRA PANT D. RAMABAL

(1879) 6 I. A. 114 = 3 B. 415 (420) = 6 C.L.R 162=4 Sar. 24=3 Suth. 617.

-Payment to junior member on account of his share-Proceeds of six land assigned to him by manager if.

In a suit for partition brought by the junior members of a joint family against the head of the family, it appeared that the plaintiffs had admittedly obtained possession of certain portions of the family estate by way of sir, as it was called, and that they took the sir land as equivalent to

S. 1. Cl. (13) - (Contd.)

Held that the proceeds of those six lands were substantially payments by the defendant within the meaning of S. I. sub-S. 13 of the Limitation Act of 1859, and that, as those payments had been continued to the time of action brought, the suit was not barred by limitation. (Six Robert P. Cellier.) RUNJEET SINGH v. KOOER GUJRAJ SINGH.

1873) 1 I.A. 9 (21-2) - 3 Sar. 304 = R. & J.'s No. 26 (Oudh).

-Participation in profits of joint family property within meaning of Evidence.

When the question was whether the plaintiffs, cogsins of the defendants, had participated in the profits of joint family property, within the meaning of S. I. cl. 13 of the Limitation Act of 1859, within 12 years prior to the suit brought by them for the recovery of their share thereof, held, that evidence of an alleged payment by the manager of the defendants' family of the expenses of marriages of members of the plaintiffs' family, when there was at the same time a marriage in the defendant's own family, even if true, could not be said to prove a participation in the profits of the joint estate within the meaning of the clause in question (170). (Sir Richard Couch.) APPASAMI ODAYAR v. SUBRAMANYA ODAYAR.

(1888) 15 I.A. 167 - 12 M. 26 (34) = 5 Sar. 255.

- S. 1. cl. 15 - Applicability of class; to minfentuary

A usufructuary mortgage is as much within the scope of S. 1, cl. 15 of Act XIV of 1859 as any other mortgage. LUCHMEE BUKSH ROY 2. RUNJEET RAM PANDAY.

(1873) 2 Suth. 897 (898) - 20 W.B. 375 = 13 B.L.R. 177 = 3 Sar. 283.

——Mortgage—Redemption of—Limitation. Sci. under LIMITATION ACT OF 1908.

 Mortgage—Redemption right in—Acknowledgment of. Sc. LIMITATION ACT OF 1908, S. 19—MORTGAGE.

- S. 1, cl. 16-Adoption by voiden-Setting aside of, and recovery of property of last male owner-Reversioner's

uit for-Limitation-Starting point.

R, a Hindu, died in 1837, leaving behind him, his mother, who died in 1855, and his widow, who died in 1864, but no issue. In a suit brought by a sister's son of K for the recovery of his properties as his nearest heir after the death of the widow from a person who claimed to have been adopted by her, held that, according to the authorities in India, time began to run against the plaintiff only from the date of the widow's death (70). (Six James W. Colvile.) RAJENDRO NATH HOLDAR 2: JOGENDSO NATH BANERJEE. (1871) 14 M.I.A. 67 = 15 W.R. (P.C.) 41 = 7 B.L. R. 216 = 2 Suth. 422 = 2 Sar. 666.

----S. 4—Acknowledgment. See LIMITATION ACT OF 1908, S. 19.

S. 5-Applicability of-Conditions-Proof of-

Any person claiming the benefit of this section should clearly and distinctly show that he fills the position of the person contemplated by this section, as a person who ought to be protected. In order to claim the benefit of this section a defendant must show three things:—(1) that he is a purchaser according to the proper meaning of that term; (2) that he is a bona fide purchaser; and (3) that he is a purchaser for valuable consideration (15). Unless the whole of the three requisites exist, the benefit of the section is not obtained (20). (Lord Cairns.) RADANATH DOSS 2. GISBORNE. (1871) 14 MIA. 1=15 W.R. (P.C.) 24=6 B.L.R. 530=2 Suth. 397=2 Sar. 636.

LIMITATION ACT OF 1859 -(Contd.)

S. 5-(Conta.)

The provisions of S. 5 of Act XIV of 1859 are of an extremely stringent kind. They take away and cut down the title which ex hypothesi is a good title, of the cestui que trust or of a person who has deposited, pawned, or mortgaged property. They cut down that title in regard to the number of years that the person would have had a right to assert it-from a very great length of time, sixty years, they cut it down to 12 years. It is therefore only proper that any person claiming the benefit of this section should clearly and distinctly show that he fills the position of the person contemplated by this section as the person who ought to be protected. In order to claim the benefit of this section the defendant must show three things : first, that he is the purchaser according to the proper meaning of that term; second, that he is a bona fide purchaser; and third, that he is a purchaser for valuable consideration [Quotation from 14 M. I. A. 1 (55 6).] (Sir James W. Colvile.) JUGGER-NATH SAHOO P. SYUD SHAH MAHOMED HOSSEIN.

(1874) 2 I. A. 48 - 14 B. L. R. 386 = 23 W. R. 99 = 3 Sar. 419 = 3 Suth. 61.

— Mortgage — Transferce of — Redemption suit against —Limitation.

In a suit brought in 1860 for the redemption of a mortgage of the year 1814, it appeared that the defendant was no more than a transferce of the mortgage title, and that the conveyance even of that was within 12 years before suit.

Held that the suit was not barred by S. 5 of the Limitation Act of 1859 (55). (Sir James W. Colvile.) JUGGER-NATH SAHOO P. SYUD SHAH MAHOMED HOSSEIN.

(1874) 2 I. A. 48 = 14 B. L. R. 386 = 23 W. R. 99 = 3 Sar. 419 = 3 Suth. 61.

— Policy underlying.

The provision of S. 5 is founded, no doubt, upon considerations of high policy,—of a policy which their Lordships do not at all doubt is one which is extremely beneficial to India, having regard to the circumstances of that country (15). (Lord Cairns.) RADANATH DOSS v. GISBORNE. (1871) 14 M. I. A. 1=15 W. R. P. C. 24=

6 B. L R 530=2 Suth. 397=2 Sar. 636.

-Provisions of Stringency of.

They provisions of S. 5 are of an extremely stringent kind. They take away and cut down the title, which ex hypothesi is a good title of the cestui que trust or of a person who has deposited, powned, or mortgaged property: they cut down that title as regards the number of years that the person would have a right to assert it; from a very great length of time, sixty years, they cut it down to twelve years (15). (Lord Cairns.) RADANATH DOSS v. GISBORNE.

(1871) 14 M. I. A. 1=15 W. B. P. C. 24=6 B. L. B. 530=2 Suth. 397=2 Sar. 636.

---Purchaser-Meaning of Mortgage-Purchaser of 
If and when purchaser within meaning of section.

A purchaser within the meaning of S. 5 of the Limitation Act of 1859 cannot be a person who purchases a mortgage as a mortgage, because that would be merely equivalent to an assignment of a mortgage; it would be the case of a person taking a mortgage with a clear and distinct understanding that it was nothing more than a mortgage. It, therefore, must mean some person who purchases that which de facto is a mortgage upon a representation made to him and in the full belief that it is not a mortgage but an absolute title (15-6). (Lord Cairns.) RADANATH DOSS 7. GISBORNE. (1871) 14 M. I. A. 1 = 2 Suth. 397=

15 W. B. P. C. 24 = 6 B. L. B. 530 = 2 Sar. 636.

—Purchaser for value without notice—Plea of—What

amounts to-Proof of.

An allegation or a plea of purchase for value is perfectly well-known and understood, and the averments in such a

S. 5-(Contd.)

plea are not matters of technicality,—they are matters of substance. In pleading a purchase for valuable consideration the very first averment in the plea is, that the person selling either was seized, or alleged that he was seized, for an absolute title, and then the plea goes on to say, that being so seized, or alleging that he was so seized, he contracted to sell, and did sell and convey that absolute title, asserting it to be such, to the purchaser, who paid his money for that which was thus sold. (17).

Where, in a suit to redeem a mortgage or conditional sale, the defendant's plea was perfectly consistent with his being nothing more than the transferee of that which was a conditional sale, or a title by way of mortgage, and the evidence adduced by him was also to that effect, held that he was not entitled to the benefit of S. 5 (19-20). (Lord Cairns.) RADANATH DOSS P. GISBORNE.

(1871) 14 M. I. A. 1 = 15 W. R. P. C. 24 = 6 B. L. R. 530 = 2 Suth. 397 = 2 Sar. 636.

- Purchaser for value without notice-Plea of-Time for raising-Privy Council appeal-Maintainability for first time in.

A defendant in a suit for redemption intending to rely upon the plea that he is a bona fide purchaser of the mortgaged property for value without notice must raise such a plea and prove it. When he fails to do so in the Court of first instance or in the Court of appeal he cannot be allowed to raise the plea for the first time in the appeal to the Privy Council (55-6). (Sir famet W. Colvile.) JUGGER-NATH SAHOO v. SYUD SHAH MAHOMED HOSSEIN.

(1874) 2 I. A. 48=14 B. L. R. 386=23 W. R. 99= 3 Sar. 419-3 Suth. 61.

3.6 Applicability—Mortgages who had forestoned
—Suit for possession by—Limitation—Cause of action—
Defendant purchaser of property prior to forcelosure proceedings and not made party thereto—Suit after 12 years
from date of default giving right of re-entry to mortgages.

Plaintiff was a mortgagee under a mortgage in the English form, with the usual proviso for redemption, and a proviso that the mortgagor should continue in possession until default, and that on default the mortgagee was to have an express right of entry. The plaintiff instituted proceedings to foreclose the mortgagor and obtained a foreclosure decree absolute.

The defendant claimed under a purchase from the mortgagor of the mortgaged property prior to the said proceedings for foreclosure. Registration and mutation of names in the Collector's Book, and possession followed upon the said purchase. The defendant was not, however, made a party to the foreclosure proceedings.

More than 12 years after the purchase under which the defendant claimed, and more than 12 years after the default conferring the right of entry upon the mortgagee within the meaning of the proviso in the mortgage deed, the plaintiff instituted a suit to recover the mortgaged property from the defendant. The defendant contended that the suit was barred by limitation, relying upon S. 1, cl. 12 of the Limi-tation Act of 1859. The plaintiff contended, on the other hand, that so long as the mortgage security was a subsisting security, and dealt with as such, time did not run as between the mortgagee, who was content to rest on his security, and the mortgagor, who was permitted to remain in possession, and persons claiming under him; and that until the foreclosure put an end to the security it was a subsisting security, and that it was then, and not till then, that time began to run. It was further contended that the defendant, who claimed under a purchase from the mortgagor, could not be in a more favourable position than the mortgagor himself. The plaintiff relied upon S. 6 of the Limitation Act of 1859.

# LIMITATION ACT OF 1859-(Contd.)

S. 6-(Contd.)

Held that S, 6 was inapplicable to the case (149).

It is impossible to hold that the defendant, the purchaser, was holding or supposed that he was holding by the permission of the mortgagee; and when both things concur—possession by such a holder for more than 12 years, and the right of entry under the mortgage deed more than 12 years old—it is impossible to say that such a possession is not protected by the law of limitations (150). (Lord Justice James) BROJONATH KOONDOO CHOWDRY v. KHELUT CHUNDER GHOSE. (1871) 14 M. I. A. 144

16 W. R. P. C. 33=8 B. L. R. 104=2 Suth. 480= 2 Sar. 711.

Applicability—Mortgagor himself continuing in possession and paying interest to mortgagee. See LAMITATION ACT OF 1859—S. 6—EXCEPTION CREATED BY.

(1871) 14 M. I. A. 144 (149-50).

2 Sar. 711.

Exception created by—Applicability of, to cases other than that precided for, even in cases of original mortgagor. S. 6 of the Limitation Act of 1859 makes one exception to the provision of S. I. cl. 12 of that Act in respect of mortgages. Where there is an express exception so limited to one special case of mortgage, it might plausibly be argued that it cannot be extended to any other case, even in the case of the original mortgagor bimself continuing in possession and paying interest to the mortgage (149.50). (Lord Justice James.) BROJONATH KOONDOO CHOWDRY v. KHELUT CHUNDER GHOSE. (1871) 14 M. I. A. 144 = 16 W. R. P. C. 33 = 8 B. L. B. 104 = 2 Suth. 480 =

-Object and Effect of.

It may have been deemed necessary to introduce the exception in S. 6 of the Limitation Act of 1859 in order to put the mortgages in the English form, when put in suit in the Supreme Court, which was generally governed by English law, upon the same footing as that in which English mortgages are under the existing statutes of Limitation, and their Lordships, dealing with suits upon mortgages in the Native Courts of India, might, in the simple case of a mortgager and his mortgagor being permitted to remain in possession so long as he paid interest, have found ground for considering that there was a permissive possession, and that a new cause of action and right of entry accrued when that permission ceased (150). (Lord Justice Jumes.) BROJONATH KOONDOO CHOWDRY 2. KHELUT CHUNDER GHOSE.

(1871) 14 M. I. A. 144 = 16 W. R. P. C. 33 = 8 B. L. R. 104 = 2 Suth. 480 = 2 Sar. 711.

S. 14-See LIMITATION. ACT OF 1908-S. 14.

-S. 15-See LIMITATION ACT OF 1908-ART. 3.

-Ss. 19 and 20-Provisions of-Distinction between

-Object and necessity of.

It is not surprising that, in framing the Limitation Act of 1859, a law designed to be common to both systems of judicature (172., the Courts of the East India Company which he called the Mofussil Courts, and the Courts established in the Presidency Towns and elsewhere by Royal ( harter), it was deemed necessary to make certain exceptions to the general rule of uniformity. And it may be presumed that, in dealing with this matter of execution of decrees, the Lagislature was moved by certain reasons which approved themselves to the minds of those who were conversant with the administration of justice in the Mofussil, to subject the execution of the decrees of the Mofuscil Courts, whether of appellate or of original jurisdiction to the three years' limitation; whilst, on the other hand, being pressed by the weight and value which the law of England gives to a judgment or decree of a Superior Court, it determined not

Ss. 19 and 20-(Contd.)

to reduce the period for enforcing the decrees of the Supreme Coarts to less than 12 years. Hence the distinction made by Ss 19 and 20 of the Limitation Act of 1859, in which the term "Coarts established by Royal Charter" was obviously used not by reason of anything inherent in every Coart established by Royal Charter, but simply because it was thought to define certain existing Coarts, ziz., the Supreme Coarts in the three Presidency Towns, and the Recorders' Coarts in the Straits Settlements, and possibly to include other Coarts of similar constitution and functions, which might thereafter be established (485). (Sir James IV, Colvile.) KRISTO KINKUR ROY 2: RAJAH BURRODA-CAUNT ROY. (1872) 14 M.I.A. 465 =

17 W.R. 292 = 10 B. L. R. 101 - 2 Suth. 564.

### CONSTRUCTION OF.

S. 20—The meaning of S. 20 of the Limitation Act of 1859 is that no process of execution should be issued to enforce a judgment or order of a Court not established by royal charter, after the expiration of 3 years from the date of it, unless some proceeding to enforce it, or to keep it in force, should have been taken within 3 years next before the application for execution (134). (Sir Barnes Peacock.) Delihi and London Bank v. Orchard.

(1877) 4 I. A. 127 = 3 C. 47 (55) = 3 Sar 721 = 3 Suth. 423.

HEIRS OF JUDGMENT-DEBTOR—APPLICATION FOR EXECUTION AGAINST—HEARING AND DISPOSAL OF, BY STRIKING OFF CASE FOR THE PRESENT.

- Application within b years of order disposing of it-Not barred.

The question was whether there was at any time within three years preceding the application for execution out of which the appeal arose any proceeding which had been taken to keep in force the judgment, decree, or order originally made in favour of the appellant.

The original judgment-debtor died. The appellant desired to have the benefit of his judgment against the heir, or heir-at-law of the debtor. In that state of things he applied to the Judge for process of execution against the respondents as heirs, and on 26 12 1861, that application was made to assume the form of a cause. It was marked and described as No. 106 of 1861, and was sent by the Judge to the Principal Sudder Ameen, who directed the usual notices to issue.

On 24 1-1862, the Nazir of the Court made his report that another Officer, a Peon, had gone to the place stated, and searched for the Judgment-debtors, but was unable to find them, and had affixed the notice in a particular way, and served it upon the village watchman. Then, in February, 1862, the respondents filed a petition of objections before the Principal Sudder Ameen, not disputing the service of the notice, but objecting to execution proceeding on the grounds. that it was barred by limitation, and that no estate of the Judgment debtor had come into their possession. In March, 1862, without any delay, the appellant put in a petition by way of answer to the petition which the respondents had put in contesting the allegations in point of law that the respondents had made. In that state of things, both parties having placed their view of their respective cases upon record, on 4-3-1862, the Principal Sudder Ameen ordered that on the last petition, if there were no objection, the notice of sale should be drawn up in due order; and, following upon that, on 29-11-1862, a species of hearing was brought on before the Principal Sudder Ameen, for the purpose of discussing all or some of the allegations which had been made in those petitions, and it was then, upon that day, 29-11-1862, that the Principal Sudder Ameen pronoun-

# LIMITATION ACT OF 1859-(Contd.)

S. 20-(Contd.)

HEIRS OF JUDGMENT-DEBTOR—APPLICATION FOR EXECUTION AGAINST—HEARING AND DISPOSAL OF, BY STRIKING OFF CASE FOR THE PRESENT— (Contd.)

ccd his opinion as follows:—"Whereas the heir of the Judgment-debtor is a respectable woman, the final process cannot be issued against her. Let the number of the suit be

struck off from this record, at present."

Held that, assuming that the order of 29-11-1862 was meant to be a final judgment, there was a proceeding to keep in force a judgment, decree, or order originally made within the meaning of S. 20 of the Limitation Act of 1859; that that proceeding was pending every day of the time until it was disposed of on 29-11-1862, by the order of that date (487-8).

It was at this point (the order of 29-11-1862), and at this point for the first time, that the suit, which up to that time had been pending, was disposed of by any order of the Court, and up to that time there appears certainly to have been no delay on the part of either side. It was prosecuted homa hde, and defended homa hde; and it appears to their Lordships, that so long as that process was going on, so long as there were these allegations and counter-allegations, as to the right to revive and prosecute the decree, there was a pending proceeding, and it would have been out of the power of the appellant to have done anything but wait for the result and the order of the Court upon that pending proceeding (487 8). (Leed Cairns.) MAHARAJAH DHEEURAJ MAHTAB CHUND BAHADOOR r. BULRAM SINGH.

(1870) 13 M. I. A. 479=14 W. R. P. C. 21= 5 B.L.R. 611=2 Suth. 351=2 Sar. 597.

### PROCEEDING TO ENFORCE DECREE.

-Ss. 20 and 21-Money Decree-Execution.

(1877) 4 I. A. 127 (136)=3 C. 47 (57-8).

-Appeal from decree if a.

An appeal prosecuted to a decree is "a proceeding taken to keep the original decree in force" within the meaning of S. 20 of the Limitation Act of 1858 (489). (Sir James W. Celvile.) KRISTO KINKUR ROV P. RAJAH BURRODA-CAUNT ROV. (1872) 14 M. I. A. 465 = 17 W.B. 292 = 10 B. L. B. 101 = 2 Suth. 564.

-Bona fide nature of-Test-Evidence.

In considering whether certain execution proceedings were bona fide or not within the meaning of S. 20 of the Limitation Act of 1859 the Court ought not to confine itself to one particular attempt to revive execution, but must look at the whole course of the proceedings (930).

Where it appeared that the first proceeding to obtain execution was not only prosecuted, but prosecuted with effect, and a large sum obtained, and that in the third attempt, when the defendant set up the defence of limitation and attempted to bar the proceeding, the decree-holder opposed him, and successfully opposed him, in two Courts, going to the High Court, held that, the case afforded strong evidence of a homa fide desire on the part of the decree-holder to execute his decree, which was thwarted and baffled by the defendant (930). (Sir Montague Smith.) BENODERAM SEIN v. BROJENDRO NARAIN ROY.

(1873) 2 Suth. 926=13 B. L. R. 169=3 Sar. 328.

-Mistaken and ineffectual proceeding if a.

Even where a proceeding is ineffectual because of some mistake in the particular step advised, if it was taken to enforce the decree, it protects the decree holder from the operation of the statute of limitations (930). (Sir Montague E. Smith.) BENODERAM SEIN v. BNOJENDRO NARAIN ROY. (1873) 2 Suth. 926=13 B. L. B. 169=3 Sar. 328.

S. 20-(Contd.)

PROCEEDING TO ENFORCE DECREE—(Contd.)

Mistaken and ineffectual but bona fide proceeding-Colorable proceeding-Distinction.

A petition presented bona fide by a decree-holder for execution in one suit of money attached in another suit is a proceeding taken within the meaning of S. 20, Act XIV, 1859, to enforce or keep in force a decree. The fact that it was in the end abortive, does not take from it the character

of a proceeding to enforce the decree.

It is said that this proceeding cannot be held to be one to keep the judgment in force, because it was a petition to obtain execution of a sum of money which it was not possible that the execution could reach, and that that must have been so to the knowledge of the decree-holder. It seems to their Lordships that these circumstances really affect only the bona fider of the proceedings. If their Lordships could infer from these facts that the petition was a colorable one, not really with a view to obtain the money; if they could come to that conclusion, in point of fact, the proceeding would not be one contemplated by the Statute; but their Lordships cannot come to that conclusion. The fact that the petition was in the end abortive does not take from it the character of a proceeding to enforce the decree. The consequence will be that the date on which the petition was dismissed (and not that on which it was presented) is the date from which the three years ought to commence to run. ROY DRUNPUT SINGH v. MADHOMOTEE DERIA. (1872) 11 B. L. R. 23 18 W. R. 76=3 Sar. 131=2 Suth. 615.

Privy Council appeal-Petition of, if a.

A petition of appeal to England, being a proceeding taken in order to destroy the decree, cannot of itself be treated as a proceeding to keep it in force within the meaning of S. 20 of the Limitation Act of 1859 (493.4). (Sir James W. Colvie.) KRITO KINKUR ROV P. RAJAH BURRODA.

CAUNT ROV. (1872) 14 M. I. A. 465 17 W. R. 292 = 10 B. L. R. 101 = 2 Suth. 564.

-Privy Council appeal-Petition by both parties pending, for stay of proceedings to effect compromiss-Dismissal of appeal subsequently for default-Petition for tay if a proceeding within meaning of section.

A decree made by a Mofusil Court in March 1862, was affirmed on appeal by the High Court in June, 1863. An appeal from the High Court was interposed to the Queen in Council, and pending such appeal a petition by both parties was presented in April, 1865, to stay proceedings for two months to effect a compromise, which did not take place, and afterwards, in the same year, no steps having been taken, the High Court, in May, 1866, struck out the appeal. In 1867, the decree holder applied to the lower Court for execution of the decree, but that Court refused to issue three years' limitation, provided by S. 20 of Act XIV of 1859, and its decision was affirmed on appeal by the High Court.

Held that, when the parties consented to the petition to stay proceedings there was such a contestatio litio touching the appeal to England as constituted "some proceeding," provided for by S. 20 of Act XIV of 1859, and took the vided by that section (494-5). (Sir James W. Calvile.) KRISTO KINKUR ROY D. RAJAH BURRODACAUNT ROY. (1872) 14 M. I. A. 465 = 17 W. B. 292 =

10 B. L. B. 101 = 2 Suth. 564

Proceeding taken bona fide and with due diligence before Judge having no jurisdiction if a-Judgment-dektor defecting to jurisdiction.

# LIMITATION ACT OF 1859 - (Contd.)

S. 20-(Contd.)

PROCEEDING TO ENFORCE DECREE-(Contd.)

S. 20 of the Limitation Act of 1859 does not say some proceeding in a Court having jurisdiction, and their Lordships are of opinion that a proceeding taken bona fide and with due diligence before a Judge whom the party hwa fide believes, though errone susly, to have jurisdiction, especially when the Judge himself also supposes that he has jurisdiction, and deals with the case accordingly, is a proceeding to enforce the decree within the meaning of S. 20 (171). The fact that the judgment-debtors did not appear or object to the jurisdiction is immaterial (172).

The principle of S. 14 of the Act, with regard to suits, may be applied to the construction of S. 20, with regard to execution (171). (Sir Barnes Peaceck.) HIRA LALT. (1880) 7 I. A. 167= BUDRI DASS.

2 A. 792 (797-8) = 6 C. L R. 561 = 4 Sar. 157 = 3 Suth. 761 = 4 I. J. 426.

-Service of notice of execution application upon judg. ment-delter if a.

Service upon the judgment-debtor of notice of an execu-tion application is a "proceeding" within the meaning of S. 20 of the Limitation Act of 1859; and an execution application filed within three years from the date of such service is not barred (154). (Sir Barues Peacork.) MANGAL PERSHAD DICHIT P. GRIJA KANT LAHIRI CHOWDHRY.

(1881) 8 I. A. 123 - 8 C. 51 (62) -11 C. L. R. 113 ~ 4 Sar. 248.

-Ss. 20 and 19-Mefussil Court-Decree in appeal from-Execution of-Limitation-Period of

The execution of a decree of the High Court made on appeal from one of the Courts in the Mofussil is to be governed by the three years rule of limitation provided by S. 20, and not by the 12 year s rule of limitation provided by S. 19, of the Limitation Act of 1859 (484).

The High Courts, though unquestionally "Courts established by Royal Charter," in the broad and general sense of the term, are not, when exercising their appellate jurisdiction from the Mofussil Courts, such Courts within the meaning of the Limitation Act of 1859 (487). (Sir James W. Colvile.) KRISTO KINKUR KOV 2. RAJAH BURRODACAUNT ROV. (1872) 14 M. I. A. 465= BURRODACAUNT ROY. 17 W. B. 292 = 10 B. L. R. 101 = 2 Suth. 564

-Ss 20 and 21-Money decree-Execution of-Limitation -Proceeding to enforce judgment in S. 20-What is-Execution application within 3 years of such proceeding-Net barred.

On the 5th of October 1866, the appellants obtained a decree for money against the respondent. Subsequently to the decree the defendant made various payments on account up to the month of October, 1869. On the 22nd of that month the appellants presented a petition to the Deputy Commissioner (who passed the decree), claiming a balance for principal and interest, and praying that, as after certainpt the amount to be recovered, a as:ertificate might be sent to the civil Court at Meerut, transferring the decree, in order that it might be executed in that Court. The Deputy Commissioner rejected the petition on the ground that, as the Commissioner's sanction for execution had not been obtained, it was not within his power to execute the decree. The application of the 22nd of October was admittedly made bona fide.

The Defendant, notwithstanding the order, made further

payments on account.

On 4th May, 1871, the plaintiff, alleging that the payments made were not sufficient to cover the interest, and claiming a balance, made a fresh application to the Deputy Commissioner for a certificate and transfer of the decree to the Court of Meerut for execution. That application was

Ss. 20 and 21-(Contd.)

ultimately rejected by the Chief Court on the ground that the decree having been obtained before the introduction of the Limitation Act of 1859 into the Punjah, the case was governed by the provisions of S. 21, and not by S. 20, of that Act, and that the application was barren.

The Limitation Act of 1859 was extended to the Punjab on the 1st of January 1867, and consequently the period of 3 years from the time when the Act came into operation in the Punjab had expired before the application of the 4th of

May, 1871, was made.

Held, reversing the Court below, that the application made to the Deputy Commissioner on the 22nd of October, 1869, being bona tole, though unsuccessful, was a proceeding to enforce the judgment within the meaning of S, 20 of the Act of 1859; and that that proceeding having been taken within 3 years next preceding the application made on the 4th of May, 1871, such last mentioned application was not barred by S. 21 of the Act of 1859, and ought to have been granted (136). (Sie Barnes Peacock.) DELHI AND LONDON BANK P. ORCHARD. (1877) 4 L.A. 127= 3 C. 47 (57-8) - 3 Sar 721 - 3 Suth. 423.

- Retrospective operation - Construction giving - Pro-

pricty.

Such a construction (of S., 20 and 21 of the Limitation Act of 1859) would cause great inconvenience and injustice, and give the Act an operation which would retrospectively deprive the creditor of a right which he had under the law as it existed in the Regulation Provinces at the time of the passing of the Act, and in the Punjab at the time of the introduction of it. Their Lordships are of opinion that such a construction would be centrary to the intention of the Legislature (135). (Sir Barnes Pewcek.) DELHI AND LONDON BANK P. ORCHARD. (1877) 4 I. A. 127= 3 C. 47 (56-7) = 3 Sar. 721 = 3 Suth. 423.

Ss. 20 and 22-Applicability-Decisions to which each section is applicable.

S. 20 of the Limitation Act of 1859 was intended to apply to decisions, whether they might be called judgments, decrees, or orders, made in a regular suit and S. 22 of the said Act to all other decisions (125). (Sir Richard Couch.) MINA KONWARI P. JUGGUT SETANI.

> (1883) 10 I. A. 119=10 C. 196 (203)-13 C. L. R. 385 = 4 Sar. 454.

-Applicability-Registration Act XX of 1866-Decision dated July, 1867 under-Execution of-Limitation-Limitation Act of 1871-Applicability. See REGISTRATION ACT OF 1866-S. 53-DECISION DATED JULY, 1867

(1883) 10 I. A. 119 (125) = 10 C. 196 (203-4).

-S. 21-But process of execution may be issued-Meaning.

The words "but process of execution may be issued," in S. 21 of the Limitation Act of 1859 mean that, notwithstanding anything mentioned in the preceding section, execution might issue either within the time. limited by law, or within3 years next after the passing of the Act, whichever should first expire (136). (Sir Barnes Peacock.) DELHI AND LONDON BANK P. ORCHARD.

(1877) 4 I. A. 127 - 3 C. 47 (57) = 3 Sar. 721 = 3 Suth. 423.

-Nothing in the preceding section-Meaning.

The words, "nothing in the preceding section" as used in S. 21 of the Limitation Act of 1859, mean that the prohibition laid down in S. 20 of the Act should not apply to judgments in force at the time of the passing of the Act (136). (Sir Barnes Peacock) DELHI AND LONDON BANK v. ORCHARD. (1877) 4 I.A. 127 = 3 C. 47 (57) =

LIMITATION ACT OF 1859-(Contd.)

S. 21-(Contd.)

"Nothing in the preceding . . . section passing of the Act" - Meaning.

The words, " nothing in the preceding section shall apply to a judgment in force at the time of the passing of the Act," in S. 21 of the Limitation Act of 1859 mean that nothing in the preceding section should prejudicially affect the right of a creditor under a judgment in force at the time of the Act (135-6). (Sir Barnes Peacock.) DELHI AND LONDON BANK P. ORCHARD. (1877) 4 I.A. 127 = 3 C. 47 (57) = 3 Sar. 721 = 3 Suth. 423.

Execution under-When will be issued.

Under S. 21 of the Limitation Act of 1859, execution might issue after the expiration of 3 years from the time of the passing of the Act to enforce a judgment which was in force at the time when the Ac was passed, provided some proceeding to enforce the judgment within the meaning of S. 20 had been taken within 3 years next preceding the application for execution (134). (Sir Barnes Peacock.) DELHI AND LONDON BANK P. ORCHARD.

(1877) 4 I.A. 127 - 3 C. 47 (55-6) - 3 Sar. 721 -3 Suth. 423.

——S. 22—Registration Act XX of 1866—S. 53— Decree made under, on 9.7-1867—Execution of—Limitation. See REGISTRATION ACT OF 1866 -S. 53-DECREE MADE UNDER, ON 9-7-1867—EXECUTION.

(1883) 10 I.A., 119 (125)=10 C. 196 (203-4).

Summary decision or award—Meaning.
The words "summary decision or award" in S. 22 of the Limitation Act of 1869 mean a decision of the Civil Courts not being a decree made in a regular suit or appeal (125). (Sir Richard Couch.) MINA KONWARI v. JUGGUT SETANL (1888) 10 I.A. 119 ==

10 C. 196 (203) - 13 C.L.B. 385 - 4 Sar. 454.

-Summary decision - Meaning - Registration Act XX of 1866-S. 53-Decree made under-If a summary deci-

Summary decision means a decision arrived at by a summany proceeding, and the decision being called a decree does not make any difference in this respect (125).

A "decree" made under S. 53 of Act XX of 1866 is a "summary decision" within the meaning of S. 22 of the

Limitation Act of 1859 (125).

Act XX of 1866 does, indeed, say that the petitioner shall be entitled to a decree, and that such decree may be enforced under the provisions for the enforcement of decrees contained in the Code of Civil Procedure. It was held by the High Court at Calcutta, in Ram Dhun Mundul v. Rameswar Bhuttacharjee, (2 B.L.R. 235), that the words "summary decision or award" meant a decision of the civil courts not being a decree made in a regular suit or appeal. This construction appears to have been adopted by the Indian Legislature in the Limitation Act IX of 1871, in Art. 166 of the 2nd Schedule, where one year is stated as the period of limitation for the execution of the decision (other than a decree or order passed in a regular suit or an appeal) of a civil court or an appeal. Here the exception shews that the word "decision" is used as including a decree (125). (Sir Richard Couch.) MINA KONWARI v. JUGGUT SETANI. (1883) 10 I.A. 119=10 C. 196(203-4)=13 C.L.R. 385= 4 Sar. 454.

-S. 24, Exception.-Oude-Extension of Act to-Suit brought in Oude within 2 years of-Limitation-Law applicable.

The last section of the Limitation Act XIV of 1859 provides that the Act "shall not take effect in any non-Regula-3 Sar. 721 = 3 Suth. 423. tion Province (to which class Oude belongs) until it shall be

S. 24. Exception-(Contd.)

extended thereto by public notification by the Governor-General in Council and that whenever it shall be so extended, all suits within such province which shall be pending at the date of such notification, or shall be instituted within the period of 2 years from the date thereof, shall he tried and determined as if this Act had not been passed." Act XIV of 1859 was not extended to Oude till July, 1860. In a suit to recover a balance due for principal and interest due on account of loans of money, which suit was instituted in the civil court of Lucknow on 13-1-1862, held that it fell within the exception of the last section of the Act XIV of 1859, and must be determined as if the Act had not been passed (379). (Lord Chelmsford.) SHAH MUKHUN LAL P. NAWAB INTIAZOOD DOWLAH.

(1865) 10 M I.A. 362 = 5 W.B. 18 = 1 Suth. 612 = 1 Sar. 160 = R. & J.'s No. 3 (Oudh).

# LIMITATION ACT IX OF 1871.

# Applicability of.

-Suits instituted before 1-4-1873—Execution applica-

tion in.

A thing which applies to an application in a suit applies to the suit, and an application for the execution of a decree is an application in the suit in which the decree was obtained, and as regards suits instituted before the 1st of April, 1873, all applications in them are excluded from the operation of the Limitation Act of 1871. Nothing therefore contained in S. 2, or in S. 4, or in Schedule 2, of that Act extends to an application for the execution of a decree in a suit instituted before the 1st of April, 1873 (133).

The reasons which may be presumed to have induced the Legislature not to apply the new rules of limitation to suits commenced before the 1st day of April, 1873 are of equal force with regard to application for the execution of decrees (134). (Sir Barnes Peacesk.) MUNGAL PERSHAD DICHIT

v. GRIJA KAUNT LAHIRI CHOWDHRY. (1881) 8 I.A. 123 = 8 C. 51 (61) =

11 C.L.B. 113 - 4 Sar. 248.

As regards suits instituted before the 1st of April, 1873, all applications in them, including applications to execute the decree, are excluded from the operation of Act IX of 1871 (127). (Sir Richard Couch.) MINA KONWARI P. (1883) 10 I.A. 119 JUGGUT SETANI. 10 C. 196 (206) = 13 C.L.R. 385 - 4 Sar. 454.

# Provisions of -Two sets of.

Nature of-Distinction.

The Limitation Act of 1871 contains two sets of provisions, which are in their nature distinct. One relates to the limitation of suits, and prescribes the limitation of time for bringing suits after the right to sue has arisen. The other set relates to the manner of acquiring title and rights by possession and enjoyment. The latter provisions are contained in Part 4 of the Act, and are introduced under the heading "Acquisition of ownership by possession." They enact a mode of acquiring ownership by possession or enjoyment (246). (Sir Montagne Smith ) MAHARANI RAJ-ROOP KOER P. SYED ABUL HOSSEIN.

(1880) 7 I.A. 240 = 6 C. 394 (402) = 7 C.L.B. 529 = 4 Sar. 199 = 3 Suth. 816.

8. 27-Object of. The object of S. 27 of the Limitation Act of 1871 was to make more easy the establishment of easement rights, by allowing an enjoyment of twenty years. if exercised under the conditions prescribed by the Act, to give, without more, a litle to easements (246). (Sir Montague Smith.)

# LIMITATION ACT IX OF 1871.—(Centd.)

S. 27-(Contd.)

MAHARANI RAJROOP KOER P. SVED ABUL HOSSEIN. (1880) 7 LA. 240 = 6 C. 394 (403) = 7 C.L.R. 529 = 4 Sar. 199 - 3 Suther. 816.

-Remedial and not prohibitory or exhaustive-Other modes of acquisition of cosement not interfered with.

S. 27 of the Lamitation Act of 1871 is remedial, and is neither prohibitory nor exhaustive. A man may acquire a title under it who has no other right at all, but it does not exclude or interfere with other titles and modes of acquiring easements, c.g., under a presumed grant (246-7). (Sir Montague Smith.) MAHARANI KAJROOP KOER v. SVED ABUL HOSSEIN. (1880) 7 I.A. 240 = 6 C. 394(403)= 7 C.L.R. 529-4 Sar. 199-3 Suth. 816.

Art 93-See LIMITATION ACT OF 1908-ARTS. 92 AND 93.

-Art. 129-Adoption of 1851-Setting uside of-Limitation for-Act Applicable - Act of 1871 or 1877.

The suit was in substance to set aside the adoption of the defendant. That adoption was made in the year 1851. The suit was brought in 1885. The plaintiff came of age in 1861 2, and the defendant in 1872-3. The period of 12 years after the defendant's adoption expired in 1863, and eight years more had elapsed when the Limitation Act of 1871 was passed. That Act came into force on the 1st of April, 1873.

Held that the Limitation Act of 1871 applied to the case, and that no suit having been brought to set aside the adoption on the 1st of April, 1873, the plaintiff's right of

action was barred (37).

The plaintiff had upwards of two years after March, 1871, when the Act of 1871 received the assent of the Governor-General within which he might have brought his suit to set aside the adoption, and had notice under the statute that the period of limitation of twelve years from the date of the adoption would be applicable on the expiry of that time (57). (Lord Shand.) MOHESH NARAIN MOONSHI P. TARUCK NATH MOITRA. (1892) 20 I.A. 30 -20 C. 487 (497) = 6 Sar. 261.

-Adoption of 1851-Suit for possession against adopted son in 1885-Latter's assertion of status and rights of adopted son, and enjoyment, to plaintiff's knowledge, of advantages of that status-Suit barred irrespective of any

question of possession by adopted son.

The suit was instituted in 1875 to recover possession of a moiety of the estate of one S, deceased, from the principal defendant, G. S died in 1850, having adopted the plaintiff as his son in 1841 in conjunction with his first wife. plaintiff's adoption was admitted to be valid, and his right to the other half of the estate of S, which was in his possession, was undisputed. G was adopted by the second wife of S in the year 1851 in pursuance of an authority to adopt conferred upon her by S in 1844. He maintained that as such adopted son he was entitled to continue in possession of the mojety of the estate of S in his possession and that the suit was liable to be dismissed on that ground. He further contended that, even if his adoption was invalid, the suit was barred on the ground that twelve years had elapsed after his adoption without any suit having been raised to set the adoption aside. The question for decision was whether the suit was barred on the ground alleged.

S was survived by his said two wives. The second wife survived till the year 1884; the first wife was alive at the date of suit and was made a "pro forma defendant", but she died subsequently. The plaintiff came of age in 1861-2, and the principal defendant in 1862-3.

### LIMITATION ACT IX OF 1871 .- (Contd.)

Art. 129-(Contd.)

blished on the ground of the long unchallenged adoption of the principal defendant, notwith-tanding his assertion of the status and right of an adopted son, and his enjoyment, with the complete knowledge of the plaintiff, of the advantages

which that status gave him (35).

The adoption of the principal defendant was made in the year 1851, with all the usual ceremonies, and was duly reported to the Government Collector, Thereafter, on 20-2-1852. it was ordered on a petition by the mother of S, and his two widows, in which it was stated that the mother, "together with the said two sons," (the plaintiff and the principal defendant) had taken possession of all the moveable and immoveable properties of the deceased, that the names of the mother of S, of his first wife, as mother of the plaintiff, minor, and of the 2nd wife of S, as mother of the principal defendant, minor, should be registered in respect of the deceased's property. After the death of the mother of S, the two widows, describing themselves as mothers of their respective minor sons, presented an application under the Act XX of 1841 to obtain a certificate of title for the administration of their late husband's estate, which would enable them to sue all debtors to the estate. In this petition they stated that their two minor sons had got the right of inheritance in all the properties, moveable and immoveable, of the deceased, and that they, the petitioners became entitled thereto as guardians on behalf of the said two minor sons, and were in possession on their behalf; and in 1855 a certificate was granted to them accordingly "as guardians of the said minors," under the authority of which they thereafter administered the estate. It need only be further stated, that from the time of his adoption in 1851 the defendant lived with his adoptive mother, as the adopted son of her late husband, till she herself died in 1884, being for about 33 years; that down to 1800, a period of 18 years, the two widows and their adopted sons (the plaintiff and the defendant) lived in family together; and that even after that date down to 1880, the collections of rents and income of the deceased's estates were made jointly by the widows, and divided in equal moieties, the widows having their respective sons in family with them. It is thus quite clear-apart from any question of possession, and whether the possession for so long a period of time as elapsed at the death of the 2nd wife of S, was truly the possession of her son, for whom she acted as guardian, and after he attained majority as his manager. or was possession by herself in virtue of a right of life-rent conferred by her husband's anumati patra, and in any view that the right of the defendant to the status of an adopted son of S was openly and constantly asserted, not only in all actings connected with the estates, but also in his daily life in family with the plaintiff, who, indeed, in many ways acknowledged or acquiesced in the assertion of this right

The period of twelve years after the defendant's adoption expired in 1863, and eight years more had elapsed when the Limitation Act of 1871 was passed. The Act came into force on the 1st April, 1873, and no suit having been brought on that date to set aside the defendant's adoption, the plaintiff's right of action was barred (37). (Lord Shand.) MO-HESH NARAIN MOONSHI D. TARUCK NATH MOITRA.

(1892) 20 I. A. 30 = 20 C. 487 (496-7) = 6 Sar. 261. -Adoption apparent within Jagadamba rase-What is an-Lapse of 12 years from date of-Title if acquired by -Suit for possession against adopted son-Limitation.

The last male owner of an Oudh taluqu died in 1857. His next heir was his widow who, by virtue of a summary settlement of the taluqa made with her in 1858 and a sannad afterwards granted to her, became Talukdar, not in right of her husband, but in her own right. The Thakurain whose favour the widow of D had purported to execute

# LIMITATION ACT IX OF 1871.- (Contd.)

Art. 129-(Contd.)

Held that the defence of limitation had been clearly esta- (widow) died inte-tate in 1893. Shortly after her death, the appellant's father S, being found in possession and claiming under an adoption alleged to have been made in his favour by the Thakurain after her husband's death, had his name entered in her place in the Revenue accounts. The alleged adoption was found to have been made in 1858. In 1899 the respondent instituted a suit within three years of his attaining majority, claiming to succeed as next heir in right of his grandfather, who was the eldest brother of the Thakurain. The Court below found, and their Lordships were disposed to accept its view, that there was no adoption in fact, but only a nomination of S as the Thakurain's heir, or, in other words, an adoption in a popular sense. Both the Courts below decided in favour of the plaintiff.

On the appeal to their Lordships it was argued on behalf of the appellant (the son of S) that there was at any rate an apparent adoption, and that, on that assumption, it mattered not whether the adoption was valid or invalid, because there was enough to satisfy the provisions of the Limitation Act of 1871, as interpreted by the Board in the case of Jagadamba Chowdhrani. The appellant's case was rested entirely on the Limitation Act of 1871. It was contended for him that the Act of 1877 did not apply because he relied on title acquired before the passing of the Act of 1877, and his rights were therefore saved by S. 2 of that Act. It was admitted on behalf of the appellant that if the Act of 1877

applied he was out of Court,

Held that the suit was not barred.

Giving full effect to the Jagadamba case and the other cases which followed it, their Lordships do not think that the immunity, such as it is, gained by the lapse of twelve years after the date of an apparent adoption amounts to acquisition of title within the meaning of S. 2 of the Act of

Querre, whether the alleged adoption was or was not an apparent adoption to which the ruling in the Jagamba case would apply if the Act of 1871 were now in force. (Lord Macnaghten.) THAKUR TIRBHUWAN BAHADUR SINGH 2. RAJA RAMESHWAR BAKHSH SINGH.

(1906) 33 I. A. 156 (163-4) = 28 A. 727 (739) = 10 C. W. N. 1065 = 8 Bom. L. R. 722 = 3 A. L. J. 695 = 4 C. L. J. 405 = 1 M. L. T. 265 = 9 O. C. 377 = 16 M. L. J. 440.

-Applicability of-Appointment of heir to widow-

Adoption by her amounting merely to.

Art. 129 of the Limitation Act of 1871 is inapplicable to a case in which the alleged adoption by a Hindu widow was not the adoption of a son as heir to her husband, but was merely an adoption of an heir to herself, and in fact a disposition of her property, very much in the nature of a will, to the heir adopted after her death (113). (Sir Robert P. Collier.) RAJ BAHADUR SINGH v. ACHUMBIT LAL,

(1879) 6 I. A. 110=6 C. L. R. 12=4 Sar. 15= Bald. 203 = 3 Suth. 598.

-Applicability of-Suit which party has, but for the adoption, the right to bring to recover possession of real property within 12 years from the time when the right accrued.

Art. 129 of the Limitation Act of 1871, though it might bar a suit brought only for the purpose of setting aside an adoption, does not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued (113).

The respondent sued to recover possession of certain property to which he alleged he was entitled as joint heir with his brother, D. The appellant was the son of a person in

Art. 129-(Contd.)

what was called a deed of adoption. The respondent also prayed for the setting aside of that deed. The question arose whether, as regards that prayer, the suit was not barred under Art. 129 of the Limitation Act of 1871.

Held that the suit was in its nature one which the respondent had, but for the adoption, the right of bringing to recover possession of real property within twelve years from the date of the death of the widow, and that the article did not interfere with that right of the respondent (113). Sir Robert P. Collier.) RAJ BAHADUR SINGH P. ACHUMBIT (1879) 6 I. A. 110 = 6 C. L. R. 12 = LAL. 4 Sar. 15 = Bald. 203 = 3 Suth. 598.

-Construction of Act of 1877 if a guide to.

Nor do their Lordships think that any guidance in the construction of the earlier Act (Limitation Act of 1871) is to be gained from the later one (Act of 1877), except that we may fairly infer that the Legislature considered the expression "suit to set aside an adoption" to be one of a loose kind, and that more precision was desirable (94). (Lord Hobbonse.) JAGADAMBA CHOWDHBANI P. DAKHI-(1886) 13 L. A. 84 = 13 C. 308 (320) = NA MOHUN. 4 Sar. 715.

 Language of—Change of, by Act of 1877—Effect of. See LIMITATION ACT OF 1877-ART. 118-LANGUAGE

-Right to set aside adoption harred under- Not re-

vived by Act of 1877

S. 2 of the Limitation Act of 1877 provides that nothing therein or in the Act of 1871 contained shall be deemed to affect any title acquired, or to revive any right to see barred. under the Act of 1871 or under any enactment thereby

Held, accordingly, that in a case in which the plaintiff's suit to set aside an adoption was barred, on the 1st of April, 1873, under the Limitation Act of 1871, the Act of 1877 could not revive the plaintiff's right so harred (38). (Lord Shand.) MOHESH NARAIN MOONSHIP, TARUCK (1892) 20 I. A. 30 = 20 C. 487 (497) -NATH MOITRA. 6 Sar. 261.

-Suit to set aside an adoption-In appropriatiness of

the phrase. The words of Art. 129 of the Limitation Act of 1871 are not such as to prevent doubt or difficulty in its construction. The expression, "suit to set aside an adoption" is not quite precise as applied to any suit. An adoption may be established, but can hardly be set aside, though an alleged or pretended adoption may be declared to be no adoption at all (93). (Lord Hobbouse). JAGADAMBA CHOWDHRANI (1886) 13 I. A. 84 v. DAKHINA MOHUN. 13 C. 308 (319) - 4 Sar. 715.

Suit to set aside an adoption-Meaning of.

The expression "set aside an adoption" in Art. 129 of the Limitation Act of 1871 is and has been for many years applied in the ordinary language of Indian lawyers to proceedings which bring the validity of an alleged adoption under question, and applied quite indiscriminately to suits for possession of land and to suits of a declaratory nature (94). (Lord Hobhouse). JAGADAMBA CHOWDHEANI F. (1886) 13 I.A. 84 DAKHINA MOHUN. 13 C. 308 (319) = 4 Sar. 715.

If then the expression "set aside an adoption in Art. 129 of the Limitation Act of 1871 is not such as to denote solely, or even to denote accurately, a suit confined to a declaration that an alleged adoption is invalid in law or never took place in fact, is there anything in the scope or structure of the Act to prevent us from giving to it the ordinary sense in which it is used, though it may be loosely, invalid, but he contended that, in that view, the plaintiff's

### LIMITATION ACT (IX OF 1871)-(Contd.)

Art. 129-(Contd.)

by professional men, the sense, namely, of every proceeding which brings the validity of an alleged adoption under question? The plaintiff's counsel were asked, but were not able, to suggest any principle on which suits involving the issue of adoption or no adoption must, if of a merely declaratory nature, be brought within twelve years from the adoption, while yet the very same issue is left open for twelve years after the death of the adopting widow, it may be fifty years more, if only it is mixed up with a suit for the possession of the same property. It seems to their Lordships that the more rational and probable principle to ascribe to an Act whose language admits of it, is the principle of allowing only a moderate time within which such delicate and intricate questions as those involved in adoptions shall be brought into dispute, so that it shall strike alike at all suits in which the plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the defendant is in possession (94-5). (Lord Hobbense). JAGADAMBA CHOWDHRANI v. DAKHINA (1886) 13 I.A. 84 = 13 C. 308 (320-1)= MOHUN. 4 Sar. 715.

- Suit to zet aside an adoption within-Suit for possession in which plaintiff cannot succeed without displacing an apparent adoption if a.

The respondents brought two suits to recover possession of the properties in suit as the reversionary heirs of the last full owner, one II. Their title accrued on the death of his surviving widow. The appellants were in possession alleging that the appellant Saroda and Doorga, deceased, the husband of the appellant, Jagadamba, were his adouted sons, and therefore his preferential heirs. The question was whether the suits were barred under Art. 129 of the Limitation Act of 1871.

It was argued for the plaintiffs that the Article in ques-tion was inapplicable to the suits, because they were suing not to set aside any adoption, but to recover possession on their perma facie title as heirs, and it was the defendants who had to allege and prove adoption and, on their failure to do so, it would not be set aside, but taken as never having existed. In one of the suits the plaintiff told the story of the adoptions; and directly impeached their validity. In the other the plaint was silent on that point.

Held that, whatsoever the mode of pleading, there was but one issue on the merits of the case, namely, the validity or invalidity of the adoptions, by virtue of which alone the defendants held their property, that, if the validity was proved, the plaintiffs could not succeed in their claim, and that the suits were therefore suits to set aside an adoption within the meaning of the Article in question (92-3).

The defendants are in possession in the character of adopted sons; the prima facie title is with them, and until that is displaced they ought to retain their possession (92). JAGADAMBA CHOWDHRANI D. DAK-(Land Hobbouse). (1886) 13 I.A. 84= HINA MOHUN. 13 C. 308 (318.9) = 4 Sar. 715.

-Plaintiff was in possession, as proprietor, of one moiety of the estate of the deceased S, and in the suit out of which the appeal arose he sought to have it declared that he was entitled as proprietor to possession of the other moiety of that estate. The plaintiff was the validly adopted son of S, and his right to the half of the estate in his pos-session was undisputed. The principal defendant, G, maintained that he was also an adopted son of S, having been adopted by his junior widow in pursuance of an authority to adopt conferred upon her by S, and that he was as such adopted son entitled to continue in possession of the half of the estate in his possession. His adoption was, however,

Art. 129-(('ontd.)

suit was barred by fimitation, inasmuch as twelve years had elapsed after his adoption without any suit having been raised to set the adoption aside.

Held that the suit was one "to set aside an adoption" within the meaning of Art, 129 of the Limitation Act of

1871 (36).

The present is not a suit in which the plaintiff expressly asks for a decree to "see aside" the defendant's adoption, or to obtain a declaration that the "adoption was invalid," which would probably be a more apt expression to use. The plaintiff merely asks for a declaration of his right, and that possession may be given to him of the properties in dispute. But this, in the circumstances, obviously involves the setting aside of the defendant's adoption, or in effect a judgment or finding by the Court that the adoption is invalid, for the defence of possession founded on the adoption directly involves the decision of the question-was the adoption invalid? In the case of Jagadamba Uhowdrani, it was settled that a suit to set aside an adoption within the meaning of these words in the Limitation Act need not be a surt having declaratory conclusions, but that any suit in which the decree prayed for involves the decision of the question of validity of an adoption set up in defence is a suit to set aside an adoption (35), (Lord Shand). MOHESH NARAIN MOONSHIT, TARUCK NATH MOTTRA.

(1892) 20 I. A. 30 - 20 C. 487 (495) = 6 Sar. 261.

-A childless Hindu died in 1849, leaving C, a widow, Pursuant to an authority to adopt conferred upon her by her husband, C, in 1862, adopted A, and made over to him possession of her husband's properties as proprietor. The adoption was, however, invalid; but A and his successors in interest held the properties in virtue of his right as such adopted son from 1862 practically until 1902, when C died. In 1905, the plaintiffs, claiming to be the reversionary heirs of C's hasband and to be entitled to succeed to his properties on her death, sued for the recovery thereof from M. the widow of A, and from alienees from her. From the facts and dates in the case it appeared that plaintiff's father and uncle, who were at the date of the adoption of of the only persons entitled to set it aside, had arrived at full age long before the Limitation Act IX of 1871 expired.

Held that the suit was barred under Art. 129 of the

Limitation Act of 1871.

The plaintiffs could not be entitled to a decree for possession without displacing the adoption of A. Art. 129 of the Limitation Act of 1871 relates to all suits in which the plaintiff cannot succeed without displacing an apparent adoption. That Article prescribed a period of 12 years from the date of the adoption as the period of time within which a suit to set it aside must be brought. Act IX of 1871 did not give to a reversioner whose right to sue for possession accrued upon the death of a Hindu widow any further time than the 12 years given by Art. 129 to any plaintiff. That Act was in force until 19th July, 1877. In the present case the period of limitation allowed by Art. 129 of Act IX of 1871 expired in 1874 and that Act (Sir John Edge). VAITHIALINGA P. SRIapplied. (1925) 52 I.A. 322 (340)= RANGATH ANNI.

48 M. 883 = 6 L.R. P.C. 169= 42 C. L. J. 563=(1926) M. W. N. 11= 28 Bom. L. R. 173=30 C. W. N. 313= A.I.R. (1925) P.C. 249 = 92 I. C. 85 = 49 M.L.J. 769.

### Art. 145.

-Adverse possession-Proof of-Onus on defendant Onus under S. 1, cl. 12 of Act of 1859-Distinction. See LIMITATION-ADVERSE POSSESSION - ONUS OF-(1882) 9 I.A. 99 (102)=5 A. 1 (6). PROOF OF.

### LIMITATION ACT (XV OF 1877).

(Under this head are given only such cases as cannot be brought under the present Act-All other cases will be found collected under the present Act).

-Schedule 11-Columns in-Object of.

The plan of the Limitation Act of 1877, following the plan of the repealed Act of 1871 is to specify in the Second Schedule to it the period of limitation for every description of suit. The division of them is so complete that the Schedule contains one hundred and eighty articles or divisions in three columns, headed "Description of Suit," "Period of Limitation," "Time from which period begins to run". (Sir Richard Couch.) RUNCHURDAS VANDRAWANDAS v. (1899) 26 I. A. 71 (81)= PARVATHIBAL 23 B. 725 (736) = 3 C. W. N. 621=1 Bom. L. R. 607= 7 Sar. 543.

### Right barred by Act of 1871 not received by.

-See UNDER THIS ACT-S. 2-ADOPTION. (1892) 20 I. A. 30 (37-8) = 20 C. 487 (497).

S. 2-Acknowledgment-Effect of-Title not conferred by. See LIMITATION ACT OF 1908-S. 19-AC-KNOWLEDGMENT-EFFECT OF.

(1913) 40 I. A. 74 (84) = 35 A. 227 (236).

Adoption-Setting aside of - Kight of barred by Act of 1871 not revised by Act of 1877.

S. 2 of the Limitation Act of 1877 provides: "Nothing herein or in that Act" (the Limitation Act of 1871), "Contained, shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed."

Where, therefore, on the 1st of April, 1873, a plaintiff's suit to set aside an adoption was barred by limitation under the Act of 1871, held that the Act of 1877 could not revive the plaintiff's right so barred (37 8). (Lord Shand.) MOHISH NARAIN MOONSHI P. TARUCK NATH MOITRA.

(1892) 20 I. A. 30 - 20 C. 487 (497) - 6 Sar. 261.

-Title acquired - Adoption apparent - Immunity gained by lapse of 12 years after date of-Acquisition of title if an.

Giving full effect to the Jagadamba case and the other cases which followed it, their Lordships do not think that the immunity, such as it is, gained by the lapse of 12 years after the date of an apparent adoption amounts to acquisition of title within the meaning of S. 2 of the Act of 1877. (Lord Macnaghten.) THAKUR TIRBHUWAN BAHADUR SINGH P. RAJA RAMESHAR BAKHSH SINGH.

(1906) 33 I A. 156 (163-4)=28 A. 727 (739)= 10 C. W. N. 1065=1 M. L T. 265=9 O. C. 377= 16 M. L. J. 440.

### Schedule II-Columns in.

-Object of. See Limitation ACT of 1877-Plan (1899) 26 I. A. 71 (81) = 23 B. 725 (736). -Art. 118-Adoption-Setting aside of-Right of, barred under Act of 1871 not revived by Act of 1877. See UNDER THIS ACT-S. 2-ADOPTION. (1892) 20 I. A. 30 (37-8) = 20 C. 487 (497)

-Adoption apparent-Non-challenge of, within 12 years allowed by Act of 1871-Effect of-Title if acquired by, within meaning of S. 2 of this Act. See UNDER THIS ACT-S. 2-TITLE ACQUIRED.

(1906) 33 I. A. 156 (163-4) = 28 A. 727 (739)

Language of-Change of, from that in Art. 129 of Act of 1871-Effect of.

It is worth observing that in the Limitation Act of 1877, which superseded the Act of 1871, the language of Act 129

Art. 118-(Contd.)

of the latter Act is changed. Art. 118 of the Act of 1877, which corresponds to Art. 129 of the Act of 1871 so far as regards setting aside adoptions, speaks of a suit " to obtain a declaration that an alleged adoption is invalid or never in fact took place," and assigns a different starting point to the time that is to run against it.

Onacre whether that alteration of language denotes a change of policy, or how much change of law it effects (94).

(Lord Hobbours:) JAGADAMBA CHOWDHEANI :: DAK-HINA MOHUN.

(1886) 13 I. A. 84

13 C. 308 (320) = 4 Sar. 715.

—It was suggested that, the Limitation Act of 1871 (Art. 129) having been superseded by the Act of 1877, the question of limitation should be determined with reference to the provisions of the later Statute, in which the language used is somewhat different, the suit there referred to, as necessary to save the limitation, being described as one." to obtain a declaration that an alleged adoption is invalid, or never, in fact, took place." It seems to be more than doubtful whether, if these were the words of the Statute applicable to the case, the plaintiff would thereby take any advantage (37-8). (Lord Shand.) MOHESH NARAIN MOONSHI v. TARUCK NATH MOTRA.

(1892) 20 I. A. 30 = 20 C. 487 (497) = 6 Sar. 261.

Art. 132 — Mortgagee in English from who had foreclosed—Suit by, against mortgagor and prior purchaser of
mortgaged property not impleaded in forceloure proceedings, for recovery of mortgage money or forceloure—Lamitation—Right of suit barred under Article not recoved by
creation of forcelosure suits by T. P. det.

It is contended that if a mortgagee wishes to fore lose be may do so within the time limited by Act 147 of the Limitation Act of 1877; that, on the 1st of July, 1882, the right to maintain foreclosure suits was conferred on Bengal mortgagees; and that the Limitation Act immediately fastened on those suits, and provided 60 years as the limit for them. But in the year 1878, when no suit for toreclosure could be brought, the right of the mortgagee to possession was wholly extinguished, and the title of the parchasers under the mortgagor freed from the mortgage. And the subsequent creation of suits for foreclosure could not, except by clear enactment, revive the extinct right. In effect the clear enactment, is, incleed, the other way, for S. 2 (c) of the Transfer of Property Act says that nothing therein shall affect "any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of such right or liability".

The appellant, the representative in interest of a mortgagee under a mortgage in the English form, sued the
mortgager and purchasers from him of portions of the
mortgaged property for recovery of the mortgage debt, or,
in default, a declaration that the defendants would be unable
to redeem the mortgaged properties, and an order for
possession. S, the original mortgagee, had instituted proceedings for foreclosure of the mortgage against the mortgagor only, and had by virtue thereof become absolute
owner as against him on or strictly before 31-3-1873. The
purchasers from the mortgagor were, however, not made
parties to those proceedings, and therefore remained unaffected by them, and the mortgagee's right as against them
became barred in August, 1878, at the latest. The appellants' suit was instituted only in 1882.

Held that the right barred in 1878, under Act 132 of the Limitation Act of 1877, was not revived by the creation of suits for foreclosure by the Transfer of Property Act

Their Lordships consider that within the meaning of bound by such a decree will not, by virtue of Art. 141, be S, 2 (c) of the Transfer of Property Act, the right of the entitled to bring a suit for possession of that property on

LIMITATION ACT (XV OF 1877)—(Centd.) Art. 132—(Centd.)

purchasers to unincumbered ownership of their plots have arisen out of the legal relations between them and the mortgagor and the original mortgagee (96). (Lord Hobbarte.) SRINATH DAS v. KHETTERMOHUN SINGH.

(1889) 16 I. A. 65 = 16 C. 693 (701) = 5 Sar. 315.

The words: "purchased for a valuable consideration" in Art. 134 mean that the ownership of the property sold has been absolutely transferred from the vendor to the purchaser in consideration of a price paid or secured by the purchaser to the vendor (166-7). (Sir Andrew Scoble.) ABHIRAM GOSWAMI v. SHYAMA CHARAN NANDI.

(1909) 36 I. A. 148 = 36 C. 1003 (1014) = 10 C. L. J. 284 = 14 C. W. N. 1 = 11 Bom. L. R. 1234 = 6 A. L. J. 857 = 4 I. C. 449 = 19 M. L. J. 530.

--- Purchaser - Lessee under mokurraree lease if a.

A mokurrari lease is not tantamount to a conveyance in fee simple, and a lessee under such a lease is not a purchaser under Art. 134. The purchaser must be the purchaser of an absolute title (166-7). (Sir Andrew Scoble.) ABHIRAM GOSWAMI P. SHYAMA CHARAN NANDI.

(1909) 36 I. A. 148 – 36 C. 1003 (1014-5) = 10 C. L. J. 284 – 14 C. W. N. 1 – 11 Bom. L. R. 1234 = 6 A. L. J. 857 – 4 I. C. 449 – 19 M. L. J. 530

-Religious Endowment-Shebast of - Mokurrarce losse of Adontier property by Successor's suit to recover property-Limitation-Article in Act of 1908-Change of language in-Effect.

Plaintiff soed, as shebait of some thakur or family idols, to recover possession of debutter property, which had been alienated more than 12 years before suit, by his predecessor in title, who had granted a mokurraree lease of the property in consideration of a fixed rent and the payment of a fine equal to the amount of two years' rent. Held that the suit was not barred by limitation under Art. 134 of the Limitation Act of 1877.

The present case is indistinguishable from that reported in 36 I. A. 148. Whatever might have been the inclination of their opinion if the matter had been res integra, it seems to their Lordships that they would not be justified in reviewing on an ex parte application the considered judgment of the Board delivered after full argument. They will, therefore, simply follow the decision in 36 I. A. 148. They do so with the less hesitation because the language of the article under discussion in that case and in this has been altered by subsequent legislation. (Lord Macnaghten.) ISHWAR SHYA.; CHAND JIN 2. RAM KANAI GHOSE.

(1911) 38 L. A. 76 = 38 C. 526 = 15 C. W. N. 417 = 9 M. L. T. 448 = 8 A. L. J. 528 = 13 Bom. L. R. 421 = 14 C. L. J. 238 = (1911) 2 M. W. N. 281 = 10 I. C. 683 = 21 M. L. J. 1145.

### Art. 141.

The words "entitled to possession of immoveable property" in Art. 141 of the Limitation Act of 1877 refer to the then existing law. It cannot be construed as altering the law respecting the effect as against a Hindu reversioner of a decree fairly and properly obtained against a Hindu widow for possession of property to which she succeeded as heir to her husband. The reversioner who is bound by such a decree will not, by virtue of Art. 141, be entitled to bring a suit for possession of that property on

### LIMITATION ACT (XV OF 1877)—(Contd.) Art. 141—(Contd.)

the death of the widow. (1) (Sir Richard Couch). HARRI-NATH CHATTERJI v. MOHUNT MOTHOOR MOHUN GO-SWAMI. (1893) 20 I.A. 183 (192) = 21 C. 8 =

followed in (2) (Lord Tamlin.) MT, JAGGO RALE. UTSAVA LAL. (1929) 56 LA, 267 - 51 A, 439 = 27 A.L.J. 716 - 33 C.W.N. 809 - 30 L.W 60 = 10 Pat. L.T. 527 - 31 Bom. L.R. 891 - 6 O.W.N. 589 = 50 C.L.J. 52 - 117 I.C. 498 - (1929) M.W.N. 762 - A.I.R. 1929 P.C. 166 - 57 M.L.J. 160.

—Limitation—Decree against widow founded on, residuata against reversioners—Effect of, on their rights. See HINDU LAW—WIDOW DECREE AGAINST—RESJUDICATA AGAINST REVERSIONERS—LIMITATION.

——Prior legislation—History of — Decree against widow—Effect against reversioner of—Article if alters.

With regard to a suit for possession of immoveable property brought by a Hindu reversioner entitled to the possession of that property on the death of a Hindu widow, the law, under the Limitation Act of 1859, was that such a suit must be brought within twelve years from the time when the cause of action arose. By the Limitation Act of 1871, the whole of the Act of 1859 which applied to the limitation of suits was repealed; and by the 4th section it was enacted that, subject to the provisions contained in vertain sections, every suit instituted after the period of limitation prescribed therefor by the second schedule to the Act should be dismissed, although limitation had not been set up as a defence, Art, 142 in the second schedule is as follows:—

"Like suit (that is for possession of immoveable property) by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow. Period of limitation—twelve years. Time when period begins to run when the widow dies."

In 1877 this Act was repealed and the Limitation Act of 1877 was passed. In that Act the same period of limitation was by Art. 141 prescribed to a suit by a Hindu or Mahomedan entitled to the possession on the death of a Hindu or Mahomedan female. The words "entitled to the possession of immoveable property" in Art. 141 refer to the then existing law; and, if under that law, a reversioner being bound by a decree fairly and properly obtained against the widow could not bring a suit for possession, he could not do so by virtue of Art. 141. Art. 141 cannot be construed as altering the law respecting the effect of a decree (191-2). (Sir Richard Couch.) HARRINATH CHATTERJI :: MOHUNT MOTHOOR MOHUN GOSWAMI.

(1893) 20 I.A. 183 = 21 C. 8 = 6 Sar. 334. Art. 179.

--- Mortgage decree-Sale-Order absolute for-Application for, barred under Art.-Not revived by C. P. C. of

An application for an order absolute for sale which was barred under Art. 179 of the Limitation Act of 1877 at the expiry of three years from the date of the decree and before the passing of C. P. C. of 1908 is not revived by any of its provisions. (Lord Moulton.) ABDUL MAJID v. JAWAHIR LAL. (1914) 36 I.A. 350 (358)=

16 Bom. L.R. 395 = (1914) M.W.N. 485 = 18 C.W.N. 992 = 16 M.L.T. 44 = 12 A.L.J. 624 = 1 L.W. 483 = 19 C.L.J. 626 = 23 I.C. 649 = 27 M.L.J. 17

#### Arts. 179 and 180.

-Applicability-Mortgage-Decree for sale of High Court-Order absolute in-Application-Limitation-Privy Council appeal from decree dismissed for default of prosecution-Effect.

# LIMITATION ACT (XV OF 1877)—(Contd.) Arts. 179 and 180—(Contd.)

The question was whether an application for an order absolute for sale was or was not barred.

The preliminary decree was passed by the Sub-Judge on 12-5-1890 for the sale of the property unless payment was made on or before 12-8-1890. That decree was affirmed by the High Court on appeal by its decree, dated 8-4-1893. The mortgagor obtained leave to appeal to the Privy Council, but did not prosecute his appeal, and on 13 5-1901, the appeal was dismissed for want of prosecution.

On an application for an order absolute to sell the mortgaged properties made on 11-6-1909, it was contended that the application was not barred, because the decree which it was sought to enforce had been constructively turned into a decree of His Majesty in Council and assigned to the date of 13-5-1901, by virtue of the dismissal of the appeal for want of prosecution on that date, and therefore the period of limitation was 12 years from 13-5-1901, by virtue of Art. 180 of the Limitation Act of 1877.

Held, overruling the contention and reversing the Court below, that the only decree capable of enforcement was the decree of the High Court dated 8-4-93, that the period of limitation applying to the enforcement of it at all material times was therefore a period of 3 years, and that the application for an order absolute was barred by limitation.

The only decree for sale that exists is the decree, dated 8-4-1893, and that is a decree of the High Court. The operation of this decree has never been stayed, and there is no decree of His Majesty in Council in which it has become merged. (Lord Mondton.) ABDUL MAJID v. JAWAHIR LAL. (1914) 36 A. 350 (353-4)=

16 Bom. L.R. 395 = (1914) M.W.N. 485 = 18 C.W.N. 992 = 16 M.L.T. 44 = 12 A.L.J. 624 = 1 L.W. 483 = 19 C.L.J. 626 = 23 I.C. 649 = 27 M.L.J. 17.

### LIMITATION ACT (IX OF 1908).

### Arbitration proceedings-Applicability to.

-4-Arbitrator-Legal defences, including defence of limitation under statute-Duty to give effect to.

The Indian Limitation Act, 1908, applies to arbitration proceedings, and an arbitrator acting under an ordinary submission to arbitration is bound to give effect to all legal defences, including a defence under any statute of limitation.

Although the Limitation Act does not in terms apply to arbitrations, in mercantile references it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and every defence which would have been open in a Court of law can be equally proposed for the arbitrator's decision unless the parties have agreed to exclude that defence. (Lord Salvesen.) RAMDUTT RAMKISSEN DASS v. SASSOON & CO. (1929) 56 I. A. 128 = 56 C. 1048 =

33 C.W.N. 485 = 29 L.W. 682 = 6 O.W.N. 473 = 49 C. L. J. 462 = 115 I.C. 713 = 27 A.L.J. 254 = 31 Bom. L.R. 741 = A.I.R. (1929) P.C. 103 = (1929) M.W.N. 546 = 56 M.L.J. 614.

### Plan of.

——No revival of. Sa Limitation ACT—EARLIER ACT.

### S. 3.

——Plea of limitation—Necessity for—Court's duty and power to take notice of plea of its own accord. See LIMI-TATION—PLEA OF—NECESSITY FOR.

S. 5.

DECREE FAVOURABLE—RIGHT OF PARTY TO.

Deprivation on light grounds of-Impropriety of. See DECREE-FAVOURABLE DECREE-RIGHT OF PARTY (1927) 55 I.A. 7 = 6 R. 29.

TIME BARRED APPEAL-ADMISSION OF.

-Ex parte order of-Objection by respondent to, at final hearing-Maintainability of-Jurisdiction to entertain.

Where an order is made admitting an appeal presented out of time in the absence of respondent, and without notice to him, it must, in common fairness, be regarded as a tacit term of such an order that, though unqualified in expression. it should be open to reconsideration at the instance of the party prejudicially affected. Further, on objection taken by the respondent, it is open to the court at the final hearing of the appeal to entertain the question of limitation and to dismiss the appeal on the ground of delay in presentation. That practice is not peculiar to Madras (27-8). (Sir I aurence Jenkins.) KRISHNASWAMI PANDIKONDAR P. RAMA-(1917) 45 I.A. 25=41 M. 412= SWAMI CHETTIAR. 23 M.L.T. 101 = 16 A.L.J. 57 = 22 C.W.N. 481 = 20 Bom. L. R. 541 = 27 C L.J. 253 = 4 P.L.W. 54 = 7 L.W. 156 = (1918) M.W.N. 906 = 11 Bur. L.T. 121 = 43 LC. 493 = 34 M.L.J. 63.

Grounds for-Appellant acting with reasonable

diligence if one. Under S. 5 of the Limitation Act the court has a discretion to admit an appeal presented after the prescribed period of limitation if there was sufficient cause for not presenting The true guide for a court is whether the it within time. appellant has acted with reasonable diligence in prosecuting his appeal and if he has been delayed by prosecuting other civil proceedings, e.g., a review, whether such proceedings were reasonably prosecuted and in good faith. (Lord Duncdin.) BRIJ INDAR SINGH P. KANSHI RAM.

(1917) 44 I.A. 218 (225 6) = 45 C. 94 = 26 C L.J. 572 = 22 C.W.N. 169 = 19 Bom. L.B. 866 = 126 P.W.B. 1917 = 104 P.R. 1917 = 3 Pat. L.W. 313 = 22 M.L.T. 362 = 6 L.W. 392 = 15 A.L.J. 777 = 42 I.C. 43 = 33 M.L.J. 486.

-Grounds for-Mistake of law per ser-Proceedings erroneous occasioned by such mistake-Distinction.

A mere mistake in law is not fer to a sufficient reason for asking the court to exercise its discretion under S. 5; but when it has in fact occasioned erroneous proceedings, it may be the foundation of an application for the indulgence which may be granted under S. 5.

The above rule being one of procedure laid down by Full Bench decisions in India and acted on for many years, their Lordships declined to interfere with it. (Lard Dancdin.)

BRIJ INDAR SINGH v. KANSHI RAM.

(1917) 44 I.A. 218 (225-6) = 45 C. 94 = 22 C W.N. 169 = 26 C.L.J. 572 = 19 Bom. L.R. 866 = 126 P.W.B. 1917 = 104 P.R. 1917 = 3 Pat. L.W. 313 = 22 M.L.T. 362 = 6 L.W. 392=15 A L J .777=42 I.C. 43= 33 M.L.J. 486.

Grounds for-Mistaken legal advice as to Court to

which appeal lay-Appeal to wrong Court on faith of.

An appeal which ought to have been presented to the District Court was, on mistaken legal advice, presented to the High Court within the period allowed for the purpose. The appeal was returned to be presented to the District Court, and was presented to that Court but after the period allowed for an appeal to the District Court.

## LIMITATION ACT (IX OF 1908)-(Contd.)

S. 5-(Contd.)

TIME-BARRED APPEAL- ADMISSION OF-(Contd )

Held, that the fact that the party had acted on mistaken advice as to the law in appealing to the High Court did not preclude him from showing that it was owing to his reliance on that advice that he had not presented the appeal to the District Court within the prescribed period of limitation, and the High Court rightly decided that the party had sufficient cause for not appealing to the District Court within the time allowed. (Sir John Edge.) SUNDERBAI v. COLLECTOR OF BELGAUM. (1918) 46 I. A. 15(23)= 43 B. 376 (384) = 21 Bom. L. R. 1148 =

23 C. W. N. 753 = (1919) M. W. N. 254 = 52 I. C. 897.

Grounds for-Sufficient cause-Proof of-Onus on appellant.

It is the duty of a litigant to know the last day on which he can present his appeal, and if through delay on his part it becomes necessary for him to ask the Court to exercise in his favour the power contained in S. 5 of the Limitation Act, the burden rests on him of adducing dirinct proof of the sufficient cause on which he relies. (Sir Lawrence Jenking.) KRISHNASWAMI PANDIKONDAR v. RAMA-(1917) 45 I. A. 25 (28)= SWAMI CHETTIAR.

41 M. 412=23 M. L. T. 101=16 A. L. J. 57= 22 C. W. N. 481 = 20 Bom L.R. 541 = 27 C. L. J. 253 = 4 Pat. L. W. 54 = 7 L. W. 156 = (1918) M. W. N. 906 = 11 Bur. L. T. 121 = 43 I. C. 493 = 34 M. L. J. 63.

Order for, not to be made on light grounds. See DECREE-FAVOURABLE DECREE-RIGHT OF PARTY (1927) 55 I. A. 7 = 6 R. 29.

Order refusing-Privy Council's interference with -Cendition

On an application to the High Court to exercise the power conferred upon it by S. 5 of the Limitation Act, by which an appeal may be admitted after date, "when the appellant satisfies the Court that he had sufficient cause" for not appealing in due time, the High Court held that sofficient cause for the delay was not made out, and rejected the application.

Held, that the Privy Council could not properly interfere in such a case unless they were satisfied that the refusal of the High Court to admit the appeal after date was wrong, and that their Lordships were not so satisfied (26-7). (Sir Arthur Wilson.) RAM NARAIN JOSHI v. PARMES-(1902) 30 I. A. 20 = WAR NARAIN MAHTA.

30 C. 309 (315-6) = 8 Sar. 431.

-Question as to-Preliminary determination of after notice-Necessity.

Their Lordships observed that the procedure of admitting by an ex parte order an appeal presented after the period of limitation allowed by the Limitation Act, 1908, was open to grave objection and impressed upon the Courts in India the argent expediency of adopting in place of that practice a procedure which would secure at the stage of admission, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. (Sir Lawrence Jenkins.) KRISHNA-SWAMI PANDIKONDAR 2. RAMASWAMI CHETTIAR.

(1917) 45 I. A. 25 (27-8) = 41 M. 412 = 23 M.L. T. 101 = 16 A. L. J. 57=22 C. W. N. 481=20 Bom. L B. 541= 27 C. L. J. 253 = 4 Pat. L. W. 54 = 7 L. W. 156 = (1918) M. W. N. 906=11 Bur L.T. 121=43 I. C. 493= 34 M. L. J. 63.

-When a memorandum of appeal is presented beyond the prescribed period of limitation the proper order which a judge should endorse upon it would be to the following effect: "Presented for admission on the (date when the

### LIMITATION ACT (IX OF 1908)—(Contd.) S. 5—(Contd.)

TIME-BARRED APPEAL-ADMISSION OF-(Cond.)

memorandum of appeal was handed into the office of his court). Let notice go to the respondents (date of the order)"

Courts in India ought argently to adopt a procedure which should secure at the stage of admission the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. (Sir John Edge.) SUNDERBAIR. COLLECTOR OF BELGAUM. (1918) 46 I. A. 15 (22-3)=43 B. 376 (383-4)=

(1918) 46 I. A. 15 (22·3)= 43 B. 376 (383 4)= 21 Bom. L. R. 1148= 23 C. W. N. 753= (1919) M.W. N. 254= 52 I. C. 897.

TIME—BARRED APPEAL—DISMISSAL OF, ON THAT GROUND—JURISDICTION.

——Wrong Court in which appeal presented—Jurisdiction of. See S. 14—WRONG COURT

(1920) 47 I. A. 255 (263) = 48 C. 110 (117-8).

#### S. 6.

#### APPLICABILITY OF.

—Benamidar—Real owner's heir's suit for possession against —Minority of heir—Extension of time by reason of. See ART, 144—BENAMIDAR.

(1893) 20 I. A. 38 (46, 49) = 20 C. 560 (570).

——Claim suit by minor claimant. See ART. 11 (1)— MINOR CLAIMANT. (1876) 3 I. A. 7 (24 5) = 1 C. 226 (242).

Minor-Guardian's suit during minority on behalf

The benefit of Ss. 11 and 12 of the Limitation Act of 1859 applies as well to the period during which the disability

continues as to the period when the disability has ceased.

Held, therefore that a minor could, even after the expiration of the year provided by S. 246 of C. P. C. of 1859, bring a suit by his guardian, whilst the disability of infan.y

continues (25).

The contrary construction is unreasonable in itself, since it implies that the infant's claim, which is admittedly not barred, was asserted too soon rather than too late; and it cannot be the policy of the law to postpone the trial of claims. Again to render such a construction imperative the phraseology of S. 11 must be altered by making the words "after the disability shall have ceased" precede instead of following, as they do, the words "within the same time" (25-6). (Sir James W. Colvile.) MUSSAMMAT PHOOLBAS KOONWAR v. LALLA JOGESHUR SAHOY.

(1876) 3 I. A. 7=1 C. 226 (243) = 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

Minor having guardian capable of sning during minority.

The fact that a suit might have been brought earlier on the minor's behalf by his guardian does not deprive the minor of the protection given to him by S. 7 of the Limitation Act, when it empowers him to sue after he attains his majority. (Sir Arthur Wilson.) MAHARAJA JAGADINDRA NATH ROY BAHADUR P. RANI HEMANTA KUMARI DEBI. (1904) 31 I.A. 203 = 32 C. 129 (142) =

8 C. W. N. 809 = 6 Bom. L. R. 765 = 1 A. L. J.585 = 8 Sar. 698.

- Special Acts prescribing special periods of limitation-Applicability to cases of.

## LIMITATION ACT (IX OF 1908) -- (Contd.)

S. 6 -(Contd.)

APPLICABILITY OF-(Contd.)

--Sα Bengal Regulations—Land Revenue Assessment (Resumed Lands) Regulation III of 1828—S. 13, Cls. 1 and 2. (1868) 12 M.I.A. 226 (238). -Sα Forfeiture Act IX of 1859, S.20 Proviso— Limitation prescribed by. (1874) 1 I. A. 167 (176).

### DISABILITY WITHIN MEANING OF.

Disqualification of proprietor under S. 6 (a) of Bengal Court of Wards Act of 1879 not a. See BENGAL ACTS—COURT OF WARDS ACT OF 1879., Ss. 6 (a) AND 27. (1918) 46 I. A. 60 (63)=46 C. 694.

### EFFECT OF.

—The effect of S, 7 of the Limitation Act of 1877 is that a person under disability may institute a suit within the same period after the disability has ceased as he would otherwise have been allowed under the schedule, but subject to a proviso that the time shall not in any case be extended for more than three years from the cessation of the disability (87). (Lord Darry.) VASUDEVA PADHI KHADANGA GARU 2. MAGUNI DEWAN BARSHI MAHAPATRULU GARU. (1901) 28 I A. 81 = 24 M. 387 (395) = 5 C. W. N. 547 = 3 Bom. L. B. 303 = 7 Sar. 819.

### Ss. 6 and 7.

—— Cases not falling under—No suspension of limitation in regard to. See BENGAL ACTS—COURT OF WARDS ACT OF 1879, SS. 6 (a) AND 27.

(1918) 46 I. A. 60 (63) = 46 C. 694 (699)

—Persons under disability—Exemption in favour of— Implication by equitable construction of—Statute specia and self-contained. Sec FORFEITURE ACT OF 1859, S. 20 PROVISG—LIMITATION PRESCRIBED BY.

(1874) 1 I. A. 167 (176).

——Ss. 6 to 8—Benefit of—Person entitled to—Person entitled to see at time from which period of limitation is to be reckoned only—Hindu Law—Joint family—Father—Alienation by—Son's suit to secover property subject of—Sons in existence, and son not in existence, at time of alienation—Suit by—Limitation. See ART. 126.

(1924) 52 I.A. 69 = 47 A. 165.

—— S. 7—Disability of one of several plaintiffs—Discharge capable of being given southout his concurrence— Effect.

In or about the year 1894 the appellants' father, N, entered into an agreement with the respondent under which the respondent was appointed agent for the purpose of collecting rents and profits from a forest land, rendering accounts of his management, from time to time, to N. N died in July 1899. He left three sons, the appellants, two of whom were minors, The agency was terminated on 16-1-1902. In September 1904 the appellants commenced the suit out of which the appeal arose against the respondent claiming a declaration that the respondent was liable to render accounts to the plaintiffs of the amounts realised in respect of the said property for the whole period of the agency. The two appellants who were minors did not come of age until a month or two before the hearing of the suit by the first Court. The respondent relied upon S. 8 of the Limitation Act and argued that limitation was not suspended against the minors.

Held that the answer to the contention was that the two appellants who were minors did not come age until a month or two before the hearing of the suit by the first court, and that the appellant who was of age, was not capable of giving a discharge which would bind the two minors (8-9). (Lord Parmoor.) NABIN CHANDRA BARWA v.

S. 7-(Contd.)

(1916) 44 C. 1= CHANDRA MADHAB PARWA. 5 L. W. 452 = 20 M. L. T. 430 =

(1916) 2 M. W. N 565-21 C. W. N. 97-

24 C. L. J. 509 = 18 Bom. L. R. 1022 = 14 A.L.J. 1199 = 36 I. C. 1=31 M. L. J. 886.

-Hindu joint family-Father-Alienation by-Eldest son barred from questioning-Effect of, against other some, (1925) 53 I. A. 36 = 48 A. 152. See ART, 126.

-S. 9-Applicability-Fusion of interests of creditor and debtor subsequent to accruing of right to sue. See ART. 148- MORTGAGE - USUPRUCTUARY MOTGAGE-RE-DEMPTION OF-LIMITATION-SUSPENSION OF

(1913) 40 I. A. 74 (85) - 35 A. 227 (236-7).

-Eaglish law followed by-S. 9 follows the provisions of the English Law. (Lard Atkin.) SKINNER . NAUNI-(1929) 56 I. A. 192 (200) 52 A. 367 27 A. L. J. 566 = 33 C. W. N. 761 = 31 Bom. L. R. 854 = HAL SINGH. 30 L. W. 76 = 117 I. C. 22 = 50 C. L. J. 74 = A. I. B. (1929) P. C. 158 = 58 M. L. J. 604.

S. 10.

APPLICABILITY OF.

CONTROL OF ART. 134 BY.

MEANING AND APPLICABILITY OF ART, 134-CLUE

TRANSFER FOR VALUABLE CONSIDERATION.

TRANSFER FOR VALUABLE CONSIDERATION-PRO-TECTION GIVEN BY SECTION TO-RIGHT TO.

TRUSTEE.

TRUST PROPERTY-FOLLOWING OF-SUIT FOR.

VALUABLE CONSIDERATION.

WILL-TRUSTEES UNDER-NEXT OF KIN-UNDIS-POSED OF PROPERTY WHEN VESTED IN TRUST FOR. WORDS IN.

### APPLICABILITY OF.

-Breach of trust-Suit founded on.

The claim being founded on an alleged breach of trust. was not, as pleaded, subject to limitation, either under the old law or under Act XIV of 1859, which, the suit having been commenced in December, 1861, seems to be the law applicable to it (606). (Sir James Colvile). MOONSHEE
BUZLOOR RUHFFM p. SHUMSOONNISSA REGUM.

(1867) 11 M. I. A. 551 = 8 W. R. P. C 3 = 2 Suth. 59 = 2 Sar. 259.

-Constructive trust—Case of —Transaction impeached -Trusts arising before occurrence of and by reason of

The effect of the Statute of Limitation on a claim arising under a constructive trust was considered in the case of Taylor v. Davies and it was there laid down that there is a distinction between a trust which arises before occurrence of the transanction impeached and cases which arise only by reason of that transaction (204), GEOFFREY TEIGNMOUTH CLARKSON P. E. C. DAVIES.

(1922) 32 M. L. T. 196 P. C.

-Forfeiture for conviction-Property obtained by

Government on-Real owner's mit to recover.

The old zemindar of Palcondah died leaving three infant sons, including the plaintiffs, and some infant daughters. On his death, the Government recognised K, the eldest of his sons as Zemindar of Palcondah, and authorised the Collector to take the estate under his charge under Regulation V of 1804. Upon that the Court of Wards took possession of the estate as guardians of K, When K came of fullage the property was given over to him, and he was proclaimed as

### LIMITATION ACT (IX OF 1908)-(Contd.)

S. 10-(Contd.)

APPLICABILITY OF-(Contd.)

zemindar. Whilst K was thus in possession of the property. he was tried for high treason and rebellion, and convicted and sentenced to death. His estate was declared to have been forfeited under S. 3 of Regulation VII of 1808, and the Government came into possession, claiming by way of forfeiture from K. That was in the year 1835.

The plaintiff, claiming to be the true heir of the old Zemindar, brought the suit out of which the appeal arose against the Secretary of State for possession of the Zemindary and also for an account and repayment of the subsequently accruing sevenue. The plaintiff came of full age in 1837, and from that time down to the date of suit far more than the period mentioned in the statute of Limitations had run. The plaintiff, however, sought to get over the bar of limitation by relying upon S. 10 of the Limitation Act of 1877. He contended that A' had been let into possession by the Court of Wards by mistake, and that, under the circumstances already stated, the Government coming into posses sion under a claim of forfeiture from A' were a person in whom the property had become vested in trust for a specific purpose within the meaning of that section, and that the suit was brought against such a person for the purpose of following, in his or their hands, such property.

Held, affirming the Court below, that S, 10 had no application to the case and that the suit was barred. (Lord Blackburn). ZEMINDAR OF PALCONDAR P. SECRETARY (1885) 12 I. A. 120 = OF STATE FOR INDIA. 8 M. 525 = 4 Sar. 644.

-Mahomedan family-Brothers in management of father's e-tate including share therein of minor sister-Sale of property by, including share of sister-Sister's suit to recover her share in case of. Sov S 10-TRUSTEES WITH-IN MEANING OF -MAHOMEDAN FAMILY.

(1888) 15 I. A. 220 = 16 C. 161 (169).

Money never reduced into possession as the property of claimant -Constructive trust affecting-Care of.

Where the foundation of the claim is constructive trust afferting money which never was reduced into possession as the property of the claimant, the claim would be affected by the Statule of Limitation (204). Geoffrey Teign-MOUTH CLARKSON v. E. C. DAVIES.

(1922) 32 M. L. T. 196 P. C.

-Religious Endowment-Personal right of management of, or right to control management of-Suit to establish-Defendant admitting to be trustee and to be in management as such,

The expression " for the purpose of following in his or their hands such property" in S. 10 of the Limitation Act, means for the purpose of recovering the property for the trusts in question. When property used is for some purpose other than the proper purpose of the trusts in question, it may be recovered, without any bar of time, from the hands of the persons indicated in the section. But there is no question of recovering the property for the trusts of the endowment, where the defendant admits that he is a trustee and says that he is applying the property to the trusts of the endowment. Where there is no evidence that he is not applying the property to the trusts of the edoxment, and there is no reason to conclude that the property would be more applied to those trusts if the plaintiff recovered the property from the defendant, the plaintiff is suing only for his own personal right to manage or in some way to control the management of the endowment, and the case does not fall within S. 10. (Sir Arthur Hebbouse). BALWANT RAO 2. PURUN MAL. (1883) 10 I. A. 90 (96) - 6 A. 1 (9-10) = 12 C. L. R. 39 = 4 Sar. 435.

### LIMITATION ACT (IX OF 1908)-(Centd.) S. 10-(Contd.)

APPLICABILITY OF-(Contd.)

Approved and followed in (Lord Share,) ARUNA' CHELLAN CHETTY :. VENKATACHALAPATHI GUPU-Approved and followed in (Lord Shrav.) (1919) 46 I.A.204 (225) -43 M. 253 = SWAMIGAL. 26 M. L. T. 479 = (1919) M.W. N. 850 =

10 L. W. 642 = 17 A L. J 1097 22 Bom. L R. 457 = 24 C. W. N. 249 = 53 I. C. 288 - 37 M. L. J. 460.

Suit to take meay property from trust.

A Chinese resident in the Straits Settlements died in 1882, having executed a will in Chinese form in the year 1874. By his will the testator provided that his property was to be dealt with by payment of a very large number of pecuniary legacies, and after they had been paid and satisfied, the residue was to be divided into sixty shares. As to 16 of those shares he directed that they should be the means of his maintenance during his lifetime, and should be " Kong lin for yearly and other sacrifices after his death " Both by clause 4 and by clause 22 of the testator's will it appeared that he contemplated that that residue should be left undistributed for 16 years. At the expiration of 16 years the testator declared by clause 22 that the income of the shares should " begin to be my sons and grandsons (or grandchildren) Kong lin for yearly sacrifices as well as for sacrifices in spring and autumn.

The plaintiff was the legal representative of a granddaughter of the testator, her grandfather, the testator's son, having died in the testator's lifetime. She instituted the suit out of which the appeal arose asking that the gift of the said sixteen sixtieths of the residue to the " kong lin" Should be declared void and distributed among the next of kin. The defendants, the executors of the will, raised the plea that the suit was barred by limitation. The plaintiff sought to get over the plea by contending that she was in fact entitled under the benefit of the trust contained in cl. 22 of the will, and that the suit was not barred by virtue of the provisions of S. 10 of the Straits Settlements Limi-

tations Ordiance No. 6, 1896,

Held, overruling the plea, that, even assuming that in cl. 22 there was an intention that a grand-daughter should be

included, S. 10 was nevertheless inapplicable.

The gift is not to the class beneficially, but to perform ceremonies which it is said render the gift void; so that even on the hypothesis that cl. 22 was intended to include a grand-daughter the plaintiff is not seeking to restore the property to the trust but to take it away, and consequently S. 10 is inapplicable (Lord Buckmaster.) KHAW SEIN TEK v. CHUCH HOOI GNOH NEOH.

(1921) 49 I. A. 37 (44-45) = 30 M. L. T. 160 = 26 C. W. N. 495 = 25 Bom. L. R. 121 = A. I. R. (1922) P. C. 212,

CONTROL OF ART, 134 BY.

-See ART. 134-CONTROL OF, ETC.

(1921) 48 I. A. 302 (315) = 44 M. 831 (843)

MEANING AND APPLICABILITY OF ART. 134-CLUE TO. -Section if gives. Sec ART. 134—CONTROL OF, (1921) 48 I. A. 302 (315) = 44 M. 831 (843).

Transfer for Valuable Consideration. -See ART. 134-TRANSFER FOR VALUABLE CON-SIDERATION.

TRANSFER FOR VALUABLE CONSIDERATION-PROTECTION GIVEN BY SECTION TO-RIGHT TO.

Knowledge at time of taking transfer that property was trust property-Effect. See ARTS, 134, 144-TRUST PROPERTY. (1923) 50 I. A. 295 (300-1)= 46 M. 751 (756-7).

### LIMITATION ACT (IX OF 1908)-(Contd.)

Ss. 6 and 7-(Contd.)

#### TRUSTEE.

-Makemedan family-Brethers in management of father's estate including share therein of minor sister if trustees for tatter.

Where it appeared that the brothers of a Mahomedan minor girl, who were majors and were managing their father's estate, joined in the execution of a Solenamah along with their mother by which the latter purported to convey the share of the minor girl in her father's estate, held, that the brothers were not trustees for their sister within the meaning of S 10 of the Limitation Act of 1877. (Sir Richand Couch.) MOULVI ABU MAHOMED ABDOOL KADAR v. SRIMATI AMIAL KAREEM BANU. (1888) 15 I. A. 220 = 16 C. 161 (169) = 5 Sar. 224.

-Shebait or muttawalli if a. See LIMITATION ACT OF 1908-ART, 134-TRUSTEE. (1921) 48 I. A. 302= 44 M. 831 (843, 847-8).

### Trust property-Following of-Suit for.

-What is a.

The statement which was made in the authority of Balwant Rao v. Puvan Mal (I.L.R. 6 All. 1) that the purpose of following the property in the hands of the trustees referred to at the end of S, 10 of the Limitation Act of 1908 must be the purpose of restoring it to the trust which is specified in the earlier part of the section is in their Lordships' opinion a sound and critical test by which to consider whether or not any particular trust is within the provisions of the section. (Lord Buckmaster.) KHAW SEIN TEK v. CHUAH (1921) 49 I. A. 37 (43)= HOOI GNOR NEOH. 30 M. L T 160 = 26 C.W.N. 495 = 25 Bom. L. R. 121 =

A. I. B. (1923) P. C. 212

See also S. 10- APPLICABILITY OF RELIGIOUS ENDOWMENT.

### Valuable Consideration.

-Sir ART. 134-VALUABLE CONSIDERATION.

Will-Trustees under-Next of kin-Undisposed of property when vested in trustees in trust for.

-Salter v. Cavanagh-Principle of-Inapplicability of, to claim by next of kin against will.

The principle that underlies the case of Salter v. Cavanagh (1 Dr. and Wal. 668) is this that if property be set aside by a testator from the general body of his estate and vested in trustees upon certain trusts, which upon the face of them are inadequate to exhaust the whole of the property, there remains as to the balance a trust impressed upon the trustees in favour of the next of kin or the heir-at-law, a trust for the purpose of which you have to do no violence whatever to the language of the will, for which it is unnecessary to disregard any intention or desire that the testator has expressed, for which it is only necessary to imply that when the testator knew, as he must have done, that the specific purpose to which the property had been devoted did not exhaust the whole trust estate, the balance would of necessity he held by the trustees for the heir-at-law or the next of kin.

That principle has no application to a case in which the only way in which the next of kin can assert their position is by defeating the provisions that the testator has made in his will. Where it is only upon the hypothesis that those provisions are bad that his interest arises it is impossible to say that in those circumstances the property was vested in trust for a specific purpose in which the next of kin was in any way interested. (Lord Buckmaster.) KHAW SEIN TEK

2. CHUCH HOOI GNOH NEOH.

(1921) 49 I. A. 37 (42-3) = 30 M. L. T. 160 = 26 C. W. N. 495 = 25 Bom. L. B. 121 = A. I. B. (1922) P.C. 212-

S. 10-(Contd.)

WORDS IN.

-For the purpose of following in his or their hands such property-Meaning of.

Their Lordships are of opinion that the expression used by the Legislature, "for the purpose of following in his or their hands such property" (in S. 10 of the Limitation Act), means for the purpose of recovering the property for the trusts in question; that when property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered, without any bar of time, from the hands of the persons indicated in the section (96), (Sir Arthur Hobbouse.) BALWANT RAO BISHWANT (HANDIRA CHOR v. PARUM MAL CHANBI. (1883) 10 I. A. 90—6 A. 1(9)—13 C. L. R. 39—4 Sar. 435.

-See also S. 10-TRUST PROPERTY-FOLLOWING OF-SUIT FOR.

-Specific purpose-Meaning of.

A specific purpose, within the meaning of S. 10 of the Strafts Settlements. Limitations Ordinance 6 of 1896, must be a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, or a purpose which, from the specified terms, can be certainly affirmed. (Lord Buckmaster.) KHAW SEIN TEK v. CHUAH HOOI GNOH NEOH. (1921) 491 A. 37 (43) =

20 M. L. T. 160 = 26 C. W. N. 495 = 25 Bom. L. R. 121 = A.I.B. (1922) P. C. 212.

- S. 12 (1)-Date of decree, judgment, or order-

Exclusion of.

The order of His Majesty in Council, dated 10th April.

1838, respecting Indian appeals, prohibited the Indian
Courts granting leave to appeal to the Privy Council
"unless the petition for that purpose be presented within
six calendar months from the day of the date of the judgment, decree, or decretal order complained of."

Held, on a construction of the Order in Council that, in computing the period of six months allowed, the date on which the judgment, decree, or decretal order was pronounced or dated should be excluded. RAMANOGERA NARAIN. On the petittion of. (1869) 13 W. B. P. C. 17.

(1928) 55 I. A. 161 = 6 R. 302 = 47 C. L. J. 510 = 5 O. W. N. 479 = A. I. B. (1928) P. C. 103 = 30 Bom. L. R. 842 = 26 A. L. J. 657 = 32 C. W. N. 845 = 28 L. W. 207 = 109 I. C. 1 = 54 M. L. J. 696.

Original Side Appeals—Applicability to. See ART. (1928) 55 I. A. 161 = 6 B. 302.

Requisite-Meaning and effect of-Onus on appel-

The word "requisite" is a strong word; it may be regarded as meaning something more than the word required. It means "properly required", and it throws upon the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. (Lord Phillimore.) JIJIBOY N. SURTY v. T. S. CHETTI-YAR. (1928) 55 I. A. 161 = 6 B. 302 = 47 C. L. J. 510 = 5 O. W. N. 479 = A. I. B. (1928) P. C. 103 =

30 Bom. L. R. 842 = 26 A. L. J. 657 = 32 C. W. N. 845 = 28 L. W. 207 = 109 I. C. 1 = 54 M. L. J. 696.

Requisite time under-What is-Elements to be contidered in determining.

In determining what is the requisite time referred to in S. 12 of the Limitation Act of 1908, the conduct of the ap-

LIMITATION ACT IX OF 1908 .- (Contd.)

S. 12 (2)-(Contd.)

pellant must be considered. No period can be regarded as requisite under the Act, which need not have elapsed, if the appellant had taken reasonable and proper steps to obtain the order. The proposition is not sound that, in determining what period is to be deducted in any case, the time actually consumed in obtaining the decree is to be regarded.

The question was whether the Appeal Court at Calcutta was right in holding that an appeal presented to it by the appellant was out of time. The period of appeal was twenty days from the date of the decree or order which it was

sought to impeach.

The appeal was against an order, dated 26th July, 1918, refusing appellant's application to set aside a decree passed against him. No steps were immediately taken by the appellant (plaintiff) to have the order drawn up, but after the lapse of four days it was competent to the defendant to app'y for that parpose. The four days elapsed and nothing was done. On the 6th August application was made by the plaintiff to have the order drawn up, and on the 7th August the draft of the order was sent to the appellant. The order was simplicity itself, but the appellant only returned the draft on the 16th August. On the 28th August it was signed, and on the 3rd September it was filed by the plaintiff.

Held, affirming the court below, that the periods between the 30th July and the 6th August, and again between the 7th August and the 16th August, which were within the appellant's control, were sufficiently great to prevent the appellant saying that the time did elapse must have elapsed, even if he had acted with reasonable promptitude. (Lord Buckmaster.) PRAMATHA NATH ROY v. LEE.

(1922) 49 I. A. 307 = 49 C. 999 = 18 L. W. 56 = 21 A. L. J. 118 = 37 C. L. J. 86 = 27 C. W. N. 156 = (1923) M. W. N. 526 = 31 M. L. T. 193 (P. C.) = (1922) P.C. 352 = 4 U. P. L. R. (P. C.) 103 = 68 I. C. 900 = 43 M. L. J. 765.

— .- S. 14—Cases under Bengal Regulations— Zillah Courts Regulation III of 1793—S. 14, Ex-Ception May also be usefully referred to.

- Applicability-Special law of limitation-Statute fixing.

Their Lordships do not, however, think it necessary to decide that either Act XIV of 1859, or the particular exception in it (S. 14), is to be brought in to qualify the peculiar and special law of limitations introduced by Act X of 1859 (Bengal) (253). (Sir James W. Celvile.) MUSSUMAT RANEE SURNO MOVEE 1. SHOSHEE MOKHEE BURMONIA. (1868) 12 M. I. A. 244 – 11 W. R. P. C. 5 – 2 B. L. R. P. C. 10 – 2 Suth. 173 – 2 Sat. 424

—Arbitrator without jurisdiction—Proceedings infractuous before—Time spent in—Deduction of, in subsequent proceedings before arbitrator with jurisdiction.

Arbitrations under the Indian Arbitration Act are not prosecuted by filing suits and preferring appeals from the decrees in such suits, but by procuring awards and filing them in Court and resisting applications to set them aside. The analogy of S, 14 of the Limitation Act requires that an arbitrator should exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. (Lord Salvace.) RAMDUTT RAMKISSEN DASS 7: SASSOON & CO.

(1929) 56 I. A. 128 = 56 C. 1048 = 33 C. W. N. 485 = 29 L. W. 682 = 6 O. W. N. 473 = 49 C. L. J. 462 = 115 I. C. 713 = 27 A. L. J. 254 = 31 Bom L. B. 741 = A. I. B. (1929) P. C. 103 = (1929) M. W. N. 546 = 56 M. L. J. 614.

-Civil Proceeding-Proceeding before Revenue authorities if a.

S. 14-(Contd.)

In a suit brought to set aside a sale held under Bengal Act VII of 1880 on the ground of non-compliance with the provisions of that Act, the courts below held that proceedings before the Collector, the Commissioner and the Board of Revenue as to whether the sale should be confirmed or not came within the description of a Civil proceeding for the same cause of action in S. 14 of the Limitation Act of 1877 and that the time occupied by these proceedings ought therefore to be excluded in the computation of time for the purpose of limitation.

Quare whether the proceeding taken by the parties to stay the confirmation of the sale was such a civil proceeding as referred to in S. 14. (Lord Davy.) BAIJNATH SAHAI (1896) 23 I. A. 45 (51-2)= r. RAMGUT SINGH. 23 C. 775 (785) - 7 Sar. 1.

" Civil proceedings in a Court "-Meaning of-Arbitrators-Proceedings before-If included.

"Civil proceedings in a Court" in S. 14 must be held to cover civil proceedings before arbitrators whom the parties have substituted for the Courts of law to be the Judges of the disputes between them. (Lord Salvesen.) RAMDUIT RAMKISSEN DASS P. SASSOON & CO.

(1928) 56 I. A. 128 = 56 C. 1048 = 33 C. W. N. 485 = 29 L. W. 682 = 6 O W. N. 473 = 49 C L J. 462 = 115 I. C. 713 = 27 A. L. J. 254 = 31 Bom. L. B. 741= (1929) P. C. 103 - (1929) M. W. N. 546 -56 M. L. J. 614.

-Civil Proceeding in competent court-Period of

pendency of-Exclusion of

G, a Hindu, died in 1872 leaving a widow and three sons B, M, and C. The suit out of which the appeal arose was brought on 14-11-1904 by the respondents, the sons of M. for a one-third share in "eight houses," which had devolved on their father on the death of G. The defendants were the representatives of B and C. Their defence was that the suit was barred by limitation under the Limitation Act of

Limitation admittedly ran against the respondents from 1892. But they contended that it was suspended between the 20th April, 1903 and the 22nd February. 1904, and that in consequence the suit was not barred. The question was

whether it was so suspended.

Up to 18-1-1892, M and the sons of C had participated in the use and enjoyment of their shares in the eight houses, but on that date owing to a quarrel with B and the widow of G, they were dispossessed and B alone collected the rents and profits of the premises to the exclusion of M and the sons of C. In 1896, the sons of C instituted a suit to have their rights and interests declared in the eight houses." In 1897 both B and M died and their sons and legal representatives were brought on the record in their place. In that suit the position of the sons and legal representatives of M (the respondents) was the same as that of the plaintiffs in that suit and they supported the case of the plaintiffs. An issue was raised at the instance of the representatives of R as between themselves and the representatives of M codefendants, as to whether the latter was entitled to a 1/2 share in the house. The suit was heard by Henderson, J. and by a decree, dated 20-4-1903, the plaintiffs in that suit were declared entitled to a 5/6 share in the houses and it was expressly declared that the sons and legal representatives of M were jointly entitled to 1/3 part of the property in dispute, and it was directed that quiet possession be given them of the share to which they had been declared to be entitled. The representatives of B appealed against that judgment, and on 22-2-1904 the appellate Court, while confirming the decree in favour of the plaintiffs in that suit, set aside the decree so far as it related to the representatives of M,

### LIMITATION ACT IX OF 1908-(Contd.)

S. 14-(Contd.)

Held, affirming the High Court, that the respondents were entitled to a deduction of the period during which they were hona fide litigating for their rights in a Court of Justice.

The decree of Henderson, J was an effective decree made by a competent court, and was capable of being enforced until set aside (664). (Mr. Ameer Ali.) NRITYAMONI DASSI P. LAKHAN CHANDRA SEN.

(1916) 43 C. 660 = 20 C. W. N. 522 = 24 C. L. J. 1= (1916) 1 M. W. N. 332 = 20 M. L. T. 10 = 3 L.W. 471= 18 Bom. L. R. 418 = 33 I. C. 462 = 30 M. L. J. 529.

·Co-sharers-Joint debt due tc-Receipt in respect of, by one sharer of more than his own share-Other sharer's suit against him for recovery of excess amount received-Limitation-Suspension of-Contract between sharers reserving and keeping open suit claim till decision in plaintiff's suit against debtor if a ground of. See ART. 62-CO-(1871) 9 B. L. R. 348 (353). SHARERS.

-Debt-Suit for-Limitation-Mode of payment insisted on by delator held to be unenforceable-Time spent in proceedings regarding-Suspensation during. See LIMITA-(1888) 15 I. A. 211= TION-DEBT-SUIT FOR. 11 A. 47 (56).

-Fusion of interests of plaintiff and of defendant subsequent to accrual of right to sue-Suspension on ground (1913) 40 I. A. 74 (85) = 35 A. 227 (236-7).

-Inheritance-Heir-at-law's suit to recover one portion of- Deduction of period of pendency of prior litigation -Right to-Decision negativing such right in suit by him to recover another portion of inheritance-Effect of. See DECEASED-HEIR-AT-LAW-SUIT TO RECOVER POR-(1874) 22 W. R. 165. TION OF INHERITANCE.

-Inquiry into disputed claim -Agreement not to take advantage of plea of limitation during period of-Suit on original cause of action, on inquiry not resulting in satisfaction of plaintiff's demand-Limitation for, if suspended during period of inquiry. See LIMITATION-PLEA OF-AGREEMENT NOT TO TAKE ADVANTAGE OF, ETC

(1849) 5 M. I. A. 43 (70):

-Mesne profits-Suit for -Limitation-Erroneous but hone fide proceedings in execution for recovery of same profits-Period of pendency of-Exclusion of-Right to. See BENGAL REGULATIONS-ZILLAH COURTS REGULA-TION OF 1793-S. 14, EXCEPTION -APPLICABILITY-(1860) 8 M. I. A. 308 (317-8) MESNE PROFITS.

-Negotiations regarding disputed claim-Suspension

during period of. It has been contended, that the subsequent negotiations and inquiries suspended the operation of the statute, till 1838, when there was a final refusal to make any compensation or that a new right of action then accrued. But no authority has been or can be cited to support either of these propositions, and their Lordships are reluctantly obliged to overrule them (69-70). (Lord Campbell.) EAST INDIA (1849) 5 M. I. A. 43= CO. P. ODITCHURN PAUL. 7 Moo. P. C. 85 = 14 Jur. 253 = 1 Sar. 394.

-Object of.

The object of the Legislature, in enacting S. 14 of the Limitation Act of 1859, at least with regard to the limitation for the commencement of a suit, was to exclude the time during which a party to the suit may have been litigating bona fide and with due diligence before a Judge whom he may suppose to have had jurisdiction, but who yet may not have had jurisdiction (171). (Sir Barnes Peacock.) (1880) 7 I. A. 167= HIRA LAL P. BUDRI DASS.

2 A. 792 (797) = 6 C. L. R. 561 = 4 Sar. 157= 3 Suth. 761=4 I. J. 426.

3 Sar. 273.

### LIMITATION ACT IX OF 1908—(Contd.)

S. 14-(Contd.)

-Owner of estate-Suit in capacity of-Limitation for-Appeal regarding ownership-Pendency of-Period of-Suspension during.

It cannot be laid down as a rule that the pendency of an appeal to England puts the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties (342). (Sir James W. Colvile). RAJAH SAHEB PERSHAD SEIN T. MAHARAJAH RAJENDER KISHORE SING.

(1869) 12 M.I.A. 292=12 W.R. P.C. 6= 2 B.L.R. P.C. 111 2 Suth. 225 = 2 Sar 430.

-Partition-Suit for-Limitation-Prior suit for partition of same property dismissed for want of jurisdiction-Deduction of period of pendency of-Right to.

In a suit for a partition of joint family properties, moveable and immoveable, brought by one of the sons of a deceased Hindu subject to the Bombay Mitakshara law against his (plaintiff's) brothers, the question was whether the suit was barred under S. 1, cl. (13) of the Limitation Act of 1859. It appeared that the plaintiff had, during the lifetime of his father, brought a suit in 1861 against the father and the defendants (his brothers) for a partition of the family moveable and immoveable properties, but that that suit had been dismissed, as regards the immoveable properties, on the ground that the Court had no jurisdiction to make a partition thereof as they were situate beyond the limits of its territorial jurisdiction.

Held that, so far as the immoveable properties of the family were concerned, the plaintiff was, under S. 14 of the Act, entitled to exclude from the computation of the period of limitation the time occupied in the prosecution of the suit of 1861, inasmuch as the decision of the Court, guested the immoveable properties, proceeded on the ground of want of jurisdiction over them (192). (Sir James W. Colvile). LAKSHMAN DADA NAIK P. RAMACHANDRA (1880) 7 I. A. 181 = 5 B. 48 (60) = 7 C.L.B. 320 = 4 Sar. 173 = 3 Suth. 778 DADA NAICK.

—Plea against suspension—Maintainability—E-toppel -Judgment inter parter denying plaintiff's right to sue during period relied upon by defendant-Effect. Sv LIMI-TATION-PLEA OF-MAINTAINABILITY OF - ESTOPPIL-(1880) 7 I. A. 181 (193) = 5 B. 48 (60.) DEFENDANT.

-Rent. See LIMITATION ACT OF 1908-ART 110. -Rent at enhanced rate-Suit for-Prior suit for enhancement and for recovery of arrear at enhanced rate for year in question dismissed as premature as regards arrear-Pendency of-Exclusion of period of.

In a suit for enhancement of rent of a sub-tenure brought by the zemindar, the Sub-Judge made a decree on 31-7-1895 and awarded the enhanced rate prospectively from the end of the Fasli year 1298. On 20-11-1895, the Zemindar filed a suit against the holders of the subordinate tenure to recover the arrears of rent due for 1298. The High Court held, reversing the Sub-Jadge, that that suit was barred by limitation.

Held, reversing the High Court, that the proceedings in the earlier suit stayed the operation of the law of limitation; and that as the zemindar claimed the arrears of 1298 in that suit, but his claim was then disallowed as premature, he was in the subsequent suit entitled to the benefit of the decree for enhancement and to recover the arrears at the enhanced rate (181). (Sir Andrew Scoble).) HE CHUNDER CHOWDHRY v. KALI PROSUNNO BHADURI. (1903) 30 I.A. 177=30 C. 1033 (1041)=

8 C.W.N. 1=8 Sar. 529.

-Second appeal in prior mit-Period of pendency of-Deduction of.

### LIMITATION ACT IX OF 1908-(Contd.)

S. 14-(Contd.)

Suit to recover a sum of money lodged by the plaintiffs the assigners of a dur-putnee talook, in Court, in order to stay the sale of a putnee talook for an arrear of rent due to the zemindar from the defendants, who were the putnee talookdars, and thereby to save a dur-putnee talook of the second degree, which had been created by the defendants out of their said putnee talook.

The plaintiffs had previously instituted a suit in another Court against the defendants to recover the same amount. The defendants pleaded to the jurisdiction of that Court, and the trial Judge rejected their plea and gave judgment for the plaintiffs. His decision was reversed on appeal, and in special appeal the High Court affirmed the appellate decree upholding the objection of the defendants. It was found as a fact that the prior suit was prosecuted bona fide and with due diligence.

Held that, in computing the period of limitation applicable to the subsequent suit, the plaintiffs were, under S. 14 of the Limitation Act of 1859, entitled to a deduction of the whole time occupied in the prior suit, including the time during which the special appeal to the High Court was pending (905).

The words of S. 14 are not very clear, but their Lordships are of opinion that, giving them a reasonable construction, the whole time in which plaintiff has been fruitlessly engaged in prosecuting a suit hows fide and with due diligence for the same cause of action, in which he fails in consequence of a final determination in the suit, whether upon appeal or otherwise, that the Court in which the suit was brought had no jurisdiction, is to be deducted (906). LUCKHINARAIN MITTER 2. KHETTRO PAL SING ROY. (1873) 2 Suth. 903 = 20 W.R. 380 = 13 B.L.R. 146 =

-- Wrong Court-Appeal time-barred filed in-Dismissal of-Propriety-Procedure proper in such case.

Where an appeal is filed in the wrong Court and is out of time the appellate Court can dismiss it and is not bound to return it for presentation to the proper Court in order that the latter might consider the question of extending the time prescribed by the law of limitation (263). (Lord Buckmaster). CHARAN DAS 2. AMIR KHAN.

(1920) 47 I A. 255 = 48 C. 110 (117-8) = 3 P.W R. 1921 = 25 C.W.N. 289 - 28 M.L.T. 149 = 18 A.L.J. 1095-22 Bom. L.R. 1370-56 I.C. 606-39 M.L.J. 195.

-S. 15-Delt-Order restraining delter from paying and creditor from receiving-Order staying institution of suit for delt if an.

An order of Court restraining a creditor from receiving, and his debtor from paying, a particular debt is not an order staying the institution of a suit in respect of that debt within the meaning of S, 15 of the Limitation Act of 1877. The effect is the same whether the order is one which was made before judgment or is one passed after decree (42-3).

There would be no violation of such an order until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper preceeding on the part of the restrained creditor, as, for example, to avoid the bar by time, though it might also be prudent to let the Court which had issued the order know what he was about (42-3). (Lord Hobbeute). BETI MAHARANI P. COLLECTOR OF ETAWAH. (1894) 22 I.A. 31=17 A. 198 (210-1)=

-8. 17-Deceased person-Suit on behalf of estate nof-Will of deceased-Executor appointed under- Administrator-Suits by-Limitation-Distinction,

S. 17-(Contd.)

For the purpose of the English Statutes of Limitation time rons from the accrete of the cause of action, but a cause of action does not accrete unless there be some one who can institute the action. In the case of a cause of action arising in favour of the estate of a deceased person at or after his death time will at once begin to run, if there he an executor, even though probate has not been obtained but if there he no executor, time will run only from the actual grant of letters of administration (120), (Lend Parker), MEYAPPA CHETTY 2, SUBRAMANIAN CHETTY.

(1916) 43 I.A. 113 = 20 C.W.N. 833 = (1916) 1 M.W.N. 455 = 18 Bom. L. R. 642 = 35 I.C. 323

--- Low enseted by - English law.

For the purpose of English Statutes of Limitation time runs from the accruer of the cause of action, but a cause of action does not accrue unless there he some one who can institute the action. In the case of a cause of action arising in favour of the estate of a deceased person at or after his death time will at once begin to run, if there he an executor even though probate has not been obtained; but if there he no executor, time will run only from the actual grant of letters of administration. It is probable that S. 17, Sub-S. (1) of the Straits Settlements Ordinance No. 6 of 1896 was intended to apply this rule (120). (Lord Parker). MEY-APPA CHETTY r., SUBRAMANIAN CHETTY.

(1916) 43 I. A. 113 - 20 C.W.N. 833 = (1916) 1 M.W.N. 455 - 18 Bom. L.R. 642 = 35 I.C. 323.

-Legal representative capable of instituting a mit-

Executor before grant of probate if a.

An executor is not only the legal representative of his testator, but capable of instituting a suit within the meaning of S. 17, Sub-S. (1) of the Straits Settlements Ordinance in question. There is nothing in the Ordinance to coefine "legal representative" to a person to whom the Court has actually made a grant. But the words "capable of instituting a suit" mean capable of instituting a suit in which a decree might be obtained. The will under which the executor claims must therefore be capable of probate; otherwise the action must fail (119). (Lord Parker). MEYAPPA CHETTY P. SUBRAMANIAN CHETTY.

(1916) 43 I.A. 113 = 20 C.W.N. 833 = (1916) 1 M.W.N. 455 = 18 Bom. L.R. 642 = 35 I.C. 323.

----Partner deceased --- Letters of Administration to estate of --- Representative under-- Suit for accounts by---Limitation--- Starting point. See LIMITATION ACT OF 1908--- ART. 106--- ACCOUNTS OF PARTNERSHIP--SUIT FOR--- LIMITATION--- DECEASED PERSON

(1898) 26 I A. 32 (36) = 23 B. 544 (549).

——Suit which a person would, if he were living, have a right to institute—Partnership between testator and defendant—Dissolution and accounts of—Suit by administrator pendente lite for—If such a suit. See LIMITATION ACT OF 1908—ART, 106—ADMINISTRATOR 'PENDENTE LITE' (1916) 43 I. A. 113 (118).

Words-Capable of instituting a suit-Meaning.

The words "capable of instituting a suit" mean capable of instituting a suit in which a decree might be obtained (119). (Lord Parker.) MEYAPPA CHETTY v. SUBRAMANIAN CHETTY. (1916) 43 I. A. 113=

20 C. W. N. 833 = (1916) 1 M. W. N. 455 = 18 Bom. L R. 642 = 35 I.C. 323.

#### S. 18.—Deed -Fraudulent concealment of-Plea of.

- Evidence against-Production of deed in public Court in litigations and claim openly made under it in public Court if.

Where a plaintiff, suing to set aside a grant of land made in 1851 by his predecessor in interest to the ancestor of the

### LIMITATION ACT IX OF 1908-(Contd.)

S. 18—Deed—Fraudulent concealment of—Plea of —(Contd.)

defendants, alleged that the grant had been fraudulently concealed from him and his predecessors in interest, except the grantor, so as to prevent the statute of limitations being a bar, Actor that the fact that, in prior litigations, the defendants or their predecessors in interest produced the grant in public Court and openly claimed under the grant in a public Court militated against the case of the plaintiff (157). (Sir Arthur Hobbouse.) VENKATESWARA IYAN v. SHEKHARI VARMA. (1881) 8 I. A. 143 = 3 M. 384 (398-9) = 4 Sar. 259.

——Plaintiff patting forward—Exomination of, as witness—Noccessity.

Plaintiff, suing in 1877 to set aside a grant of land made in 1851 by his predecessor in interest to the ancestor of the defendants, alleged that the grant had been fraudulently concealed from the plaintiff and his predecessors in interest, except the grantor, so as to prevent the statute of Limitations being a bar. He alleged that the grant did not come to his knowledge till January or February, 1874 and that he discovered it only then.

Held, that in such a case it was extremely important to know what was the occasion of such discovery or the circumstances which led to it, and that the plaintiff must himself give evidence on that point 157). (Sir Arthur Hobhouse.) VENKATESWARA IYAN 2. SHEKHARI VARMA.

(1881) 8 I. A. 143=3 M. 384 (399)=4 Sar. 259.

The appeal arose out of a suit brought in 1877 to set aside a grant of land made in 1851 by the predecessor in interest of the plaintiff to the ancestor of the defendants. The plaintiff alleged that the grant had been fraudulently concealed from himself and his predecesors in interest, except the grantor, so as to prevent the statute of Limitations being a bar.

Held, on the evidence in the case, that there was not only no fraudulent concealment of the grant of 1851, but no concealment at all (158). Held that the onus lay upon the plaintiff of proving such fraudulent concealment by clear evidence (155). (Sir Arthur Hobbouse.) VENKATESWARA IVAN v. SHEKHARI VARMA (1881) 8 I. A. 143=3 M. 384 (399-400)=4 Sar. 259.

-Question true in case of.

Where a plaintiff, suing to set aside a grant of land made in 1851 by his predecessor in interest to the ancestor of the defendants, alleges that the grant had been fraudulently concealed from himself and his predecessors, other than the grantor, so as to prevent the statute of Limitations being a bar, the true question is, not whether everything connected with the grant can be explained, but whether the grant itself has been so fraudulently concealed as to exclude the effect of time (156). (Sir Arthur Hobboust.) Venkateswara Ivan v. Shekahari Varma.

(1881) 8 I. A. 143 = 3 M. 384 (398) = 4 Sar. 259.

-Registration of deed if displaces.

In a suit to set aside a grant made by the plaintiff's predecessor to the ancestor of the defendants, the plaintiff alleged that the grant was fraudulently concealed from himself and his predecessors, other than the granter, so as to prevent the statute of Limitations being a bar.

Held, that the fact that the deed of grant was registered

displaced the theory of concealment (156).

Registration at this period was not compulsory, and it is very difficult to suppose that a person desiring to conceal an instrument should lodge it in a public office within two months of its execution (156). (Sir Arthur Hobbouse.)
VENKATESWARA IYAN v. SHEKHARI VARMA.

(1881) 8 I. A. 143=3 M. 384 (398)=4 Sar. 259.

### S. 18-Deed-Fraudulent concealment of-Wrong appellation of deed if amounts to.

-In a case in which the question was whether a perpetual lease of land granted in 1851 by the predecessor in interest of the plaintiff to the ancestor of the defendants had been fraudulently concealed from the plaintiff and his predecessors, other than the grantor, so as to prevent the statute of Limitations being a bar, the Sub-Judge thought that the mention and registration of the deed of grant as a kanom had been the means of concealment.

The land granted was alleged by the plaintiff to be the property of a devaswom, and, whatever interest might be conferred by the grant of 1851, the grant amounted to a wrongful alienation of the property, which the plaintiff and

his predecessors had a right to set aside.

Held that, under the circumstances, even if a kanom was a wrong appellation, that could not affect the plaintiff's or his predecessor's knowledge of his right to sue (156). (Sir Arthur Hobbouse.) VENKATESWARA IVAN F. (1881) 8 L. A. 143 SHAKHARI VARMA. 3 M. 384 (398) = 4 Sar. 259.

### Execution sale.

Fraudulent concealment of-Decree holder's purchase through benamidar after refusal of leave to hid if.

In a suit to set aside an execution sale. Querre whether concealment from the Court of the fact that the decreeholder, who had applied for permission and been refused. was in fact buying through is kenamidae, would make the case one of concealed fraud to which S. 18 and Art. 95 of the Limitation Act of 1908 would apply. (Lord Phillimore.) RAI RADHA KRISHNA 2. BISHESHAR SAHAY

(1922) 49 I. A. 312 (318) = 1 Pat. 733 (739-40) = 21 A. L. J. 23 = 37 C. L. J. 430 = 25 Bom. L. R. 680 = 27 C. W. N. 294 = 9 O. & A. L. R. 194 = 16 L. W. 190 -3 Pat. L. T. 529 = 31 M L. T. 209 (P. C.) = (1922) P. C. 336 = 67 I. C. 914 - 44 M. L. J. 718.

### Fraud.

Charge of-Proof with precision of-Necessity. A charge of fraud under S. 18 of the Limitation Act

must be proved with precision.

Held, that, though a charge of fraud under the section was sufficiently pleaded in the written statement, the evidence in the case was insufficient to support such a charge (88). (Lord Davey.) VASUDEVA PADHI KHADANGA GARU 2. MAGUNI DEWAN BAKSHI MAHAPATRULU (1901) 28 I. A. 81 - 24 M. 387 (396) --GARU. 5 C. W. N. 547 = 3 Bom L. R. 303 = 7 Sar. 819.

Hindu widow's knowledge of-Reversioners if

For the purposes of S. 18 of the Limitation Act of 1908 a Hindu widow represents her husband's estate, and if she had knowledge of an alleged fraud within the meaning of the section, the reversionary heirs would be equally affected by it. (Lord Phillimore.) RAI RADHA KRISHNA v. BISHESHWAR SAHAY. (1922) 49 I. A. 312 (318 9) =

1 Pat. 733 (740) = 21 A. L. J. 23 = 37 C. L. J. 430 = 25 Bom. L. R. 680 = 27 C. W. N. 294 = 9 O & A. L. R. 194 = 16 L. W. 190 = 3 Pat. L. T. 529 = 31 M. L. T. 209 (P. C.) = (1922) P. C. 336= 67 I. C. 914 = 44 M. L. J. 718.

-Knowledge of, beyond limitation period-Onus of

-Proof of, on party guilty of fraud.

When a man has committed a fraud and has got property thereby, it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of those facts which constitute the fraud, at a time when it is too remote to allow him to bring

LIMITATION ACT IX OF 1908—(Contd.)

S. 18-Fraud-(Centd.)

the suit (5). (Lord Hobbouse.) RAHIMBHOY HUBIBBHOY (1892) 20 I. A. 1=17 B. 341 (347)= a. TURNER 6 Sar 256

-Knowledge clear and definite of facts constituting the-Necessity-Clues and houts which if presented might have led to knowledge of fraud-Insufficiency of.

The appeal arose out of a suit brought by the assignce of A, against the appellant to recover assets alleged to belong to the insolvent's estate, of which the appellant had wrong-

fully become possessed.

The first item which was in dispute, namely the China Assets, was of the following kind. The insolvent had a business at Hong Kong, and his two brothers, one of whom was the appellant, also carried on business at the same place in partnership. By the middle of 1866 the insolvent was in very embarrassed circumstances. In September, 1866, he absconded so as to conceal himself from his creditors. His petition in insolvency was presented on 17-12-1866, and he was adjudicated insolvent on 7-1-1867. Pending those transactions, that is to say on 1-1-1867, between the date of the petition and the date of the adjudication, the whole of the insolvent's assets at Hong Kong were handed over by his manager to the firm of his brothers, and his books were also handed over.

The suit out of which the appeal arose was brought in 1887, and the appellant pleaded that it was barred by time. The assignee's answer was that the transfer was committed in pursuance of a fraud, and was concealed from the creditors, that it was a fraud which prevented the assignee from having knowledge of his right to recover the assets, and therefore fell within S. 18 of the Limitation Act of 1877. The assignee alleged that he did not know anything about that fraud until the year 1885.

Held that the onus was on the appellant to prove that the assignee had clear and definite knowledge of those facts which constituted the fraud, at a time which was too remote

to allow him to bring the suit (5),

Where all that the appellant did was to show that some clues and hints reached the assignee in the year 1881, which perhaps, if vigorously and actively followed up, might have led to a complete knowledge of the fraud, but that there was no disclosure made which informed the mind of the assignce that the 'insolvent's estate had been defrauded by the appellant of those assets in the year 1867, held that there was not proof of such knowledge on the part of the assignce as would deprive him of the benefit of S. 18 of the Limitation Act (5-6.)

Held, accordingly, that the suit was brought in good time, being brought within two years after the real knowledge came to the mind of the assignee (6). (Lord Hobhouse). RAHIMBHOY HUBIBBHOY P. TURNER.

(1892) 20 I. A. 1 = 17 B. 341 (347-8) = 6 Sar. 256.

### PURDANASHIN.

-Fraud of adviser under whose influence she was until his death-Termination of-Date of-Death of adviser.

Where a purdanashin lady was induced to assent to an award by the fraud of her husband's brother under whose influence she was till be died, held that, if she sued to recover possession of property of which she was deprived by the award, time would not run against her until he died (Sir John Edge). SRI KISHAN LAL D. MUSSAMAT (1916) 20 C. W. N. 957 = KASHMIRO.

14 A. L. J. 1236 = (1916) 1 M. W. N. 433 = 3 L. W. 528 = 34 I. C. 37 = 31 M. L. J. 362 (374).

-S 19.

ACCOUNTS. ACKNOWLEDGMENT.

S. 19-(Cont.)

BOND-ACKNOWLEDGMENT OF LIABILITY UNDER. CONSEQUENCES LEGAL OF THING ACKNOWLEDGED-SPECIFICATION OF, UNNECESSARY.

COURT OF WARDS-ACKNOWLEDGMENT OF WARD'S DEBT BY

DEBT-ACKNOWLEDGEMENT OF.

DEBT-JOINT NATURE OF-ADMISSION BY JOINT

DEBT ADMITTED-TOENTITY OF, IN CASE OF SEVERAL DERIS OWING TO SAME CREDITOR-EVIDENCE OF. HINDU WIDOW OR DAUGHTER-ACKNOWLEDGMENT BY-REVERSIONER IF AFFECTED BY.

LIABILITY - ACKNOWLEDGMENT OF, IF BALANCE ON INVESTIGATION SHOULD TURN OUT TO BE AGAINST PERSON ACKNOWLEDGING.

LIABILITY TO PLAINTIFF OR HIS PREDECESSOR IN INTEREST.

MORTGAGE-REDEMITION RIGHT IN-ACKNOW-LEDGMENT OF.

MORTGAGE WITH POSSESSION-REDEMPTION RIGHT IN-ACKNOWLEDGMENT OF.

MUTUAL AND OPEN ACCOUNTS-ADMISSION OF EXIS-TENCE OF -EFFECT OF.

WARDS - PERSON THROUGH WHOM HE DERIVES TITLE OR LIABILITY.

ACCOUNTS.

-Liability if balance of, should on investigation turn out to be against a person-Acknowledgment of-Sufficiency of, on balance turning out to be against him. See S. 19-ACKNOWLEDGMENT - CONDITIONAL ACKNOWLEDG-(1906) 33 I. A. 165 (172) = 33 C 1047 (1058-9). -Mutual and open accounts-Admission of existence of-Effect of. See S. 19-MUTUAL AND OPEN ACCOUNTS. (1906) 33 I. A. 165 - 33 C. 1047.

### ACKNOWLEDGMENT.

acknowledgment-Sufficiency of, on -Conditional performance of condition.

An acknowledgment of liability, if the balance on investigation should turn out to be against the person making the acknowledgment, is sufficient under S. 19 of the Limitation Act of 1877.

There is no reason for drawing any distinction in this respect between the English and the Indian Law. Under the English law an acknowledgment to take the case out of the Statute of Limitations must be either one from which an absolute promise to pay can be inferred or. secondly, an unconditional promise to pay the specific debt, or, thirdly, there must be a conditional promise to pay the debt and evidence that the condition has been performed. An unconditional acknowledgment has always been held toimply a promise to pay, because that is the natural inference if nothing is said to the contrary. It is what every honest man would mean to do. There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the accounts settled, and no qualification of the natural inference that whoever is the creditor shall be paid when the condition is preformed by the ascertainment of a balance in favour of the claimant. It is a case of the third proposition referred to above, a conditional promise to puy and the condition performed. (Sir Alfred Wills.) MANI-(1906) 33 I. A. 165 (172) = RAM P. SETH RUPCHAND.

33 C. 1017 (1058-9)=4 C. L. J. 94= 8 Bom. L. R. 501 = 10 C. W. N. 874 = 1 M.L.T. 199 = 3 A. L. J. 525 = 2 N. L. R. 130 = 16 M.L.J. 300.

-Effect of -Title not conferred by.

An acknowledgment of liability only extends the period of limitation within which a suit must be brought and does not confer title within the meaning of S. 2 of the Limitation

LIMITATION ACT IX OF 1908-(Contd.)

S. 19-(Contd.)

ACKNOWLEDGMENT-(Contd.)

Act of 1877 (84). (Sir John Edge). LALA SONI RAM v. KANHAIYA LAL. (1913) 40 I. A. 74 = 35 A. 227 (236) = 13 M. L. T. 437 = (1915) M. W. N. 470= 17 C. L. J. 488=17 C. W. N. 605=11 A. L. J. 359=

13 Bom. L. R. 489-19 I. C. 291-25 M. L. J. 131.

Letter not signed by party liable if a valid.

Under S. 4 of Act XIV of 1859 letters not signed by the party to be charged are not a sufficient acknowledgment (384). (Lord Chelmsford). SHAH MUKHUN LALLD. NAWAB IMTIAZOOD DOWLAH. (1865) 10 M.I.A. 362= 5 W. R. 18=1 Suth. 612=1 Sar. 160= R. & J.'s No. 3 (Oudh).

Sufficiency of.

-English decisions if a proper guide to determine.

Though the English law requires words from which a promise to pay may be inferred, yet under it it is the acknowledgment of liability which is the ground upon which a promise to pay is inferred, so that the requirements of English law as to a valid acknowledgment are, if anything, more and not less, stringent than those of Indian law. English cases on the question as to what amount to valid acknowledgments can be looked at for deciding what acknowledgments will be valid under S. 19 of the Limitation Act of 1877. (Sir Alfred Wills.) MANIRAM r. SETH RUPCHAND.

(1906) 33 I. A. 165 (174)=33 C. 1047 (1060)= 4 C. L. J. 94 - 8 Bom. L. R. 501 = 10 C. W N. 874 = 1 M. L. T. 199 = 3 A. L. J. 525 = 2 N. L. B. 130 = 16 M. L. J. 300.

-Law applicable for determination of -Law in force at date of suit-Law applicable when alleged acknowledge ment was made.

The suit which was instituted in 1907, was against the daughter's son of a deceased Hindu for the redemption of a usufructuary mortgage executed in favour of the deceased in 1842. In the years 1866 and 1867 the widow and daughter respectively of the deceased mortgagee executed deeds of sale of the mortgage interest which acknowledged the existence of the mortgage. It was contended that the Limitation Act of 1859 applied to the case, and that the acknowledgments of 1866 and 1867 by the widow and the daughter being acknowledgments by persons "claiming under" the mortgagee were good acknowledgments under S. 1, cl. 15 of that Act and were effectual to save limitation.

Held that the Act of 1859 was inapplicable to the suit, that the Act of 1877 alone applied, and that the acknowledgments in question were not acknowledgments within the meaning of S. 19 of the Act of 1877 made by a person or persons through whom the defendant derived title or liability, and that they were ineffectual to give a new period of limitation (84). (Sir John Edge). LALA SONI RAM v. (1913) 40 I.A. 74= KANHAIYA LAL.

35 A. 227 (235-6)=13 M. L. T. 437= (1913) M. W. N. 470=17 C. L. J. 488= 17 C. W. N. 605 = 11 A L. J. 359 = 13 Bom. L.B. 489 = 19 I. C. 291 = 25 M. L. J. 131.

-Liberal but yet fair and just construction of section -Necessity.

The decisions on the sufficiency of acknowledgments within the exceptions in recent statutes of limitation, have proceeded on a liberal but yet a fair and just construction of these statutes." A like construction should be given to the law of Limitation that applies to the present case (BENGAL REGULATION III of 1793, S. 14, exception,) (Sir Joseph Napier). GOPEE KISHEN GOSHAMEE D. BRINDABUN CHUNDER SIRCAR CHOWDHRY.

(1869) 13 M. I. A. 37 (55) = 12 W. R. P. C. 36 = 3 B. L. B. 37=2 Suth. 261=2 Sar. 479.

S. 19-(Contd.)

ACKNOWLEDGMENT-(Contd.)

Sufficiency of -(Contd.)

Promise to pay-Not necessary.

It has been decided that in an acknowledgment within the 3rd and 4th Will IV C. 27, S. 40, it is not necessary that there should be a promise to pay the debt (55). (Sir Joseph Napier.) GOPEE KISHEN GOSHAMEE P. BRINDABUN CHUNDER SIRCAR CHOWDHRY. (1869) 13 M. I. A. 37 -12 W. R. P. C. 36 - 3 B. L. R. 37 - 2 Suth 261 =

-Promise to pay-Words leading to inference of-Necessity-English and Indian Issos-Distinction.

S. 19 of the Limitation Act of 1877 says nothing about a promise to pay, and requires only a definite admission of liability. The English Law requires words from which a promise to pay may be inferred, whereas the Indian Act requires words from which an admission of liability may be inferred. (Sir Alfred Wills). MANIRAM P. SETH (1906) 33 I. A. 165 (173-4) = RUPCHAND. 33 C. 1047 (1059 60) = 4 C. L. J. 94 =

8 Bom. L. R. 501 = 10 C. W. N. 874 = 1 M. L. T. 199 = 3 A. L. J. 525 = 2 N. L. R. 130 - 16 M L.J. 300.

BOND-ACKNOWLEDGMENT OF LIABILITY UNDER.

-Collector attacking debtor's estate calling upon creditors to represent existing debts-Debtor's statement filed before, admitting execution of bond-Acknowledgment if an.

The estate of A was sequestered by the Collector of the District, who issued a proclamation and notices, calling upon the creditors of A to come forward and represent the extent of their dues. The petitioner, who held a bond from A, presented a petition to the Collector, mentioning the bond and stating the amount due thereunder. A also filed an account before the Collector, admitting the execution of the bond, and stating the amount due thereunder. A's estate was subsequently released from attachment, and his creditors were directed to seek their own remedy against A.

In a suit subsequently instituted by the plaintiff to recover upon the bond, held that the account field by A before the Collector was a distinct acknowledgment on his part of the existence of the bond, and also of the payments on which the plaintiff relied to take the case out of the Statute of Limitations (249). (Sir William II. Maule.) RAJAM BOMMARAUZE BAHADUR P. RUNGASAWMY MUDALI.

(1855) 6 M. I. A. 232 = 1 Sar. 536.

CONSEQUENCES LEGAL OF THING ACKNOWLEDGED -Specification of, unnecessary.

It is not required that an acknowledgment within the statute shall specify every legal consequence of the thing acknowledged (101). (Lord Hebbouse.) SUKHAMONI CHOW-DHRANI v. ISHAN CHUNDER ROY. (1898; 25 I. A. 95= 25 C. 844 = 2 C. W. N. 402 = 7 Sar. 294.

-See also S. 19-MUTUAL AND OPEN ACCOUNTS (1906) 33 I. A. 165 = 33 C. 1047.

COURT OF WARDS-ACKNOWLEDGMENT OF WARD'S DEBT BY.

What amounts to.

A notice given by the Court of Wards was as follows:-"Whereas the 'riasat' of H, is under the management of the Court of Wards, and it has been ascertained that money is due to you by the "raises' of H, therefore notice is hereby given to you to attend either in person or through a mokh-tar at the Collector's office at Etawah in my Court on 17-4-1880, at 10 A.M. together with the deeds relating to the accounts, and you will be questioned about the debt.

Held, that if the statement in the notice could be applied to any particular debt, it would be an acknowledgment of

LIMITATION ACT IX OF 1908—(Contd.)

S. 19-(Centd.)

COURT OF WARDS - ACKNOWLEDGMENT OF WARD'S DEBT BY-(Contd.)

liability to pay whatever might be found due on account of that debt (41).

Though the notice ends by saying that the creditor will be questioned about the debt, it begins by saying that it has been ascertained that money is due from the "raises" of H, (41). (Lend Hobbonse.) BUTI MAHARANI 7: COLLEC-TOR OF ETAWAH.

(1894) 22 L. A. 31-17 A. 198 (209)-6 Sar. 551.

DEBT-ACKNOWLEDGMENT OF.

-Amount of debt-Specification of unnecessary.

It has been decided that in an acknowledgment within the 3rd and 4th Will. IV. C, 27, S. 40, it is not necessary that the amount of the debt should be specified (55). (Sir Joseph Napier.) GOPEE KISHEN GOSHAMEE P. BRINDA-BUN CHUNDER SIRCAR CHOWDIRY.

(1869) 13 M I.A. 37=12 W.R.P C. 36= 3 B. L. R. 37 - 2 Suth. 261 - 2 Sar. 479.

-Letter by debtor offering to pay principal by instalments and praying to be excused from payment of interest if an. See PUNJAB CODE-PART II, S. 1 (6)-DEBT. (1865) 10 M. I. A. 362 (883)

-Novation-Distinction. See DEBT-ACKNOWLEDG-

MENT OF-NOVATION.

(1891) 18 L A. 37 (39-40)=14 M. 258 (261-2).

-Novation-Letter by debtor undertaking to "settle accounts" and to pay amount "which may be due" within two months, though note for debt might be barred. See DEBT-ACKNOWLEDGMENT OF

(1891) 18 I A. 37 (40) = 14 M. 258 (261-2).

-Paper admitting indebtedness drawn up in presence of debtor but not signed by him if an.

The appeal arose out of a suit brought for the purpose of recovering Rs. 3,481. The Court below held that the whole of the plaintiff's claim was not proved, but that there was proof of an acknowledgment, on the part of the defendant that a sum amounting to Rs. 2,701 was due from the defendant to the plaintiff, and gave the plaintiff a decree for that amount. The question was whether the Court below was right in holding that there was such an acknowledgment.

It appeared that the plaintiff and the defendant went to the house of one of the plaintiff's witnesses, and got him to write a copy of a Kurar-dad (deed of agreement or compromise) on the plaintiffs' claims, which they took away with them, and that afterwards defendant gave it to the witness to write on stamp paper. It further appeared from the witness's evidence that that copy was written over on the stamp paper, and that the defendant gave it to the plaintiff.

The defendant promised to bring the stamp paper back when he had got witnesses for it, but he never brought it to the witness. The copy of that was, however in the witness's possession, and he produced it at the hearing of the suit. That copy was the acknowledgment relied upon by the Court below. In it the defendant expressly acknowledged that he was indebted to the plaintiff in the sum of Rs. 2,207-3 odd, and he promised to pay the same on demand, with interest. That document did not, however, bear the signature of the defendant,

Held, that the Court below rightly treated the paper as an acknowledgment by the party who agreed to the contents of that paper that he did owe the plaintiff the amount stated therein. (Mr. Justice Bosanguet.) EDULJEE FRAMJEE p. ABDOOLA HAJFE CHERAK. (1837) 1 M.I.A. 461=

5 W. B. 58 P. C. = 1 Suth. 74 = 1 Sar. 140.

S. 19-(Contd.)

DEBT -- ACKNOWLED GMENT OF -- (Contd.)

In a case in which the question was whether the plaintiff had brought his case within the Exception to S.14 of Bengal Regulation III of 1793, it was contended for the defendant that there was no proof that a demand of the amount of the debt in dispute was specifically made by the plaintiff; or that the defendant admitted the truth of such a demand, or promised to pay it; that, as to the admissions of indebtedness, there was some doubt, whether any of them were made to the plaintiff himself; and that there was not any which amounted to a promise to pay the debt sucd for, or to an acknowledgment of any specific sum; that they were attempts at a compromise which failed.

The authorities which have been mainly relied on, in order to show that there has not been a sufficient acknowledgment within the period of limitation in the present case, were cases of actions on promises, decided on the statutes of the 21st Jac. 1 and the 9th Geo. IV. U. 14. The principle of these decisions is not applicable to a case like the present. They depend not upon the effect of an exception in the statute but upon the principles of the common law with respect to the cause of action. The issue joined made it incumbent on the plaintiff to prove a promise made within 6 years, and such as to agree with that laid in the declaration. In such cases, acknowledgments, whether by words or acts, are of no avail, save so far as they sustain the promise alleged; there is no exception within which they come; and these cases are to be regarded simply as actions brought on promises made within 6 years. But the cases in which acknowledgments are operative by way of exception, are of a different character. In these, the action must be maintained on the original security; and an acknowledgment within the prescribed period of limitation, shows that the obligation was then subsisting and unsatisfied; a promise to pay is not required. It is one thing to acknowledge a debt and another to promise to pay it, and this distinction is well recognised (54-5.) (Sir Joseph Napier.) GOPEE KISHEN GOSHAMFE P. BRINDA-BUN CHUNDER SIRCAR CHOWDERY.

(1869) 13 M.I.A. 37 = 12 W. R. P. C. 36 = 3 B. L. R. 37 = 2 Suth. 261 = 2 Sar. 479.

——Promise to pay debt unnecessary. See S. 19—AC-KNOWLEDGMENT—SUFFICIENCY OF—PROMISE TO PAY. ——Promise to pay in a particular manner—Distinction —Mode and form of payment becoming impossible—Obligation to pay—Effect on. See DERT—ADMISSION UN-OUALIFIED OF. (1894) 22 I. A. 68 (75) = 22 C. 434 (443.4).

### DEBT-JOINT NATURE OF-ADMISSION BY JOINT DEBTOR OF.

- Contribution to co-deltor in respect of delt-Liability for-Admission of, if also involved.

In a suit by a co-owner, who had paid the whole of a joint debt, for contribution against the other co-owner to the extent of his share, it appeared that in a petition presented to the District Court by both the co-owners the joint nature of the suit debt was admitted. The Sub-Judge held that the admission did not amount to an acknowledgment within the meaning of S. 19 of the Limitation Act because the defendant did not thereby admit any liability to the plaintiff, nor promise to pay anything

Held, that the Sub-Judge was wrong (100-1).

It is not required that an acknowledgment within the statute shall specify every legal consequence of the thing acknowledged. The defendant acknowledged a joint debt. From that follow the legal incidents of her position as joint

### LIMITATION ACT IX OF 1908-(Contd.)

S. 19-(Contd.)

DEBT—JOINT NATURE OF—ADMISSION BY JOINT DEBTOR OF—(Contd.)

debtor with the plaintiff, one of which is that he may sue her for contribution (101). (Lord Hobboute.) SUKHA-MONI CHOWDHRANI 7. ISHAN CHUNDER ROY.

(1898) 25 I. A. 95=25 C. 844= 2 C. W. N. 402=7 Sar. 294.

Manager for pretection of joint estate by payment of joint delt—Petition to Court by joint debtors for including delt in question in list of joint debts—Admission if an.

The appellant and respondent were two co-owners of lands subject to payment of rent. The owner of the rent obtained decrees for a large sum in arrear, and to save the estate from sale the respondent and another co-owner deposited the arrear in Court, and the sum so deposited was paid to the judgment-creator on 1—4—1885. The respondent instituted the suit out of which the appeal arose against the appellant for contribution to the extent of her share in the estate. The question was whether or not his suit was barred by lapse of time.

The cause of action arose on 1—4—1885. The suit was brought in February, 1891. It appeared that in July, 1887, the three co-owners presented a petition to the District Court which was in effect an appointment of one B, as manager for (among other things) the protection of their ijmali joint property by the payment of their debts. One of the directions given to him was to apply surplus income "to the payment of the ijmali debts of us three co-owners, of which a list is given below." The list contained the names of 12 persons from whom the money used to pay the judgment creditor was borrowed; the amount due to each being set opposite to his name, and the total brought to the amount of Rs. 50,750.

Held that, that was a distinct acknowledgment that the total of the debts comprised in the list was a joint debt (100-1). (Level Hobbicust.) SUKHAMONI CHOUDHRANI: ISHAN CHUNDER ROY. (1898) 25 I. A. 95=25 C. 844=2 C. W. N. 402=7 Sar, 294.

DEBT ADMITTED—IDENTITY OF, IN CASE OF SEVERAL DEBTS OWING TO SAME CREDITOR —EVIDENCE OF.

-Absence of -Effect.

There were two debts due to the same creditor, one on a mortgage bond and the other on a simple bond, by a person who was subsequently declared to be a disqualified proprietor. In a suit brought on the simple bond, the plaintiff relied upon a notice given by the Court of Wards as an acknowledgment of liability on the bond within the meaning of S. 19 of the Limitation Act. The terms of the notice were not clear as to which liability it referred to, and it was impossible for the plaintiff to contend that the general words of the notice were not satisfied by reference to the mortgage bond.

Held that, under the circumstances, the notice could not be relied upon as an acknowledgment of liability under the suit bond within the meaning of S. 19 of the Limitation Act of 1877 (41). (Lerd Hobbouse.) BETI MAHARANI v. COLLECTOR OF ETAWAH. (1894) 22 I.A. 31=

17 A. 198 (209) = 6 Sar. 551.

—Oral evidence of intention of writer of instrument containing admission—Admissibility — Surrounding circumstances—Reference to—Permissibility.

Where the terms of a notice of admission of liability issued by the Court of Wards on behalf of the debtor, who was a disqualified proprietor, were not clear as to which of two debts due to the same creditor was referred to, held

S. 19-(Contd.)

DEBT ADMITTED — IDENTITY OF, IN CASE OF SEVERAL DEBTS OWING TO SAME CREDITOR—
EVIDENCE OF.

that oral evidence of the Collector who gave the notice, as to his intentions in doing so, was not admissible for the purpose of construing the notice, though the court might, for that purpose, properly look at the surrounding circumstances.

"Indeed, it is only by reference to intrinsic facts that the general words of the notice can be applied to any specific subject." (Lord Hobbouse.) BETI MAHARANI F. COLLECTOR OF ETAWAH. (1894) 22 I.A. 31 (41) = 17 A. 198 (209) = 6 Sar. 551.

HINDU WIDOW OR DAUGHTER—ACKNOWLEDGMENT BY—REVERSIONER IF AFFECTED BY.

- Mortgage in favour of last male owner-Rodemp-

tion right in-Acknowledgment of.

Although for certain purposes the widow and the daughter of a deceased. Hindu represent the estate of the deceased, they are not competent, in regard to a mortgage held by him, to bind any interests except their own by an acknowledgment of a right of redemption in the mortgagor in regard to that mortgage. Such an acknowledgment by them is ineffectual to give a new period of limitation in a suit for the redemption of the mortgage instituted against the daughter's son or other reversionary heir of the deceased.

To hold otherwise would be to extend the power of a Hindu woman in possession for her limited interest to bind the estate to an extent which has not been sanctioned by authority. (Sir John Edge.) I.ALA SONI RAM v. KANHAIYA LAL. (1913) 40 I.A. 74 (83.4)

35 A. 227 (235) = 17 C.W.N. 605 = 11 A.L.J. 359 = 13 M.L.T. 437 = (1913) M.W.N. 470 = 17 C.L.J. 488 = 13 Bom. L.R. 489 = 19 I.C. 291 = 25 M.L.J. 131

LIABILITY—ACKNOWLEDGMENT OF, IF BALANCE ON INVESTIGATION SHOULD TURN OUT TO BE AGAINST PERSON ACKNOWLEDGING.

——Sufficiency of, on balance being found to be against him. See S. 19—ACKNOWLEDGMENT—CONDITIONAL ACKNOWLEDGMENT. (1906) 33 I.A. 165 (172) = 33 C. 1047 (1058-0).

LIABILITY TO PLAINTIFF OR HIS PREDECESSOR IN INTEREST.

-Acknowledgment of-Necessity.

The liability to be acknowledged under S. 19 of the Limitation Act of 1877 is a liability to the person who is seeking to recover possession, or to some one through whom he claims (171-2). (Sir Barnes Pracock.) MYLAPORE IYASAWMY VYAPOORY MOODLIAR v. YEO KAY.

(1887) 14 I.A. 168=14 C. 801 (808)=5 Sar. 50

MORTGAGE—REDEMPTION RIGHT IN— ACKNOWLEDGMENT OF.

- Entry of payment and acknowledgment of receipt as

mortgagee if an.

In 1793, the predecessor in title of the plaintiff mortgaged to the defendants a certain Desaigiri Dastur (subsequently commated by the British Government into a fixed money allowance) and certain lands in Broach. The mortgagees procured an entry of their names in the Collector's books and were receiving payments of the allowance. In the book of the Government Agent entrusted with the payment of the allowance there was an entry of payment dated 8th June. 1843 of their respective shares to the "mortgagees of Desai" with their signatures in acknowledgment of the receipt.

LIMITATION ACT (IX OF 1908)-(Contd.)

S. 19-(Contd.)

MORTGAGE—REDEMPTION RIGHT IN—ACKNOW-LEDGMENT OF—(Centd.)

Held: that this was clearly an acknowledgment by the mortgagees that they received the payments as parties interested in the mortgage and that their interest was that of mortgagees thereunder.—

Held accordingly, that this created a new period of limitation starting from the 8th June, 1843 and as the suit was instituted within 60 years thereof the suit was in time. (Lord Moulton.) MAJMUDAR HIRALAL ICHHALAL V. DESAI NARSILAL CHATURBHUJDAS.

(1913) 40 I.A. 68 (73) = 37 B. 326 (337-8) = 17 C.W.N. 573 = 13 M.L.T. 415 = (1913) M.W.N. 428 = 11 A.L J. 432 = 17 C.L J. 474 = 15 Bom. L.B. 483 = 18 I.C. 909 = 25 M L J. 101.

MORTGAGE WITH POSSESSION-REDEMPTION RIGHT IN-ACKNOWLEDGMENT OF.

——Mooktar of mortgagee—Written signed only by, containing acknowledgment—Mooktarnamah signed by mortgagee not containing any—Effect.

Held that a mookhtarnamah, which was signed by the mortgagee, but which contained no acknowledgment of the title of the mortgager, and that a written statement, which was signed only by the mooktar but not by the mortgagee himself and which did contain an acknowledgment, did not amount to acknowledgments within the meaning of S. 1, cl. 15 of Act XIV of 1859. LUCHMEE BUSSH ROY v. RUNJEET RAM PANDAY. (1873) 2 Suth. 897 (898) = 20 W.B. 375 = 13 B.L.B. 177 = 3 Sar. 283.

Mockhiar of mortgage authorised to defend a suit against mortgagee—Written Statement filed in suit by—If can be held to be one signed by mortgagee himself.

A mortgagee with possession executed a mookhtarnamah authorising a person to defend a suit for an adjustment of accounts brought against the mortgagee by an heir of the mortgager. The mookhtar filed a written statement in that suit which contained an acknowledgment of the title of the mortgagor. The written statement was signed by the mookhtar but not by the mortgagee.

Held that the written statement could not be said to be incorporated into the moukhtarnamah so as to make it a part of the document signed by the mortgagee within the meaning of S. 1, cl. 15 of Act XIV of 1859 (898), LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY.

(1873) 2 Suth. 897=20 W.R. 375=13 B.L.R. 177= 3 Sar. 283.

—Mookhtar of mortgagee authorised to defend suit by mortgagor's heir against mortgagee for adjustment of accounts—Acknowledgment by—Sufficiency of.

S, I, cl. 15 of Act XIV of 1859 must receive a strict construction according to its plain words. It requires the signature of the mortgagee himself to constitute an acknowledgment of the title of the mortgagor; and it would be a wrong construction of it to hold that any other signature would satisfy those words.

McId, therefore, that a written statement signed by a mookhtar authorised by the mortgagee to defend a suit brought by the mortgagee's heir against the mortgagee for an adjustment of accounts could not, even if it contained an acknowledgment of the title of the mortgagor, constitute an acknowledgment within the meaning of S. 1, cl. 15, of Act XIV of 1859 (898). LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY. (1873) 2 Suth. 897 = 20 W.R. 375 = 13 B.L.R. 177 = 3 Sar. 283.

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S. 19-(Contd.)

MUTUAL AND OPEN ACCOUNTS—ADMISSION OF EXISTENCE OF —EFFECT OF.

--- Halance found due by destor - Liability for - Admission of, if also involved.

M and the defendant-re-pondent had regular dealings with one another from 1895 to 1898 and at the close of those dealings the respondent owed a certain sum to AI on account of principal and interest M died leaving a will by which the respondent and four other persons were appointed trustees to administer the estate. Three of them, of whom the respondent was one, applied for probate. The application was opposed, interalia, by the other two executors on the ground, amongst others, that the respondent owed money to the estate. The respondent in his reply, in writing and signed by him, to the petition of objections, stated as follows:- "The applicant (the respondent) is a big Mahajan of Burhampur paying Rs. 106 as income tax. For the last 5 years he had open and current accounts with the deceased (.I/). The alleged indebtedness does not affect his right to apply for probate."

In a suit brought, within three years of the date of the said reply of the respondent, on behalf of the adopted son of Al for the recovery of the amount due by the respondent on the said dealings, held that the statement in the respondent's reply set out above was sufficient acknowledgment to give a new period of limitation from the date of the acknowledgment, and that the suit instituted within three years thereof was not barred.

There is in the statement of the respondent a clear admission that there were open and mutual accounts between the parties at the death of M. The legal consequence would be that at that date either of them had a right as against the other to an account. It follows equally that wheever on the account should be shown to be the debtor to the other was bound to pay his debt to the other, and the inevitable deduction from this admission is that the respondent acknowledged his liability to pay his debt to M or his representative if the balance should be ascertained to be against him.

The trial judge dismissed the suit, being of opinion that the word "had" in the sentence "for the last 5 years he had open and current accounts with the deceased " and the word "alleged" were fatal to the validity of the acknowledgment. Their Lordships cannot share this opinion. The first sentence shews that there were open accounts at the death of M. If nothing further is alleged the natural presumption is that they continued unsettled at the time the statement was made. The sentence which follows is perfectly consistent with this admission. The meaning is "even if there is a balance against the respondent that does not disqualify him from fulfilling the duties of an executor." What is relied upon here is an acknowledgment subject to the condition that an adverse balance really exists, and the condition is fulfilled in fact.

The Divisional Court also held against the acknowledgment on the ground that it would require a considerable stretch of the imagination to place upon it the meaning that there was a right to have the account taken, thereby implying a promise to pay. There was no doubt no promise to pay in any event, but the words import an admission of liability if the balance should prove to be against the respondent coupled with the fulfilment of the condition—a state of things which in all reason and sound sense places the acknowledgment upon the same footing as an acknowledgment unconditional in the first instance, from which, in English law, a promise to pay has always been inferred.

LIMITATION ACT (IX OF 1908)-(Contd.) S. 19-(Contd.)

MUTUAL AND OPEN ACCOUNTS—ADMISSION OF EXISTENCE OF—EFFECT OF—(Contd.)

(Sir Alfred Wills.) MANIRAM 2. SETH RUPCHAND. (1906) 33 I.A. 165 = 33 C. 1047 = 4 C.L.J. 94 = 8 Bom. L.R. 501 = 10 C.W.N. 874 = 1 M.L.T. 199 = 3 A L.J. 525 = 2 N.L.R. 130 = 16 M.L.J. 300.

WORDS—PERSON THROUGH WHOM HE DERIVES TITLE OR LIABILITY.

Reversioner if derives title through widow or daughter within meaning of. See S. 19—ACKNOWLEDGMENT— SUFFICIENCY OF—LAW APPLICABLE, ETC.

(1913) 40 I.A. 74 (84) = 35 A. 227 (235-6).

### S. 19. Expl. I—Communication to creditor— Necessity.

It has been held that an admission of a Bond debt contained in the answer of the Executors of the obligor, although in a suit to which the obligee was not a party, was sufficient to take the case out of the operation of 3rd and 4th Will. IV, C. 42 (55). (Sir Joseph Napier.) GOPEE-KISHEN GOSHAMEE v. BRINDABUN CHUNDER SIRCAR CHOWDHRV. (1869) 13 M.I.A. 37 = 12 W.R. P.C. 36 = 3 B.L.B. 37 = 2 Suth. 261 = 2 Sar. 479.

The acknowledgment is not addressed to the person entitled, but according to the "explanation" given in S. 19 of the Limitation Act of 1877 this is not necessary.

The admission of liability in this case was contained in a written statement filed by the debtor. (Sir Alfred Wills.)
MANIRAM P. SETH RUPCHAND.

(1906) 33 I.A. 165 (171) = 33 C. 1047 (1058) = 4 C.L.J. 94 = 8 Bom. L.R. 561 = 10 C.W.N. 874 = 1 M.L.T. 199 = 3 A.L.J. 525 = 2 N.L.B. 130 = 16 M.L.J. 300.

### S. 19. Expl. II—Agent—Authority to acknowledge.

 Disqualified proprietor—Sarbarakar or Manager of property of—Personal liability of ward—Acknowledgment of—Power of.

P, who succeeded as heir to the estate of L, became incompetent to manage his property, and his wife, K, was appointed by the Collector to be Sarbarakhar or manager. She never was his guardian. In a suit brought on a bond executed by L, held that it was very doubtful whether K had authority to acknowledge P's liability under the bond (39).

The debt due under the bond was a personal debt of L, not specifically charged on his estate, and P was liable to answer the bond to the extent of L's asests. The office of Sarbarahkar has regard to the lands with which the Collector is concerned, and not to the person or the personal property of the landholder. If so, it is difficult to see how a Sarbarahkar, not being guardian, can be authorised to admit a personal liability (39). (Lord Hobbouse,) BETI MAHARANI 7. COLLECTOR OF ETAWAH.

(1894) 22 I.A. 31=17 A. 198 (207)=6 Sar. 551.

-Onus of Proof of.

In a case in which plaintiff's claim would be barred but for an acknowledgment thereof alleged to have been made by an agent of the defendant, held it was the duty of the plaintiff to adduce evidence to show that the agent had authority to make the acknowledgment, and to produce the documents, if any, on which such authority was so ught to be founded, or to give evidence of their contents (12). (Sir Montague Smith.) DINOMOVI DEBI v. ROY LUCHMIP UT SINGH. (1879) 7 I.A. 8=6 C.L.B. 101 = 4 Sar. 112=3 Suth. 710=Bald. 342.

S. 19, Expl II -Agent-Authority to a aknowledge -(Contd.)

-Person having general authority to settle purchase and price of goods-Authority to acknowledge claim in

respect of price of these goods.

The suit was brought against the appellant, a Raja, to recover the price of goods sold and delivered. The suit would be barred but for an alleged acknowledgment of the liability by one S made under a note of hand on 8-2-1908. The question for decision was whether S was an agent of the appellant duly authorised on his behalf to sign the note.

It appeared from the evidence that S was "kote" manager of the appellant, and that it was within his general authority as such manager to settle the purchase and price

of goods of the kind in question.

Held, affirming the Court below, that S was a person duly authorised to sign the acknowledgment on behalf of the appellant within the meaning of S. 19 of the Limitation Act of 1908

If S could pay the amount of the claim, he could plainly also arrange to prevent time from becoming a bar to it. (Viscount Haldane.) RAJA BRAJA SUNDAR DEB P. (1919) 24 C.W.N. 153-BHOLA NATH. 55 I.C. 543 = 12 L.W. 288.

-Proof of-Quantum.

In a case in which, to get over the plea of limitation in regard to his claim, the plaintiff relied upon an acknowledgment thereof alleged to have been made by an agent of the defendant, held that he had failed to prove that the person by whom the acknowledgment had been made was an agent of the defendant generally or specially authorised in that behalf within the meaning of S. 20 of the Limitation Act of 1871. (Sir Montague Smith.) DINOMOYI DEBI v. (1879) 7 I.A. 8 -ROY LUCHMIPUT SING.

6 C.L.R 101 = 4 Sar. 112 = 3 Suth. 710 = Bald. 342.

S. 20.

-Agent duly authorised-Formal authority-Necessity-Implied authority-Sufficiency of -What amounts to. One B, who was a director of a bank, had been allowed by the bank's manager, R, to become indebted in a large sum to the bank, and in December, 1917, in view of the approaching half-yearly audit it was desirable that the account should be squared in some way as not to show the director as a delstor to the Bank. The first respondent was accordingly persuaded to execute a promissory note on 22-12-1917, so as to show him as the bank's debtor for the amount of B's indebtedness, and that amount was credited in the books of the bank to B, thus wiping out his indebtedness. On 23-12-1918, B paid a sum of Rs. 908-6-3 to interest due on the said promissory note, and the question was whether B made the payment as the agent and under the implied authority of the first respondent within the meaning of S. 20 of the Limitation Act. Upon the true meaning and effect of the transaction of

22-12-1917, it was agreed between B and the first respondent that the former would discharge the latter's debt to the Bank in respect of both principal and interest, and it was clear from the first respondent's evidence that he left it to B

Held, that, under the circumstances, there was no difficulty in implying authority from the first respondent to B to pay the interest on his behalf as it became due. (Sir George Loundes.) NATIONAL BANK OF UPPER INDIA. LTD. v. BANSIDHAR. (1929) 57 I. A. 1 = 51 C.L.J. 56=

1930 M.W.N. 1=32 Bom. L. R. 136=121 I.C. 193= 34 C. W. N. 145=6 O. W. N. 1136= A. I. B. 1929 P. C. 297 = 31 L. W. 1.

-Construction of-Bradshaw v. Widdrington, (1902)

LIMITATION ACT (IX OF 1908)-(Contd.)

S. 20-(Contd.)

See S. 20-Person liable to pay debt.

(1929) 34 C. W. N. 145.

-Joint debt-Interest on-Payment of, by common agent of joint delters out of joint funds under express instructions contained in his instrument of appointment-

Sufficiency of.

S. 20 of the Limitation Act says that a new starting point of time shall be gained when interest on a debt is paid as such by the person liable to pay the debt or by his agent. It does not specify any particular mode or form of payment, and there are many modes in which payment may be made. In this case the common agent of the joint debtors paid interest on the joint debt out of joint funds under express instructions contained in the instrument of his appointment. That is clearly a payment in exoneration pro tanto of the liability of the plaintiff, and such as is contemplated by S. 20 of the Limitation Act (101). (Lord Hobbouse.) SUKHAMONI P. ISHAN CHUNDER ROY.

(1898) 25 I. A. 95=25 C. 844-2 C. W. N. 402= 7 Sar. 294.

-Payment of interest as such-Payment of lump sum in respect of several different accounts which debtor had with creditor-Allocation of sum by the creditor to the different accounts accepted by the debtor-If payment in respect of each of the accounts.

In a suit upon a promissory note executed in favour of a Bank, the question was whether a payment of a sum of Rs. 908-6-3 made by B on 23-12-1918 was a payment of interest "as such" within the meaning of S. 20 of the

Limitation Act.

The said sum of Rs. 908-6-3 was part of a sum of Rs. 6,000 paid to the bank on 23-12-1918 by B. There were evidently several different accounts with the Bank upon which payments had to be made by B for interest on 31-12-1918, and the lump payment was probably to put his own account in funds for that purpose. It was proved that it was the bank's practice to send out formal notices of the interest that would be due on particular accounts at the end of each half-year, and presumably # had received either directly from the bank or through the medium of persons in whose names those accounts stood, notice of the payments that he would have to make. Tha sum of Rs. 6,000 paid by B was allocated by the Bank to the different accounts in which B was interested, and that allocation, including the credit of the Rs. 908 6 3 to interest due on the promissory note, was accepted by B, as was shown by the entries in his books a few days later.

Held, that the Rs. 908-6-3 was paid as and for the interest which was due under the promissory note within the meaning of S. 20 of the Limitation. Act and that payment was effective to save limitation. (Sir George Lorondes.) NATIONAL BANK OF UPPER INDIA, LTD, r. BANSIDHAR.

(1929) 57 LA. 1: 51 C. L. J. 56 - 1930 M.W.N. 1 = 32 Bom. L. R. 136 = 121 I.C. 193 = 34 C. W. N. 145 = 6 O. W. N. 1136 - A. I. R. 1929 P. C. 297 - 31 L. W. 1.

-Person liable to pay debt-Person who, as between himself and debtor, bound to pay debt, though under no ontract with creditor to do so if a-Payment of interest

by such person-Sufficiency of.

The first respondent executud a promissory note in dis-charge of a debt due by one B to a bank. Though the effect of the transaction was to substitute the first respondent as a debtor to the bank in the place of B, it was agreed between B and the first respondent that the debt should be treated as that of the former and that he should discharge the same to the bank in respect of both principal and interest. B paid a sum of money for interest 2 Ch. 430 and other similar decisions-Applicability of. rest due on the note, and the question was whether that

S. 120-(Cental.)

payment saved limitation under S. 20 of the Limitation Act. It was contended for the bank even if B could not be regarded as duly authorized by the first respondent to make a payment of interest on his behalf, he was himself under a direct obligation to the first respondent to satisfy the debt, and in that sense was at all events "a" person liable to pay it. In support of that contention the case of Bradshase v. Widdrington, (1902) 2 Ch. 430, and other similar English decisions were relied upon.

Their Lordships did not think it necessary to discuss the applicability of those cases to the construction of the

Indian Act.

Whether the English cases referred to above would engraft a larger principle upon S. 20 of the Limitation Act, may possibly have to be considered on some future occasion. (Sir George Lounder.) NATIONAL BANK OF UPPER (1929) 57 I.A. 1 = INDIA, LTD, v. BANSIDHAR. 51 C. L. J. 56-1930 M.W.N. 1 = 32 Bom. L. R. 136-121 I. C. 193 = 34 C. W. N. 145 - 6 O. W. N. 1136 -

A. I. R. 1929 P. C. 297 - 31 L. W. 1. S. 22.

#### APPLICABILITY.

-Estoppel -- Applicability by -- Party already on record -Application for addition of and order adding, under misapprehension that he was not. See S. 22-PLAINTIFF. (1889) 17 C. 580.

-Suit properly constituted becoming defective by reason of change or devolution of interest.

S. 22 of the Straits Settlements Limitation Ordinance No. 6 of 1896 contemplates cases in which a suit is defective by reason of the person or one of the persons in whom the right of suit is vested not being before the court .- S. 133 of the Civil Procedure Code provides against the defeat of a suit on this ground and enables the proper party to be added or substituted. If .t is the right person to sue, it would be clearly wrong to allow him, for the sake of avoiding the Limitation Ordinance, to take advantage of a suit improperly instituted by B. Their Lordships do not think that S. 22 of the Ordinance has any application to cases in which the suit was originally property constituted as to parties but has become defective because there has been a change or devolution of interest. Such cases do not fall within S. 133, but within S. 169, of the Civil Procedure Code, and the proper remedy is by way of an order to carry on proceedings, and not of an order adding or substituting parties (121-2). (Lord Parker.) MEVAPPA CHETTY D. SUBRA-MANIAN CHETTY. (1916) 43 I. A. 113 =

20 C.W.N. 833 = (1916) 1 M. W. N. 455 = 18 Bom. L. R, 642 = 35 I.C. 323

### DEFENDANT.

Addition of, under O. 1, R. 10(2) of C. P. C. Applicability of Section to case of. See C. P. C. OF 1908, O. 1, R. 10 (2)-DEFENDANTS ADDED UNDER.

(1927) 55 I. A. 7 = 6 R. 29.

New defendant-Addition of-What amounts to.

Where the legal representatives of a deceased shebait of an idol sued for the recovery of amounts alleged to have been spent by him for protecting the debutter estate and performing his obligations as a shebait, making the appellant, along with all other possible claimants to the office of shebait, parties, but the Court directed an amendment in the prayer of the plaint so as to raise directly the question as to which of the claimants were entitled to the office of the shebait and should represent the estate, and the appellant was found upon a trial of that issue, to be the shebait, held that the amendment did not alter the nature of the suit, and that the appeliant was not brought on the record as a "New

### LIMITATION ACT (IX OF 1908)—(Contd.)

S. 22-(Contd.)

DEFENDANT-(Centd)

defendant" within the meaning of S. 22 of the Limitation Act. (Lord Macnaghten.) PEARY MOHAN MUKERJI v. NORENDRA NATH MUKERIL

(1909) 37 I. A. 27 (37-8)= 37 C. 229 (234)= 7 M. L. T. 63 = 7 A. L. J. 125 = 11 C. L. J. 220 = 14 C. W. N. 261 = 12 Bom. L. R. 257 = 5 I. C. 404 = 20 M. L. J. 171.

-Originally impleaded defendant-Striking out of name of, by amendment of plaint and re-impleading of, after period of limitation, by fresh amendment of plaint-Effect.

In a suit instituted within time against the appellants, the sons of one S deceased, the court struck out their names, and substituted as the only defendants the administrators of the estate of S. The original plaint against the appellants was superseded by a new plaint amended in accordance with the order striking out their names so as to be directed against the estate of S alone. Subsequently the court reviewed that order and altered it and directed the names of the appellants to be restored as defendants. The amended plaint was accordingly superseded by one in which the suit was to be one against the appellants alone. When the names of the appellants were restored the period allowed for the suit had expired.

Held that the plaint thus amended a second time must be treated as instituting a new suit, against the appellants and that, as the period of limitation had then expired, the suit was out of time and barred by limitation. (Viscount Haldane.) HAVELI SHAH v. SHEIK PAINDA.

(1926) 31 C. W. N. 174=(1926) M. W. N. 592= A. I. R. (1926) P.C. 88 = 96 I. C. 887.

HINDU JOINT FAMILY-MANAGER OF.

-Family business carried on by-Contract in his name in respect of-Suit to enforce-Joinder of junior members in, after period of limitation - Suit if barred on ground of. See HINDU LAW-JOINT FAMILY-BUSINESS OF-MA-NAGER OF-JOINT FAMILY BUSINESS CARRIED ON BY. (1911) 38 I. A. 45 = 33 A. 272.

HINDU LAW-RELIGIOUS ENDOWMENT-FAMILY ENDOWMENT.

-Joint shebaits of -Suit by some of-Others if also parties to-Dismissal of, on ground of non-joinder of latter -Propriety. See HINDU LAW-RELIGIOUS ENDOW-MENT-FAMILY ENDOWMENT-JOINT SHEBAITS OF

(1881) 8 I. A. 135 (141) = 8 C. 42 (48.9).

### ORDER UNDER-ERROR IN FORM OF.

-Defendant if can take advantage of.

In a case in which an order to carry on proceedings under S. 169 of the Straits Settlements Civil Procedure Code Ordinance No. 31 of 1907, the court made an order adding or substituting parties under S. 133 of that Code. advantage of the wrong form of the order, the defendant contended that S. 22 of the Straits Settlements Limitation Ordinance No. 6 of 1896 (which corresponds to S. 22 of the Limitation Act of 1908) applied to the case.

Held that the defendant could not take advantage of the form of order to escape a liability to which he would have been subject if the order had been made in proper form

(121-2).

What was required was an order under S. 169 of the code, and if the order was competent it was competent under this section only (122). (Lord Parker.) MEYAPPA CHETTY P. SUBRAMANIAN CHETTY.

(1916) 43 I. A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N. 455 = 18 Bom. L. B. 642 = 35 I. C. 323.

S. 22-(Contd.)

PLAINTIFF-PERSON ALREADY A.

Order erroneous for addition of-Applicability of section to case of.

The suits out of which the appeals arose were instituted on the 2nd of November 1883 to recover moneys alleged to be due to M, G & K' jointly on an account acknowledged

and signed in 1880.

On the face of these plaints the three joint-creditors were named as co-plaintiffs. The names of G & A' had not been struck out, nor did they, or either of them, attempt to repudiate the suits. But still it was contended that A' ought not to be treated as a co-plaintiff from the commencement of

the litigation.

It appeared that, having named K as co-plaintiff, M presented petitions asking for permission to prosecute the suits on behalf of A', relying, as appeared by the plaints, on S. 30 of C. P. C. of 1882, which only applied "when a suit is brought by one person on behalf of other persons having joint interests, but not named as co-pluintiffs." Notice of the petitions was given to K, and he being named as coplaintiff already asked to be made a plaintiff. By some oversight orders to that effect were made on the 8th January, 1884.

It was contended on the strength of the above-mentioned facts that the suit was originally defective for want of parties, that K became a party to the suits only on 8th January, 1884, when it was too late, and that the suits were therefore

barred by limitation.

Held, reversing the court below, that A', as well as G, became a party, as plaintiff, on the 2nd of November, 1883; and that the suits therefore were not barred by lapse of time.

The orders dated 8th January, 1884 making K a plaintiff were merely waste paper. These various experiments or blunders cannot, in their Lordships' opinion, affect the real position of the parties, which is plain on the face of the record. The question is simply this :-When was it that K became a party to these suits? If it was on the 2nd of November, 1883, the suits were in time. If it was not till the 8th of January, 1884, they were too late. Their Lordships think that K, as well as G, became a party, as plaintiff, on the 2nd of November, 1883. (Lord Macnaghten.) MOHINI MOHUN DAS 2. BUNGSI BUDDAN SAHA DAS

(1889) 17 C. 580 = 5 Sar. 498.

-8. 22, Proviso-Control of operative words of section by.

The proviso to S. 22 of the Straits Settlements Limitation Ordinance No. 6 of 1896 may have been inserted for caretolam, and cannot be relied on as controlling the operative words (122). (Lord Parker.) MEYAPPA CHETTY :. (1916) 43 L.A. 113= SUBRAMANIAN CHETTY.

20 C. W. N. 833 = (1916) 1 M. W. N. 455= 18 Bom. L. B. 642 = 35 I. C. 323

S. 23-Religious Endowment-Shebait of-Hereditary office-Emoluments attached to-Adverse enjoyment of, by person not competent to hold office-Declaration of right to receive emoluments-Suit for, by person entitled to hold office-Limitation-Right to emoluments depending upon right to office. See ART. 124.

(1914) 41 I. A. 267 (273-4) = 42 C. 244 (251-2).

-8. 23, Art. 37-Applicability-Artificial watercourse-Obstruction of-Removal of-Snit for-Limitation -Cause of action.

In a suit by the plaintiff to establish an asserted right to a pyne or artificial watercourse, and the water flowing from it through the defendant's estate to his own, and to obtain the removal of certain obstructions in the pyne, the Courts below found that the plaintiff succeeded in establishing his

LIMITATION ACT (IX OF 1908)-(Contd.) S. 23, Art. 37-(Contd.)

right to the pyne as an artificial watercourse, and to the u-e of the water flowing through it; and that the obstructions complained of were unauthorised and were an interruption of the plaintiff's right. The High Court, concurring in the Munsif's finding that the obstructions had existed for more than two years before suit, dismissed the suit as regards them, apparently basing its judgment on Art. 34 of Part V of the second schedule of the Limitation Act of 1871, which limits the time for bringing suits for the obstruction of watercourses to two years "from the date of the obstruction".

Held that the decision of the High Court was clearly

wrong (248).

The obstructions which interfered with the flow of water to the plaintiff's mehal were in the nature of continuing nuisances as to which the cause of action was renewed de die in diem so long as the obstructions causing such interference were allowed to continue. Indeed S. 24 of the -tatute contains express provisions to that effect (248), (Sir Mentague Smith.) MAHARANI RAJROOP KOER P. SYED (1880) 7 I. A. 240 = ARDOL HOSSEIN.

6 C. 394 (404-5) = 7 C. L. R. 529 - 4 Sar. 199 = 3 Suth. 816.

-S. 28-Applicability-Person cutilled to property but not entitled to recover possession from ferson asserting adverse right therito-Case of

S. 28 can have no application to a case in which the person entitled to property cannot institute a suit for recovery of possession thereof from the person in possession, or treat the person in possession as if he had been merely a squatter. (Lord Salzysen.) MAHOMED MUMTAZ ALI KHAN P. MOHAN SINGH. (1923) 50 I. A. 202 (209-10) = 45 A. 419 = A. I. R. 1923 P. C. 118 = 21 A. L. J. 757 =

26 O. C, 231 = 9 O & A. L. B. 901 = 10 O. L. J. 383 = 19 L. W. 283 = 39 C. L. J. 295 = 28 C. W. N. 840 = 33 M. L. T. 321 = 45 M. L. J. 623 = 74 I. C. 476.

-Extinguishment of defendant's title under-Plea express by plaintiff of-Necessity.

A person suing to recover property which originally belonged to the defendant but whose title to it had, at the date of suit, been extinguished under S. 28 of the Limisation Act need not expressly plead such extinction. The point is only evidence of the plaintiff's title and does not require to be expressly pleaded. (Lord Davy.) VASUDEVA PADHI KHADANGA GARU :: MAGUNI DEVAN BAKSHI MAHA-(1901) 28 I. A. 81 (88)= PATRULU GARU.

24 M. 387 (396) - 5 C. W. N. 547 - 3 Bom. L. R. 303 = 7 Sar. 819.

-S. 31 (1)-Suit pending at date of passing of this

Act-What amounts to a. An appeal preferred to the Privy Council by the defendant in a suit for sale on a mortgage was allowed by their Lordships by a judgment delivered on 22nd July, 1907, which was in the following terms:—"Their Lordships will humbly advise His Majesty that it should be declared that art. 132 is the article which provides the rule of limitation applicable to this case, and that the case should be remitted to the High Court to be disposed of in accordance

with this declaration." A remit took place accordingly, and, while the suit was pending in the Court of Appeal, the Limitation Act of 1908 was passed.

Held, that the suit was a suit pending at the passing of the Act (Limitation Act of 1908) within the meaning of S. 31 (1) thereof, and that the said section applied to the suit.

The former judgment of the Board did not end the suit : did not finally determine it. It was remitted to the High Court for further procedure, and for inquiry upon allegations

### LIMITATION ACT (IX OF 1908)—(Centd.) S. 31 (1)—(Centd.)

of fast; and at the date of the statute that procedure was not concluded, and the inquiry had not indeed been entered upon. The suit in fact was neither adjudged upon nor ready for judgment. (Lord Shraw.) VASUDEVA MUDA-LIAR F. SADAGOPA MUDALIAR. (1912) 39 I. A. 96-35 Mad. 191-9 A.L.J. 504-16 C.W.N. 489--

35 Mad. 191 = 9 A.L.J. 504 = 16 C.W.N. 489 = 15 C.L.J. 466 = 14 Bom. L R. 455 = 15 I C. 222 = 23 M.L.J. 16.

### Schedule I.

——Columns in—Object of, See LIMITATION ACT OF 1877—PLAN OF, (1899) 26 I. A. 71 (81) = 23 B. 725 (736)

-Purpose of.

The purpose of the 2nd Schedule in each of the Acts of Limitation is only to prescribe the period of limitation for the suit. That appears from the 4th section of each Act. The prescribed periods are to be applied to suits founded on the existing law (192). (Sir Richard Conch). HARRINATH CHATTERJI : MOHUNT MOTHOOR MOHUN GOSWAMI. (1893) 20 I.A. 183 = 21 C. 8 = 6 Sar. 334.

—Arts, 2 and 36—Canal—Cutting of, for purpose of protecting adjoining railway—Suit for damages for—Limitation.

Art. 2 applies only to a case in which the action of the Canal Authorities alleged to have caused the damage to the plaintiff was done for the purpose of protecting the canal, that is, to action done under S. 15 of the Canal Act. That Article is inapplicable to a case in which the action complained of was done, not for the purpose of protecting the canal, but only for the purpose of protecting an adjoining railway. (Viscount Danadin). PUNJAR COTTON PRESS CO., LTD. P. SECRETARY OF STATE.

(1927) 26 L.W. 134 = 4 O.W.N. 471 = 31 C.W.N. 835 = 28 Punj. L.R. 453 = 103 L.C. 1 = 39 M.L.T. 343 = (1927) M.W.N. 334 = A I.R. (1927) P.C. 72 = 10 Lab. 161

—Art. 3—Magistrate's order—Defendant in passession under—Suit to recover possession from, in strength of prior possession only—Limitation.

The defendants were put into possession by the Government, who were entitled to the lands, and they were ordered by the Magistrate under the Code of Criminal Procedure to be retained in possession. If the plaintiffs had wished to contend that the defendants had been wrongfully put into possession and that the plaintiffs were entitled to recover on the strength of their previous possession without entering into a question of title at all, they ought to have brought their action within six months under S. 15 of Act XIV of 1859 (80). (Str. Barnes Poscock). WISE 2. AMEERUNNISSA KHATOON. (1879) 7 I.A. 73=6 C.L.R. 249 = 4 Sar. 127 = 3 Suth. 730 = Bald 350.

—Art. 10—Physical possession in—Meaning of— Possession—Actual possession—Formal possession—Comparison and contrast with.

The words "physical possession" in article 10 of the Limitation Act mean a "personal and immediate" possession (255-6).

Expressions "possession", "actual possession", "physical possession", and "formal possession" compared and contrasted. (Lord Robertson). BATUL BEGUM v. MANSUR ALI KHAN. (1901) 28 I.A. 248 = 24 A. 17 = 5 C.W.N. 888 = 3 Bom. L. B. 707 = 8 Sar. 133.

- Arts. 10, 120 and 144 Applicability Pre-emption

Suit to enforce right of Defendant heir of mortgagee
by conditional sale toho had forcelosed Property not admitting of physical possession.

# LIMITATION ACT (IX OF 1908)—(Contd.) Arts. 10, 120 and 144—(Contd.)

A suit brought to declare a right of pre-emption against the heir of a mortgagee by conditional sale, who has fore-closed, is governed, where the subject of the sale does not admit of physical possession and there is no registered instrument of sale, not by article 10 but by article 120 of schedule II of the Indian Limitation Act (XV of 1877), and limitation in such a suit runs from the expiration of the year of grace, that being the period when the right of the montgagee has become mature; the mere fact that he has not enforced that right by a suit for possession is immaterial. Art. 10 of the Limitation Act is inapplicable to the case, because the mortgagee's heir had no semblance of physical possession in the true and natural sense of the term (256).

Art. 144 does not also apply because claims of pre-emption are specially considered in Art. 10, and although this particular claim of pre-emption does not (for the reasons already stated) fall within it, that does not affect the construction of Art. 144 as illustrated by Art. 10 (256). (Lord Robertson.) BATUL BEGAM v. MANSUR ALI KHAN.

> (1901) 28 I.A. 248 = 24 A. 17 = 5 C.W.N. 888 = 3 Bom. L.R. 707 = 8 Sar. 133.

—Axts. 10 and 144 — Applicability — Pre-emption— Suit to enforce right of —Plaint praying for possession "by setting aside the competing right."

A claim to enforce a right of pre-emption is, as Art. 10 of the Limitation Act shows, a claim impeaching another's right; and its primary object is to set aside the competing right. The circumstance that a plaint inverts the proper order, and instead of first asking the setting aside and then asking possession as the consequence, asks for possession "by setting aside" cannot alter the nature of the action, so as to make it a suit for possession of immoveable property within the meaning of Art. 144 (256). (Lord Robertson.) BATUL BEGUM T. MANSUR ALI KHAN.

(1901) 28 I.A. 248 = 24 A. 17 = 5 C.W N. 888 = 3 Bom. L.B. 707 = 8 Sar. 133.

-Art. 11 (1)—Applicability by estoppel of—Property ordered to be attacked but not de facto attacked—Claim to, mader misapprehension that there was de facto attachment—Order rejecting—Applicability by estoppel of article to case of.

Where, in a case in which property was only ordered to be attached but was not attached in fact, the parties were under a mistaken impression that there was an attachment and a claim petition was put in under that mistaken impression which, however, was rejected, held that the claimant could not be held to be estopped from pleading the inapplicability of Art. 11 (1) of the Limitation Act to the order rejecting his claim.

It would be somewhat difficult for a case to be figured in which out of the fact of mutural error there had in effect been a two-fold result, namely, (1) that a statutory requirement had been jumped over, and (2) that a limitation as from the date of a nullity had begun to run against one of the parties to the error. (Lord Shaw.) MUTHIAH CHETTI T. PALANIAPPA CHETTI.

(1928) 55 I.A. 256 = 51 M 349 = 26 A.L.J. 616 = 32 C W.N. 821 = 48 C.L.J. 11 = 5 O.W.N. 579 = 28 L.W. 1 = 109 I.C. 626 = 30 Bom. L.R. 1353 = A.I.R. (1928) P.C. 139 = 55 M.L.J. 122.

Minor claimant—Suit by—Limitation—S. 6 of Act if applicable Sz. 11 and 12 of the Limitation Act of 1859 apply to S. 246 of C.P.C. of 1859 (24).

Looking to Sub-S. 5 of S. 1, and Ss. 3 and 11 of the Limitation Act of 1859, their Lordships have no doubt that the period of limitation resulting from S. 246 of C.P.C. of 1859 should in the case of a minor be modified by the

Art. 11 (1)-(Contd.)

operation of S. 11 of the Limitation Act of 1859 (24-5). (Sir James W. Colvile). MUSSUMAT PHOOLBAS KOON-WAR P. LALLA JOGESHUR SAHOY.

(1876) 3 I.A. 7=1 C. 226 (242)=25 W.R. 285= 3 Sar. 573 = 3 Suth. 236.

-Mortgage decree-Claim to property attached in execution of-Order disallowing-Setting aside of - Failure -- Effect. See C.P.C. OF 1908-O. 21, R. 58-MORT-(1922) 27 C.W.N. 275 (279). GAGE DECREE.

-Order disallowing claim without intestigation directed by Code-Applicability of article to.

An order was made under S. 280 of C. P. C. of 1882 allowing a claim to property attached in execution of a decree. More than 22 months after the date of the order, the decree-holder instituted a suit to get rid of it.

Held that the suit was barred under Art. 11 of the Limi-

tation Act of 1877.

Art. 11 is aimed against all persons who object to orders passed under S. 280 of C.P.C. of 1882, and nobody can be more affected by such orders than the decree-holder

An order made under S. 280 of C. P. C. of 1882, even without the investigation directed by S. 278 of that code, is an order within the jurisdiction of the Court that made it, and the rule of limitation under Art. 11 applies to such an order. (Lord Hobbouse.) SARDHARI LAL P. AMBIKA (1888) 15 I.A. 123 = 15 C. 521 (525-6) = PERSHAD. 5 Sar. 172.

-Order on claim preferred within meaning of - Order rejecting application for postponement of sale if an-Article if applicable to. See C. P. C. OF 1908-O. 21, R. 58-CLAIM-ORDER DISALLOWING.

(1875) 2 I. A. 210 (218).

-Policy of.

The policy of Art. 11 of the Limitation Act of 1877 evidently is to secure the speedy settlement of questions of title raised at execution sales, and for that reason a year is fixed as the time within which the suit must be brought (127). (Lord Hobkouse.) SARDHARI LAL D. AMBIKA (1888) 15 I. A. 123 - 15 C. 521 (526) -PERSHAD. 5 Sar. 172.

-Property ordered to be uttached but not attached de facto-Claim to-Order rejecting-Inapplicability of article to.

It is a necessity of the order specified in Art. 11 (1) of the Limitation Act of 1908 that the property to which a claim is made, or to the attachment of which there is an objection, must be property which had been de facto attached, for the only property referred to is "property attached in execution". Unless there has been attachment, there can be no order made on an objection lodged to it, nor can any claim be made to the property so attached; and without such an order, there is no terminus a quo for the running of limitation, and with this the limitation itself is non-existent.

Where, though a conditional attachment before judgment was ordered, none was actually made, but the parties were under a mistaken impression that there was an attachment, and, under that mistaken impression, a mortgagee of the property the attachment of which was ordered put in a claim petition which was, however rejected on the ground that the mortgage was a sham transaction, held that Art. 11 of the Limitation Act had no application to the order made on that claim petition. (Lord Shaw.) MUTHIAH CHETTI :. (1928) 55 I. A. 256-PALANIAPPA CHETTI.

51 M. 349 = 26 A. L. J. 616 = 32 C. W. N. 821 48 C. L. J. 11=5 O. W. N. 579 = 28 L. W. 1 = 109 I. C. 626=30 Bom. L. R. 1353= A, L. B. (1928) P. C. 139 = 55 M. L. J. 122.

### LIMITATION ACT (IX OF 1908)-(Contd.)

-Art. 11 (a)-Execution purchaser-Suit for actual possession by-Limitation-Order under 0.21, R. 99, C. P. C. refusing such possession more than a year before swit-Order under O. 21, R. 35, C. P. C. giving symbolical

possestion within a year before suit.

The appellant, the purchaser in Court auction of an 8 anna share in a mouzah, being obstructed by a stranger in obtaining physical possession, applied to be put into physical possession of his share. That application was dismissed, after contest, under U. 21, R. 99, of C. P. C. of 1908. He then applied for and obtained symbolical possession of his share under O. 21, R. 35, C. P. C. More than a year after the date of the order under O. 21, R. 99, but within a year from the date of the order under O. 21, R. 35, he sued for actual possession of the 8 anna share.

Held the suit was barred under Art. 11 (a) of the Limi-

tation Act of 1908,

Whether or not the appellant was entitled to actual possession, he did ask for it and was refused under O. 21, R. 99. In the suit also he has asked for actual possession, He ignores the symbolical possession of the 2nd order altogether. (Lord Dungdin.) BALDEO :. KANHAIYALAL.

(1920) 12 L. W. 408 = 16 N. L. R. 103 = 24 C. W. N. 1001 = (1920) M. W. N. 545 = 58 I. C. 21.

Art. 12 (a).

#### APPLICABILITY OF.

-Purchase at sale by decree-holder himself either withend permission to bid or after refusal of such permission.

Where a decree-holder purchases at a sale held in execution of his own decree, either without permission or after he had applied for permission and been refused, the sale is voidable only and not void, and a suit to set aside the sale not brought within the one year provided for by Art, 12 of the Limitation Act of 1908 is barred (315-6). (Lord Phillimerc.) RAI RADHA KRISHNA D. BISHESHAR (1922) 49 I. A. 312 = 1 Pat. 733 (739)= SAHAY. 21 A. L. J. 23 = 37 C. L. J. 430 = 25 Bom. L. R. 680 = 27 C. W. N. 294 = 96 O. & A. L. R. 194 = 16 L. W. 190 = 3 Pat. L T. 529 - 31 M. L. T. 209 (P. C.) = (1922) P. C. 336=67 I. C. 914=44 M. L. J. 718.

-Relief consequential on annulment of sale-Prayer

for-Addition in plaint of-Effect.

Act 12 (a) of the Limitation Act protects hona fide purchasers at judicial sales by providing a short limit of time within which suits may be brought to set them aside. If the protection is to be confined to suits which seek no other relief than a declaration that the sale ought to be set aside. and is to varnish directly same other relief consequential on the annulment of the sale is sought, the protection is exceedingly small. There is no justification for refusing toconstrue Art. (12 (a) according to its obvious meaning when ever a suit goes on to pray for that relief which is the objector perhaps the only object, of setting aside the sale (229.30). (Lord Hobbouse.) MALKARJUN P. NARAHARI. (1900) 27 I. A. 216 = 25 B. 337 (352) = 5 C. W. N. 10 = 2 Bom. L. B. 927 = 7 Sar. 739 = 10 M. L. J. 368.

Sale invalid and ineffectual against plaintiff because

affected by lis pendens.

In a suit for a declaration of plaintiff's title to the suit property and that it was not liable to be attached and sold in execution of A's decree, it was found that the defendants' purchase in execution of the said decree was invalid and in effectual as against the plaintiff by reason of the fact that the purchase was made during the pendency of a prior suit by the plaintiff to establish his title to the said property. Held that the suit was not barred under Art, 12 of the Limitation Act of 1908 because it was instituted more than a year after the sale at which the defendants purchased. (Lord

Art. 12 (a)-(Contd.)

APPLICABILITY OF -(Contd.)

Hobbouse.) MOTI LAL :: KANAB-UL-DIN.

(1897) 24 I. A. 170 = 25 C. 179 - 1 C. W. N. 639 = 7 Sar. 222.

EXECUTION SALE-SETTING ASIDE OF.

Necessity-Finding as to its invalidity against plaintiff-Sufficiency of-Sale intentil and ineffectual against plaintiff.

In a case in which it was found that the defendant's execution purchase of the suit property was invalid and ineffectual as against the plaintiff, who claimed to be entitled to the same, by reason of the fact that the defendant's purchase was made during the pendency of a suit brought by the plaintiff to establish his title to the said property, held that it was not necessary for the plaintiff to have the sale in favour of the defendant set aside, and that a finding that the sale would not affect the plaintiff's interests was quite sufficient. (Lord Hobbouse.) MOTI LAL r. KANAB-UL-DIN.

(1897) 24 I. A. 170 - 25 C. 179 = 1 C. W. N. 639 = 7 Sar. 222.

Necessity-Irregular and Illegal Sales-Distinction. See EXECUTION SALE-SETTING ASIDE OF -NECESSITY -IRREGULARITY AND ETC. (1871) 14 M. I. A. 40 (47).

Necessity-Person not parties to proceedings or not properly represented on record-Sale affecting. See EXE-CUTION SALE-PERSONS NOT PARTIES TO PROCEED (1904) 32 I. A. 23 (33) - 32 C. 296 (312).

-Prayer for-Addition of-Amendment of plaint for purpose of-P. C. appeal-Permissibility for first time in -Nullity of sale-Suit brought on foot of.

Plaintiffs had conducted their case throughout on the principle that the question of the nullity of the sale was the only question, and that they could not succeed on any other ground. To allow them now (in Privy Council appeal) to shift their ground and to make a new case, and that too without allowing the defendant an opportunity of making the defence which he says, he has in reserve, is wrong in principle and is calculated to work practical injustice. (Lord Hobbouse,) MALKARJUN :: NARAHARL (1900) 27 I. A. 216 (227-8) - 25 B. 337 (349-50) =

5 C. W. N. 10 - 2 Bom. L. R. 927 - 7 Sar. 739 = 10 M. L. J. 368.

-Suit for-What is a-Suit treating sale as mullity and elaiming relief inconsistent with it not an.

The expression "set aside a sale" in Art. 12 (a) of the Limitation Act is not attended by any such difficulty as the expression "set aside an adoption" in Art. 129 of the Limitation Act of 1871 because a sale, valid until set aside, can be legally and literally set aside; and anybody who desires relief inconsistent with it may and should pray to set it aside (228). A suit, which treats an execution sale as a nullity and ignores it altogether, is not a suit to set aside the sale merely because it prays for relief inconsistent with the validity of the sale (227). (Lord Hobbouse.) MALKAR-JUN P. NARAHARI. (1900) 27 I.A. 216=

25 B. 337 (351-2)=5 C.W.N. 10=2 Bom. L.R. 927= 7 Sar. 739 = 10 M.L.J 368.

MORTGAGED PROPERTY-SALE OF, IN EXECUTION OF THIRD PARTY'S DECREE-MORTGAGEE'S PURCHASE AT-MORTGAGOR'S SUIT FOR REDEMPTION AND ACCOUNTS IGNORING,

Applicability of article to-Sale a real one.

Property subject to a mortgage was sold in execution of a decree obtained by a third party and purchased by the mortgagee himself. Nearly 8 years after the sale, the mortgagor's heirs sued the mortgagee-purchaser for redemption and accounts,

Held that, if the sale at which the mortgagee purchased I

LIMITATION ACT (IX OF 1908)-(Contd.)

Art. 12(a)-(Contd.)

MORIGAGED PROPERTY-SALE OF, IN EXECUTION OF THIRD PARTY'S DECREE-MORTGAGEE'S PUR-CHASE AT-MORTGAGOR'S SUIT FOR REDEMPTION AND ACCOUNTS IGNORING-(Contd.)

was a reality at all, it was defeasible only in the way pointed out by law; that the case would fall either within S. 311 of C. P. C. of 1882, or within Art. 12 (a) of the Limitation Act; and that the suit, when looked on as a suit to set aside the sale, fell within the prohibition of Art. 12 (a).

The mortgagor's right to set aside the sale would not be kept alive as long as the right to redeem subsisted. (Lord Hobberse.) MALKARJUN v. NARAHARI.

(1900) 27 I.A. 216 (229-30) = 25 B. 337 (352) = 5 C.W.N. 10 = 2 Bom. L R. 927 = 7 Sar. 739 = 10 M.L.J. 368.

-Suit to set aside sale if a-Decree holder not made a party-Effect.

Property subject to a mortgage was sold in execution of a decree obtained by a third party and purchased by the mortgagee himself. The mortgagor thereupon sued the mortgagee-purchaser for redemption and accounts, ignoring the sale altogether. The plaint did not pray for setting aside the sale, and the holder of the decree in execution of which the mortgagee purchased the property was not made a party to the suit.

Held that the suit was not one to set aside the sale within the meaning of Art. 12 (a) of the Limitation Act.

The suit can only be called a suit to set aside a sale in the sense in which any other suit might be so called if it prayed relief inconsistent with the validity of the sale. To a suit to set aside the sale, the decree-holder would be a proper and even a necessary party, and the issues in such a suit would be different. (Lord Hobbourc.) MALKARJUN v. NARAHARI. (1900) 27 I.A. 216 (227-8)=

25 B. 337 (351-2) - 5 C.W.N. 10 = 2 Bom. L R. 927 = 7 Sar. 739 = 10 M.L.J. 368.

Art. 12(b) and (c).

-Bengal Act VII of 1880-Sale under-Suit to set aside -Limitation-Starting point of-Final order of Board of Revenue in revision confirming sale-Date of.

A sale was held under Bengal Act VII of 1880 by the Collector on 24-9-1882. The owner of the property applied to the Commissioner on 26-9-1882, not to confirm the sale. That petition was refused, and the sale was confirmed by the Commissioner on 2-5-1884. The owner then presented a revision petition to the Board of Revenue against the Commissioner's order. At first the Board of Revenue set aside the Commissioner's order on 12-8-1884, and referred the matter back to the Collector to consider the case upon its merits. But, on the case again coming up before then the Board of Revenue reversed their previous decision and revived the order of the Commissioner, dated 25-1-1884 refusing to set aside the sale. The last order of the Board of Revenue was on 21-8-1886.

Held that for the purpose of the law of limitation there was no final or definitive confirmation of the sale until 21 8-1886, the date of the last order of the Board of Revenue, and that a suit brought to set aside the sale on the ground of non-compliance with the provisions of Bengal Act VII of 1880 within 1 year of 21-8-1886 was not barred under Art. 12 of the Limitation Act of 1877.

There was no final, conclusive and definitive order confirming the sale, while the question whether the sale should be confirmed was in litigation, or until the order of the Commissioner of 25-1-1884 became definitive and operative by the final judgment of the Board of Revenue on 21-8-1886. In fact there was not during the period which had elapsed between the date of the sale and 21-8-1886 any sale to set aside which a suit could have been brought by the parties

Art, 12(b) and (c)-(Contd.)

(Lord Davey.) BAIJANATH SAHAI P. RAMGUT SINGH, (1896) 23 I.A. 45 (51-2) = 23 C. 775 (785-6)=7 Sar. 1.

-Applicability of-C. P. C. of 1908-S. 73-Refund of assets wrongly paid under-Suit for.

Art. 13 of the Limitation Act of 1877 is inapplicable to a suit brought under the penultimate paragraph of S, 295 of C. P. C. of 1882. Such a suit is in no sense an action to set aside the order of distribution, and that order does not stand in the way of such a suit (209). (Lord Robertson.) SANKAR SARUP v. MEJO MAI. (1901) 28 I.A. 203 = 23 A. 313 (322-3)=5 C.W.N. 649= 3 Bom L. R. 713 - 8 Sar. 72.

-Applicability-Possession-Order for-Person not party to-Suit to recover property by-Setting aside of order-Absence of -Effect.

In execution of a decree made in a suit among the heirs of Maish, an order was made for placing one of them, A, in possession of a part of a village. Under color of that order, A disturbed the possession of Moti, who claimed the village against Maish. Moti applied in the execution proceedings to protect his possession, and an order was made on 1-11-1886, allowing Moti's application on the ground that A could not use an order made as between her and her coheirs for the purpose of dispossessing one who was a stranger to Maish's estate and to the litigation between his heirs. In a suit subsequently brought by the representative in interest of Maish against Moti for a declaration of his (Maish's) preferential right to the property, held that the suit was not barred by Art. 13 of the Limitation Act on the ground that it was brought more than a year after the order in Moti's favour, dated 1-11-1886.

The suit does not pray, and the plaintiff need not pray, any relief of that sort. The order remains wholly unaffected. It was quite right to hold (as the order of Nov. 1886 did) that A had wrongfully disturbed Moti's possession; but the right of Maish or of anybody claiming under him to bring a suit within any time allowed by law for suits to recover property was quite unaffected by that. (Lord Hobhouse). MOTI LAL P. KARRAB-UL-DIN.

(1897) 24 I. A. 170 (175-6) = 25 C. 179 (185-6) = 1 C.W.N. 639 = 7 Sar. 222.

-Minor not properly represented-Decree against, and sale of properties in execution thereof-Declaration of invalidity of, and recovery of property sold-Suit for-Limitation.

The plaintiff sued to obtain possession of certain properties, and for a declaration that the decree and auction sale under which the defendants in the two suits became the purchasers of the properties were not binding upon him, as he was a minor, and was not properly represented in the suit in which the decree was obtained.

Held, that the suits were suits in the nature of one to set aside a decree, and that such a suit must be brought, according to the law of limitation, within one year from the making of the decree, if the party at that time was of full age, but if he was a minor, then within one year of his attaining majority (201). (Sir Richard Couch.) MUNGNI-RAM MARWARI D. MOHUNT GURSAHAI NUND.

(1889) 16 I. A. 195=17 C. 347 (357-8) = 5 Sar. 463.

#### Art. 14.

-Applicability-Batwara proceedings-Land allotted to plaintiff in-Suit for possession of.

Art. 14 of the Limitation Act applies to a suit brought for the purpose of setting aside an order of the revenue Court. porting to act as his guardian is not governed by Art, 44

### LIMITATION ACT IX OF 1908—(Contd.)

Art. 14-(Contd.)

It is inapplicable to an action in ejectment, the main purpose of which is to recover possession of certain lands allotted to the plaintiff in Batwara proceedings (186). (Mr. Ameer Ali.) RAJA DHAKESHWAR PRASAD NARAIN SINGH v. (1926) 53 I. A. 176=5 Pat. 735= GULAR KUER. 7 P. L. T. 483 = A. I. R. 1926 P. C. 60 =

97 I. C. 217 - 31 C. W. N. 341.

#### Arts. 14, 96.

Applicability.-Canal dues under Agra Land Revenue Act of 1873-Money wrongly recovered by Secretary of State under head of-Suit for recovery of.

The suit was for the recovery from the Secretary of State of a sum of money which the plaintiff alleged to have been wrongly taken from him under the head of canal dues, such canal dues not being, in fact, payable by him or his ancestors, who were the proprietors of the lands in respect of which the dues were claimed, but by the occupiers of the lands. The plaint alleged that the money had been paid under a mistake of fact.

The question was what was the period of limitation applicable to the case, that provided by Art. 96, or that provided by Art. 14 of the Limitation Act. The District Judge held that Art. 14 applied to the case. The High Court, in the view that it took, had not to decide the question.

Their Lordships also had not to decide the question (173-4). (Lord Davy.) RAJA BALWANT SINGH P. SEC-RETARY OF STATE FOR INDIA IN COUNCIL.

(1903) 30 I. A. 172 = 25 A. 527 (531) = 8 C. W. N. 121 = 8 Sar. 564.

#### Art. 19.

-Imprisonment - Ending of, within meaning of Article-Date of release of plaintiff on bail if.

The imprisonment of a person ends, within the meaning of Art. 19 of the Limitation Act, the moment he is released on bail, and a suit for false imprisonment which is brought more than one year after the date of such release is barred under that Article (158). (Lord Macnaghten.) SYED MAHAMAD YUSUF-UD-DIN v. SECRETARY OF STATE FOR (1903) 30 I. A. 154= INDIA IN COUNCIL.

30 C. 872 (879) - 7 C. W. N. 729 = 5 Bom. L. R. 490 - 8 Sar. 503.

### Art. 27.

-Contract-Breach of-Improper procuring of-Conpensation for-Suit for-Limitation. See C. P. C. OF 1908 -Ss. 19 and 20 -Contract. (1926) 31 C. W. N. 174.

-Applicability-Canal-Cutting of, for purpose of protecting adjoining railway-Suit for damages for. See ARTS. 2 AND 36. (1927) 26 L W. 134.

#### Art. 37.

-Applicability-Artificial watercourse-Obstruction of -Removal of-Suit for-Limitation-Cause of action. See S. 23, ART. 37. (1880) 7 I. A. 240 (248) = 6 C. 394 (404-5).

### Art. 44.

-Applicability-Unauthorised but de facto guardian Sale by-Minor's suit to set aside.

Art. 44 has no application to a sale effected not by a

guardian but by a wholly unauthorised person (56).

Under the Mahomedan Law, the brothers of a minor have no right to act on his behalf except under the authority of an appointment by the Court. A suit by the minor on attaining age to set aside a sale made by his brother pur-

Art. 44-(Contd.)

(56). (Lord Robson.) MATA DIN v. AHMAD ALL

(1911) 39 I. A. 49 - 34 A. 213 (222-3) = (1912) M. W. N. 183 = 16 C.W.N. 338 = 13 I C. 976 = 11 M. L. T. 145 = 9 A. L. J. 215 - 15 C. L. J. 270 = 14 Bom. L. R. 192 = 15 O. C. 49 = 23 M. L. J. 6.

-Hindu Law - Religious Endocument - Minor manager of -Hereditary office and emoluments thereof helonging to-Sale by guardism of-Suit to set aside-Limi-

tation.

In a case in which a minor was entitled to the hereditary right to manage an endowment connected with a temple and to enjoy the lands forming the endowment, his mother, purporting to act as his guardian, sold his right of management and his interest in the property forming the endowment. Possession was taken by the purchaser pursuant to the sale.

Held, that the minor had, under Art. 44 of the Limitation Act, 3 years for suing to set aside the sale, and that, on his failure to do so, his right would become extinguished under S. 28 of the Limitation Act. (Ser Richard Couch.) GNANASAMBANDA PANDARA SANNADHI 7. VELU PANDARAM. (1899) 27 I. A. 69-23 M. 271 (279)-2 Bom. L.R. 597 = 4 C. W. N. 329 = 7 Sar. 671 =

#### Art. 47.

-Applicability of -Successful party in powersion pro-

ceeding-Suit by.

Cl. 7 of S. 1 of Act XIV of 1859 applies to a suit brought by the party who was unsuccessful in a proceeding under Act IV of 1840, and is inapplicable to a suit brought against him by the party successful in such proceeding (81). Barnes Powork). WISE P. AMEERUNNISSA KHATOON,

(1879) 7 I A. 73 - 6 C.L.R. 249 - 4 Sar. 127 -3 Suth. 730 - Bald. 350.

----Possession proceeding-Order in-Possession held for 3 years under-Effect of-Title to property if acquired by, Sc BENGAL ACIS-AFFRAYS ACT IV OF 1840-ORDER UNDER-POSSESSION FOF 3 YEARS UNDER.

(1879) 7 I.A. 73 (81).

10 M. L. J. 29

#### Art. 48.

-Construction of - Consersion - Mouning of.

"Conversion" in Art. 48 cannot be split up into two classes, one dishonest and the other not dishonest; the Article is not restricted to cases of dishonest conversion but applies to all classes of conversion, including simple conversion. "Conversion," a well-known legal term for a particular class of tort, is referred to in the Article as one of the modes by which specific movable property may be wrongfully acquired, the others being theft and dishonest misapuropriation. The Article should be construed as if it ran as lost or acquired by theft or by dishonest misappropriation or by conversion." (Lord Warrington.) LEWIS PUGH P. ASHUTOSH SEN. (1928) 56 I.A 93 (100-1)=

27 A.L.J. 170 - 10 P.L.T. 155 - 29 L. W. 449 = 114 I.C. 604 = 49 C.L.J. 415 = 31 Bom. L. R. 702= 33 C.W N. 323 = 6 O.W.N. 151 = A.I R. 1929 P.C. 69 = 56 M. L. J. 517.

-Conversion not dishonest-Applicability of article to

Held that Art. 48 applied to a suit for damages for conversion by the defendant of coal wrongfully gotten from the plaintiffs' mines and sold or otherwise disposed of by the defendant to his own use, though the defendant had, in doing so, acted under the honest belief that he had obtained or would obtain sufficient authority for what he did. (Lord LEWIS PUGH D. ASHUTOSH SEN. Warrington).

(1928) 56 I.A. 93 (101) = 27 A.L.J. 170 = 10 P.L.T. 155 = 29 L.W. 449 = 114 I.C. 604 = LIMITATION ACT IX OF 1908-(Contd.)

Art. 48-(Contd.)

49 C.L.J. 415=31 Bom. L. R. 702=33 C.W.N. 323= 6 O.W.N. 151 = A.I.R. 1929 P.C. 69 = 56 M.L.J. 517.

Art. 48 of Schedule I of the Limitation Act, 1908, applies to all conversions, whether dishonest or not,

In a suit for damages for coal cut and taken away by the defendants by trespassing upon the plaintiff's coal mine, the Subordinate Judge found that the trespass was due to inadvertence, while the High Court held that it was due to inadvertence and want of reasonable care,

Held that both those views of the conversion fell within the terms of Art. 48. (Lord Thankerton). ADJAI COAL CO., LTD., P. PANNA LAL GHOSH.

(1930) 34 C. W. N. 483 = 32 Bom. L. R 654 = A. I. R. 1930 P. C. 113 = 58 M.L.J. 536. Arts. 48, 62, 120,

-Applicability-Conversion by A of movables of B-Sale thereof by C as A's agent-B's suit against C for recovery of sale proceeds in his hands-Right of-Limitafrom for.

The plaintiffs instituted a suit against M for the conversion of timber belonging to them and obtained a decree for a certain sum of money against his widow brought on record after his death as his legal representative. Not having obtained full satisfaction of their decree in execution, they sued the appellant, the brother of M, alleging that the timber misappropriated by M had come into the hands of the appellant after his death, that the appellant had sold the same, and that the money which was the proceeds of the sale of the timber was in the hands of the appellant, and had not been paid over by him to M's widow. The plaintiffs prayed for the recovery of the said proceeds from the appellant. There was no dishonest misappropriation or conversion by the appellant. He sold the timber, and received the procoeds as the agent of M's widow.

Held that the plaintiffs had a right to follow the proceeds of their timber, and that the appellant having received the money, and not having paid it over to N's widow, they had a right to recover the amount from him (64).

Held further that the suit fell within Art. 118, and not within Art. 60 or Art. 48 of the Limitation Act of 1871

(64.5).

The suit is to enforce an equitable claim on the part of the plaintiffs to follow the proceeds of their timber, and finding them in the hands of the appellant, to make him responsible for the amount. That comes within Art. 118 of the Act. The plaintiffs had a right at any time within six years from the time when the defendant received the money to hold him responsible to them for the amount so long as it remained in his hands; they might have given him notice not to pay it over, and held him responsible in equity if he had done so (65). (Ser Barnes Peaceck). GOOROO DAS (1884) 11 LA. 59= PYNE : RAM NARAIN SAHOO. 10 C. 860 = 4 Sar 548.

### Art. 49-Applicability.

-Deceased person-Right to inherit property of-Suit to establish.

Art. 49 of the Limitation Act of 1877 does not appear to be applicable to a suit to establish a right to inherit the property of a deceased person (159). (Sir Richard Couch.) MAHOMED RIASAT ALI v. MUSSUMAT HASIN BANU. (1893) 20 I. A. 155 = 21 C. 157 = 6 Sar. 374 = R. & J's No. 133 (Oudh).

-Mahomedan widow-Husband-Inheritance right to -Suit to establish and to recover property of husband-Movables forming part of property-Limitation as regards. See ARTS. 120, 49, 123. (1893) 20 I. A. 155 (159)=

21 C. 157.

Art. 49-Applicability-(Contd.)

Religious Endowment—Rightful Shebait of—Person alleging to be.-Suit by, to recover temple and movables appertaining to endowment. See ARTS, 120, 49, 144.

(1889) 16 A. I. 137 (146)=17 C. 3 (22).

### Art 57.

-See LIMITATION-DEBT.

### Art 59.

——Payment on demand—Deed creating obligation of— Demand prior to enforcement of obligation—Necessity. See DEED—CONSTRUCTION OF—PAYMENT "ON DEMAND." (1855) 6 M. I. A. 211 (229).

#### Art 61

Co-owner - Joint debt - Payment by one co-owner of
 Contribution suit by him against owner in respect of
 Limitation.

The appellant and respondent were co-owners of lands subject to payment of rent. The owner of the rent obtained decrees for a large sum in arrear, and to save the estate from sale the respondent and another co-owner deposited the arrears in court and the sum so deposited was paid to the judgment-creditor. The respondent instituted the suit out of which the appeal arose against the appellant for contribution to the extent of her share. Both the Courts below considered that the case fell within Art. 61 of the Limitation Act of 1877, and the arguments before their Lordships proceeded on that footing.

In the view that their Lordships took it was not necessary for them to examine the point further. (100). (Lord Hob-house.) SUKHAMONI CHOWDHRANI P. ISHAN CHUNDER ROY. (1898) 25 I. A. 95 = 25 C. 844 = 2 C. W. N. 402 = 7 Sar. 294.

### Art. 62.

### APPLICABILITY.

Conversion by A of movables of B—Sale thereof by C as A's agent—B's suit against C for recovery of sale proceeds in his hands—Limitation. See LIMITATION ACT OF 1908—ARTS, 48, 62, 120.

(1884) 11 I.A. 59 (64-5)=10 C. 860.

CO-SHARERS—JOINT DEBT DUE TO—RECEIPT IN RESPECT OF, BY ONE SHARER OF MORE THAN HIS OWN SHARE—OTHER SHARER'S SUIT AGAINST HIM FOR RECOVERY OF EXCESS AMOUNT RECEIVED—LIMITATION.

receiving co-sharer

In a case in which the appellant and the respondents were joint obligees of a bond for Rs. 3 lakhs and odd, dated 21-7-1849, the respondents received in December 1856 from the debtor a sum of 2 lakhs of rupees, and gave a receipt therefore as entitled to their share of the debt. In actions brought separately by the appellant and the respondents for their shares respectively of the balance, the High Court ultimately decided in December, 1863, that the 2 lakhs received by the respondents must (against the debtor) be appropriated to the whole debt, the result of that view being to cut down the claim of the appellant by Rs. 25,000, and to enlarge the claim of the respondents by Rs. 16,000.

Thereupon the appellant sued the respondents in August, 1864, for the recovery of the loss caused to him by the receipt by the respondents of the 2 lakhs on account of all of

them.

### LIMITATION ACT IX OF 1908-(Contd.)

Art. 62-(Contd.)

CO-SHARERS—JOINT DEBT DUE TO—RECEIPT IN RESPECT OF BY ONE SHARER OF MORE THAN HIS OWN SHARE—OTHER SHARER'S SUIT AGAINST HIM FOR RECOVERY OF EXCESS AMOUNT RECEIVED—LIMITATION—(Contd.)

Held that appellant's claim was based on, or arose out of, the decision of the High Court of December, 1863, and not of the original payment in 1856, and the suit was, therefore, not barred by limitation (352).

It was not till the respondents had gos more than their share that they could be said to have received any money to the use of the appellant so as to give any ground of action (352).

Held further that the measure of the respondent's liability was not the Rs. 25,000 which the appellant lost, but the Rs. 16,000, the sum in excess of that to which the respondents were entitled (353). SYED LUTF ALI KHAN v. MUSSAMAT AFZALUNNISSA BEGUM.

(1871) 9 B. L. R. 348 P. C. -16 W. R. P. C. 20 = 2 Sar. 701 = 2 Suth. 459.

——Suspension of—Contract between containers resering and keeping open suit claim till decision in plaintiff's suit against debtor if a zeround for.

In a case in which the appellant and the respondents were joint obligees of a bond for 3 laklis and odd, dated 21-7-1849, the respondents in December, 1850, received from the debtor a sum of 2 lakhs of rupees, and gave a receipt therefor as entitled to their share of the debt. In actions brought separately by the appellant and the respondents for their shares respectively of the balance, the first court decided that the 2 lakhs received by the respondents must (against the debtor) be appropriated to the whole debt, the result being to cut down the claim of the appellant by Rs. 25,000, and to enlarge the claim of the respondents by Rs. 16,000. The appellant appealed to the High Court in his suit against that decree. While that appeal was pending, the appellant and the respondents compromised certain suits then pending between them as to a partition of their estates, By that compromise the appellant in effect said that he was trying to get back his share of the debt aforesaid in his appeal to the High Court against the debtor, that that being so, the compromise was not to affect that in any way whatever, and that, if any claim should arise out of the result of that appeal, any question upon that was reserved as between him and the respondents.

In December, 1863 the High Court in the appeal by the appellant against the debtor, affirmed the decree below. Thereupon the appellant sued the respondents, in August, 1864, for the recovery of the loss caused to him by the receipt by the respondents of the sum of 2 lakks on account of all of them.

Med, that from November, 1882, the date of the deed of compromise between the appellant and the respondents there could be no question as to the Statute of Limitations, as there was, by contract between the parties, reserved and kept open until the decision of the appellant's appeal against the debtor was arrived at, and very reasonably so, because, if the appellant had succeeded in that appeal in getting the money from the debtor, he would have had no manner of claim whatever against the respondents (353). SYUD LUTF ALI KHAN 2. MUSSAMAT AFZALUNNISSA BEGUM.

(1871) 9 B. L. R. 348 P. C. = 16 W. B. P. C. 20 = 2 Sar. 701 = 2 Suth. 459.

#### VENDOR.

- Delivery of goods-Breach as regards-Purchaser's suit for damages for-Limitation-Suspension of-Negotiations between parties if a ground of.

Art. 62-(Cont.d.)

VFNDOR-(Contd.)

In 1822. A purchased at a Government sale, at Calcutta, a quantity of salt, part of a larger portion then lying in the ware house of the vendors (the Government) where the salt was to be he delivered. By the conditions of sale, it was declared, that on payment of the purchase-money, the purchaser should be furnished with permits to enable him to take possession of the salt; there was also a stipulation that the salt purchased should be cleared from the place of delivery within twelve months from the day of sale, otherwise the purchaser was to pay ware-house rent for the quantity then afterwards to be delivered. The purchaser paid the purchase-money, and received permits for the delivery of the salt, which was delivered to him in various quantities, down to the year 1831; in which year an inundation took place, which destroyed the salt in the ware-house, and there remained no salt to satisfy the contract. The purchaser petitioned the vendors for a return of the purchase money which was refused on the ground that the loss happened through his negligence in not sooner clearing the salt from the ware-house. An inquiry, however, took place at the instance of the Government, who referred the matter to the Salt Collector for a report. This inquiry was made by the Government without the parchaser being a pasty to The Collector did not make his report till the year 1838 and upon that report, the Government refused to return the purchase-money claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for recovery of the purchase-money of such part of the salt as had not been delivered, alleging, as a breach, the non-delivery thereof. To this the defendants pleaded the Statute of Limitation. The Supreme Court at Calcutta found a verdict for the plaintiff.

Held, upon appeal, reversing such verdict, that when the purchaser applied for the residue of the salt, and was told that there was none to deliver, the contract was broken, and the cause of action accrued from the time of such breach, and that the sub-equent inquiries by the Government did not suspend the operation of the Statute of Limitations till the year 1838, the time of the final refusal; that the remedy was barred by the Statute. (Lord Campbell.) EAST INDIA CO. r. ODITCHURN PAUL. (1849) 5 M. I. A. 43 (69-70) = 7 Moo. P.C. 85 = 14 Jur. 253 = 1 Sar. 394.

### Arts. 62, 89.

-Applicability-Hindu joint family-Partition Money-dealings by one of separated members after, on behalf of himself and others-Latter's suit against former for accounts of.

The plaintiffs and the defendants were originally members of a joint Hindu family. By a consent decree made on 5th March 1902, the line of the plaintiffs became divided from that of the defendants. Notwithstanding the said division. the two lines continued to maintain intimate relations, their lands were jointly cultivated, and they lived and messed together as if they formed parts of a joint Hindu family. They were land-owners and money-lenders. For the purposes of their business the principal member was the representative of the elder generation, the 1st defendant,

In a suit instituted by the plaintiffs on 22nd April, 1910 claiming a partition of certain immoveable property and milch cattle, their half of the paddy grown on the two estates which were in joint cultivation, and an account in respect of money-lending transactions. Semble the suit was governed by Art. 89 rather than by Art. 62 of the Limitatian Act of 1908. (Lord Phillimore.) MERLA VENKANNA P. MERLA AGASTRIAH. (1922) 27 C. W. N 725 (733)=

### LIMITATION ACT IX OF 1908-(Contd.) Arts 62, 97- Applicability.

BENGAL PUTNI TALUQ REGL. VIII OF 1819-SALE UNDER-REVERSAL OF-PURCHASER'S SUIT AGAINST ZEMINDAR FOR RECOVERY OF SUMS PAID.

-Limitation-Starting point-First Court decree reversing sale-Appellate decree affirming-Deprivation of

possession-Dates of.

On 14-5-1904, a putni taluq was sold for arrears of rent under Bengal Regulation VIII of 1819. The purchaser paid in the entire amount of the purchase money, and on 23.5 1904, he received a certificate of payment under S. 15 of that Regulation. On 28-5 1904, he received the usual order for possession. On June 30 following, however, a darpatnidar sued the Zemindar for the reversal of the sale. Three similar suits for the same purpose were instituted by other darpatnidars in July and August. A decree for reversal of the sale was passed in each of those suits, that in the first suit being dated on 24 8-1905, and those in the others being passed on 28-8-1906. An appeal to the High Court in the first suit was dismissed on 3-8-1906.

On 14-9-1908 the purchaser sued to recover from the Zemindar the aggregate of several sums of money being (a) the amount of rent arrears due and paid by the Collector to the Zemindar out of the purchase money; (b) the expenses of the sale appropriated by the Collector out of the purchase money; (c) the putni rents paid to the Zemindar subsequent to the sale; and (d) interest on those several sums and on the balance of purchase money left in the hands of the

Collector.

The cause of action was stated in the plaint to be the reversal of the sale. By the decision in the first suit the sale was reversed in its entirety and for all purposes irrespective of the decrees in the later courts. The purchaser gave up possession of the taluq to the darpatnidars on 28 8-1906. The suit was throughout treated as governed by Art. 97 of the Limitation Act of 1908. Their Lordships also treated the case as falling under Art. 97. The only question which their Lordships considered and decided was what was the starting point of limitation for the suit, whether it was (1) the date of the original decree in the first suit, 24-8-1905, or (2) the date of the appellate decree therein 3-8-1906, or (3) the date on which the purchaser gave up possession, 28-8-1906.

Held, affirming the courts below, that the failure of consideration was on 24-8-1905, the date of the first court's decree in the first suit, that time began to run from that

date, and that the suit was barred,

There may be circumstances in which a failure to get or retain possession may justly be regarded as the time from which the limitation period should run, but that is not the case here. The quality of the possession acquired by the present purchaser excludes the idea that the starting point is to be sought in a disturbance of possession or in any event other than the challenge to the sale and the negation of the purchaser's title to the entirety of what he bought involved in the decree of 24-8-1905. If further support of this view be required, it may be found in the express provision of S. 14 of the Regulation which directs that in the suit for reversal itself the purchaser is to be indemnified against all loss. (Sir Lawrence Jenkins.) JUSCURN BOID v, PIRTHI-CHAND LAL. (1918) 46 I. A. 52 (56-8)=

46 C. 670 (678 9) = 21 Bom. L. R. 632= 23 C. W. N. 721 = (1919) M. W. N. 258 = 30 C.L.J. 71 = 26 M. L. T. 131=17 A. L. J. 514=50 I. C. 444= 36 M. L. J. 557.

· Nature of.

A patni talook was sold for arrears of rent under the Bengal Patni Taluks Regulation VIII of 1819. The pur-32 M. L. T. 86 (P. C.) = A. I. R. 1923 P. C. 31. chaser paid the entire amount of the purchase money and

Arts. 62, 97-Applicability-(Contd.)

received a certificate of payment under S. 15 of the Regulation. He also received the usual order for possession. A darpatnidar, who was desirous of contesting the right of the Zemindar to make the sale, sued her for its reversal and obtained a decree for its reversal. In a suit brought thereupon by the purchaser for the recovery from the Zemindar of a specified sum, the aggregate of several sums of money being (a) the amount of rent arrears due and paid by the Collector to the Zemindar out of the purchase-money; (6) the expenses of the sale appropriated by the Collector out of the purchase-money; (c) the patni rents paid to the Zemindar subsequent to the sale; and (d) interest on those several sums and on the balance of purchase money left in the hands of the Collector, Quaere: whether, in view of the peculiar character of a sale under the Regulation, the suit could be said to be one "for money paid upon an existing consideration which afterwards fails

Semble the facts more nearly approach the formula of "money had and received by the defendant for the plaintiffs" use," if read as a description and apart from the technical qualifications imported in English law and procedure. (Six Lawrence Jenkint.) JUSCURN BOID 5. PIRTHICHAND-LAL. (1918) 46 I. A. 52 (55-6) = 46 C. 670 (677-8) = 21 Bom. L. R. 632 = 23 C. W. N. 721 =

(1919) M. W. N. 258 = 30 C. L. J. 71 = 26 M.L.T. 131 = 17 A. L. J. 514 = 50 I. C. 444 = 36 M. L. J. 557.

— Hindu joint family governed by Mithila law-Father and manager of—Sale of family property by, invalid against other members—Purchaser's suit to recover purchase-money in case of—Limitation—Starting point of —Date of sale—Date on which purchaser found himself unable to obtain possession.

On the 1st of August, 1879, D, the father of the respondents and the Kurta of a Mithila joint Hindu family consisting of the respondents and others, sold to the appellant a portion of the joint family property in consideration of a sum of money then paid by him to D. The appellant applied to the Collector for mutation of the share purchased into his name, but, on objections made by the respondents, that application was dismissed. Thereupon the appellant instituted a suit on the 10th March, 1881, against D and the other members of his family, including the respondents, for possession of the share purchased by him. The Sub-Judge decreed the suit; the District Judge dismissed it on the ground that II had no authority without the consent of his co-sharers to sell a portion of the joint family property in order to raise money on his own account, and not for the benefit of the family; and on appeal by the appellant to the High Court that court dismissed the appeal. On the 4th of March, 1885, the appellant instituted the suit out of which the appeal arose against the respondents, the surviving members of D's family for the recovery of his purchasemoney and interest. The question was whether the suit was barred by the Law of Limitation.

Held that the case fell either within Art. 62 or Art. 97 of the Limitation Act of 1877 and that the suit was barred (164).

If there never was any consideration, then the price paid by the appellant was money had and received to his account by D within the meaning of Art. 62. But their Lordships are inclined to think that the sale was not necessarily void, but was only voidable if objection were taken to it by the other members of the joint family. If so, the consideration did not fail at once, but only from the time when the appellant endeavoured to obtain possession of the property, and

### LIMITATION ACT IX OF 1908-(Contd.)

Arts. 62. 97-Applicability-(Contd.)

being opposed, found himself unable to obtain possession. There was then, at all events, a failure of consideration, and he would have had a right to sue at that time, to recover back his purchase-money upon a failure of consideration; and therefore, the case appears to them to be within the enactments of Art. 97. (104). (Sir Richard Couch.) HANUMAN KAMUT 7. HANUMAN MANDAR.

(1891) 18 I. A. 158 - 19 C. 123 - 6 Sar. 91.

——Hindu Law-Reversioner presumptive-Sale of expectancy by—Purchaser under—Suit for compensation by—Limitation—Starting point of—Date of sale—Date of payment of purchase-money—Date of resistance to demand for possession.

The presamptive reversioner to an Oudh estate obtained a decree declaring his right to succeed to the estate on the death of the last surviving widow of the last male holder of the estate. After obtaining that decree, but before the death of the last surviving widow, the reversioner executed a sale deed in respect of a portion of the estate, undertaking by the deed to deliver possession of the portion sold when he succeeded to the estate. The sale deed being invalid and ineffectual to pass title, the question arose as to the limitation period applicable to the vendee's claim for compensa-The suit was instituted within 3 years of the date on which the vendee's demand for possession was resisted. The Courts below held that the limitation period ran from the date of the payment of the purchase money or the date of the execution of the sale deed, and that in either view the suit was barred under Art. 62 or Art. 97 of the Limitation Act.

Held, reversing the Courts below, that in the peculiar circumstances of the case, time began to run only from the date when the vendee's demand for possession was resisted, and that the claim was not barred.

There was a misapprehension as to the private rights of the vendor in the portion which he purported to sell by the deed of sale, and the true nature of those rights were not discovered by the sendee or his widow, the plaintiff, earlier than the time at which the vendee's demand for possession was resisted. It was thus that the agreement was discovered to be void, and the discovery in their Lordships' view was one within the words and the meaning of S. 65 of the Contract Act. (Sir Lawrence Jonkins.) HAINATH KUAR v. INDAR BAHADUR SINGH. (1922) 50 I. A. 69 (76) =

45 A. 179 (184 5) = 9 O L J. 652 = 37 C. L J. 346 =
A. I. R. 1922 P. C. 403 = 9 O. & A. L. R. 270 =
27 C. W. N. 949 = 5 Pat. L. T. 281 = 2 Pat. L. R. 237 =
33 M. L. T. 216 = 18 L. W. 383 = 26 O. C. 223 =
71 I. C. 629 = 44 M. L. J. 489.

- Vendee-Specific performance or re-fund of portion of purchase money paid-Suit for-Limitation as regards latter relief-Sale found to be unenforceable because of uncertainty of its terms.

A vendee under a contract to sell property sued for specific performance of the contract, or, in the alternative, for a refund of the money paid by the plaintiff in part satisfaction of the purchase-money. The High Court found the contract to be unenforceable owing to the uncertainty of its terms. They decreed the refund of the money prayed for by the plaintiff, holding that the claim to it was not barred under Art. 97 of the Limitation Act, the art.cle applicable to the case. Their view was that there was an existing consideration for the payment which only failed by reason of their judgment holding the contract to be unenforceable and

# LIMITATION ACT IX OF 1908—(Contd.) Arts. 62. 97—Applicability—(Contd.)

that under Art. 97 limitation ran-only from the date of the failure of the consideration.

Their Lordships affirmed the High Court. (Lord Macnaghten.) AMMA PIBLE, UDIT NARAYAN MISRA.

(1908) 36 I A. 44 - 31 A. 68 - 6 M. L. T. 89 -9 C. L. J. 512 - 11 Bom. L. R. 525 - 1 I C. 890 -19 M. L. J. 295.

#### Arts. 66. 132.

- Applicability - Mertgage - Personal Trability under - Claim to enterior.

In a suit to enforce a mortgage, by which certain property was pledged to the mortgagee for a mortgage debt, the plaintiff sought two remedies, one against the mortgaged property, and the other by rendering the other property and the person of the defendant liable. By the mortgage deed the mortgager gave the mortgages a pledge of certain fixed immoreable property, and also gave as a further security his personal hand or covenant.

Held that Art, 65 of the Limitation Act of 1871, applicable to money demands, applied to the plaintiff's demand for a personal remedy against the mortgagor (14).

It was contended that the period of 12 years given by Art. 132 of the said Act applied to every remedy which the instrument carried with it, and gave 12 years for the personal remedy against the mortgaged property. Looking at the previous language with reference to personal suits, and at the language of Art. 132, their Lordships must read the latter as having reference only to suits for money charged on immoveable property to raise it out of that property (15). (Lord Fit: Gerald.)

RAMDIN 7. KALKA PERSHAD. (1884) 12 I. A. 12 = 7 A. 502 = 4 Sar. 619.

The claim of a mortgagee to make the mortgagor personally liable for any deficiency in the realization of the mortgage debt out of the mortgaged properties is governed by the three years' period of limitation provided by Art. 66 of the Limitation Act and not by the 12 years fixed by Art. 132 of that Act (139.40). (Mr. Ameer Mi.) GANESH LALPANDIT r. KHETRAMOHUN MAHAPATRA.

(1926) 53 I. A. 131 - 5 Pat. 585 = 24 A. L. J. 615 = 28 Bom. L. R. 931 = 43 C. L. J. 545 = 24 L. W. 50 = (1926) M. W. N. 535 = 3 O. W. N. 591 = 7 P. L. T. 501 = 31 C. W. N. 25 =

A. I. R. 1926 P.C. 56 = 95 I. C. 839 = 51 M. L. J. 82.

### Art. 85.

APPLICABILITY-' DEL CREDERE' AGENT.

### MUTUAL, OPEN AND CURRENT ACCOUNT.

- Il'hat amounts to.

A question has been raised as to whether the dealings between the respondent and Mwere mutual as well as open and current, and involved reciprocal demands between the parties so as to make Art. 85 of the Limitation Act of 1877 applicable. The dealings were certainly not the ordinary ones of banker and customer, but rather in the nature of mutual accommodation, but it is unnecessary to decide this question. (Six Alfred Wills.) Maniram r. Seth Rup-Chand. (1906) 33 I. A. 165 (170) = 33 C. 1047 (1056) =

4 C. L. J. 94 = 8 Bom. L. R. 501 = 10 C. W. N. 874 = 1 M. L. T. 199 = 3 A. L. J. 525 = 2 N. L. R. 130 = 16 M. L. J. 300.

### LIMITATION ACT 1X OF 1908—(Centd.) Art. 85—(Contd.)

MUTUAL, OPEN AND CURRENT ACCOUNT-(Contd.)

——Principal and Agent—What amounts to such accounts between—Balance due on such accounts—Principal's suit against Agent for—Limitation.

The suit was brought on 28.2-1871 by the appellant, as manager of the estate of C. and Co., against the respondents, to recover a sum of money, alleged to be the balance of an account due from the respondents to C and Co. The question for decision was whether or not the plaintiff's claim was barred, at least as to many items of the account, by the clause of Act XIV of 1859, which prescribed a three years' limitation for suits for breaches of contract, money lent, and the like.

The coerse of dealing between C. and Co. and the respondents was regulated, at all events after that date, by the agreement of 17.5.1867. Under the agreement the course of dealing between C. and Co. and the respondents was the ordinary course of dealing between principal and agent; C. and Co. being often in advance on account of their principals; and being, on the other hand, responsible for the proceeds of the timber sent down from the forests to them for the purpose of sale, and sold by them. The agreement, which started with an admitted balance of Rs. 44,000, clearly contemplated the existence of an account curtent between the two firms containing mutual items of debit and credit. The 9th clause of it contained a distinct stipulation that on the adjustment of the accounts the respondents should be bound to pay such balance as might be then found due from them. The account was accordingly kept as one continuous account, and there were several items which brought the mutual dealings down to March or May, 1868.

Held that the plaintiff's claim did not fall within the three years' limitation 350.

It would be a misapplication of the law to treat the claim as barred as to some, and valid as to other items of the account. The acount was one continuous account between principal and agent, with debits and credits on each side of it, and the contract was to pay the balance of that account when it should be struck. The case therefore falls within S. 8 of Act XIV of 1839 (359-60) (Sir James W. Colvile.) WATSON p. AGA MEHEDEE SHERAZEE.

(1874) 1 I.A. 346=3 Sar. 384.

### Art. 89.

AGENT-SUIT FOR ACCOUNTS AGAINST.

- Limitation - Starting point - Termination of agency.

The appellant and the respondent were two brothers, who remained joint in all their estate until 1882, and in business till 1885. The evidence showed that each acted for the other in the receipt of the profits of their estate, and, when necessary for more important matters, powers-of-attorney were granted by the one to the other. On 22nd December, 1885, appellant brought a suit for, inter alia. the recovery of his share of a certain item of the joint estate. To this suit the respondent, besides limitation, pleaded that the brothers had been joint owners, that there must be a general account between them as partners, and that no action could lie for what was only one item in an account. On 9th November, 1888, the respondent himself brought a suit against the appellant for an account and payment of the balance.

Held that Art. 89 of the Limitation Act governed the respondent's suit and that it was not barred by limitation.

The two brothers were agents the one of the other in dealing with the joint estate. The evidence of the appellant shows that the relation of agency continued down

Art. 89-(Contd.)

AGENT-SUIT FOR ACCOUNTS AGAINST-(Contd.) to the institution of the suit, and accordingly the plea of limitation fails (238). (Lord Robertson.) ASHGAR ALI

KHAN v. KURSHED ALI KHAN. (1901) 28 I. A. 227 = 24 A. 27 (42 3) = 3 Bom. L. R. 576 = 8 Sar. 142.

-Principal's sons-Suit by, after his death-Periol for which agent liable to account-No demand and refusal during lifetime of principal or after his death.

The appellant's father, N, was the owner of one movety and his uncles, the respondent and C, were the owners of the other moiety of a lakhraj estate. In or about the year 1894, N entered into an agreement with the respondent under which the respondent was appointed agent for the purpose of collecting rents and profits from the forest Land comprised in the estate, rendering accounts of his manage-ment from time, to time to N. N died in July 1899. He left three sons, the appellants, two of whom were minures and did not attain age until the hearing of the suit by the first Court. For about 2 years after the death of the appellant's father, the respondent managed the property on the same terms as before. The agency was terminated by a notice dated 16th January, 1902. In September, 1904, the appellants commenced the suit out of which the appeal arose against the respondent claiming a declaration that the respondent was liable to render accounts to the plaintiffs of the amount realised in respect of the said property for the whole period of the agency.

The Sub-Judge ordered an account of the income and expenditure in regard to the Forest Mahal from the month of July-August 1896 to the month of January 1902. The High Court on appeal varied the decree so as to limit the account to five months from August 1901 to January 1902,

Held, that the decree of the Sub-Judge ought to be

restored (7).

It was not argued that, after the death of N in July 1899, the position of the respondent was altered or that he became a trustee in place of an agent. Consequently, Article 89 of the Limitation Act, 1877, applies, and the only point for decision is whether the provisions contained in this Article protect the respondent against a liability to render accounts from the month of July-August 1896 and limit his liability to render accounts from August 1901 (7).

In Article 89 of the Limitation Act, the period of limitation is three years from the date when the account is demanded, or from the conclusion of the agency. It appears doubtful how far there had been any demand and refusal during the lifetime of N, but in any case at the date of his death his representatives would have been entitled to demand an account for a period of three years. There is no evidence of any kind that a demand and refusal of accounts were made by or on behalf of the appellants after the death of N (7-8). (Lord Parmour.) NOBIN CHANDRA BARUA (1916) 44 C. 1= D. CHANDRA MADHAB BARUA. 5 L W. 452 = 20 M. L. T. 430 = (1916) 2 M.W.N. 565 = 21 C. W. N. 97 = 24 C. L. J. 509 = 18 Bom. L. R. 1022 = 14 A. L. J. 1199 = 36 I. C. 1 = 31 M. L.J. 886.

APPLICABILITY-HINDU JOINT FAMILY.

Manager of - Family outstandings collected and misappropriated by-Claim by junior member in respect of-Limitation.

Plaintiff was a junior member of a joint Hindu family. Alleging that there had been a division of status between the members of the family, and a partition between them of certain immoveable property, plaintiff sued for partition and allotment to him of his share of the suit property. He further made a claim against the manager of the joint property in respect of certain family outstandings alleged to have been collected and misappropriated by the latter.

LIMITATION ACT IX OF 1908-(Contd.)

Art. 89-(Contd.)

APPLICABILITY—HINDU JOINT FAMILY—(Contd.)

Held, that the Article of the Limitation Act applicable to the claim in respect of the family outstandings was Article 89, and that, no demand from which under that Article time would run having been proved at the trial, the claim was not barred. (Lord Tomlin.) VIRAYYA 7, ADENNA. (1929) 51 C. L. J. 136 = 31 L. W. 176 =

1980 M. W. N. 60 - 121 I. C. 205 - 32 Bom L. R. 499 -A. I. R. 1930 P. C. 18-58 M. L. J. 245 (251).

Partition- Money-dealings by one of separated members after, on behalf of himself and others-Latter's suit against former for accounts of. See ARTS 62, 89.

(1922) 27 C.W.N. 725 (733).

MOVEABLE PROPERTY-MEANING OF.

-11 includes money.

The words "moveable property" in Art. 89 includes money (238). (Lord Robertson.) (1901) 28 I. A. 227 = 24 A. 27 (43) = 3 Bom. L. R. 576 = 8 Sar. 142.

### Art. 91.

APPLICABILITY.

-Benamidar-Real owner's suit for pessession against. See ART. 144-BENAMIDAR.

-- Maintenance grant for life of granter-Lease by grantee unier-Lessee allosed to remain in persession as mokarrari tenant for his life-Suit by granter for possession on death of.

The grantee of a village from a Zemindar under a grant made in lieu of maintenance died childless, having previously executed a permanent pottalt in respect thereof to k. The grant being only one for life, R's tenure came to an end at latest on the death of the grantee. But R was left in possession by the grantor's successor, and by P, the son of the latter. It appeared from the evidence that Rhad been so allowed to remain in possession as a mokurrari tenant for his life.

P brought a soit for a declaration of his rights after the death of R in the village. A' died pending the suit, and, on his death, the plaint was amended, and a prayer for possession was added.

Held, that the suit, as amended, was not barred under Art. 91 of the Limitation Act.

R having been allowed to remain in possession as a mokurrari tenant for his life, no suit could have been brought for recovery of possession until A's death. With regard to the plea of limitation, it was said that P's father and afterwards P might have sued for a declaration of his right to possession on R's death under S. 39 of the Specific Relief Act at any time after the death of the grantee under the grant for maintenance, and that the suit as originally framed was in fact one of that character. The answer to this contention is that, though such an action might have been brought, the Zemindar was not bound to bring it, and there was no necessity for him to do so. The pottah (whatever its construction) had become a spent instrument, and had no longer any validity as a grant of the property. (Lord Datey.) MAHARANI BENI PERSHAD KOERI E. DUDH (1899) 26 I.A. 216 (2234)= NATH ROY.

27 C. 156 (165 6) = 4 C.W.N. 274 = 7 Sar. 580.

Will-Carr of.

Art, 91 of the Limitation Act of 1877 has no application to the case of a will. (Lord Watson.) SAJID ALI AND (1895) 22 I.A. 171 (177) = WAJID ALI P. IBAD ALI. 23 C. 1 (10) = 6 Sar. 627.

AWARD-SUIT TO SET ASIDE.

Limitation-Starting point-Date of award-Date of Court's refusal to file it.

### LIMITATION ACT IX OF 1908 - (Central.)

Art. 91-(Contd.)

AWARD—SUIT TO SET ASIDE—(Contd.)

The time allowed for a suit to set aside an award begins to run from the date of the award, and not from the date when the Court refused to file it. (Lord Atkinson.) KIRK-WOOD also MA THEIN P. MAUNG SIN.

(1925) 52 I.A. 265 (277) = 6 L.R. P.C. 160 = A.I.R. 1925 P.C. 216 89 I.C. 773.

Minor-Suit by, on attaining majority-Limitation -Minor and his guardian aware of facts entitling them to set ande award.

Where plaintiff and his guardian were perfectly aware of facts entitling them to set aside an award, plaintiff must prove that he attained majority within 3 years of the suit. (Lord Atkinson.) KIRKWOLD alias MA THEIN D. (1925) 52 I.A. 265 (274 5. 277) 6 L.R. P. C. 160 - A.I.R. 1925 P.C. 216 - 89 I.C. 773.

-Suit questioning legal effect of a clause in it but seeking to coloree it in far as it was legally valid not a.

A plaintiff who contends that an arbitrator has no power to make an unauthorised addition to an award already made and sought to be enforced by him is not in any sense seeking to cancel or set aside the award within the meaning of Art. 91 of the Limitation Act. Neither does the contention that a particular clause in the award is altra vires and invalid bring the case within the Article.

In a suit for partition of properiies dealt with by an award, the plaintiffs alleged that a clause in it restraining partition was invalid in law and that another portion of it was a subsequent illegal addition to the award as originally made and in other respects his claim was in terms of the award and not in contravention of it,

Held, that the suit was not to set aside the award within the meaning of Art. 91 of the Limitation Act but to enforce it so far as it was legally valid.

The plaintiff disputes the legal effect of a particular clause in the award but does not seek to cancel or set aside the award. (Lord Lindley) JAFRI BEGAM v. SYED ALI KAZA. (1901) 28 I A. 111(118)-

23 A. 383 (391 2) -5 C W.N. 585 - 3 Bom. L.R. 311 = 8 Sar. 27 - 11 M.L.J. 149.

#### HINDU WIDOW.

-Lease by-Reversioner's suit to recover property subject of, on her death. See ART. 141-WIDOW-LEASE (1907) 34 I.A. 87 (91.2) = 34 C. 329 (332.3). BY.

SALE DEED-VENDOR'S SUIT TO SET ASIDE

-Applicability of Article to-Possession of property conveyed by deed-Proyer in plaint also for-Setting aside of deed on payment of what had been advanced under it condition precedent to recovery of possession.

The suit was to set aside a deed of sale executed by the plaintiff and to recover back the properties conveyed by it, on the ground that the deed had been obtained at an inadequate consideration, by fraud and undue influence.

Held that the suit fell within Art. 91 of the Limitation Act of 1877 (152 3).

The suit was not a suit for the possession of immoveable property in the sense to which the limitation of 12 years is applicable. The immoveable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced under it (152-3). (Sir Richard Couch.) RANI JANKI KUNWAR v. RAJA -AJIT SINGH. (1887) 14 I. A. 148=15 C. 58(64.5)= 5 Sar. 92.

-Limitation-Starting point-Unconscionable bargain evidencing fraud and undue influence-Deed sougt to be set aside on ground of.

### LIMITATION ACT IX OF 1908—(Contd.)

Art. 91-(Contd.)

SALE DEED-VENDOR'S SUIT TO SET ASIDE-(Contd.)

The suit, which was instituted in 1884, was to set aside a sale executed in 1872 by the 1st plaintiff and to recover possession of the properties conveyed thereunder. The 2nd plaintiff was the wife of the 1st, and claimed under a gift deed executed by him. The case of the 2nd plaintiff was, that the value of the property was such that, having regard to the amount that was given first, the sale was an unconscionable bargain on the part of the purchaser, affording evidence that the transaction was a fraudulent one on his part, and was brought about by the exercise of undue influence by him, and that in fact he procured the 1st plaintiff to be surrounded by persons in the purchaser's own interest, and acting for him, and the 1st plaintiff was not in a condition to have, and had not the advice which he ought to have had.

The plaint gave as the date of the fraud having come to 2nd plaintiff's knowledge, 772., 25-8-1882. The facts relied upon by the plaintiffs were, however, facts which must have been known long before 25-8-1882, and it was not alleged that any new matter was then discovered.

Held that the suit was barred under Art. 91 of the Limitation Act of 1877 (151-2.) (Sir Richard Couch.) RANI JANKI KUNWAR P. RAJA AJIT SINGH.

(1887) 14 I. A. 148=15 C. 58 (64)=5 Sar. 92,

-Arts 91, 120. 144-Applicability - Deed-Land claimed by defendant under-Suit in form for possession of-Cancellation of deed or declaration of its invalidity against plaintiff substantial relief sought and only relief which court had jurisdiction to grant.

Where, though a suit was in the plaint made to look as much like a suit for recovery of land as possible, the canrellation of a deed under which the defendant claimed perpetual under proprietary right in the said land or a declaration of its invalidity as against the plaintiff was the substantial relief sought and the only relief which the Court had jurisdiction to give in the suit, held that the relevant Article of the Limitation Act applicable to the suit was either Art. 91 or Art. 120.

Quare whether the starting point of limitation was the date of the death of the grantor of the deed (plaintiff's grandfather) or the date on which the plaintiff became aware of the said deed. (Lord Datry.) RAJA RAMPAL SINGH 2. BALABHADUR SINGH.

(1902) 29 I. A. 203 (210-3) = 25 A. 1 (16-18) = 6 C. W. N. 849 = 4 Bom. L. R. 832 = 8 Sar. 340.

Art. 92-Issued-Instruments to which, applicable -Authority to adopt-Expression inapplicable to

The word "issued" in Article 92 is intended to refer to the kinds of documents to which people commonly apply that term in business, and it has no application to an instrument such as a power to adopt (101). (Lord Morris.) HURRI BHUSAN MOOKERJI :: UPENDRA LAL MOOKERJI. (1896) 23 I. A. 97 = 24 C. 1 (7) = 6 Sar. 680.

-Arts. 92 & 93-Applicability-Adoption by widow Declaration of invalidity of - Suic for—Authority to adopt -Declaration of spurious and false nature of-Prayer in plaint also for. See Under this Act-ART. 118-WIDOW. (1896) 23 I. A. 97 (101) = 24 C. 1 (8).

-Registration or attempt-Construction of.

Registration or attempt in Art. 93 of the Limitation Act of 1871 must be construed with regard to the words in the former paragraph, that is the date of the registration, or the date of the attempt to enforce the deed (205). (Sir Robert P. Cellier.) FAKHARUDDIN MAHOMED CHOWDHRY v. OFFICIAL TRUSTEE OF BENGAL

(1881) 8 I. A. 197=8 C. 178 (188)=10 C. L. R. 176=

4 Sar. 270.

2722

### LIMITATION ACT IX OF 1908-(Contd.)

#### Art. 93.

-Attempt to enforce deed-Meaning of. See under this article HIBBANAMAH.

(1881) 8 I. A. 197 (206) = 8 C. 178 (188).

-Authority to adopt-Attempt to inferee-Adoption pursuant to authority without nothing more if an.

It is very difficult to say that an adoption by a Hindu widow to her husband in pursuance of a written authority followed by nothing more is in any sense an enforcement of the power against other persons. It is not to within Art. 93. If it were, Art. 118 would bave no force in cases where the plaintiff impugns an adoption on the ground that the power alleged for it is not genuine (101). (Lord Morres.) HARI BHUSAN MOOKERJI v. UPENDRA LAL MOOKERJI.

(1896) 23 I. A. 97 = 24 C. 1 (8) = 6 Sar, 680.

-Hibbanamah - Suit to declare forgery of - Suit to set it atide on the ground that it was false and fabricated if an-Attempt to enforce hibbanama-What amounts to.

A suit by a Mahomedan lady against her husband. A. for the purpose of obtaining possession, together with mesne profits, of certain lands alleged to have been conveyed to her by her husband, was decreed by the High Court in her favour by a written judgment, dated 27th July, 1864. Before the date of the written judgment, but after an oral judgment had been pronounced, that is, on 17th July, 1864, the lady executed a hibbanama or deed of conveyance to one P, of a 6-anna share in the decree, in consideration of an advance by him. In 1865 P applied, upon the strength of that hibbanama, to be admitted as a respondent in the appeal to the Privy Council preferred by A, the husband, against the decree of the High Court. That application was opposed by A, but finally an order was made in 1866, permitting P to be added as a respondent, but declaring it to be open to d to bring an action or any proceeding he might think fit, at any time, for the purpose of setting aside the hibbanama, which A disputed.

In a suit brought by A in the year 1875 to set aside the hibbanama on the ground that it was false and fabricated, held that the suit was a sait to declare the forgery of the hibbanama within the meaning of Art. 93 of the Limitation

Act of 1871 (205).

Held further that when P, in the year 1865, set up the hibbanama, and insisted upon it for the purpose of being made a respondent in the suit, and when that application was opposed by A, and, the parties being heard, P succeeded in his attempt to become a respondent, without prejudice, in the words of the order, to any action or proceeding to be brought by A, that was an attempt to enforce the deed within the meaning of the said Article, and that limitation for the suit began to run from that date (206).

Held also that, as the deed was registered on the 19th of July, 1864, the Statute of Limitations doubly applied (206). (Sir Robert P. Collier.) FAKHARUDDIN MAHOMED AHSAN CHOWDHRY 2. OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I. A. 197 = 8 C. 178 (188-9) = 10 C. L. R. 176 = 4 Sar. 270.

#### Art. 95.

- Applicability-Benemidar-Decree collusive against
-Property sold in execution of Real owner's suit to recover-Limitation-Setting aside of decree or sale-Neces-

A took a dur-putni in the name of his son-in-law, B. The putnidar, who was aware of the benami transaction, brought a collusive suit for rent against B, obtained a decree, executed it, and purchased the property on the 20th June, 1891; A became aware of this fraud on the 29th of July, 1892, and sued to recover possession on the 25th of October, 1895. Held that the suit was not barred under Art. 95 of the Limitation Act.

### LIMITATION ACT IX OF 1908-(Contd.)

Art. 95-(Contd.)

Nothing that happened between the putnidar and the beaami dur-putnidar could affect the title of the real durputnidar, unless he was estopped from denying the authority of his benamidar to deal with it. On the facts of the case no such estoppel could exist, and, therefore, the putnidar could not acquire from the benamidar more than the latter had to give. (Lord Cellins.) ANNADA PERSHAD PANJAR (1907) 34 I. A. 138 (141)= r. PRASANNOMOVI DASL

34 C. 711 - 6 C. L. J. 17 - 11 C. W. N. 817 = 9 Bom. L. R. 743 = 2 M. L. T. 397 - 4 A. L. J. 467 = 9 Sar. 251 = 17 M. L. J. 358.

-Execution-Fraudulent concealment of-Decreeholder's purchase through benamidar by concealment of refusal of leave to bid if. See S. 18-EXECUTION SALE.

(1922) 49 I. A. 312 (318) = 1 Pat. 733 (739-40). Sale deed obtained by fraud from deceased lady-Suit by her heirs to cancel, and to recover immoveable property conveyed thereunder-Limitation-Starting point.

The suit by the plaintiffs was to recover possession of a talook, and to cancel and invalidate a deed of sale thereof executed by a lady, who last held possession of the talook, in favour of the appellant's father.

Held that if the plaintiffs were to be taken to sue as the heirs of the lady, to set aside a conveyance obtained from her by fraud, their right of action accrued at the date of the conveyance, and their suit was just within even the twelve years' fimitation (535). (Sir Edward V. Williams.) JOWALA BUKSH P. DHARUM SINGH.

(1866) 10 M. I. A. 511 = 2 Sar. 189.

### Art. 96.

Applicability - Canal dues under Agra Land Revenue Act of 1873 - Money wrongly recovered by Secretary of State under head of-Suit for recovery of. See AKIS. 14 AND 96. (1903) 30 I.A. 172 (173-4)= 25 A. 529 (531).

### Art. 97.

-Delt recited in sale deed by deltor to creditor to be set off against price pursuant to agreement to that effect-Recutery of, on sale being subsequently held to be unenforceable-Suit for-Limitation-Starting point,

Kespondent, who owed a debt to B, agreed to convey property to B, and to have the debt payable by him set off against a portion of the price due to him. On 1-9-1879, the respondent executed and delivered to B a deed by which he acknowledged the receipt of the whole purchase money, and conveyed the property to B, and he indorsed on the deed a memorandum showing that the balance only of the price, after allowing for the debt, was paid in cash. Very soon after, however, B declined to complete the purchase, on the ground that the deed was not in accordance with the contract, and demanded what was owing to him. The quarrel between them was not about the retention by the respondent of his debt as part payment, and the payment by B of the balance, but about other matters. Thereupon the respondent sned B for specific performance of the contract and for a decree directing B to pay the balance of the price after setting off the delt due by him to B. The Sub-Judge decreed the suit on 24 2-1881; on appeal, the High Court reversed his decree and dismissed the suit on 14-3-1884, on the ground that there was no binding and enforceable contract between the parties. In a suit instituted by B on 10.9 1884 for the recovery from the respondent for the recovery of his debt with interest, held that the suit was not barred by limitation.

The decree of the High Court in 1884 brought about a new state of things, and imposed a new obligation on the respondent. He was now no longer in the position of being able to allege that his debt to B had been wiped out by the

Art. 97-(Centd.)

contract, and that instead thereof B was entitled to the property. He became bound to pay that which he had retained in payment for his land. And the matter may be viewed in either of two ways, according to the terms of S. 65 of the Contract Act, or according to the terms of Art. 97 of the Limitation Act. (Lord Hobbonse.) MUSSAMAT BASSO KUAR > LALA DHUM SINGH.

(1888) 15 I.A. 211 = 11 A. 47 - 5 Sar. 260.

——Guardian—Mertgag, of minor's property by, declared and in minor's ant—Money astranced under—Suit to recover, from guardian—Limitation—Starting point.

On 6.8-1507, the appellant and her busbond advanced Rs. 10,000 to the 1st respondent, a Mahomedan woman, then alleging herself to be the guardian of one M, her nephew, then a minor. She, as guardian of the said minor. executed in favour of the appellant and her husband a mortgage of two oil wells, professedly belonging to the said minor, to secure repayment of the money advanced with interest. The 1st respondent did for some time pay to the appellant and her husband the interest agreed by them to be payable on the money lent. Default in this respect having been made, appellant and her husband, on 5-2-1913, took proceedings, claiming the principal and interest as due from the 1st respondent and the minor. In that suit the Ist respondent made written admission of the debt. On 8.7-1913, a decree was passed in that suit as claimed. In execution of that decree the oil wells were sold by auction and purchased by one T, who afterwards resold them to the appellant and her husbond, who thus got possession of them. In or about April, 1915, however, M. the minor, sued the appellant and her husband and the 1st respondent to set aside the sale of the oil wells and for a declaration that the mortgage of 0.8-1907 was not binding on him. That suit was finally decreed on 11-3-1918 by the appellate Court, on the ground that the 1st respondent was not legally M's guardian and had no authority to mortgage his oil wells or to represent him in the suit on the mortgage. The appellant had thereupon to give up possession of the oil wells. The appellant's husband baying died, she, on 9-8-1919, brought the suit under appeal against the 1st respondent, the plaint submitting that, as the money borrowed by her could not be recovered from the minor, she should repay it with interest, and stating that the cause of action arose on 11-3-1918, when the appellate Court set aside the sale.

Held that the suit was for an existing consideration which afterwards failed within the meaning of Art. 97 of the Limitation Act of 1908, and that, having been brought within 3 years of the date of the failure of the consideration, it was not barred.

The facts of the case show that the appellant and her husband were, from the date of the loan (6-8-1907), down to 11-3-1918, not entitled to allege that they had not received any consideration for the loan that they had made—since for a considerable time they had actually received interest upon it, paid to them by the respondent. There was at the time of the loan no failure of the consideration upon which the loan of the money and the promise to repay it with interest were made—since the obligation of that promise was for some time observed—and the failure of consideration for the loan of the money did not occur until 11-3-1918 (151). (Lord Darling.) MA HNIT v. FATIMA BIBI. (1927) 54 I.A. 145-5 Rang. 283-

31 C.W.N. 830 = 4 O.W.N. 517 = 26 L.W. 429 = 46 C.L.J. 344 = 25 A.L.J. 918 = 29 Bom. L.R. 863 = 101 I.C. 414 = A.I.B. 1927 P.C. 99 = 52 M.L.J. 579.

—Arts. 97, 62—Applicability. See ARTS. 62, 97-APPLICABILITY.

### LIMITATION ACT IX OF 1908-(Contd.)

Art. 103-Prompt dower

DEMAND FOR.

-Abertity suit if a.

Querre, whether an aboutive suit by a Mahomedan wife against her husband for the recovery of prompt dower is a demand by way of action within the meaning of the statute which prescribes the period of limitation for a suit for the recovery of such dower (238). (Sir Montague E. Smith.) RANEE KHAJOOROONISSA: RANEE RYESOONISSA.

(1875) 2 I.A. 235 = 15 B.L.R. 306 = 24 W.R. 163 = 3 Sar. 526 = 3 Suth. 182.

#### DEMAND AND REFUSAL.

- Wife's application for leave to sue in forma pauperis
for such Jover-Counter of husband denying liability filed
in.

An application by a Mahomedan wife for permission to sue her bushand in forma pauperis for the recovery of her prompt dower was rejected by the Court on the ground that she had sufficient means.

Medd that the application did not amount to a demand by way of action sufficient to constitute a cause of action within the meaning of the statute, and that the fact that the husband, by his counter-petition, denied his liability to pay the dower and objected to the amount claimed did not alter the character of the proceedings (239-40).

The application of the wife is an expression, and a strong expression, of an intention to sue the husband in that form if she is permitted to do so, but it does not amount to a demand by way of action until she has that permission. And unless she had made a previous demand, no amount of opposition on the part of the husband would be sufficient to constitute a cause of action (239.40). (Sir Montague E. Smeik.) RANEE KHAJOOROONISSA P. RANEE RYESOONISSA. (1875) 2 I.A. 235 = 15 B.L.R. 306 = 24 W.R. 163 = 3 3ar. 526 = 3 Suth. 182.

SUIT FOR-LIMITATION-CAUSE OF ACTION.

—The suit was by a Mahomedan widow for the re covery of prompt dower from the heirs of her deceased husband. The question was whether the suit was or was not barred by limitation.

The husband died on 21-2-1854—more than 6 years, and less than 12 years, before the commencement of the suit. No divorce between the deceased and the plaintiff was proved. The suit was commenced on 3-9-1860, and the period of limitation was that fixed by Reg. III of 1793, S. 14, 272., 12 years.

### Held that the suit was not barred (136, 140). (Sir Barnes Peaceck.) MUSSUMAT MULLEEKA 7: MUSSUMAT JUMEELA. (1872) Sup. I.A. 135 = 11 B.L.R. 375 = 5 W R. 23 = 3 Sar. 220 = III C.G. Sup. Vol. 82 = 2 Suth. 766.

-Prompt dower is said to be exigible immediately. Macnaghten, in his principles of Mahomedan law, says: "Where it has not been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand." The word "exigible" implies that it may, not that it must, be exacted, and therefore it would seem that a cause of action in respect of it does not accrue so long as the marriage exists, until the wife does something to show that she requires it to be paid. According to the Mahomedan law a woman may refuse herself to her husband as a means of obtaining so much of her dower as is prompt. That is a mode of exacting it. But she is not obliged to adopt it. It is optional with her either to insist upon the payment of her prompt dower during her husband's lifetime, or to wait until the dissolution of the marriage (138-9). In Macnaghten's Precedents of Mah-

Art. 103-Prompt dower-(Centd.)

SUIT FOR-LIMITATION-CAUSE OF ACTION-(Contd.)

medan law, it is said: "The dower becomes due on the consummation of the marriage, or the death of either of the parties, or on divorce. Should the wife not claim the payment of it during the lifetime of her husband, it must be paid to her out of the property left by him on his decease

Held, therefore, that, in respect of prompt dower payable under the Mahomedan law, limitation does not begin to run before the dower is demanded, or the marriage is dissolved by death or otherwise (140). (Sir Barnes MUSSUMAT Peacock.) MUSSUMAT MULLEEKA P. (1872) Sup. I.A. 135 = 11 B.L.R. 375 = JUMEELA. 5 W.R. 23=3 Sar. 220=111 C. G. Sup. Vol. 82=

-Quare whether the limitation to be applied to a suit for prompt dower is that in cl. 9 of S. 1 of Act XIV of 1859, or that in the 16th (238). (Sir Montague E. Smith.) RANEE KHAJOOROONISSA :. RANEE RYESOONISSA.

(1875) 2 I.A. 235 = 15 B.L.R. 306 24 W.R. 163-3 Sar. 526-3 Suth. 182.

2 Suth. 766.

-Prompt or exigible dower may be considered a debt always due and demandable, and certainly payable on demand, and, therefore, upon a clear and unambigious demand and refusal a cause of action would accrue, and the Statute would begin to run (239). (Sir Montague E. Smeth.) RANEE KHAJOOROONISSA P. KANEE RYESOONISSA.

(1875) 2 I.A. 235 - 15 B.L.R. 306 -24 W.R. 163 = 3 Sar. 526 = 3 Suth. 182

Payment on demand- Proxition in deed of dower for. The material part of a deed of dower executed by a deceased Mahomedan in favour of the respondent on the occasion of his marriage with her was as follows :- " I acknowledge myself justly a debtor for the dower of my said wedded wife, to the amount of Rs. 46,000 of the present currency, the moiety whereof is Rs. 23,000, and the amount I acknowledge to be justly due, and when demanded by my said wedded wife, in the payment thereof, I will raise no objection, no excuse make, but will deliver the same to my said wedded wife."

Held that, upon the true construction of the deed, the respondent had a right of suit as regards the dower without a previous demand, and that she was not obliged to sue her husband immediately or in his lifetime (229).

It was contended that the form of the deed by the Mahomedan law was to make the dower exigible immediately, not only due but at once demandable, and that twelve years, the period of limitation, having expired during the lifetime of the husband, the claim to dower was barred under S. 14 of the Regulation of Limitation, III of 1793. It is important to consider how inconvenient it would be if a married woman was obliged to bring an action against her husband upon such an instrument; it would be full of danger to the happiness of married life (228-9). (Lord Justice Knight Bruce.) AMEER-OON-NISSA P. MOORAD-OON-NISSA

(1855) 6 M. I. A. 211 = 1 Sar. 533.

Art. 104.

-Deferred dower-Limitation - Cause of action-Divrec-Effect.

Quare whether, even in the case of a divorce, a cause of action accrues in respect of deferred dower before the repudiation has become irrevocable, or the dower has been demanded. (Sir Barnes Peacock.) MUSSUMAT MUL-LEEKA v. MUSSUMAT JUMEELA.

(1872) Sup. I.A. 135(140)=11 B. L. R. 375= 5 W. R. 23 = 3 Sar. 220 -- III C. G. Sup. Vol. 82 = 2 Suth. 766.

### LIMITATION ACT IX OF 1908 -(Centd.)

Art. 106-Partnership.

-Accounts of-Suit for-Cessation of annual accounts and making of final account-Effect. See PARTNERSHIP -DISSOLUTION-PRESUMPTION.

(1916) 36 M. 185.

- lecounts of-Suit for-Deceased person-Letters of Administration to estate of-Representative under-Suit

Defendants 1 and 2, and a widow, H, were partners in a firm. If died in 1889. Subsequent to her death, i.e., in 1895, the defendants 1 and 2 recovered by suits amounts due to the firm. // died leaving a minor heir. Letters of Administration to the estate of // were granted to the Administrator-General of Bombay in March 1894. In April 1894, the Administrator-General filed a suit on behalf of the infant heir of H alleging that the amounts recovered by defendants 1 and 2 as aforesaid belonged to the estate of 11 on the ground that she was the capitalist partner and was exclusively entitled to the amounts, and, if necessary, for an account of the partnership. The High Court in its appellate jurisdiction held that the suit was not barred under S. 17 of the Limitation Act of 1877.

On appeal their Lordships affirmed that decision.

The ground of the decision of the High Court was that the Administrator General having been the only person capable of suing within the meaning of S, 17, that section operated to allow the period of Art. 106 to be computed from the issue of administration of the estate of 11. (Lord Macmagnice.) PHUGWANDAS MITHARAM P. RIVETT CARNAC.

(1898) 26 I. A. 32 (36) = 23 B. 544 (549) = 3 C. W. N. 186 = 7 Sar. 541.

Accounts of -Widow of deceased partner-Suit by. Where, after a partition between the members of a joint Hindu family, the members continued to carry on a business which had, prior to partition, been carried on as a joint family business, held that the business became an ordinary partnership subject to the Contract Act, that the partnership was dissolved on the death of one of the members, and that a suit by his widow for an account of the dissolved partnership brought more than three years after her husband's death was barred under Art. 106 of the Limitation Act of

1908. (Lord Duncdin.) JATTI v. BANWARI LAL. (1923) 50 I. A. 192 (195) = 4 Lah. 350 = 21 A. L. J. 582 - A. I. R. 1923 P. C. 136 = 18 L.W. 273 - (1923) M. W. N. 687 - 28 C. W. N. 785 -25 Bom. L. R. 1256 = 33 M. L. T. 283 = 74 I. C. 462 = 45 M. L. J. 355.

-Administrator pendente lite-Partnership between testator and defendant-Dissolution and accounts of-

After the death of a partner his administrator pendente lite instituted a suit asking for a declaration that the partnership existing between the testator and the defendant had been dissolved by the testator's death, and for the usual partnership accounts.

Querr, whether the suit was one which the testator would, if he were living, have a right to institute within the meaning of S. 17, sub-S. (1) of the Straits Settlements Ordin-Ance No. 6 of 1896 (118). (Lord Parker.) MEYAPPA CHETTY P. SUBRAMANIAM CHETTY.

(1916) 43 I. A. 113 = 20 C. W. N. 833 = (1916) 1 M.W.N. 455 = 35 I. C. 323 = 18 Bom. L.R. 642.

-Dissolution and accounts-Suit for-Limitation-Prior litigation between parties in which defendant successfully contended that partnership was subsisting - Suit brought within three years of termination of - Effect.

In a suit for dissolution of a partnership and accounts and consequential relief, it appeared that in a prior litigation bet-

Art. 106-Partnership-(Cont.)

ween the parties, which terminated only within three years of the suit the defendants contended successfully that the part-

ner hip was still subsisting.

Hild that, under the circumstances, the partnership could not be held to have been dissolved more than three years before suit, and that the suit was therefore within time: (Lord Phillimore.) SATHAPPA CHETTI : SUBRAMANIAM (1927) 31 C.W.N. 857 - 1927 M.W N. 500 -

25 A. L. J. 687 = 25 L.W. 265 = 39 M.L.T. 232 = 4 O.W.N. 491 = 101 I. C. 17 = A I R 1927 P. C. 70 = 53 M. L. J. 245 (248).

#### Art. 109-Mesne Profits.

(See also MESNE PROFFIS.)

PERIOD FOR WHICH, ALLOWED.

-Art, 109 of the Limitation Act of 1877 limits the mesne profits to three years from when they are received. Held, therefore, that the Counc below erred in giving mesne profits for four years (159). (Sir Richard Conch.) MAHO-MED RIASAT ALL : MUSSUMAT HASIN BANG

(1893) 20 I. A. 155-21 C. 157-6 Sar. 374-R. & J.'s No. 133 (Oudh).

-Onth Talookdars' Relief Act XXIV of 1870-Settlement Officer or manager acting under-Disposession

by-Mesne profits in case of.

The plaintiff having been dispossessed of certain villages by the manager under the Oudh Talookdars' Relief Act XXIV of 1870, sued for and obtained a decree which declared him entitled to recover possession of those villages. The plaintiff then instituted another suit for the recovery of profits from the time of his dispossession and during the pendency of the prior suit, that is, for a period of nine years. The suit for the profits was originally instituted against the manager under the Oudh Talookdars' Relief Act, but the estate having, during the pendency of the suit, been released from management, and handed over to the respondent. a fresh summons was issued and served upon the respondent.

The plaintiff contended that his dispossession by the manager under the Oudh Talookdars' Relief Act was in the nature of a dispossession under a decree, because the Settle ment Officer, or the manager acting under the said. Act, was acting, as it were, judicially, and that he was therefore en-

titled to mesne profits for more than three years,

Held, over-ruling the contention, that the claim was barred except as to the mesne profits for the three years prior to suit (92). (Sir Richard Couch.) KISHNANAND F. KUNWAR PARTAB NARAIN SINGH.

(1884) 11 I. A. 88 = 10 C. 785 (790-1) = 4 Sar. 551 - R. & J.'s No. 80 (Oudh).

### SUIT FOR-LIMITATION.

-Erroneous but hona fide proceeding in execution for recovery of same-Period of pendency of-Exclusion of, See BENGAL REGULATIONS - ZILLAH COURTS REGULA-TION OF 1793. S. 14. EXCEPTION.

(1860) 8 M. I. A 308 (317-8).

-Starting point-Defendant precenting plaintiff from sning-Effect.

Where a purchaser of a four-anna share was kept out of possession of a portion of the property sold, and having recovered judgment in a suit brought for possession and mesne profits against the vendor, an arrangement was come to pending appeal, that within a year the parties should appoint an arbitrator to fix on the shares and make a division, and in default of such appointment an application should be made to the hakim, but that if no such application was made within the year, and a suit should be subsequently brought, the party suing should lose his right to mesne pro-

### LIMITATION ACT IX OF 1908-(Contd.)

Art. 109-Mesne Profits-(Contd.)

SUIT FOR-LIMITATION-(Contd.)

having prevented the plaintiff from making the necessary application within the year, and proceedings having gone on for years to carry out the partition, the plaintiff was, on the termination of those proceedings, entitled to sue for mesne

Where proceedings were going on to effect a partition the right to particular properties being in dispute, held that the right to mesne profits accrued at the termination of those proceedings, and that the party improperly kept out of possession was entitled to see for all mesne profits during the period of his non-possession, subject to any ground which the defendant could show which would entitle a Court of Equity to deprive the plaintiff of his rights.

In a suit brought in January 1862 respecting property situated in Assam, mesne profits for twenty-eight years prior to 1854 were decreed subject to any equitable claims for deducting any portion; Act XIV of 1859 not applying to Assam previous to July 1862. (Lord Cairns.) NILKOMAL

LAHURI P. SRI GUNOMANI DEBI.

(1871) 7 B.L.R. 113 (130-1) = 15 W. R. (P. C.) 38 = 6 M. J. 227 = 2 Sar. 651.

Art. 110-Rent -Arrears of-Suit for-Limitation. ARREAR BECOMING DUE-DATE OF.

-Close of fusli year-Date of ascertainment of rent-Other date.

The point of time from which, under. Art 110 of the Limitation Act, the period of limitation for a suit for arrears of rent is to run is that at which the arrear became due. In most cases, no doubt the point of time at which rent becames due is the close of the period in respect of which it is to be paid. But this is not necessarily always the case in India. Legislation, or custom, or express contract, or the special circumstances of any case may make rent become due at a point of time different from the close of the period in respect of which it is to be paid The object of the Limitation Act being presumably to compel people who have actionable claims to sue upon them with due promptitude or to forfeit the right to do so at all, the falling due of rent in such an Act naturally means the falling due of an ascertained rent, which the tenant is under an obligation to pay, and which the landlord can claim and, if necessary, sue for. (Sir Arthur Wilson.) RAJA RANGAYYA APPA RAO BAHA-(1903) 31 I. A. 17= DUR P. BORBA SRIRAMULU.

27 M. 143 (150) = 6 Bom. L. R. 241 = 8 C. W. N. 162 = 8 Sar. 617 = 14 M. L. J. 1.

LITIGATION PREVENTING RUNNING OF.

Proceeding for ascertainment of rate of rent if a.

As long as proceedings under S. 9 of the Madras Rent Rec very Act are pending before the Collector, and, on appeal from him, before the Civil Courts, the rate of rent is in suspense, for no one can say what it will prove to be, and therefore no arrear of rent can be said to have become due within the meaning of Article 110, until those preceedings are finally determined. There is no distinction in this respect between the case in which the pattah tendered has been ultimately approved by the Courts, and the case in which it has been modified.

Where, therefore, a landholder sued his ryot to enforce acceptance of a pattah for faslis 1295 to 1298, and the pattah tendered was modified ultimately by a decree of the High Court, and, within three years of the decree of the High Court but more than three years from the close of the respective faslis, the landlord sued for rent due for the said faslis, held that the arrears became due within the meaning of Article fits. Held that, under the circumstances, the defendant 110 only on the date of the decree of the High Court, and

Art. 110 - Rent - Arrears of - Suit for - Limitation -(Contd.)

LITIGATION PREVENTING RUNNING OF-(Contd.) that the suit was not barred. (Sir Arthur Wilson.) RAJAH RANGAYYA APPA RAO v. BOBBA SRIRAMULU.

(1903) 31 I. A. 17 = 27 M. 143 = 8 C. W. N. 162 = 6 Bom. L. R. 241 = 8 Sar. 617 = 14 M. L. J. 1.

Suit to eject tenants from their holdings if a. So BENGAL ACTS-LANDLORD AND TENANT PROCEDURE (1882) 9 I. A. 82 = 9 C. 255. ACT OF 1869, S. 29. Suit to s.t aside sale prior for same arrears if a. See LANDLORD AND TENANT-RENT-ARREARS OF-SUIT FOK-MAINTAINABILITY. (1868) 12 M.I.A. 244 (253 4).

POSSESSION OF LAND-SUIT TO RECOVER, BALKED.

Effect of.

If, in spite of length of possession, an action for use and occupation could be maintained, so loag as a plaintiff could show a good title in himself and a bad one in the oocupier, of what avail would any Statute of Limita-tions be? A man might be barred in an action directly brought to recover the possession, such as ejectment, and yet not be barred when he sued from year to year, for use and occupation, for a compensation for the fruits of the land; because in this the occupation would be referable to the sufferance and permission of the real owner, and so be a good consideration for an implied promise to pay what it was worth. But this clearly could not be; and so here, if no action could be maintained directly to recover the possession of the land, none can be brought to recover the rent, which is the compensation for the occupation-that occupation having been always of one and the same character; in fact, rent-free (219-20). (Sir John Coleridge) MUSSUMUT CHUNDRABULLEE DEBIA P L. DEBIA CHOWDRANI. (1865) 10 M. I. A. 214 = 5 W. B. 1

2 Sar. 119-1 Suth. 602.

REGISTERED CONTRACT IN WRITING, -Rent due under-Suit for. Ser ARTS, 116, 110, (1916) 44 I. A. 65-44 C. 759 (767-8). STARTING POINT OF.

-Sale prior for same arrears set aside in proceedings by tenant-Fresh suit by landlord in case of-Limitation for.

The sale of a putni talook for an arrear of rent under Regulation VIII of 1819 was set aside on the ground of irregularity in a suit brought for that purpose by the putnidars. The first judgment in the putnidars' suit was on 26-12-1860; the appellate judgment, the final judgment therein 30.6.1863. The effect of the judgment was, that the appellant (the Zemindar) had to pay back the purchase money to the purchaser, with interest; and that the putnidars were again put into possession of the talook. In a suit instituted by the appellant on 5-10-1863 in the Collector's Court under Act X of 1859 for recovery of the arrears of rent due to her for the year 1857-8, held that if the case had arisen in an ordinary Court of law, and the law of limitations to be applied was Act XIV of 1859, the suit would have undoubtedly been within time (252).

The cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this sum of money revived; and whether that time be taken to be the date of the first decree, or the date of the final decree, the present suit would, in either case, have been brought in time (252 3). Until the sale had been finally set aside, the appellant was in the position of a person whose claim had been satisfied; and her suit for the recovery of the arrears might have been successfully met by a plea to that effect (254).

(Sir James W. Colvile.) MUSSUMAT RANI SURNO MOYEE

P. SHOSHEE MOKHEE BURMONIA. (1868) 12 M. I. A. 244 = 11 W. B. (P. C.) 5= 2B. L. R. (P. C.) 10=2 Suth. 173=2 Sar. 424.

LIMITATION ACT IX OF 1908-(Centd.)

Art. 113.

-Benamidar-Sale to real owner of property held by -Contract by benamidar for, on foot of himself being legal and beneficial owner-Real owner's suit for execution of conveyance and recovery of property-Limitation.

The suit was to recover possession from the defendants of certain villages on payment of such sum, if any, as might be found due. It was instituted on 24th August, 1900.

The suit villages originally belonged to the plaintiff's late father. They were sold in 1883 in Court auction and purchased by the 1st defendant, the purchase being alleged by the plaintiff to have been made on behalf of his father. The 1st defendant had been in possession of the villages from 7th February 1890 up to the date of suit, acting as the absolute owner thereof. On the 28th August, 1888, a contract was entered into between the first defendant and plaintiff's father whereby the former consented to receive a stated sum and sell the suit villages to the plaintiff's father.

The Subordinate Judge held that, upon the true construction of the contract of 28th August, 1888, the 1st defendant was the owner of the suit villages, and agreed to sell the same to plaintiff's father for a stated consideration, to be paid or secured as provided for in the contract, and that the suit being essentially one for the specific performance of the contract, was barred under Article 113 of the Limitation Act. The High Court, on the other hand, held that upon the true construction of the contract the plaintiff was the beneficial owner of the villages and the 1st defendant only the legal owner; that the suit was really one for the possession of immoveable property by a beneficial owner thereof against the legal owner on payment, if necessary, of such sum, if any, as might be found due; and that the execution of a conveyance by the 1st defendant to the plaintiff was not essential, and was unnecessary if he got a decree for the recovery of the villages as beneficial owner. The High Court, accordingly, gave the plaintiff a decree for possession.

Held, reversing the High Court and affirming the Sul-Judge, that upon the true construction of the contract the 1st defendant was the legal and beneficial owner, that the contract was a contract for sale of the villages, and that the suit was one for the specific performance of the contract and was barred under Art. 113 of the Limitation Act (340-1).

Whatever may have been the original nature of the purchase by the 1st defendant or the arrangements entered into to raise the money required for the purchase by him at the execution sale, this contract of 28th August 1888 was a settlement of questions of account in relation to the said villages and other matters, and under the terms of it the first defendant is treated as the legal and beneficial owner. The second clause of the contract further strengthens this construction. It provides that the 1st defendant should rell the villages to plaintiff's father, and the plaintiff's father should purchase the same for the stated sum. "He should not sell to others without the consent of the Maharajulangaru" (plaintiff's father)-a provision which would be mean ingless unless he was the legal and beneficial owner. The fifth clause of the agreement provides for payment of interest on the purchase-money until paid, and that until the principal and interest are paid, the plaintiff's father should mortgage the villages which the 1st defendant had consented to sell, or other villages, etc.-properties which are acceptable to the 1st defendant as security for the said principal and interest-and execute a document therefor.

Their Lordships agree with the Sub Judge that no charge is created by the contract over the villages in question, and that the plaintiff had no right to recover possession of the property absolutely or conditionally on his executing a mortgage deed or making a payment to the 1st defendant. (Lord

Art. 113-(Contd.)

KATA PERUMAI, RAJA BAHADUR VARU

(1922) 49 I. A. 355 45 M. 641 -21 A. L. J. 297 = 37 C. L. J. 426 - 25 Bom. L. R. 640 -90. & A.L.R. 372 (P.C.) - 16 L.W. 169-31 M.L.T. 146 (P.C.) = A. I. R. 1922 P.C. 345 68 I. C. 172 - 44 M. L. J. 740.

-- Specific performance - Suit for - Limitation-

Starting fount.

In a suit instituted in 1912 for the specific performance of a contract of 1903, it appeared that the defendant was in a position to satisfy the contract in 1904, but that she refused to do so then or in 1905. Held that the sait was barred under Art. 113 of the Limitation Act. (Lerd Buckmaster.) MA SHWE MYAT, MAUNG MO HNAUNG. (1921) 48 I. A. 214 (218-9) - 48 C. 832 (836 7) -

(1921) M. W. N. 396 - 30 M.L.T. 28 -24 Bom. L. R. 682 - 63 I. C. 914 --A. I. R. 1922 P.C. 249.

-- Specific performance-Suit for - Nature of - Suit to enforce real rights created by a transaction net a

A suit for specific performance is essentially a suit for enforcing a stipulated obligation relating to property. The word "contract" itself primarily means a transaction which creates personal obligations, but it may, though less exactly, refer to transactions which create real rights Art. 113 of the Limitation Act is inapplicable to a suit brought for the enforcement of such real rights (16v). (Lord Buckmaster.) RANJIT SINGH ». MAHARAJ BAHADUR SINGH.

(1918) 45 I A. 162=46 C. 173 (181)= 25 M. L. T. 8 = 23 C. W. N. 108 = 16 A. L. J. 964 = 21 Bom. L. B. 506 = 10 L.W. 83 = 29 C. L. J. 193 48 I.C. 265 = 35 M. L. J. 728.

#### Arts. 113 and 144.

-Applicability-Chankidari Chakaran lands resumed by Government and transferred to Zemindar-Puturdar's suit to recover.

The respondent was the putnidar of half and darpatoidar of the other half of village G, and was putnitar of six other villages, all of the said villages being within the zemindary of the appellant. Some of the lands in those villages included in the patnis and the darpatnis were originally held as Chaukidari Chakaran lands, but were subsequently all resumed by the Collector under the Bengal Act VI of 1870, and then transferred to the appellant. On such resumption and transfer to the Zemindar, the respondent, as the patnidar or the darpatnidar, became entitled, under S.51 of Bengal Act VI of 1870, to possession of the Chaukodari Chakaran lands. The respondents' right to possession of the lands being denied, he instituted a suit for recovery of khas possession of the same from the appellant.

Held, that the suit was not one for specific performance of a contract within the meaning of Art. 113 of the Limitation Act, but was a suit for possession of immoveable pro-

perty within the meaning of Art. 144 thereof.

It does not follow that, because the rights originally arose by virtue of a grant declared to be a contract within the meaning of S. 51, they are therefore rights, contractual in the sense that the contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the putni grants were made the resumption of the Chaukidari Chakran lands was not even contemplated, and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession. Upon resumption of such possession the rights of the putnishar were those conferred on him by the estate and damages-Limitation.

#### LIMITATION ACT IX OF 1908-(Contd.)

Arts. 113 and 144 - (Contd.)

Carson.) SUBBARAYA PILLALO, RAJAH KUMARA VEN- interest created by the putni leases, and it was these rights that were kept alive by S. 51 of Bengal Act VI of 1870 (Lord Buckmaster.) RANJIT SINGH v. (166.7).MAHARAJ BAHADUR SINGH.

(1918) 45 I.A. 162 = 46 C. 173 = 25 M. L. T. 8 = 23 C. W N. 198 = 16 A. L. J. 964 = 21 Bom. L. R. 506-10 L. W. 83-29 C. L. J. 193-48 I C. 265 = 35 M.L. J. 728.

Breach of any contract—Meaning and effect of.

It was urged that the words " breach of contract" in S. 1,

cl. 9 of the Limitation Act of 1859 were not there used for the purpose of distinguishing actions founded on contract from actions founded on tort, but for the purpose of distinguishing actions to recover unliquidated damages for breach of contract. from actions to recover debts, and that the enumeration in the clause itself and in the 8th clause of several debts with respect to which the period of limitation is to be three years, proves that it could not have been intended to make the limitation for all debts three years under the words" breach of contract". Much difference of opinion has prevailed among the Judges in India respecting the proper construction to be put on the words " for the breach of any contract" in cl. 9 of S. 1. Their Lordships do not think it necessary or advisable that they should attempt on the present occasion to lay down what is the proper construction of those words as applicable to all cases (142-3). (Lord Justice Mellish.) OUKUR PERSHAD BUSTOOREE 7. MUSSAMUT FOOLCOOMAREE BEBEE.

(1871) 14 M.J.A. 134-16 W.R. (P.C.) 35= 10 B.L.R. 15 = 2 Suth. 482 = 2 Sar. 703.

-Del credere agent-Suit against, for balance of accounts of dealings not covered by express contract-Limi-

A suit against a del credere agent, on a balance of accounts in respect of dealings regarding which there is no express written contract, is governed by the three years' limitation prescribed by cl. 5, S. 1, Act XIV of 1859.

"The real debtors for the price of the goods sold are the purchasers of the goods, and the broker (agent) is only sued upon his collateral undertaking that, in consideration of the commission paid to him, he will pay the price of the goods if the purchaser fails to do so. An action on such an undertaking is an action on an express contract, and the sums which can be recovered under it are damages for a breach of contract." (Lord Justice Mellish.) OUKUR PERSHAD HUSTOOREE D. MUSSAMUT FOOLCOOMAREE (1871) 14 M.I A. 134 = 16 W R. (P. C.) 35= BEBFF. 10 B L R. 15 - 2 Suth. 482 = 2 Sar. 703.

#### Arts. 116, 110.

-Applicability-Rent due under registered contract in writing-Suit for.

Held, accepting the decisions of the Indian courts on the point, that a suit for rent on a registered contract in writing was governed by Art. 116, and not by Art. 110 of the Limitation Act of 1908.

The Limitation Acts of 1871 and of 1877, like that of 1859, draw a broad distinction between unregistered and registered instruments much to the advantage of the latter. (Lord Sumner.) TRICOMDAS COOVERJI BHOJA (1916) 44 I. A. 65= P. GOPINATH JIU THAKUR. 44 C. 759 (767-8) = 19 Bom. L. B. 450 = 15 A L J. 217 = 1 Pat. L. W. 262 = 21 M. L. T. 262 = 21 C.W.N. 577 = 25 C. L. J. 279=5 L.W. 654=(1917) M. W. N. 363=1

#### Arts. 116, 115.

39 I. C. 1E6=32 M. L. J. 357.

-Mortgage deed-Interest under-Claim to, by way of

Arts. 116 and 115-(Contd.)

In a case in which the Courts below held that a mortgage deed did not provide for interest beyond the period fixed for payment, they were pressed to give damages by way of interest. They held, however, that such a claim being compensation for breach of a contract was barr of by Arts, 115 and 116 of the Limitation Act of 1877.

Held, that the mortgagee was entitled to recover six

years' arrears of interest by way of damages.

The principal debt was not time barred, and it was not paid. Every day that it remained unpaid there was a breach of contract, and the bar of time applies only to breaches occurring six years before suit. (Sir Richard) Couch.) MATHURA DAS P. RAJA NARINDAR RAHADUR (1896) 23 I.A. 138=19 A. 39 (46-7)= PAL. 1 C.W.N. 52 = 7 Sar. 88 = 6 M.L.J. 214.

Arts. 116, 144.

-Applicability-Compromise-Insuovable pronerty assigned under-Suit to recover-Compositive not root of title but merely evidence of antecedent title a knowledged and defined by it. See LIMITATION ACT OF 1908 ARTS. (1874) 1 LA. 157 (166).

Art. 118.

-[See ACT OF 1859, S. 1, Cl., 16 for cases under that Act.

-See ACT OF 1871, ART. 129 for cases under that

-See ACT OF 1877, ART. 118 for cases under that Act.

Adoption- Declaration of invalidity of-Suit Act]. brought more than six your after plaintiff knowledge of

adoption-Barrel.

144, 116,

Article 118 governs a suit which is in effect and substance one for a declaration that an alleged adoption is invalid. And a suit brought more than six years after the date when the plaintiff first had knowledge of the claim made on the strength of the alleged adoption is barred. (Lord Blanesburgh,) LALA JAGMOHAN SARAN : SAHU DEOKI NANDAN. (1927) 46 C.L.J. 280 = 29 Rom. L.R. 1336 = 32 C.W.N. 153 = 4 O.W.N 832

A I.B. 1927 P.C. 229 = I.L.T. 40 A. 4 = 106 I. C. 488 (2) = 27 L. W. 449 = 53 M. L. J. 301.

-Applicability of -Adoption by widow to berself and not to her husband-Person claiming under-Reversioner's

mit for possession against.

K, a Hindu, died in 1846 without issue. His widow, who succeeded to his estate, was alleged to have adopted the defendant appellant within two years of K's drath. The widow, however, remained in possession of her husband's estates till her death in 1886, when the appellant took possession.

The respondent, as the nearest bandhu or beir of K', sued in 1888 to recover possession of A"r estates from the appellant. K's widow's authority to adopt and the adoption of the appellant were both found against. The appellant contended that nevertheless the suit was barred under Art. 118 of the Limitation Act of 1877, because it was maintained that the suit was one in fact to obtain a declaration that the adoption of the appellant was invalid or had never in fact been made. It was, however, found that the adoption was really made by K's widow of a son to herself and not to her husband.

Held that the plea of limitation could have no application in the suit which related entirely to the husband's estate (53). (Lord Shand.) LUCHMUN LAL CHOWDHRY (1894) 22 I. A. 51= v. KANHYA LAL MOWAR. 22 C. 609 (614)=6 Sar. 558.

-Applicability of -- Possession -- Reversioner's suit for, against person claiming to have been adopted by widow.

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 118-(Contd.)

The suit was by the nephews of a deceased Mahomedan to recover possession of property appertaining to his estate. The property had admittedly been held by a daughter of the deceased by virtue of a gift made to her by the deceased. The plaintiffs alleged that the property was ancestral property and that by the custom of the tribe to which they belonged the daughter acquired only a life interest in it and that on her death it dovolved on the plaintiffs. The defendant claimed to have been adopted by the said daughter and to be entitled to the property as such adopted son. He further pleaded that the suit was barred under Art. 118 of the Limitation Act of 1877, as the plaintiffs had knowledge of his adoption more than six years before suit. The suit was instituted within a year of the daughter's death.

Held, reversing the Court below, that the omission to bring within the period prescribed by Art. 118 a suit to obtain a declaration that an alleged adoption was invalid, or never, in fact, took place was no har to a suit for pos-session of property. L.R. 33 1.A. 156, Ref. to. (Sir John Edge.) UMAR KHAN P. NIAZ-UD-DIN KHAN.

(1911) 39 I. A. 19 (25) = 39 C. 418 (432) = 15 C. L. J. 172 = 16 C.W.N. 458 = 9 A L J. 137 = 14 Bom. L R. 182 = 13 P. L. R. 1912 = 11 M.L.T. 76 = 6 P.W.R. 192 = (1912) 1 M.W.N. 77 = 13 I.C. 344 22 M.L.J. 240.

The plaintiff, claiming to be the ne. rest agnate of D and to be entitled to his property on the death of his widow, sped to recover possession of the same. M. D's widow, adopted one A, who slied in 1895, leaving a widow, B. R took the ordinary woman's estate and died in 1903. Plaintiff's suit was instituted within the 12 years allowed by Art. 141 of the Limitation Act. The defendant set up that he had been validly adopted by M to D in 1901, and plearled that the suit was governed by Art. 118 of the Limitation Act. His adoption was void,

HAd that Art, 141, and not Art. 118, of the Limitation Act applied to the case, and that the suit was not barred. (Lord Phillimerr.) KALYANADAPPA P. CHANBASAPPA,

(1921) 51 I. A. 220 (233-4) - 48 B. 411 = 28 C.W.N. 666 = 22 A.L.J. 508 = 26 Bom. L. R. 509 = 10 O. & A.L.B. 1114 = A.I.B. 1924 P.C. 137 = (1924) M.W.N. 414 = 34 M.L.T. 111 = 20 L.W. 109 = 11 O.L J. 181 = 79 I. C. 971 = 46 M.L. J. 598.

-Interpretation of - Decisions on Art. 118 of Act of 1877-Regard for-Necessity.

The question was whether a suit by a reversionary heir to recover possession of the last male owner's property on the death of his widow which involved the decision of an issue as to the validity or invalidity of the defendant's adoption was a suit to obtain a declaration that an alleged adoption was invalid or never in fact took place within the meaning of Art. 118 of the Limitation Act of 1908.

Prior to the Act of 1908, the Privy Council had held that such a suit was not a suit within the meaning of Art, 118 of the Limitation Act of 1877 (the Act then in force), the language of which Article was identical with that of Art. 118 of the Limitation Act of 1908,

Held that, on a question of the interpretation of Art. 118 of the Act of 1908, it was a point of considerable importance to note that the Legislature passed the Act of 1908 with the Article in question in precisely the same language as that used in 1877 after the construction already put upon it by the Privy Council. (Lord Phillimore.) KALYANADAPPA P. CHANBASAPPA.

(1924) 51 I.A. 220 (232-3)=48 B. 411= 28 C. W. N. 666 - 22 A.L.J. 508 - 26 Bom. L.R. 509 = 10 O. & A.L.B. 1114 = A. I. B. 1924 P.C. 137= (1924) M.W.N. 414 = 34 M.L.T. 111 ==

Art. 118-(Contd.)

20 L.W. 109 = 11 O.L.J. 181 = 79 I.C. 971 -46 M L J. 598.

-Scope and effect of-Prior Act: - Corresponding articles under-Scope and effect of-Distraction,

Article 129 of the Limitation Act of 1871 is expressed as follows:-"To establish or set aside an adoption-twelve years from the date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father." Not only is the description of the suit different from that contained in Art. 118 of the two later Acts, but the time from which the limitation begins to run is different (226). The words used in that Article-namely, "to establish or set aside an adoption"-had no technical meaning, and they were treated as expressing popular language to which in popular reasoning the meaning which prevailed could attach.

In the Acts of 1877 and 1908, the matter is, however, otherwise. The words "a suit to obtain a declaration" are terms of Art. They relate back to the Specific Relief Act passed in the same year (1877). S. 42 of the Specific Relief Act deals with declaratory decrees, and illustration (f) is much in point; " A Hindu widow in possession a property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid." It is to this class of suit that this particular limitation (provided by Art. 118) applies. The date from which the time begins to run is a subjective or personal date; and the condition of obtaining the particular relief which I sought in a declaratory suit is that the plaintiff should not be guilty of laches, the measure of laches being fixed by the statute as 6 years. But a claimant chooses to run the risk that an adoption which he has not attacked will have every presomption made in its favour by reason of its long standing. he can wait till his reversionary right has accrued, and even till the limit (no doubt a very wide limit) of twelve years from that accruer has passed (233). (Lord Phillimore.) KALYANADAPPA P. CHANBASAPPA.

(1924) 51 I. A. 220 = 48 B. 411 = 28 C. W. N. 666 = 22 A.L.J. 508 = 22 Bom. L.R. 509 = 10 O. & A.L.R. 1114 = A.I.R. 1924 P.C. 137 = (1924) M.W.N. 414 = 34 M L.T. 111 = 20 L.W. 109 = 11 O.L.J. 181=79 I.C. 971-46 M.L.J. 598

-Widow-Adoption by-Declaration of invalidity of -Suit for-Applicability of Article to-Authority to adopt -- Declaration of spurious and false nature of-Prayer in plaint also for

C', a Hindu, died in 1832. Soon after his death, the existence of a written authority to adopt alleged to have been given by him was asserted by his widow or her friends, and the assertion was renewed at intervals thereafter action was, however, taken on it till 1884, when the widow adopted a boy, and, on his death four years afterwards, she adopted the appellant in 1887. In 1888 the reversionary heirs of C sued for a declaration that the adoption of the appellant was invalid, because the widow had not the necessary authority to adop. The plaint included a prayer for a declaration that the authority to adopt set up by the widow had not in fact been executed, but was "spurious

Held that the suit was governed by Art. 118, and no by Art. 92 or Art. 93, of the Limitation Act of 1877, and that it was not harred. (Lord Morris.) HURRI BHUSAN MOOKERJI :: UPENDRA LAI, MOOKERJI.

(1896) 23 I.A. 97 (101) = 24 C. 1 (8) = 6 Sar. 680.

-Wilow-Adoption by-Person claiming under alleged-Reversioner's suit for possession against, on widows

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 118-(Contd.)

death-Limitation-Starting point of, sohen plaintiff's knowledge of adoption.

K, a Hindu, died in 1846 without issue. On his death his widow succeeded to his estates and possessed them till her death in 1886. The respondent, the nearest bandhu or heir of A instituted in 1888 the suit out of which the appeal arose to recover possession of the estates of K, which had been taken possession of by the appellant. The appellant claimed to be the adopted son of K under an adoption made by his widow pursuant to an authority to adopt conferred upon her by A'. The authority and the adoption were both found against. It was also found concurrently by both the Courts below that the appellant had no possession of A's estates until after the death of his widow. The appellant contended that nevertheless the suit was barred under Art, 118 of the Limitation Art of 1877 because his alleged adoption took place within two years of K's death,

Held that the suit was not barred as it had not been proved that the alleged adoption did become known to the respondent till the death of A's widow, which occurred within two years of the institution of the suit (53.4). (Lord Shand.) LUCHMUN LAL CHOWDHRY D. KANHYA LAL MOWAR. (1894) 22 I. A. 51 = 22 C. 609 (614) 6 Sar. 558.

### Art. 120-Applicability.

- Bingal Tenancy Act of 1885, S. 104-H-Applicahility-Tenant-Record of rights-Entry in, as to his being tenure-holder-Declaration of incorrectness of-Suit lor.

A sait by a tenant for a declaration that the entry in the record of rights to the effect that he was a tenure-holder was incorrect and that he was really an occupancy raiset comes within the proviso to S. 111-A of the Rengal Tenancy Act, and not within the purview of S. 104-H of that Act. and the period of limitation applicable to such a suit is that provided by Art. 120 of the Limitation Act, and not that provided by S. 104-H of the Tenancy Act. (Sir Bened Mitter.) MIDNAPUR ZEMINDARY CO., LTD. v. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1929) 56 I.A. 388=34 C. W. N. 1= A. I. B. 1929 P. C. 286 = 30 L.W. €00 = 120 I.C. 56= 51 C.L.J. 1 = 32 Bom. L.R. 114 = 57 M. L. J. 849.

Condition.

Art. 120 of the Limitation Act of 1877 provides a period of limitation of six years for a suit for which no period of limitation is provided elsewhere in the schedule. Their Lordships think this Article should be applied, unless it is clear that the suit is within some other article (159). (Sir Richard Couch.) MAHOMED RIASAT ALI v. MUSSUMAT HASIN BANU. (1893), 20 I. A. 155 = 21 C. 157 = 6 Sar. 374 = R. & J.'s No. 133 (Oudh).

 Conversion by A of moveables of B—Sale thereof by C as As agent-Bs suit against C for recovery of sale proceeds in his hands -- Limitation. See LIMITATION ACT OF 1908, ARTS, 48, 62, 120. (1884) 11 I. A. 59 (64-5)=

-Deed-Land claimed by defendant under-Svit in form for possession of-Cancellation of deed or declaration of its invalidity against plaintiff substantial relief sought or only relief which Court had jurisdiction to grant. Su ARTS. 91, 120, 144. (1902) 29 I. A. 203(210-3)= 25 A. 1 (16, 18).

-Hindu Law-Will of last male owner-Declaration of invalidity of, and administration-Heir at-law's suit for, on death of widow-Limitation as regards moveables comprised in suit. See ARTS, 141, 120, 144.

(1899) 26 L.A. 71 (81-2) = 23 B. 725 (736).

Art. 120-Applicability-(Contd.)

Minerals-Lessee's wrongful working of-Lessor's suit in respect of, for possession and declaratory relief. See ARTS, 144, 120-APPLICABILITY-MINERALS,

(1924) 52 I. A. 109 (113-4) = 4 Pat. 244.

-Pre'emption right-Suit to enforce. See ARTS, 10, 120, 144,

-Religious Endowment-Management of-Suit to establish plaintiff's personal right of, or in some way to control. See ARTS 124, 144, 120.

(1883) 10 I. A. 90 (96-7) = 6 A. 1 (10).

Religious Endocoment-Shebait of -Money spent for protection of endowment by-Recovery from debutter estate -Suit by representative of shebait for.

In a suit against a debutter e-tate by the legal representatives of a deceased shebait for the recovery of amounts alleged to have been spent by him out of his personal estate for the purposes of the trust, held, that the suit was governned by the 6 years' period of limitation, the starting point being the date of the death of the deceased shebait. (Lord Macnaghten.) PEARY MOHAN MUKERJI P. NORENDRA (1909) 37 I. A. 27 (317-8) = NATH MUKERJI. 37 C. 229 (234) = 7 M L. T. 63 - 7 A. L. J. 125 =

11 C. L. J. 220 = 14 C. W. N. 261 = 12 Bom. L. R. 257 = 5 I. C. 404 = 20 M. L. J. 171.

"Rough" patta issued by Government to plaintiff-Exclusion of suit lands from-Plaintiff's objections to-Order rejecting-Suit to set aside and to obtain declaration

of plaintiff's right.

The suit, which was instituted in 1913, was by the Karnavan of a Malabar tarward against the Government for a declaration that certain lands in the forest tracts of South Canara belonged exclusively to his tarwad, and for an injunction restraining the defendant from dealing in any manner with the said lands to the prejudice of the right and possession of the plaintiff's tarwad.

It appeared that in 1903 the Government officials marked off the suit lands and issued to the plaintiff as the Karnavan of his tarwad what was called a "rough" patta, showing the lands to which the Government admitted his right to obtain a grant subject to the usual conditions. The plaintiff preferred objections to the exclusion from the rough patta of the suit lands. His objections were definitely rejected in

1905

Held that the suit, which was to set aside the order of the Government of 1905 rejecting plaintiff's objections to the exclusion from the rough patta of the suit lands and to obtain a declaration of his right, not having been instituted until after 6 years from the date of the said order, the suit was barred under Art. 120 of the Limitation Act of 1908. (Mr. Ameer Ali.) KODOTH AMBU NAIR P. SECRETARY (1924) 51 I. A. 257 = OF STATE FOR INDIA.

47 M. 572 = 26 Bom. L. B. 639 = 20 L. W. 49 = (1924) M. W. N. 572 = 35 M. L. T. 128 = A. I. B. 1924 P. C. 150 = 29 C. W. N. 365 = 80 I. C. 835 = 47 M. L. J. 35.

-Arts. 120, 49. 123-Applicability - Mahomedan widow-Husband-Inkeritance right to-Suit to establish. and to recover property of husband-Morrables forming

part of property.

The plaintiff-respondent, the widow of a deceased Mahomedan, sued for a declaration of her right to inherit the entire property left by the deceased and for recovery of possession of the same from the defendant, the brother of the deceased, who had taken possession of the same on the death of the deceased. The suit related also to cash and moveables, and the question was what Article of the Limitation Act of 1877 applied to that portion of the claim. The

#### LIMITATION ACT IX OF 1908-(Contd.)

Arts. 120. 49. 123-(Contd.)

District Judge Leld that Art. 49 applied; while the Judicial Commissioner thought that Art. 123, and not Art. 49,

applied.

Held, differing from the courts below, that Art, 120, and not Art. 123 or Art. 49, applied, and that the suit having been brought within 6 years of the death of the deceased the claim as to cash and moveables was not barred (159). (Sir Richard Couch.) MAHOMED RIASAT ALL P. MUSSUMAT HASIN BANU. (1893) 20 I. A. 155 = 21 C. 157 = 6 Sar. 374 = R. & J's No. 133 (Oudh).

Arts. 120. 141-Applicability-Handn daughter-Father's estate—Malikana perpetual psyable by Government forming part of-Suit for declaration of right to amount

of, as reversionary heir on death of mother

A Hindu widow in possession of her husband's estate as his heir purported to release immoveable property appertaining to the estate to Government in return for a perpetual malikana. After her death, the daughter of the last male owner sued to establish her right as reversionary heir to the said malikana. The suit was instituted within 6 years of her obtaining the necessary certificate from the Collector under the Pensions Act, 1871.

Held that, even in the view that the malikana was immoveable property, still, in view of the language of the plaint and of the form of the relief sought therein (namely, declaration of the plaintiff's right as regards the malikana amount), the suit was not one for possession or within the operation of Art. 141 of the Limitation Act : that it was governed by Art. 120 of that Act; and that, having been instituted within 6 years of the grant of the certificate under the Pensions Act, it was not barred.

Under the Pensions Act, 1871, there is no right of action at all in respect of such a subject-matter as the malikana unless and until a certificate under the Act has been obtain-(Lord Tomlin.) MT. JAGGO BAI v. UTSAVA LAL.

(1929) 56 I. A. 267 = 51 A. 439 = 30 L. W. 60 (67) = 27 A. L. J. 716 = 33 C.W. N. 809 - 10 Pat. L. T. 527 = 31 Bom. L. R. 891 = 6 O. W. N. 589 = 50 C. L. J. 52 = 117 I. C. 498=(1929) M. W. N. 762= A. I. R. 1929 P. C. 166 - 57 M. L. J. 160.

Arts 120, 142-Co charers-Decree for joint posussion in favour of one of-Suit for partition and separate possession and meme profits by him-Limitation-Symbols. cal possession obtained by him in execution of his decree.

A co-sharer obtained a decree for joint possession and obtained symbolical possession under S. 264 of C. P. C. of 1882 in execution thereof. Not being able to obtain actual possession, he instituted another suit for partition and separate possession and mesne profits.

Held that the claim for the recovery of possession was governed by Art. 142, and that for mesne profits by Art. 120 MIDNAPORE ZEMINDARY CO. LTD. P. NARESH NARAIN (1924) 29 C. W. N. 270.

-Art. 121-Bengal Act XI of 1859-Sale under-Purchaser at-Suit to avoid incumbrances by-Limitation -Starting point.

The suit was by the respondent as purchaser at a sale held under Act XI of 1859 to recover possession of a number of bighas alleged to form portion of the property purchased by him, the possession of which was withheld by the defendant appellant. The latter pleaded that the suit was barred by limitation because he and those through whom he claimed had held possession of the suit property adversely to all persons having claims upon it, the right of the defaulter to the suit property had been extinguished by such adverse possession.

Held that the right alleged to have been acquired by adverse possession was only an incumbrance, that the time

Art. 121-(Cont.)

limited by the Limitation Act of 1908 only commenced to run from the date of the sale in favour of the respondent, and that the sait brought within 12 years from that date was not barred by limitation. (Lord Atkinson.) MAHARAJA SURJA ACHARIYA BAHADUR :: SARAT CHANDRA ROY CHOWDHURI. (1914) 18 C.W.N. 1281 = 16 M.L.T. 290 = 1 L.W. 807 = (1914) M.W. N. 757 = 16 Bom. L. B. 925 = 20 C. L. J. 563 = 25 I. C. 309 = 27 M. L. J. 365 (368-9).

——Art. 123—Barmese Buddhist Law—Eldest surviving son—Right of—Suit to enforce—Limitation. Src BURMESE BUDDHIST LAW—INHERITANCE—ELDEST SURVIVING SON. (1916) 44 I.A. 42=44 C. 379.

——Heir of testator not in possession of any of his asset —Suit for payment of legacy by, when he might be in possestion of assets with which legacy payable—Maintainability.

Quarre, whether a suit could or could not be maintained against a Hindu heir, who had received no property belonging to the deceased, for the recovery of a legacy bequeathed by the deceased, and whether in such a suit a decree could or could not be obtained against the heir for the payment of the legacy when he might be in possession of assets with which the legacy might be payable (2267.) (Sir John Edge.) VENKATADRI APPA RAO P. PARTHASARATHY APPA RAO. (1925) 52 I. A. 214 -48 M. 312 - (1925) M. W. N. 441 = 3 Pat. L. R. 823 - (1925) M. W. N. 441 = 3 Pat. L. R. 208 - 29 C. W. N. 989 = A. I. R. 1925 P. C. 105 = 87 I. C. 324 = 48 M. L. J. 627.

I.egacy payable out of fund subject of litigation— Intention of testator that it should be payable and paid after final determination of that litigation—Suit to recover legacy in case of Limitation—Starting point—No other fund out of which legacy could be paid.

On the death on 4-8-1895 of N, an unmarried Hindu minor, who was the last male owner of the Medur estate. V, his mother, became entitled to the same for her life. The Court of Wards had taken charge of the Medur estate during his minority and continued to be in charge of it until December, 1895, when a Receiver, appointed by a civil court, having jurisdiction, took possession of it. The estate continued to be in charge of Receivers, duly appointed, until after 1902. Part of the estate consisted of Government Promissory notes which the Court of Wards had held in respect of moneys received from the Medur estate before August, 1895, the date of the death of N, and of moneys paid into the Bank by the Receivers and the Government Promissory notes and other securities in which moneys derived from the Medur estate were invested under the con trol of the civil court for the benefit of those who might be entitled to the estate.

V's right to inherit the estate of N was disputed by another lady who claimed to be entitled to the estate as the adoptive mother of N. V, therefore, instituted a suit on 21-10-1895 for a declaration that the alleged adoption of N was invalid and also claimed to be placed in possession of the Medur estate with all the savings, appurtenances, etc., of the estate. That suit was finally disposed by the Privy Council in favour of V only in 1913. While that suit was pending, V, in January 1899, executed a will bequeathing legacies to various persons to be paid out of the Government promissory notes and cash accruing to the Medur estate in the custody of Court till that day and the jewels. V died in March, 1899.

In 1916 suits were instituted by the various legatees under her will to recover the legacies bequeathed to them thereby.

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 123-(Contd.)

Held that the testatrix (V) intended that the legacies should be payable and be paid after the final determination of the suit which she had brought for a declaration that the adoption of N was invalid and to establish her right to the income of the Medur estate, and that, as that litigation was finally determined only in 1913, and the suits were instituted within 3 years thereof, they were not barred under Art. 123 of the Limitation Act of 1908 (225-6, 228).

In the present case no one could have had in his possession or control any fund representing the income of the Medur estate, which I' had had a right to enjoy for her own use but had not received, until it had been finally decided by the Board in 1913, that the adoption of A' was invalid, and there was no other fund (226). (Sir John Edge.) VENKATADRI APPA RAO P. PARTHASARATHY APPA RAO

(1925) 52 I. A. 214=48 M. 312=28 A. L. J. 261= 6 L. R. P. C. 82=27 Bom. L. B. 823= (1925) M. W. N. 441=3 Pat. L. B. 208= 29 C. W. N. 989= A. I. R. 1925 P. C. 105= 87 I. C. 324=48 M. L. J. 627.

——Mahomedan—Intestacy of—Division of his estate on foot of—Suit for—Limitation—Starting point—Will and gift deed of deceased—Possession of eldest son under, for more than 12 years prior to suit with consent of all heirs—Effect. See BENGAL REGULATIONS—ZILLAH COURT REGULATION III OF 1793—S. 14—MAHOMEDAN LAW.

(1868) 12 M. I. A. 366 (378).

— Mahomedan widow—Husband—Inheritance right to
—Suit to establish, and to recover property of husband—
Movables comprised in—Limitation as regards, See ARTS.
120, 49, 123 (1893) 20 I. A. 155 (159)=21 0. 157.

"Payable" —" Deliverable" — Meaning of Money with which legacy could be paid — Share to be delivered — Possession of, by person liable to pay or deliver — Necessity.

Art. 123 of the Limitation Act of 1908 allows 12 years from the time" when the legacy or share becomes payable or deliverable," for bringing a suit " for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate." Looking at Art. 123. as one of general application to such suits, a similar interpretation must be given to the words "payable" and "deliverable" as used in the Article, and a share in the property of an intestate would not be "deliverable "until the administrator, to whom letters of administration had been granted, had in his hands the share to be delivered, and, similarly, a legacy or share in a legacy does not become " payable " until the executor or other person liable to pay it has in his hands money with which it could be paid (226). (Sir John Edge.) VENKATADRI APPA RAO PARTHASARATHY APPA AO. (1925) 52 I. A. 214= 48 M. 312 = 23 A. L. J. 261 = 6 L. B. P. C. 82=

18 M. 312 = 23 A. L. J. 261 = 6 L. R. P. C. 32 27 Bom. L. B. 823 = (1925) M. W. N. 441 = 3 Pat. L. B. 208 = 29 C. W. N. 989 = A. I. B. 1925 P. C. 105 = 87 I. C. 324 = 48 M. L. J. 627.

A Chinese resident in the Straits Settlements died in 1882 having executed a will in Chinese form in the year 1874. By his will the testator provided that his property was to be dealt with by payment of a very large number of pecuniary legacies and after they had been paid and satisfied, the residue was to be divided into sixty shares. As to 16 of those shares he directed that they should be the means of his maintenance during his lifetime, and should be "kong lin for yearly and other sacrifices after his death." Both by clause 4 and by clause 22 of the testator's will it appeared that he contemplated that this residue should be left undis-

Art. 123-(Contd.)

tributed for 16 years. At the expiration of 16 years the testator declared by clause 22 that the income of the shares should "begin to be my sons' and grandsons' (or grand children's) kong lin for yearly sacrifices as well as for sacrifies in spring and autumn.

The plaintiff was the legal representative of a granddaughter of the testator, her grandfather, the testator's son, having died in the testator's lifetime. Her claim, therefore, was as the legal personal representative of one of the female next of kin of the testator, and in that capacity she,in 1916, instituted the suit out of which the appeal arose asking that the gift of the said sixteen-sixtieths of the residue to the "kong lin" should be declared void and distributed among the next of kin.

Held, reversing the Court below, that the suit was barred by virtue of Art. 99 of the Limitations Ordinance which existed in the Straits Settlements (Ordinance No. 6, 1896),

Quare whether the starting point of limitation was (1) date of the death of the testator, or (2) the period of division fixed by the testator for the estate, or (3) the period when the trustees had in accordance with the trusts of the will so dealt with the estate that it was ready for division (41).

Their Lordships dissented from the view of the trial Judge that the time ran from the date when the clause was construed by a competent Court, and from that of one of the appellate Judges that the time fixed was when the intestacy was declared by a decree established beyond appeal. "The intestacy, if it exists, has existed throughout, and the distributive share of one of the next of kin has been his to claim from the time when the intestacy arose and not when it was declared." (41-2). (Lord Buckmaster.) KHAW SIN TEK NOH NEGH. (1921) 49 I. A. 37 = 30 M. L. T. 160 = 26 C. W. N. 495 = D. CHUAH HOOI GNOH NEGH.

25 Bom. L. B. 121 - A. I. R. (1922) P. C. 212.

-Arts. 123, 144 - Applicability - Makemedan Law-Inheritance-Share of-Snit to recover-Limitation-Starting point.

One M.B., a Mahomedan died in 1865 possessed of property, which passed first to his mother, and after her death to his senior and junior widows, of whom each held an eight anna share. The senior widow died on the 24th January, 1888, and after her death, the junior widow retained possession of the whole estate until her death on the 19th December, 1894. The senior widow had a brother named Mubarak who died on the 7th February, 1891. On the death of the junior widow mutation of names was made in favour of three sons of another brother of the senior widow, who died in October, 1890, in respect of a twelve anna share, and in favour of the only son of a third brother of the senior widow, who predeceased her, for the remaining four annas. The plaintiff, a sister of the senior widow, instituted against her said four nephews and others the suit on the 11th Febru ary, 1903, to recover her share of the estate of Mubarak. including in that estate a share of the estate which had been that of M.B., and which Mubarak was said to have inherited from the senior widow, and also property which he took by inheritance from his father.

Held, that with regard to the property taken by Mubarak from the senior widow the period of limitation began to run at soonest, from the death of the junior widew, and not from any earlier period; and that the suit was not barred by limitation. (Sir Arthur Wilson.) MUHAMMAD KAMIL v. IMTIAZ FATIMA. (1909) 36 I.A. 210 (220)= v. IMTIAZ FATIMA.

31 A. 557 (570-1)=10 C.L.J. 297=14 C.W.N. 59= 11 Bom. L B. 1210 = 4 I.C. 457 = 13 O.C. 183 =

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-Art. 124-Hereditary office - Emoluments attached to-Declaration of right to receive-Suit by person entitled to office for-Limitation-Emoluments attached to and depending upon right to office-Person in adver e enjoyment of emoluments not competent to hold office.

The office of Shebait of a temple was an hereditary one which could not be held by anyone who was not a Brahmin Panda. The Shebait for the time being was, in right of the Shebaitship, entitled to receive a 31 anuas share of the daily surplus income from the offerings to, after defraying the expenses of, the temple, and bound to perform, or to provide for the performance of the sacred worship or puja of the deity at the temple. On the death of the last male holder of the office without male issue, he was succeeded by his widow. In execution of a money decree obtained against her, the 31 annas share aforesaid to which she was entitled as shebait was sold in 1891, and, in right of his purchase, the execution purchaser began to appropriate the said share of the surplus income in 1892. The widow died in 1900, and within 12 years of her death, the reversionary heir of the last male holder of the office sued the execution purchaser inter alia for a declaration that he was entitled to the 34 annas share in the surplus offerings.

Held, reversing the High Court, that the suit was not one for possession of an hereditary office to which Art. 124 of the Limitation Act applied, that the suit was not barred, and that the plaintiff was entitled to the declaration prayed for (273.4).

J. the execution purchaser, was not a Brahmin Panda but was of an inferior caste, and was therefore not competent to hold the office of Shebait of the temple, or to provide for the performance of the duties of that office. The appropriation from time to time by J of the income derivable from the 31 annas share did not deprive the widow, or, after her death, the plaintiff, of the possession of the office of shebait, although that income was receivable by them in right of the shebaitship. The right to the office of Shebait did not arise from, or depend upon, the receipt of a share of the surplus daily income from the officrings to the temple although the right to receive daily a share of the net income from the offerings to the temple was attached to and dependent on the possession of the right to the Shebaitship. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings / acquired no title and no right to a share of that income. On each occasion upon which I received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled. I committed a fresh actionable wrong in respect of which a suit could be brought against him by the Shebait, But it did not constitute him the Shebait for the time being or affect in any way the title to the office (273.4). (Sir John Edge.) JALANDHAR THAKUR P. JHARULA DAS.

(1914) 41 I A. 267 = 42 C. 244 (251-2) = 16 M.L.T. 210 = (1914) M.W.N. 636 = 12 A.L.J. 1176= 16 Bom. L.B. 845 = 20 C.L.J. 360 = 18 C.W.N. 1029 = 24 I.C. 501 = 27 M.L.J. 100.

- Hereditary office and land foming endowment-Sale invalid by father of-Son's suit to establish right to management of endowment and to recever possession of lands forming endowment-Limitation-Father barred-Effect.

N, who was entitled to the hereditary right to manage an endowment connected with a temple and to enjoy the lands forming the endowment, sold his right and interest, and died leaving a son and heir. The sale was invalid but possession was taken by the purchaser pursuant to it.

In a suit brought by the son to estal lish his right to the management of the endowment and to the possession of the lands forming the endowment, held that the son was entitled to the right claimed only as heir to his father, N, and from 19 M.L.J. 697.

Art. 124-(Contd.)

and through bim within the meaning of Act 124 of the Limitation Act, and that as A was borred under that Article and his right extinguished, the son's suit was also barred under that Article. (Six Richard Couch.) GNANASAMB-ANDA PANDARA SANNADHI : VELU PANDARAM.

(1899) 27 I.A. 69 - 23 M. 271 - 2 Bom. L.R. 597 -4 C.W.N. 329 - 7 Sar. 671 - 10 M.L.J. 29.

— Hereditary office held by Hindu toidoto—Reversioner's suit to recover, on her death—Limitation—Widoto barred—Effect.

On the death without male issue of the last male holder of the hereditary office of shebait in a temple, his wislow succeeded to the same. In execution of a money decree obtained against her, her right as such shebait to receive a share of the surplus offerings in the temple was sold and was purchased by a third party. In right of his purchase, he began to appropriate the said share of the surplus income in 1892. The widow died in 1900. In a suit brought within 12 years of her death but more than 12 years after 1892 by the reversionary heir of the last male-holder of the office for inter alia a declaration of his right to receive the said sur plus income, Quare whether, if the suit was one for possession of an hereditary office within the meaning of Art. 124 of thet Limitation Act of 1908, the twelve years period of limitation would begin to run in 1892 or on the death of the widow in 1900 (273). (Sir John Edgs.) JALANDHAR THAKUR P. JHARULA DAS. (1914) 41 I.A. 267 = 42 C. 244 (251) - 16 M.L.T. 210 - (1914) M.W.N. 636 -12 A.L.J. 1176=16 Bom. L.R. 845=20 C.L.J. 360= 18 C.W.N. 1029 - 24 I.C. 501 - 27 M.L J. 100.

— Idol—Property of—Shebait's suit in regard to— Limitation—Shebait a minor at time of acceptal of cause of action—Effect. See HINDU LAW—RELIGIOUS EN-DOWMENT—IDOL—SHEBAIT OF—SUIT BY, IN REGARD TO, ETC.

(1904) 31 I.A. 203 (209-10) = 32 C. 129 (141-2).

Arts. 124. 49. 144 Applicability Rightful Shebait—Person alleging to be—Temples and movables appertaining to endocoment—Claim by him for—Personal or on behalf of endocoment—Test.

The plaintiff was the representative by primogeniture of the Bullav Acharjee community. P, the principal defendant, was a cadet of the same family. The head of the family had the precedence, and was styled the Tickut. The plaintiff was the Tickut at the date of suit. His grandfather named Dowjee, was Tickut in his day. In the year 1825 he paid a visit to Calcutta and presented to his disciples there a consecrated portrait of himself, known as the Thakoor Dowjee, which had ever since been worshipped. The plaintiff claimed that the worship at Colcutta was founded by his grandfather, and that he, as the founder's beir, was entitled by the general law to the shebaitship of that worship; and he instituted the suit out of which the appeal arose for the recovery of the temple, the portrait, and various articles of movable property contained in the said temple. The defendant contended that the suit was not a suit on behalf of Dowjee, the Thakoor, but a personal claim by the plaintiff to moveable chattels, and was barred under Art. 49 of the Limitation Act of 1877.

Held that the suit was not one in which the plaintiff was seeking merely personal relief and that it rather fell under Art 124 or Art. 144 than under Art 49 of the said Act (146).

Even apart from the sixth and seventh paragraphs of the plaint, which expressly put forth the plaintiff's spiritual character as the foundation of his claim, the nature of the suit was for the proper conduct of the Thakoor's worship. It rests quite as much on the right of the Thakoor to have

## LIMITATION ACT IX OF 1908-(Contd.)

Arts. 124, 49, 144-(Contd.)

the conduct of his worship and his own custody placed in the right hands, as upon the personal right of the plaintiff to property. The suit would rather fall under Art 124 or Art. 144 than Art 49. But under whichever of the three articles it falls the starting point of time is unlawful possession or adverse possession (146). (Lord Hobhouse) GOSSAMEE SREE GREEDHARJEE 7. RUMANLOLLIFE G. SSAMEF. (1889) 16 I.A. 137 = 17 C. 3 (22) = 5 Sar. 350.

-Arts. 124. 144, 120, S. 10—Applicability—Religious Endocoment—Management of—Suit to establish plaintiff's personal right of, or right to control.

The plaintiff claimed to remove the defendant from the management of the worship and service performed at a temple; to remove the power and control of the defendant from the properties belonging to the temple; and to be declared authorised to appoint a second manager for the purpose of carrying out the object of the endowment. The suit was instituted in September, 1877. The question was

whether or not it was barred by limitation.

It appeared that the temple in question was founded by the plaintiff's ancestor prior to the commencement of the 19th century, so that for 80 years or upwards the management had been in the family of the defendant. The plaintiff became the heir, or one of the heirs, of the founder in the year 1847. The defendant's title or possession as manager accrued on the death of his father in the year 1863, when the defendant himself was a child, and under the guardianship of his mother. In 1865, the plaintiff presented a petition, which was for the purpose of having the trusts of the endowment carried into effect by the Collector's Court under Regulation XIX of 1310. That petition alleged that the funds were applied improperly. It was however dismissed for want of jurisdiction. The plaintiff did not then institute any suit in the civil court. Nearly 12 years subsequent to the petition, the plaintiff again sought a remedy in the Revenue Department. He applied to expunge the name of the defendant, who was registered as muahdar of a village appertaining to the temple, and for the entry of the plaintiff's name in lieu of that of the defendant. His claim was dismissed, and thereupon he instituted the suit out of which the appeal arose.

The defendant did not dispute but that the property in question was an endowment appertaining to the temple. He said that the income of it had all along been spent for the purposes of the temple, and the business of the temple was carried on as before. He, however, pleaded that the suit

was barred by limitation.

There was no direct or sufficient allegation of misconduct in the pleadings. These was no issue framed upon that point. There was no evidence and no finding that the defendant was not applying the property for the trusts of the endowment. All that was found was that the defendant opposed the right of the plaintiff.

Held, affirming the High Court, that the suit was barred

by limitation (96-97).

Their Lordships do not see any reason to differ from the High Court, in thinking that the suit may fall within Art, 123 or Art. 145 of the Limitation Act of 1871, but they desire to express no opinion upon that point. But if it does not fall within either of those sections then the case is caught by the general Art. 118 of the Act of 1871. Therefore either the suit is barred in six years or in twelve years it matters not which, for the cause of action arose at all events before the year 1865 (96-7). (Sir Arthur Hobboust.) BALWANT RAO BISHWANT CHANDRA CHOR v. PURUN MAL CHAUBE. (1883) 10 I. A. 90 = 6 A. 1 (10) = 13 C. L. B. 39 = 4 Sar. 485.

See also Cases under S, 10 of this Act,

-Art. 125-"Entitled"-Meaning.

The person "entitled" in Art. 124 of the Limitation Act of 1871 must mean the presumptive heir who would be entitled if the widow died at that moment (150.) (Ser. Action Hobbouse.) ISKI DUT KOER 5. MUSSUMUT HANSBUTH KOERAIN. (1883) 10 LA.150 = 10 C. 324 (332 3)

13 C.L.R. 418-4 Sar. 459.

Art. 126-Eldest son's attainment of majority-

Suit instituted within 3 years of

The suit was instituted in 1907 by the appellants (4 of them), members of a joint Hindu family governed by the Mithakshara law, to set aside their father's alienation of ancestral property made in 1898 in favour of the 1st respondent, the alienation taking the form of an allotment of the property to the 1st respondent, an utter stranger, at a family partition. It was admitted that possession of the suit property was given to the 1st respondent in 1898, that he enjoyed it exclusively from that time up to the date of suit, and that, previously, since 1887, he (1st respondent) was living as a joint member of the family, and jointly enjoying the profits by reason of the inaction and acquiescence of the appellant's father in that mode of enjoyment. The suit was filed within the expiration of three years after the 1st appellant attained his majority; only the 1st appellant was in existence in 1847, when the 1st respondent was admittedly accepted as a member of the joint family, and all the appellants were minors at the date of the partiton in 1898.

Held, that as the suit was instituted within 3 years of the 1st plaintiff's attaining majority, he was estitled to the benefit of S. 7 of the Limitation Act, and the suit was not barred as against him, and that, if the 1st plaintiff succeeded in the suit, his younger brothers born before a partition of the estate would be entitled to share in the relief. (Sir Samuel Griffith.) KAMKISHORE KEDARNATH P. JAINARAYAN RAMRACHHPAL. (1913) 40 I. A. 213 (221)

40 C. 966 (979-80) = 18 C. L. J. 237 = 7 C. W. N. 1189 = (1913) M. W. N. 661 = 15 Bom. L. R. 867 = 14 M.L.T. 163 = 11 A.L.J. 865 = 10 N. L. R. 1 = 20 I. C. 958 = 25 M.L.J. 512.

—Eldest son's attainment of majority—Suit brought more than 3 years after.

In a sait brought by the plaintiffs for a declaration that a sale effected by their father was not justified by necessity, the Sub-Judge held that the plaintiffs' claims were harred by the Limitation Act of 1908. S. 7 as F, their eldest brother, had attained majority long before and had not questioned the sale. The High Coart reversed him, and held, following I. L. R. 31 A. 156, as against I. L. R. 16 M, 436 and I. L. R. 38 M. 118, that the conduct of their eldest brother did not affect the undoubted rights of the plaintiffs, and that the suit was therefore not barred.

Their Lordships concurred with the High Court. (Mr. Ameer Ali.) JAWAHIR SINGH v. UDAI PARKASH.

(1925) 53 I. A. 36 = 48 A. 152 = 24 A. L. J. 97 = (1926) M. W. N. 197 = 3 O. W. N. 365 = 43 C. L. J. 374 = 28 Bom. L. R. 851 = 30 C. W. N. 698 = A. I. R. 1926 P.C. 16 = 93 I.C. 216 = 50 M. L. J. 344

Son not in existence at time of alienation - Sust within 3 years of attainment of majority but more than 3 years after attainment of majority of sons in existence at time of alienation.

The plaintiffs (4 in number) and their father were a joint Hindu family governed by the law of the Mithakshara. On 3.—6.—1893, the plaintiffs' father purported to sell ancestral property of the joint family to the predecessor in interest of the defendants. The plaintiffs instituted the suit in June 1920, to recover possession of the property on the ground

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 126-(Contd.)

that the alienation was without legal necessity and was void. The alience took possession of the property on 3-6-1893. The suit was instituted more than 3 years after the first three plaintiffs attained majority and within 3 years of the fourth plaintiff's attaining majority. But the fourth plaintiff was not born till long after the date of the alienation in question.

Held, that the entire suit was barred under Art. 126 of

the Limitation Act of 1908.

The cause of action arose on 3—6—1893, and it is from that date that the period of limitation is to be reckoned. The 4th plaintiff's subsequent birth did not create a fresh cause of action or a new starting point from which limitation should be reckoned. The extended period of three years from the cessation of minority provided by Ss. 6 to 8 of the Limitation Act of 1908 can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. The 4th plaintiff does not come within this description, for at that time he was not in existence. He, therefore, is not entitled to the three years' extension. (Sir Lawrence Jenkins.) RANODIP SINGH v. PARMESHWAR PERSHAD. (1924) 52 I. A. 69 =

47 All. 165 = 23 A.L.J. 176 = 27 Bom. L.R. 175 = 21 L.W. 236 = 6 L.R. P. C. 47 = (1925) M. W. N. 262 = 12 O.L.J. 74 = 2 O. W. N. 1 = 27 O.C. 343 = 29 C. W. N. 666 = A. I. R. (1925) P. C. 33 = 86 I. C. 249 = 26 P. L. R. 113 = 48 M. L. J. 29.

-Art. 127-(For cases under Act of 1859. See UNDER S. 1, CL. 13 OF THAT ACT.)

#### EXCLUSION.

--- What amounts to-Evidence of.

The fact that a joint family estate has been occupied for many years by some of the members of the family and their predecessors is insufficient to prove exclusion of the other members of the family without further evidence (124). (Lord Buckmaster.) HARDIT SINGH r. GURMUKH SINGH. (1918) 9 L. W. 123 - 64 P. R. 1918 = 28 C. L. J. 437 - 58 P. W. R. 1917 = 24 M. L. T. 389 = 20 Bom. L. R. 1064 = 47 I. C. 626 = (1919) M. W. N. 1.

The question whether a person has been excluded from joint family property within the meaning of Art. 127 of the Limitation Act must depend upon the facts of the particular case which is under consideration. An intention to exclude is an essential element and it is necessary for the court to be satisfied that there was an intention on the part of those in control and possession of the joint family property to exclude a member. The questions arising upon Art. 127 are: (1) whether the member in question was excluded from the joint family property; (2) if he was so excluded when did such exclusion take place; (3) when did the exclusion, if any, become known to him.

R, who with his brothers B and G, constituted a joint Hindu family, had a son, N, by his second wife. Within a year of his marriage with A's mother, and while she was living in the family dwelling house, R married another lady, being the third wife. N was born in June, 1886. Up to 1886 N's mother lived with her husband in his family dwelling-house. Owing to friction in K's, family, due to his third wife, A's mother and her two children were, soon after the birth of N, taken by his maternal uncle with K's consent to live with him (the maternal uncle) at his own village. In September, 1888, N's mother and her two children were, however, brought back by R, or by one of his brothers acting on his behalf, to R's family dwelling-house, and they lived there until K's death in 1893. They continued to live there until 1898, when N's mother and his elder brother

Art. 127-(Contd.)

EXCLUSION -(Contd.)

died of the plague. A's maternal uncle went to A's village for the obsequies of A's mother, and, with the consent of B, N's paternal uncle, he took N, to his own home in another village. N was at that time 12 years old. Thereafter N lived with and was maintained by his maternal uncle, and assisted his uncle in his agriculture. After that date, A' never resided in the family dwelling-house and he received no maintenance or education from the members of the joint family. N was married in or about 1908. The marriage took place in his maternal uncle's village at the same time as the marriage of his uncle's brother. ingly his marriage expenses were practically No application was made by him or on his behalf to the members of his joint family for any assistance towards his marriage expenses, and they did not provide anything towards the same. About 2 years after his marriage N began to live separately and he then got some land, which he rented from the Government, at his maternal uncle's village.

In a suit for partition instituted by N on 21-7-1920, the High Court dismissed the suit, holding that N had been excluded from the joint family property from 1898, and that he must be taken to have been perfectly well aware of the fact in 1904, when he came of age. The ground of their decision was that the whole series of facts, beginning with 1898, when his mother died, showed that N's connection with the family had been severed and that he acquiesced in that severance.

Held, reversing the High Court that the evidence was not sufficient to justify the finding that A'was excluded from the joint family property in 1898, and that, even if the facts relied upon could be said to amount to exclusion, the defendants had failed to prove that A' was aware more than 12 years before the institution of the suit of any intention on the part of the members of the joint family to exclude him from the joint family property when he should choose to assert his rights.

The evidence goes to show that the departure of N from the family dwelling-house in 1898 with his maternal uncle was voluntary. He was in no sense turned out. He went with the consent of B. his paternal uncle. The reason for his departure is obvious: his father and mother were dead, he was only 12 years old, and his step-mother ruled that branch of the family, and having regard to the state of affairs under that rule and to what had previously occurred, it may well have been thought better for N that he should go with his maternal uncle rather than remain in the same house with his step-mother. The mere fact that during the time N was living with his maternal uncle the members of the joint family did not subscribe towards his maintenance, education or marriage expenses, does not, in their Lordships' opinion, having regard to the facts of this case, prove that those in control and possession of the joint family property intended to exclude him from his share of the joint family property. It is consistent with the evidence that the members of the joint family, who were in control and possession of the joint property, though willing to allow N to be maintained at the expense of his maternal uncle never did anything to indicate to N or any one else that they intended to exclude him from his share in the joint family property (Sir Lancelot Sanderson.) RADHOBA BALOBA VAGH :. ABURAO BHAGWANTRAO SHIROLE.

(1929) 56 I. A. 316 = 53 B. 699 = 33 C. W. N. 1096 = 50 C. L. J. 135 = A. I. B. 1929 P. C. 231 = 27 A. L. J. 1031 = 31 Both. L. B. 1030 = 118 I. C. 1 = 6 O. W. N. 786 = 30 L. W. 514 = (1929) M. W. N. 852 = 57 M. L. J. 287.

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 127-(Contd.)

EXCLUSION-(Contd.)

— Finding as to—Fact or Law-Concurrent findings

—Privy Council's interference with.

The question of what constitutes exclusion may well, in many cases, be a question of law. But in this case the Board are clearly of opinion that the facts relied on to establish the exclusion are quite insufficient for the purpose and as the burden of proof on this issue lay in the first instance on the appellant, this disposes of the appeal. Their Lordships think that the whole of this case is really determined by the concurrent findings of fact of the Courts below. (Lord Buckmatter.) SHYAMANANDA DAS v. RAMKANTA DAS. (1917) 42 I. C. 258=(1917) M. W. N. 642=21 C. W. N. 1142

A Hindu died in 1882, leaving him surviving 3 sons. On his death, the eldest son, the other two being minors, applied under Oudh Land Revenue Act of 1876 for mutation of names in respect of the deceased's estate in his favour as the eldest son. On that application an order was made by the Deputy Commissioner that the eldest son be recorded as lambardar, and that so much of the order of the Assistant Commissioner as directed the registration of the names of the younger sons as co-sharers should be cancelled. The younger sons, however, remained in occupation of the estate jointly with their elder brother until 1911. Then they lived separately, receiving substantial sums from their elder brother for maintenance. The eldest brother died in 1916, and in 1917 the youngest brother sued for partition. The defendants, the sons of the eldest brother, pleaded, inter alia, impartibility of the estate by custom (a plea which was found against), and limitation on the ground that the plaintiff had been excluded from the family property for more than 12 years since 1882, when the mutation of names had been effected in favour of their (defendants') father.

Held, reversing the appellate Court and restoring the

trial Judge, that the suit was not barred.

The judgment of the appellate Court is to a great degree based on the error that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind the mutation proceedings afford clear evidence that the eldest brother took possession of the estate as property to which he was entitled to exclu-sive ownership, and not on behalf of the younger brothers. There can be no doubt he had sole physical possession in the sense that he was able to deat with the proceeds, and to exclude all others, and there can be no doubt that he showed a determination to exercise that physical power on his own behalf. He had therefore sole legal possession, but only in the sense that any person who on application for mutation of names is put upon the registry as sole occupier will have sole legal possession, whether he be the head of a joint Hindu family, or not head of any family, or an absolute owner. Those orders are not, however, evidence that the eldest brother was in possession as sole legal owner in a proprietary sense, to the exclusion of all claims of the other members of the family as co-owners or for maintenance of otherwise. The said orders did not effect and were not intended or designed to effect proprio vigore an exclusion of the other members from all interest in the property of the joint family of which they were members (227-8). (Lord Atkinson.) NIRMAN SINGH v. LAL RUDRA PARTAB (1926) 53 I. A. 220 = 48 A. 529 = NARAIN SINGH. 1 Luck. 389 = 3 O. W. N. 623 = (1926) M. W. N. 716= 44 C. L. J. 330 = A. I B. 1926 P. C. 100=

Art. 127-(Contd.)

EXCLUSION-(Contd.)

25 A. L. J. 25 = 25 L. W. 1 = 29 O. C. 316 = 28 Bom. L. R. 1409 = 38 M. L. T. (P. C.) 81 = 51 M. L. J. 836.

Onus of-Proof of.

Where in a suit for partition of a joint estate the defendant pleads that plaintiffs had been exclued from the joint estate and that their suit was therefore barred, the burden of proof on that issue lies in the first instance on the defendant. (Lord Buckmaster.) SHYAMANANDA DAS P. (1917) 21 C. W. N. 1142-RAMKANTA DAS. 42 I. C. 258 = (1917) M. W. N. 642.

-Proof of. See HINDU LAW-JOINT FAMILY-PARTITION-SUIT FOR-MESNE PROFITS IN. (1912) 40 I. A. 40 (47) = 35 A. 80 (89)

-Suit brought within 12 years of.

In a suit brought by plaintiffs as members of a joint Hindu family under the Mitakshara law for a declaration that they were entitled to a third share of the family property, and for a decree for partition on that footing, the High Court held that no case of exclusion from the joint property could be made out against the plaintiffs till 5 or 6 years before suit, and that the suit was therefore not barred by the law of limitation. Their Lordships affirmed the judgment of the High Court (Lord Macnaghten.) JEOLAL MAHTON P. LOKE NARAYAN MAHTON.

(1912) 15 L. C. 184 - 16 C. W. N. 466.

-Suit brought more than 12 years after.

In a suit brought by the plaintiff-appellant to recover from the defendant-respondent his share of alleged joint family property in the latter's possession, it appeared that the plaintiff had, to his knowledge, been excluded from the family property for more than 12 years before suit.

Held that the suit was bassed under Art 127 of the Limitation Act of 1908 (115). (Sir Robert P. Collier).

RAGHUNATH RAI P. RAI MAHARAJ BALL

(1885) 12 I.A. 112-11 C. 777 (783 4)-4 Sar. 642.

-Younger sons-Exclusion of-Mutation of names on death of father in favour of eldest son in respect of joint family property if amounts to. See HINDU LAW-ANCES-TRAL PROPERTY-MUTATION OF NAMES, ETC.

(1926) 53 I.A. 220 (227-8) = 48 A. 259.

JOINT ENJOYMENT.

-Evidence.

In a suit brought by the plaintiff-appellant for the recovery of his share of alleged joint family property in the possession of his cousin, the defendant-respondent, the question was whether plaintiff had been excluded from the alleged joint family property. It was contended that there was some joint possession on behalf of the plaintiff, on the grounds, 1st, that he lived in the family house, though not in the same apartments with his cousin; 2ndly, that he obtained an allowance of some Rs. 90 either per mensem or per annum,-it did not appear which.

Held that the first of the grounds alleged did not establish joint possession, and that the second went some way to negative it (115). (Sir Robert P. Collier). RAI RAGHU-

NATH RAI v. RAI MAHARAJ BALI.

(1885) 12 I.A. 112 = 11 C. 777 (783-4) = 4 Sar. 642

#### Art. 132.

APPLICABILITY-MORTGAGE-PERSONAL LIABILITY UNDER.

Claim to enforce. Arts. 66 and 132.

LIMITATION ACT IX OF 1908-(Contd.)

Art. 132 - (Contd.)

CONSTRUCTION OF.

-English Limitation Act and decisions thereou-Applicability of.

Quere whether the words of the English Limitation Act and the English decisions thereon applied without question to the words of Art 132 (193). (Lord Blanesburgh). (1926) 53 I.A. 187= PANCHAM P. ANSAR HUSSAIN.

48 A. 457 - 24 A. L.J. 736 - (1916) M'W.N. 520 -24 L.W. 241 = 31 C.W.N. 324 = A.I.R. 1926 P.C. 85 = 99 I.C. 650.

DEBT CHARGED ON IMMOVEABLE PROPERTY.

Suit to recover-Limitation.

A suit to recover a delst charged on immoveable property is governed by Art, 132. (Sir Richard Couch). GIRISH-CHUNDER MAITE P. RANI ANUNDMOVI DEBI.

(1887) 14 I.A. 137-15 C. 66-5 Sar. 78.

MAINTENANCE CHARGED ON IMMOVEABLE PROPERTY ARPEARS OF.

-- Suit for-Limitation.

A suit for arrears of maintenance charged upon immoveable property is governed by Art. 132 of the Limitation Act of 1877 (49). (Sir Richard Couch). AHMUD HOSSEIN KHAN & NIHALUDDIN KHAN. (1883) 10 I.A. 45= 9 C. 945 (950 1) = 13 C.L.R. 330 = 4 Sar. 442 = R. & J's. No. 72 (Oudh).

#### MORTGAGE-PRIORITY OF.

-Suit to enforce-Limitation-Starting point,

A mortgage deed of the year 1874 made the mortgage amount repayable in September 1887. A puisne mortgagee under a mortgage of the year 1888, who paid off the mortgage of 1874 and who therefore claimed to be subrogated to the rights of the mortgagee under that mortgage, brought a suit on September 22, 1900 to enforce such right as against intervening mortgagees. Held that the claim of the plaintiff to priority was barred by Art. 132 of the Limitation Act (84) (Sir John Edge). MAHOMED IBRAHIM HUSSAIN KHAN P. AMBIKA PERSHAD SINGH. (1911) 39 I.A. 68=

39 C. 527 (558) = (1912) 1 M.W.N. 367= 11 M.L.T. 265 = 9 A.L.J. 332 = 14 Bom. L.R. 280 = 16 C.W.N. 505 = 15 C.L.J. 411 = 14 I.C. 496 = 22 M.L.J. 468.

#### MORTGAGE FOR TERM.

Suit to enforce-Limitation-Cause of action-Date fixed for payment-Liberty to martgages to succertier in certain event- Happening of such event-Cause of action in case of.

A mortgage bond, dated 21 6-1856 provided for payment of the principal with intarest in the month of Jeyt 1274 F. S. (June 1866) and contained a claue to this effect: " should the mowzahs mortgaged be sold in execution of decree or for arrears of revenue, the mortgagee shall in that case be at liberty, without waiting for the expiration of the term of payment. to institute a regular suit, and to sell the moveable and immoveable properties of me the declarant and my heirs, and thereby realise the amount in question.

The mortgaged property was as a matter of fact sold on 21-3-1865 in execution of a decree obtained upon another mortgage bond made by the mortgagor subsequently to the above bond, and subject to it.

In a suit instituted on 30-8-1871 to enforce the mortgage bond against the mortgagor and the purchasers at the auction sale on 21-3-1865 above-mentioned, it was contended that the cause of action arose on the date of that auction sale, and that the suit, having been instituted more than 6 years after the date thereof, was barred. Semble the cause

Art. 132-(Contd.)

MORTGAGE FOR TERM-(Contd.)

of action arose on the date fixed for payment and not on the date of the auction-sale (6). (Sir Montague E. Smith). JUNESWAR DASS #: MAHABEER SINGH.

(1875) 3 I.A. 1-1 C. 163 (167-8) - 25 W.R. 84 = 3 Sar. 581 = 3 Suth. 222.

-Suit to enforce-Limitatin-Date fixed for payment -Expiry of-Cause of action on-Abandonment of case of-Amendment of plaint by relying on date of default of first instalment payment and on dates of payment for interest subsequently if amounts to-Effect of.

A mortgage for a term of 12 years provided that the mortgagors should pay annually a sum of Rs. 500 on account of principal and interest, and that, if there was any default in the said payment, the mortgagee was entitled, without waiting for the expiry of the stipulated period, to see for the recovery of the entire amount due under the mortgage. The first default was committed in February 1894. The stipula-ted period of 12 years expired on 21-2-1905. I suit to en-force the mortgage was instituted on . 1 2-1917, the original plaint stating that the cause of action accrued on 21-2-1905. The plaint presented in that form was, in pursuance of Or. 7 R. 11 (d) of C. P. C. of 1908, rejected with the note that under the terms of the mortgage deed the cause of action for the suit accrued on 21-2-1894, when the first instalment was not paid, that the suit was beyond time with reference to that date, and the plaintiff had not shown in the plaint why the suit was not time barred. The plaintiff thereupon amended the plaint stating that the cause of action accrued on 21-2-1894, and that the suit was not time barred by reason of various payments made towards interest on the dates specified in the plaint as amended.

Held that, by reason of the said amendment, the plaintiff must be deemed to have abandoned his case that the cause of action for the suit accrued on 21-2-1905 and to have committed himself to the position that the cause of action accrued to him on 21-2-1894, and that his suit, in the absence of any payment or acknowledgment by the mortgagor was barred long before the date on which it was instituted, and that he could not thereafter accordingly revert to the case so abandoned by him (195-6). (Lord Blanesburgh).

PANCHAN v. ANSAR HUSSAIN. (1926) 53 I.A. 187 - 48 A. 457 - 24 A.L.J. 736 -(1926) M.W.N. 520 - 24 L.W. 241 - 31 C.W.N. 324 -A.I.R. 1926 P.C. 85-99 I.C. 650.

-- Suit to enfarce -- Limitation -- Starting point-Annual payments-Default in payment of -Enforcement of mortgage within stipulated period in event of-Provision for-Effect.

A mortgage for a term of 12 years provided that the mortgagors should pay annually a sum of Rs. 500 on account of principal and interest. The deed contained a further clause that if there was any default in payment of Rs. 500 per annum, as aforesaid, on the part of the mortgagors, the mortgagee was entitled, without waiting for the expiry of the stipulated period, to sue for the recovery of the entire amount due under the mortgage. The High Court of Allahabad held, following previous decisions of that Court, that under a clause in the above form a single default on the part of the mortgagors, without any act of election, cancellation or other form of response or acceptance on the part of the mortgagees, and even against their desire, operated co-instanti, to make the money secured by the mortgage "become due," so that all right of action in respect of the security was finally barred 12 years later.

Quoere whether the decisions of the Allahabad High Court to the effect above stated were correct, and whether, even if they were, they had any application to a proviso

#### LIMITATION ACT IX OF 1908-(Contd.)

Art. 132-(Contd.)

MORTGAGE FOR TERM-(Contd.)

framed as above set out (1934). (Lord Blanesburgh). PANCHAM P. ANSAR HUSSAIN. (1926) 53 I.A. 187 = 48 A. 457 = 24 A.L J. 736 = (1926) M.W.N. 520 = 24 L. W. 241=31 C.W.N. 324= A.I.R. 1926 P.C. 85=99 I.C. 650.

-Suit to enforce, against mortgagor personally and against purchaser of mortgaged property in execution of another decree against him-Limitotion-Principal object of suit to obtain sale of land against auction-purchaser.

By a mortgage bond, dated 21-6-1856 the mortgagor undertook to liquidate the amount of principal and interest in the month of Jeyt 1274 F.S. (June 1866). the instrument which created an hypothecation of land was as follows:- "As security for the above sums of money I pledge and mortgage mowzahs....held and possessed by me. I and my heirs shall not, as long as the whole amount aforesaid remains unpaid, transfer them in any way." The bond was registered on 23-6-1856.

The suit out of which the appeal arose was instituted on 30.8-1871 by the heirs of the mortgagee. The defendants were the mortgagor and purchasers of the mortgaged property in execution of a decree obtained upon another mortgage bond made by the mortgagor subsequently to the suit bond, and subject to it. The plaint in the suit sought to charge the mortgagor personally, and it also claimed to recover the amount of the principal and interest by the sale of the mortgaged property.

Held, affirming the High Court, that the suit was in substance one for the recovery of immoveable property, or of an interest in immoveable property, and fell therefore within cl. 12 of S. 1 of the Limitation Act of 1859 (6)

Neither cl. (10) nor cl. (16) of S. 1 of the Act of 1859 is applicable to the suit. Its object is to obtain a sale of the land as against the auction-purchasers. It is, therefore, as against them a claim founded not upon the contract to pay the money, but upon the hypothecation of the land (5-6). JUNESWAR DASS D. MAHA-(Sir Montague E. Smith). (1875) 3 I. A. 1=1 C. 163 (166-7)= BEER SINGH. 25 W.R. 84-3 Sar. 581=3 Suth. 222.

PRIOR AND SUBSEQUENT MORTGAGES-THIRD MORTGAGEE-SURPLUS PROCEEDS OF SALE OF MORTGAGED PROPERTY IN EXECUTION OF DECREE ON FIRST MORTGAGE WITHDRAWN BY.

Second mortgage's suit to recover his mortgage amount from-Limitation-Starting point.

Property X was mortgaged by A, its owner, first to B, then to C, and again to B. B obtained a decree on his first mortgage, making C a party to the suit, and in execution thereof the property was sold. The balance of sale proceeds left after satisfying B's decree was deposited in Court. Then B sued upon his subsequent mortgage without making C a party, obtained a decree and in execution thereof withdrew the balance of sale proceeds in Court deposit in satisfaction of the decree without giving notice to C of the said withdrawal In a suit for sale on his mortgage instituted by C within 12 years from the time when the money sued for became due, C sought a decree against B for the amount withdrawn by him from Court in satisfaction of his second decree with interest on the said amount, held that the suit was, so far as it related to B, a suit to enforce payment of money charged upon immoveable property within the meaning of Art. 132 of the Limitation Act and was governed by the period of limitation provided for

Held that the balance of sale proceeds in Court deposit represented the security which C had under his mortgage

Art. 132-(Contd.)

PRIOR AND SUBSEQUENT MORTGAGES -THIRD MORTGAGEE-SURPLUS PROCEEDS OF SALE OF MORTGAGED PROPERTY IN EXECUTION OF DECREE ON FIRST MORTGAGE WITHDRAWN BY -(Contd.)

and did not cease to represent that security owing to the fact that B had, wrongfully and in fraud of C, drawn it out of the Court in which it had been deposited.

The view of Henderson, J. that, under the circumstances of the case, the balance in the bands of B was saddled with a charge in favour of C to the amount of his charge, i.e., under his mortgage stated to be not dissented from. (Sir John Edge). BARHAMDEO PRASHAD P. TARA (1913) 41 I.A 45-41 C. 654-21 I.C. 961-CHAND. 18 C.W.N. 345 = 19 C.L.J. 132 = 12 A.L.J. 82-

16 Bom. L.R. 89 = 15 M.L.T. 62 = (1914) M.W.N. 38=26 M.L.J. 243.

-Arts. 132 and 147-Applicability-Simple mort-

gage-Suit for sale on-Limitation.

Article 132, and not 147, of the Limitation Act of 1877. is applicable to a suit whose object is to enforce payment of the amount due under a simple mortgage, by sale of the mortgaged property. (Sir Arthur Wilson). VASUDEVA MUDALIAR D. SRINIVASA PILLAI.

(1907) 34 I.A. 186=30 M. 426=2 M.L.T. 333= 6 C.L.J. 255=11 C.W.N. 1005-4 A.L.J. 625-9 Bom. L.R. 1104-17 M.L.J. 444.

#### Art. 134.

(For cases under Act of 1859 see S. 5 of that Act; and for cases under Art. 134 of Act of 1877, see under Art. 134

APPLICABILITY-MAHOMEDAN WAKE. CHANGE OF LANGUAGE IN. CONTROL OF, BY S. 10 OF ACT. MEANING AND APPLICABILITY OF-CLUE TO. PLEA OF BAR UNDER-APPEAL. TRANSFER FOR VALUABLE CONSIDERATION. TRANSFER OF PROPERTY MORTGAGED. TRUSTEE. VALUABLE CONSIDERATION.

## APPLICABILITY-MAHOMEDAN WAKE.

-- Muttawalli of-Mortgage of wakf property by-

Suit by successor to recover property sold.

This was a suit brought by the mutawalli of a mosque to recover possession of property, alleged to have been settled as a valid wakf, from the defendants, whose title arose under incumbrances created by his predecessors in that office. The High Court held that the claim was statutebarred, relying on Art. 134 of the Limitation Act of 1908.

Held that, in view of the decision in L.R. 48 I.A. 302, which held that Art. 134 does not apply to a wakf, the conclusion of the High Court was not sustainable. (Lerd Sumner). ABDUR RAHIM P. NARAYAN DAS AURORA. (1922) 50 I.A. 84 (87)=50 C. 329 (332)=

32 M.L.T. 153=17 L.W. 509=25 Bom. L.R. 670= 38 C.L.J. 242=(1923) M.W N. 441=

28 C.W.N. 121 = A.I.B. (1923) P.C. 44 = 71 I.C. 626 = 44 M.L.J. 624.

#### CHANGE OF LANGUAGE IN.

Effect of. See LIMITATION ACT OF 1908-ART. 134-LIMITATION ACT OF 1877-ART. 134-CASES UNDER-RELIGIOUS ENDOWMENT. (1911) 38 I.A. 76 = 38 C. 526.

CONTROL OF, BY S. 10 OF ACT.

The operation of Art. 134 of the Limitation Act is controlled by S. 10 of the Act (166). (Sir Andrew Scoble).

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Art. 134-(Contd.)

CONTROL OF, BY S. 10 OF ACT-(Contd.)

ABHIRAM GOSWAMI 7. SHYAMA CHARAN NANDI.

(1909) 36 I. A. 148 - 36 C. 1003 (1014) = 10 C.L.J. 284-14 C.W.N. 1-11 Bom. L.R. 1234-6 A.L.J. 857 = 4 I.C. 449 = 19 M.L.J. 530.

-Art. 134 is controlled by S. 10 of the Limitation Act. The language of S, 10 gives the clue to the meaning and applicability of Art. 134 (315), (Mr. Ameer Ali). VIDYA VARUTBI THIRTHA P. BALUSAMI AIYAR.

(1921) 48 I. A. 302 = 44 M. 831 (843) = (1921) M.W.N. 449 = (1922) P.C. 123 = 15 L. W. 78-30 M.L.T. 66-26 C.W.N. 537-(1922) Pat. 245 = 20 A.L.J. 497 =

24 Bom. L. R. 629 = 65 I.C. 161 - 41 M. L. J. 346.

MEANING AND APPLICABILITY OF-CLUE TO. -S. 10 if gives. See LIMITATION ACT 1908-ART. 134 - CONTROL OF, ETC. (1921) 48 I. A. 302(315)= 44 M. 831 (843).

PLEA OF BAR UNDER-APPEAL. -Maintainability for first time in-Evidence necessary. See LIMITATION-PLEA OF-APPEAL.

(1929) 56 I. A. 192(198) - 51 A. 367.

TRANSFER FOR VALUABLE CONSIDERATION.

-Permanent lease if a.

In the Limitation Act of 1877, the words of Art. 134 were "purchased" from the trustee or mortgagee." The ward "purchased" has been omitted in the Act of 1908, and the words of Art. 134 are "transferred by the trustee or mortgagee for valuable consideration." The alteration was made with the object of including permanent leases in transactions of the character contemplated in the article (314-5). (Mr. Ameer Ali.) VIDYA VAKUTHI THIRTHA v. BALUSAMI AIYAR. (1921) 48 I. A. 302 =

44 M. 831 (843) - (1921) M. W. N. 449 -(1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N 537-(1922 Pat 245-20 A. L. J. 497-

24 Bom. L. R. 629 - 65 I. C. 161 - 41 M. L. J. 346. -Permanent lease on small quit rent if a. See UNDER THIS ACT-ART. 134-VALUABLE CONSIDERATION.

(1921) 48 I. A. 302 - 41 M. 831 (854).

TRANSFER OF PROPERTY MORTGAGED.

Transfer by mortgagee after he ceased to be such by getting in equity of redemption if a.

The transfer of property mortgaged contemplated by Article 134 is admittedly something other than an express transfer of the original mortgage. The article contemplates a transfer by a mortgagee purporting to transfer a larger interest than that given by the mortgage or at any rate an interest unencumbered by a mortgage. The appellant sought to put a limited construction on the article by contending that it only applied where the transfer took place while the mortgagee was mortgagee, or at any rate transferred possession which he had obtained as mortgagee. It did not apply, they said, where the mortgagee had apparently ceased to be mortgagee by getting in the equity of redemption, and had obtained possession not under the mortgage but under the purchase of the equity of redemption. Their Lordships see no reason for accepting this view. It appears to them to be immaterial that the mortgagee should have thought he was absolute owner if in fact he was mortgagee; and immaterial whether he got possession before, under or after the mortgage if in fact be purported to transfer the property to the transferee (199). (Lord Atkin.) SKINNER v. NAUNIHAL SINGH. (1929) 56 I. A. 192=

51 A. 367 = 31 Bom. L. B. 854 = 30 L. W. 76:= 117 I.C. 22=50 C. L. J. 74=33 C. W. N. 761= 27 A. L. J. 166 = A. I. B. (1929) P. C. 118 = 58 M. L. J. 604.

Art. 134-(Contd.)

TRANSFER OF PROPERTY MORTGAGED-(Contd.)

-Transfer in fact only transfer of mortgage but mistakenly supposed to convey absolute title if a.

Art. 134 does not protect the transferee of a mortgage by express transfer, and it appears idle to suppose that it protects a person who has taken a transfer only of a mortgage, but has taken it without his knowledge mistakingly supposing that he was getting something better in circumstances when he cannot maintain his superior title by reliance on any period of limitation (200). (Lord Atkin.) SKINNER P. NAUNIHAE SINGH. (1929) 56 I. A. 192 = 51 A. 367 = 31 Bom. L. R. 854 = 30 L. W. 76 =

51 A. 367 = 31 Bom. L. R. 854 = 30 L. W. 76 = 117 I. C. 22 – 50 C. L. J. 74 = 33 C. W. N. 761 = 27 A. L. J. 166 = AI.R. 1929 P.C. 118 – 58 M. L. J. 604.

#### TRUSTEE.

 Hindu and Mahomedan pious institutions—Manager or superior of—Trustee if and when a,

From the above review of the general law relating to Hindu and Mahomedan pious institutions, it would format facie follow that an alienation by a manager or superior, by whatever name called, cannot be treated as the act of a 'trustee' to whom property has been "conveyed in trust" and who by virtue thereof has the capacity vested in him which is possessed by a "trustee" in the English law. Of coarse, a Hindu or a Mahomedan may "convey in trust" a specific property to a particular individual for a specific and definite purpose, and place himself expressly under the English law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term. (Mr. Ameer Ali.) VIDYA VARUTHI THIRTHA P. BALUSAMI AIYAR. (1921) 48 I. A. 302 =

44 M. 831 (847) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = (1922) P. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.

-Shebait or muttawalli if a.

Art. 134 of the Limitation Act of 1908 refers to cases of specific trust, and relates to property "conveyed in trust." Neither under the Hindu law nor in the Mahomedan system is any property "conveyed" to a shebait or a muttawalli, in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution he holds as manager with certain beneficial interests regulated by custom and usage. Under the Mahomedan law, the moment a wakf is created all rights of property pass out of the wakf, and vest in God Almighty. The curator, whether called, mutwalls or Sajjadanashin, or by any other name, is merely a manager. He is certainly not a "trustee" as understood in the English system (315). Of course, a Hindu or a Mahomedan may "convey in trust" a specific property to a particular individual for a specific and definite purpose, and place himself expressly under the English law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term, But persons holding property generally for Hindu and Mahomedan religious purposes are not to be treated as "trustees." "Conveyed in trust "is hardly the right expression to apply to gifts of land or other property for the general purposes of a Hindu religious or pious institution. (Mr. Ameer Ali.) VIDYA VARUTHI THIRTHA v. BALUSAMI AIYAR. (1921) 48 I. A. 302 =

44 M. 831 (843, 847, 848) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = (1922) P. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.

### LIMITATION ACT (IX OF 1908)-(Contd.)

Art. 134-(Contd.)

#### VALUABLE CONSIDERATION.

Onit rent small reserved under permanent lease if.

In a case in which the head of a mutt granted to a near relative a permanent lease of mutt property on a small quitrent of Rs. 24 a year, held that it would be ridiculous to 
hold that the rent reserved in the grant was "valuable 
consideration" which forms the essence of both S. 10 and 
Art. 134 of the Limitation Act of 1908. (Mr. Ameer Ali.)
VIDYA VARUTHI THIRTHAT. BULUSAMI AIYAR.

(1921) 48 I A. 302 = 44 M. 831 (854) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L. W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = (1922) P. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.

- Arts. 134, 140, and 148—Applicability—Mortgage by testator—Redemption of—Suit for, by remainderman under will of mortgagor—Limitation—Transfer by mortgagee of absolute interest during lifetime of life tenant—Plea under Art. 134 based on—Maintainability.

In 1863 S mortgaged the suit villages, amongst others, and died in 1864, leaving a will whereby in the events that happened he left successive life interests to his three sons with ultimate remainder to his daughter, the plaintiff. Each interest was, under the will, contingent on the holder of the prior estate dying without male issue; but the three sons who were successively life tenants did die without lawful issue. B, the eldest son, who became tenant for life on his father's death, however, assumed an absolute interest in the property, and, acting as absolute owner, he, in 1867, mortgaged the villages subject to the mortgage of 1863 to the mortgagee under that mortgage for a sum which was expressed to include the amount due on that mortgage. The name of the mortgagee was to be entered in the revenue papers as mortgagee and that of B as proprietor In 1892, the equity of redemption in the suit villages was sold in execution of a money decree against B and was purchased by the mortgagee himself, who therefore entered into postession of them on the footing of being absolute owner. In 1898, the mortgagee, purporting to be absolute owner, mortgaged with possession the suit villages to R. In 1903 R purchased the villages from the heirs of the mortgagee in satisfaction of all claims under the mortgage and himself sold them to the respondent in 1904.

B died in 1900 and was succeeded by his brother, who in 1900 seed the respondent to recover possession of, inter alia, the suit villages. In that suit it was decided by the Privy Council that, though the mortgagee did not acquire an absolute interest from B, he yet, notwithstanding the terms of the mortgage of 1867, must be held to be entitled to his rights under the mortgage of 1863. Those rights, it was held, passed to the subsequent purchasers, and therefore the plaintiff in that suit was not entitled to recover possession of the property except on condition that he redeemed the mortgage security. The suit was remitted for the condition to be performed, but in 1913 the plaintiff in that suit died and the suit abated. G, the third brother, who succeeded him. filed a suit for redemption against the respondent, but he died in 1919 pending the suit which accordingly abated Within 12 years of his death and within 60 years of the mortgage of 1863 the plaintiff instituted against the respondent the suit out of which the appeal arose for redemption of the mortgage of 1863,

Held that, as the transfer of 1898 which was ex concention ineffective to give the absolute title was made during the existence of the particular estate vested in B, the provisions of Art. 140 of the Limitation Act applied to the case, and the respondent was defeated in the enjoyment of the absolute title by the provisions of that article; that, in so far as the

## LIMITATION ACT (IX OF 1908)--(Contd.) Arts. 134, 140 and 148--(Contd.)

respondent relied upon the transfer to him of the mortgage interest of the mortgage in the original mortgage of 1863, Art. 134 afforded him no protection, because it was inapplicable to the case of a transferee of a mortgage by express transfer, and to that of a person who has taken a transfer only of a mortgage, but has taken it without his knowledge mistakingly supposing that he was getting something better in circumstances like those of the case before the Privy Council, where he could not maintain his superior title by reliance on any period of limitation; and that, as the suit had been brought within the statutory period of 60 years allowed by Art. 148, it was not barred.

If the transfer ultra the mortgage interest had taken place in the lifetime of S, the Settlor, so that time had begun to run in his lifetime, Art. 140 would not, by reason of S. 9 of

the Limitation Act, have availed the plaintiff.

Semble:—If B had the absolute title to the equity of redemption at the time when the mortgagee purported to transfer the absolute title to R the case would have been brought within Art. 134. (Lord Atkin). SKINNER:
NAUNIHAL SINGH. (1929) 56 I.A. 192 = 51 A. 367 =

31 Bom. L.R. 854 = 30 L. W. 76 = 117 I.C. 22 = 50 C. L. J. 74 = 33 C.W. N. 761 = 27 A. L. J. 166 = A.I. R. 1929 P. C. 118 = 58 M. L. J. 604. Arts. 134 and 144—Applicability.

--- Hindu Religious Endowment-Mutt-Mahant of-Alienation by-Successor's suit to recover property subject

of.

The then mahant of a math sued for the recovery of properties, endowments of the math, on the ground that they had been improperly alienated by his predecessor to the defendants. The math was a math of Sanyasis. The properties of the math stood in the name of the mahant for the time being, but he had no right to alienate them otherwise

than for necessity.

Quarte, whether limitation for the suit did not commence to run in favour of the defendants from the dates of the wrongful alienations of the properties or at all events from the date of the final abandonment of his office by the previous mahant (the alienor) and not only from his death; whether, in other words the case was governed by the decisions of which L. R, 37 I. A. 147 might be taken as the leading authority; or by the line of authority of which L. R. 48 I. A. 302; might be taken as typical (35). (Lord Blanesburgh). LAL CHAND MARWARI c. RAMKUP GIR. (1925) 53 I. A. 24 = 5 P. 312 = 24 A. L. J. 105 =

(1925) 53 I. A. 24 = 5 P. 312 = 24 A. L. J. 105 = (1926) M.W.N. 203 = 7 P.L.T. 163 = 3 O.W.N. 335 = 43 C.L.J. 249 = 28 Bom. L. R. 855 = 30 C. W. N. 721 = A. I. R. (1926) P. C. 9 = 93 I. C. 280 = 50 M.L.J. 289.

Property gifted to a person for her life and for performance of debshebas—Sale of, in execution of decree against donce—Donor's suit to recover property on death of donce.

In 1841 D, a Hinda widow, executed an ikrarnama in favour of R, her mother-in-law, whereby she gave certain property to R for her life in order that she might perform certain deb-sebas and provide for her own support. In 1864, one M, having obtained a decree against R, and having applied for a sale of a ten-annas share of the Zemindary of a talook, which was the share of R by virtue of the ikrarnama, the same was publicly sold and purchased by the respondent in 1865. He also obtained possession of the property purchased. R died in 1807. In 1876 D and T, who was then the presumptive heir on the death of D, executed a deed of gift transferring the same property to the wife of the appellant. In a suit brought by the appellant in 1878, after the death of his wife, for recovery of possession of the property

## LIMITATION ACT (IX OF 1908)—(Contd.) Arts 134 and 144—Applicability—(Contd.)

from the respondent, held that Art. 134 of the Limitation Act of 1877 had no application to the case, and that, as the suit was brought within 12 years of R's death, it was not harred under Art. 144 of the said Act. (229). (Sir Richard Conch). KALL DAS MULLICKY. KANNYA LAL PUNDIT.

(1884) 11 I.A. 218 = 11 C. 121 (131) = 4 Sar. 578.

——Trustee—Permanent mokurrari lease of trust proforty by—Successor's suit to recover property subject of.

A trustee has no power to dispose of trust property by a permanent mukarrari lease, though he is at liberty to dispose of it during the period of his life and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office. Such an argument has no relation to a case where trust property has been acquired under an execution sale and possesion retained throughout. (Lord Buckmaster). SUBBAIYA PANDARAM 2. MAHAMED MUSTAPHA MARACAYAR.

(1923) 50 I. A. 295 (299-300) = 46 M. 751 (756) = 21 A.L.J. 730 = A. L. R. (1923) P. C. 175 = 25 Bom. L. R. 1275 = 18 L.W. 903 = 33 M.L.T. 285 = (1924) M. W. N. 65 = 28 C. W. N. 493 = 40 C. L. J. 20 = 2 Pat. L. R. 104 = 74 I.C. 492 = 45 M. L. J. 588.

— Trust property—Execution purchaser of—Succeeding trustee's sait to recover property from—Limitation—Purchase by defendant with knowledge of property being trust property.

A was trustee of certain charities created by two deeds the first of which declared that the heirs of the settlor in the order of primogeniture should be trustees and conduct the said charities. In execution of a decree obtained against A for a private debt of his, charity properties were attached and sold. In the same year, the plaintiff, his son and then a minor, sued, inter alia, the execution purchaser, and obtained a decree on 31-12-1900 declaring that the properties covered by the two deeds, including those purchased by the execution purchaser, formed a trust estate for the purpose specified in the deeds. The plaintiff instituted another suit and obtained a decree therein, dated 21-7-1913 removing his father from the trusteeship, and thereupon the plaintiff himself succeeded as trustee. On 23-7-1913 the plaintiff insti tuted the suit out of which the appeal arose to recover the properties sold at the execution sale aforesaid from the representatives of the execution purchase. The said execution sale was confirmed on 11-8-1898, and delivery of possession was made to the execution purchaser and from that day until the institution of the suit he and his representatives in interest were in uninterrupted possession of the suit properties.

Held, that the suit was barred under Art. 134 or Art. 144 of the Limitation Act of 1908.

The execution purchaser being an assignee for valuable consideration within the meaning of the Exception to S. 10 of the Limitation Act of 1908, he is not prevented, by reason of the fact that he knew that the property, was trust property from relying on the provisions of the statute which limit the time within which a suit must be brought for recovery. (Lord Buckmatter). SUBBIAH PANDARAM v. MAHAMED MUSTAPHA MARGAYAR.

(1923) 50 I.A. 295 (300·1)=
46 M. 751 (756·7)=21 A. L. J. 730 =
A. I. B. (1923) P. C. 175=25 Bom. L. B. 1275=
18 L. W. 903=33 M. L. T. 285=(1924) M.W. N. 65=
28 C. W. N. 493=40 C.L.J. 20=2 Pat. L. B. 104=
74 I. C. 492=45 M. L. J. 588,

## LIMITATION ACT (IX OF 1908)—(Centd.) Arts. 135, and 147.

Applicability—Mortgage in English form—Foreclosure proceedings on—Peror purchaser of mortgaged property not made party to—Mortgage's mut for procession against.

A mortgage in the English form, dated 17-11-1865, provided for the payment of the debt on 17-2-1866, and gave to the mortgagor the right of possession until default in payment, and to the mortgagee the right of entry after default. The mortgagec took proceedings under Regulation XVII of 1806 for foreclosure of the mortgage, and, by virtue of such proceedings, he became absolute owner on or strictly before 31-3-1873. Portions of the mortgaged property had, however, been sold previously by the mortgagor, but those purchasers weren ot made parties to the foreclosure proceedings, and they therefore continued entitled to redeem the mortgage. Consequently, the appellant, who acquired the original mortgagee's interest in the mortgaged property in the year 1879. instituted, on 6.9-1882, the suit out of which the appeal arose against the mortgagor and the purchasers from him. praying for an order for payment of the morigage amount, and in default a declaration that the defendants would be unable to redeem the mortgaged properties, and for possession.

Held, affirming the High Court, that Art. 135 and not Art. 147, of the Limitation Act of 1877, applied to the case and that the suit was barred. (Lord Hobborne.) SRINATH DAS P. KHETTERMOHAN SINGH.

(1889) 16 I. A. 85 (94-5) = 16 C. 693 = 5 Sar. 315.

Art. 139.

Bengal Tenancy Act of 1885—Sch. III. Art. (1) (a)
Applicability—Private lands of proprietor—Lessee of—Ejectment suit against after expiration of lease—Limitation. See BENGAL ACIS—TENANCY ACT OF 1885—SCH III. ART. (1) (a)—PRIVATE LANDS.

(1922) 49 I.A. 81 (89) = 1 Pat. 340 (348).

Matt - Mohant of - Postetsion of must property from lessee under lease for term by prior mohant - Non-payment of rent by lessee for over 12 years after expiration of term

Plaintiff, the mobunt of a mutt, sued to recover possession of the suit land, alleging that the same belonged to a math of which the plaintiff was the mobunt, and that the defendants had no title to it. The suit was instituted in 1911. The defendants were persons who claimed through one R who held the suit land under a kabuliyat executed in 1862 in favour of the then mobunt of the suit math for a period of 18 years. No rent was ever paid since the expiration of the term of the said lease in 1880. A verbal lease or arrangement set up by the plaintiff as having been entered into between the uncle of the defendants and the predecessor of the plaintiff was found against.

Held that the High Court was right in holding that the suit was barred under Art. 139 of the Limitation Act of 1908. (Lord Shate.) MOHUNT BHUGWAN KAMANUJ DAS 2. RAMKRISHNA BOSE. (1919) 26 C. W. N. 722 =

A. I. R. (1922) P.C. 184 = 74 I.C. 561

Art. 140.

-Remainderman-Person claiming only equity of redemption if a.

It was contended that the plaintiff claiming only an equity of redemption did not come within the meaning of a remainderman. So to hold would be to do violence to the language and reasoning of this Board in Skinner v. Naunihal Singh, 40 I. A. p. 105, and would be inconsistent with the ordinary meaning of the term (199). (Lord Atkin.) SKINNER v. NAUNIHAL SINGE.

SKINNER c. NAUNIHAL SINGH. (1929) 56 I. A. 192= 51 A. 367=31 Bom. L. R. 854=30 L. W. 76= 117 I. C. 22=50 C. L. J. 74=33 C. W. N. 761= 27 A.L.J. 166=A.I.R. 1929 P. C. 118=58 M.L.J. 604.

## LIMITATION ACT (IX OF 1908)-(Contd.)

Att. 140-(Contd.)

- Will-Immreable property devised by-Devise's suit for possession of-Limitation-Starting point.

Under Art. 140 of the Limitation Act of 1877 a suit by a devisee for possession of immoveable property left by a will must be brought within 12 years from the time when his estate falls into possession. According to the Hindu law a devisee becomes entitled to the property bequeathed, immediately upon the death of the testator; and a suit by him for possession of the immoveable property bequeathed is, therefore, harred under Art. 140, unless brought within 12 years from the date of the testator's death (172). (Sir Barnet Postorick.) MyLAPORE 2. YEO KAY.

(1887) 14 I. A. 168-14 C. 801 (807-8)=5 Sar. 50. Arts. 140, 134.

- Applicability—Mortgage by testator—Redemption of
Suit for. by remaindermar under will of mortgagor—
Limitation—Defendant claiming under transfer of absolute
interest by mortgagee during lifetime of life tenant—Applicability of Art. 134 to case of. See LIMITATION ACT OF
1908—ARTS. 134, 140 AND 148. (1929) 56 I.A. 192=
51 A. 367.

-Art. 141-(FOR OTHER CASES SEE UNDER ART. 141 OF ACT OF 1877).

#### APPLICABILITY.

Hindu daughter—Father's estate—Malikana perpetual payable by Government forming part of—Suit for declaration of right to amount of, as reversionary heir on death of mother. See LIMITATION ACT OF 1908—ARTS. 120, AND 141. (1929) 56 I. A. 267=51 A. 439.

Widow.

Adverse possession against—Effect of, on reversioner's right to recover property on her death. See HINDU LAW—REVERSIONER—WIDOW—ADVERSE POSSESSION AGAINST.

--- Death of Date of Onus of proof of, in suit by reversioner to recessor possession on her death.

The question was whether a suit brought the appellants, the reversionary heirs of a deceased Hindu, for the recovery of possession of his properties after the death of his widow was or was not barred by limitation. The settlement of that question depended upon the fixture of the date of the death of the widow of the last male owner. The appellant's case was that the widow died on a date four days within the lapse of 12 years prior to the institution of the suit, while the respondents maintained that that fact had not been established.

Held, affirming the High Court, that the onus of proving the averment rested upon the appellants, and that they had failed to establish that fact. (Lord Share.) MALRAJU VENKATA RAMA KRISHNA RAO GARU: KOPPURAYURI SRIRAMULU. (1924) 20 L. W. 1 = 26 Bom. L. R. 563 = A. I. R (1924) P.C. 136 = 46 M. L. J. 541.

 Decree agains: Effect of, on reversioner's right to recover property on her death. See HINDU LAW—WIDOW
 DECREE AGAINST—RES JUDICATA AGAINST REVER-SIONERS.

--- Decree against, founded on limitation—Effect of, on reversioner's right to recover possession on her death. See HINDU LAW—WIDOW—DECREE AGAINST—RES JUDICATA AGAINST REVERSIONER—LIMITATION.

- Lease by-Reversioner's suit after her death to re-

Appellants, the reversionary heirs of one M, sued for a declaration that an ijara or lease, of the whole of M's property for a term of 60 years, executed by M's widow, had become inoperative as against the plaintiffs since her death, and for khas possession of those properties.

Art. 141-(Contd.)

WIDOW-(Contd.)

Held that the article of the Limitation Act applicable to the case was Art. 141, and not Art. 91 (92).

Art. 91 would have been applicable if the plaintiffs could not have recovered possession without setting aside the lease. But it was not necessary for them to pray to set aside the lease (91.2). (Lord Davey.) BIJOY GOPAL MUKERJI v. (1907) 34 I. A. 87 = KRISHNA MAHISHI DEBI.

34 C. 329 (332-3) = 2 M. L. T. 133 = 5 C.L. J. 334 = 11 C. W. N. 424 = 9 Bom. L. R. 602 = 4 A. L. J. 329 = 9 Sar. 216 = 17 M. L. J. 154.

-Sale by-Property subject of-Reversioner's suit after her death to recover-Limitation.

Plaintiffs sued to recover possession of a talook, and to cancel and invalidate a sale deed thereof executed by a lady, who last held the talook, in favour of the appellant's father.

Held that if the plaintiffs were to be taken to sue as the next heirs of the lady's husband, to set aside a conveyance which, whether fraudulent or not, she, considered as a Hindu widow, was incompetent to execute, their right of action accrued at the date of her death, and the suit brought within 12 years from that date was well within time (535). (Six Edward V. Williams.) JOWALA BUKSH & DHARUM (1866) 10 M. I. A. 511 = 2 Sar. 189. SINGH.

-Arts. 141, 120 and 144-Applicability Hindu Law -Will by last male owner-Declaration of invalidity of. and administration-Heir at-last's suit for, on death of widow-Suit property comprising moveables and immoved-

A testator died in 1869 leaving behind him two widows, one of whom died in 1871 and the other in 1888 and also a will whereby he bequeathed the whole residue of his estate to trustees for "Dharam". In a suit brought by the heirat-law in 1883 very shortly after the death of the surviving widow for a declaration of the invalidity of the bequest to "Dharam" and for administration, held that, as to immoveables, the suit was governed by art. 141 and, as to movables. by art. 120 and that art, 144 had no application to the case. (Sir Richard Couch.) RUNCHORDAS VANDRAWANDAS (1899) 26 I. A. 71 (81 2) P. PARVATHI BHAL. 23 B. 725 (736) = 3 C. W. N. 621 = 1 Bom. L. B. 607 7 Sar. 543.

-- Art. 142--(ALL OTHER CASES WILL BE FOUND UNDER EJECTMENT SUIT).

-Adverse possession-Necessity of, in cases falling

under Article. Quare whether in cases falling under Art. 142 of the Limitation Act there must be what is called adverse pussession (151). (Sir Richard Couch.) NAWAB MUHAMMAD AMANULLA KHAN P. BADAN SINGH.

(1889) 16 I. A. 148 = 17 C. 137 (143) = 23 P. B. 1890 P. C. = 5 Sar. 412.

-Applicability-Condition.

In order to bring a case under Art, 143 of Schedule II of the Limitation Act of 1871, it must be shown that there has been a dispossession or discontinuance (214). (Sir Arthur Hobhoute.) MUSSAMMAT DEBIA SAHODRA v. ROY JUNG (1881) 8 I. A. 210 = 8 C. 224 (229) = BAHADOOR. 6 L J. 108=4 Sar. 294.

-Co-sharers-Decree for joint possession in favour of one of-Suit for partition and separate possession and mesne profits by-Limitation-Symbolical possession obtained by him in execution of his decree. See ARTS, 120 and 142. (1924) 29 C. W. N. 270.

Co-sharers-Joint possession given in execution of decrees to one of-Partition suit by him within 12 years of Not barred.

LIMITATION ACT (IX OF 1908)-(Contd.)

Art. 142-(Contd.)

WIDOW -- (Contd.)

Plaintiff and Watson & Co. were co-sharers of certain lands. Watson & Co. having denied the right of the plaintiff as a co-sharer, he sued for and obtained a decree for possession of the suit lands, the decree in effect declaring that Watson & Co. had no jotedari right in the suit lands. A commissioner was appointed to deliver possession to the decree holder, and he delivered possession under S. 264 of C.P.C, of 1882.

In a suit by the plaintiff against the successors in interest of Watson & Co. for a declaration that the defendants had no jote rights in the lands of which he obtained possession under the prior decree and for a decree for possession after partition by ejectment of the defendants. held that the possession which the plaintiff got in execution of the prior decree was a possession of the lands in his proprietary right as a co-sharer and that the subsequent suit, which had been instituted within 12 years of his so obtaining possession, was not harred under Art. 142 of the Limitation Act. (Sir John Edge.) MIDNAPUR ZEMINDARY CO., LTD v. NAR-ESH NARAIN ROY. (1924) 51 I. A. 293 (298-9)=

51 C. 631 A. I. R. (1924) P.C. 144 = 26 Bom. L. B. 651 = 35 M. L. T. 169 = 20 L. W. 770 = 23 A. L. J. 76=(1924) M. W. N. 723 - 80 I. C. 827= 29 C. W. N. 34 = 47 M. L. J. 23.

- Dispossession-Distontinuance of possession-Mean ing of-Submergence of land-Possession of land in case of, if real owner's or trespasser's. See POSSESSION-SUB-MERGED LAND.

-Mafi land held by plaintiff - Resumption by Govern ment of, and settlement of it with defendant-Possession with defendant purmant to-Plaintiff's suit to recover land from defendant-Limitation.

The plaintiffs in the suit were descendants of one L, who held the land in suit as Man. That Man was resumed in 1837, and at that time the ancestors of the plaintiffs, who had the Mafi, were offered an engagement for the land revenue. They on 5-4-1838 declined to take the land and engage for payment of the revenue. In 1842 a settlement was made, and then an engagement was made with the defendants, called the lumbardars, or representatives of the villagers, for the whole of the village, including the suit land and making no distinction between the way in which that land and the other land, of which the villagers were undoubted proprietors, was to be held. That settlement was to last for 30 years, and would expire in 1872. On a revision of settlement in 1879, the plaintiffs applied for what they called a cancelment of the farm to the defendants, and to have possession of the land as their ancestral estate. The defendants refused to surrender the land, and consequently the plaintiffs were referred to the Civil Court, and then the suit out of which the appeal arose was brought. The question was whether the suit was barred by the law of limita-

Held that Art. 142 of the Limitation Act of 1877 was applicable to the case, that when there was a refusal on the part of the plaintiffs, or their anscestors, to make the engagement for the payment of the revenue and the Government made the engagement with the villagers-the defendants-there was a dispossession or a discontinuance of possession of the plaintiffs within the meaning of that article, and that the suit was barred by the law of limita-

There has been no possession of any description in the plaintiffs or their ancestors since the period of the engagement with the defendants; and whether any proprietary right may have existed is not the question. It is whether there has been a dispossession or discontinuance, which there

Art. 142-(Contd.)

Willow-(Confd.)

clearly was. No doubt the proprietary right would continue to exist until by the operation of the law of limitation it had been extinguished; but upon the question whether the law of limitation applies, it appears to be clear that it comes within the terms of Art. 142 (150-1).

Quare whether in cases of this description there must be what is called adverse possession (151). (Sir Richard Cench.) NAWAB MUHAMMAD AMANULLA KHAN v. BADAN SINGH. (1889) 16 I A. 148=17 C. 137=23 P.R. 1890 P.C=5 Sar. 412.

----Submerged land—Dispossession of—Annual cultivation of such parts of diluviated lands as emerged during part of the year if. See ARTICLE 142—SUBMERGED LAND—REFORMATION in vitu.

(1917) 44 I.A. 104 (1135)=44 C. 858 (874).

 --- Submerged land—Possession of -Real owner's or trespasser's. See Possession—Submerged Land.

Submerged land-Reformation in situ-Original owner's suit for possession on ground of-Limitation.

A chur which was found to be a reformation in situ of plaintift's land was occupied for some years by Government. It was then claimed by defendants as their property and Government made over possession to them. The plaintiffs sued to recover possession within 12 years of 1892 down to which year beyond temporary utbandi cultivation there was nothing to show an exclusion of the plaintiffs by the revenue authorities. Whether the land cultivated was the same each year or not did not appear; at any rate, it was annually submerged, and there were no circumstances to link together various portions of ground, so as to make the possession of a part, as it emerged, amount to constructive possession of the whole.

Held that down to 1892 there was no dispossession of the plaintiffs within the meaning of Art. 142 of the Limitation Act.

An annual cultivation of such parts of the diluviated lands as emerged during part of the year was not a dispossession of the owner of the lands within the meaning of that article.

Quere whether in the circumstances of such a case con duct insufficient to evidence dispossession of the plaintiffs could be used to evidence adverse possession available to the defendants. (Lord Sumner.) KUMAR BASANTA ROY 2. SECRETARY OF STATE FOR INDIA.

(1917) 54 I A. 104 (113-5) = 44 C. 858 (874) = 22 M.L.T. 310 = 21 C.W.N. 642 = 15 A.L.J. 398 = 25 C.L.J. 487 = 1 Pat. L.W. 593 = 1 Bom. L.R. 483 = 6 L.W. 117 = 40 I.C. 337 = 32 M.L.J. 505.

-Suit under-Onus of Proof in.

In a suit to r-cover possession of immoveable property, held that the onus was on the plaintiff to establish that the suit was brought within the period of limitation and that the plaintiff had failed to discharge the same. (Sir John Wallis.) RAJA OF BOBBILL : AVYAGISI SOPEMMA.

Wallis.) RAJA OF BOBBILI :: AVYAGIRI SODEMMA. (1928) 11 I.C. 77 = 28 L.W. 787 = 48 C.L.J. 511 = 55 M. L. J. 302.

## Arts. 142 and 144 - Applicability.

Court of Wards—Sale of property under charge of— Suit by ward to set aside, and to recover possession of property sold—Limitation—Starting point. See BENGAL ACTS—COURT OF WARDS ACT IX OF 1879—SS. 6 (a) AND 27. (1918) 46 1.A. 60 (63)=46 C. 694.

-Mahomedan Law-Wakf-Mutwali of-Alienation of wakf property by Successor's suit to recover property on ground of invalidity of.

# LIMITATION ACT (IX OF 1908)—(Contd.) Arts. 142 and 144—Applicability—(Contd.)

The suit out of which the appeal to the Privy Council arose was brought by the mutawali of a mosque to recover possession of property, alleged to have been settled as a valid wakf, from the defendants, whose title arose under incumbrances created by his predecessors in that office. The question was whether or not the claim was statute-barred.

The plaintiff's evidence established that his predecessor in office remained in possession of the property in question until after the year 1901, that is, until less than 12 years

before the suit was begun.

Held that the suit was not barred, whether Art. 142 or Art. 144 of the Limitation Act of 1908 applied to the case. (Lord Sumner.) ABDUR RAHIM & NARAYAN DAS AURORA. (1922) 50 I.A. 84 (87-8) = 50 C. 329 (332 3) =

32 M.L.T. 153=17 L.W. 509=25 Bom. L.R. 670= 38 C.L.J. 242=(1923) M.W.N. 441= 28 C.W.N. 121=A.I.R (1923) P.C. 44= 71 I.C. 646=44 M.L.J. 624.

— Minor—Separate estate of —Enjoyment of, as joint estate of minor and his cousin, for over 12 years—Effect of —No suit by minor within 3 years of his attaining majority.

A suit brought by the respondent in the year 1891 for the recovery of share of two villages as joint estate of himself and the appellant was resisted by the latter on the ground that the property was and continued to be the separate property of his father and after his death of himself. On the assumption most favourable to the appellant, the facts were that up to the year 1858 the property was treated as and was separate property of his father, the appellant being then a minor, that at least in that year the appellant was disposses-sed, or discontinued his possession of his separate property, in favour of the joint estate, and that the appellant attained his majority in the year 1873.

Held, that the case came within Art. 142; but that if that was not so, the possession of the joint family was at any rate adverse to appellant's separate estate from the year 1858, and the case came within Art. 144; that the appellant could not have brought an action after the expiration of three years after he attained his majority; and that by \$5.28 of the Limitation Act his right to the property was extinguished at the determination of the period limited for bringing a suit for possession of it (87-8). (Lord Datey.) VASUDEVA PADHI KHADANGA GARU v. MAGUNI DEWAN BAKSHI MAHAPATRULU GARU.

(1901) 28 I.A 81 = 24 M. 387 (395-6) = 5 C.W.N. 547 = 3 Bom. L.B. 303 = 7 Sar. 819.

Possession-Suit for-Decree prior against defendant declaring plaintiff's title to suit land-Suit filed within 12 years of-Not barred.

The suit, which was filed in June 1917, was for possession of a piece of land appertaining to mouza B, which was liable to diluvion. On 15-4 1908, the present plaintiff's father, claiming as patnidar under the owners of the said mouza, had instituted a suit in the same court against the present defendants, for possession and mesne profits, alleging that, when the lands of the mouza had reformed and had become fit for cultivation and he attempted to take possession, he was obstructed by the defendants, who had taken possession in execution of a decree obtained by them in a prior suit of 1897 which they had instituted against third parties. In the suit of 1908, the High Court found that the defendants had not been shown to have been in possession of the particular price of land, the subject-matter of the suit of 1917, and that consequently a decree for possession and mesne profits should not be passed against the defendants. The High Court, accordingly, in the suit of 1908, passed a decree merely declaring the

Arts. 142 and 144-Applicability-(Cont.d.)

title of the plaintiff to the piece of land, the subject-matter of the soit of 1917. In thier written statement filed in the suit of 1917, the defendants expressly admitted that they were in possession of the land sued for when the suit was filed.

Held that the plaintiffs, having established thier title in the suit of 1908, and not being barred by limitation, were entitled to a decree. (Sir John Wallis). SATISH CHAN-DRA JOARDAR P. KUMAR BIRENDRA NATH ROY BAHA-DUR. (1929) 56 I. A. 305 = 33 C W. N. 1016 =

A. I. R. (1929) P. C. 225 = 31 Bcm L R. 1376= 30 L. W. 840 = 118 I. C, 259 - (1929) M. W. N. 905 = 57 M. L. J. 602

 Art. 144—(For cases relating to Adverse possession. See Limitation-Adverse Possession. For cases relating to adverse possession of Alluvial land and Deluvrated land See UNDER ALLUVION AND DILUVION.

#### APPLICAPILITY.

-Condition.

Art. 144 of the Limitation Act as to adverse possession only applies where there is no other article which specially provides for the case (151). (Sir Richard Couch.) NAWAB MAHAMMAD AMANULLAKHAN P. BADAN SINGH, (1889) 16 I. A. 148=17 C. 137 (143)-23 P. R. 1890-5 Sat. 412.

-Deed-Land clamied by defendant under-Suits in form for possession of-Cancellation of deed or declaration of its invalidity against plaintiff substantial relief sought and only relief which court had jurisdiction to grant. See Arts. 91, 120 AND 144.

(1902) 29 I. A. 203 = 25 A. 1 (16, 18)

-Hindu Law-Will of last male owner-Declaration of invalidity of, and administration-Heir at-law's suit fer, on death of widow. See Art. 141, 120 AND 144.

(1899) 26 I. A. 71 (81 2) - 23 B. 725 (736).

Sale-deed-Vendor's suit to set aside, and to recover properties conveyed by it-Setting aside of deed on payment of what had been advanced under it condition precedent to recovery of possession. See Art. 91 - Sale-deed

(1887) 14 I. A. 148 (152 3) = 15 C. 58 (64-5).

BENAMIDAR-READ OWNER.

-Heirs of-Suit for possession against Benamidar on foot of his being mere benamidar-Limitation-Minority of heirs-No extension of time by reason of.

If, in a case in which property is purchased by one person benami in the name of another, the real owner is out of possession, and the benamidar is in possession, of the property so purchased, the real owner can bring a sait to recover the property, and to have it declared that the formal title vested in the benamidar and his successors was only benami for himself. If the real owner omits to do so, time begins to run against him, and after 12 years' becomes an

absolute bar to him and his heirs. In such a case the minority of the real owner's heris will not give them further time to sue (46, 49). (Lord Hobbeure.) SYED ASHGAR REZA v. SYED MEDHI HOSSAIN KHAN.

(1893) 20 I. A. 38 = 20 C. 560 (570) = 6 Sar. 283. Sale to, of property held benami-Contract by benamidar for-Real owner's suit for execution of conveyance and for recovery of property in case of-Limitation. See (1922) 49 I A. 355= ART. 113-BENAMIDAR. 45 M. 641.

-Suit for possession against benamidar by-Limitation.

A benami conveyance, being an inoperative instrument, does not bar the real owner's right to recover possession of his land from the benamidar. It is unnecessary for the real owner to have the conveyance set aside as a preliminary

LIMITATION ACT (IX OF 1908) - (Contd.)

Art. 144-(Contd.)

BENAMIDAR-REAL OWNER-(Contd.) .

to his obtaining possession. Art. 144, and not Art. 91 of the Limitation Act of 1908 is, therefore, that which applies to a suit brought by the real owner for possession (104). (Lord Atkinson). PETHAPPERUMAL CHETTY D. MUNI-ANDI SERVAL. (1908) 35 I. A. 98 = 35 C. 551 (559-60) = 4 M. L. T. 12=7 C. L. J 528=

12 C. W. N. 562 = 10 Bom. L. R. 590 = 5 A. L J. 290 = 14 Bur. L. R 108 = 4 L. B. R. 266 = 18 M. L. J. 277.

CHAUKIDARI CHALLEKAN LANDS RESUMED BY GOVERNMENT AND TRANSFERRED TO ZEMINDAR.

-Putnidar's suit to recover. See ARTS 113 and 144. (1918) 45 I. A. 162-46 C. 173.

HINDU JOINT FAMILY-MEMBER OF-CONVERSION TO MAHOMEDANISM OF.

-Suit by remaining member to recover convert's share in joint family property-Limitation.

Where a Hindu, who with his son formed a joint Hindu family and was entitled in joint tenancy to a moiety of the family properties, abandoned Hinduism and adopted the Mahomedan faith in 1845, held that, assuming that the son acquired, on the father's conversion, any enforceable right to the latter's share in the joint family porperty, such right came into existence in 1845, on the conversion of the father, and that no suit could be brought to enforce the right after the lapse of 12 years "from the time the cause of action arose" (S. 12) Act XIV of 1859) (Mr. Ameer Ali.) KHUNNI LAL 7, GOVIND KRISHNA NARAIN.

(1911) 38 I. A. 87 (101-2) = 33 A. 356 (360) = 15 C. W. N. 545 = 8 A. L. J. 552 = 13 Bom. L. R. 427 = 13 C. L. J. 575 = 10 M. L. T. 25 = (1911) 1 M.W.N. 432 = 10 I. C. 477 = 21 M. L. J. 645 =

HINDU WIDOW-HUSBAND'S ESTATE-MOVEABLES AND IMMOVEABLES APPERTAINING TO.

-Suit for-Limitation for, if and when same as regards both kinds of property. See HINDU LAW-WIDOW-TO HUSBAND-RIGHT OF-SUIT BY INHERITANCE (1903) 31 I. A. 10=31 C. 262 (272). WIDOW, ETC.

IMMOVEABLE PROPERTY.

Meaning of.

The term " immoveable porperty" in S. 1, Cl. 12 of Act XIV of 1859 is not identical with "lands or houses." The word "immoveable" was used as something less technical than "real", and the term "immoveable property" comprehends certainly all that would be real property according to English law, and possibly more, In some foreign systems of law in which the technical division of property is into moveables and immoveables, as, e.g., the Civil Code of France, many things which the law of England would class as "incorporeal bereditaments" fall within the latter category (52). (Sir James Colvile). MAHARANA FATTEH-SANGJI JASWATSANGJI P. DESSAI KALLIANRAIJI HEKOO-(1873) 1 I. A. 34 = 21 W. R. 175 = MUTRAUII.

10 B. H. C. R. 281 = 13 B. L. B. 254 = 3 Sar. 306.

IMMOVEABLE AND MOVEABLE PROPERTIES-SUIT FOR. -Limitation as regards both kinds of property when same. See LIMIT-IMMOVEABLE AND MOVEABLE PRO-PERTIES.

IMMOVEABLE PROPERTY OR INTEREST THEREIN.

-Meaning of -Hindu law and usage-Reference to-When permissible.

The rule laid down in 6 Bom. H. C. R. (A. C. J.) 137 for the interpretation of Act XIV of 1859, S. 1, Cl. 12, is shortly this, viz, that, inasmuch as the term "immoveable property" is not defined by the Act, it must, when the

Art. 144-(Contd.)

IMMOVEABLE PROPERTY OR INTEREST THEREIN-(Contd.)

question concerns the rigths of Hindus, be taken to include whatever the Hindu law classes as immoveable, although not such in the ordinary acceptation of the word. To the application of this rule within proper limits, their Loraships see no objection. The question must, in every case, be whether the subject of the suit is in the nature of immove able property, or of an interest in immoveable property; and if its nature and quality can be only determined by Hirdu law and usage, the Hindu law may properly be invoked for that purpose (50-1) (Sir James 11. Colvile.) MAHARANA FATTEHSANGJI JASWATSANGJI P. DESSAI KALLIANRAIJI HEKOOMUTRAIJI. (1873) 1 I. A. 34-21 W. R. 175 = 10 B. H. C. R. 281 = 13 B. L. R. 254 = 3 Sar. 306.

INAM VILLAGE GRANTED BY PEISHWA-RESEMPTION ILLEGAL OF, BY OFFICER OF PEISHWA.

Real owner's suit for recovery of-Limitation-Starting point.

The suit was brought in 1828 by the respondent to recover from the appellant, the possession of a village. The village had been granted in 1803, by the peishwa, in Enam to A', the uncle of the respondent, and had been enjoyed by A' till his death in 1814. Soon after A"s death it was illegally resumed by an officer of the Peishwa, the Mamlutdar of the tallooka of Ahmedahad within which the viliage was situated. By the treaty of Poona in 1817, the Mamlut of Ahmedabad devolved upon the Guicowar. By the treaty of Baroda in November 1817, the Guicowar assigned the Mamlut to the East India Co. All the right of the prishwa against the East India Co as Mamiatdar, or farmer of Ahmedabad, having ceased by his declaration of war, and consequent subjugation of his territories, and surrender of himself, the Government of the East India Co. took possesssion of the village and collected the revenues for its own use, from 1817, to the commencement of the suit. The question for decision was whether the suit for the recovery of the village was barred.

It was found that the Enam grant continued in force until the deposition of the Peishwa and that the village had not been assessed for the benefit of the state for the period of twelve years, Held, that the suit was not barred (50.1). (Mr. Justice Besauquet). COLLECTOR OF KAIRA 7. MODEE PESTON-JEE. (1838) 2 M. I. A. 37 3 Moo. P. C. 368 1 Sar. 215.

MAHOMEDAN LAW-INHERITANCE-SHARE OF. -Suit to recover-Limitation-Starting point. See ARTS, 123 AND 144. (1909) 36 I. A. 210 (220) -31 A. 557 (570-1).

MORTGAGE BY CONDITIONAL SALE-FORECLOSURE PROCEEDINGS ON.

-Prior purchaser of mortgaged property not impleaded in-Mortgagee's suit for possession against-Limitation -Provision in mortgage for entry on default.

Defendant was purchaser from the Assignee in insolvency of a person who had purchased the suit property from the mortgagor, A. The purchase was followed by registration and mutation of names in the Collector's Book, and possession.

At the time of the sale the property in question was subject to a first mortgage, made in the form of the English mortgage, with the usual proviso for redemption, and a proviso that the mortgagor should continue in possession until default, and on default an express right of entry was given to the Mortgagee.

After the sale under which the defendant claimed, the first mortgagee instituted a suit for foreclosure, which pro-

## LIMITATION ACT (IX OF 1908)-(Contd.)

Art. 144-(Contd.)

MORTGAGE BY CONDITIONAL SALE - FORE-CLOSURE PROCEEDINGS ON-(Contd.)

ceeded to a foreclosure nisi, which was subsequently made absolute.

The plaintiff, who was himself a secured mortgagee of the suit property, the mortgage being also in the English form with the same provisos for redemption and entry on default, however, procured that foreclosure to be opened, paid off the first mortgagee, took a transfer of his mortgage, and then proceeded himself to foreclose the mortgagor, and obtained his final decree for foreclosure. To those foreclosure proceedings the purchaser of the property in question was not made a party.

Having foreclosed his mortgage, the plaintiff commenced the suit out of which the appeal arose against the defendant for possession of the property. The suit was instituted more than 12 years after the original purchase from the mortgagor and more than 12 years after default within the meaning of the proviso in the mortgage conferring the right of entry on such default. The question was whether the suit was harred by limitation.

Held, affirming the High Court, that the suit was barred under S. I. cl. 12 of the Limitation Act of 1859 (149).

The defendant not being a party to the foreclosure procoedings, neither he not the property in question was affected by them. As against the defendant the plaintiff has acquired no right, except that which was conveyed to him by his securities. The right under the mortgage deed was to obtain possession of the land, and the cause of action accrued when default was made which was more than 12 years before suit (149). (Lord Justice James.) BROJONATH KOONDOO CHOWDHAY P. KHELUT CHUNDER GHOSE

(1871) 14 M. I. A. 144=16 W. R. P. C. 33= 8 B. L. R. 104 = 2 Suth. 480 = 2 Sar. 711.

-Purchaser under-Suit for recovery of property by -limitation-Defendant bona fide execution purchaser under money decree against mortgagee.

The title of a judgment creditor, or a purchaser under a judgment decree cannot, with respect to the law of limitation of suits, be put on the same footing as the title of a mortgagor, or of a person claiming under a voluntary alienation from the mortgagor. The possession of such purchaser if bona fide and without notice of the mortgage is possession of an owner; and a suit by a mortgagee against the purchaser founded on a title to enter into possession by reason of a default having occurred ought to be brought within tucke years after the commencement of the purchaser's possession (111). (Lord Justice James.) ANUNDO MOYEE DOSSEE : DHONENDRO CHUNDER MOOKERJEE

(1871) 14 M. I. A. 101 = 16 W. R. P. C. 19= 8 B. L. R. 122 = 2 Suth 457 = 2 Sar. 698.

#### PRE-EMPTION RIGHT.

-Suit to enforce. See ARTS. 10, 120, 144 AND ARTS. 10, 144.

#### RELIGIOUS ENDOWMENT.

-Management of-Suit to establish plaintiff's personal right of, or in some way to control See ARTS, 124, 144 AND (1883) 10 I. A. 90 (96.7) = 6 A. 1 (10).

Sec also S. 10.

-Rightful Shebait of-Person alleging to be-Suit by. to recover temple and moveables appertaining to endowment. See ARTS. 124, 49 AND 144. (1889) 16 I. A. 137 (146)= 17 C. 3 (22).

#### REVENUE SALE.

-Bengal Act XI of 1859-Sale under S. 13 of-Purchaser at-Suit against, to establish incumbrance under S. 54 of Act-Limitation.

Art. 144-(Contd.)

REVENUE SALE-(Contd.)

On 14-6-1875, R, the father of the respondent in the original appeal and appellant in the cross-appeal purchased a share of a mehal at a sale for arrears of Government revenue held under S. 13 of Act XI of 1859, and received a certificate of sale thereof from the Collector. On 25-2-1878, the appellant in the original appeal brought the suit out of which that appeal arose against R and others, claiming to have an incumbrance upon the estate by virtue of two mokurruri pattas executed by the heirs of the last of a series of benamidars. It appeared from the evidence that the last benamidar had actual ownership of one-fourth of the property comprised in the pattas.

Held that the incumbrance was good to the extent of such fourth, and that the claim was not harred by Art. 144 of the Limitation. Act of 1877 (166). (Sir Richard Couch.) IMAMBANDI BEGUM v. KUMLESWARI PERSHAD.

(1886) 13 I. A. 160 = 14 C. 109 (118) = 4 Sar. 732.

Property sold at Owner's suit for recovery of Limitation—Cause of action—Grant subsequent by Government to purchaser at increased revenue if affords a.

Talook H, belonging to the plaintiff's deceased father. was sold by the Government for arrears of revenue in 1854. and the 2nd defendant, the purchaser, was put into actual possession of 50 villages belonging to the talook in 1855, and he remained in possession up to the date of suit. The plaintiff instituted the suit out of which the appeal grose on 28-9-1868 for the recovery of the said villages. alleging that those villages, although in some sense belonging to the talook, ought not to have been sold by the Government inasmuch as they were not subject to revenue, but were mocassa villages, which had been alienated from the Zemindary, and paid a quit-rent only to the Zemindar. To get over the plea of limitation the plaintiff relied upon some proceedings of the Government of 1860, by which it was said that they made a new grant of those villages to the 2nd defendant at an increased revenue.

Held that the grant to the 2nd defendant, supposing one to have been made, would not give a new cause of action, and could not affect the time when the only cause of action arose to the plaintiff, and that the suit was barred.

The plaintiff is suing under the title he had in 1854 and 1855, and he has no other title, and he does not allege that he has had any possession or that the Government has given him possession since his first dispossession. (Sir Montague E. Smith.) RAJAH SRI CHAITANYA CHUNDRA v. COLLECTOR OF GANJAM. (1874) 11.A. 335.

——Purchaser at—Dispossession of, while in possession— Suit to recover possession upon—Limitation—Starting point— —Date of sale or date of dispossession. See BENGAL REGLS.—ZILLAH COURTS REGL. OF 1793—S. 14— REVENUE SALE PURCHASER OF ZEMINDARY.

(1865) 10 M. I. A. 165 (169-70).

TODA GIRAS HUQ—SUIT TO ESTABLISH RIGHT TO, AND TO RECOVER ARREARS DUE IN RESPECT OF.

-Arrears barred-Right if also barred.

The suit was brought by the appellant against the respondent to establish the right of the former to a toda girat hug upon the inam village of the latter, and to recover the arrears due in respect of that huq, for the seven years preceding the commencement of the suit. Lordships held that the suit was not barred, and therefore considered it unnecessary to consider the question whether, upon the principles enunciated and enforced in such cases as the Dean and Chapter of Oly v. Cash (15 M. & W. 617) Grant v. Ellis (9 M. & W. 113), and Owen v. De Beauvoir (16 M. & W. 547), it ought to be held that, inasmuch as

#### LIMITATION ACT IX OF 1908-(Contd.)

Art. 144-(Contd.)

TODA GIRAS HUQ—SUIT TO ESTABLISH RIGHT TO.
AND TO RECOVER ARREARS DUE IN RESPECT OF
—(Cont.d.)

Act XIV of 1859 contained no express words to bar the right as well as the remedy, that statute could have any effect on the appellant's claim, except that of preventing him from recovering more than the arrears for the six years next preceding the institution of the suit (53-4). (Sir James Colvile.) MAHARANA FATTEHSANGJI JASWATSANGJI v. DESSAI KALLIANRAIJI HEKOOMUTRAIJI.

(1873) 1 I. A. 34=21 W. R 175=10 B.H.C.R. 281= 13 B.L.R. 254=3 Sar, 306.

-Limitation.

Suit by the appellant to establish his right to a toda girarhug upon the inam village of the respondent, and to recover arrears due in respect of that hug.

Held that the interest of the hugdar of a toda girai hug was "an interest in immoveable preperty" within the meaning of S. 1, cl. 12 of the Limitation Act of 1859, and that the suit, having been brought within 12 years after the date of the last payment, was not harred (53).

The liability to make the payment is not personal to the respondent, but is one which attaches to the inaudar into whosoever hands the village may pass; in other words, the huq is payable by the inaudar virtute tenney. The interest of the handar does possess the qualities both of immobility and of indefinite duration in a degree which, if the question depended upon English law, would entitle it to the character of a freehold interest in or issuing out of real property (53), (Sir James W. Colvile.) MAHARANA FATTEHSANGJI JASWANTSANGJI v. DESSAI KALLIANRAIJI HEROOMUTERAIJI. (1873) 1 I.A. 34 = 21 W.R. 175 =

10 B.H.C R. 281 = 13 B.L.R. 254 = 3 Sar. 306.

—Arts 144. 116.—Applicability—Compromise—Immoveable property assigned by—Suit to recover—Compromise not root of title but merely evidence of antecedent title acknowledged and defined by it.

The suit was to recover the share of immoveable property assigned to the plaintiff and her sister (in whose right also the plaintiff claimed) by a compromise agreement. The defendant claimed under the other party to the compromise, and was, and continued, in possession of the share sued for notwithstanding the compromise. The suit was instituted at the end of 9 years from the date of the deed of compromise.

The compromise was, on its true construction, based on the assumption that there was an antecedent title of some kind in the parties, and the agreement merely acknowledged and defined what that title was. The plaintiff's claim did not therefore rest on contract only, but upon a title to the land acknowledged and defined by the contract, which was part only of the evidence of the plaintiff to prove her title, and not all her case.

Held that cl. 12 of S. 1, and not clause 10 of S. 1 of the Limitation Act of 1859, applied to the case, and that the suit was not barred (166).

The suit is not founded on contract or for a breach of it, but it is a suit for the recovery of immoveable property "to which no other provision of the Act applies," and so within cl. 12 (106). (Sir Montague E. Smith.) RANI MEWA KUWAR. P. RANI HULAS KUWAR.

(1874) 1 I. A. 157 – 13 B. L. R. 312 = 3 Sar. 354 = R. & J's. No. 27.

#### Arts. 144, 120-Applicability.

- Minerals - Lesse's wrongful working of -Lessor's suit in respect of, for possession and declaratory relief.

The plaintiffs, the zemindars of a zemindary within the bounds of which the suit mouza lay, sued the defendants, the

Arts. 144. 201-Applicability-(Contd.)

putnidars and darputnidars of the said mouza, praying that it should be declared that the plaintiffs were entitled to go and were in possession of the underground rights of the said mauza. The suit was raised in 1915, and it was found that the defendants had worked the mines on a large scale since 1894 and to the knowledge of the plaintiffs since 1895. The plaintiffs alleged that the defendants were rot entitled to the minerals, and that the working by them was, therefore, working not under a lease but by a mere trespasser.

Held that, in that view, the suit, if possessory, was barred under Art. 144, and, if declaratory, it was barred under Art 120 of the Limitation Act of 1908 (113-4). (Lord Dunodin.) SATYA NIRANJAN CHAKRAVARTI P. RAM LAL KAVIRAJ.

(1924) 52 I. A. 109-4 P. 244-6 P. L. T. 42= 21 L.W. 289 = 29 C.W.N. 725 - 27 Bom L.R. 753 -23 A. L. J. 712 = A. I. R. 1925 P.C. 42 = 86 I.C. 289 - 48 M.L.J. 328.

Arts. 144, 134. Sar ARTICLES 134, 144.

-Arts 144, 142-Applicability. See ARTICLES 142. 144.

-Art. 146. See under LIMITATION ACT OF 1859. S. 6 WHICH CORRESPONDS TO THE PRESENT ARTICLE

-Art 147-Applicability and effect of.

Quaere as to the effect to be attributed to Art. 147, a provision which appeared for the first time in the Act of 1877 (96). (Lord Hobbour). SRINATH DAS P. KHET-TERMOHUN SINGH. (1889) 16 I A. 85= 16 C. 693 (702) = 5 Sar. 315.

Mortgages to which alone, applicable,

Article 147 applies only to the class of mortgages (English mortgages) in which alone the suit can be, and always is, brought for "foreclosure or sale," while Art. 132 means what the corresponding article meant before (193). (Sir Arthur Wilson). VASUDEVA MUDALIAR P. SRINIVASA (1907) 34 I A. 186 - 30 M. 426 -PILLAL

2 M.L.T. 333-6 C.L.J. 255-11 C.W.N. 1005-4 A.L.J. 625=9 Bom. L.B. 1104-17 M L.J. 444.

-Mortgage in English form-Foreclosure proceedings on-Prior purchaser of mortgaged property not made party to-Mortgagee's suit for possession against. See ARTS. 135, 147. (1889) 16 I.A. 85 (94-5)=16 C. 693. -Simple mortgage-Suit for sale on-Applicability of Article to. See ARTS, 132, 147.

(1907) 34 I.A. 186-30 M. 426.

#### Art. 148-Mortgage by conditional sale-Redemption of.

-Suit for, brought 61 years after det admittedly discharged out of usufruet-Barred.

In a suit instituted in 1899 for redemption of a mortgage made in 1830, it appeared that the mortgage was by way of conditional sale, there being a sale with possession to the mortgagee, subject to a condition that the sale should "be cancelled upon payment of the amount of consideration in nine years." The case of the mortgagor himself was that he was entitled to recover the property within the period of nine years on the liquidation of the debt with the usufruct of the property and that the debt became satisfied under the contract in 1838.

Held that the light to recover possession accrued in 1838 and that the suit was clearly barred. (Mr. Ameer Ali.) BAKHTAWAR BEGUM v. HUSAINI KHANAM.

(1914) 41 I.A. 84 = 36 A. 195 (199-200) = 18 C.W.N. 586 = 19 C L.J. 477 - (1914) M W.N. 411 = 15 M.L.T. 389 = 16 Bom. L. R. 344 = 12 A.L.J. 470 = 23 I.C. 335=1 L.W. 813=26 M.L.J. 474.

LIMITATION ACT IX OF 1908-(Contd.)

Art. 148-Mortgage-Usufructuary mortgage-Redemption of.

Bar of right of-Effect of, on title to land-Limitation Act of 1859.

Under S. 1, cl. (15) of the Limitation Act of 1859, a suit for redemption of a usufructuary mortgage dated 17-10 1788 would be barred on 17-10-1848, unless in the meantime an acknowledgment as required by the section was given. In 2 suit for redemption of a mortgage dated 17-10-1788 brought in 1893, there being no such acknowledgment, held that the right of the mortgagors to sue was barred as from 17-10-1848 by force of the Act of 1859 and that their right to the land was extinguished by force of the Act of 1871 (107-8). (Lord Hobbouse). FATIMATUL-NISSA BEGUM 2. SOONDUR DAS. (1900) 27 I.A. 103= 27 C. 1004 (1010-1) = 4 C.W.N. 565=7 Sar. 718.

Bar of right of-Plea by mortgogee of-Maintainability-Decree prior restoring possession to him of mortgaged property unlawfully taken possession of by mortgagor-Declaration in, entitling mortgagee to hold posser

sion till balance of mortgage money was fully paid to him

A usufructuary mortgagee was dispossessed of four of the 5 mouzahs mortgaged by the sons of the mortgagor. In a suit brought in consequence by the mortgagee for the restoration of possession, the then mortgagor set up the defence that the mortgage money had been fully satisfied by the usufruct of the property. That defence was found to be false, and the Court ordered that the mortgagee was entitled to a restitution of possession. The Coart, however, made a declaration which, perhaps, was unnecessary, that he was entitled to hold possession until the amount found due by the mortgagor was fully paid. In a suit subsequently brought by the mortgagor for possession of the five moweahs mortgaged, Quacre whether the decree in the prior suit at all affected the right of the mortgagee to rely on limitation, for the prior suit was brought only to recover the possession of the mouzahs which had been unlawfully taken from the mortgagee by the mortgagor or his sons (897). LUCHMEE BUKSH ROY P. RUNJEET RAM PANDAY. (1873) 2 Suth. 897 = 20 W.R. 375 = 13 B.L R. 177 = 3 Sar. 283.

-Limitation-Suspension of-Fusion of interests of mortgagor and mortgagee after accruing of right to

redeem-Suspension on ground of.

In a suit brought in 1907 for the redemption of a usefructuary mortgage made in 1842, it was contended that the suit was not barred under Art. 148 of the Limitation Act, 1877, inasmuch as, between the years 1883 and 1898, there was a junction of the mortgagor and mortgagee interests in one person and the said period should therefore be excluded from the computation of the sixty years period. Held overruling the contention, that under the mortgage bond the right to redeem accrued to the mortgagors the moment the mortgage was executed, and the sixty years' period must be computed from the date of the mortgage, that there was nothing in the Act of 1877 to justify the view that, once that period of limitation had begun to run, it could be suspended and that to hold that, by reason of the fusion of interests, the period of limitation was suspended, would the case being not one to which the proviso to S. 9 of the Act applied-be to decide contrary to the express enactment of that section that "when once time has begun to run, no subsequent disability or liability to sue stops it. (Sir John Edge.) LALA SONI RAM D. KANHAIYA LAL (1913) 40 I. A. 74 (85)=35 A. 227 (236 7)=

17 C. W. N. 605 = 11 A.L.J. 359 = 13 Bom. L.B. 489 19 I.C. 291=13 M.L.T. 437=(1913) M.W.N. 470=

17 C.L.J. 438=25 M.L.J. 13L

Art. 148 - Mortgage -Usufructuary mortgage-Redemption of -(Contd.)

-Mortgage for term-Minor's property subject to-Sale unauthorized of-Redemption suit by minor on attaining majority-Limitation-Starting point.

A, the owner of two villages, B and C, mortgaged village B to X on 2-12-1885, and village C to the same person on 7-8-1886. Under the morigages, the mortgagee was entitled to, and did, take possession of the villages for the purpose of realising the agreed interests out of the annual profits. The first mortgage was for a term of 10 years; the second

for a term of 7 years.

A died after bequeathing his entire estate to his four grandsons, one of whom was the respondent, in equal shares. Thereafter, and while the respondent was yet a minor, his elder brothers, on their own behalf and as guardian of the respondent, sold village B to the mortgagee (appellant) in 1889 in discharge of both the mortgages. The respondent attained his majority in 1892 or 1893, and in 1904 seed to redeem the mortgage of 2-12-1885. The sale to the appellant was, under the Mahomedan Law applicable to the case, invalid and ineffectual to affect the respondent's rights.

Held that the possession of the appellant did not become adverse to the respondent until 2-12 1895, when the term of 10 years expired, and that the suit brought in 1905 was not

barred (56).

On attaining age the respondent was entitled to treat the mortgage as still subsisting, so far as he was concerned (56). (Lord Robson.) MATA DIN D. AHMAD ALL.

(1911) 39 I.A. 49 - 34 I. A. 213 (223) = (1912) M. W. N. 183=16 C.W.N. 338=13 I.C. 976 11 M.L.T. 145=9 A.L.J. 215-15 C.L.J. 270= 14 Bom. L.B. 192-15 O.C. 49-23 M.L.J. 6.

Art. 149.

ADVERSE POSSESSION FOR LESS THAN STATUTORY PERIOD.

-Evidence of title against Crown if. See CROWN-(1908) 35 I.A. 195 (205)= TITLE AGAINST. 36 C. 1 (19-20).

-Effect of-Onus of proof of subsisting title if thrown

on Crown by.

In a case in which the respondents objected before the Forest Settlement Officer to the afforestation of certain lanka land alleging title by adverse possession against the Crown for over the statutory period, the High Court, in second appeal, accepted the finding of fact of the Courts below that the respondents had not proved adverse and exclusive possession and enjoyment prior to 1883, they never theless held that "though the title was originally in the Crown, still, as the possession of the claimants for over 20 years prior to the notification is found, it rests upon the Crown to prove that it has a subsisting title by showing that the possession of the claimants commenced or became adverse within the period of limitation, i.e., within 60 years before the notification.'

Held that, in so far as the view of the High Court negatived the duty resting upon the claimants to establish affirmatively their predecessor's possession for 60 years, it was erroneous (203-4, 206). (Lord Shuw.) SECRETARY OF STATE FOR INDIA D. CHELIKANI RAMA RAO.

(1916) 43 I. A. 192 = 39 M. 617 (631-2, 633)= 20 C. W. N. 1311 = 20 M. L. T. 435 =

(1916) 2 M.W.N. 224 = 4 L. W. 486 = 14 A. L. J. 1114 = 18 Bom. L. R. 1007 = 35 I. C. 902 = 31 M. L. J. 324. APPLICABILITY-ASSIGNEE FROM SECRETARY OF STATE.

-Suit by. the Secretary of State. (Sir Arthur Wilson.) MAHARAJA the memorandum of appeal.

LIMITATION ACT IX OF 1908-(Contd.)

Art. 149-(Contd.)

APPLICABILITY-ASSIGNEE FROM SECRETARY OF STATE-(odtd.)

JAGADINDRA NATH ROY BAHADUR P. RANI HEMANT KUMARI DEBI. (1904) 31 I. A. 203 (207) =

32 C. 129 (138 9) - 8 C. W. N. 809 -6 Bom. L. R. 7(5-1 A. L. J. 585 = 8 Sar. 698.

MADRAS FOREST ACT OF 1882-PROCEEDINGS UNDER -OBJECTORS TO-ADVERSE POSSESSION.

-Claim of title by-Onus of Proof of-Subsisting title in Crown-Meaning of. See MADRAS ACTS-FOREST ACT OF 1882. (1916) 43 I. A. 192 (204, 206)= 39 M. 617 (631, 633).

Onus of proof of, for 60 years. See MADRAS ACTS REST ACT OF 1882. (1916) 43 I. A 192 (205) = -FOREST ACT OF 1882. 39 M. 617 (632).

---Proof of, for less than statutory period-Onus of proof of subsisting title if thrown on Crown by. See ART, 149-ADVERSE POSSESSION FOR LESS THAN STATUTORY PERIOD. (1916) 43 I. A. 192 (203 4 206) = 39 M. 617 (631 2, 633).

POSSESSION OF GOVERNMENT PROPERTY FOR 12 YEARS.

-Effect against Crosses of.

Possession for a period of twelve years, though it would be sufficient to bar a claim by a private party would not exclude a claim by the Crown to recover what could be shown to be Government property (74). (Lord Shand.) SECRE-TARY OF STATE FOR INDIA IN COUNCIL P. DURJIBHOY (1892) 19 I. A. 69 - 19 C. 312 (321) -6 Sar. 113.

PRIVATE OWNER-BENEFIT OF PERIOD ALLOWED BY ARTICLE.

-Right to, merely by reason of his making common came seith Cellecter.

A private owner, whose title to land has been extinguished by 12 years' adverse possession, cannot set up a sixty years' law of limitation merely by making common cause with a Collector. The true answer to such a contrivance is, the legal right of the Government is to its rent; the lands are owned by others; as between private owners contesting inter se the title to the lands, the law has established a limitation of 12 years; after that time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor. The Government has no title to intervene in such contests, as its title to its rent in the nature of jumma is unaffected by transfer simply of proprietary right in the lands.

The cause of action of a private owner who has been dispossessed to sue for the recovery of possession cannot be kept alive longer than the period of limitalion of 12 years, by the expedient of inducing the Collector to make common cause with him, or by inducing the Collector to sue in his right (362-3.) (Lord Remilly.) GUNGA GOBIND MUND. AL p. COLLECTOR OF THE 24 PERGUNNAHS.

(1867) 11 M. I. A. 345 = 7 W. R. 21 = 1 Suth. 676 =

-Art. 151-Copies of decree and judgment-Time taken up in obtaining-Deduction of-Copies not required by Rules of Court to be annexed to appeal memo-Effect-S. 12 of A t-Applicability to O. S. appeals of.

In reckoning the period of 20 days allowed by Art. 151, the appellant is, under S. 12 of the Act, entitled to an exclusion of the time during which he was procuring a copy of the decree and a copy of the judgment, though by the rules Art, 149 held inapplicable to a suit by an assignee from of the Court such copies are not required to be annexed to

12 M.L.J. 77.

#### LIMITATION ACT IX OF 1908-(Contd.)

Art. 151-(Contd.)

S. 12 of the Act makes no reference to the Code of Civil Procedure or to any other Act. It does not say why the time is to be excluded, but simply enacts it as a positive direction. (Lord Phillimmer.) JUJBOY N. SURTY = T. S. CHETTIAR. (1928) 55 I. A. 161 – 6 R. 302 – 47 C. L. J. 510 = 5 O. W. N. 479 =

A. I. R. 1928 P. C. 103 - 30 Bom. L. R. 842 -26 A. L. J. 657 - 32 C. W. N. 845 - 28 L. W. 207 -109 I C. 1 - 54 M. L. J. 296.

-Art. 158-Limitation har under-Court's duty to take notice of even in absence of plea.

An application to set aside an award made after the period prescribed by Art. 158 of the Limitation Act ought not to be entertained by the Court, even though the parties do not take the objection that it is barred (60). (Lord Managhten.) GHULAM JHANI >. MUHAMMAD HASSAN. (1901) 29 I. A. 51-29 C. 167 (185)=6 C. W. N. 226=4 Bom. L. R. 161-25 P. R. 1902-8 Sar. 154=

——Arts. 163, 176—Applicability—Death of sole plaintiff before hearing of suit—Application by his Legal Representative to be brought on record. See LIMITATION ACT OF 1908. ARTS, 176, 163. (1913) 40 I.A. 151 = 35 A. 331.

- Arts. 176, 163 Applicability Death of seleplanetiff before hearing of suit-Application by his Legal Representative to be brought on record.

Rules 8 & 9 of O. 9 of C.P.C. are inapplicable to a case in which a sole plaintiff dies before the hearing of the suit and the suit is dismissed for non-appearance. In such a case an application by his legal representative to have his name substituted in place of the deceased under O. 22, R. 3 of C. P. C. is, if filed within the period of 6 months of the date of the death of the deceased, well within time under Art. 176 of the Limitation Act of 1908. Art. 163 is inapplicable to such a case. (Lord Share.) DEBLERGER SINGH v. HARIB SHAR: (1913) 40 I. A. 151 = 35 A. 331 = 17 C. W. N. 829—11 A. L. J. 625 = 18 C. L. J. 9 =

15 Bom. L. R. 640 = 14 M. L. T. 33 = (1913) M. W. N. 566 - 16 O. C. 194 = 25 M. L. J. 148.

#### Art. 181.

#### APPLICATION WITHIN MEANING OF.

- Certification of payment by decree-holder under O. 21, R. 2 (1) of C.P.C. if an.

The mere certification by the decree-holder of a payment to him out of court by the judgment-debtor under O. 21, R. 2 (1) of C.P.C., is not an application within the meaning of Art. 181. The mere fact that the document by which the decree-holder intends to certify and does certify in accordance with the said rule is called an "application" and is in the form of a petition cannot after the real nature of the procedure and convert what is really no more than a certificate of certain payments into an "application" within the meaning of Art. 181. (Sir Lancelot Sanderson.) RAJA SHRI PRAKASH SINGH F. ALLAHABAD BANK, LTD.

(1928) 56 I. A. 30 = 33 C. W. N. 267 = 29 L. W. 161 = 3 Luck. 684 = 27 A. L. J. 33 = 6 O. W. N. 29 = 31 Bom. L. R. 239 = 114 I. C. 581 = A. I. R. 1929 P. C. 19 = 56 M. L. J. 233.

#### LEGAL REPRESENTATIVE

---Property of deceased in possession of Decree for recovery of amount from -- Execution of -- Limitation -- Application filed within 3 years of Legal Representative first obtaining possession -- Not barred.

On 27-7-1906 a decree was made against E, who had been brought on record as the legal representative of the deceas-

## LIMITATION ACT IX OF 1908-(Contd.)

Art. 181\_(Contd.)

LEGAL REPRESENTATIVE-(Contd.)

ed defendant, J, E's brother. The decree did not make E personally liable, but declared that the decretal amount was to be realised by the sale of the property of J in E's hands. On the death of J, E sued J's widow for the recovery of possession of J's property which she had taken possession of. That suit was decreed in E's favour by the sub-judge. His decision was reversed by the High Court on appeal, but was restored on further appeal by the Privy Council, on 22-7-1914. J's widow remained throughout in possession of J's property, and E obtained possession of it only after the decision of the Privy Council, Though the sub-judge had decided in E's favour, execution of his decree was stayed by the High Court pending the disposal of the appeal to it.

On an application made in December 1914 for execution of the decree of 1906, held that the application was not harred.

Art, 181 was the Article applicable to the case, but the application was not barred under it, because under it an application to enforce the decree was necessary and that application could be made within 3 years of the time when the right to apply first accrued, which was in 1914. (Lord Phillimore.) MAHARAJA OF DARBHANGA P. HOMESHWAR SINGH. (1920) 48 I. A. 17 (22-3)=

(1921) M. W. N. 21 = 13 L. W. 546 = 33 C. L. J. 109 = 19 A. L. J. 26 = 6 Pat. L. J. 132 = 25 C. W. N. 337 = L. R. 2 (P.C.) 1 = 23 Bom. L. R. 721 = 59 I. C. 636 = 30 M. L. T. 189 = 40 M. L. J. 1.

MORTGAGE SUIT—FINAL DECREE IN—APPLICA-TION FOR—LIMITATION – STARTING POINT.

Preliminary decree—Affirmance on appeal of.

If an appeal is preferred against the preliminary decree in a mortgage suit, the final decree is the decree of the appellate court of final jurisdiction, and, when that decree is passed, it is that decree and only that which can be made final in the cause between the parties. Hence the period of limitation for an application for the making of a final decree in such a case runs, not from the expiry of the time fixed by the original preliminary decree, but from the date when on appeal against that decree the appeal was dismissed. (Vincount Duncdin.) JOWAD HUSSAIN v. GENDAN SINGH. (1926) 53 I. A. 197 = 6 Pat. 24 = 24 A. L. J. 765=

(1926) 53 I. A. 197 = 6 Pat. 24 = 24 A. L. J. 765 = 7 Pat. L. T. 575 = (1926) M. W. N. 591 = 44 C. L. J. 63 = 3 O. W. N. 690 = 24 L. W. 394 = 28 Bom. L. R. 1395 = 31 C. W. N. 58 = A. I. R. 1926 P.C. 93 = 98 I. C. 499 = 51 M. L. J. 781.

- Preliminary decree-Appeal from-Decree in, not extending time for payment-Expiry of period before date of.

Where there has been an appeal from a preliminary mortgage decree under O. 34, R. 4 (1) of C.P.C., and the appellate court has not extended the time for payment, the period of three years within which, under the Indian Limitation Act of 1908, Art. 181, an application for a final decree under O. 34, R. 5 (2) C.P.C., must be made runs from the date of the decree of the appellate court, not from the expiry of the time for payment fixed by the preliminary decree. This rule applies, notwithstanding that, before the date of the appellate decision, three years after the time fixed for redemption by the first court decree had expired, and therefore that decree was dead before the appellate court gave its decision.

The jurisdiction of the appellate court is not touched by the Limitation Act, and when an appellant appeals, unless there is some rule dismissing the appeal for want of time or an order is procured dismissing it, his appeal stands till it is heard. Therefore the appellate court has a right to determine the appeal, and it has jurisdiction to pass its decree.

Art. 181-(Contd.)

MORTGAGE SUIT-FINAL DECREE IN-APPLICA-TION FOR-LIMITATION-STARTING POINT-(Contd.)

(Lord Phillimore.) FITZHOLMES P. BANK OF UPPER (1926) 54 I. A. 52 = 8 Lah. 253 = INDIA, LTD. 31 C. W. N. 444 = 45 C. L. J. 297 - 8 Pat. L. T. 377 -29 Bom. L. R. 792 = 25 L. W. 722 = 25 A. L. J. 78 = (1927) M. W. N. 87 = 4 O. W. N. 181 =

38 M. L. T. P. C. 46 = 28 Punj. L. R. 117 = 100 I. C. 22 - A. I. R. 1927 P. C. 25 = 52 M. L. J. 366. -Arts. 181. 182-Starting points under-Distinc-

There is a great difference between Arts, 179 and 180 of the Limitation Act of 1877; for Art. 179 assigns a fixed starting point of time, whereas Art. 180 assigns one that is dependent on the right to enforce the judgment (160). (Lord Hobhouse.) NAVIVAHOO P. TURNER.

(1889) 16 I. A. 156 = 13 B. 520 (531) = 5 Sar. 400.

#### Art. 182

APPEAL FROM DECREE-LIMITATION FOR EXECU-TION IN CASE OF-STARTING POINT OF

It is admitted that, in a case in which a decree has been appealed from, the date from which the period of three years allowed for the execution of the decree is to be calculated is the date of the appellate decree; whether that decree is to be treated as the decree to be executed; or the appeal of which it is the termination is to be deemed "a proceeding taken to keep the original decree in force" within the meaning of S. 20 of the Limitation Act of 1859 (488.9). (Sir James W. Celvile). KRISTO KINKUR ROY v. RAJAH BURRODACAUNT ROY.

(1872) 14 M.I.A. 465=17 W.R. 292=10 B L.R. 101= 2 Suth. 564.

-Dismissal of appeal for default of prosecution-

Effect. In a case in which an appeal against a decree is dismissed for want of prosecution, the period of three years named in Art. 182 of the Limitation Act of 1908 runs from the date of the decree appealed against and not from the date of the order to dismiss the appeal for want of prosecution (343.4). (Lord Atkinson). SACHINDRA NATH ROY P. MAHARAJ (1921) 48 I.A. 335 BAHADUR SINGH.

49 C. 203 (213) - L.B. 3 P.C. 174 = A. I. R. 1922 P.C. 187 = 30 M.L.T. 96 = 24 Bom. L. R. 659 = (1922) M.W.N. 338 =

26 C.W.N. 859 = 4 U.P.L.R. P.C. 57 = 74 I.C. 660. Privy Council appeal from decree-- Leave for-Ap-

plication for-Filing of-Effect.

An application for leave to appeal to her Majesty in Council is not equivalent to an appeal and does not operate as a stay of execution. Limitation for execution of a decree of the High Court runs from the date of the decree notwithstanding that an application is filed for leave to appeal to Her Majesty in Council against the said decree (207). (Lord Davy.) RAJAH KOTAGIRI VENKATA SUBRAMA RAO v. RAJAH VELLANKI VENKATARAMA RAO

(1900) 27 I.A. 197 = 24 M. 1 (12) = 4 C.W.N. 725. 2 Bom. L.R. 771 = 7 Sar, 678 = 10 M.L.J. 221. Privy Council appeal dismissed for default of prose-

Under rule V of the Order in Council of the 13th of June, 1853, when an appellant in an appeal to His Majesty in Council or his agent does not take effectual steps for the prosecution of the appeal, the appeal stands dismissed with-out further order. The dismissal for want of prosecution of an appeal to His Majesty in Council is not by a final decree or order of his Majesty in Council made in the appeal within the meaning of cl. 2 of Art. 182 of the Limitation Act of 1908. No such order need be made in the appeal.

#### LIMITATION ACT IX OF 1908—(Contd.)

Art. 182 .- (Contd.)

APPEAL FROM DECREE-LIMITATION FOR EXECU-TION IN CASE OF-STARTING POINT OF-(Contd.)

Where therefore an appeal to His Majesty in Council was dismissed for default of prosecution, held that such dismissal did not furnish a starting point of limitation for the execution of the decree, and that an application for execution filed more than 3 years after the date of the decree appealed from but within 3 years of the date of the dismissal of the appeal to His Majesty in Council for default of prosecution was barred. (Sir John Edge.) BATUK NATH r. MUNNI DEI. (1914) 41 I.A. 104-36 A. 284=

18 C.W.N. 740 - 23 I.C. 644 - 16 Bom. L.R. 360 = 12 A.L.J. 596 = (1914) M.W.N. 437 = 16 M.L.T. 1= 1 L.W. 729 = 19 C.L.J. 574 - 27 M L.J. 1.

See ACT OF 1877-ARTS, 179 AND 180. (1914) 36 A. 350 (353 4).

DECREE OR ORDER REFERRED TO IN.

Only enforceable decree er order

Art. 182 of the Limitation Act of 1908 refers only to an order or decree made in such a form as to render it capable

in the circumstances of being enforced. (Lord Phillimore.) MAHARAJA OF DARBHANGA 2. HOMESHWAR SINGH. (1920) 48 I.A. 17 (22-3) - (1921) M.W.N. 21 =

13 L.W. 546 = 33 C.L.J. 109 - 19 A.L.J. 26 = 6 Pat. L.J. 132=25 C.W.N. 337=L.B. 2 P.C. 1= 23 Bom. L.R. 721 30 M.L.T. 189 - 59 I.C. 636 -40 M.L.J. 1.

#### EXECUTION APPLICATION.

Continuation of pending-New application-Test. On August 24, 1888, an application for execution of a decree upon a mortgage bond was made, and an order was made on December 18, 1888, that the execution should proceed; and other steps followed. On November 29, 1889, an order was made to the effect that, the property to be sold being ancestral, the case should be struck off the file, and the papers transferred to the Court of the Collector for the completien of the sale proceedings.

On December 23, 1889, there appeared another: "In this case the decree-holder has not up to this date deposited R I on account of the order for sale by auction, and the copy of the decree to be sent to the Collector's Court. Therefore it is ordered that in default of prosecution on the part of the decree-holder the record be not sent to the Collector's Court for taking the said proceedings,

During the interval, however, that is, on February 15, 1889, an appeal was preferred to the High Court against the original order of December 18, 1888, under which the execution proceeded. The High Court allowed that appeal, but the decision of the High Court was reversed by Her Majesty in Council, the judgment of the Board being delivered on November 24, 1894, and embodied in an Order in Council of December 12, 1894.

On November 23, 1897, an application was made which by its terms asked that the sums due by virtue of the decree be "realised by sale of the mortgaged property," that "the execution case instituted on the 24th August, 1888, which was sent to the Collector's Court on the 29th November, 1889 may be revived, and it may be sent to the Collector's Court, and by issue of a warrant of arrest."

Held, affirming the High Court, that the application of November 23, 1897, was in substance as well as in form an application to revive and carry through a pending execution, suspended by no act or default of the decree-holder, and not an application to initiate a new one, and that it was accordingly not barred by limitation.

It was contended for the appellant that the former execution proceedings were finally disposed of and came to an end by the orders of November 29 and December 29, 1889,

Art. 182 - (Contd )

EXECUTION APPLICATION-(Contd.)

or one of them, and that the present application could only be regarded as one for a fresh execution, and therefore was barred under Art. 179 of the Limitation Act of 1877. But the first of those orders was in aid of the execution. As to the second order, assuming it to have been perfectly regular, it was in no sense a final order. If the appeal to the High Court against those proceedings and the judgment of that Court, and the appeal to Her Majesty in Council rendered necessary by that judgment, had not intervened to interrupt the course of the execution, there was nothing in the terms of the order to preclude the decree-holder from coming again to the Court, satisfying the conditions indicated in the order, and obtaining the transmission of the case to the Collector's Court. Their Lordships are of opinion that the execution proceedings commenced by the petition of August 24, 1888 were never finally disposed of. (Six Arthur Wilson.) SHAIRH KAMAR-UD-DIN AHMAD P. JAWAHIR LAL. (1905) 32 I.A 102 - 27 A. 334 --1 C.L.J. 381 - 9 C.W.N. 601 - 2 A.L.J. 397 = 7 Bom. L.R. 433 = 8 Sar. 810 = 15 M.L.J. 258.

(1929) 57 M. L. J. 184.

----Striking off of -- Effect. See EXECUTION APPLI-CATION-STRIKING OFF.

#### MORTGAGE.

- foint mortgage debt—Suit for recovery of, against all mortgagors—Preliminary decret in, ex parte against on defendant, and on merits against others—Setting aside of ex parte decree against that defendant and fresh deese passed against him—Execution of decree in suit—Limitation as against all defendants—Starting point of.

In a suit for the recovery of a joint mortgage debt from all the mortgagors jointly, a preliminary decree was passed on 25-8-1900 against all the defendants, the judgment against S, one of them, going by default of appearance. That decree was made absolute on 21-12-1901. In the interval, however, S applied for a review of the judgment of 25-8-1900 on the ground that she had never been served with process. That application was allowed on appeal on 11-3-1902, the case was re-heard against S, and judgment was given against her by the first Court on 15-8-1902, and by the High Court on appeal on 16-11-1904. On 27-11-1905 a decree absolute was made against her by the trial Court.

Held that an application filed by the plaintiff on 21-12-1905 against all the defendants for execution by sale of the mortgaged property was not barred against any of the defendants.

The judgment of 25-8-1900 was treated by the Court and by the parties as a mere step in the granting of the relief for which the plaintiff was asking and to which, as it ultimately turned out, he was entitled, namely, a decree against all the defendants jointly. The decree of 16-11-1904 was the second step in granting to the plaintiff the relief to which he was entitled. It supplemented and completed the decree of 25-8-1900, and for the first time gave to the plaintiff that which would alone justify him in applying for the joint execution to which he was entitled. It is from the date of this last judgment (November 16, 1904), or rather from the date when it was made absolute (November 27, 1905) that the time under the Statute (Art. 179 of the Limitation Act of 1877; began to run. It was then for the first time that the Court granted a complete decree to the respondent (43.4). (Lord Mersey). ASHFAQ HUSAIN v. GAURI SAHAI. (1911) 38 I. A. 37 = 33 A. 364(370-1)= (1911) 2 M. W. N. 177=15 C. W. N. 370=

LIMITATION ACT IX OF 1908-(Contd.)

Art. 182 -(Contd.)

MORTGAGE - (Contd.)

8 A.L.J. 332 = 13 C. L. J. 351 = 9 M. L. T. 380 = 13 Bom. L. R. 367 = 4 Bur. L. T. 121 = 9 I.C. 975 = 21 M. L. J. 1140.

Prior mortgage's suit Subsequent mortgages impleaded in Decree in favour of Execution of, by last of them-Limitation-Negligence of others if saies.

After decree every party to a suit is an actor and can take steps to enforce the decree. And if this is true in other cases, so especially is it true when it is a case of a mortgagee, the amount of whose debt has been ascertained and decreed (133).

Where, therefore, in a suit by a first mortgagee to which the 2nd, 3rd and 4th mortgagees were parties, the amounts to which the 2nd, 3rd and 4th mortgagees were entitled were ascertained and decreed, held that the 4th mortgagee was bound to execute the decree in his favour within the period prescribed by the Limitation Act, notwithstanding that the other mortgagees were so slow in exercising their rights as to imperil his, and that it was idle for him to say, in answer to a plea of limitation, that he was waiting for previous mortgagees to take steps (133). (Lord Phillimort). BANKU BEHARI CHATTERJI v. NARAINDAS DUTT.

(1927) 54 I. A. 129 = 54 C. 500 = 45 C. L. J. 507 = 26 L. W. 180 = (1927) M. W. N. 336 = 4 O. W. N. 474 = 101 I. C. 24 = 31 C.W.N. 589 = 38 M. L. T. (P. C.) 90 = 29 Bom. L. R. 850 = A. I. R. (1927) P. C. 75 = 52 M. L. J. 565.

- Sale-Decree for-Order absolute in-Application for-Limitation-Starting point.

It was contended that where a decree nisi for sale is made in a mortgage suit the period of limitation mentioned in the Limitation Act of 1877 is in effect three years plus six months, the period given by the decree for redemption. That view is not correct. The sale is merely something to be done under the decree. A certain time is fixed by the decree within which it is to be done, but the decree is operative from its date and it is the length of time during which it is operative that the Limitation Act looks to (344-5). (Lord Arkinson). SACHINDRA NATH ROY v. MAHARAJ BAHA-DUR SINGH. (1921) 48 I. A. 335=49 C. 203 (214)=

L. B. 3 P. C. 174 = A.I.R. 1922 P. C. 187 = 30 M. L. T. 96 = 21 Bom. L. R. 659 = (1922) M. W. N. 338 = 26 C. W. N. 859 = 4 U. P. L. R. P.C. 57 = 74 I. C. 660.

——Sale—Decree of High Court for—Order absolute— Application for—Limitation—Privy Council appeal from decree dismissed for default of prosecution. See ACT OF 1877—ARTS. 179 AND 180 (1914) 36 A. 350 (353-4).

#### PROPER COURT.

Decree transmitted for execution to another court and not re-transmitted—Application to original court for execution by sale of immoveable property within jurisdittion of Court of transfer.—If to proper Court.

A money decree of the District Court of V, dated 5—4—1904, was, on the application of the decree-holder, transmitted for execution, by order dated 30—9—1904, to the Court of the District Munsif of P. The copy of the decree sent to the Munsif's Court for execution and the certificate of non-satisfaction were not returned by the Munsif to the District Court of V till 3—8—1910.

After the transmission of the decree to the Munsif's Court of P, the decree-holder applied to the Munsif's court of P for the attachment of the judgment-debtor's immoveable property which was situate within the local limits of the jurisdiction of that court, and the property was attached in execution of the decree. But nothing further was done.

Art. 182-(Contd.)

PROPER COURT-(Contd.)

On 13-12-1907, the decree-holder applied to the District Court of V for an order for the sale of the property which had been attached by order of the Munsif's Court of P, on the erroneous assumption that the decree had been retransferred to the District Court of V. Nothing was done on that application.

On 27-4-1910 the decree-holder presented a fresh petition to the District Court of V for the execution of the decree by sale of the immoveable property which had been attached by the Court of the Munsif, alleging that the decree had been returned to the District Court.

Held, that the application of 27-4-1910 was not made to the proper Court, and that it was in any event barred

under Art. 182 of the Limitation Act of 1908. The decree had by order of the District Court been sent

on 30-9-1904 to the Court of the Munsif of P for execution by the latter Court. The copy of the decree with the non-satisfaction certificate was not returned to the District Court until 3-8-1910. Hence the application of 13-12-1907 for execution of the decree by sale of the immovable property of the judgment-debtors, which was within the local limits of the jurisdiction of the Munsit's Court of P, must have been made to the Munsif's Court of P and not to the District Court of V. That application having been made to the latter Court was not made to the proper Court and cannot afford a fresh starting point of limitation. (Sir John Edge.) MAHARAJAH OF BOBILLI :- NARASA-RAJU PEDA SIMHULU. (1916) 43 I. A. 238 =

39 M. 640 = 20 M.L.T. 472 = (1916) 2 M. W.N. 541 = 4 L. W. 558 = 18 Bom. L. B. 909 = 14 A. L. J. 1129 = 36 I. C. 682 = 31 M.L J. 300.

#### STEP-IN-AID OF EXECUTION.

Certification of payment by decree-holder if a.

Quaere whether the certification by the decree-holder of a payment which had been made out of Court in satisfaction of a decree is a "step-in-aid" of execution " of the decree within the meaning of Art. 182 (5). (Sir Lancelot Sander-1011.) RAJA SHRI PRAKASH SINGH 2. ALLAHABAD (1928) 56 I. A. 30 = 33 C. W. N. 267= BANK, LTD. 29 L. W. 161 = 3 Luck. 684 = 27 A. L. J. 33 = 6 O. W. N. 29 = 31 Bom. L. R. 239 = 114 I. C. 581 = A. I. B. 1929 P. C. 19-56 M.L.J. 233.

-Arts. 182 (7) and 181-Annual payments-Possession on default-Decree providing for-Execution of-Limitation-Time at which right to possession arese.

On 30-9-1916, the respondent, the wife of the appellant, obtained a decree by which certain properties, contained in a list attached to the decree were to be left in possession of the appellant, who was to pay to the respondent annually a sum of Rs. 2,000 in the month kason, or in default of payment of the same (Rs. 2.000 annually) the said property contained in the said list would be made over to the respondent.

On 8-10-1924, the respondent filed an application for execution of the decree against the appellant in default of payment of two instalments of Rs. 2,000 each for the years 1923 and 1924 respectively, and claimed that as the judgment-debtor had failed to pay according to the decree, the Court might direct the delivery of the lands in the said list by the appellant to the respondent.

Held, that the application was not barred either as to the payments for 1923 and 1924 or as to delivery of possession.

Upon the true construction of the decree each instalment as it became due was a claim originating under the decree

## LIMITATION ACT IX OF 1908-(Contd.)

Arts. 182 (7) and 181-(Contd.)

d. 7 of Art. 182 of the Limitation Act therefore applied Further, upon the true con traction of the decree itself, on the occasion of a defauit in each payment the right of the respondent to have the said property made over to her arose, and therefore the claim to the lands was not time barred. (Lord Carson.) NAUNG SIN P. NA TOK.

(1927) 54 I. A. 272 = 5 R. 422 = 1 Luck. C. 192 = (1927) M. W. N. 442 - 29 Bom. L.R. 1014 = 46 C. L. J. 123 = 39 M.L.T. 144 = 32 C. W. N. 1= 26 L W. 751 = 101 I. C. 736 = A. I. R. 1927 P.C 146 = 53 M. L. J. 22.

Art. 183.

#### APPLICABILITY—INSOLVENCY COURT.

Order against insolvent of-Judgment entered up in High Cours pursuant to - Execution of-Limitation. See INSOLVENCY-HIGH COURT-INSOLVENCY COURT

(1889) 16 I.A. 156 (162 3) = 13 B. 520.

#### MORTGAGE SUIT.

Decree of High Court in-Order absolute in-Application fer-lamitation.

In a suit for sale upon a mortgage brought in the High Court of Calcutta, a decree was made on 16-12-1886 for payment of a certain sum in 6 months, with a provision that in default of payment the mortgagor should pay any deficiency arising on the sale. In 1903, the mortgagor (1st respondent before the Privy Council) sold his interest in one of the mortgaged properties to a person who re-rold it to the 2nd respondent. On an application filed by the mortgagee on 3-7-1909 for an order joining the second respondent as a party to the suit and for an order granting leave to sell the mortgaged property in pursuance of the decree of 16-12-1886, Held (affirming the judgment of the High Court) that the application was one "to enforce a judgment or decree" within the meaning of Art. 183 of Schedule I of the Limitation Act 1908, and was barred as it was not made within twelve years from the date fixed for payment, (Lord Show,) MUNNA LAL PARRUCK P. SARAT CHUNDER (1914) 42 I. A. 88 = 42 C. 776 = MUKERJEE.

19 C. W. N. 561 = 2 L.W. 282 = 17 Bom. L. R. 408 = 21 C. L. J. 118-17 M. L. T. 120-27 I. C. 683-28 M.L.J. 47.

-Personal decree in-Application for-Limitation-Ascertainment of balance.

The right of a mortgagee to a personal decree accrues, within the meaning of Art. 183 of the Limitation Act of 1908 along with his other rights, when the final decree is made. If he wishes to exercise it in time, he must also take timely steps for those proceedings which are a necessary preliminary (134).

A mortgagee cannot, it is true, have a personal decree till the mortgaged properties have been exhausted by sale. But this does not mean that he can first wait till just short of twelve years before selling and then take another period just short of twelve years for a personal decree (133.4).
(Lord Phillimore.) BANKU BEHARI CHATTERJI v.
NARANDAS DUTT. (1997) 54 T. A. 199-54 C. 500-(1927) 54 I. A. 129=54 C. 500= NARAINDAS DUTT. 45 C. L. J. 507 = 26 L. W. 180 = (1927) M. W. N. 336 =

4 O. W. N. 474 - 101 I.C. 24 = 31 C. W. N. 589= 38 M. L. T. (P. C.) 90 = 29 Bom. L. R. 850 = A. I. R. 1927 P. C. 75 = 52 M. L. J. 565.

PRIVY COUNCIL-ORDER IN COUNCIL

Enforcement of -Limitation.

It appears to have been decided in India that what are there termed " the decrees of the Privy Council," are not from the date when such claim arose, and the provisions of subject to any law of limitation. The ground of the deci-

Art. 182-(Contd.)

PRIVY COUNCIL-ORDER IN COUNCIL-(Contd.)

sion seems to have been, that the Order of Her Majesty in Council being an act done by virtue of Her prerogative, it was not competent to the Indian Legislature to limit the time within which that order could be enforced. Their Lordships are not prepared, without full argument and consideration, to accept this ruling as correct. Should the question ever be brought here, it will have to be considered whether the Order in Coen il does more than prescribe what shall be the final decree in the cause, leaving it to be executed by the ordinary process of the Courts in India. It may well thus finally ascertain and define the rights of the parties without relieving them from the obligation imposed upon them by the general law of enforcing those rights with due diligence-a matter with which the prerogative has no concern (492-3.) (Sir James W. Celvile.) KRISTO KIN-KUR ROY 2: RAJAH BURRODACAUNT ROY

(1872) 14 M. I. A. 465 - 17 W. R. 292 -10 B. L. R. 101 - 2 Suth 564.

REVIVAL OF DECREE.

--- Transmission of decree to District Court for execution if a.

An application for transmission of a decree from the High Court to a District Court is not by itself a revival of the decree within the meaning of Art. 183 of the Limitation Act of 1908, inasmach as it is a mere ministerial act of an officer of the Court and not the judicial act of a Judge (134).

Held that, that view was not affected by the circumstance that the judgment debtor was served with notice of the application for transmission, that he appeared pursuant to the notice and raised objections to the order, and that thereupon a consent order was made which, however, had no more effect than that of putting the order for transmission in form, leaving all objections of substance to be raised in the District Coart (134-5.) (Lord Phillimore.) BANKU BEHARI CHATTERIL 2. NARAINDAS DUTT.

(1927) 54 I.A. 129 - 54 C. 500 - 45 C. L. J. 507 - 26 I. W. 180 - (1927) M. W. N. 336 - 4 O. W. N. 474 - 101 I. C. 24 - 31 C.W.N. 589 - 38 M. L. T. (P. C.) 90 - 29 Bom. L. R. 850 - A. I. R. 1927 P.C. 75 - 52 M. L. J. 565.

#### LIMITATION ACT AND CIVIL PROCEDURE CODE AMENDMENT ACT VI OF 1892.

- Effect

The Act VI of 1892 does nothing more than express the true meaning of the C. P. C. of 1882 (50). (Lord Heb. house.) THAKUR PERSHAD P. SHEIKH FAKIR-ULLAH.

(1894) 22 I. A. 44 = 17 A. 106 (112) = 6 Sar. 526 = 5 M. L. J. 3.

#### LITIGANT.

- Difficulties of, in India-Beginning of, with his obtaining decree.

The difficulties of a litigant in India begin when he has obtained a decree (612). (Sir James IV. Colvile.) GENERAL MANAGER OF THE RAJ DURBHANGA C. MAHARAJAH COOMAR RAMAPUT SINGH. (1872) 14 M. I. A. 605=

17 W. R. 459=10 P. J. P. 904-

17 W. R. 459=10 B. L. R. 294= 2 Suth. 575=3 Sar. 117

#### LITIGATION.

AGREEMENT CREATING INTEREST IN SUBJECT OF AGREEMENT TO FINANCE. AGREEMENT TO SHARE SUBJECT OF. COMPROMISE OF. DEED FALSE—SETTING UP OF.

#### LITIGATION-(Contd.)

DEFENDANT—EXAMINATION OF, BEFORE PLAINTIFF OR HIS WITNESSES.

DELAY IN CONDUCT OF.

EVIDENCE IN.

FALSE CASE.

FALSE EVIDENCE.

FRUITS OF-ASSIGNMENT OF.

INCONSISTENCY IN CASE PUT FORWARD IN.

INCONSISTENT POSITIONS IN-MAINTAINABILITY-ESTOPPEL.

INDIAN LITIGATION.

JUDGMENTS CONFLICTING AND CONTRADICTORY IN. LITIGATION NOT inter partes.

OPPONENT—EXAMINATION OF PARTY BY—FORCING OF.

OPPOSING CASE.

PROPERTY—LITIGATION RESPECTING—MEANING OF.
PROPERTY SUBJECT OF, OR PROPERTY TO BE RECOVERED BY.

SALE OF PROPERTY SUBJECT OF.

#### Agreement creating interest in subject of.

#### Agreement to finance.

—Compromise of litigation—Consent of financier to— Provision as to—Meaning and effect—Consent to be taken when possible.

An agreement by T, to supply funds for carrying on a litigation which had been launched by R, provided that R should not compromise with the defendant, or file razinams or withdrawal without the consent of T, and that if K, Vakil for R, in the said litigation advised him from the then existing circumstances of the suit, that it would be better for R, to compromise, R should agree to it and compromise or withdraw the suit.

Medd, that it was reasonably certain that the parties to the agreement intended that the consent of T, and of the Vakil to a compromise by K should be obtained only where it was possible to obtain such consent, that a term to that effect must therefore be implied to exist in the agreement, and that the giving of the consent of T himself to a compromise accepted by his representatives was not such a condition precedent when it had become impossible for him to give it (21-2). (Lord Atkinson.) VATSAVAYA VENKATA JAGAPATHI T. POOSAPATHI VENKATAPATI.

(1924) 52 I. A. 1 = 48 M. 230 = 20 L. W. 298 = A. I. R. 1924 P. C. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. B. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L.J. 93 (127-8).

Further advances under-Right to-Condition pricident to-Accounts and vouchers of disbursements cut of monies already advanced-Furnishing of.

An agreement to supply funds for a litigation which had been instituted by R provided, inter alia, that T should advance for the proceedings of the said suit and appeal money up to 2 lakhs of rupees subject to the conditions, that, in respect of the money advanced by T from time to time, detailed receipts for the vakils' day fees, etc., printing, stamps, and house rents, should be furnished to him; that as regards the whole of the balance, accounts of receipts and expenses should be rendered to him and for the sum so ascertained, he should obtain receipt from R and with respect to the money that might again be required, T should, at the request of R, advance money, look into accounts, and get detailed vouchers for monies spent as above-stated and settle accounts then and there.

#### LITIGATION-(Contd.)

#### Agreement to finance-(Contd.)

Held, on a construction of the agreement, that T was entitled to insist upon vouchers of the disbursements made by R out of the sums advanced by T under the agreement and that R was bound to send vouchers of those disbursements whether demanded by T or not (15-6). (Lord Alkinson.) VATSAVAYA VENKATA JAGAPATI v. POOSAPATHI VENKATAPATHI. (1924) 52 I. A. 1=48 M. 230 = 20 L. W. 298 = A. I. R. 1924 P. C. 162 = 25 M. I. T. 210 = (1924) M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 298 = A. I. R. 1924 M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. W. N. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 200 M. M. M. 607 = 20 L. W. 20

20 L. W. 298 = A. I. R. 1924 P. C. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. B. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L. J. 93 (122-3).

-Sale of property subject of litigation in consideration of Validity-Consideration-False recital in deed as to-Effect.

The suit was to recover the estate of one Pirthipal, the last male owner of the estate, after the death of his daughter who had succeeded to the same as his heiress. It was originally brought by A, who had been held to be the heir of the nearest collateral of Pirthee living at the daughter's death, and by the respondent, who claimed to be entitled to one moiety of the estate under a porchase from A. Subsequently to the institution of the suit, however, A withdrew from the case, and his name was on his own application struck off the record. Then arose the question whether the respondent could sue alone. The defendant appellant, who was in possession admittedly without title, contested the right of the respondent to sue alone on the ground that the sale to him was void as being champertous and a "gambling in litigation" contrary to public policy.

In the sale-deed A stated his title by succession, the impossibility of recovering possession from the defendant-appellant without a suit, and his own inability to sue owing to want of money. 'So, therefore, "he went on to say, "he has sold half the estate to the Raja (respondent) for a lakh and a half of rupees. He acknowledges the receipt of one lakh". The balance of Rs. 50,000 was to remain on deposit with the respondent to be expended in prosecuting the proposed suit and in paying a monthly stipend of Rs. 50 to himself and Rs. 20 to a muktar. On the termination of the litigation he was to receive the balance. In the suit the respondent and he were to act and work jointly, and the respondent was given full power to conduct the litigation and manage the expenditure.

The statement in the sale deed to the effect that one lakh had been paid to A was not in accordance with the fact. Probably the statement was introduced by the draftsman under the notion that it might impart some additional solemnity to the instrument. Apart from that untrue recital in the sale deed, however, there was no flaw in the transaction. Without assistance A could not have prosecuted his claim. There was nothing extortionate or unreasonable in the terms of the bargin. There was no gambling in litigation. There was nothing contrary to public policy.

Held, affirming the Court below, that the transaction was a present transfer by A of one moiety of his interest in the estate, giving a good title to the respondent on which it was competent for him to sue (121). (Lord Macnaghten.) LAL ACHAL RAM v. RAJA KAZIM HUSAIN KHAN.

(1905) 32 I. A. 113 = 27 A. 271 (290) = 9 C. W. N. 477 = 8 O. C. 155 = 8 Bar. 772 = 15 M. L. J. 197.

## Agreement to share subject of.

See LITIGATION-PROPERTY SUBJECT OF, OR PROPERTY TO BE RECOVERED BY-AGREEMENT TO SHARE.

#### LITIGATION-(Contd.)

#### Compromise of.

(See also COMPROMISE).

Consent of party to—Issue as to—Legal practitioners engaged in litigation—Examination of—Necessity. See COMPROMISE—SUIT—COMPROMISE OF—CONSENT OF PARTY TO. (1922) 17 L. W. 481 (493).

——Legal Practitioner—Compromise by. See LEGAL PRACTITIONER—COMPROMISE BY.

Setting aside of —Fraudulent intention—Necessity.

The advice to enter into a compromise rather than engage in litigation, subject to be protracted by appeal, not only to the appellate court in India, but to England, cannot, in the absence of fraudulent intention, be deemed a ground for impeaching the validity of the compromise (248). (Mr. Justice Besanquet.) RAJUNDER NARAIN RAE v. BIJAI GOVIND SINGH. (1839) 2 M. I. A. 181 =

#### Deed false-Setting up of.

1 Moo. P. C. 117 = 1 Sar. 175.

Deed undoubtedly genuine-Relief on foot of-No bar to.

That a party is precluded from relying upon a title estahlished by a deed conclusively established to be genuine, because he has foolishly and wickedly set up a false deed which, if treated as a conveyance and not as a mere confirmation, may be inconsistent with that title, is a proposition for which there is no foundation either in reason or in law. (Lord Chelmsford.) PATTABHIRAMIER v. VENKATAROW NAICKEN. (1870) 13 M. I. A. 560 (571) =

15 W. R. (P. C.) 35 = 7 B. L. R. 136 = 2 Suth. 410 = 2 Sar. 623.

Defendant-Examination of, before plaintiff or his witnesses.

\_\_\_\_\_Irregularity. See EVIDENCE—PARTY—DEFEN-(1923) 45 M. L. J. 363 (368-9).

#### Delay in Conduct of.

Costs of party responsible for—Disallowance of, though successful. See PRIVY COUNCIL—APPEAL—DELAY IN PROSECUTION OF.

—Exils of—P. C's disapproval of.

Their Lordships cannot but regard as lamentable the long, harassing, and expensive litigation to which the Sannyals have been subjected in endeavouring to obtain the fruits of their decree of 1828, an object which, although upwards of half a century has elapsed since the date of the decree, they have not as yet attained (76). (Sir Barnes Pracock.) DINENDRONATH SANNYAL 2. RAMCOOMAR GHOSE.

(1881) 8 L. A. 65=7 C. 107 (119)= 10 C. L. R. 281= 4 Sar. 213.

Such delays as these are discreditable to any judicial system and their Lordships have no reason to think they are not to a large extent avoidable. They vastly increase the costs, keep litigants in a state of anxious uncertainty, and prejudice their interest in many ways. (Lord Atkinson.) SADIK HUSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212 (236) = 38 A. 627 (662.3) = (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. B. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

——Litigation so prolonged becomes an instrument of oppression, is discreditable to any judicial system, and every effort should be made to correct the abuse (293). (Lord Atkinson.) JHANDA SINGH 2. WAHID-UD-DIN.

(1916) 43 I. A. 284 = 38 A. 570 (581) = 14 A. L. J. 1189 = 20 M. L. T. 529 = (1916) 2 M. W. N. 570 = 21 C. W. N. 66 = 25 C. L.J. 524 = 5 L. W. 189 = 19 Bom. L. R. 1 = 36 I.C. 38 = 31 M. L. J. 750, LITIGATION -(Contd.)

Dolay in Conduct of - Contd.)

——It can only be a misfortune that a dispute, which affects a master so important as the right of mining—a right of great value for the development and prosperity of any country—should have been in abeyance for a period exceeding 12 years. (Lord Buckmaster, L. C.) SASHRI BHUSHAN MISRA v. JVOTI PRASHAD SINGH DEO.

(1916) 44 I. A. 46 = 44 C. 585 (594.5) = 6 L. W. 2 = 19 Bom. L. R. 416 = 21 C. W. N. 377 = 21 M. L. T. 303 = 15 A. L. J. 209 = (1917) M. W. N. 226 = 25 C. L. J. 265 = 1 Pat. L. W. 361 = 40 I. C. 139 = 32 M. L. J. 245.

Delay in litigation means to every one concerned, in whatever country he may be needless expense, anxiety, and disappointment, and to the poor and honest suitor it is an oppression hard to be borne. (Lord Buckmester, L. C.) DEONANDAN PRASHAD SINGH :: RAMDHARI CHOW-DHRI. (1916) 44 I. A. 80 (86) = 44 C. 675 (697-8) = (1917) M. W. N. 470 = 19 Bom. L.R. 437 = 6 L. W. 65 = 15 A. L. J. 375 = 1 Pat. L.W. 527 = 22 M. L. T. 196 = 25 C. L. J. 573 = 21 C. W. N. 786 = 39 I. C. 346 =

32 M. L. J. 459. See Community—Well being of. (1917) 34 M. L. J. 361 '369).

Comment upon the length of these proceedings cannot be fairly made without fuller knowledge of all the attendant circumstances than their Lordships possess. That such
delay should be possible justifies the reproach to which the
administration of the law is so often and so justly made
subject, a reproach which their Lordships are most anxious
to remove (530). (Lord Buckmarter.) MADHU SUDAN
CHOWDHRI v. CHANDRABATI CHOWDHRAIN.

(1917) 42 I. C. 527 - 21 C.W.N. 897 (1917) M. W. N. 518 - 6 L. W. 437.

It is now seventy years since Lord Macaulay pointed out that the delay in Indian litigation constituted a reproach to our administration, and their Lordships feel with regret that this reproach has not been taken away. A period of 15 years is needlessly long for the determination of any suit, and more than that period has elapsed since the plaints in these proceedings were issued (370). (Lord Backmatter.) HARADAS ACHARJYA CHOWDHURI P. SECRETARY OF STATE FOR INDIA. 20 Bom. L. R. 49 = (1917) 43 I. C. 361 = 22 M. L. T. 438 = 26 C. L. J. 590 = (1918) M. W. N. 28.

——See Community—Well Being—Danger to. (1917) 34 M. L. J. 361 (369).

——Their Lordships once more commented upon the unsatisfactory conditions relating to the Indian litigation, e.g., its delay. They observed: security of title and reasonable swiftness of legal decisions are essential conditions of commercial development, and both are lacking in such a case as the present, a case which unfortunately does not stand alone. (Lord Buckmaster.) JEUNA BAHU 2. PARMESHWAR (1919) 46 I. A. 294 (299) 47 C. 370 (375.6) = 17 A. L. J. 207 = 25 M. L. T. 278 = 23 C. W. N. 490 = 29 C. L. J. 443 = 21 Bom. L. R. 589 = 10 L. W. 26 = (1919) M. W. N. 347 = 12 Bur. L. T. 80 = 49 I. C. 620 = 36 M. L. J. 215.

There appears to have been much delay in disposing of the appeal to the court below. So great a delay in disposing of the appeal should have been avoided if possible. (Viscount Haldane.) MA HMIT 7. MAUNG PO PU.

(1919) 11 L. W. 253 (255-6)=31 C. L. J. 87= (1920) M. W. N. 176=27 M. L. T. 139=55 I. C. 791

Their Lordships cannot part with this case without expressing once more their regret as to the interminable course of litigation in India. It cannot be for the welfare

LITIGATION-(Contd.)

Delay in Conduct of-(Contd.)

of any community that the purchaser of property bought in good faith should be liable to endless quarrels arising out of his purchase, which continue, as they do in this case, and as they must in many, beyond the period of his natural life. Their Lordships refer once more to this matter in the earnest hope that a condition of things which they regard as constituting a serious blot upon the administration of justice should be removed. (Lard Buckmaster.) RAJA RAI BHAGWAT DAYAL SINGH v. RAM RATAN SAHU.

(1921) 15 L. W. 481 = (1922) M. W. N. 102 = 4 U. P. L. B. (P.C.) 7 = 24 Bom, L. R. 336 = 3 Pat. L. T. 229 = 35 C. L. J. 121 = (1922) P. C. 91 = 26 C. W. N. 257 = 20 A. L. J. 26 = 65 I. C. 69 = 42 M. L. J. 243 (247).

Notwithstanding their efforts, their Lordships find that it has been impossible to accelerate the procedure of business in the cours of India, so as to prevent instances of delay, which bring discredit on the administration of jestice. Their Lordships find themselves quite unable to deal as they would desire with the record of delay to which they have drawn attention. (Lord Buckmaster.) UDHAM SINGH.

(1922) 38 C. L. J. 298 = 45 M. L. J. 254.

-Their Lordships must pause to comment upon the lamentable delay which has taken place. These suits were both started in 1895 in respect of claims which, if wellfounded, would have accrued in 1892. It is true that some of the delay is to be accounted for by the fact that when the cases first came defore the District Judge, he attempted to deal with them by a short cut, and that time was consumed in the appeal from these orders and the consequent remand. But he gave his second judgment in April, 1914, and it has taken till now to bring the matter before their Lordships. Some delays are to be accounted for by the fact that in the agnate's suit there were very many plaintiffs and that all of them except the one plaintiff were made defendants in the other suit; and that from time to time deaths occurred, and that new parties had to be added by way of revivor or supplement. But, even so, the delays are discreditable. (Lord Phillimore.) KEFSARA VENKATAPPAYYA NAYANI VENKATARANGA ROW. (1928) 56 I. A. 21=

52 M. 175 = 29 L. W. 118 = (1929) M. W. N. 47 = 33 C. W. N. 261 = 27 A. L. J. 41 = 49 C. L. J. 148 = 31 Bom. L. R. 299 = 114 L. C. 17 = A. I. R. 1929 P. C. 24 = 56 M. L. J. 218 (228 9)

Their Lordships think it is of the utmost importance that the people in India should realise that the statements their Lordships have made, as to the essential duty on the part of litigants to use all reasonable speed to bring their cases to trial are not mere empty phrases; and their Lordships mean to enforce and make them effectual by the only instrument in their hands, by dealing with the question of the costs on the appeal where the delay arises. (Lord Buckmaster.) VIRABHADRAYYA GARU to MAHALAKSHAMMA GARU. (1929) 34 C. W. N. 512

32 Bom. L. B. 492=31 L. W. 326=122 I. C. 305= A. I. B. 1930 P. C. 42=58 M. L. J. 285 (292)

Evidence in.

Connected suits—Evidence in one of—Use of, in another—Defendants same but plaintiffs different. SW EVIDENCE—LATIGATION—CONNECTED SUITS.

(1892) 19 I. A. 179 (181) = 15 M. 503 (509)

Cross—Suits—Evidence in one of—Use of in the other. See EVIDENCE—LITIGATION—CROSS—SUITS.

(1864) 10 M. I. A. 60 (77)

-Litigations different-Evidence in one of-Admissibility of, in another-Issues different. See EVIDENCE-

#### LITIGATION -(Contd.)

Evidence in-(Contd.)

LITIGATION-DIFFERENT LITIGATIONS.

(1905) 32 I. A. 217 (224) = 15 M. L. J. 432.

·Litigations different—Evidence in one of -Admissibility of, in another by consent of parties-Decree on basis of-Validity. See EVIDENCE-LITIGATION-DIFFERENT LITIGATIONS. (1892) 14 A. 366

-Litigation not inter parter-Depositions in-Admissibility of. See EVIDENCE-LITIGATION-LITIGATION (1871) 17 W. R. 108. NOT INTER PARTES.

Material evidence in possession of party-Production of-Duty as to-Non-production of, trusting to abstract doctrine of onus of proof-Impropriety of. See EVIDENCE - PARTY-EVIDENCE MATERIAL IN POSSESSION OF.

(1916) 44 I. A. 98=40 M. 402 (408-9) and (1929) 33 C. W. N. 430 = 57 M. L. J. 565.

·Non-production of evidence which party could have produced-Inference adverse from. See EVIDENCE ACT-S. 114, ILL. (G).

Opponent-Document put in by- Evidence against party himself if and when becomes-Cross-examination by party with reference to it-Argument founded by him upon it-Effect. See EVIDENCE-DOCUMENT- PLAINTIFF-(1925) 52 I. A. 372 (376-7). DOCUMENT PUT IN BY.

-Opponent's evidence-Reliance on, in support of one's case, See EVIDENCE-DEFENDANT-EVIDENCE own (1864) 10 M. I. A. 151 (161), OF.

-Party's own, and evidence of his witnesses fatal to his case-Ignoring of-Permissibility. See EVIDENCE-PARTY-EVIDENCE GIVEN BY, AND ON BEHALF OF, (1925) 53 I. A. 24 (35)=5 P. 312.

-Prior sait-Evidence in-Admission of. See Evi-DENCE-LITIGATION-PRIOR SUIT.

-Unsatisfactory nature of party's-Adverse inference from-Propriety-Onus of proof not on him but undertaking by him nevertheless to adduce counter evidence. See ONUS OF PROOF-PARTY NOT SUBJECT TO.

(1838) 2 I. A. 118 (124-5).

#### False case.

-Costs of party putting forward-Disallowance of, though successful. See COSTS-SUCCESSFUL PARTY-DISALLOWANCE OF COSTS TO-GROUNDS-FALSE (1862) 9 M. I. A. 96 (122-3). CASE.

See COSTS—SUCCESSFUL PARTY—DISALLOWANCE TO-GROUNDS-FRAUDULENT CONDUCT, ETC.

(1917) 42 I. C. 236 (240).

-Portion of case -False case in regard to-Effect of, on other portion of that party's case.

The appellants had set up a case of fabrication of documents, which entirely broke down and failed to obtain credit. The endeavour to do so, and in a very systematic way, throws great discredit upon the whole of their case. (101-2). RAJAN CHUNDERNATH ROY v. KOOAR GO-(1872) 11 B. L. R. 86= BINDNATH ROY. 18 W. B. 221 = 2 Suth. 608.

It is now conceded that all the issues thus raised have been correctly found in favour of the plaintiff, and therefore it is unnecessary to advert to the nature of the defence, except for the purpose of showing its inequitable character, which connot but materially affect the credit to be given to the defendants personally respecting the matters still in dispute in the cause (162). MONMOHINI DASI 2. (1875) 3 Suth. 161. ITCHAMOYI DASI.

-In considering the whole, it is not immaterial to remember that the main defence of the contesting defendants was that N was not a member of their joint family, that | DENCE-FALSE EVIDENCE-TRUE CASE,

LITIGATION-(Contd.)

False case - (Contd.)

the further case made was that he was definitely refused a share in 1905 or 1906, and that both these allegations have been held to be unfounded. (Sir Lancelot Sanderson.) RADHOBA BALOBA VAGH P. ABURAO BHAGWANTRAO SHIROLE. (1929) 56 I. A. 316 = 53 Bom. 699 =

33 C. W. N. 1006 = 50 C. L. J. 135 = 118 I. C. 1 = 31 Bom. L. R. 1030 = 6 O. W. N. 786 = 30 L W. 514 = 27 A. L. J. 1031=(1929) M. W. N. 852= A. I. R. 1929 P. C. 231 = 57 M. L. J. 287.

-Setting up of to meet another false case of opponent -Practice of.

It is unhappily too common in Hindu litigation for a party to set up a false case to meet another false case set up by his opponent (31). (Sir James W. Colvile.) INDROMONI CHOWDHRANI P. BEHARI LAL MULLICK.

(1879) 7 I. A. 24=5 C. 770=6 C. L. R. 183= 3 Suth. 719-4 Sar. 120.

#### False evidence.

COMMON IN INDIA.

-SW EVIDENCE-FALSE EVIDENCE-COMMON IN INDIA. (1835) 5 W. R. 109 (P.C.).

FABRICATION OF.

See EVIDENCE-FALSE EVIDENCE-FABRICATION

USE OF.

-Costs to successful party-Disallowance of, on that ground. See COSTS-SUCCESSFUL PARTY-DISALLOW-ANCE TO-GROUNDS-FALSE EVIDENCE.

(1835) 5 W. R. 109 (P.C.) and (1864) 10 M.I.A. 123 (150).

-Decision in favour of opposite party merely on ground of-Propriety.

It might be possibly an advantageous rule if, as Mr. Scott expresses in his judgment, that where a party "has resorted to forgery to establish his claim, he must take the consequences of his own act, and that the court is not at liberty to assume for him a position which he has himself rejected." But their Lordships are unable to arrive at that conclusion, and are apprehensive that if such was the practice adopted, some cases might occur in which the court could not determine the point in issue in favour of either party. We also find in a recent case this Committee gave effect to the defendant's title although a document by which she sought to strengthen it was found to be a forgery. (161-2) However much the want of trustworthiness in the evidence of cases from India is to be regretted, we cannot by reason of the proof that a document adduced by one party is forged, transfer the property in which he and those through whom he claims have been in possession at the date of the suit for 44 years, to another, who has not established any right to it himself (162-3). (Sir John Romilly.) SEVVAJI VIJAYA RAGHUNADHA P. CHINNA NAYANA CHETTI.

(1864) 10 M. I. A. 151 = 2 Sar. 88.

-Effect of, on other evidence adduced by party. See EVIDENCE-FALSE EVIDENCE-USE OF.

-Presumption against case on ground of.

The introduction into a case of matters too grossly improbable for belief, and not the subject of innocent mistake, raises a presumption against it (106). (Sir James W. Colvile). SOORENDRONATH ROY v. MUSSAMAT HEE-(1868) 12 M. I. A. 81= RAMONEE BURMONEAH. 10 W. R. 35=1 B. L. R. P. C. 26=

2 Suth. 147 = 2 Sar. 372.

-True case-Use of false evidence to support-Practice of-Decision of case not to be affected by. See EVI-

#### LITIGATION-(Contd.)

#### Fruits of-Assignment of.

-Agreement for-Validity.

R and others, who had instituted a suit to establish R's title to the absolute interest in an estate subject to the life-interest of C, being in want of funds to carry on the said litigation, entered into an agreement with T for the supply of funds to him for the said purpose. Clauses 10 and 11 of the agreement provided for a compromise of a suit being entered into by R and the others in certain circumstances. Clause 12 provided that out of the moveable and immoveable properties that might be obtained by them by such compromise, they should at once execute and give to T a proper sale-deed and place in his possession 3.32 share.

Held that the agreement embodied in cl. 12 of the agreement was an agreement by A' and the others to assign to others part of the fruits they might acquire in an action at law and therefore perfectly legal. (Lord Atkinson). VAT-SAVAVA VENKATA JAGAPATI v. POOSAPATI VENKATA-PATI. (1924) 52 I. A. 1=48 M. 230=20 I. W. 298=

A. I. R. 1924 P. C. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. B. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L. J. 93 (125-6).

#### Inconsistency in case put forward in.

-Responsibility for-Presumption adverse from.

In a suit brought against a zemindar for the recovery of possession of some bighas of land lying within the ambit of a mouza in the defendant's zemindary, the defendant put forward inconsistent defences. In his conduct in regard to that matter and his failure to produce the best evidence in his possession which would have helped the court in deciding the case one way or another, the court below saw a design on his part to take advantage of the abstract doctrine of burden of proof upon a plaintiff in ejectment.

Held, that the defendant, who had access to the papers, maps, and surveys of a well-ordered zemindari, could not disclaim responsibility for the inconsistency in the defences put forward by him. RAMESWAR SINGH P. BAJIT LAL. PATHAK. (1929) 33 C. W. N. 430=27 A. L. J. 261=

27 L. W. 501 = 49 C. L. J. 308 = 6 O. W. N. 423 = 114 I. C. 592 = 31 Bom. L. R. 721 = A. I. R. 1929 P. C. 95 = 57 M. L. J. 565.

#### Inconsistent positions in—Maintainability— Estoppel.

Both parties taking up inconsistent positions - Effect. Where, in a suit by the widow of a deceased Mahomedan to obtain a widow's share in his estate under the Mahomedan Law the question was whether her marriage with the deceased had been dissolved by a divorce, and it appeared that, in prior proceedings between the plaintiff and the deceased, the plaintiff had stated that she had been divorced by him, while the deceased had stated that she had not, held that these proceedings were insufficient to raise an estoppel either against the plaintiff or against the deceased, in any question between them as to their status, that plaintiff was not estopped from maintaining that she never ceased to be the wife of the deceased, and that the question whether she continued to be his wife down to the date of his death should be decided upon the weight of the evidence before the court (41-2). (Lord Watson). SKINNER v. SKINNER.

(1897) 25 I. A. 34 = 25 C. 537 (547) = 2 C. W. N. 209 = 7 Sar. 262

The contest in the case was as to the real character of an instrument, whether it was a will or a settlement. In the courts below both parties took up inconsistent positions with regard to this point. On appeal, their Lordships held that, notwithstanding the conflicting views presented in the courts below, they were bound to give effect to the real character of the instrument (111). (Lord Macnaghten). UMRAO SINGH v. LACHHWAN SINGH. (1911) 38 I. A. 104=

#### LITIGATION-(Contd.)

Inconsistent position in — Maintainability— Estoppel—(Contd.)

(1911) 38 I. A. 104=38 A. 344 (355 6)=8 A.L.J. 465= 15 C. W. N. 497=13 C. L. J. 519=9 M. L. T. 507= 13 Bom. L. R. 404=(1911) 2 M. W. N. 242= 14 O. C. 133=10 I. C. 285=21 M. L. J. 637.

——Prior litigation—Inconsistent position in—Persons ranged on same side.

On the death of a Hindu widow the respondent set up title to succeed her as the adopted son of her husband B, and on that footing secured the succession to which P, as the nearest heir, would have been entitled but for the respondent's intervention. The question was whether by reason of that circumstance the respondent was estopped as against P and persons claiming under him (the appellants claimed to be such persons) from denying the adoption.

There was, however, no evidence that P in any way opposed the respondent's claim; on the contrary, he was living with, and apparently co-operating with, the respondent at the time.

the time.

Held, that the essential elements of an estoppel between P and the respondent were lacking, and that even if the appellants were claiming through P, they could not establish an estoppel (131-2). (Lord Collint.) HAR SHANKAR PARTAB SINGH P. LAL RAGHURAJ SINGH.

(1927) 34 I. A. 125 = 29 A. 519 (533.4) = 2 M. L. T. 391 = 6 C. L. J. 13 = 11 C. W. N. 841 = 9 Bom. L. R. 757 = 4 A. L. 497 = 10 O. C. 343 = 9 Sar. 266 = 17 M. L. J. 354.

-Prior litigation-Plaintiff's evidence in-Plea of limitation on basis of-Defendant's right to set up-Divmissal of prior suit on defendant's contention that that evidence was false-Effect.

In 1895, the plaintiff, the mahant at a math, instituted a suit aginst the defendants or their predecessors in interest to recover possession of properties of the math alleged to have been improperly alienated by his predecessor, B. Plaintiff's case then was that B had made the math over to plaintiff in March, 1892, went on pilgrimage thereafter and never returned, and died at Hardwar on 27-4 1892. The evidence adduced by him in that suit was also to that effect. The then defendant's case was that B was seen alive in 1895, the date of the institution of that suit, and that the plaintiff had, therefore, no title to sue. The Courts in that suit disbelieved the plaintiff's evidence, accepted that of the then defendants, and dismissed that suit on the ground that the plaintiff had failed to establish the fact essential to the validity of his claim, viz., that B was dead when the suit was instituted.

In 1916 the plaintiff instituted the suit out of which the appeal arose against the defendants for the recovery of possession of the same properties on the same ground viral that they had been improperly alienated by B. In this suit also the evidence of the plaintiff himself and of that of his witnesses was to the effect that B had died in 1892, in which case the suit would be clearly barred by limitation. The question was whether, by reason of the defendant's attitude in the prior litigation, they had so compromised their position that they were in effect estopped from deriving benefit from the plaintiff's evidence of death and from insisting that on that evidence the suit should be held barred by limitation.

Held, that the defendants were not so estopped, that the plaintiff's evidence could not be ignored, and that, in view of that evidence, the suit was clearly barred by limitation (345). (Lord Blanesburgh.) LAL CHAND MARWARI RAMRUP GIR. (1925) 53 I. A. 24=5 P. 312=

24 A. L. J. 105 = (1926) M. W. N. 203 = 7 P. L. T. 163 = 3 O. W. N. 335 = 43 C. L. J. 249 = 28 Bom. L. R. 855 = 30 C. W. N. 721 = A. I. R. (1926) P. C. 9 = 93 I. C. 280 = 50 M. L. J. 289.

#### LITIGATION-(Contd.)

Inconsistent positions in - Maintainability -Estoppel-(Contd.)

Prior and subsequent litigations-Later litigation directed to define scope or ambit of prior one-Decision in -Rights of parties governed by-Claim inconsistent with such decision-Maintainability.

Where a litigation of a later date between the parties was directed to the avoidance of mistake as to the ambit or scope of an earlier litigation between them in regard to the same matter, held that to ignore the later proceedings and to treat them either as if they had never been brought or were of no avail was contrary to sound principle.

The later proceedings would in such a case be at least of an interpretative character. (401-2). (Lord Shaw). KU-THALI MOOTHAVAR P. PERINGATI KUNHARANKUTTY.

(1921) 48 I. A. 395 = 44 M. 883 (889) = 14 L. W. 721 = (1921) M. W. N. 847 = 30 M. L. T. 42-L. R. 3 P. C. 9-24 Bom. L. R. 669-(1922) P. C. 181 = 66 I. C. 451 = 41 M. L. J. 650.

Same litigation-Inconsistent positions in.

A litigant who has all along maintained a position in support of one, and in this case the more important, branch of his suit cannot be permitted, when he fails upon this branch to withdraw from the position and assert the contrary, more especially when he thereby places his opponent at a great disadvantage. There could be no clearer case for the application of the doctrine of estoppel owing to the conduct of the litigant (70). (Lord Salvesen). MAHARAJA OF VIZIA-NAGARAM D. SECRETARY OF STATE FOR INDIA IN (1926) 53 I. A. 64 = 49 M. 249 = COUNCIL.

43 C. L. J. 378 -94 I. C. 501 = 28 Bom. L. R. 865 = 24 L. W. 9 = (1926) M. W. N. 589 = A. I. R. 1926 P. C. 18 = 50 M. L. J. 391 (395 6).

#### Indian litigation.

CONDUCT BAD OF-PRESUMPTION ADVERSE FROM. -English and India-Distinction. See LITIGATI N-CASE-MIXTURE TOF LITIGATION-TRUE (1868) 12 M. I. A. 81 (92-3). FALSEHOOD WITH.

### DISCLOSURE OF CASE

-Reluctance of party as to, even though case honest one. Possibly, parties in India, when a dispute has arisen, may be chary of shewing their hand, and although they have an honest case may wish to state as little as they can when they see that their claim is going to be resisted (12). (Lord Morris), LACHMI PERSHAD v. MAHARAJAH NAREN-DRO KISHORE SING BAHADUR.

(1891) 19 I. A. 9=14 A. 169 (173).

## EXAGGERATION AND INVENTION.

-Admixture of .

An experience of Indian cases shows that few of them, however, true, are free from admixture of exaggeration and invention; and it is not necessary to the affirmance of this judgment that their Lordships should believe entirely all the attendant circumstances detailed by the witnesses who support the nomination. (Lord Chelmsford.) NEELKISTO DEB BURMONO v. BEERCHUNDER THAKOOR.

(1869) 12 M. I. A. 523 (544 5) = 12 W. R. P.C. 21 = 3 B. L. B. P.C. 13=2 Suth. 243=2 Sar. 523.

#### FALSE CASE.

Seiting up of, to meet another false case of opponent-Practice of. See LITIGATION - FALSE CASE-(1879) 7 I. A. 24 (31)= SETTING UP OF, ETC. 5 C. 770.

#### IRRELEVANT CONSIDERATIONS.

LITIGATION-(Contd.)

Indian litigation-(Contd.)

IRRELEVANT CONSIDERATIONS-(Contd.)

bearing on the main questions for determination. (Mr. Ameer Ali). PRATAPSING SHIVSING r. AGARSINJI RAISINGJI. (1918) 46 I. A. 97 (100) = 43 B. 778 (789) = 17 A. L. J. 522=(1919) M. W. N. 313=

21 Bom. L. R. 496 = 24 C. W. N. 57 = 10 L. W. 339 = 27 M. L. T. 47 = 50 I. C. 457 = 36 M. L. J. 511.

MISMANAGEMENT OF, FROM INCOMPETENT ADVICE.

-See LITIGATION -INDIAN LITIGATION -CON-(1868) 12 M. I. A. 81 (92-3). DUCT BAD OF.

#### TRUE CASE.

-False evidence to support-Use of-Practice of-Decision of case not to be affected by. See EVIDENCE-FALSE EVIDENCE-TRUE CASE.

-Placing of, on false grounds-Practice of-Relief on feet of real title-Grant of-Necessity.

It is true his (appellant's) case is stated higher in his pleadings than the real title warrants; but the case, as stated, includes the real title, and is only the common error which is so frequently observed in the cases of natives in India, where their legal advisers, from ignorance or foolish craft, misstate a good case, and place it on false grounds (545.6). (Sir Edward Williams.) NAWAB UMJAD ALLY KHAN P. MUSSAMAT MOHUNDEE BEGUM.

(1867) 11 M. I. A. 517 = 10 W. R. P. C. 25 = 2 Suth. 98 = 2 Sar. 315 = R. & J.'s. No. 7 (Oudh).

Mixture of falsehood with-Adverse inference from Propriety of.

It is the great misfortune of Hindoo litigants that their cases often fall, in the earlier stages of litigation, into the hands of incompetent advisers, who, by the mixture of falsehood with truth, or by the suppression or abandon-ment of part of a true case, from some mistaken views of policy or difficulty, create often impediments to its success from which the true story, if revealed, would have been free. If, for instance, it should seem expedient to exaggerate the illness, weakness, or incapacity of an alleged testator, and to tutor witnesses to such proof, it may be thought politic to drop that part of a case, which necessarily supposes during the same interval a disposing capacity in the testator; and in Indian cases it is scarcely safe or just to make against the suitor himself the ordinary presumptions from the conduct of a suit, which would be made in our own courts under the like circumstances (92-3). (Sir James W. Colvile.) SOORENDRONATH ROY v. MUSSU-MAT HEERAMONEE BURMONEAH.

(1868) 12 M. I. A. 81 = 10 W. R. P. C. 35 = 1 B. L. R. (P. C.) 26=2 Suth. 147=2 Sar. 372.

#### Judgments conflicting and contradictory in.

-Impropriety of.

It is indeed a subject of deep regret that in the course of that litigation so many contradictory and conflicting judgments have been delivered, sometimes on appeal from an inferior to a superior Court, and sometimes even by the same judges in reviewing their own judgments (76). (Sir Barnes Peacock.) DEVINDRONATH SANNYAL v. RAM-(1881) 8 I. A. 65= COOMAR GHOSE. 7 C. 107 (119) = 10 C. L. R. 281 = 4 Sar. 213.

#### Litigation not inter partes.

Depositions in-Admissibility of. See EVIDENCE-LITIGATION-LITIGATION NOT INTER PARTES. (1871) 17 W. R. 108.

Judgment in. See under JUDGMENT.

It usually happens in India that a case is overladen with a variety of considerations which have only an indirect TION NOT INTER PARTES. (1874) 1 I. A. 157-(164).

LITIGATION-(Cond.)

Opponent-Examination of party by-Forcing of.

Practice of-Impropriety of, See EVIDENCE-PARTY-OPPONENT-EXAMINATION BY.

#### Opposing Case of.

Failure of - Support to party's case from.

The failure of an opposing case ordinarily lends support to the case which it impeaches (106). The case of the defendants (who set up a will the genuineness of which was questioned by the plaintiff) certainly derives some support from the failure of the case made (by the plaintiff) as to the forgery of the will (102). (Sir James W. Colvile.) SOO-RENDRANATH ROY v. MUSSUMAT HEERAMONEE BUR-MONEAH. (1898) 12 M. I. A. 81 = 10 W. R. 35 =

1 B. L. R. P. C. 26=2 Suth. 147=2 Sar. 372. Falsity of-Effect of See EVIDENCE-DEFEN-DANT-OPPOSING CASE OF, ETC.

(1864) 10 M. I. A. 151 (161).

## Property-Litigation respecting-Meaning of.

-Contract to sell property subject to settlement of litigation respecting it-Administration suit if a litigation within meaning of Pendency of Contract if complete and enforceable notwithstanding. See SALE-CONTRACT FOR -LITIGATION RESPECTING PROPERTY.

(1925) 50 M. L. J. 644 (650).

## Property subject of, or property to be recovered by.

AGREFMENT CREATING INTEREST IN.

Validity of -Conditions

The Indian Courts will not sanction every description of maintenance. Probably the true principle is that administering, as they are bound to administer, justice according to the broad principles of equity and good conscience, those Courts will consider whether the transaction is merely the acquisition of an interest in the subject of litigation. Asset fide entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive. Although the law of champerty is not a law applicable to the mofussil, the Courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family affairs, by an agreement between him and the real heirs that if he should establish their claim he should be entitled to a share of the estate. Nor, in holding that such an agreement could not be enforced. would the Courts be running counter to what was decided by this committee in 8 M. I. A, 170; for the judgment there assumes that if the agreement is something against good policy and justice, something tending to promote unnecessary litigation, something that in the legal sense is immoral, it cannot be supported (264-5). (Sir fames W. Celvile), CHIDAMBARA CHETTY P. RENGA KRISHNA MUTHU VIRA PUCHAIYA NAICKER. (1874) 1 I. A. 241= 22 W.R. 148=13 B. L. R. 509=3 Sar. 373.

-But whilst the specific English law of maintenance and champerty has not been introduced into India, contracts of this character ought under certain circumstances to be held to be invalid, as being against public policy (46).

A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, per se, opposed to public policy (47).

Agreements of this kind ought, however, to be carefully watched, and when found to be extortionate and uuconscionable, so as to be inequitable against the party, or to be made, not with the bona fide object of assisting a claim believed to be just, and of obtaining a reasonable recomLITIGATION-(Contd.)

Property subject of, or property to be recovered by -- (Contd.)

AGREEMENT CREATING INTEREST IN-(Contd.)

of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy.-effect ought not to be given to them (47). (Sir Montague F. Smith). RAM COOMAR CONDOO :: CHUNDER CANTO MOOKERJEE.

(1876) 4 I. A. 23=2 C. 233 (257)= 3 Sar. 654 = 3 Suth. 361.

The English law of champerty is not in force in India, and documents which set up agreements to share the subject of litigation, if recovered, in consideration of supplying funds to carry it on, are not in themselves opposed to public policy; but documents should be scanned, and when found to be extortionate and unconscionable, they are inequitable as against the party against whom relief is sought, and effect should not be given to them (115). (Lord Morris). KUNWAR RAM LAL v. NIL KANTH. (1893) 20 I. A. 112=20 C. 843= 6 Sar. 302 = R. and J.'s Oudh No. 129.

#### AGREEMENT TO SHARE.

Compromise of suit by assigner and dismissal thereof against him-Assignee's right to continue suit in case of -Assignee co plaintiff in suit.

A certain estate in the Partabghar district was owned by two joint families, the respective heads of which were Binds Sewak and Rama Pershad. They had made certain alienations which their descendants wanted to set aside. Not having funds to carry on the litigation, these entered into agreements with one Mahabir Prasad which were to the effect, 272., that in the share of each of them, Mahabir Prasad will be a co-sharer of one-half share . . . . he will bear the entire expenses in connection with the suit. In case of success he will be entitled to proprietary possession of the share which may be decreed and thereafter, he might at hit pleasure keep his share joint or have it partitioned."

Suits were accordingly instituted, with Mahabir Prasad as co plaintiff. But, soon after, the principal plaintiffs in each suit compromised the claim and allowed the suits to be dismissed against them. The question was whether under those circumstances Mahabir Prasad could continue the suits in respect of the share conferred on him by the agreement.

Held reversing the judgment of the court below he could

The agreement did not confer upon him a then present right to the possession of any share in the property, the subject-matter of the suit. That right would arise, if at all, only when success in the litigation had been achieved. Till then Mahabir Prasad was merely a partner or co-owner with his co-plaintiffs in a certain undivided share of the property. There was no present grant or assignment to him of any separate share or fraction of the property by virtue of proof of which he could maintain a suit in eje:tment. (Lord Atkinson.) BASANT SINGH P. MAHABIR PERSHAD.

(1913) 40 I. A. 86 (95-6) = 35 A. 273 (281-2)= 11 A. L. J. 469=(1913) M. W. N. 481= 17 C. W. N. 669 = 16 Bom. L. R. 525 = 17 C. L. J. 566 = 16 O. C. 136=14 M. L. T. 64=19 I. C. 340= 25 M. L. J. 301.

Enforceability of - Conditions.

On the death of a zemindar, respondent, his brother, was recognised by the widows of the deceased and by the Government as his heir. Two years afterwards, however, the windows changed their minds. The plaintiff, an utter stranger to the family, came up on the scene, and entered into an agreement with the widows for the purpose of pense therefor, but for improper objects, as for the purpose claim the estate as the heirs of their deceased husband. The enabling them to contest the right of the respondent and to

LITIGATION-(Contd.)

Property subject of, or property to be recovered by-(Cental).

AGEEMENT TO SHARE-(Contd.)

widows placed themselves completely under the infinence of the plaintiff, and agreed to pay him on demand the moneys to be advanced by him with interest. They also agreed that in the event of their succeeding in their suit against the respondent they would pay him a lakh of rupees and a moiety of the surplus collections, mortgaging the estate to secure those payments; that they would to nothing in the suit, or otherwise, without his consent. Under that agreement a suit was instituted in the names of the widows for the recovery of the zemindary. The plaintiff was, however, the dominus litis. Under the agreement the wislows executed a bond for Rs. 20,000 purporting to be the amount of the plaintiff's advances up to that date.

Held that, in view of all the facts of the case, it was extremely doubtful whether the plaintiff could have recovered on the agreement if the question had arisen between the widows and the plaintiff after he had got the estate for them; whether, upon the principles laid down by Peacock, C.J., and cited by Mr. Justice Kemp in 13 W. R. 426, the courts might not have refused to enforce such an agreement

(265).

The plaintiff was a person who had got up, or at all events intervened, in a suit with which he had no necessary concern; he had made himself dominus litis in that suit, and had acquired over the plaintiffs in it the power of preventing them from doing what they felt to be right and just; and from interested and corrupt motives was exercising that power. The respondent must be taken to have been the legitimate heir; and even if the wishows had fome fide entered into the litigation to dispute that legitimacy, it is perfectly clear that very soon after they had come to a better mind and had satisfied themselves that the right thing to do was to admit the legitimacy of the respondent (265.6). (Sir James IV. Colvile.) CHEDAMBARA CHETTY D. RENGA KRISHNA MUTHU VIRA PUCHAIVA NAICKER.

(1874) 1 I. A. 241 = 22 W. R. 148 = 13 B. L. B. 509 = 3 Sar. 373.

The suit was to enforce against the defendants, an agreement deted 3-11-1882 executed by the defendants and one H, not a party to the suit, in favour of the plaintiff. The defendants and // were some of the claimants to certain property, to which rival claims had been set up by others. The agreement in question provided that, in consideration of the plaintiff having taken upon himself the liability to pay all expenses of the prosecution of the suit which had been instituted by the defendants and # to get possession of the said property, they agreed with him that as soon as they were put in possession they would sell to him a certain share of the property, in lieu of and in consideration of the expenses to be incurred by the plaintiff in the prosecution of the case. Alleging performance of his part of the agreement, the plaintiff sued to have a sale-deed executed and for delivery of possession of defendants' share of the property.

Held, on the evidence affirming the courts below, that the agreement was unfair and was unconscionable, and that it would be against public policy to enforce it. The plaintiff in suit was a money-lender and was dealing with illiterate persons; he must have represented to them the likelihood and the necessity of extensive litigation-a representation unwarranted by the facts; further, the fee paid to the vakil was most excessive, and disproportionate to any work

likely to be done by him (115).

No evidence was given that the assertion made in the agreement of 3 -- 11-1882, to the effect that to recover possession for the defendants would require large sums of money, was true, or that the plaintiff had any ground for

LITIGATION-(Centd.)

Property subject of, or property to be recovered by-(Centd.)

AGREEMENT TO SHARE-(Contd.)

believing it to be true. In fact, the proceedings where brief and simple (115). (Lord Morris.) KUNWAR RAM LAL (1893) 20 I. A. 112 = 20 C. 843 = NIL KANTH. 6 Sar. 302 = R. & J's. Oudh No. 129.

" Moreable or immoreable properties obtained by

compremis: in-Meaning of.

R and others, who had instituted a suit to establish R's title to the absolute interest in an estate subject to the lifeinterest of C, being in want of funds to carry on the said litigation, entered into an agreement with T for financial aid. Clauses 10 and 11 of the agreement provided for a compromise of the suit being entered into by R and others under certain circumstances. Clause 12 of the agreement ran as follows :-

"Moreover, out of the moveable and immoveable properties that may be obtained by such compromise, etc., we shall first pay to you the principal money advanced by you together with interest at one per cent. per mensem from the respective dates, and out of the moveable and immoveable properties that remain after so giving away (to you) we shall at once execute and give you a proper sale-deed and place in your possession 3/32 share. All of us and our belrs are liable to you and your family members according to all the aforesaid terms and are also bound to give effect to them without fail."

Held that the words "moveable or immoveable property" in clause 12 of the agreement included almost every conceivable kind of property, and the words of the clause would be satisfied if half the estate sued for, or another estate, or the jewels of the tenant for life, C, deposited in his safe, and the money packed in his money bags had been awarded under the compromise (20). (Lord Atkinson.) VATSAVAVA VENKATA JAGAPATI v. POOSAPATHI VEN-KATAPATHI. (1924) 52 I. A. 1 = 48 M. 230 = KATAPATHI.

20 L. W. 298 - A. I. R. 1924 P. C. 162 -35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. R. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L. J. 93 (126).

-Subject-matter of existing or non-existing-Vested remainder in estate-Suit to establish title to-Agreement to share-Subject of.

R and others, who had instituted a suit to establish R's title to the absolute interest in an estate subject to the lifeinterest of C, being in want of funds to carry on the said litigation, entered into an agreement with T for supplying funds to him for the purpose. Clauses 10 and 11 of the agreement provided for a compromise of the suit being entered into by R and the others in certain circumstances, Clause 12 of the agreement provided as follows:

"Moreover, out of the moveable and immoveable properties that may be obtained by such compromise, etc., we shall first pay to you the principal money advanced by you together with interest and out of the moveable and immoveable properties that remain after so giving away (to you) we shall at once execute and give you a proper sale-deed and

place in your possession 3/32 share."

Held, dissenting from the High Court, that the language of cl. 12 of the agreement pointed rather to existing things than to non-existing things, and the agreement embodied in it was entirely different in its nature and character from an agreement assigning for a certain sum what, for instance, some relative might leave a contracting party, but who might never leave him anything whatever (18).

The main purpose and object of the provisions of the agreement are to finance a suit brought to establish title to an existing thing an estate extending over a large portion

LITIGATION-(Contd.)

Property subject of or property to be recovered by-(Contd.)

AGREEMENT TO SHARE-(Contd.)

of the earth's surface. The point in controversy was not the existence or non-existence of that thing, but which of two adverse claimants was entitled to a vested interest in it. subject to a life estate in one of them. The fruits of success in that action which would be gathered in by a decree would be this vested remainder. The fruit of it which would be gathered in by a compromise might be something different, but in essence the same. What the agreement really does is to provide that the fruit, which may be either moveable or immoveable property shall be divided in certain shares between the parties to the agreement (18). (Lord Atkinson). VATSAVAYA VENKATA JAGAPATI V. POOSAPATH1 VENKATAPATI. (1924) 52 I. A. 1=48 M. 230=

20 L. W. 298 = A. I. R. 1924 P. C. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. R. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L. J. 93 (124-5).

——Suit to enforce—Money advanced under agreement with interest—Decree for—Grant of, on agreement being found to be unenforceable. See LITIGATION—PROPER-TY SUBJECT OF, OR TO BE RECOVERED BY—AGREE-MENT TO SHARE—ENFORCEABILITY OF.

(1870) 1 I.A. 241 (265 6).

The respondent instituted a suit to recover possession of an impartible estate from the widow of the last male holder, claiming to be entitled to succeed to the same in preference to her. That suit was dismissed by the first Court, and the respondent's appeal to the High Court was also dismissed.

The respondent desired to appeal to the Privy Council, but had not a pice with him. The appellants consented to help him in meeting the costs of the Privy Council; including the security, provided he would, in lieu thereof, make them the proprietor of an eighth share of the property involved in the case with certain small exceptions. The respondent accepted the proposal, and executed a deed of sale in their favour, thereby selling to them an eighth share in the estate and of outstanding debts due to the estate, amounting to Rs. 64,000 and odd. It was stated that the consideration for the sale was Rs 12,500, the estimated costs of the Privy Council Appeal, convisting of Rs. 4,000 for the security of the Privy Council costs, and Rs. 8,500 for the translation of papers, the pleader's fee, and other expenses of every sort in the said department.

The appellants deposited these urity and the translation fees, and paid the other expenses of the Privy Council appeal. The appeal to the Privy Council was successful, and in execution of the decree therein the respondent obtained possession of the estate. He, however, refused to give to the appellants any part of the eighth share, whereupon they instituted the suit of which the appeal arose to recover it.

The High Court on appeal found that the respondent could not have filed or prosecuted the appeal to the Privy Council without pecuniary aid from third parties; that the plaintiffs believed the respondent's claim to be well founded and undertook to help on the conditions of the sale-deed; that they did not press him to accept the terms contained in the sale deed. In short, the High Court found that the plaintiffs were not professional money-lenders who had taken advantage of the position of the respondent, and had not volunteered their assistance to promote litigation. The High Court, however, felt constrained to find that the reward stipulated for was excessive and unconscionable, and, on that ground, they awarded to the plaintiffs the amount spent by them for the purposes of the Privy Council appeal with interest, instead of decreeing to them the eighth share of the estate.

LITIGATION-(Centd.)

Property subject of, or property to be recovered by-(Contd.)

AGREEMENT TO SHARE-(Contd.)

Held, that a decision so arrived at ought not to be set aside on appeal unless it clearly appeared to be wrong, and that their Lordships were unable to say that they thought that it was wrong (138-9).

Their Lordships think that the question whether the deed is contrary to public policy does not arise (138). (Sir Richard Couch.) RAJAH MOKHAM SINGH v. RAJAH RUP SINGH. (1893) 23 I. A. 127=15 A. 352=6 Sar. 327.

Suit to enforce—Money advanced under agreement

with interest-Decree for Right to, under head of general relief-Agreement held to be invalid.

In a suit to have a sale deed executed and for delivery of proprietary possession of certain property in enforcement of an agreement to share the subject of litigation, if recovered, in consideration of supplying funds to carry it on, both the Courts below found that the agreement was unfair, and that it would be against public policy to enforce it. But, while the 1st Court dismissed the suit, the appellant Court, under the prayer for general relief in the plaint, awarded the

mately incurred by him.

Their Lordships affirmed the decree of the appellate Court. (Lord Morris.) KUNWAR RAM LAL v. NIL KANTH. (1893) 20. I. A. 112=20. C. 843=6 Sat. 302=

plaintiff Rs. 1,000 as compensation for any expenses legiti-

SALE OF.

R. & J's Oudh No. 129.

A certain person, alleging himself to be entitled to possession of certain property from a stranger and being in want of funds to institute a suit, executed a conveyance to B, whereby it was agreed that, in consideration of the latter's financing the litigation to be launched, he (B) should take one half of the property to be recovered by the intended suit, and that the suit itself should be instituted jointly by the vendor and B. Shortly afterwards and before the institution of any suit, the vendor entered into a compromise, with the person against whom the contemplated suit had to by filed, whereby the vendor got some property in quit of all his claims. B then brought the present suit impleading the said vendor and also against the party, with whom he (the vendor) had entered into the compromise, the object of the suit being not specific performance of the agreement to sell, but possession of a half share in the whole property which was to have been recovered by the contemplated suit. Held, that the vendor not having been in possession of the property at the date of the agreement, it did not operate as a present transfer of the property but as an agreement to transfer so much of it as might be recovered by the contemplated suit. which had to be instituted by B and the vendor, in the event of the happening of a contingency, which did not happen at all, the deed being only evidence of a contract to be performed in future, and that the suit was unsustainable, RANEE BHOBOSOONDREE DOSSEE : ISSURCHUNDER (1872) 11 B. L. B. 36 (41-2)=18 W. B, 140= DUIT. 2 Suth. 616=3 Sar. 136

Contract for Specific performance of Purchastr's suit for, after termination of litigation Price not fully paid as agreed upon Decree proper in case of Dismissal of suit.

In 1844 the appellant executed a bill of sale of a fouranna share of a zemindary in favour of one K. At that time the title to that zemindary was in litigation and that litigation terminated only in 1858. Accordingly appellant was not then in possession of the zemindary, nor had be established any title thereto. The price fixed for the sale was Rs. 75,000, but only a sum of Rs. 18,000 to Rs. 20,000 LITIGATION-(Contd.)

Property subject of or property to be recovered by—(Contd.)

SALE OF-(Contd.)

was advanced to the appellant. In a suit brought by the representatives of A', after the termination of the litigation relating to the title to the zemindary and the establishment of appellant's title thereto, for recovery of possession of the share sold, the Sudder Court decreed possession to the plaintiffs, observing that the appellant had the power to sue for the recovery of the balance of the purchase-money.

Held that that decree was erroneous and that the suit

ought to have been dismissed (308).

The price was presumably fixed upon a calculation of the risk undertaken by the purchaser, at a sum far below the real value of the thing sold. But if the purchaser under such a contract has retained part of the price for several years and until the risk has been determined by the happening of the contingency, he has pro tanto diminished the risk which he contracted to bear; and the vender has pro tanto lost that for which he stipulated—the present use and enjoyment of the money. The contract has, therefore, become incapable of being performed, according to the meaning and intent of the contracting parties (307-8). (Sir James W. Colville.) RAJAH SAHIB PERHLAD SEIN v. BABOO BUDHOO SINGH (1869) 12 M. I. A. 275 = 12 W. R. P. C. 6 = 2 B. L. R. P. C. 111 = 2 Suth. 225 = 2 Sar. 430.

----Invalidity of -Compensation psyable in case of-Measure of -- Advances made by purchaser for litigation-

Sale in consideration of.

Plaintiff's husband advanced to B in 1878 Rs. 20,000 for a litigation by B to establish his reversionary right to an Oudh taluka and for other expenses. In 1880, plaintiff's husband made a further advance of Rs. 5,000, whereupon B executed in his favour a sale-deed purporting to transfer certain villages forming part of the said taluka. The sale was invalid and ineffectual to pass title, and the question was what was the measure of the compensation which plaintiff was entitled to recover from B.

Held that plaintiff was entitled to recover the Rs. 25.000 paid by her husband and interest thereon at 6 per cent. from

the date of her suit.

Plaintiff's claim was for interest at 12 per cent. per annum from the date of the sale-deed. (Sir Leavence Jenkins.)

HARNATH KUAR \*. INDAR BAHABUR SINGH. (1922) 50 I. A. 69 (76) = 45 A. 179 (185) = 9 O. L. J. 652 = 37 C. L. J. 346 - 9 O. & A. L. B. 270 -A. I. B. (1922) P. C. 403 = 27 C. W. N. 949 = 5 Pat. L. T. 281 = 2 Pat. L. R.237 = 18 L. W. 383 = 26 O. C. 223 = 71 L. C. 629 = 44 M.L. J. 489.

Validity of — Consideration—False recital as to— Effect. See LITIGATION—AGREEMENT TO FINANCE— SALE OF PROPERTY, ETC.

(1905) 32 I. A. 113 (121) = 27 A. 271 (290).

TRUST DEED IN RESPECT OF—CONSTRUCTION OF.

— Debt borrowed by trustee or settler for purposes of litigation—Lien in respect of, on property obtained in litigation.

R, who was about to institute a suit to establish his title to the absolute interst in an estate subject to the life-interst in C created by the will of the last male holder of the estate, executed a deed of trust by which he appointed V trustee of all the property in which he, R, claimed to have a vested interest in remainder as heir of the last male holder of the estate in trust to administer the fifteen-sixteenths of the same for his, the settlor's, own benefit, and one-sixteenth of the same for the benefit of respondents 5 and 6. The trust deed conferred upon the trustee and upon the settlor respectively powers, which were both wire and important. The words conferring them were as follows:—

LITIGATION-(Contd.)

Property subject of, or property to be recovered by—(Contd.)

TRUST DEED IN RESPECT OF -CONSTRUCTION OF-(Contd.)

"Therefore you (i.e., the trustre) should not only manage the trust property subject to the arrangements I may make regarding consideration for your trouble, etc., and other matters, but also full authority is given you to conduct suits, etc., either jointly with me or separately, and to manage it in such a way as you may think fit for the preservation of the properties."

Held, on a construction of the trust deed, that if the trustee not having money of his own available, borrowed money from a third party for the purpose of financing the contemplated litigation, and actually used it to prosecute those purposes, then, in case the litigation were successful, the person who advanced the money would be entitled to stand towards the trust property in the place of the trustee and he entitled to a lien on the property gained in the litigation, while if the settlor, with the assent and concurrence of the trustee, borrowed money absolutely necessary to finance the suit, from a third party for the purposes abovementioned and so applied it, then, in the event of the litigation being successful, the person who advanced the money would be equally entitled standing in the shoes of the settler to a lien on the property preserved for the trust by his outlay (7). (Lord Atkinson.) VATSAVAYA VENKATA JAGA-PATI D. POOSAPATHI VENKATAPATHI.

(1924) 52 L. A. 1-48 M. 230 = 20 L. W. 298 = A. I. R. 1924 P. C. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom. L. B. 786 = 29 C. W. N. 57 = 80 I. C. 807 = 47 M. L. J. 93 (111).

Loan advanced by trustee for purposes of litigation Lieu in respect of, on property in litigation—Trustee's right of.

R, who was about to institute a suit to establish his title to the absolute interest in an estate subject to the life-interest in C created by the will of the last male holder of the estate, executed a deed of trust by which he appointed V trustee of all the property in which he, R, claimed to have a vested interest in remainder as heir of the last male holder of the estate in trust to administer the fifteen-sixteenths of the same for his, the settlor's, own benefit, and one-sixteenth of the same for the benefit of respondents 5 and 6. The trust deed conferred upon the trustee and upon the settlor respectively powers, which were both wide and important. The words conferring them ran thus:—

"Therefore you (i.e., the trustee) should not only manage the trust property subject to the arrangements I may make regarding the consideration for your trouble, etc., and other matters but also full authority is given you to conduct suits, etc., either jointly with me or separately, and to manage it in such a way as you may think fit for the preservation of the properties."

Meld, on a construction of the trust deed, that the trustee would be acting within his express powers if having money of his own at his command, he thought proper to advance or some of it, to finance the contemplated litigation directed to secure and preserve the trust property for the purpose of the trust by establishing the title of the settlor, and in the event of that suit being successful would be entitled to a lien on the property gained for the sum advanced (6·7). (Lord Atkinson.) VATSAVAYA VENKATA JAGAPATI v. POOSA-PATHI VENKATAPATHI (1924) 52 I. A. 1=

48 M. 230 = 20 L. W. 298 = A.I.B. 1924 P. O. 162 = 35 M. L. T. 210 = (1924) M. W. N. 607 = 26 Bom L. B. 786 = 29 C.W.N. 57 = 80 I.C. 927 = 47 M. L. J. 93 (111).

#### LITIGATION-(Contd.)

### Sale of property subject of.

#### LOAN

Agreement to take, and to grant lease—Specific performance of--Rights of parties on. See SPECIFIC PERFOR-MANCE—LOAN. (1889) 16 I. A. 221 (232) = 17 C. 223 (233).

—Bond for—Suit upon—Parties to—Transferees of properties of debtor if proper—Bond not creating charge upon estate or interest in property. See DEBTOR AND CREDITOR—DEBTOR—MONLY BOND BY.

(1867) 11 M. I. A. 468 (472-3).

— Bond fraudulect fer—Suit to enforce—Portion of debt justly due—Decree making bend security fer—Discretion of court. See DEBTOR AND CREDITOR—DEBTOR—LOAN BOND, ETC. (1874) 1 L. A. 241 (267).

Interest on-Agreement enhancing-Consideration for-Necessity. See DEBTOR AND CRIDITOR-INTEREST ON LOAN. (1871) 8 B. L. B. 110.

Lender - Position of to dominate will of horrower. So: CONTRACT ACT -S. 16.

(1927) 55 I. A. 85=7 Pat. 294.

Terms of -- Reasonableness and propriety of -- Issue as to -- Other borrowings by betrower on similar onerous letters -- Evidence of -- Admissibility. See HINDU LAW-- JOINT FAMILY -- MANAGER -- MORTGAGE BY--INTEREST PROVIDED BY--RATE OF AND OTHER TERMS OF BORROWING. (1927) 55 I A. 85=7 Pat. 294.

### LOCAL INVESTIGATION.

Boundary dispute—Local investigation in case of,
See BOUNDARY DISPUTE—AMEEN'S REPORT IN.

Chur land—Cases relating to—Local investigation of
—Ameen's report in—Court's duty to give effect to. See
ALLUVION AND DILUVION—CHUR LAND—CASIS RELATING TO. (1876) 3 Suth. 260.

- Commission for Farlure of party to make use of-Application by him for further time or for second local incontigution-Grant of Conditions.

In a suit to recover some land there was a dispute as to boundaries. A local investigation was directed to ascertain the boundaries. The Ameen appointed to conduct the investigation went to the spot. The plaintiff either failed to appear before him altogether, or if the persons who, after some delay, did appear, were his agents, they suggested that the boundaries were erroneously stated in the plaint. The result was that no report concerning the boundaries was made to the Court, and the parties again appeared before it. On the second appearance, the plaintiff did not appear to have taken any objection as to the proceedings of the Ameen. and the court upon that ground, and also upon the ground of his having omitted to give formal proof of his deed of purchase, dismissed the suit. He then appealed to the High Court; and his complaint there was not so much that his suit had been dismissed, because he had failed to prove his case, as that the lower Court had not given him further time or directed a second local investigation. The High Court, dealing with that as a pure question of practice, said that be had not given any sufficient excuse for his former laches. and on that ground dismissed the appeal.

### LOCAL INVESTIGATION-(Contd.)

Held that the High Court were perfectly right, and there was no ground for interfering with their decision. MEER MAHOMED TUQUE CHOWPHRY v. JUDONATH JAHA.

(1871) 16 W. R. 28 P. C.

Commissioner for making-Report of Hearing before Court on-Evidence additional-Tender of-Right of-Admissibility of such evidence-Conditions.

The sections of the Code of Civil Procedure which relate to local investigations do not contemplate the tender of further evidence after an Amin's report except the examination of the Amin himself, but they do not forbid it. They are consistent with either course, and the point whether such further evidence can be tendered must be decided on general principles according to the facts of each case (123).

In every trial there must come a time when it is proper that the evidence should be closed. After that time new evidence should not be given as a matter of course or without the assent of the court. As regards local inquiries, it may in many cases be clearly proper and convenient to take evidence in court after taking it in the locality. In others it may be equally clear that the locality is the proper place and the time of inquiry the proper time for bringing the proposed evidence.

In a case in which the most obvious time for closing evidence on an inquiry into mesne profits was the presentation of the Amin's report, the judgment-debtor not only neglected to produce his evidence before the Amin but disregarded the repeated demands of the latter for his evidence, and did not, either in his written objections to the report or in his grounds of appeal to the High Court, or even before the Privy Courtil, state the nature of the fresh evidence to be adduced and the reason for his being allowed to adduce such evidence at the heating of objections to the report before the Subordinate Judge, keld that the Subordinate Judge acted rightly in declining to allow the judgment-debtor an opportunity to adduce such additional evidence at that stage (123.4).

The judgment of the High Court cannot be supported unless every party to a local investigation has an absolute right to adduce evidence before the court after a commissioner's report; but no such absolute right exists (123-4). (Lord Helshense.) GIRISH CHUNDER LAHIRI v. SHOSHI SHIK-HARESWAR ROY. (1900) 27 I. A. 113=

27 C. 951 (965-6)=4 C. W. N. 631.

-Earlier and later investigations-Conflict between-Preference.

Where the results of two local investigations are conflicting, the earlier is to be preferred. The principle is reasonable; since in the interval between the two investigations, the features may have changed and evidence of possession may have been lost. PROTAB CHUNDER BURROOAH RANEE SURNOMOVEF. (1873) 19 W. B. 361=

2 Suth 851=5 Sar. 716.

-Report mode on-Value of.

While declining to act in the case before them on the report of a Sudder Ameen deputed by the Court to make local investigation, their Lordships took care to observe that they were not departing from what had been laid down in other cases touching the weight to be given to a report made by an officer deputed to make a local investigation. PROTAB CHUNDER BURROOAH t.RANEE SURNOMOYEE.

(1873) 19 W. B. 361=2 Suth. 851=5 Sar. 716.

### LOCAL VISIT.

Court's suggestion of—Consent of Counsel to—Effect of—Decision based on impression formed by Court from such visit and without considering evidence in the case

- Legality of. See APPEAL—LOCAL VISIT.

(1907) 34 I. A. 115 (124) = 31 B. 381 (392)

#### LOCUSTS.

-Driving away of, to avoid damage to one's own land -Damage to neighbour's land by reason of-Liability for -Principles governing. See DAMAGES-LOCUSTS.

(1911) 21 M. L. J. 674.

### LUNACY DIST. COURTS ACT (XXXV OF 1858).

-Date of commencement of lunary-Finding as to in report of Munsif. in proceedings under Act-Effect of, in

civil suit-No res judicata.

In a civil suit between the parties the question was whether the plaintiff's wife was insane at the time of her mother's death, or became insane only after the death of her mother. Held, that the report of a Munsif made on an inquiry held in a proceeding between the parties under Act XXXV of 1858 to the effect that the plaintiff's wife became a lunatic only after the death of her mother had not the effect of res judicata between the parties (526).

There was no adjudication by any competent tribunal upon the point in issue in this suit. The Munsif had no jurisdiction to decide it (526), (Sir James Colvile), BABOO BODHNARAIN SINGH & BAROO OMRAO SINGH,

(1870) 13 M.I.A. 519 = 15 W R. P.C. 1 - 6 B.L.R. 509 = 2 Suth. 371 = 2 Sar. 607.

-Inquiry under-Scope of -Lunacy at what date,

Act XXXV of 1858 contemplates only the question of lunacy or sanity at the time of the inquiry; there is no provision in the Act that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind (525). (Sir James Colvile.) BABOO BODHNARAIN SINGH 2. BABOO OMRAO SINGH. (1870) 13 M.I.A. 519 = 15 W.R.P.C. 1 = 6 B.L.R. 509 = 2 Suth. 371 - 2 Sar. 607.

-S. 9-Court of Wards in Oudh-Lunatic-Propristor adjudged by Civil Court to be a-Management of estate of-Power to assume-Order of Civil Court appointing

Court of Wards Manager-Necessity.

The Talookdar who owned the property in question became a lunatic, and an application was duly made for an in quiry into the state of his health under S, 3 of Act XXXV of 1858. The application was made by the officer of the district where the talook in question was situated, and the Civil Court to which the application was made having caused notice to be given, did enter into an inquiry, and the result was that the talookdar was adjudged to be a lunatic,

Held that thereupon the talukdar was rendered a disqualified proprietor within the meaning of S. 9 of the said Act, with the result that the Court of Wards was authorised to take charge of his estate without a further order of the Civil Court appointing the Court of Wards to be manager.

It seems to have been rather hastily concluded by the Judge below that the Court of Wards being authorised by the Legislature "to take charge of the same," required some further order from the Civil Court which adjudged the talookdar to be a lunatic to justify them in acting. Lordships think there is no ground for saying that, though S. 9 of the Act goes on to provide:-"In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate" (45). (Lord Blackburn.) RAE SARABJIT SINGH v. CHAPMAN.

(1886) 13 I.A. 44 = 13 C. 81 (83.4) = 4 Sar. 700. 8. 14-Lease of property of disqualified proprietor -Manager's power of-Manager under Court of Wards appointed Manager by Civil Court-Adjudication of pro-

prietor by Civil Court as a lunatic-Effect.

A Civil Court, having adjudged a talookdar to be a lunatic and incapable of managing his affairs and so authorised the Court of Wards in Oudh to manage his property, did contemporaneously make an order appointing as the mana-ger of the property the same person who acted as the manager under the Court of Wards. The Courts of Wards

### LUNACY DISTRICT COURTS ACT (XXXV OF

1858)-(Contd.)

entered into possession of the estate and the management of it; and during the course of the management a lease for 25 years was granted with various terms and provisions in it. It was contended that, as the lease was for a period exceeding five years, it was altra vires of the manager under S. 14 of Act XXXV of 1858.

Held that whatever might be the importance of the objection if the lease had been granted by one acting only under the authority of an appointment as manager by the Civil Court it did not apply to a lease granted by the Court

of Wards (46).

Their Lordships suppose that the object of the order appointing as the manager of the property the same person who acted as the manager under the Court of Wards probably was that the court thought ex majore cantela "if there is any ambiguity about it we will take care that the Court of Wards has double power, and the manager shall act both under this court and the Court of Wards." It may not have been judicious, but that is the utmost object the Court would have bad, and if it was wrong it will not be a bit the worse (46). (Lord Blackhurn.) RAE SARABJIT SINGH :. CHAPMAN.

(1886) 13 I A. 44 - 13 C. 81 (84 5) - 4 Sar. 700.

#### LUNATIC.

-Dangerous lunatic-Arrest and confinement of, alleged-Damages for-Public servant-Liability of-Bona fide but mistaken act of such servant. So: DAMAGES-ARREST WRONGFUL-WRONGFUL CONFINEMENT.

(1882) 9 I.A. 152 9 C. 341.

#### LUNATIC ASYLUMS ACT (XXXVI OF 1858).

-S. 4 .- Military Cantenment-Commanding Officer of-Dangerous Innatic-Arrest and detention of-Power to direct.

A bong fide belief that the plaintiff was dangerous by reason of lunacy might have justified the defendant who, as commanding officer of the cantonment had the control and direction of the police, in directing proceedings to be taken by the police under S. 4 of Act XXXVI of 1858 (171). (Sir Barnes Peacock.) SINCLAIR v. BROUGHTON.

(1882) 9 I.A. 152=9 C. 341 (353)= 13 C.L.R. 185 = 4 Sar. 387 = R. & J's No. 69.

#### MAAFEE SUNUD.

-Nature of.

The property appears to have been held under a grant at a light rent (called a manfee sunud). (Mr. Pemberten Leigh.) DOUGLAS P. THE COLLECTOR OF BENARES.

(1852) 5 M.I.A. 271 (275) = 1 Suth. 231 = 1 Sar. 434.

-Land-Machinery on-Permanently fastened to it or temporarily attached to it-Test, See LAND ACQUISITION (1927) 54 I.A. 187= ACT OF 1894, S. 3 (a) 54 C. 582 = 53 M. L. J. 99.

-Meaning of.

The word "machinery", when used in ordinary language, prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, be the combined movement and independent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. The determination in any given case of what is or is not "machinery," must, to a large extent, depend npon the special facts of that case (445). (Lord Atkinson.) COR-PORATION OF CALCUTTA P. COSSIPUR AND CHITPORE MUNICIPALITY. (1921) 48 I.A. 435 = 49 C. 190 (201) =

15 L. W. 253 = 26 C.W.N. 761 = 67 I.C. 926 = A.I.B. 1922 P.C. 27

#### MACHINERY-(Cental.)

-Meaning of See BENGAL ACTS-MUNICIPAL ACT OF 1884, S. 101 PROVISO,

(1921) 48 I. A. 435 (443-4) = 49 C. 190 (201-2)

#### MADRAS ACTS.

CIVIL COURTS ACT HI OF 1873. ESTATES LAND ACT 1 OF 1908. FOREST ACT V OF 1882. HEREDITARY VILLAGE OFFICES ACT III OF 1895. IMPARTIBLE ESTATES ACT II OF 1904. IRRIGATION CESS ACT VII OF 1865 (AS AMENDED). LAND ENCROACHMENT ACT III OF 1905. LAND REVENUE ASSESSMENT ACT I OF 1876. PROPRIETARY ESTATE VILLAGE SERVICE ACT II OF 1894.

RENT RECOVERY ACT VIII OF 1865.

#### Civil Courts Act III of 1873.

-S. 16—Mahomedans — Inheritance — Mahomedan Law-Custom varying ardinary-Proof of-Onus-Quantum. See MAHOMEDAN LAW-INHERITANCE-FEMALES -EXCLUSION OF

(1922) 49 I. A. 119 (124) = 45 M. 308 (314) Estates Land Act I of 1908.

APPLICABILITY OF.

-liaradars or Middlemen.

The object of the Estates Land Act was to improve the condition and confer new rights and privileges especially upon the occupying cultivators of syoti lands. It would be quite opposed to its policy to confer on middlemen who sublet to occupying and cultivating tenants, rights and privileges at all resembling those conferred on occupying cultivators. and, indeed, would result in deprixing the latter class of the benefits intended to be conferred upon them. It could hardly be suggested that it was the object of the statute to bring about such a result as this, that the middleman could compel his landlord to grant him a patta at a rent to be fixed by a court, and the middleman's occupying and cultivating sub-tenants should in their turn be able to compel their immediate landlord, the middleman, to grant to them pattas of their holdings at rents to be similarly fixed, and this, though the middleman was an absentee who never even visited his estate (393). (Lord Atkinson.) SURISETTI BUTCHAYYA F. PARTHASARATHY APPA KOW,

(1921) 48 I.A. 387 - 44 M. 856 (862) -14 L. W. 168 = 26 C. W. N. 785 = A. I. R. 1922 P. C. 243 - 69 I. C. 1 = 41 M. L. J. 669.

-Rights in litigation at time of passing of Act. Their Lordships do not consider it necessary to express any opinion as to whether Madras Act I of 1908 applied to rights in litigation at the time of the passing of the Act. (Mr. Ameer Alf.) CHIDAMBARA SIVAPRAKASA v. VEFRA-MA KEDDI. (1922) 49 I. A. 286 (306) =

45 M. 586 (611) = 27 C. W. N. 245 == 37 C. L. J. 199 = 16 L. W. 102 = 31 M. L. T. 54 = (1922) M. W. N. 749 = A. I. R. 1922 P. C. 292 =

68 I. C. 538 = 43 M. L. J. 64.

-Effect of-Old customary law-Recagnition of New rights created by At.

In declaring the rights of the occupancy ryots and emphasising the distinction between the landlord's "private lands" and "the ryoti" lands, the Madras Esta'es Land Act of 1908 affirmed the old customary law that had always been recognised by the British administration. Apart from rules relating to procedure and the jurisdiction of the Revenue Courts, it created one new right in order to settle the constant disputes between the landlords and tenants which had been going on for nearly a century; it gave occupancy right to all ryots in occupation of lands within an "estate" at the time of the passing of the Act. It also gave some security MADBAS ACTS-(Contd.)

Estates Land Act I of 1908-(Contd.)

APPLICABILITY OF-(Contd.)

to non-occupancy ryots in the enjoyment of their lands. In other respects, generally speaking, it declared and gave statutory recognition to existing rights and status. (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA v. VEERAMA REDDI. (1922) 49 I. A. 286 (298)=

45 M. 586 (601 2) = 27 C. W. N. 245= 37 C. L. J. 199=16 L. W. 102=31 M. L. T. 54= (1922) M. W. N. 749 = A. I. B. 1922 P. C. 292= 68 I. C. 538 = 43 M. L. J. 640.

FEATURE IMPORTANT OF.

-Village-Component parts of-Throwing into relief

One important feature of the Madras Estates Land Actis worthy of note; it throws into relief the component parts which, from immemorial times, go to constitute a village; first, the lands in the direct cultivation of the proprietor (called by various names); second, lands occupied by tenants or ryots; and third, old waste lands over which by custom the landlord possessed certain specific rights now crystallised in the statute (298). (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA 7. VEERAMA REDDI.

(1922) 49 I. A. 286=45 M. 586 (601-2)= 27 C. W. N. 245=37 C. L. J. 199=16 L. W. 102= 31 M. L. T. 54 = (1922) M. W. N. 749= A. I. R. 1922 P. C. 292 - 68 I. C. 538 = 43 M. L. J. 640.

OCCUPANCY RIGHTS. -Agnisition by prescription of.

The existence in a village of pannai lands in which the tenant cannot acquire occupancy rights except by contract, connote the existence of lands in which he can acquire such rights by prescription. (Mr. Ameer Ali.) CHIDAMBARA SIVAPKAKASA P. VEERAMA REDDI.

1922) 49 I. A. 286 (298) = 45 M. 586 (602) = 27 C. W. N. 245 = 37 C. L. J. 199 = 16 L. W. 102= 31 M. L. T. 54 = (1922) M. W. N. 749 = A. I. R. 1922 P. C. 292=68 I. C. 538= 43 M. L. J. 640.

#### POLIGAR-KUDIVARAM.

-Kight to-Limits of-Ryoti land-Kudivaram right in. See MADRAS ACTS-ESTATES LAND ACT-ZEMINITAR. (1922) 49 I. A. 286 (299) = 45 M. 586 (602). RYOTS-CULTIVATING RYOTS.

-Pesition and privileges of.

The place of the cultivating ryots in the agricultural economy of Southern India is thus described in a proceeding of the Board of Revenue of Fort St. George (Madras), dated 5-1-1818: "The universally distinguishing character, as well as the chief privilege of this class of people, is their exclusive right to the hereditary possession and usufruct of the soil, so long as they render a certain portion of the pro duce of the land, in kind or money, as public revenue; and whether rendered in service, in money, or in kind, and whether paid to rajahs, jageerdars, zemindars, polygars motadars, shrotriemdars, inamdars, or Government officers, such as tahsildars, aumeens or tanadars, the payments which have always been made by the ryot are universally termed and considered the dues of the Government" (299). (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA D. VEERAMA (1922) 49 I. A. 286 = 45 M. 586 (602-3)=

27 C. W. N. 245=37 C L. J. 199=16 L. W. 102= 31 M. L. T. 54=(1922) M. W. N. 749= A. I B. 1922 P. C. 292 = 68 I. C. 538 = 43 M. L. J. 640.

RYOTI LAND -KUDIVARAM RIGHT IN. -Zemindar-Poligar-Rights of. See under this Act (1922) 49 I. A. 286 (299)= ZEMINDAR. 45 M. 586 (609) . ....

Estates Land Act I of 1908-(Contd.)

ZEMINDAR-POLIGAR-KUDIWARAM RIGHT OF.

-Limit to-Ryeti land-Kudiwaram right in.

Prima facie a Zamindar or poligar is a rent-receiver; or, to use the language of S. 4 of Madras Act I of 1908, he has the right to collect the rent from his tenants. Prima facic. his right of direct possession of the lands is confined to his " private lands" and the old waste land; it does not extend to "ryoti land." (Mr. Ameer Ali.) CHIDAMBARA SIVA-PRAKASA v. VEERAMA REDDI.

(1922) 49 I. A. 286 (299) = 45 M 586 (602) = 27 C. W. N. 245 = 37 C. L. J. 199 = 16 L. W. 102= 31 M. L. T. 54=(1922) M. W. N. 749= A. I. R. 1922 P. C. 292 = 68 I. C. 538 = 43 M. L. J. 640.

-S. 3-Settled estate-Acquisition of part of, under Land Acquisition Act-Government rycli patta land awarded as compensation for-If part of settled estate.

Parts of a settled-estate were taken by the Government under the Land Acquisition Act. The value of the lands taken was investigated; it was brought out that compensation would be fairly settled by a remission of Rs. 777 out of a total peishkush of Rs. 35,588, payable for the said estate. The estate holder then presented a petition to the Government praying that instead of the peishkush being tro tanto remitted, he might be given some Government lands in another district of which lands he had already acquired the ryoti rights. Accordingly no remission was made of the peishkush, which continued to be exacted as formerly, but by order of the Collector the new lands were transferred to the estate holder, and were entered in the register as Zemindari lands instead of Government lands as formerly.

Held, that the new lands were not part of a permanently

or temporarily settled estate.

When in the hands of the Government they were not part of a permanently or temporarily settled estate. The effect of the transaction detailed above was not to make the lands an estate settled at the peishkush of Rs. 777. A settlement should be effected formally, and there should be some recorded evidence of it. There is admittedly no sanad dealing with the lands, in terms of the articles of the Regulations. That is per te conclusive. (Lard Dunedin.) ZEMNDAR OF SANIVARAPUPET D. ZEMINDAR OF SOUTH (1918) 46 I. A. 38 (41-2)= VALLUR.

42 M. 355 (358-9) = (1919) M. W. N. 496= 9 L. W. 411=17 A. L. J. 273= 21 Bom. L. B. 622 = 26 M. L. T. 32 = 30 C. L. J. 82 =

23 C. W. N. 673 = 49 I. C. 818 = 36 M. L. J. 279. 8.3(2)(d)-Inam grant-Interest conveyed under

-Melwaram only or Kudiwaram also conveyed. See INAM -GRANT IN-MELWARAM ONLY, ETC.

Ss. 3 (10) and 185-Private land-Ryoti land or -Concurrent findings as to-Privy Council's interference

John Edge) YERLAGADDA MALLIKARJUNA (Sir UDU v. SOMAYA. (1918) 46 I. A. 44 (50) = 42 M. 400 (405) = 17 A. L. J. 233 = 26 M. L. T. 1 = NAYUDU D. SOMAYA. 10 L. W. 400 = (1919) M. W. N. 541 = 23 C. W. N. 626 = 30 C. L. J. 77 = 21 Bom. L. B. 627 = 49 I. C. 708 = 36 M. L. J. 257.

(Lord Shaw.) SREEMUTHU RAJA YERLAGADDA MALLIKARJUNA PRASAD NAYUDU BAHADUR D. REN-(1925) 88 I. C. 196= DUCHINTALA SUBBAYYA. A. I. B. 1925 P. C. 174 (1).

In a case in which the question was whether the suit lands was the private lands of the plaintiff within the meaning of the Madras Estates Land Act, the Chief Justice in

MADRAS ACTS-(Contd.)

Estates Land Act. I of 1908-(Contd.)

SS. 3 (10) AND 185-(Contd.)

the High Court observed: "I agree that the suit lands were never cultivated by the Zemindar" (plaintiff) "as part of his home farm lands, and it seems to me that his treatment of them as Kambattam was merely colourable for the purpose of defeating the occupancy rights of the tenants. In some parts of India lands of this kind are known as Sir lands and this is one of the terms mentioned in the definition. It was held in 3 N. W. P. Rep. 203 that Sir land is land which a Zemindar has cultivated himself and intends to retain as resumable for cultivation by himself even when from time to time he demises it for a season. I think that this test may well be applied here. "

Held, that that test was obviously suggested by S. 185 of the Madras Estates Land Act, and was rightly applied by the Chief Justine. (Sir John Edge.) VERLAGADDA

MALLIKARJUNA NAYUDU P. SOMAYA.

(1918) 46 I. A. 44 (49.50) = 42 M. 400 (404.5) = 17 A. L. J 233 = 26 M. L. T. 1 = 10 L. W. 400 = (1919) M. W. N. 541 = 23 C. W. N. 626 = 30 C.L. J. 77 = 21 Bom. L. R. 627-49 I. C. 708-36 M. L. J. 257.

-S. 6 (1)- Applicability to lease created before Ad-Proof of -Onne on lessee or lessor.

Where leesees under a lease granted before the Estates LandAct allege that by the provisions of certain clauses of the Madras Estates Land Act, their contract of tenancy is entirely superseded; that they are relieved from the obligations imposed on them by many of the covenants of their lease; that their tenure is charged, their occauancy continued, and their rent made subject to revision, the burden rests upon them of clearly establishing that those clauses apply to their case. The obligation of proving the negative proposition. that those clauses do not apply to their case, does not rest upon the lessor (391). (Lord Athinson.) SURISETTI BUT-CHAYYA v. PARTHASARATHY APPA ROW.

(1921) 48 L A. 387 = 44 M. 856 (860) = 14 L. W. 168 = 26 C. W. N. 785 - A. I. R. 1922 P.C. 243 - 69 I.C. 1 -41 M. L. J. 669.

Occupancy-Meaning-Possession-Distinction.

The word in sub-S. (1) of S. 6 of the Madras Estates Land Act is "occupancy" not "possession." An owner may in one sense be in possession of his estate by the receipt of rent from the tenants of that estate, but not occupancy (394). (Lord Atkinson.) SURISETTI BUTCHAYYA #. PARTHA-SARATHY APPA RAO. (1921) 48 I. A. 387 =

44 M. 856 (863) = 14 L. W. 168 = 26 C. W. N. 785 = A I. R. 1922 P. C. 243 - 69 I. C. 1 = 41 M. L. J. 669.

-Rysts within meaning of -Middlemen or - Test. The appellants were lessees of certain lanka lands in an estate under leases granted to them, before the Madras Estates Land Act of 1908 came into operation by virtue of their having been the highest bidders at an auction held in respect of the said lands. The practice in the estate with reference to the said lands was that when a lease was about to expire, or had but recently expired, an auction was held and a new lease granted to the highest bidder, whether he was the old lessee or not, there being thus no continuity of occupation, and the outgoing lessee having no privilege or advantage. The lease in favour of the appellants contemplated the cultivation of the land and the raising of crops upon it by ryots, and contained no clause prohibiting subletting. It was also found that the appellants dealt with the lands demised as middlemen, sub-letting them to tenants who held them subject to a rent payable to their immediate landlords, occupied them and cultivated them.

Held, that the appellants had not acquired a permanent right of occupancy under, and were not ryots within the

Estates Land Act I of 1908-(Contd.)

S. 6(1)-(Contd.)

meaning of S. 6. sub-S. 1 of the Act. being merely middle-

Quarra whether, if the appellants had only sub-let to occupying and cultivating sub-tenants a substantial portion of their lands, they would have been altogether disentitled to the relief they sought (issue of pattas to them) or would only have been entitled to that relief in relation to the portion of the demised lands which they had not sub-let (393).

If ijaradars and farmers of rent are ryots at all, they are, as appears from S. 46, non-occupancy ryots and cannot be converted into systs with a permanent right of occupancy (394-5). (Lard Atkinson.) SUBRISETTI BUTCHAYVA p. (1921) 48 I. A. 387 = PARTHASARATHY APPA ROW.

44 M. 856 (862 3)=14 L. W. 168=26 C. W. N. 735= A. I. R. 1922 P. C. 243 = 69 I. C. 1 = 41 M. L. J. 669.

-S. 6 (1), Expl. -Ryeti land not being old waste-Tenant in wrongful possession of, under term-expired muchiliks-Occupancy right of.

Ryoti lands, not being old waste, within the appellant's Zemindary, had been held by the respondents for the purpose of agriculture under a muchilika, dated 28-7-1907, by which they agreed to hold the lands as appellant's tenants until 30.4-1908, the lands being described as "your Divanam Kambatam (private) lands," By clause 8 of the muchilika the respondents undertook to relinquish possession on 30-4-1908. They, however, failed to do so, and continued in possession of the lands after 30-4-1908, not only without the consent of the appellant, but contrary to his wishes and expressed intentions, and contrary to the terms of CL 8 of the muchilika. In a suit in ejectment brought by the appellant, held, affirming the High Court, that, even if the respondents had not any permanent right of occupancy in the suit lands before the commencement of the Madras Estates Land Act, they obtained a permanent right of occupancy in the holding by the operation of S. 6, sub-S. 1, as amended by S. 3 of Madras Act IV of 1909.

Their Lordships overruled, as unsound and untenable, the contention that the explanation to S. 6, sab-S. 1 of Madras Act I of 1908 did not apply to a person whose continued possession of ryoti land was that of a trespasser, and that it applied only when the person continuing in possession did so with the consent of the landholder. (Ser John Edge.) YERLAGADDA MALLIKARJUNA NAIDU v. SOMAYA

(1918) 46 I. A. 44 = 42 M. 400 = 17 A. L. J. 233 = 26 M. L. T. 1=10 L. W. 400=(1919) M. W. N. 541= 21 Bom. L. R. 627=30 C. L. J. 77=49 I. C. 703= 23 C. W. N. 626 = 36 M. L. J. 257.

-S. 6 (6)—I jaradars and farmers of rent—Not syncnymous.

The words "ijaradars and farmers of rent" in sub S. (6) of S. 6 of the Estates Land Act are not synonymous. They denote two classes of persons. They are not defined in the definition clause (394.5). (Lord Atkinson.) SURISETTI BUTCHAYYA F. PARTHASARATHY APPA ROW.

(1921) 48 I. A. 387 = 44 M. 856 (863) = 14 L. W. 168 = 26 C. W. N. 785 = A. I. R. 1922 P. C. 243 = 69 I. C. 1= 41 M. L. J. 669.

-S. 8-Kudivaram-Kudivaram interest-Melwaram-Meaning of.

The term "kudivaram" is not defined in the Madras Estates Land Act It is a Tamil word, and literally signifies a cultivator's share in the produce of land held by him, as distinguished from the landlord's share in the produce of the land received by him as rent. The landlord's share is sometimes designated "melvaram". The "kudivaram in-terest", an expression occurring in S. 8 of the Act, is appaMADRAS ACTS—(Contd.)

Estates Land Act I of 1908-(Contd.)

S. 8-(Contd.)

a right to occupy land permanently (215). (Sir John Edge.) (1918) 45 I. A. 209= SURVANARAYANA 7. PATANNA. 41 M. 1012 (1018) = 29 C. L. J. 153=

(1918) M. W. N. 859 = 25 M. L. T. 30= 23 C. W. N. 273 = 9 L. W. 126 = 21 Bom. L. B. 547 =

48 I. C. 689=36 M. L. J. 585. -The term "Kudiwaram" is a Tamil word, literally signifying a cultivator's share in the produce of land as distinguished from the landlord's share, which is sometimes designated "Melwaram". The "Kudivaram" or "Kudivaram interest", as it is called in S. 8 of the Act, is in fact a species of tenant-right or right of permanent occupancy. (Viscount Care.) UPADRASHTA VENKATA SASTRULU t. DIVI SEETHARAMUDU. (1919) 46 I. A. 123 (127-8)=

43 M. 166 (171) = 26 M. L. T. 175 = 10 L. W. 633 = 23 C. W. N. 129 = 30 C. L. J. 441=

21 Bom. L. R. 925 = 17 A. L. J. 725 = 51 I. C. 304 = 37 M. L. J. 42

-"Ku livaram" is a Tamil word, which signifies a cultivator's share in the produce of land as distinguished from the landlord's share in the produce of the land received by him as rent, which is sometimes designated as "melwaram The "Kudivaram" or "Kudivaram interest", as it is called in S. 8 of the Madras Estates Land Act, is in fact a species of tenant-right or right of permanent occupancy. (Sir John Edge.) NAINAPILLAI MARKAYAR D. RAMANATHAN CHET-(1923) 51 I. A. 83 (90·1) = 47 M. 337=

A. I. R. 1924 P. C.65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

S. 12-Applicability-Trees held on separate title. If the trees are held on what may be called separate title, S. 12 of the Madras Estates Land Act does not apply in such a case, and 1 L. W. 881 was rightly decided (81). (Vircount Duncdin.) RAJAH OF RAMNAD v. KAMID ROW-(1926) 53 I.A. 74 = 49 M. 335 =

(1926) M. W. N. 376 = 30 C. W. N. 844 = 24 L. W. 1 = 94 L. C. 322 = A. I. R. 1926 P. C. 22 = 50 M. L. J. 503 (509)

-Contract in writing prior to Act-Reservation of landlord's right to trees by-Effect of section when Landlord's right to trees in case of.

On 6-6-1901, the original plaintiff, the owner of a Zemindari which was an estate within the meaning of the Estates Land Act (Madras), granted to R for a term of 10 years, expiring Fasli 1320, a lease of some 1,363 acres of land in a village appertaining to his Zemindari. Prior to the lease in his favour, R had no occupancy or other rights in

the holding.

Upon the holding was an immense belt of paying trees, yielding a substantial revenue. By the lease the Zemindar reserved to himself full rights in regard to all those trees The lessee was "not in the least to be entitled to them"; 25 the cist of all the trees standing on the lands was not included in the rent reserved, the Jessee was not to raise any objection whatever to the Zemindar dealing with the same. matter of fact, those trees during the term continued to be let by the Zemindar to other persons for tapping. possession of and all rights over the trees remained during the pendency of the lease in the Zemindar, and no payment whatever in respect of them was included in the cess there by reserved. On a question arising as to whether, notwith standing the reservation by the Zemindar of his right to the said trees by written contract, the right to use, cut down and enjoy them vested in the lessee and his representatives rently understood by the High Court at Madras as meaning by virtue of S. 12 of the Madras Estates Land Act 185.

#### MADRAS ACTS-(Centd.)

Estates Land Act. I of 1908 (Contd.)

S. 12-(Contd.)

reversing the High Court, that S. 12 made no distinction in the result between a reservation made by custom and one made by contract, and that the true conclusion was, that where the reservation, however constituted, was conterminous with the previously limited possession, it remained, except with regard to trees subsequently planted by the ryots or naturally grown upon the holding, operative throughout the occupancy made permanent by the Estates Land Act. (Lord Blanesburgh.) BOMMADEVARA NAGANNA NAIDU v. PITCHAYYA.

(1929) 56 I. A. 346 = 52 M. 797 = 33 C. W. N. 1097 = 30 L. W. 485=(1929) M. W. N. 657=119 I. C. 636= 50 C. L. J 493 = A. I. B. 1929 P. C. 249 -57 M. L. J. 654.

Palmyra trees-Cutting by ryet of without leave of landlord-Compensation for-Landlord's right to-Measure of.

There are just three situations in which pulmyra trees may

1. They may simply be growing on land which is held by a ryot, though no mention of trees be made in any

2. They may be growing on land held by a ryot, but they may be left as a separate entity in his lease.

3. They may be let to a person on whose land they do

not grow (82).

Assuming trees to be cut without the leave of the landholder, as regards (1) S. 12 of the Estates Land Act applies and the land-holder has no claim. As regards (3), S. 12 does not apply and the land-holder has a claim for the full value of the trees so cut. Quaere as regards (2) (82 3). (Viscount Dunedin.) RAJAH OF RAMNAD P. KAMID KOWTHEN.

(1926) 53 I. A. 74 = 49 M. 335 = (1926) M. W. N. 376 - 30 C. W. N. 844 =

24 L. W. 1=94 I. C. 323 = A- I. B. 1926 P. C. 22= 50 M L. J. 503 (509-10).

-Trees illegally cut by ryot-Compensation for-Measure of .

In the case of trees illegally cut by a ryot, the full value of the trees cut must be paid for (81-2). (Viscount Dancdin.)

RAJAH OF RAMNAD P. KAMID ROWTHEN. (1926) 53 I.A. 74 = 49 M. 335 = (1926) M. W. N. 376 = 30 C. W. N. 844 = 24 L. W. 1 = 94 I. C. 322 = A. I. R. 1926 P. C. 22 = 50 M. L. J. 503 (509)

Trees vested in tenant by-Enhancement of rent for

-Land-holder's right to.

There is no provision in the Act enabling the land-holder to claim an enhancement of rent or any additional payment for trees on the holding which become the tenants' by virtue of the Act and which are thus lost to the land holder. (Lord Blanesburgh.) BOMMADEVARA NAGANNA NAIDU :. (1929) 56 I.A. 346 = 52 M. 797 = PITCHAYYA. 33 C.W.N. 1097 = 30 L. W.435 = (1929) M.W.N. 657 = 119 I.C. 636 = 50 C.L.J. 493 = A.I.B. 1929 P. C. 249 = 57 M. L. J. 654.

-B. 46—Non-occupancy ryots—Ijaradars if. See S.6. (1)-IJARADARS AND FARMERS OF RENT.

(1921) 48 I. A. 387 (394-5) = 44 M. 856 (863-4). 8. 52 (3)-Muchilikas decreed within meaning of-

Muchilikas decreed under Rent Recovery Act if included-Puttas tendered as per, and approved by Collector-Rent due as per-Landlord's right to recover.

S. 52, sub-S. 3, Estates Land Act, enacts a special rule under which muchilikas decreed for any revenue year remain in force until the beginning of the year, for which fresh ones are exchanged or decreed. There is no reason for of proof of-Limitation Act of 1908, Art. 149.

MADRAS ACTS-(Contd.)

Estates Land Act I of 1908-(Contd.)

S. 52 (3)-(Contd.)

restricting the scope of the general reference to muchilikas decreed in that sub-section to muchifikas decreed by any particular decription of Court (218),

An inamdar tendered pottahs in terms of S, 54 and the other relative sections of the Estates Land Act. The tenants notwithstanding previous decrees in proceedings under the Madras Rent Recovery Act refused to accept the terms or to grant muchilikas. The terms of the pottahs having been entirely approved by the Collector, the inamdar brought a sait for rent due in accordance with the terms of those

Held, that, as the pottahs tendered were in terms of previous pottahs upon which judgment and decree had been passed, under Ss. 27 and 28, the old rent thus decreed continued, until reduced or enhanced by special applications under the Act, none of which had been made (218-9). (Lord Share.) RADHAKRISHNA AVYAR r. SUNDARA. SWAMIER.

(1922) 49 I . A. 211 = 44 M. 475 (484) - 16 L. W. 18 = 31 M. L. T. 31 - 27 C. W. N. 1 - 20 A. L. J. 937 36 C. L. J. 450 = A. I. R. 1922 P. C. 257 = 47 I. C. 584 = 43 M. L. J. 323.

-S. 185—Private land—Test. See Ss. 3 (10) AND 46 I. A. 44 (49-50) = 42 M. 400 (404-5).

#### Forest Act V of 1882.

AFFORESTATION PROCEEDINGS UNDER-OBJECTORS TO.

Adverse possession-Claim of title by-Onni of proof of-Substituting title in Crown-Meaning of.

The respondents objected before the Forest Settlement Officer to the afforestation of certain lanka lands alleging title by adverse possession against the Crown for over the statutory period. The Courts below found that the respondents had proved adverse possession for only 20 years and that the title was originally in the Crown. The High Court held that, though the title was originally in the Crown, still, as the possession of the claimants for 20 years prior to the notification was found, it rested upon the Crown to prove that it had a subsisting title by showing that the possession of the claimants commenced or became adverse within the period of limitation, i.e., within 60 years before the notification.

Held, that the view of the High Court was wrong (204). The duty rested upon the claimants to establish affirmatively their and their predecessors' possession for 60 years. With reference to the "subsisting title," nothing further is needed than the acknowledgment of the undisputed fact that the suit lands belonged to the Crown. That fact is fundamental; until adverse possession against the Crown is complete, that is to say, is for the period of 60 years, that fundamental fact remains, and that fact forms " subsisting title." It is no part of the obligation of the Crown to fortify its own fundamental right by any inquiry into possession or the acceptance of any onus on that subject (206).
(Land Show.) SECRETARY OF STATE FOR INDIA v. CHELIKANI RAMA RAO. RAMA RAO. (1916) 43 I. A. 192 = 39 M. 617 (631, 633) = 20 C. W. N. 1311 =

20 M. L. T. 435 = 4 L. W. 486 = (1916) 2 M.W.N. 224 = 14 A. L. J. 1114 = 18 Bom. L. R. 1007 = 35 I. C. 902 = 31 M. L. J. 324.

-Adverse possession for 60 years -Onus of proof of. See under this very sub-heading POSITION OF.

(1916) 43 I. A. 192 (205) = 39 M. 617 (632). -Position of -Adverse possession for 60 years-Onus

Forest Act V of 1882 -- (Contd.)

AFFORESTATION PROCEEDINGS UNDER-OBJECT-TORS TO-(Contd.)

Objectors to afforestation preferring claims to lands sought to be constituted into a reserved forest under the Madras Forest Act, 1882, are in law in the same position as persons bringing a suit in an ordinary Court of Justice for a declaration of right. To such a situation in the one case, as in the other, Art. 144 of the Limitation Act of 1877 applies, the period of twelve years thereunder being, however, extended to a period of 60 year by Art. 149. In an ordinary suit for a declaration it cannot be doubted that the onus of establishing possession for the requisite period would rest upon the plaintiff. The situation of a claimant under afforestation proceedings is the same on this point (205). (Lord Shate.) SECRETARY OF STATE FOR INDIA D. CHELIKANI (1916) 43 I.A. 192 = 39 M. 617 (632)= RAMA RAO. 20 C.W.N. 1311 = 20 M.L.T. 435 = 4 L.W. 486 = (1916) 2 M.W.N. 224 = 14 A.L.J. 1114 = 18 Bom. L R. 1007 = 35 I.C. 902 = 31 M.L.J. 324

S. 10 (ii)-District Cent's decision-Appeal to High Court from.

The respondents' claims in certain proceedings under the Madras Forest Act V of 1882 were dismissed by the Forest Settlement Officer under S. 10 of that Act. An appeal to the District Court from his decision was dismissed by that Thereupon the respondents then appealed to the High Court, and that court reversed the decision below.

Held, that the appeal to the High Court from the decision of the District Court was not excluded by S. 10 (ii) of the Madras Forest Act and was not incompetent (197).

When proceedings arising out of a claim preferred under the Madras Forest Act, 1882 reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees, the ordinary rules of the Civil Procedure Code apply. From the decision of the District Judge in such a case, a further appeal to the High Court is perfectly competent (197-8). (Lord Shaw.) SECRETARY OF STATE FOR INDIA :. CHELIKANI RAMA RAO.

(1916) 43 I.A. 192 = 39 M. 617 (624-5)= 20 C.W.N. 1311 = 20 M.L.T. 435 = 4 L.W. 486 = (1916) 2 M.W.N. 224 = 14 A.L.J. 1114 = 18 Bom. L.R. 1007 = 35 L.C. 902 = 31 M.L.J. 324.

## Hereditary Village Officers Act III of 1895.

-Karnam-- Office of-Appointment to-Basis of, since Act. See KARNAM.

### Impartible Estates Act II of 1904.

-S. 2-Definition in-Conformity of, with decisions of the Pricy Council as to the origin and descent of impartible estates.

The definition in S. 2 of Madras Act II of 1904 would appear to be in entire accordance with what has often been laid down by this Board, that these impartible estates are the creatures of custom, and with the decision in the Shivagunga case that where no special custom is proved, the customary law of succession is to be found in the Mithakshara, which is the general customary law in this part of India, "with such qualifications only as flow from the impartible nature of the subject," and that consequently, in applying this law, the impartible estate, though in the sole enjoyment of the hokler, is to be regarded for the purposes of succession as the joint porperty of the holder and his family and as passing by survivorship, unless it is shown to be the separate property of the holder or his branch in which case it is descendible according to the rules of the Mithakshara of water actually used for such irrigation; and (3) without

MADRAS ACTS-(Contd.)

Impartible Estates Act II of 1904-(Contd.)

ANNADANA JADAYA GOUNDER.

(1927) 55 I.A. 114=51 M. 189= 27 L.W. 497=5 O.W.N. 411=108 I.C. 354= 30 Bom L.R. 802=47 C.L.J. 488= 9 Pat. L.T. 347 = 26 A.L.J. 642 = 32 C.W.N. 983= A.I.R. 1928 P. C. 68 = 54 M.L.J. 504 (506).

-S. 4-Will by holder-Validity of.

S. 4 of the Act restrains the proprietor from making any alienation to enure beyond his own lifetime except for necessary purposes, except in so far as sub-S. (3) preserves his right to provide for the succession to the estate in default of heirs. (Sir John Wallis.) KONNAMNAL v. ANNADANA JADAYA GOUNDER (1927) 55 I.A. 114=51 M. 189= 27 L.W. 497 = 5 O.W.N. 411 = 108 I.C. 354=

30 Bom. L.R. 802 = 47 C.L.J. 488= 9 Pat. L.T. 347 = 26 A.L.J. 642 = 32 C.W.N. 983= A.I.R. 1928 P.C 68 = 54 M.L.J. 504 (506).

Irrigation Cess Act VII of 1865 (as amended).

#### PREAMBLE.

S. 1-Conflict between - Which prevails.

S. 1 of Madras Act V of 1900 makes operative provisions somewhat in excess of the apparent ambit of the preamble. If so, the section must govern. (Lord Show.) SECRETARY OF STATE FOR INDIA :. MAHARAJA OF BOBBILL

(1919) 46 I.A. 302 (309) = 43 M. 529 (536) = 27 M.L.T. 1=(1919) M.W.N. 775=11 L.W. 204= 18 A.L.J. 1=24 C.W.N. 416=22 Bom. L.B. 498= 54 I C. 154 = 37 M.L.J. 714.

-Preamble-Conflict between-Which prevails. Set Under this Act-PREAMBLE. (1919) 46 I.A. 302 (309)= 43 M. 429 (636).

-River or stream belonging to the Government-Meaning.

It is by no means easy to say what is meant by river or stream "belonging to the Government." The same expresion in an Act of the United Kingdom would probably connote a Government ownership of the bed or the banks of the river, but it is quite possible that the law of the Madras Presidency recognises some proprietary right on the part of Government in the water flowing in rivers and streams-The law of Madras Presidency as to rivers and streams certainly differs in some material respects from English law. Further, Madras Act III of 1905 appears to enact that (inter alia) all standing and flowing water, not the property of private individuals, is the property of Government. (Let Parker.) KANDUKURI BALASURYA RAO : SECRETARY (1917) 44 I.A. 166 (172-3)= OF STATE FOR INDIA.

40 M. 886=19 Bom. L.R. 751=2 Pat. L.W. 260= 26 C.L.J. 290 = 22 M.L.T. 76 = 21 C.W.N. 1089 = 15 A.L.J. 697 = (1917) M.W.N. 536 = 6 L.W. 340 41 I.C. 98=33 M.L.J. 144

-Water cess-Government's right to levy-Condition Extent of right to water-Engagement with Government. The decision in 40 M. 886, (P. C.) was followed in this case. (Lord Parker.) AMBALAVANA PANDARA SANNA-DHI : SECRETARY OF STATE.

(1917) 40 M. 909 (P.C.) = 43 I.C. 114. S. 1. Proviso 1.

-Applicability-Effect.

It is enough that the person relying on the proviso shall show an engagement between the Government and himself or his predecessors in title by virtue of which he is, in fact, entitled to water for irrigation (1) from the source from which he is actually irrigating his lands; (2) to the amount as to separate property. (Sir John Wallis.) KONNAMMAL being subject to a " separate charge " for such irrigation.

Irrigation Cess Act VII of 1865-(Contd.)

S. 1, PROVISO (1)-(Contd.)

(Lord Parker.) KANDUKURI BALASURYA KAO 7. SECRETARY OF STATE FOR INDIA.

(1917) 44 I. A. 166 (172-3) = 40 M. 886 = 19 Bom. L. B. 751 = 2 Pat. L. W. 260 =

26 C. L. J. 290 = 22 M. L. T. 76 = 21 C. W. N. 1089 = 15 A. L. J. 697 = (1917) M. W. N. 536 = 6 L. W. 340 = 41 I. C. 98=33 M. L. J. 144.

-Engagement-What amounts to-Estate subject to-Forfeiture to Crown of - Effect.

With acquisition by forfeiture the Crown becomes bound to take the forfeited estate tantum-et-tale as it stood in the subject who had rebelled, that is to say, to respect the rights and in particular the easements enjoyed by others. Otherwise the scope of the forfeiture would be extended; protante it would fall upon innocent and loyal subjects.

In 1814 a Zemindar who before the permanent settlement had constructed an artificial channel through the estate held at the time of the suit by the respondent admitted the right of the then holder thereof to take water from the channel for the irrigation of a village, and from that date until 1907 the respondent's predecessors and the respondent exercised that right without any claim to payment. In 1833 the estate of the Zemindar who had constructed the channel was forfeited to the Crown. In 1907 the Government imposed upon the respondent in respect of the village an irrigation cess under the Madras Irrigation Cess Act (VII of 1865) as amended by Madras Act V of 1900. In a suit brought by the respondent for the refund of the a nount levied upon him, and paid under protest, and for a declaration that he was entitled to use the water for irrigation in the village free of the cess, held that the re-pondent's prede:essors had with the owners of the forfeited zemindary a good "engagement" within the meaning of the proviso to Madras Act VII of 1865 as amended, that in taking the servient estate, that engagement accompanied the transaction, and was thereafter with the Crown; and that the respondent was consequently not liable to pay the cess. (Lord Shaw.) SECRETARY OF STATE FOR INDIA v. MAHARAJA OF BOBBILI. (1919) 46 I. A. 302 (313) = 43 M. 529 (539-40) = 27 M. L. T. 1 =

(1919) M. W. N. 775 = 11 L. W. 204 = 18 A. L. J. 1 = 24 C. W. N. 416 = 22 Bom. L. R. 498 = 54 I. C. 154 = 37 M. L. J. 714.

-Free of separate charge-Mouning of-Person rely-

ing upon Proviso-Proof required of.

There is difficulty in arriving at the meaning of the expression "free of separate charge" in proviso 1 to S. 1 of the Act. A provision that the person relying on the proviso must prove that he is already being charged for the supply would be intelligible, for in that case by the imposition of a cess, he would be charged twice for the same thing. But this is not what he has to prove. Indeed, he has to prove the contrary. He must prove either that he is not already charged for the supply, or that the charge, if any, is not a separate charge. (Lord Parker.) KANDUKURI BALA-SURYA RAD & SECRETARY OF STATE FOR INDIA.

(1917) 44 I. A. 166 (172-3) = 40 M. 886 = 19 Bom. L. B. 751=2 Pat. L. W. 260= 26 C. L. J. 290=22 M. L. T. 76=21 C. W. N. 1089= 15 A. L. J. 697=(1917) M. W. N. 536=6 L. W. 340= 41 I. C. 98 = 33 M. L. J. 144

Object of.

The real object of the provision may be found in the following considerations. The cess under the Act is leviable on the land which is irrigated. It is therefore in the nature of a land tax, and by S. 2 is recoverable in the same manner as arrears of land revenue. Now the permanent land settle-

MADRAS ACTS-(Centd.)

Irrigation Cess Act VII of 1865-(Contd.)

S. 1, PROVISO (1)-(Contd.)

ment in the Madras Presidency (as in the Presidency of Bengal) proceeded on the footing that, whatever may have been the interest of the zemindars and other land-holders prior to the British occupation, the Government would grant to them and their heirs " a permanent property in their land for all time to come, and would fix for ever a moderate assessment of public revenue on such lands the amount of which should never be liable to be increased under any circumstances." The Government, therefore came under an obligation not to raise the jumma, or, as it is sometimes called, the peishcush, fixed at the permanent settlement in respect of the lands then granted. Under these circumstances the Government could not impose a cess for the use of water the right to use which was appurtenant to the land in respect of which the jumna was payable without in fact, if not in name, increasing the amount of such jumma, and thus committing a breach of the obligation undertaken at the time of the permanent settlement. If the right to use the water was paid for separately the case would be different. The existence of a separate charge would show that no payment for the use of the water was included in the jumma, and the imposition of a water cess though it might increase the separate charge would not increase the jumma. Its imposition would not be a breach of the Government's obligation. The object of the proviso was to safeguard the obligation not to increase the jumma. KANDUKURI BALASURYA RAO P. (Land Parker.) SECRETARY OF STATE FOR INDIA.

(1917) 44 I.A. 166 = 40 M. 886 = 19 Bom. L.R. 751 = 2 Pat. L.W. 260 = 26 C.L.J. 290 = 22 M.L.T. 76 = 21 C.W.N. 1089 = 15 A.L.J. 697 = (1917) M. W. N. 536=6 L.W. 340=41 I.C. 98= 33 M. L. J. 144.

-Reliance on-Proof required in case of, See under this Proviso-FREE OF SEPARATE CHARGE.

(1917) 44 I. A. 166 (172-3) = 40 M. 886.

- Riparian woner - Natural stream-Water taken for irrigation purposes from, in exercise of natural or prescriptive right-Liability for cess in respect of.

Onere whether a riparian owner, who is exercising his natural or prescriptive right of taking water from a natural stream for purposes of irrigation, is taking water from a stream belonging to the Government within the meaning of the Cess A:t? If he is, the natural and prescriptive rights of riparian owners are seriously diminished by the Act, and, when the Government have not expended money in improving the natural stream, apparently without any sort of quid pro que. (Lord Parker). KANDUKURI BALA-SURYA RAO P. SECRETARY OF STATE FOR INDIA

(1917) 44 I.A. 166 (172-3) = 40 M. 886 = 19 Bom. L.R. 751 - 2 Pat. L.W. 260 - 26 C.L.J. 290 -22 M.L.T. 76=21 C.W.N. 1089=15 A.L.J. 697= (1917) M. W. N. 536=6 L. W. 340=41 I. C. 98= 33 M. L. J. 144.

-Scope of - Permanent settlement if covered by-Zemindar's right to take and use water by virtue of-

Liability for cess in such case.

The first proviso to S. 1 of the Act is not confined to cases in which there is an express contract that the supply to which the person claiming the protection of the proviso is entitled shall be free from anything in the nature of a future tax. Whether or not, there are other possible cases which the proviso was intended to meet it at least covers the case of the permanent settlement. If by virtue of such settlement a zemindar is entitled to take and use water from any such source of supply as mentioned in the Cess Act, and this right is part of or appurtenant to the property

Irrigation Cess Act VII of 1865-(Contd.)

S. I. PROVISO (1) -(Centd.)

in respect of which he pays a single jamma or peishgash, no cess can be levied under the Act in respect of the water which he is so entitled to take and use. (Lord Porker.) KANDUKURI BALASURVA KAO F. SECRETARY OF STATE FOR INDIA. (1917) 44 I.A. 166 = 40 M. 886 = 19 Bom. L. R. 751 = 2 Pat. L. W. 260 = 26 C. L.J. 290 = 22 M.L.T. 76 = 21 C.W.N. 1089 = 15 A.L.J. 697 = (1917) M.W.N. 536 = 6 L.W. 340 = 41 I.C. 98 = 33 M.L.J. 144.

#### -S. 1. Proviso (2)-Object of.

The incidents of Kyotwari tenure are governed by custom, and in lude a right to receive from the owner of the soil (whether the Government or a private individual) a supply of water sufficient for the irrigation of the mamual wet lands comprised in each holding. The owner of the soil is, on his part, entitled to his customary share in the actual produce. I, has, however, long been the practice on Government estates to make periodical settlements with the Ryots whereby the Government's sleare in the produce is commuted for a fixed annual payment, in assessing which the wet lands are separately classified. The annual payment is incapable of increase during the period for which the settlement is made. It is paid (inter alia) for the Ryot's right to water for irrigating his mamul wei lands, and would be increased if a new cess were imposed for this supply. The second proviso seems to be intended to provide against this result. (Lord Parker.) KANDUKURI BALA-SURVA RAO : SECRETARY OF STATE FOR INDIA.

(1917) 44 I.A. 166 = 40 M. 886 = 19 Bom. L.R. 751 = 2 Pat. L.W. 260 = 26 C. L. J. 290 = 22 M.L.T. 76 = 21 C. W. N. 1089 = 15 A.L.J. 697 = (1917) M. W. N. 536 = 6 L.W. 340 = 41 I.C. 98 = 33 M.L.J. 144.

——Ss. 1 and 2—Engagement with Government—Zemindar's or inamidar's rights of user under—Extent of— Sanad—Construction—River or stream belonging to Government—Free of separate charge—Meaning of.

At the permanent settlement, the Government settled in four zemindaris lands contiguous to a river, together with four artificial irrigation channels and sluices connecting them with the river. The sunnads did not refer to the channels or sluices. The appellants were the present holders of one of the four zemindaris, the sluices of one only of the channels being upon their lands. The other three zemindaris has been purchased by the Government. The appellants used for irrigation water derived from the river through all four channels. The Government claimed to be entitled to key cess under the Irrigation Cess Act upon the appellant's lands for the irrigation so far as it included crops not customary at the time of the permanent settlement:—

Held, assuming that the river belonged to the Government, (1) that the settlement was an engagement with the Government within the meaning of proviso I to S. I of the Act; (2) that under the sanads the zemindar in whose estate the sluices of each of the channels were situated acquired the right to take from the river for irrigation an amount of water limited by the then size of the channels and nature of the sluices, but not limited by the irrigation then customary; (3) that after the water had passed into the channels the Government had no rights in respect of it, save as owners of the three zemindaris; (4) that the rights of the owners inter se in the water flowing in the channels were analogous to those of riparian owners in a natural stream, and (5) that, there being no evidence that more water was being taken from the river than was justified by the sanads, the appellants were not liable to pay cess.

MADRAS ACTS-(Contd.)

Irrigation Cess Act VII of 1865 -(Contd.)

SS. 1 AND 2-(Contd.)

Held, on the assumption that the river did not belong to the Government, that the right of taking water from it into each of the four channels could not depend upon any easement created by virtue of the permanent settlement, that it would depend in part upon the natural rights of riparian owners and in part on prescriptive rights existing at the date of, and passing under the sanads, or acquired since the sanads were granted; that in the case of those prescriptive rights, it would be the lands of the lower riparian owners and not the river itself, which would constitute the servient tenement and the Government would have even less interest in the amount of water taken into the channels, than if the river belonged to it and constituted the servient tenement and the rights inter te of the grantees of the four zemindaris being, however, for all practical purposes, the same; and that the rights of the appellants under the sanad could not in any case be affected by the subsequent purchase by the Government of the three other zemindaris. (Lord Parker.) KANDUKURI BALASURYA RAO P. SECRETARY OF STATE FOR INDIA.

(1917) 44 I. A. 166 = 40 M. 886 = 19 Bom. L.R. 751 = 2 Pat. L. W. 260 = 26 C.L.J. 290 = 22 M.L.T. 76 = 21 C.W.N. 1089 = 15 A L.J. 697 = (1917) M. W.N. 536 = 6 L. W. 340 = 41 I. C. 98 — 33 M. L. J. 144.

#### Land Encroachment Act III of 1905.

- Assessment under-Person liable for-Lessor-Lesse in physical occupation.

Quarre whether an assessment, whether penal or otherwise, could, under the Madras Land Encroachment Act III of 1905, be imposed only upon the persons in physical occupation of the land encreached upon, and whether such an assessment could not be imposed upon the owner of an estate who had merely granted leases of such land under a home fide belief that it formed an accretion to his property (68-9). (Lord Salveger.) MAHARAJA OF VIZIANAGARAM 2, SECRETARY OF STATE FOR INDIA.

(1926) 53 I. A. 64 = 49 M. 249 = 43 C. L. J. 378 = 94 I. C. 501 = 28 Bom. L. R. 865 = 24 L. W. 9 = (1926) M. W. N. 589 = A. I. B. 1926 P. C. 18 = 50 M. L. J. 391 (3934)

S. 16—Lands claimed by Government within mening of—Kyot.cari tenure lands—Submergence of, and relinquishment by ryets therenpon—Reformation in situ-Third party taking possession of them on—Governments claim against—Nature of.

Lands held by ryots under ryotwari tenure were submerged, and, on their submergence they were relinquished by those ryots. They were again re-formed in situ subsequently, and were taken possession of by the appellant, the holder of a neighbouring estate, or his tenants. The Government, however, claimed the lands as Government property, and proceeded against the appellant under the Land Encroachment Act III of 1905. The appellant contended that, as the lands had been throughout occupied by himself of his tenants, they had never been reduced into possession by the Government, that they were lands "claimed by Government" within the meaning of S. 16 of that Act, and that they were therefore exempted from the operation of that Act.

Held that the lands were not " claimed by Government" within the meaning of S. 16 of that Act (73).

Before submersion these lands were the property of the Government, subject only to the rights of the ryotwari tenures which they had created. The moment these rights were relinquished by the ryots the Government were free to deal with them as they pleased. The effect of the relinquish-

Land Encroachment Act III of 1905-(Centd.)

ment was to restore to the Government full freedom to dispose of what was originally their own (73). (Lord Salvien.) MAHARAJA OF VIZIANAGARAM v. SECRETARY OF STATE FOR INDIA. (1926) 53 I. A. 64=

49 M. 249 = 43 C. L. J. 378 =

94 I. C 501=28 Bom. L. R. 865=24 L. W. 9= (1926) M. W. N. 589 = A. I. R. 1926 P. C. 18 = 50 M. L. J. 391 (398-9).

Land Revenue Assessment Act I of 1876.

SEPARATE REGISTRATION AND SUB-ASSESSMENT-COLLECTOR'S ORDER FOR-

GOVERNMENT ORDER CANCELLING.

Ss. 5 and 6-Decree setting aside-Disobedience by

Collector of-Liberty to apply in case of.

An order of Court setting aside as ultru vires and illegal an order of Government cancelling an order of the Collector under Madras Act I of 1876 for separate registration and sub-assessment carries with it liberty to apply. In case of disobedience of the order by the Collector, on a proper application and on proper notice being given it would be found that the arm of the Court would be long enough to reach the offender, whatever his position might be. (Lord Macnaghten.) FISCHER D. SECRETARY OF STATE FOR INDIA. (1898) 26 I. A. 16 (28-9) = 22 M. 270 (282 3) = 3 C. W. N. 161 = 7 Sar. 459.

-Procedure to be adopted by Collector in case of-Decree setting axide Government order-Note of-Proce-

dure in case of .

The proper course for a Collector to follow when he is informed than an order of his directing separate registration and sub-assessment has been cancelled by an order of the Government is to make a note or memorandum against the entry of the decision in his book to the effect that the decision was cancelled by virtue of an order of the Government of such and such a date, and then on the determination of a suit (brought to set aside the order of the Government) adversely to the Government it would be his duty to make a further note or memorandum to the effect that the cancellation was declared void by the order of the Court in such and such a suit. (Lard Macnaghten.) FISCHER D. SECRETARY OF STATE FOR INDIA.

(1898) 26 I. A. 16 (28) = 22 M. 270 (282) = 3 C. W. N. 161 = 7 Sar. 459.

-Suit for declaration of invalidity of-Maintainability-Prayer for further relief-Necessity-Specific Relief Act, S. 42.

In a case within his jurisdiction, the Collector, with the subsequent sanction of the Board of Revenue, ordered, on notice to the proprietor and lessees of a Zemindary, that separate registration and sub-assessment of the appellant's village situate therein be made under Regulation XXV of 1802, S. 8, and Act I of 1876. The Government, however, without notice to the appellant or the Collector, ordered the latter to cancel the registration,

In a suit by the appellant for a declaration that the order of the Government was ultra vires and illegal and of no binding effect on him held, Quaere whether the suit was within the purview of S. 42 of the Specific Relief Aca (28).

Held further that, assuming that the section applied to the case, as no further relief was required, the suit was not open to objection under that section. (Lord Macnaghten.) FISCHER D. SECRETARY OF STATE FOR INDIA.

(1998) 26 I. A. 16 (28 9) = 22 M. 270 (282 3) = 3 C. W. N. 161 = 7 Sar. 459.

-Suit for declaration of invalidity of-Parties. In a case within his jurisdiction, the Collector, with the subsequent sanction of the Board of Revenue, ordered, on

MADRAS ACTS-(Centd.)

Land Revenue Assessment Act I of 1876-(Contd.)

SEPARATE REGISTRATION AND SUB-ASSESSMENT-COLLECTOR'S ORDER FOR-GOVERNMENT ORDER CANCELLING-(Contd.)

separate registration and sub-assessment of the appellant's village situate therein be made under Regulation XXV of 1802, S. 8, and Act I of 1876. The Government, however, without notice to the appellant or the collector, ordered the latter to cancel the registration.

In a suit by the appellant against the Government for a declaration that the order of the Government was ultra viscs and illegal and of no binding effect on him, held that the Zemindar and the lessees were not nocessary parties to the suit, and that the suit was not open to the objection of non-joinder of parties on the ground of their not being joined. (Lord Macnaghten.) FISCHER v. SECRETARY OF STATE FOR INDIA IN COUNCIL

(1898) 26 I. A. 16 (29)=22 M. 270 (283)= 3 C. W. N. 161-7 Sar. 459,

SEPARATE REGISTRATION AND SUB-ASSESSMENT --COLLECTOR'S ORDER FOR- JUDICIAL OR FISCAL. -Cancellation by Government-Legality of.

Being of opinion that the Collector's action in separately registering and assessing a portion of a permanently settled estate, under Madras Act I of 1876, was not judicial but purely fiscal, and that his proceedings were those of a Revenue Official and were therefore subject to the control of the Board and Government under Regulation II of 1803, the Government cancelled an order of the Collector for separate registration and sub-assessment of a village of the appellant made, with the subsequent sanction of the Board of Revenue, on notice to the parties concerned.

Held that the order of the Government was ultra vires

and illegal (27).

It is perfectly plain on the face of Madras Act I of 1876 that the decision of the Collector in a case within his jurisdiction whether for or against separate registration when once duly sanctioned as provided by the Act can only be questioned in a Civil Court. Separate registration is a matter of private right with which the Government has no business to interfere (27). (Lord Macnaghten.) FISCHER . SECRETARY OF STATE FOR INDIA IN COUNCIL. (1898) 26 I. A. 16 = 22 M. 270 (281) = 3 C. W. N. 161 =

7 Sar. 459. -S. 8-Assessment-Apportionment by Collector of-Government's powers as to.

Under Madras Act I of 1876, the only power reserved to the Governor in Council is the power unlimited in point of time of requiring re-adjustment of the separate assessment if it appears that there has been fraud or material error in the apportionment-S. 8. The apportionment of the assessment is a matter which concerns the Government. It may affect the security of the revenue (27). (Lord Macmaghten.) FISCHER P. SECRETARY OF STATE FOR INDIA IN (1898) 26 I. A. 16 - 22 M. 270 (281) =

3 C. W. N. 161 - 7 Sar. 459. Proprietary Estates Village-Service Act II of 1894. -Karnam-Office of-Appointment to-Basis of, after Act. See KARNAM.

Rent Recovery Act VIII of 1865. S. 3.

-Patta in-Parties betwee n whom there is a subsisting relation of landlord and tenant-Written engagement between-Word if confined to.

S. 3 of Madras Act VIII of 1865 does not strictly contain a definition of a pattah or muchilika, but a description only. It appears to provide for what shall be done where there is an existing relation of landlord and tenant, and notice to the proprietor and lessees of a Zemindary, that requires that the landlord shall in that case enter into a

Rent Recovery Act VIII of 1865 - (Contd.)

S. 3 - (Contd.)

written engagement with his tenant (1745). (Ser Montague E. Smith.) RAMASWAMI CHETTI P. COLLECTOR OF (1879) 6 I. A. 170 - 2 M. 67 (73) = MADURA. 5 C. L. R. 341 = 3 Suth. 646-4 Sar. 50.

-Pattah within meaning of -- Lease at favourable rent by Zemindar if a. See REGISTRATION ACT OF 1866, S. 17-LEASE AT, ETC. (1879) 6 I. A. 170 (175-6)=

2 M. 67 (73-4). -Scope of -Cultivating tenants and their immediate

landlords-Relation between. S. 3 of Madras Act VIII of 1865 seems to be confined to the relation of tenants who are cultivating the land, and their immediate landlords. The whole Act may not be confined to that class, but the intention appears to be, by S. 3 and the following sections which specifically refer to it, to regulate the relation of landlords and tenants of that description (173-4). (Sir Montague E. Smith.) RAMASWAMI CHETTI P. COLLECTOR OF MADURA.

(1879) 6 I. A. 170 = 2 M. 67 (72) = 5 C. L. R. 341 = 3 Suth 646 = 4 Sar. 50.

-S. 7-Applicability of -Americance rents-Case of. S. 7 of the Madras Rent Recovery Act is not an enabling section, but a restraining section. Its provisions refer only to ascertained rents. (Sir Arthur Wilson.) RAJA KANG-AYYA APPA RAO BAHADUR P. BOBBA SRIRAMULU.

(1903) 31 I.A. 17 = 27 M. 143 (152) = 6 Bom.L.R. 241 = 8 C. W. N. 162=8 Sar. 617=14 M. L. J. 1.

-Nature of - Restraining net enabling section. S. 7 of the Madras Rent Recovery Act is not an enabling section, but a restraining section. (Sie dethue Wilson.) RAJA RANGAYYA APPA RAO BAHADUR P. BOBBA SRI-RAMULU. (1903) 31 I. A. 17 - 27 M. 143 (152) =

6 Bom. L. R. 241=8 C. W. N. 162=8 Sar. 617= 14 M. L. J. 1.

-8. 9-Pattak-Suit to enforce acceptance of-Proceedings for-Suit for arrears of rent after disposal of-Limitation-Starting point. See LIMITATION ACT OF 1908, ART. 110. (1903) 31 I. A. 17=27 M. 143.

-Suit under-Second appeal in-Maintainability. A second appeal lies to the High Court from a decision of the District Judge with respect to an adjudication under the Madras Rent Recovery Act by the Collector.

So held in the case of a suit under S. 9 of the said Act (264). (Mr. Ameer Ali.) RAVI VEERARAGHAVULU P. BOMMA DEVARA VENKATA NARASIMHA.

(1014) 41 I. A. 258 = 37 M. 443 (453) = (1914) M. W. N. 695 = 16 M. L. T. 262 = 20 C. L. J. 375=16 Bom. L. R. 853=19 C. W. N. 97= 25 I. C. 305 = 1 L. W. 779 = 27 M. L. J. 451.

-S. 11 - Abandonment of raigati rights - Implied contract for-Consideration for-Forbearance by landlord of

hopeless dispute of those rights if.

A valid consideration for an implied contract (under S. 11 of the Madras Rent Recovery Act) for the abandonment of the raiyat's rights cannot be found in the Zemindar's submission not to raise a hopeless and groundless dispute of those rights, any more than a promise to pay a sovereign in satisfaction of a debt of a guinea is supportable by the consideration that it saves the creditor the trouble of bringing an unfounded action for the larger sum (203). (Lord Summer). RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA :: ARUMUGAM. (1918) 45 I.A. 195= 43 M. 174 (182) = 23 C.W.N. 225 = (1918) M.W.N. 732 =

48 I.C. 907 = 36 M.L.J. 49 -Dry land-Dry rate on-Implied contract to pay-Conditions-Change of circumstances affecting holdingMADRAS ACTS-(Contd.)

Rent Recovery Act VIII of 1865-(Contd.)

S. 11-(Contd.)

The judgment of the High Court says: " in the present suits " (by tenants against their landlord under the Madras Rent Recovery Act for the grant of proper pattas) "it is admitted that, prior to the construction of the wells, the tenants had always been paying the uniform punja rate of 4 fanams a guli for the suit lands, and this as far back as can be traced." From such facts it would be a legitimate inference that a contract to hold the lands at a 4-fanam rate of rent might be implied, and, when this is taken in conjunction with the terms of raiyati tenure, such a contract has at any rate an element of fixity, since so long as the raiyat's rent is paid the Zemindar cannot dispossess him against his will. It need not necessarily be inferred that such an inplied contract gives a right of occupation at the punja rate in perpetuity. Its duration may be implied to be so long as circumstances affecting the holding remain unchanged, otherwise than by the labour and outlay of the raiyat himself (202). (Lord Sumner.) RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA P. ARUMUGAN. (1918) 45 I.A. 195 = 43 M. 174 (181) = 23 C.W.N. 225 =

(1918) M.W.N. 732=48 I.C. 907=36 M.L.J. 49

Dry land-Garden crops raised on, with aid of tenants' water - Garden rates for-Contract to pay-Validity. Garden crops were raised on dry land with the aid of the water of a well sunk by the tenant at his own expense. The landlord claimed in respect of such land rent at the garden rate instead of at the dry rate under which it had been held. It was urged for the landlord that the contract between the parties must be taken to be that the raigst should pay at the dry rate for the land while dry, and at the garden rate for the land when under garden cultivation, no matter at whose expense the water should be procured.

Held that such a theory, if applicable at all, was one of general application, and was repugnant to the whole scheme

of the Rent Recovery Act (204).

The whole scheme of the Act is based on the idea of making contract paramount, even when it is only implied and of recognising agreed rents in supersession of division of the produce (204). (Lord Sumner). RAJA JAGAVEERA RAMA VENKATESWARA EITAPPA P. ARUMUGAM.

(1918) 45 I. A. 195=43 M. 174(1834)= 23 C.W.N. 225=(1918) M.W.N. 732=48 I.C. 907= 36 M.L.J. 49.

-Dry land-Garden crops raised on, with aid of tenants' water-Garden rates for-Implied contract to MY Consideration for.

At some date, the respondent, raiyat, had made a well of tank at his own expense to water the land, which had been "punja" or dry land before, and thereafter he resorted togarden cultivation. No permission for the working of those wells was required on the part of the land-holder. Rent had previously been paid at the usual "dry" rate; thenceforward, it was always demanded and paid at the rate usual for 'garden" cultivation. There was no demur to the garden rate till 1903, and presumably pattas and muchilikas at that rate were regularly exchanged, in accordance with the Madras Rent Recovery Act. The land-holder conceded the existence of a contract for a rent at the dry rate before the wells were made, and alleged its supersession by another contract, since the payments at the garden rates began.

Held that, assuming there was an implied agreement to pay rent at the garden rate there was no consideration for the new promise to pay rent at that rate for land which was already held on a binding contract of tenancy at the dry rate.

No fresh consideration moved from the landlord for the raiyats' assumed promise to pay at the garden rate. The District Judge's view that the abstention by the landlord

Rent Recovery Act VIII of 1865 - (Contd.)

S. 11-(Contd.)

from exercising his right to resort to the waram system was the consideration for such promise is not correct, for, under the Act, if there was an implied contract for the dry rate, that contract had to be enforced, and there was no question of resorting to the waram system. Further, there is no evidence that there was any waram system in the village in question. It could not be said that the landlord forbore to harass the tenant by proceedings in the Sub-Collector's Court because (1) there is no evidence that there was actually any such forbearance and (2) such proceedings would, in face of the implied contract for the dry rate, have been useless (203). (Lord Sumner). RAJA JAGAVEERA RAMA VEN-KATESWARA ETTAPPA v. ARUMUGAM.

(1918) 45 I.A. 195 = 43 M. 174 (182) = 23 C.W.N. 225 = (1918) M.W.N. 732 = 48 I.C. 907 = 36 M.L.J. 49.

Implied contract-Consideration for-Necessity.

Whether the framers of the Madras Rent Recovery Act of 1865 fully appreciated its effect or not, the expression "implied contract" is an English term of art, and must be so construed in S. 11 of the Act. It involves the legal incident of some consideration moving from the landlord, as that incident is understood in English law (198). (Lord Sumner.) RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA v. ARUMUGAM. (1918) 45 I.A. 195 = 43 M. 174 (177) = 23 C.W.N. 225 = (1918) M.W.N. 732 = 48 I.C. 907 - 36 M.L.J. 49.

-Lease by Zemindar at favourable rent-Binding nature of, on succeeding Zemindar. See REGISTRATION ACT XX OF 1866, S. 17—LEASE AT FAVOURABLE RENT. (1879) 6 I.A. 170 (175-6) = 2 M. 67 (74).

-Rent-Enhancement on improvement of land at tenant's own expense-Custom as to-Validity.

A general custom to enhance rent if the tenant enhanced the value of the land at his own expense is had in law, as being contrary to the policy of the Madras Rent Recovery (Lord Sumner.) RAJA JAGAVEERA RAMA Act, 1865. VENKATESWARA ETTAPPA P. ARUMUGAM.

(1918) 45 I.A. 195 (201) - 43 M. 174 (180) -23 C.W.N. 225 = (1918) M.W.N. 732 = 48 I.C. 907 = 36 M.L.J. 49.

-Rent-Rate of - Dispute as to-Mode of determining

-No contract express or implied.

S. 11 of Madras Act VIII of 1865 lays down the rules for deciding disputes as to rates of rent. Cl. (iii) deals with the mode of determining the rate when no contract exists. When there is no Contract express or implied, the question must be decided in accordance with the roles contained in clause (3). (Mr. Ameer Ali.) PARTHASARATHY APPA RAO v. CHEVENDRA VENKATA NARASAYYA.

(1910) 37 I A. 110 (122-3) = 33 M. 177 (186-7) = 8 M.L.T. 141 = 12 C.L.J. 233 = 14 C.W.N. 938 = 12 Bom. L.R. 648 = 6 I.C. 988 = 20 M.L.J. 596. -Scheme of-Contract, express or implied-Status-

Usage. The scheme of S. 11 of the Madras Rent Recovery Act was as follows: If a contract, express or implied, and legally enforceable, was once established, the issue was determined and the proper patta was one giving effect to that contract. If, on the other hand, no such contract could be established, then in the case of a zemindary which was not surveyed by Government before the 1st January, 1859, local usage could be proved. If such usage established a proper rent, then either party, if dissatisfied with it, could require resort to the waram customary in the village for the division of the crop between landlord and tenant and, failing proof of such a customary waram, it would have been the Collector's duty to fix such rate as he thought

MADRAS ACTS-(Contd.)

Rent Recovery Act VIII of 1865-(Contd.)

S. 11-(Contd.)

just, "after ascertaining if any increase in the value of the produce or in the productive power of the land has taken place, otherwise than by the agency or at the at the expense of the raiyat" (1989). (Lord Sumner.)
RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA v. ARUMI GAM. (1918) 45 I.A. 195 = 43 M. 174 (177.8)= 23 C.W.N. 225=(1918) M.W.N. 732-48 I.C. 907=

36 M.L.J. 49.

-Waram system-Resort to - Permissibility-Contract implied for particular rate-Existence of-Effect.

Under the Madras Rent Recovery Act, S. 11, if there is an implied contract for a particular rate, that contract has to be enforced, and the landlord cannot resort to the waram system (203). (Lord Sumner.) RAJA JAGAVEERA RAMA VENKATESWARA ETTAPPA : ARUMUGAM.

(1918) 45 I. A. 195=43 M. 174 (182)= 23 C. W. N. 225 - (1918) M.W.N. 732 - 48 I.C. 907 = 36 M. L. J. 49.

-S. 11 (3)-Implied contract-Evidence of-Express agreement to pay specified rent for a term-Inference from, of implied agreement to pay rent permanently at that rate -Propriety.

In a suit brought under S. 9 of Madras Act VIII of 1865 to enforce the acceptance of pattals tendered by the plaintiff and the execution of mochilikas corresponding thereto, the plaintiff's case that the asara or the sharing system was the mamood or customary mode of payment in the suit village, and that the tenants (defendants) had refused to accept the asara pattas for Fusli 1309.

The tenants denied that the asara system was in force in their village, and alleged that by a specific arrangement entered into in Fush 1299 a uniform rate of Rs. 5 per acre had been settled in perpetuity for the lands beld by them

respectively.

In Fusli 1299 different rates of rent prevailed in the suit village; some were higher than Rs. 5, others lower. In that year a uniform rate of Rs.5 per acre was introduced by nsutual agreement between the landlord and tenants, and leases were exchanged on that basis for a term of five years, The defendants alleged that the plaintiff at that time expressly agreed that the rate of Rs. 5 should be permanent. The Courts in India disbelieved the story of an express agreement to that effect. But they nevertheless inferred an implied contract from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1299.

Held, that the Courts below erred in inferring an implied contract from the said circumstance.

Their Lordships are unable to concur in the view of the Courts below, or to held that alongside of the express contract embodied in the leases exchanged between the parties there was a collateral implied agreement relating to fixity of rest. (Mr. Ameer Ali.) PARTHASARATHY APPA ROW P. CHEVENDRA VENKATA NARASAYYA.

(1910) 37 I. A. 110 (122) = 33 M. 177 (185 6) = 8 M. L. T. 141 = 12 C. L. J. 233 = 14 C. W.N. 938 = 12 Bom. L. R. 648 = 6 I C. 988 = 20 M. L. J. 596.

-- Money rent-Agreement to pay-Implication of. from fact of its having been paid for a series of years-Propriety.

It is not open to Courts to imply from the mere circumstance that the rent has been paid in money for a series of years an agreement to pay money rent. (Mr. Ameer Ali.) PARTHASARATHI APPA ROW : CHEVENDRA VENKATA NARASAYYA. (1910) 37 I.A. 110 (123) = 33 M. 177 (186) =

8 M L.T. 141=12 C. L. J. 233=14 C. W. N. 938= 12 Bom. L. R. 648 = 6 I.C. 988 = 20 M. L. J. 596.

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MADRAS ACTS-(Contd.)

Rent Recovery Act VIII of 1865-(Contd.)

S. 11-(Cont.)

Usage-Evidence-Prevalence of money rent in locality for a considerable number of years if.

The fact that money rent has prevailed in a particular locality for a considerable number of years may form an element in the consideration of the question of usage. (Mr. Ameer Ali.) PARTHASARATHI APPA ROW :: CHEVENDRA (1910) 37 I. A. 110 (123)= VENKATA NARASAYYA.

33 M. 177 (186) = 8 M. L. T. 141 = 12 C. L. J. 233 = 14 C. W. N. 938 = 12 Bom. L. R. 648 = 6 I.C. 988 = 20 M. L. J. 596.

-S. 11. Proviso-Lease at favourable rent by genindar-Validity against successor of. So: REGISTRATION ACT OF 1866, S. 17-LEASE AT ETC.

(1879) 6 I. A. 170 (175-6) - 2 M. 67 (73-4).

-Scope of - Cases where suits are brought under Ss. 8 to 10-Provide if confined to.

There seems to be ground for the contention that the proviso to S, 11 of Madras Act VIII of 1865 is not limited to cases where suits are brought under Ss. 8-10 of the Act, although the commencement of S. 11 refers to such suits. It is difficult to suppose that the operation of this proviso was intended to be confined to cases in which suits are brought under Ss. 8 or 9; and it may be that it was intended to apoly to all pattahs which come within the 3rd section of the Act (175-6). (Sir Montague E. Smith.) RAMASWAMI CHETTI v. THE COLLECTOR OF MADURA

(1879) 6 I.A. 170 = 2 M. 67 (74) = 5 C. L. R. 341 = 3 Suth. 646 = 4 Sar. 50.

-S. 14-Applicability-Rent ascertained-Rent rate of which is to be ascertained-Cases of.

S. 14 of the Madras Rent Recovery Act, and the other sections which with it form a series, apply to ascertained rents, not to rents at rates which have yet to be ascertained. (Sir Arthur Wilson.) RAJA RANGAYYA APPA RAO BAHADUR 2. BOBBA SRIRAMULU. (1903) 31 I. A. 17 = 27 M. 143 (151·2)=6 Bom. L.R. 241=8 C. W. N. 162= 8 Sar. 617 = 14 M.L.J. 1.

# MADRAS CIVIL SERVICE ANNUITY FUND.

-See Civil Service Annuity Fund (Madras). MADRAS GOVERNMENT SETTLEMENT NOTI-

FICATION (1910). -Cl. 36-Ryotwari pattadar-Dry land-Conversion into wet of, by construction of small bunds - Additional assessment in case of-Levy of-Legality. See RYOTWARI

(1927) 55 I.A 331=51 M. 611. MADRAS LAND TENURES.

TENURE.

# Kudiwaram -Kudiwaram interest

-Meaning of. See MADRAS ACTS-ESTATES LAND (1923) 51 I. A. 83 (90-1) = 47 M. 337. ACT, S. 8.

#### Melwaram.

-Meaning of. See MADRAS ACTS-ESTATES LAND ACT, S. 8. (1923) 51 I.A. 83 (90-1) = 47 M. 337.

#### Purakudi.

-Meaning of. See WORDS-PARAKUDI. (1904) 31 I. A. 83 (92·3) = 27 M. 291 (299).

### Purakudis.

-- Meaning of. See WORDS-PURAKUDIS. (1904) 31 I A. 83 = 27 M. 291 (296).

### Purakudi Ulavadai.

-Meaning of. See WORDS-PURAKUDI ULAVADAL

### MADRAS LAND TENURES-(Contd.) Rokkaguthagai.

-Meaning of. See WORDS-ROKKAGUTHAGAI. (1923) 51 I. A. 83(92)=47 M. 337.

# Rokkaguthagai miras ekabhogam Village.

-Meaning of. See WORDS - ROKKAGUTHAGAI MIRAS EKABHOGAM VILLAGE. (1923) 51 I.A, 83 (95)=

#### South Canara.

-Kumri Cultivation-Warg kumris-Nature and incidents of.

It appears that the Government for the parposes of clearing the undergrowth in the forests have been in the habit of allowing the forest tribes who sparsely inhabited the forest to make clearances, and grow such cereals as they were capable of. These primitive tribes cultivated certain spots, reaped the crop and then moved off to some other patches of lands. These apparently were called Government Kumris. The Government also allowed some of the neighbouring wargdars to take the leaf manures from the forest and clear the undergrowth for the desultory cultivation, called Kurnri. These apparently are designated Warg Kumris. In all these cases, dealings with forest lands appear to have been by distinct permission of the Government. (Mr. Ameer Ali.) KADOTH AMBU NAIR r. SECRETARY OF STATE FOR INDIA.

(1924) 51 I. A. 257 (265-6) = 47 M. 572 = 26 Bom. L. R. 639 = 20 L. W. 49= (1924) M. W. N. 572 = 35 M. L. T. 128= A. I. R. 1924 P. C. 150 = 29 C. W. N. 365 = 80 I. C. 835-47 M. L. J. 35.

-Kumris-Wargdar Kumris-Ryotwari holding-Distinction.

It is contended that the incidents attached to wargdar Kumris in South Canara stand on the same footing as ryot wari holdings. The chief ground on which this analogo appears to be founded were two facts namely, that the wargdar possessed in these Kumri lands a heritable and transferable interest. There is, however, absolutely no relation or analogy between the nature of these kumri and ryotwari holdings. The latter belong to a totally different calegory of tenures. Ryotwari holdings relate to arable lands for fixed periods-ordinarily 30 years-and are subject to periodical surveys and assessments. No inference, therefore can be derived from the fact that kumri lands, cultivated on the kumri system, were held by wargdars whose property is transferable and heritable. (Mr. Ameer Ali.) KODOTH AMBU NAIR P. SECRETARY OF STATE FOR INDIA-

(1924) 51 I. A. 257 (268) = 47 M. 572= 26 Bom. L. R. 639 = 20 L. W. 49= (1924) M. W. N. 572 = 35 M L. T. 128=

A.I.R. 1924 P. C 150 = 29 C. W. N. 365 = 80 I. C. 835 = 47 M. L. J. 35.

-Wargs-Murli Wargs-Kumris-Kumri lands-What are.

The district of South Canara lies to the North of Malabar and to the west Mysore and Coorg; in the north lies North Canara and on the west the Arabian sea. The whole district at a short distance from the sea is covered with inmemorial forests. The lands in suit are situated south of the Chandragiri River, and in the Kasargod Taluk, formetly called Bekat Taluq. In the lowlands below the forest ridges there lie the farms and holdings of the ryots, which are called " wargs." The " wargs " the ryots hold in their own right are called " murli wargs." These ryots and farmers it appears, are in the habit of going upon the forest lands, clearing a part of the jungle and raising a temporary crop (1904) 31 I. A. 83 (93) = 27 M. 291 (299). and some other part is taken up. For this privilege they

### MADRAS LAND TENURES-(Contd.)

South Canara - (Contd.)

have been paying a small fee to the Government. These patches are called "Kumris," and the lands so desultorily cultivated are designated as 'Kumri lands," The wargs do not constitute a farm or an estate of a compact character, the component parts often lying apart from each other. (Mr. Ameer Ali.) KODOTH AMBU NAIR P. SECRETARY (1924) 51 I.A. 257 (260-1)= OF STATE FOR INDIA.

47 M. 572 = 26 Bom. L. R. 639 = 20 L. W. 49 = 1924 M. W. N. 572=35 M. L. T. 128= A. I. R. 1924 P. C. 150 = 29 C. W. N. 365 = 80 I. C. 835 = 47 M. L. J. 35.

#### Tanjore District.

Arudikarai Villages-Meaning of. Villages held by a number of individuals in separate shares. (Sir John Edge.) NAINAPILLAI MARKAYAR r. (1923) 51 1. A. 83 (93) = RAMANATHAN CHETTIAR. 47 M. 337 - A. I. R. 1924 P.C. 65 - 22 A. L. J. 130 -19 L. W. 259 - 34 M. L. T. 10 - (1924) M. W. N. 293 -10 O. & A. L. B. 464 - 28 C. W. N. 809 - 82 I.C. 226 -

-Ekabhogam Villages-Meaning of. Villages of which the sole occupancy right was vested in one individual (93). (Sir John Edge.) NAINAPILLAI MAR-KAYAR P. RAMAN THAN CHETTIAR. (1523) 51 I.A. 83 47 M. 337 = A. I. B. 1924 P. C. 65 =

22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M.W.N. 293 = 10 O. & A. L. R. 464 28 C. W. N. 809 = 82 I. C. 226 = 46 M.L.J. 546.

46 M. L. J. 546.

46 M. L. J. 546

Pasunkarie or Samudayam Village-Meaning of. Village held in common. (Sir John Edge.) NAINAPILLAI MARKAYAR P. RAMANATHAN CHETTIAR.

(1923) 51 I. A. 83 (93) = 47 M. 337 = A. I. B. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 225 =

#### Taram faisal.

-Meaning of. See WORDS-TARAM FAISAL. (1904) 31 I. A. 83 = 27 M. 291 (297). Ulavadai Kani.

-Meaning of. See WORDS-ULAVADAI KANI (1904) 31 I. A. 83 = 27 M. 291 (294).

### Ulavadai Kani tenure.

of. See WORDS-ULAVADAI KANI -Meaning (1904) 31 I. A. 83=27 M. 291 (294). TENURE. Ulavadai mirasidars.

-Meaning of. See WORDS-ULAVADAI MIRASIDARS (1904) 31 I. A. 83 (92)= 27 M 291 (298.9)

### Vara adai olai chite.

---- Meaning of, See WORDS-VARA ADAI GLAI (1904) 31 I. A. 83 = 27 M 291 (294). CHITS.

### MADRAS REGULATIONS.

ADMINISTRATION OF ESTATES REGULATION III OF

APPEAL TO PRIVY COUNCIL REGULATION VIII OF

CIVIL JURISDICTION PROCEDURE REGULATION XV

DISTRICT PANCHAYATS REGULATION VII OF 1816. ENDOWMENTS AND ESCHEATS REGULATION VII OF 1817.

GRANTS OF MONEY OR LAND REVENUE REGULATION IV OF 1831.

JURISDICTION OF CIVIL COURTS REGULATION II OF .110

#### MADRAS REGULATIONS-(Contd.)

PAUPER SUITS REGULATION VII OF 1818. PERMANENT SETTLEMENT REGULATION XXV OF 1802

REGULATION XXXI OF 1802.

#### Administration of Estates Regulation III of 1802.

-S. 16 (1)-Hindus and Makemedans-Test-Birth only or religion also.

The Regulations, so far as they prescribe that the Hindoo law shall be applied to Hindoos and the Mahomedan law to Mahomedans, must be understood to refer to Uindoos and Mahomedans not by birth merely, but by religion also (239). (Lord Kingsdoon.) ABRAHAM r. ABRAHAM,

(1863) 9 M. I. A. 195 - 1 W. R. 1 P. C. 1 Suth. 501 = 2 Sar. 10.

#### Appeal to Privy Council Regulation VIII of 1818.

S. 14-Applicability-Possession given to party not by Court but by Collector before unt.

Madras Regulation VIII of 1818, S. 4, has no application to a case in which the respondents in an appeal to the Privy Council were put in possession of the suit property not by the Court, but by the Collector before the institution of the suit out of which the appeal arose (329). (Lord Justice Knight Bruce.) NAGALUTCHMEE UMMAL D. (1856) 6 M. I. A. 309-GOPOO NADARAJA CHETTY. 1 Sar. 543

Execution of decree fending appeal to Prity Council -Security from party applying for-Necessity-Subjectmatter of suit consisting of large property.

In this case their Lordships alluded the circumstance that, pending the original appeal to them, the Sudder Court put the successful party \* before it in possession without taking security in conformity with S. 4 of Regulation VIII of 1818, They observed that in consequence of large property being put into the hands of the successful party without security, the whole property had been wasted and dilapidated, and that it had been exhausted (319.20), (Dr. Lushington.) RAJAH VASSAREDDY LUTCHMEPUTTY NAIDOO. In re.

(1852) 5 M. I. A. 300 = 8 Moo. P. C. 115 = 1 Sar. 446,

#### Civil Jurisdiction Procedure Regulation XV of 1816.

-Decision on point not distinctly raised in cause and on which evidence not directed- Revertal in appeal of.

In a contest between the widow and the surviving male member of the family of a deceased zemindar, the most important question on which the whole contest turned was whether a division had taken place in the family of the deceased. And though there was some evidence on that question, and it was decided against the widow by the first Court, and in her favour on appeal, the division was not made a distinct point in the cause, and no order was made for the production of evidence in proof of such an avernment as was required by Madras Regulation XV of 1816, and there was no satisfactory explanation as to how the evidence on that point came to be taken.

Held that the decision could not, in the face of the said Regulation, be sustained (293.4).

The Regulation points directly against the course which has been unfortunately adopted in this case because the point on which the whole case turns, and in the opinion of the appel late Court, beyond all question, the whole case was decided. never was alleged as a point in any of the proceedings, and evidence which was read in support of it never was directed or sanctioned by the Court (293). (Dr. Lushington.) MOOTTOO VIJAYA RAGANDHA GOURY VALLABHA PERIA WOODIA TAVER 2. RANY ANGA MOOTTOO NATCHIAR. (1844) 3 M. I. A. 278 = 6 W. R. 50 P. C .= 1 Suth. 155 = 1 Sar. 280

Civil Jurisdiction Procedure Regulation XV of 1816-(Cont.)

Misapprehension by parties of Dismissal of suit-Leave to bring new smit-Grant of-Procedure proper.

In a suit by the widow of a deceased Zemindar against the surviving male member of his family for the recovery of the deceased's estate, the first Court found that the deceased was not a divided member and dismissed her suit. decree was reversed on appeal, the appellate Court finding that the deceased was a divided member. On the point of division the provisions of Madras Regulation XV of 1816 were not complied with, and the decree of the appellate Cours could not therefore be sustained.

Held, that the parties having acted under a misapprehension of the Regulation, the decree of the first Court dismissing the suit ought not to be restored, but that leave ought to be given to the widow to bring a suit at any time within a period of 3 years (294), (Dr. Luckington.) MOTTOO VIJAVA RAGHANADHA GOURY VALLABHA PERRIA WOODIA TAVER P. RANY ANGA MOOTTOO (1844) 3 M. I. A. 278 = 6 W. R. 50 =

1 Suth 155-1 Sar. 280. -S. 3-Evidence on point not alleged in plant-Adducing of-Permissibility.

Held that, by virtue of S, 3 of Madras Regulation XV of 1816, the plaintiffs, who had not alleged any case of injury done to them by defendants, were not entitled to go into evidence upon that question (381-2). (Lerd Brougham.) NAMBOORY SEETAPATY P. KANOO COLANOO PULLIA.

(1845) 3 M. I. A. 359 = 7 W. R. 7 P. C. 1 Suth. 163 = 1 Sar. 290.

-S. 10 (3)-Mandatory or directory.

Madras Regulation XV of 1816, 10, Cl. 3 is not directory but mandatory and inoperative (381). (Lord Brougham.) NAMBOORY SERTAPATY v. KANOO COLANOO POULLIA. 3 (1845) M. I. A. 359-7 W. R. 7 P. C.=1 Suth. 163-

1 Sar. 290. -S. 10 (3) and (4)-Provident of -Compliance with -Necessity.

Madras Regulation XV of 1816 in Chapter 10. generally speaking, but especially cls. 3 and 4 thereof, is a most wholesale and most beneficial Regulation, requiring to be most fealously guarded, and most carefully kept in view, and, if possible, extended to the other Presidencies. It would be highly inexpedient that any doubt should exist of the determination of their Lordships to abide by and support that beneficial Regulation (381). (Lord Brougham.) NAMBOORY SECTAPATY P. KANOO COLANGO PULLIA.

(1845) 3 M. I. A. 359 = 7 W. R. 7 P. C. = 1 Suth. 163 = 1 Sar. 290.

# District Panchayat Regulation VII of 1816.

-Award of Panchayat -- Appeal from.

An appeal under Madras Regulation VII of 1816 from an award made by a Panelarpat could take place only where there was a flagrant violation of the first principles of justice (473). (Dr. Lushington.) ZEMINDAR OF RAMNAD ZEMINDAR OF VETTIAPOORAM.

(1859) 7 M. I. A. 441 = 1 Suth. 360 = 1 Sar. 701. Endowments and Escheats Regulation VII of 1817.

-Effect—Manager of charitable endocements—Alienation-Powers of, after Regulation.

Madras Regulation VII of 1817 vested the general superintendence of all charitable endowments "in land or money" in the Board of Revenue, and made it the duty of the local agents of the Board (of whom the Collector was one ex officio) to report to the Board "any instance in which they may have reason to believe that lands or buildings, or the rent or revenues derived from lands are unduly appropriated", care being taker not to infringe private rights.

### MADRAS REGULATIONS-(Contd.)

Endowments and Escheats Regulation VII of 1817 -(Contd.)

The effect of the Regulation was to supersede the powers of managers to alienate charitable property, and to sanction the revision of existing appropriations, if unduly made, (Sir Andrew Scoble.) SEENA PENA REENA SEENA MAYANDI CHETTIAR & CHOKKALINGAM PILLAY.

(1904) 31 I. A. 83 (88) = 27 M. 291 (295) = 8 C. W. N. 545 = 8 Sar. 587 = 14 M. L. J. 200.

-Temple - Superintendence of - Government's powers as regards-Mode of exercise of, prior to Regulation-Effect of Regulation. See HINDU LAW-RELI-GIOUS ENDOWMENT-TEMPLE-VISITATORIAL JURIS-DICTION. (1874) 1 I. A. 209 (233-5).

-Ss. 10, 11-Collector's duties under-Reports mb mitted by-Nature of.

It is the duty of the Collectors, under S. 10 of Regulation VII of 1817, to ascertain and report to the Board the names of the present trustees, managers, and superintendents of the temples, and by whom and under what authority they have been appointed or elected, and whether in conformity to the special provisions of the original endowment by the founder, or under any general rules. They are also, under S. 11, to report all vacancies, with full information to enable the Board to judge of the pretensions of claimants and whether the succession has been by descent, or by election, and if so, by whom (238). (Sir Montague E. Smith.) RAJAH MUTTU RAMALINGA SETUPATI P. PERIANAYA-GUM PILLAL (1874) 1 I. A. 209 = 3 Sar. 344.

-Ss. 10 and 11-Collectors' reports under-Author rity of - Exidentiary value of.

It must be conceded that when the reports submitted by the Collectors under Ss, 10 and 11 of Reg. VII of 1817 express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the reports of public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded upon them (238-9).

In a suit in which the question related to the right of the zemindars of Ramnad either to appoint, or to confirm the election of, the pandaram or head of the pagoda of Rameswaram, it appeared that in or about 1834 the then Zemindar impeached the validity of the title under which the then pandaram had held the office from 1815, asserting the Zemindar's right to appoint the pandaranis as well as to manage the pagoda. That dispute was referred to the then Collector of the District. He examined the depositions sent to the Collectorate in 1815, and other documents, and he recorded the facts which, in his opinion, were adverse to the claims made on the part of the Zemindar. He also reported in favour of the title of the then Pandaram to the office. He submitted a report to the above effect. Board of Reve sue upon that report made a minute that there existed no ground for questioning the validity of the appointment of the pandaram.

On appeal to the Privy Council Counsel for the Zemindar urged that the learned Judges of the High Court had given too much weight to the report of the Collector, which they described as a "quasi-judicial proceeding."

Held, that the report of the Collector was entirely within his province, and the line of his duty, and that, though it could not be treated as having judicial authority, it was entitled to great consideration (238.9). (Sir Montague E. Smith.) RAJAH MUTTU RAMALINGA SETUPATI P. PERIANAYAGUM PILLAL '1874) 1 L A. 209= 3 Sar. 344,

### Grants of Money or Land Revenue Regl. IV of 1831.

——Applicability—Tenure ancient and permanent and in existence before the Dewanny—Suit by person halding under—Sanction under Regulation—Necessity.

Regl. IV of 1831, Madras Code, which must be strictly construed, applies only to suits brought to try the validity of grants emanating from, or confirmed or affected by, the direct act and order of the Governor in Council. A written order under that law is not necessary in a suit brought by a person who claims to hold under an ancient and permanent tenure in existence before the Dewanny, (Lord Justice Giffard.) BRETT v. ELLAIVA.

(1869) 13 M. I. A. 104 (109) = 12 W.R. P.C. 33 = 2 Suth. 254 = 2 Sar. 492.

### Jurisdiction of Civil Courts Regi. II of 1802.

--- S. 4—Hindu Law-Joint Family -Partition-Property allotted at, but refused to be delivered up-Suit to recover-Limitation.

If the appellant had shown that there was an agreement made between competent parties, either in the lifetime of the common ancestor, or after his death, by which he obtained a right to a third of all the property belonging to that ancestor, both that which was actually divided, and that which was the subject of the suit and which was to be actually divided when the complainant required it, it is by no means clear that the appellant's claim would have been barred by lapse of time; for the cause of action may not be considered as having accrued until it was clear that a refusal had taken place on the part of the person entitled, or of the person in actual possession, to deliver up the third share. (Mr. Baron Parke.) YACHEREDDY CHINNA BASSAVAPPA v. YACHEREDDY GOWDAPA. (1835) 5 W.B. 114 P.C. = 1 Suth. 41 (43) = 1 Sar. 84.

Court's duty to take notice of.

In view of the positive language of cl. 4 of Madras Regulation (II of 1802), it is incumbent on a plaintiff to shew, by proper allegations in his plaint, either that the cause of action did accrue within 12 years, or to bring himself within the other alternative stated in the Regulation; and it would be the duty of the Court to give judgment against him, when the cause came to a hearing, for defect of such allegations, unless that defect were supplied by the allegations in the pleadings of the opposite party. (Mr. Raron Parke.) YACHEREDDY CHINNA BASSAYAPA 2. YACHEREDDY GOWDAPPA. (1835) 5 W.B. 114 P.C. = 1 Suth. 41 (43) = 1 Sar. 84.

The English law is not of obligatory force in the company's Courts. There is, properly speaking, no prescribed general law to which their decisions must conform. They are directed in the Madras Presidency to proceed generally, according to justice, equity, and good conscience (320).

Held, accordingly, that the English law had no authoritative obligation in a suit brought in the Company's Courts to enforce a lien on land, created by an equitable mortgage of title deeds, in so far as the suit was against the subsequent purchasers of the nortgaged property (320). (Lord Kingsdown.) VARDEN SETH SAM v. LUCKPATHY (1862) 9 M.I. A. 303=

ROYJEE LALLAH. (1862) 9 M.I. A. 303=

Marsh. 461=1 Suth. 483=1 Sar. 857.

—— 8. 18 (4)—Irregular proceedings of Court—Delay in commencement of suit due to—Limitation bar in case of.

In 1847, A presented a petition to the Civil Court of Chittoor for liberty to sue in forma pauperis. The Court was of opinion that A could not be permitted to sue without

#### MADRAS REGULATIONS-(Contd.)

Jurisdiction of Civil Courts Regl. II of 1802-(Contd.)

the sanction of the Government. In May, 1848. A obtained that sanction, and, in October of that year he presented a petition for leave to sue in forma pauperis, and at the same time, lodged his plaint. On 13—11—1848, the plaint and petition were ordered by the court to be filed. The order for service of the petition and plaint on the defendant, and requiring her to show cause, why A should not be allowed to sue in forma pauperis, was not actually made till July, 1849. Service was made in August, and no cause was shown. On 1—3—1850 the Court made an order directing the plaint to be filed, and it was filed on that day. The 12 years allowed for the filing of the suit expired on 16—9—1849, so that, if the suit was to be regarded as having been commenced on 1—3—1850, it would be barred.

H.dd that even so, the case came within paragraph 4 of S. 18 of Madras Regulation 11 of 1802, and the suit was not barred (95).

A had preferred this claim within the prescribed period to a court of competent jurisdiction, and had been prevented from commencing his suit in proper time by no neglect on his part, but by the irregular proceedings of the court to which his claim was preferred (95). (Lord Kinguloum,) NARAGUNTY LUTCHMEEDAVAMAH T. VENGAMA NAIDOO. (1861) 9 M.I.A. 66 = 1 W.B. 30 P.C. = 1 Suth. 460 = 1 Sar. 826.

### Pauper Suits Regulation VII of 1818.

—S. 5—Petition to be allowed sto sue in forma pauperis —Notice to defendant to show cause against—Delay in ordering service of—Ieregularity.

In 1847 A presented a petition to the Civil Court of Chittoor for liberty to sue in forma panferis. The court was of opinion that A could not be permitted to sue without obtaining the authority of the Government. In May, 1848, A obtained the sanction of the Government, and, in October of that year. he presented a petition for leave to sue in forma panferit, and at the same time lodged his plaint. On 13—11—1848, the plaint and petition were ordered by the court to be filed. The order for service of the petition and plaint, requiring the defendant to shew cause why A should not be allowed to sue in forma panferis was not actually made till July, 1849. Service was made in August. No cause was shown, and the plaint was filed by an order of the court dated 1—3—1850.

Held that the proceedings adopted by the court on 13-11-1848, were irregular (95).

On that day, the court ought, according to the Regulation VII of 1818, to have ordered immediate service of the petition and of the plaint on the defendant, and to have fixed a day for her to shew cause. If she could, why the plaintiff should not be allowed to sue in forma pauperis. NARA-GUNTY LUTCHMEEDAVAMAH P. VENGAMA NAIDOO.

(1861) 9 M.I.A. 66 (94-5)=1 W.B. 30 P.C.= 1 Suth. 460=1 Sar. 826.

# Permanent Settlement Regulation XXV of 1802. OBJECT OF.

Policy in pursuance of which it was passed-Other policy on foot at the time.

The British authorities appear to have taken in hand as early as September 24, 1799, the regularization of the land revenue in the Carnatics and to have issued instructions to the Board of Revenue as to the line of action to be taken for the purpose of instituting a general inquiry into the territories. Regulation XXV of 1802 was an outcome of the inquiries made under those instructions to the Board of Revenue (428). At the time when the instructions abovementioned were issued, two policies were on foot; one with

Permanent Settlement Regulation XXV of 1802— (Contd.)

OBJECT OF-(Contd.)

regard to the powerful Zemindars who maintained large armies, with whom a settlement was essential or a separate basis; the other a measure of general assessment in accordance with the instructions issued to the Board of Revenue on September 24, 1709. In the carrying out of this latter policy the Government passed Regulation XXV of 1802, which came into force on July 13 of 1802 (422-3). (Mr. Ameer Ali.) SECRETARY OF STATE FOR INDIA 2: RAJA OF VENKATAGIRI. (1921) 48 I. A. 415=

44 M. 864 (876) = (1922) M.W.N. 1 = 30 M.L.T. 164 = 26 C.W.N. 809 = A. I. R. 1922 P.C. 168 = 73 I.C. 741 = 41 M.L.J. 624.

OBJECT AND EFFECT OF.

 Existing rights—New rights—No taking away of former or giving of latter. Sec S. 2—Effect of.

SANAD UNDER-ARSENCE OF.

-Title to land-Effect on.

In the absence of a sanad under Regulation XXV of the Madras Regulations of 1802, those regulations do not affect the title to any land. (Lord Parker.) VENKATA NARA-SIMHA APPA ROW 7. PARTHASARATHY APPA ROW.

(1913) 41 I.A. 51 = 37 M. 199 = 18 C.W.N. 554 = (1914) M.W.N. 299 = 16 Bom. L. B. 328 = 19 C.L.J. 369 = 15 M.L.T. 285 = 12 A.L.J. 315 = 23 I.C. 166 = 26 M.L.J. 411.

SANAD IN COMMON FORM UNDER.

SETTLEMENT PAPERS—MISDESCRIPTION OF VILLAGE IN.

----Effect of, against Zemindar, against Government, and against tenants-Misdescription if conclusive against tenants.

In a suit brought by the appellant, the Zemindar of Kuruppam, to eject the respondents, who were certain Brahmins claiming to have an agraharam tenure in a certain village, from that village, the court below came to the conclusion that the Brahmins were entitled to hold the suit village only subject to the payment of the shrotriem or fixed rent of Rs. 150, and that that was the state of things in 1800, and before the completion of the perpetual settlement of the appellant's Zemindary. From that conclusion, and upon the other evidence in the cause, the court below found that the defendants' holding under that grant was kattubadi, or other tenure subject to a fixed quit-rent, which the plaintiff could not legally determine.

The correctness of that finding was attacked before their Lordships upon the principal ground that it was conclusively shown by the llsts of the Zemindary property, upon which the perpetual settlement was made, that the village was entered in those lists, and must therefore have been treated in the settlement made upon them as a jerayeti village, and not as a shrotriem or agraharam village. The question arose as to the effect of the entry upon the interest of the holders of an agraharam tenure. As a matter of fact their Lordships were inclined to think that the description of the village in the lists was a mistake.

Held that the entry in the lists was not conclusive against the rights of the tenants (217).

They (the tenants) were not necessarily parties to the proceedings which resulted in the settlement between the Zemindar and the Government. It may be conceived that MADRAS REGULATIONS—(Cont.)

Permanent Settlement Regulation XXV of 1809— (Contd.)

SETTLEMENT PAPERS — MISDESCRIPTION OF VILLAGE IN—(Contd.)

the Brahmins might have been absent whilst the proceedings were pending. There seems to be nothing in the Regulations, which would so conclude them. No doubt if the village had been entered as a shrotriem village in the settlement papers, that would have been conclusive as to the right of the Brahmins against the Zemindar, against the Government, against any purchaser at a sale for arrears of revenue, and in fact against all the world. But the Settlement Regulation XXV of 1802 does not contain anything which says that if the parties by carelessness or by accident allow their village to be misdescribed they are to forfeit their rights. It does not even say that all the shrotriem grants which then existed, and which were to be protected against future enhancen ent were to be registered; and, on the other hand, that Regulation is followed by a subsequent Regulation of 1822, which declares that the provisions of the former Regulation were not meant to define, limit, infringe, or destroy the actual rights of any description of landlords or tenants but merely to point out in what way the tenants might be proceeded against in the event of their not paying the rents justly due from them, leaving them to recover their rights infringed, with full costs and damages, in the Courts of Justice. It cannot be said that as a matter of law and of right the parties have forfeited the interest which they would otherwise have in this tenure, by reason of the misdescription of the village in the settlement papers (217). STRI RAJA VYRICHERLA RAZ RAHADOOR D. NADIMINTI BAGAVAT SASHI. (1875) 3 Suth. 215 = 25 W. B. 3.

#### ZEMINDAR-GRANT BY.

-Permanent settlement- Grant before - Validity
against successors of.

It would have required very strong authority to convince their Lordships that grants made by a Zemindar before the estate was permanently settled, and became subject to the rules which may have been laid down in the Madras Regultions as to subsequent alienations of this kind, were not binding upon the successors of the grantor (217-8). STRI RAJA VYRICHERLA RAZ BAHADOOR v. NADIMINTI BAGAVAT SASHI. (1875) 3 Suth. 215 = 25 W. B. \$.

-Title to inam acquired by prescription against him -Successor's right to disturb.

The true construction of Madras Regulations XXV of 1802 is that it imposed restrictions on alienations only to secure the interests of the public revenue, and that the Zemindar would have no power to disturb grants, otherwise valid, made by his predecessor, or titles to inams acquired by pre scription (40). (Sir Richard Couch.) MAHARAJAH MIRZA SRI ANANDA P. PIDAPARTI SURIANARAYANA SASTRI.

(1886) 13 I.A. 32 = 9 M. 307 (315-6) = 4 Sar. 696.

#### PREAMBLE OF.

The preamble of Madras Regulation XXV of 1802 recognised the right of private property when it stated that the then existing mode of administration was injurious by diminishing the security of private property. It did not assert a right on the part of Government to deprive or disposses Zemin dars in their lifetime, or their heirs after their deaths, for the purpose of transferring their rights to Government, or to new holders at the will of Government, independent of some considerations connected with the realization of revenue (307). (Sir Barnes Peacock.) THE COLLECTOR OF TRICHINOPOLY v. LEKKAMANI. (1874) 1 I. A. 289=14 B. L. R. 115=21 W. R. 358=3 Sar. 318.

Permanent Settlement Regulation XXV of 1802-(Coutd.)

PREAMBLE OF-(Contd.)

-Words-"The implied right and the actual exercise

of the proprietary possession" - Meaning of.

The words of the recital "the implied right and the actual exercise of the proprietary possession are, to say the least of them, very ambiguous. But whatever may be the real meaning of those words, the recital clearly was not intended amount to more than a declaration that it had been usual for Government, in order to enforce an increased revenue, to deprive or dispossess the Zemindars, and to take the management of the Zemindaries into the hands of their own officers; or, in other words, that they were in the habit of taking khas possession of the Zemindaries of those Zemindars who neglected to pay any increased amount of revenue assessed upon them (307). (Sir Barnes Peacock.) THE COLLECTOR OF TRICHINOPOLY P. LAKKAMANI

(1874) 1 I.A. 282=14 B. L. R. 115=21 W. R. 358= 3 Sar. 318.

-Words-Proprietary possession-Meaning of.

The words "proprietors of land," as used both in the Bengal Code of 1793, and in the Madras Code of 1802 have a technical signification (see the definition in Bengal Regulation VIII of 1793, Ss. 5,6 & 7; and Regulation XXVII of 1802. Madras Code, S. 2). They refer to "Zemindars, independent talookdars, and others who pay the revenue assessed upon their estates immediately to Government" and the words "proprietary possession" as used in the recital of Regulation XXV of 1802, must also be read in a similar sense as meaning the possession and rights of a proprietor in the technical sense in which that word is used, rgz., the person who pays the revenue immediately to Government (See Regulation I of the Madras Code, Ss. 14 and 157, (306) (Sir Barnes Peacock.) THE COLLECTOR OF TRICHING-(1874) 1 I. A. 282-POLY D. LEKKAMANI. 14 B. L. R. 115-21 W. R. 358-3 Sar. 318.

Zemindaries in respect of which default was made in payment of increased revenue assessed-Possession actual of -Usage of taking-Limits of. See UNDER THIS REGU-LATION-PREAMBLE OF- WORDS - "THE IMPLIED RIGHTS AND THE ACTUAL ETC." (1874) 1 I.A. 282 (307).

-S. 2-Effect of-Existing rights-New rights-Ne

taking away of former or giving of latter.

The affirmative words of S. 2 of Madras Regulation XXV of 1802. "That, in consequence of the assessment the proprietary right of the soil shall become vested in the Zemindars, etc.," did not either give to or take away from the former owners of lands not permanently assessed any rights which they then had. It merely vested in all Zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. There are no words declaring that no proprietary right then existed, or should thereafter be deemed to exist, except in Government, in any lands not permanently settled; and in their Lordships' opinion it was not the intention of the Legislature to pass such an enactment (306). (Sir Barnes Peacock). THE COL-LECTOR OF TRICHINOPOLY P. LEKKAMANI. (1874) 1 I.A. 282=14 B.L.B. 115=21 W.B. 358=

3 Sar 318.

-Though the quality of the estate might doubtless be altered by a law, it was not within the scope of Regulation XXV of 1802 to effect any such alteration. It was framed with a view to the land revenue, and not otherwise to infringe on or limit the rights of anybody. And in Regulation IV of 1822 there is a declaration to this effect (115). (Sir Arthur Hobhouse.) MUTTU VADUGANADHA TEVAR D. (1881) 8 LA. 99= DORASINGA TEVAR. 3 M. 290 (307) = 4 Sar. 239.

#### MADBAS REGULATIONS-(Contd.)

Permanent Settlement Regulation XXV of 1802--(Contd.)

S. 2-(Contd.)

Regulation XXV of 1802 does not affect the question as to whether in 1895 the palayam was alienable or not. The Board decided in the Marangapuri case that the affirmative words of the second section of the Regulation. "that, in consequence of the assessment the proprietary right of the soil shall become vested in Zemindars, etc.," did not either give to or take away from the former owners of lands not permanently settled any rights which they then had. It (a settlement under that Regulation) merely vested in all Zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent settlement with them. (Sir John Elge). APPAYASAMI NAICKER 7. MIDNAPUR ZEMINDARY CO., LTD. (1921) 48 I A. 100=

44 M. 575 (586) = (1921) M.W.N. 352 = 34 C.L.J. 6 = 29 M.L. T. 383 - 14 L.W. 49 - 26 C.W.N. 106 -20 A.L.J. 393 = A.I.R. 1922 P.C. 154 = 60 I.C. 953 = 40 M.L.J. 537.

-Lands not permanently settled-Tenure of-Ascertainment of Mode of. See HINDU LAW-IMPARTIBLE ESTATE-PALAYAM- UNSETTLED PALAYAM- TENURE (1921) 48 I.A. 100-44 M. 575 (586).

-Ss. 3 & 4-Permanently settled Zemindary-Inam lands within, existing at time of settlement-Resumption and assessment to revenue-Government's right of-Sanad granted and assessment fixed on quite a different basis from that provided in S. 4 of the Regulation.

Pursuant to an arrangement come to between the British Government and the then holder of the Zemindary of Venkatagiri, held subject to the payment of a fixed revenue or peshcush and to the burden of military service, a Sunnud-imilkiat istimrar was issued to the Zemindar on August 24, 1802, (but made to take effect from July 12 of that year, i.e. from before the date on which Regulation XXV of 1802 was passed. The sannad provided that, in consideration of the British Government relieving the Zemindar from the burden of military service and itself undertaking the same, " the British Government has fixed your annual contribution, including equivalent for the military service and the established peshcush for every year, at the sum of Star pagodas 1,11,058, which said amount shall never be liable to changes under any circumstances, and is hereby accordingly declared to be the permanent annual demand of Government on your Zemindary."

The sannad also stated in specific terms the extent of the Zemindary. Clause 5 of the Sunnud contained certain reservations of the absolute abandonment on the part of Government of all claim to enhance the consolidated peshcush, but they were not in reference to lakhiraj lands within the Zemindary. All those lands had been taken into consideration in arriving at the estimate of the commuted amount, but the Sunnud contained no reference whatever to them, The other documents connected with the matter showed that the Government, represented by the Governor-in-Council, on the one side, fixed a defintee specific assessment on the whole Zemindary irrespective of particular assets derived from each particular unit of property within the estate, and that the Zemindar, on the other side, accepted that arrangement on that special understanding.

On an attempt made by Government to enforce its rights against the Zemindar in respect of the lakhiraj lands within the Zemindari, the question arose whether the Zemindar was entitled to take possession of them without any liability for the payment of additional revenue or whether the Government was entitled to the benefit of the resumption and possessed the right to assess revenue on those lands,

Permanent Settlement Regulation XXV of 1802 --(Contd.)

SS. 3 & 4-(Contd.)

Held that as the Sunnud to the Zemindar contained no reference to the lakhiraj lands within his zemindary provisions of S. 4 of Madras Regulation XXV of 1802 had no application in the case of his property and that the assessment fixed upon it by virtue of the arrangement adopted in 1802 was upon a basis quite different from that provided in S. 4 of the Regulation. In other words, both the assessment and the Sannad are outside the Regulation under which the Government claims the right to resume the main lands within the plaintiff's estate and to assess them separately. (Mr. Ameer Ali.) SECRETARY OF STATE FOR INDIA IN COUNCIL P. RAJA OF VENKATAGIRI

(1921) 48 I. A. 415-44 M. 864=(1922) M.W.N. 1= 30 M.L.T. 164 = 26 C.W.N. 809 =

A. I. R. 1922 P. C 168=73 I.C. 741=41 M.L.J. 624.

-S. 8 .- Michation by Zemindar-Validity against success or of-Deed of alienation not registered according 10 S. S.

In a case in which the respondent sought to establish a claim to hold in perpeturity, at a fixed rent, certain villages forming part of the appellant's Zemindary under a Cuttorgotaga lease granted in 1895 by the appellant's ancestor to the respondent's ancestor, the appellant contended that the respondent was in law precluded from recovering on the strength of the said leave, inasmuch as the respondent's title was not registered according to Madras Regulation XXV of 1802, S. 8. It was said to have been settled in India that although an instrument not registered might be good against the Zemindar who executed it, the successor was not bound

Their Lordships observed, with reference to this contention, "it is not very obvious upon what principle it can be held that an instrument good against the party making it is bad against an heir, if the ancestor had an absolute power of alienation. If the successor is a remainderman, or claiming by a title which the ancestor could not defeat, the case, of course, is different" (337-8). (Lord Kingsl.con.) YETTIAPAH NAICKER : ALAGOO VENCATASWARA MOOTTOO SERVAGARAN. (1861) 8 M. I. A. 327 = 4 W.R. 73 = 1 Suth. 440 = 1 Sar. 788.

Object and applicability of.

The language of the Madras Regulation XXV of 1802, S. 8, would seem to apply to questions between the Zemindar and the Government, and to have been framed with a view of preventing a severance of the Zemindary without public notice to the Government (337-8.) (Lord Kingdown.) VENCATASWARA YETTIAPAH NAICKER P. ALAGOO MOOTTOO SIRVAGAREN (1861) 6 M.I.A. 327=

4 W. R. 73=1 Suth 440-1 Sar. 788. -Transfer-Perpetual lease of distinct portion of

Zemindary if a.

This is not an alienation of the Zemindari, or any part of it. It is a perpenual lease of a distinct portion of the Zemindary which constituted a distinct portion before the appellant's title to the Zemindary accrosed, and such an estate could not, without great violence to the language of S. 8 of Madras Regulation XXV of 1802, be considered as a transfer within the words of the Regulation (338). (Lord Kingdown.) VENCATASWARA YETTIAPAH NAICKER r. ALAGOO MOOTTOO SERVAGARAN.

(1861) 8 M. I. A. 327=4 W. B. 73= 1 Suth 440 = 1 Sar. 788.

Regulation XXXI of 1802.

Applicability-Lands not exempted from payment of public recenue,

### MADRAS REGULATIONS-(Contd.) Regulation XXXI of 1802-(Contd.)

Madras Regulation XXXI of 1802 refers entirely to procedure appointed for the investigation of the title to hold lands exempted from the payment of a revenue, and is inapplicable to the case of lands not exempted from the payment of public revenue (434). (Mr. Ameer Ali.) SECRE-TARY OF STATE FOR INDIA IN COUNCIL v. RAJA OF VENKATAGIRI. (1921) 48 I. A. 415=44 M. 864 (882)=

(1922) M. W. N. 1 = 30 M. L. T. 164= 26 C.W.N. 809 = A.I.R 1922 P. C. 168= 73 I. C. 741 = 41 M.L.J. 624.

Object of-Private property-Right of-Interference with

The object of Registration XXXI of 1802 was merely the protection of the revenue from invalid lakiraj grants, and to provide for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue; it was not intended to confer upon Government any title which did not then exist. The words "alienations of land "referred not to mere transfers from one proprietor to another, but to grants for holding lands exempt from the payment of revenue. It is clear that the Regulation never intended to assert that, according to the usages of the country, there was no private right to lands; for, in rendering valid all lakiraj grants made prior to a certain date, and declaring that the holders should continue to enjoy the same free from the payment of revenue, there was this proviso, that the lands had not escheated to the State since those dates (309). (Sir Barnes Peacock.) THE COL-LECTOR OF TRICHINOPOLY ?, LAKKAMANI.

(1874) 1 I. A. 282 = 14 B. L. B 115= 21 W.R. 358 = 3 Sar. 318.

Preamble of -Alienations of land -Meaning of. The words "alienations of land" in the preamble of Regulation XXXI of 1802 referred not to mere transfers from one proprietor to another, but to grants for holding lands exempt from the payment of revenue (309). (Sir Barnet THE COLLECTOR OF TRICHINOPOLY S. Peacock.) (1874) 1 I. A. 282 = 14 B. L. B. 115 = LEKKAMANI. 21 W. R. 358 = 3 Sar. 318

-Preamble of-"Has reserved to itself and has est cised the actual proprietary rights of lands of every decription"-Reference to, of.

The words, "has reserved to itself and has exercised the actual proprietary rights of lands of every description," used in the preamble of Regulation XXXI of 1802 are not precisely the same as those used in the preamble of Regulation XXV but they evidently have reference to the same usages, refa., the custom of dispossessing Zemindars, and taking their Zemindaries into the khas possession of Government, for the purpose of realising the public revenue from time to time assessed upon them (308-9). (Sir Barnes Peacock.) THE COLLECTOR OF TRICHINOPOLY P. LEKKAMANI.

(1874) 1 I. A. 282=14 B. L. B. 115= 21 W. R. 358 = 3 Sar. 318.

#### MADRAS SUPREME COURT.

-SW SUPREME COURT OF MADRAS.

### MAHAL

-Meaning of. See OUDH LAWS ACT OF 1876-(1) (1910) 14 C. W. N. 817. S. 9-MAHAL

(2) S. 9 (2)-MAHAL-MEANING OF. (1910) 37 I. A 124 (132) = 32 A. 351 (3623)

Nature and ownership of - Revenue - Joint liability for-Bases and limits of.

A mahal is a unit of property; it may consist of one village or of several villages: it may be owned by one or seve ral proprietors who may have an interest in all or some of

#### MAHAL-(Contd.)

the villages comprised in the estate. Their joint liability for the Government revenue arises from the fact that they own undivided interests in the property; and that joint liability does not cease in the case of any co-sharer until his particular share has been partitioned by the revenue authorities, when the share so partitioned becomes a separate unit of property. (Air. Ameer Ali.) JADU LAI. SAHU P. JANKI (1912) 39 I. A. 101 (108-9) - 9 A. L. J. 525 = 16 C W. N. 553=15 C. L. J. 483=15 I. C. 659.

### MAHOMEDAN LAW.

MAHOMEDAN.

MAHOMEDANS-SECTS. OF.

MAHOMEDANISM-CONVERSION TO.

APPLICABILITY OF.

AUTHORITIES.

SCHOOLS OF.

ACKNOWLEDGMENT.

ADOPTION AMONG.

ANCESTRAL PROPERTY—SELF-ACQUISITION-MITHAK-SHARA DISTINCTION BETWEEN.

ARIAT.

ARIATNAMA.

BENAMI TRANSACTION.

BROTHER.

CO-HEIRS.

CONCUBINAGE.

CONTRACT FOR CONSIDERATION-DELIVERY OF POS-SESSION IN CASE OF.

CREDITOR'S LIEN OF, RECOGNISED BY BRITISH INDIAN COURTS.

DEBT DUE BY DECKASED.

DEBT DUE TO DECEASED.

DECEASED—REPRESENTATION IN SUIT OF.

DIVORCE. DOWER.

ESTATES RECOGNISED BY.

FATHER.

FAZOLEE.

FAZOLEE MARRIAGE.

FAZOLEE SALE -HANAFI DOCTRINE OF.

FURUCKUTTEE.

GIFT.

GIFT FOR CONSIDERATION.

GIRL.

HIBA-BIL-EWAZ.

HUSBAND AND WIFE

IBRANAMAH.

IDDAT.

ILLEGITIMATE CHILD.

INHERITANCE.

INTEREST.

JOINT FAMILY PROPERTY-SELF-ACQUISITION.

KHARCH-I-PANDAN.

KHOOLANAMAH.

LAND OF ONE PERSON,

LEGITIMACY.

LIEN.

LIFE ESTATE.

MAINTENANCE.

MAJORITY.

MALE MEMBERS OF FAMILY-MORTGAGE OF ANCES-TRAL PROPERTY BY-FEMALE MEMBERS' RIGHT TO DISPUTE VALIDITY OF, AS REGARDS THEIR SHARES.

MARRIAGE.

MINOR.

MOOLTAKIT.

MUTWALI.

PAWN.

### MAHOMEDAN LAW-(Contd.)

PENSION IN PERPETUITY.

PROSTITUTION.

PUBERTY.

RAFADIN.

RELIGION AND LAW.

RELIGIOUS ENDOWMENT.

RESTITUTION OF CONJUGAL RIGHTS.

SAJJADANASHIN.

SELF-ACQUISITION.

SETTLEMENT

SON,

SONS.

TRANSFER REPUGNANT TO.

TRUST.

USURY.

VESTED REMAINDER.

WAKE.

WIDOW.

WIFE.

WILL.

WOMEN.

#### Mahomedan.

-Meaning of-Inheritance and succession-Enactments, earlier and later, dealing with matters of-Meaning in-Distinction. See HINDU LAW-MEANING OF-INHERITANCE AND SUCCESSION.

(1903) 30 I. A. 249 (253)=31 C. 11 (29)

-Sect of, Shia or Soonee. See MAHOMEDAN LAW-INHERITANCE-SECT OF DECEASED.

-Test of-Birth only or religion also. See MADRAS REGULATIONS-ADMINISTRATION OF ESTATES REGU-LATION III OF 1802. (1863) 9 M. I. A. 195 (239).

#### Mahomedans-Sects of,

Deceased-Sect of, Shia or Soonee, See MAHO-MEDAN LAW-INHERITANCE-SECT OF DECEASED.

Sheeak and Somes-Preponderance of latter in India.

It is true that the Soonee law has generally prevailed in India, because the great majority of the Indian Mahomedans are Soonees, there being very few families of the Sheeah sect, except those of the reigning princes, which will account for the prevalence of the Soonee doctrine in the Courts (478). (Mr. Baron Parke.) RAJAH DEEDAR HOSSEIN \*. RANEE ZUHOOR-UN-NISSA. (1841) 2 M. I. A. 441 = 2 Suth. 993=1 Sar. 217.

-Soonee -Orthodox Sunni-Who is an. See MAHO-MEDAN LAW-MAHOMEDANS-SECTS OF-SOONEES -LAW OF. (1891) 18 I. A. 59 (70-1)= 18 C. 448 (459).

-Somes-Late of-Sources of-Orthodox Sunni-Who is an.

The Sunnis follow the four Imams, who appear to agree in placing the sources of their law in the following order :-1. The Koran; 2. The Hadis, or traditions handed down from the Prophet; 3. Ijma, or concordance among the followers; and 4. Kias, or private judgment. Beyond that the four differ in many details, including the loud Amen and Rafadain. No Imam can follow all four in everything. But the followers of any are equally orthodox Sunnis (70-1).
(Lard Hobbourge.) FUZUL KARIM v. HAJI MOWLA BUKSH.

(1891) 18 I. A. 59 = 18 C. 448 (460) = 6 Bar. 19.

#### Mahomedanism-Conversion to.

-Hindu-Conversion of. See HINDU-CONVERT TO MAHOMEDANISM

-Hindu family-Conversion of. See HINDU FAMILY CONVERSION TO MAHOMEDANISM OF.

#### Applicability of.

- (Six also MAHOMEDAN LAW-INHERITANCE-CUSTON OF).

——Hindu Converts to Islam—Groups of—Succession— Lite governing—Females—Exclusion of—Custom as to.

There are among the Mahoenedans certain groups whose ancestors were Hindus and professed the Hindu religion, and were then converted to Islam. Among these groups may be re-koned Khojas. Suni Borahs. Molesalm Girasias, Cutchi Memons. Nassaporia Memons, and Halai Memons, it has been held that the converts had retained their Hindu Law relating to the exclusion of females from succession, and that that law has been engrafted as a custom on the Mahomedan Law. although not in accordance with the rules of the Koran. (Lord Dunglin.) KHATUBALD. MAHOMED HAJI ALU. (1922) 50 I. A. 108 (111-2)=

47 B. 146 (150-1) = 25 Bom. L. R. 127 = 17 L. W. 208 = 37 C. L. J. 131 = 32 M. L. T. 45 = 27 C. W. N. 774 = A. I. R. 1922 P. C. 414 = 72 I. C. 202 = 44 M. L. J. 35

--- Kanchans. See KANCHANS.

--- Memons. See MEMONS.

——Mombasa — Mahomedans in—Succession to—Presumption—Onus of proof. See MOMBASA—MAHOMEDANS IN—SUCCESSION—LAW GOVERNING.

(1915) 43 I.A. 35 (40).

Mombasa—Mahomedans in-Succession—Law applicable to See MOMBASA. (1915) 43 I.A. 35 (40).

#### Authorities.

#### ANCIENT TEXTS.

- Interpretation of, opposed to that of commentators of antiquity and authority-Propriety.

It would be wrong for the Court to put their own construction on a text of the Koran in opposition to the express ruling of commentators of such great antiquity and high authority as the Hedaya (2034). (Lord Davey). AGA MAHOMED JAFFER BINDANEEM F. KOLSOM BEF BEE.

(1897) 24 I.A. 196 = 25 C. 9 (18) = 1 C.W.N. 449 = 7 Sar. 199 = 7 M.L.J. 115.

-New rules from - Deduction of - Propriety-Ancient lawyers not themselves drawing those conclusions -New rules not conducing to justice.

The danger pointed out in 22 I.A. at 86, 87 of relying upon ancient texts of the Mahomedan Law, and even precepts of the Prophet himself, of taking them literally, and deducing from them new rules of law, especially when such proposed rules do not conduce to substantial justice, is equally great whether reliance be placed upon fresh texts newly brought to light, or upon fresh logical inference newly drawn from old and undisputed texts. It would be extremely dangerous to accept as a general principle that new rules of law are to be introduced because they seem to lawyers of the present day to follow logically from ancient texts, however authoritative, when the ancient doctors of law have not thenselves drawn those conclusions (111-12). (Sir Arthur Wilson). BAKER ALI KHAN :: ANJUMAN ARA BEGAM. (1903) 30 I.A. 94-

25 A. 236 (254) = 7 C.W N. 465 = 5 Bom. L.R. 410 = 8 Sar. 397.

--- Hedaya-Faticai Alamgiri-Value of.

The Hedaya and the Fatwai Alamgiri are recognised as standard authorities in India on the Hanafi branch of the Sunni law. Of the Hedaya there is a rendering in English made by Mr. Hamilton under the orders of Warren Hastings; and a large part of the Fatwai Alamgiri, paraphrased into English by Mr. Neil Baillie, forms the work commonly known as Baillie's Digest (Hanafi Law). Both

#### MAHOMEDAN LAW-(Contd.)

Authorities-(Contd.)

ANCIENT TEXTS-(Contd.)

Mr. Hamilton and Mr. Neil Baillie in the renderings have, with the object of elucidation occasionally added phrases which do not exist in the original, but on the whole the English versions of the Hedaya and of the Fatwai Alamgiri are valuable works on Mahomedan Law (89). (Mr. Ameer Ali). IMAMBANDI v. MUTSADDI. (1918) 45 I. A. 73 = 45 C. 878 (899) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. B. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 =

#### Schools of.

5 Pat. L.W. 276-47 I. C. 513 = 35 M. L. J. 422.

- Supremacy of School originally supreme was Swnec-Date of disappearance of its supremacy and of recoguition of Shia law.

At the date of these procedings (about 1810), the only course of succession recognized by the Native Courts was that of the Sunnis, which had been the general law of the country from the time when it first came under Mahomedan rule. This observation does not apply to the state of the law in 1838. Long before that time the supremacy of Sanai law had disappeared, and it must have been generally known that the Shia rule governed the succession of Shias, and the Sunni rule that of Sunnis. (78). (Lord Watton.) MUSSAMMAT HAVAT-UN-NISSA P. SAYYID MUHAMMAD ALI KHAN. (1890) 17 I. A. 73=12 A. 290 (298)=5 Sar. 521.

#### Acknowledgment.

ADULTEROUS INTERCOURSE—OFFSPRING OF. BINDING NATURE OF.

BROTHER—ACKNOWLEDGMENT OF A PERSON AS A. CONCUBINE'S CHILD—TREATMENT AS LEGITIMATE

DENIAL OF RELATIONSHIP AFTER ESTABLISHED. EFFECT OF.

ILLEGITIMATE CHILD—ACKNOWLEDGMENT OF. ISSUE AS TO.

LEGAL SENSE OF.

MOTHER OF ACKNOWLEDGEE-STATUS OF.

MUTA MARRIAGE-CHILDREN OF.

PRESUMPTION OF.

RELATIONSHIPS SUBJECT OF.

SON-ACKNOWLEDGMENT OF.

ADULTEROUS INTERCOURSE-OFFSPRING OF.

--- Legitimation by acknowledgment of.

Ouvre whether under the Mahomedan law the offsping of an adulterous intercourse could be legitimated by any acknowledgment (36). (Lord FitzGerald.) SYED SADA-KUT HOSSEIN :. SYED MOHAMED YUSOOF.

(1883) 11 I.A. 31=10 C. 663 (668)=4 Sar. 519.

#### BINDING NATURE OF.

BROTHER-ACKNOWLEDGMENT OF A PERSON AS A.

——Effect of—Other heirs of acknowledger existing and denying brothership—Inheritance rights of person acknowledged as brother in case of. Sci MAHOMEDAN LAW—ACKNOWLEDGMENT—RELATIONSHIPS ETC.

(1873) 1 I. A. 23 (31-2, 33.)

——Effe.t of—Widow's existence if destroys. See MAHOMEDAN LAW—ACKNOWLEDGMENT—RELATIONSHIPS

ETC. (1873) 1 I. A. 23 (31-2, 33).

— Inheritance—Right of—Acknowledgment so as to confer—What amounts to,

phrased into English by Mr. Neil Baillie, forms the work commonly known as Baillie's Digest (Hanafi Law). Both and their father. Accordingly by the law of the Shiah

Acknowledgment-(Contd.)

BROTHER - ACKNOWLEDGMENT OF A PERSON AS A-(Contd.)

sect of the Mahomedans applicable to the case, the plaintiff would not be heir of E.

After the death of the mother a proceeding in the Civil Court of G was instituted, in which it was recited that the plaintiff, E, and B, sons and daughte: of their mether, de eased, by their pleaders, prayed for a certificate under the provisions of Act XXVII of 1860, on the proof of heirship to the mother. Those three also by some means or other obtained possession of some property belonging to an elder sister, apparently in the character of her heirs.

Held that it was not the intention of the parties by the document referred to above to constitute each brother to the

other, so as to make him an heir to his estate.

All that is directly admitted by the statement in Court (the language being that of the pleader of the parties) is that the plaintiff and the defendant were the sons of their mother, and as such claimed her property. It would be very unduly stretching the purport of this document to take it as an admission that they were also to all intents and purposes brothers and heirs to each other, and that they were entitled to succeed to each other's property, not only property obtained from the mother but any property which might have been obtained by either of them from any source whatever. (Sir Robert P. Collier). MIRZA HIMMUT BAHADUR v. MUSSUMMAT SAHEBZADEE BEGUM.

(1873) 1 I. A. 23 = 13 B. L. R. 182 = 21 W. R. 113-3 Sar. 331.

CONCUBINE'S CHILD-TREATMENT AS LEGITIMATE OF.

-Not evidence of acknowledgment.

Treatment as legitimate of the child of a concubine would furnish evidence of acknowledgment (113-4). (Sir James W. Colvile). ASHRUFOOD DOWLAH ARMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M.I.A. 94-7 W. R. P.C. 1 = 1 Suth. 659 - 2 Sar. 223 =

R. & Js. No. 5 (Oudh).

DENIAL OF RELATIONSHIP AFTER ESTABLISHED.

-Permissibility.

A denial of a son either of a Nikahee or Mootahee wife, after an established acknowledgment, will, according to the Mahomedan Law, be untenable (108), (Ser James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94 = 7 W. R. P.C. 1 = 1 Suth. 659 =

2 Sar. 223 = R. & J's. No. 5 (Oudh).

EFFECT OF.

-There is no question that under the Mahomedan Law acknowledgments may be made of such a kind as to operate not merely as admissions but as actually conferring certain descriptions of status, among others, a status of heirship, limited or general, as the case may be, upon the persons acknowledged. (Sir Robert Collier). MIRZA HIMMUT BAHADOOR P. MUSSUMAT SAHERZADEE BEGUM.

(1873) 1 I. A. 23 (31) = 13 B. L. B. 182 = 2I W. R. 113 = 3 Sar. 331.

-Binding nature of.

There are many cases in which, under Mahomedan Law, acknowledgments are not treated as merely matters of evidence, but have certain legal consequences attached to them, and are binding on third parties, as well as on those who make them (167). OOMRAO BEGUM P. NAWAB NAZIM OF (1875) 3 Suth. 165=24 W.B. 28. BENGAL.

-Mother of knowledgee-Status of-Effect on. Sec UNDER MAHOMADAN LAW-ACKNOWLEDGMENT-SON -ACKNOWLEDGMENT OF-EFFECT OF-MOTHER'S STATUS. I W. IN ASSESSED AND INC.

#### MAHOMEDAN LAW-(Contd.)

Acknowledgment-(Contd.)

ILLEGITIMATE CHILD-ACKNOWLEDGMENT OF.

Admission of paternity if of itself equal to,

Where the evidence came to nothing more than an admission of paternity which was not intended to have the serious effect of conferring the status of legitimacy, held that the evidence fell very far short of such an acknowledgment as would confer the status of legitimacy upon an illegitimate child (70). (Lord Macnaghten). ABDOOL RAZACK r., AGA MAHOMED JAFFER BINDANEEM. (1894)21 I. A. 56= 21 C. 666 (679) = 6 Sar. 389 = 4 M. L. J. 131.

Effect of.

An illegitimate child, if acknowledged, acquires the status of legitimacy. When, therefore, a child really illegitimate by birth becomes legitimated, it is by force of an acknowledgment express or implied, directly proved or presumed (113). (Sir James W. Colvile). ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN & HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 = 7 W. R. P. C. 1= 1 Suth. 659 = 2 Sar. 223 = R. & J's. No. 5 (Oudh).

-Under the Mahomedan law, a child born out of wedlock is illegitimate, if acknowledged, he acquires the status of legitimacy. When, therefore, a child really illegitimate by birth becomes legitimated, it is by force of an acknowledgment, express or implied, directly proved or presumed (69.70). (Lord Macnaghten). ABDOOL RAZACK P. AGA MAHOMED JAFFER BINDANEFM.

(1834) 21 I.A. 56-21 C. 666 (678-9)=6 Sar. 389= 4 M. L. J. 131.

#### ISSUE AS TO.

-Decision of, with aid of opinion of Punchayat Mahomedan gentlemen-Weight due to.

The trial judge was assisted in his decision of this Important and difficult question (as to the legitimacy of a person and as to whether there had been proof of the acknowledgment of his legitimacy) by a Panchayet, as it is termed, formed out of twenty Mahomedan gentlemen, selected with case, and reduced to ten by five challenges on either side; and as the reduced number consisted of ten men, including the High Priest, and another Mahomedan Priest, all of whom are stated to have been mutually approved on both sides, a more competent tribunal could hardly have been appointed for the decision of such a case. On a question of Mahomedan Law, so closely allied as it swith the religion of the Mahoa edans, the opinion of Priests of the dignity of these would be entitled to respect, since they are unlikely to be ignorant of it, or consciously to swerve from it. Such a decision, therefore, creates a more than ordinary presumption of its correctness (105). (Sir James Colvile). ASHRU-FOOD DOWLAH AHMED HOSSEIN P. HYDER HOSSEIN (1866) 11 M. I. A. 94 = 7 W. R. P. C. 1= KHAN. 1 Suth, 659 = 2 Sar. 223 - R. & J's. No. 5 (Oudh).

Meaning of word in.

In a case in which the legitimacy of the defendant-respondent was in question, the issues framed were : (1) Did A (deceased) contract Moottah with defendant's mother before or after his birth? (2) Has the deed of repudiation the effect of cancelling previous acknowledgment of defendant's legitimacy, if such were made?

Held that the second issue used the word "acknowledgment" in its legal sense, under the Mahomedan law, of acknowledgment of antecedent right established by the acknowledgment on the acknowledger, that is, in the sense of a recognition, not simply of sonship, but of legitimacy as a

son (104),

Acknowledgment in the sense of treatment, as evidence simply of marriage or of legitimation, could not have been included with propriety in the issues, though as evidence it

Acknowledgment-(Contd.)

ISSUE AS TO-(Contd.)

would not lose any part of its efficacy by reason of the wording of the issues (104). (Sir James W. Celvile.) ASHKU-FOOD DOWLAH AHMED HOSSEIN KHAN P. HADER HOSSEIN KHAN. (1866) 11 M. J. A. 94 - 7 R. W. P. C. 1 = 1 Suth. 659 - 2 Sar. 223 - R. & J's No. 5 (Oudh).

LEGAL SENSE OF.

— Under the Mahomedan Law, the word "acknowledgment" in its legal sense, means acknowledgment of antecedent right established by the acknowledgment on the acknowledger, that is, in the sense of a recognition, not simply of sonship, but of legitimacy as a son (104). (Sir James IV. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94 = 7 W. R. P.C. 1=1 Suth. 659=2 Say. 223=

R. & J's No. 5 (Oudh).

The word "acknowledgment" in its legal sense, under the Mahomedan law, is an acknowledgment of antecedent right established by the acknowledgment on the acknowledger, that is, a recognition, not simply of sonship, but of legitimacy as a son (69.70). (Lord Macmaghten.) ABDOOL RAZACK P. AGA MAHOMED JAFFER BINDA-NEEM. (1894) 21 I. A. 56=21 C. 666 (678) = 6 Sar. 389=4 M. L. J. 131.

MOTHER OF ACKNOWLEDGEL-STATUS OF.

——Effect of acknowledgment on. See MAHOMEDAN LAW—ACKNOWLEDGMENT—SON—ACKNOWLEDGMENT OF—EFFECT OF—MOTHER'S STATUS.

#### MUTA MARRIAGE-CHILDREN OF.

——Legitimacy of—Acknowledgment of - Proof of. See MAHOMEDAN LAW—MARRIAGE = MUTA MARRIAGE = CHILDREN OF. (1903) 30 I. A. 94 (103) = 25 A. 236 (247).

PRESUMPTION OF.

Propriety of.

The Courts have properly presumed, in many cases, both marriage and acknowledgment; for to presume acknowledgment, and to consider treatment as tantamount to it, is virtually the same thing. The loss or destruction of evidence by time or design is as likely to take place with respect to acknowledgment as with respect to any other subject; and whilst matters of the highest import are capable of being inferred and are inferred from circumstances, it would be a merely arbitrary limitation of legitimate inference to exempt this one subject from its operation (116). (Sir James W. Celvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 = 7 W. R. P.C. 1 = 1 Suth. 659 = 2 Sar. 223 = B. & J's. No. 5 (Oudh)

#### RELATIONSHIPS SUBJECT OF.

Brother - Acknowledgment of - Validity - Other heirs - Existence of - Effect - Widow if an heir within meaning of rule.

With regard to acknowledgments of relationship, the law is thus laid down in Baillie's "Digest of Mahomedan Law," -- "The acknowledgment of a man is valid in regard to five persons, his father, mother, child, wife, and mowla, because in all these cases he acknowledges an obligation, and it is not valid except for these." After giving cases of those acknowledgments which have been stated to be valid, the author adds:—"The acknowledgment of a man is not valid with respect to any other persons than those before mentioned, such as a brother, or a paternal or a maternal uncle, or the like." If this passage stood without further explanation it would lead to the conclusion that by the Mahomedan Law an acknowledgment of one person by another as his brother,

### MAHOMEDAN LAW-(Contd.)

Acknowledgment-(Contd.)

RELATIONSHIPS SUBJECT OF-(Contd.)

and as such his heir and successor, would have no validity. However the passage is further explained thus:—"When it is said that the acknowledgment of a man is not valid with respect to any other than those above mentioned, it is only meant that it is not obligatory on any other except the acknowledger and the acknowledged; but with regard to such rights as affect them only the acknowledgment is valid, so that if one were to acknowledge a brother, for instance, having other heirs besides who deny the brothership, and the acknowledger should die, the brother would not inherit with the other heirs, nor would he inherit from the acknowledger's father if he denied the descent, but he would be entitled to maintenance as against the acknowledger himself during his life."

Quarz whether the widow is or is not an heir in the sense in which the word is used in the passage above cited, so that her existence would destroy the effect of the acknowledgment of a brother. (Sir Robert Collier.) MIRZA HIMMUT BAHADOOR T. MUSSUMAT SAHIB ZADEE BEGUM.

(1873) 1 I. A. 23 (31-2, 33) = 13 B. L. B. 182 = 21 W. B. 113 = 3 Sar. 331.

#### SON-ACKNOWLEDGMENT OF.

-Acknowledgment of legitimacy if amounts to.

In a case in which the question was whether M was the legitimate son of a Nawab by his muta wife, it was admitted that M was the son of the alleged muta wife, and four witnesses proved distinctly that the Nawab acknowledged M to be his son, keld that that prima facie meant his legitimate son (232). (Lord Atkinson.) SADIK HUSSAIN KHAN T. HASHIM ALI KHAN. (1916) 43 I. A. 212

38 A. 627 (659) = (1916) 2 M. W. N. 677 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 L. C. 104 = 31 M. L. J. 607.

——Denial of son after established—Permissibility. Sα MAHOMEDAN LAW—ACKNOWLEDGMENT—DENIAL OF RELATIONSHIP AFTER FSTABLISHED.

(1866) 11 M. I. A. 94 (108).

-Effect of.

Under the Mahomedan law the acknowledgment and recognition of children by a Mahomedan as his sons gives
them the status of sons capable of inheriting as legitimate
sons unless certain conditions exist. (Sir Montagut E.
Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN F.
MUSSUMAT LALLI BEGUM. (1881) 9 I. A. 8 (18)=

8 C. 422 (432) = 4 Sar. 310 = 17 P. R. 1882 (Civil), —(Lord Fitz Gerald.) Syed Sadakut Hoossein v.

SVED MAHOMED YUSOOF. (1883) 11 I. A. 31 (36)= 10 C. 663 (668)=4 Sar. 519.

----Effect of-Illegitimacy of son proved-Effect in cost of-Distinction.

Under the Mahomedan law no statement made by one man that another (proved to be illegitimate) is his son can make that other legitimate, but where no proof of that kind has been given such a statement or acknowledgment is substantive evidence that the person so acknowledged is the legitimate son of the person who makes the statement provided his legitimacy be possible (234). (Lord Atkinson.) SADIK HUSSAIN KHAN 2. HASHIM ALI KHAN.

(1916) 43 I. A. 212=38 A. 627 (661)= (1916) 2 M. W. N. 577=21 M. L. T. 40= 6 L. W. 378=21 C. W. N. 133=25 C. L. J. 363= 14 A. L. J. 1248=18 Bom. L. B. 1037=19 O.O. 198= 1 Pat. L. W. 157=36 I. C. 104=31 M. L. J. 507.

Acknowledgment-(Contd.)

SON-ACKNOWLEDGMENT OF-(Contd.)

-Effect of-Mother's marriage with acknowledges disproved.

Under the Mahomedan Law an acknowledgment by a person that his natural son is his legitimate son will not in law confer the status of legitimacy on the son where it is established as a fact that no marriage took place between the son's mother and the a:knowledger. In face of the fact that there was no marriage such an acknowledgment is of no avail.

The status of legitimacy is not acquired by a proper acknowledgment, and the Coart is not precluded on proof of a good acknowledgment from inquiring into the fact of marriage. In Mahomedan law such an acknowledgment is a declaration of legitimacy and not a legitimation. aration, though it cannot be withdrawn, may be contradicted, for it is only a statement; legitimation is an act, which being done cannot be done. (Lord Dungdin.) HARIBUR RAHMAN CHOWDHURY F. ALTAF ALI CHOWDHURY

(1921) 48 I. A. 114 (121-2) - 48 C. 856 (865) = 19 A.L.J. 414 = 33 C.L.J. 479 - (1921) M. W. N. 366 -26 C. W. N. 81 = 23 Bom. L. R. 636 = 29 M. L. T. 354 = 14 L. W. 175 = A.I.R. 1922 P.C. 159 - 60 I. C. 837 = 40 M. L. J. 510.

Effect of -Mother's status-Effect on.

Quare: whether, under the Mahomedan law, the acknowledgment of a son as legitimate who might be a legitimate son of his acknowledger necessarily in all cases raises its mother to the status of a wife (193) (Sir Richard Kindersely.) WISE P. SUNDULOONISSA CHOWDRANGE

(1867) 11 M. I. A. 177 = 7 W. R. P. C. 13 = 1 Suth. 667 = 2 Sar. 249.

The question was whether one L. was merely a concubine or a wife of D. It was an undisputed fact that A. the son of L, was treated by his father and by all the members of the family as a legitimate son. It was not that he was on any particular occasions recognised by his father, but that he always appeared to have been treated on the same footing as the other legitimate son.

Held that circumstance of itself raised some presumption

that his mother was his father's wife (311).

In the case in 3 M.I.A. 295 at 318, their Lordships observed: "Where a child has been born to a father, of a mother, where there has been not a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to such a marriage, then, according to the Mahomedan Law, the presumption is in favour of such marriage having taken place." In this case there is no evidence that L was a woman of bad character, or that her connection was merely casual. She appears to have lived in the house at all events up to the date of the death

The undoubted acknowledgment by the father and by the whole family of the legitimacy of A' raises some presumption of the marriage of his mother (312). (Sir Robert P. RANEE KHUJOOROONISSA P. MUSSAMUT (1876) 3 I.A. 291= ROUSHUN JEHAN. 2 C. 184 (199 200) = 26 W.R. 36 = 3 Sar. 629.

Clear and reliable evidence that a Mahomedan has acknowledged his children as his legitimate issue raises a presumption of a valid marriage between him and the children's mother (81-2). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI. (1918) 45 LA. 73 = 45 C. 878 (889-90) = 20 Bom. LB. 1022 = 23 C.W.N. 50 = 28 C.L.J. 409 = 5 P.L.W. 276 = 16 A.L.J. 800 = 24 M.L.T. 330 =

(1919) M.W.N. 91 = 47 I.C. 513 = 35 M.L.J. 422.

Under the Mahomedan Law, the status of legitimacy

M AHOMEDAN LAW-(Conta.)

Acknowledgment-(Contd.)

SON-ACKNOWLEDGMENT OF-(Contd.)

acknowledgment raises a presumption of marriage-a presumption which may be taken advantage of either by a wife claimant or a son claimant. Being, however, a presumption of fact, and not juris et de jure, it is like every other presumption of fact, capable of being set aside by contrary proof. The result is that claimant son who has in his favour a good acknowledgment of legitimacy is in this position. The marriage will be held proved and his legitimacy established unless the marriage is disproved. Until the claimant establishes his acknowledgment the onus is on him to prove a marriage. Once he establishes an acknowledgment, the ours is on those who deny a marriage to negative it in fact. (Lord Duncajn.) HABIBUR RAHMAN CHOW-DHURY P. ALTAF ALI CHOWDHURY.

(1921) 48 I.A. 114 = 48 C. 856 (865) = 19 A.L.J. 414 = 33 C.L.J. 479-(1921) M.W.N. 366-26 C.W.N. 81= 23 Bom. L.R. 636 - 29 M.L.T. 354 = 14 L.W. 175 = A.I.R. 1922 P.C. 159 = 60 I.C. 837 = 40 M.L.J. 510.

-An acknowledgment by the father, involving the assertion that he was married to the mother of the acknowledgee, undoubtedly raises a presumption in favour of the marriage and of the legitimacy. The presumption is, no doubt, rebuttable, and if there is proved alrunde to the effect that there was no such marriage in fact, the same position is reached as if no such marriage had been possible. In such a case the onus of proving that there was no marriage rests upon the party alleging the same. (Lord Shate.) MOHAB-BUT ALI KHAN P. MD. IBRAHIM KHAN.

(1929) 56 I.A. 201 = 10 Lah. 725 = 27 A.L.J. 465 = 33 C.W.N. 645 = 30 Bom. L.R. 846 = 6 O.W.N. 517 = 30 L.W. 97 = 117 I.C. 17 = 50 C.L.J. 89 == (1929) M.W.N. 676 - A.I.R. 1929 P.C. 135 at 57 M.L.J. 366.

Evidence of - Positive evidence-Effect of-Evidence counteracting-Pedigree of family prepared by father without mention of boy's name if.

The question was whether R, one of the plaintiffs, had been acknowledged and recognised by the deceased Nawab as his son, so as to give him the status of a son, and a title to inherit.

There was positive evidence of the acknowledgment of A' by the Nawab. The evidence given on the part of the defendant on that point was unsatisfactory. The defendant, however, produced and relied upon a genealogical tree of the Nawab's family which was returned by him to the Government. That tree was prepared after the birth of R. but it made no mention of A'.

Held that, though the pedigree would be a piece of evidence favourable to the view of the defendant, and perhaps strongly favourable to that view, it would not be sufficient to outweigh the positive evidence of the acknowledgment of R by the Nawab (17). (Sir Montagne E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN P. MUSSAMAT LALLI (1881) 9 I.A. 8 = 8 C. 422 (431-2) = BEGUM. 4 Sar. 310=17 P.R. 1882 (Civil).

-Evidence of-Titular name of Khan given by acknowledger to boy-Value of.

The question was whether there was proof of an acknowledgment and recognition by the deceased Nawab, Ahmed Ali Khan, of the two plaintiffs, as his sons, which would give them the status of sons and a title to inherit. It appeared that the plaintiffs received the titular name of Khan, and that they bore that name even during the lifetime of Nawah, in fact, always,

Held that, that was an important circumstance, as it was is not acquired by a proper acknowledgment. Such an not likely that the father would have bestowed it upon any

Acknowledgment-(Contd.)

SON-ACKNOWLEDGMENT OF-(Contd.)

but his acknowledged and legitimate sons (16). (Sir Montague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN
r. MUSSAMAT LALLI BEGUM. (1881) 9 I.A. 8-

8 C. 422 (433-4) = 4 Sar. 310 = 17 P.R. 1882 (Civil).

- Inference of, from open treatment as son-Permissibility.

There need not be proof of an express acknowledgment. An acknowledgment of children by a Mahomedan as his sons may be inferred from his having openly treated them as such (18). (Six Montague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN v. MUSSAMAT LALLI BEGUM.

(1881) 9 I.A. 8-8 C. 422 (432)= 4 Sar. 310-17 P.B. 1882 (Civil).

——Legitimacy of son—Acceptance of—Acknowled gment showing—Necessity.

Under the Mahomedan Law, an acknowledgment must be not merely of sonship, but must be made in such a way that it shows that the acknowledger meant to accept the other not only as his son, but as his legitimate son. It must not be impossible upon the face of it; i.e., it must not be made when the ages are such that it is impossible in nature for the acknowledger to be the father of the acknowledgee, or when the mother spoken to in an acknowledgment, being the wife of another, or with prohibited degrees of the acknowledger, it would be apparent that the issue would be the issue of adultery or incest. (Lard Dunodin.) HABIBUR RAHMAN CHOWDHURY P. ALTAF ALI CHOWDHURY.

(1921) 48 I.A. 114 (120·1)= 48 C. 856 (864)= 19 A.L.J. 414=33 C.L.J. 479=(1921) M.W.N. 366= 26 C.W.N. 61=23 Bom. L.R. 636=29 M.L.T. 354= 14 L.W. 175=A I.R. 1922 P.C. 159= 60 I.C. 837=40 M.L.J. 510.

of. Mother of boy Acknowledgment of as wife-Effect

Held that an acknowledgment, which acknowledged the mother as wife involved the consequence of raising the mother to the status of a wife (193-4.) (Sir Richard Kindersely.) WISE v. SUNDULOONISSA CHOWDH-RANEE. (1867) 11 M.I.A. 177-7 W.B. P.C. 13-1 Suth. 667-2 Sar. 249.

--- Presumption of, from treatment as son.

From the treatment of children by a Mahomedan as his sons, an acknowledgment may under certain circumstances be presumed. The question whether the acknowledgment should be presumed or not must of course depend on the circumstances of each particular case in which it arises (18). (Sir Montagne E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN v. MUSSUMAT LALLI BEGUM.

(1881) 9 LA. 8 = 8 C. 422 (432-3) = 4 Sar. 310 = 17 P.B. 1882 (Civil).

- Proof of.

The question was there was proof of an acknowledgment and recognition by the deceased Nawab of the two plaintiffs as his sons, which would give the status of sons and a title to inherit.

R, the eller son, was born 6 or 7 years before the Nawab's death. The evidence showed that he was treated by the Nawab as a legitimate son would be. He was often taken by his father on visits to the houses of Mr. W, a native of India but educated by an Englishman and a Government Official, and Major P. another British Officer, both living in the neighbourhood. The Nawab appeared to have introduced R as his son, and the evidence was that he treated him with greater affection than his admittedly legitimate eldest son. Not only in the Nawab's house was R put forward as his son, but he was taken on the above-mention-

### MAHOMEDAN LAW-(Contd).

Acknowledgment-(Contd.)

erl and other visits as if he were a legitimate son. He was always dressed as a legitimate son would be. When R's education was about to be commenced the Bismillah ceremony was performed. At that ceremony he was introduced and treated as the son of the Nawab. Further it appeared that in a report made by the Nawab to the Government a year before his death respecting the onus belonging to his family, the Nawah described R as the Nawab's son. Ruslain Alikhan," and returned exactly the same number of arms as belonging to him as belonged to his admittedly by legitimate eldest son. As against all this it was attempted to be shown that the plaintiffs were, in fact, the children of a slave girl allowed to have promiscuous intercourse with men outside the Nawab's house, and whose fathers, some of the witnesses said, it was impossible to know. That evidence, and the evidence which sought to prove that the hoys were treated as such children would probably be treated, was, however, utterly unworthy of credit.

The other plaintiff, U, was born shortly before the Nawab's death, probably about a year, or a little more. The evidence of his acknowledgment and recognition was, as might be naturally expected, much less than that in the case of R. Still enough was shown in the case of U also to satisfy their Lordships, as it satisfied the Judges of the Court below, that he was acknowledged and treated as a son.

Held that an acknowledgment by the Nawab of both the minor plaintiffs as his sons had been proved (12-7). (Sir Montague E. Smith.) NAWAB MUHANMAD AZMAT ALI KHAN r. MUSSAMAT LALLA BEGUM.

(1881) 9 I. A. 8 = 8 C. 422 (432) = 4 Sar. 310 = 17 P. B. 1882 (Civil).

The question for decision was whether S,—who was beyond question the actual son of A by a woman D,—had been so recognised by A as to give him the status of a son capable of inheriting A's estate.

Held, affirming the courts below, that there was sufficient evidence of the acknowledgment by A of S as his son, from which an inference was fairly to be deduced that the father intended to recognise him and give him the status of a son capable of inheriting (36).

Their Lordships think that the status of S as son has been sufficiently established by recognition so as to enable him to claim as heir (36). (Lord Fitz Gerald.) SYED SADAKUT HOSSEIN 2: SYED MAHOMED YUSOOF.

(1883) 11 I. A. 31 = 10 C. 663 (668-9) = 4 Sar. 519.

—Several sons by same rooman—Acknowledgment of

each son in case of-Necessity.

In a case in which the question was whether there was proof of an acknowledgment and recognition by the decased Nawab of the two plaintiffs (children of the 1st respondent) as his sons, which would give them the status of sons and a title to inherit, held that undoubtedly an acknowledgment of each son must be proved (16). (Sir Montague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN v. MUSSAMAT LALLI BEGUM. (1881) 9 I. A. 8 = 8 C. 422 (431) 4 Sar. 310 = 17 P. R. 1882 (Civil).

one or some of Acknowledgment of other or others from
Resumption of.

The question was whether there was proof of an acknowledgment and recognition by the deceased Nawab of the two plaintiffs as his sons, which would give him the status of sons and a title to inherit.

Both the plaintiffs were the sons of the 1st respondent. The elder was born six or seven years before the death of the Nawab; and the younger shortly before his death, pro-

Acknowledgment-(Contd.)

SON-ACKNOWLEDGMENT OF-(Contd.)

bably about a year or little more. The evidence of the acknowledgment of the elder son was extremely strong. That of the acknowledgment and recognition of the younger son was much less than in the case of the elder brother.

Held that, though an acknowledgment of each son must be proved, yet in the actual circumstances of the case before their Lordships, it was highly probable that when the Nawab had recognised the elder son of the 1st respondent, he would also acknowledge the younger, that that probability gave support to the evidence in the case of the latter, and that there was no reason for the Nawab's making a distinction between them (16-7). (Sir Montague E. Smith.)

NAWAB MUHAMMAD AZMAT ALI KHAN F. MUSSAMAT LALLI BEGUM (1881) 9 I. A. 8 = 8 C. 422 (431-2) = 4 Sat. 310 = 17 P. B. 1882 (Civil).

#### Adoption among.

Legality of.

No power of adoption is known to the Mahomedan Law
(224). (Lord Justice Knight Bruce.) AMEER-OON-NISSA
v. MOORAD-OON-NISSA. (1855) 6 M. I. A. 211=
1 Sar. 533

——See also MAHOMEDAN I.AW — INHERITANCE—ADOPTED SON. (1865) 10 M. I. A. 252 (278).

——Adoption is not known to the general law of Mahomedans (199). (Lord Hobbouse.) GHASITI AND NANHI JAN v. UMRAO JAN. (1893) 20 I. A. 193 = 21 C. 149 = 6 Sar. 370 = 52 P. B. 1893.

— Under the general Mahomedan Law an adoption cannot be made; an adoption, if made in fact by a Mahomedan, could carry with it no right of inheritance (25). (Sir John Edge.) UMAR KHAN 2. NIAZ-UD-DIN KHAN. (1911) 39 I. A. 19=39 C. 418 (432)=15 C. L. J. 172=16 C. W. N. 458=9 A. L. J. 137=14 Bom. L. R. 182=13 I. C. 344=12 P. L. R. 1912=11 M. L. T. 76=6 P. W. R. 1912=(1912) 1 M. W. N. 77=22 M. L. J. 240.

#### A'kar.

-Meaning of.

A'kar is immoveable property, and includes houses, groves, orchards, etc. (85). (Mr. Ameer Mi.) IMAMBANDI 2. MUTSADDI. (1918) 45 I. A. 73 = 45 C. 878 (894, 902) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L.B. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 Pat. L. W. 276 = 47 I. C. 513 = 35 M. L. J. 422.

Ancestral Property—Self Acquisition— Mithakshara distinction between.

-Inapplicability of. See MAHOMEDAN LAW-IN-HERITANCE-ANCESTRAL PROPERTY.

#### Ariat.

An ariat or loan, in Mahomedan Law, would seem to be no more than a licence to take the profits of the property given, revocable by the donor (35). (Sir Montague E Smith.) HAJI MAHOMMED FAIZ AHMED KHAN v. HAJI (1881) 8 I. A. 25 = GHULAM AHMED KHAN.

3 A. 490 (500) = 4 Sar. 218.

#### Ariatnama.

— Gift for consideration—Test. See MAHOMEDAN LAW—GIFT FOR CONSIDERATION—ARIATNAMA. (1881) 8 I. A. 25 (38)=3 A. 490 (503-4).

#### Benami transaction.

ADVANCEMENT—ENGLISH LAW PRESUMPTION OF. CHILDREN—PURCHASE IN NAMES OF. FATHER—DAUHTER—GIFT TO. FATHER—SON—GIFT TO.

#### MAHOMEDAN LAW-(Contd.)

Benami transaction-(Contd.)

FATHER—SON—PURCHASE IN NAME OF - BENAMI OR NOT.

HUSBAND.

MOTHER-DAUGHTER.

NEPHEW—CONVEYANCE FOR VALUE IN FAVOUR OF, SON AND WIFE—PURCHASE IN NAMES OF,

WIFE.

ADVANCEMENT-ENGLISH LAW PRESUMPTION OF.

CHILDREN—PURCHASE IN NAMES OF.

-Common in India. See BENAMI—CHILDREN.

(1854) 6 M. I. A. 53(79)

#### FATHER-DAUGHTER-GIFT TO.

—Benami or not.

M, a Mahomedan gentleman, was of somewhat weak insellect and impaired health, and was not capable of managing his affairs. His son, the defendant left him in March, 1874, in consequence of a quarrel, carrying with him a large quantity of jewellery to which he laid claim, and M was a good deal annoyed in consequence. On 28-4-1874 Af made a gift of certain immoveable property, and also of a large quantity of moveable property, in lieu of a ring set with diamonds which he had received from his daughter, the plaintiff. The deed of gift stated: "I have transferred possession of all the property transferred by gift above referred to and detailed below, by putting the donee in possession thereof. The conditions of offer and acceptance, with transfer of possession, have been thoroughly completed. This is a valid and lawful gift." On the 1st of May, 1874, he also executed a deed of the same description, transferring certain other property which was mentioned in the schedule to that deed. On the same date (1-5-1874) the plaintiff professed to give to AI's muta wife a certain house for her lifetime; and a short time afterwards leased to him a portion of what had been previously his own house. The son, the defendant came back and joined M on the 6th of May, after the above documents had been executed.

In a suit instituted by the plaintiff against the defendant and M for restitution of goods, etc., conveyed to her under the deed of gift of 28-4-1874, the Court below held that the deed, in form at all events, was what was called a hiba-bileway, and that it would operate under the Mahomedan Law, if operative at all, to transfer the property without delivery of possession; but it came to the conclusion from all the circumstances of the case, amongst others from the absence of any change of possession, that the deed was not intended to operate as an immediate transfer or conveyance of the property, and that therefore it was void and of no effect.

Held, on the evidence affirming the Court below, that there was no intention on the part of M to make an immediate transfer of the property to the plaintiff, and that the plaintiff herself must have perfectly understood that the transaction was not a real one. (Sir Robert P. Collier.) NAWAB UMAT-UZ-ZOHRA P. NAWAB MIRZA ALI KADR.

(1879) 3 Suth. 601 = Bald. 208 = 3 I. J. 290 = B. & J's. No. 56 (Oudh).

#### FATHER-SON-GIFT TO.

-Benami or not.

Where the question was whether a transaction purporting to be a gift by a Mahomedan in favour of his son was intended to be a transfer of the true ownership, or was a benami transaction leaving the true ownership in the transferor, held, on a consideration of the position of the parties at the time of the transaction and of their conduct between the date of the transaction in question and that of the death of the transferor, that the transaction was only a benami

#### MAHOMEDAN LAW-(Centil.)

Benami transaction-(Contd.)

FATHER-SON-GIFT TO-(Contd.)

transaction. (Lord Hobbouse.) NAWAB IBRAHIM ALI KHAN P. UMMAT-UL-ZOHRA. (1896) 24 I. A. 1 19 A. 267-7 Sar. 117.

Benami or not-Object of transaction to give son more than would come to him by succession air intestato,

Where the object of a gift by a Mahomedan father to his son was to give the son a larger share of the father's property than would come to him by succession ah intestate held that the transaction could not be a mere bename transaction (546). (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN: MUSSUMAT MOHUNDEE BEGUM.

(1867) 11 M. I. A. 517 = 10 W. R. P. C. 25 = 2 Suth. 98 = 2 Sar 315 = R. & J's. No. 7 (Oudh).

-Family settlement—Benami transaction to be followed by-Test-Evidence.

In this case certain hibbanamahs were executed by the defendant (a Mahomedan father) in favour of his son, the plaintiff The trial Judge held, on the evidence, that the transfers, purporting to be made by the hibbanamahs, were " purely nominal," and that the father did not intend that any property should pass by them, or at least whilst he lived (104).

The High Court, on the other hand, came to the conclusion that the transfers were not colourable, but intended to

operate as real gifts (104),

Their Lordships were disposed to adopt the opinion of the trial Judge that an absolute gift was not intended, and that the transaction was either purely benamee, or, more probably, to be followed by a family settlement (111.) (Sir Montague E. Smith.) AMEEROONISSA KHATOON P. ABE-DOONISSA KHATOON. (1875) 2 I. A. 87 = 15 B. L. R. 67 = 23 W. R. 208 = 3 Sar. 423 - 3 Suth. 87.

-Family settlement-Fraudulent bename-Gift-Test-Evidence.

The question was whether a certain hibbanama executed by a Mahomedan in favour of his son by his second wife, a boy of ten years of age at the time, was benami, or was fraudulent and void as against his creditors.

Held, on a fair and full consideration of the state of circumstances existing at the time of the hibba, and the course of conduct pursued afterwards, that it was benami to this extent-that it was a mere pocket instrument, not intended to operate according to its tenor and effect, but by which property was put in the name of the son but for the benefit of the alleged donor, his father (17).

Held further that even if the hibba was operative as between the parties, it was, according to equity and good conscience, fraudulent and void as against creditors (19).

The hibba was not, and could not be dealt with as, a family settlement. There was no occasion for it, and the grantee was a boy of ten. It was a covinous instrument, not made bons fide or on any good consideration, and by which creditors have been delayed in their just rights. Taking the transaction as a whole, the intention of the settlor was to protect the property from those who were his creditors at the time (19;. (Lord Fit: Gerald.) ABDOOL HYE r. MIR MAHOMED MOZUFFER HOSSEIN.

(1883) 11 I. A. 10=10 C. 616 (623 4)=4 Sar. 500.

FATHER-SON-PURCHASE IN NAME OF-BENAMI OR -Held, on the evidence, reversing the Courts below,

that a purchase made by a Mahomedan in the name of his son was only benamee for the father. (Sir James W. Colvile.) MOULVIE SAYYUD UZHUR ALI v. MUSSUMAT BEBEE ULTAF FATIMA. (1869) 13 M. I. A. 232=

13 W. R. 1=4 B. L. R. 1=2 Suth. 279=2 Sar. 522.

### MAHOMEDAN LAW-(Contd.)

Benami transaction-(Contd.)

FATHER-SON-PURCHASE IN NAME OF-BENAMI OR NOT-(Contd.)

Where a father, being in insolvent circumstances when he purchased a property, mortgaged it, and the mort gagee who had foreclosed and had become the absolute owner of the property, not caring (out of consideration for the father and the family) to insist on retaining the whole value of the property so acquired, but willing to allow it to go back to the family on being satisfied or secured the real amount of his debt, made a conveyance of his interest under the foreclosure in consideration of money raised by the sont it was held, that the arrangement was made for the benefiof the family, and that the father's creditors had no equi, table or moral right to the property. (Lord Justice James.) FAEZ BUKSH CHOWDRY 71. TUKEEROODDEEN MAHOM-(1871) 14 M. I. A. 234 (244) = 9 B. L. B. 456= 2 Suth. 490 = 2 Sar. 733.

... a Mahomedan, and his brother had granted a putni to two persons, against whose representatives decrees were executed, one in February and one in June, 1867. In execution of those decrees the putni was sold and purchased ostensibly in the name of .1/, guardian and executrix of the two minor sons of A. and the sale deed was in favour of those minors. Admittedly A found the purchase-money. The question for decision was whether he intended his sons to be benamidars or beneficial owners. The Courts below concurrently found that the sons were not benamidars but beneficial owners. Their Lordships affirmed the finding below (46-7). (Lord Hobbouse.) SYED ASHGAR ROZA 2. SVED MEDHI HOSSEIN KHAN.

(1893) 20 I. A. 38 = 20 C. 560 (572-3).

-Concurrent findings as to-Privy Council's inter ference with.

When the question was whether the properties which had been purchased by a Mahomedan were put by him into the name of his son benami for himself or as a provision for the son, and there were concurrent findings of both Courts that the transaction was not benami but was made as a provision for the son, and it could not be said that there was no evidence on which to base the finding, held that the finding would not be disturbed by their Lordships. (Lord Dungdin.) MUHAMMAD WALI KHAN r. MUHAMMAD (1919) 11 L. W. 421 (423)= MOHI-UD-DIN KHAN.

24 C. W. N. 321 = (1920) M. W. N. 189 27 M. L. T. 204 = 58 I. C. 843.

-Object of to prevent daughters from succeeding W property.

The question was whether R, the deceased son of the original appellant, was the real owner of certain properties which stood in his name or was a mere benamee-bolder of those properties for his father. The case for the father was that the funds which purchased the suit properties in the name of R were exclusively the funds of the father; that a legal presumption thence arose that the proprietary right was the father's, and that the respondents, the attaching decree-holders of R, had not rebutted that presumption.

The Courts below found as a fact, that the father pur chased the suit properties with his own funds in the name of R, but nevertheless held that R was not a mere benamidar for his father. In support of their conclusion they relied on the father's own explanation of the cause of the conveyance being taken in the name of his son, R. The explanation given by the father was that there were daughters in his family, and that he took the conveyance in the name of his sons, because he wanted to change the amount of shares of the whole property on a succession between sons and daugh-

Benami transaction - (Could.)

FATHER—SON—PURCHASE IN NAME OF BENAMI OR NOT—(Contd.)

Held that the courts below were justified in regarding the whole evidence before them as not sufficient to establish the case of benamee ownership which the father advanced (402).

Had this fact (the father furnishing the purchase money) received no other addition than that the conveyance was taken in the names of his sons, the case would have fallen within the case of Gopeekrist Gossain (6 M. I. A. 53), and the argument for the father must have prevailed, but the courts below rely on a very important addition to those facts, in the father's own explanation of the cause of the conveyance to his sons; the Courts below thence inferred that a motive existed for it in the state of his family, the existence of daughters, and his desire, as expressed, to vary the rule of succession between sons and daughters in his family. If the conveyance to the sons was designed to produce an effect thereafter, by changing the amount of shares of the whole property on a succession between sons and daughters, it could not be designed as a mere naked Benamee conveyance, because a mere benamee conveyance would in no way affect such succession. But if as the father himself represented the transaction, it was designed to affect the daughter's claims, or interests, it could only so operate as a real transaction, that is, by a conveyance of interest to the sons (401-2.) (Sir Joseph Napier.) NAWAB AZIMUT ALI KHAN P. HURDWAREE MULL

(1870) 13 M. I. A. 395=14 W. R. P. C. 114= 5 B. L. R. P. C. 578=2 Suth. 343=2 Sar. 571.

#### HUSBAND.

-Benamidar for wife-Plea by latter of -Presumption-Onus of Proof-Ostensible ownership with husband.

In a suit by the respondents, claiming to be the nearest relations and only heirs, according to the Mahomedan law, of A, for the recovery from the appellant, his widow, of a zemindary and other properties of which A was, at the date of his death, the registered and ostensible proprietor, the appellant pleaded that A, though the ostensible purchaser and registered holder of the properties, was a mere manager and trustee for her and her family.

Held, though the oral testimony adduced by the respondents to prove the poverty of the appellant and her family, and that A, at the date of his marriage, had some, though not very ample means was hardly more trustworthy than that on the part of the appellant, the respondents were entitled to rely on the presumption resulting from his ostensible ownership of the property, until that was satisfactorily rebutted.

Held, on the evidence, that of the two cases set up by the parties, the weight of evidence was in favour of that of the respondents (219-20). (Sir James W. Colvile.) MEETH-UN BEBEE v. BUSHEER KHAN. (1867) 11 M. I. A. 213 = 1 Suth. 683-7 W. B. P. C. 27-2 Sar. 255.

----Estate held by another person as benamidar for-Transfer to first wife of, on occasion of husband's second marriage-Benami or gift,

A Mahomedan was the absolute owner of an estate held for him by a benamidar. He married a second wife, and somewhere about the same time, directed his benamidar, to effect a transfer of the formal and ostensible title to his first wife. On a question arising as to whether the transfer to the first wife was merely a benami transaction, merely effecting a change of the benamidar, or was really a gift to her of the property transferred. The Sub-Judge found that it was a gift. The High Court reversed him, holding that the transfer was merely a benami transaction.

#### MAHOMEDAN LAW-(Contd.)

Benami transaction-(Contd.)

HUSBAND-(Contd.)

Their Lordships agreed with the view of the Sub-Judge, (Lord Hobbouse.) ASGHAR REZA P. MEHDI HOSSEIN,

(1893) 20 I A. 38 (48-9) = 20 C. 560 (573) = 6 Sar. 283 = 17 I. J. 226.

——Purchase in name of Wife-Benami for husband or not Mortgage deed in his favour-Sale deed in wife's name in discharge of.

The respondent was the wife of the appellant. The appellant was mortgagee under a mortgage dated 10-5-1870. On 14-5-1875 the mortgagors executed a sale deed of the mortgaged property to the respondent. The deed of sale recited that a sum of Rs. 11,000 was found to be due to the appellant for principal and interest under his mortgage, that the mortgagors sold the mortgaged property in lieu of Rs. 11,000 to the respondent, and that the mortgagors having received the purchase-money in full from the said vendoe had paid it to the appellant in liquidation of the debt due to him under his mortgage. It appeared from the indorsement on the sale deed that a further sum of Rs. 250 was paid in cash to the mortgagors, and that that sum found its way back into the hands of the appellant's their agent.

The question on the appeal was what the transaction recorded in that sale deed really was. The appellant contended that the sale deed was executed ism farzi (fictitiously) in the name of the respondent, and that he was the real purchaser and assumed proprietary possession of the property comprised in the deed. The respondent, on the other hand, alleged that she purchased the property in suit with her own money, and had ever since been in adverse proprietary possession thereof.

It appeared from the evidence that no money in fact passed from the nominal purchaser (the respondent) to the vendors, and from the latter to the niortgagee, and that the narrative of the deed was not in accordance with the facts. The effect, and doubtless the object, of the deed was to make it appear that the consideration to the vendors for the sale proceeded to them from the respondent, so as to give her an apparent title for value whereas the real consideration to the vendors being the extinction of the mortgage debt, which was the property of the appellant, proceeded from him.

Held, that that circumstance, and the other evidence of the appellant and his witnesses, were sufficient to call upon the respondent for an answer, and to shift the burden of proof upon her (19).

Held further, that that burden she might discharge by shewing that the purchase-money, though not paid by her to the vendors, was paid to the appellant out of her moneys, or by evidence of continuous possession in accordance with the deed (19).

Held also, that the respondent had failed to prove either (20). (Lord Durcy.) PRINCE SULEMAN KADAR BAHADUR P. NAWAB MEHNDI. (1897) 25 I A. 15=25 C. 473 (476-7)=2 C.W.N. 186=7 Sar. 254.

-Purihase in name of -Wise-Benami for husband -Plea by him of -Onus of proof.

The respondent was the wife of the appellant. The appellant was mortgage under a mortgage dated I0-5-1870'. On 14-5-1875 the mortgagors executed a sale deed of the mortgaged property to the respondent, the deed reciting that the entire purchase money which was received by the mortgagors from the respondent was paid to the appellant in liquidation of the debt due to him under his mortgage. The question was what the transaction recorded in the sale deed really was. The appellant contended that the sale deed was executed fictitiously in the name of the respondent, and that

Benami transaction-(Cont.d.)

HUSBAND-(Contd.)

he was the real purchaser and assumed proprietary possession of the property comprised in the deed. The respondent, on the other hand, alleged that she purchased the property in suit with her own money, and had ever since been in adverse proprietary possession thereof.

Held that the burden of proof was in the first place upon the appellant who claimed against the tenor of the deed (18), (Lord Davey.) PRINCE SULEMAN KADAR BAHADUR :: NAWAB MEHNDI. (1897) 25 I.A. 15 = 25 C. 473 (476) -2 C.W.N. 186 = 7 Sar. 254.

MOTHER-DAUGHTER.

- Purchase in name of - Benami or Gift-Object of purchase to disinherit son.

A Mahomedan lady, who had only a son and a daughter, and who was extremely hostile to the former, purchased from out of her funds certain properties in the name of her daughter. On a question arising as to whether the said purchase was benami for the mother, held that, though the circumstance that the purchase-money came from the mother would, if taken alone, have afforded evidence that the transaction was benami, yet the circumstances of the case pointed to an absolute gift in favour of the daughter, and not to a benami transaction. The circumstances being that the purchase was prompted by hostility to the son and that it was made with the purpose of excluding him from inheritance, an object which could not have been attained by any benami transaction. (Sir Arthur Willion.) ISMAIL MUSSAJEE MOOKEEDUM P. HAFIZ BOO.

(1906) 33 I.A. 86=33 C. 773 (784-5)=10 C.W.N. 570= 3 A.L.J. 353=3 C.L.J. 484=8 Bem. L B. 379= 1 M.L.T. 137=9 Sar. 94=16 M.L.J. 166.

—Sale deed in favour of, with imaginary consideration—Object of, to disinherit son—Gift really intended.

A Mahomedan Lady, who had only a son and a daughter, and who was extremely hostile to the former, executed a deed in favour of her daughter, which deed purported to be a deed of sale and to have been executed for a stated consideration of Rs. 10,000 which had already been paid. It was found that the daughter never paid any consideration for the so-called sale, and that in executing the deed, the mother was prompted by hostility to her son and that she executed the deed with the object of excluding him from inheritance. It was contended that the transaction was a mere benami transaction, or, at any rate, that, if a genuine transaction at all, it was a sale, not a gift, and the property still formed part of the mother's estate.

Held, that the transaction was neither a benami transaction nor a sale, but a gift with an imaginary consideration.

The fact that the sum of Rs. 10,000, is mentioned as the price, a sum which, according to the evidence was far short of the actual value of the property, and the fact that that sum is stated to have been paid in advance, whereas in fact, it was not paid at all, are strong to show that the transaction was not a sale, but a gift with an imaginary consideration inserted. (Sir Arthur Wilson) ISMAIL MUSSAJEE MOOKEEDUM v. HAFIZ BOO. (1906) 33 I.A. 86=

33 C. 773 (784-5)=10 C. W.N. 570=3 A.L.J. 353= 3 C.L.J. 484=8 Bom. L.B. 379=1 M.L.T. 137= 9 Sar. 94=16 M.L.J. 166.

NEPHEW—CONVEYANCE FOR VALUE IN FAVOUR OF.

— Deed of — Benami — Evidence.

Held, on the evidence, reversing the judgment of the court below and restoring that of the trial Judge, that a deed, executed by a Mahomedan in favour of his nephew and purporting to be a conveyance for value, was a transaction in which no consideration passed or was intended to pass;

#### MAHOMEDAN LAM-(Contd.)

Benami transaction-(Contd.)

NEPHEW—CONVEYANCE FOR VALUE IN FAVOUR OF—(Contd.)

that in executing the deed the executant (plaintiff) did not intend to give the property to the defendant except subject to a reservation of the possession and enjoyment to himself and his wife during their lives, to which the defendant pledged himself; and that the deed was not followed by delivery of possession, but was a fictitious and benami deed and was invalid and void. (Sir Ford North.) CHAUDHRI MEHDI HASAN r. MUHAMMAD HASAN. (1906) 33 I.A. 68=

28 A. 439 (453) = 10 C.W.N. 706 = 3 A.L.J. 405 = 8 Bom. L.R. 387 = 9 O.C. 196 = 1 M.L.T. 163 = 4 C.L.J. 295 = 9 Sar. 27.

Practice of —Existence of, as much among Mahomedans as among Hindoos, See BENAMI—PRACTICE OF—MAHOMEDANS. (1869) 13 M.I.A. 232 (246).

SON AND WIFE-PURCHASE IN NAMES OF.

- Benami or not.

The mere fact that this property was purchased, not in the sole name of the son, but in the name of the wife as well as of the son, affords a strong argument in favour of the hypothesis that it was a hymant purchase, for there was no such community of interest between the wife and the son as would render it probable that they had been made joint owners of the property; and the reason for putting two names rather than one into a trust applies almost as strongly in India as it would in England (247). (Sir James W. Colvile.) MOULVIE SAVYUD UZHUR ALI v. MUSSUMAT BEBEE ULTAF FATIMA. (1869) 13 M.I.A. 232c

13 W.R. 1=4 B.L.R. 1=2 Suther. 279=2 Sar. 522

WIFE.

——See Mahomedan Law—Benami transaction— HUSBAND.

### Brother.

-Deceased brother-Widow and infant son of-Suit
against-Deceased if represented in.

N. a Mahomedan, executed a mortgage on behalf of his brother A as well as of himself. A suit was brought to enforce the mortgage, to which N alone, and not A also, was made a defendant. There was a reference to arbitration of the points at issue in the suit, all the parties, including N signing the agreement of reference. N died shortly after, and on his death his two widows and his minor son by his mother, one of the widows, were named as his legal representatives on the record. The arbitrators made an award, a decree was passed in accordance with the award, and in execution thereof, the mortgaged property, including the share of A therein, was sold.

In a suit brought by A for redemption of the mortgage, the question was whether the execution sale of his share in the proceedings in the prior suit could be held to have validly conveyed his interest.

Held, that the Court in the prior suit had no jurisdiction to sell A's share (34)

It must be presumed that N was authorised to sign the mortgage for his brother. At any rate, A by suing for redemption admits it. And possibly it might have been held that N's authority extended to representing him in the prior suit. But by no possibility could it be considered that he was represented by the widows or infant son of his deceased brother. In fact his interest in the property seens to have been ignored altogether. He is not mentioned as a debtor in the award, and there is no decree against him. The Court, therefore, had no jurisdiction to sell his share (34). (Lord Davey). KHIARAJMAL v. DAIM.

(34). (Lord Datey). KHIARAJMAL v. DAIM. (1904) 32 I. A. 23 = 32 C. 296 (313) = 9 C. W. N. 201= 2 A. L. J. 71 = 7 Bom L.B. 1 = 1 C.L.J. 584 = 8 Sar. 734.

Brother-(Contd.)

——Relationship of—Acknowledgment of. See Maho-MEDAN LAW—ACKNOWLEDGMENT - RELATIONSHIPS SUBJECT OF, (1873) 1 L A. 23 (31-2, 33).

#### Co-heirs.

———Debt due by deceased. See MAHOMEDAN LAW— DEBT DUE BY DECEASED.

——Debt due to deceased. See MAHOMEDAN LAW— DEBT DUE TO DECEASED.

----Inheritance: See MAHOMEDAN LAW-INHERIT-ANCE.

-Purchase by one of -Claim in, by other heir - Maintainability - Hindu law presumption in such cases - In-

applicability of.

A Mahomedan died leaving two sons, the plaintiff and another, A. The plaintiff being an infant, the whole properties were managed by A, whose name, along with that of the plaintiff, was entered in the Government registers.

In a suit by the plaintiff against A or his representatives for the recovery of his half share of certain properties purchased by A after their father's death in the name of his (A's) eldest son, held that the plaintiff could succeed only on proving that the suit properties were purchased out of what was joint undivided property.

There is no presumption in the case of a Mahomedan such as exists in the case of a Hindu joint family. The succession of a Mahomedan is an individual succession. 

Prima facie, therefore, in the absence of other evidence, property bought by A would be property bought with his own money. (Lord Dunedin). MUHAMMAD WALI KHAN v. MUHAMMAD MOHIUI DIN KHAN.

(1919) 11 L. W. 421 (423) = 24 C. W. N. 321 = (1920) M. W. N. 189 = 27 M. L. T. 204 = 58 I. C. 843.

#### Concubinage.

-Casual intercourse-Distinction.

The character of cohabitation of a permanent nature is that which, under the Mahomedan law, distinguishes concubinage from casual intercourse (117). (Sir James W. Colvile). ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M.I.A. 94 = 7 W. B. P. C. 1 = 1 Suth. 659 = 2 Sar. 223 = B. & J's No. 5 (Oudh).

—.-Children of—Legitimacy of. See MAHOMEDAN LAW—LEGITIMACY—MARKIAGE—CONCUBINAGE. (1866) 11 M. I. A. 94 (113-4).

# Contract for consideration—Delivery of possession in case of.

-Necessity. See MAHOMEDAN LAW-GIFT-CON TRACT FOR CONSIDERATION OR.

(1922) 49 I. A. 153 (166 7) = 49 C. 820(836).

Creditor's lien of, recognised by Br. Indian Courts.

-Widow's lien for unpaid dower only.

The widow's lien for unpaid dower is the only creditor's lien of the Musulman law which has received recognition in the British Indian Courts and at this Board (301). (Lord Parker.) HAMIRA BIBI v. ZUBAIDA BIBI.

(1916) 43 I. A. 294 = 38 A. 581 (588 9) = 14 A.L. J. 1055 = 20 M. L. T. 605 = (1916) 2 M. W.N. 551 = 4 L.W. 602 = 21 C. W. N. 1 =

(1916) 2 M. W.N. 551=4 L.W. 602=21 C. W. N. 1= 1 Pat L. W. 57=18 Bom. L. B. 999=25 C.L.J. 517= 36 I. C. 87=31 M. L. J. 799.

#### Debt due by deceased.

--- Compromise by one of heirs in respect of -- Benefit of -- Right of other heirs to.

### MAHOMEDAN LAW-(Centd.)

Debt due by deceased-(Contd.)

Under the Mahomedan law, a compromise entered into by one of the heirs of a deceased Mahomedan in respect of his (the deceased's) debts operates for the benefit of all those amongst whom the estate is divisible, and the balance is divisible amongst them (145). (Sir Barnes Peacock). MUSSUMAT MULLEEKA v. MUSSUMAT JUMFELA.

(1872) Sup. I. A. 135=11 B. L. R.375=5 W. R. 23= 3 Sar. 220=III O. G. Sup. Vol. 82=2 Suth. 766.

-Inheritance-Claims by-Preference.

The rule of Mahomedan law is that all the assets must be applied in payment of debts in preference to claims by inheritance (142). (Sir Barnes Peacock). MUSSUMAT MULLEEKA 2. MUSSUMAT JUMEELA.

(1872) Sup. I. A. 135 = 11 B. L. R. 375 = 5 W. R. 23 =

3 Sar. 220 = III O. G. Sup. Vol. 82 = 2 Suth. 766.

—Under the Mahomedan law the shares of heirs cannot be ascertained until all debts have been satisfied. It is only the balance after paying all debts that, according to that law, is divisible amongst them (145). (Sir Barnes Peaceck.) MUSSUMAT MULLEEKA v. MUSSUMAT JUMEELA. (1872) Sup. I. A. 135 = 11 B. L. R. 375 =

3 Sar. 220-III O. G. Sup. Vol. 82-5 W R. 23-2 Suth 766.

——No co-sharer in the estate of a deceased person would be entitled to receive his share of the estate until the debts of the deceased had been ascertained, and provision made for the payment of them. Until that is done the amount of the share is uncertain (829). MIRZA BEDAR BUKHT P. MIRZA KHURRUN BUKHT.

(1873) 2 Suth. 823 = 19 W. B. 315 = R. & J.'s. No. 20 (Oudh).

-Liability for, of alience of estate for heir-at-lato-Creditor's suit for payment of debt out of assets in hands of heir-at-lato-Alienation pending-Effect-Lis pendens -Applicability of rule of.

A creditor of a deceased Mahomedan cannot follow his estate into the hands of a bona fide purchaser for value to whom it has been alienated, whether by way of sale or mortgage, by his heir-at-law (221-2). But where the alienation is made during the pendency of a suit in which the creditor obtains a decree for the payment of his debt out of the assets of the estate which have come into the hands of the heir-at-law, the alienee will be held to take with notice, and be affected by the doctrine of lis pendens (223-4). (Sir Barnes Peacock.) Syud Bazayer Hossein v. Dooli Chund. (1878) 5 I. A. 211 = 4 C. 402 (407-8) = 3 Sar. 853.

 Litigation costs incurred by one of heirs in respect of—Reimbursement of, out of assets in his hands—Right of, as against other heirs.

A suit by the widow of a deceased Mahomedan against his heirs for the recovery of a large amount, alleged to be the balance of dower settled upon the widow by the decease ed, was, pending an appeal to the High Court, compromised by one of the heirs, so far as the claim against him was concerned. The other heir persisted in resisting the suit, and in carrying the matter on appeal to the Privy Council.

Held that, in the circumstances of the case, the other beir was justified in resisting the suit and taking the opinion of the Court, and that she was entitled to retain her costs incurred in the several proceedings in the suit, and in the appeal to Her Majesty in Council, out of any assets of the deceased in her hands after satisfaction of the sums awarded against her in the suit, and that such costs should take punity of all claims by inheritance to any portion of such assets (147). (Sir Barnes Peacock). MUSSUMAT MULLEEKA 2. MUSSUMAT JUMEELA. (1872) Sup. I. A. 135=

11 B. L. B. 375=5 W. B. 23=3 Sar. 223= III O. G. Sup. Vol. 82=2 Suth. 766.

Debt due to deceased.

Suit by each sharer for his there of Maintainshi-

A debtor to a Mahomedan estate is not fiable to be vexed by a separate suit by every co-sharer in that estate for his share of the debt (829). MIRZA BEDAR BUKHT 7: MIRZA KHURRUM BUKHT. (1873) 2 Suth. 823 = 19 W.B. 315 = R. & J. s. No. 20 (Oudh).

#### Deceased-Representation in suit of.

(1904) 32 I. A. 23 (34) = 32 C. 296 (313).

#### Divorce.

AII.A OR VOW THAT HUSBAND WOULD HAVE NO FURTHER INTERCOURSE WITH HIS WIFE—CON-CURRENT FINDINGS AS TO.

DEED OF.

FORMS OF-KHOOLA AND TALAK.

FURUCKUTTEE.

KHOOLA-DIVORCE BY.

KHOOLANAMAH.

ORAL DIVORCE.

PROOF OF.

SECLUSION OF WIFE AFTER.

TALAK-DIVORCE BY.

AILA OR VOW THAT HUSBAND WOULD HAVE NO URTHER INTERCOURSE WITH HIS WIFE—

#### CONCURRENT FINDINGS AS TO.

Privy Council's interference with. (Sir Montagne E. Smith.) RANEE KHAJOOROONISSA P. RANEE KAVAT-ONISSA. (1875) 2 I. A. 235 (237) = 15 B. L. R. 306 = 24 W. R. 163 = 3 Suth. 182 = 3 Sar. 526.

#### DEED OF.

Contents of Secondary evidence of Person who has not himself read the deed-Statements of Admissibility. See EVIDENCE ACT, S. 63 (5)—MAHOMEDAN LAW-DIVORCE-DEED OF. (1926) 54 I. A. 61 (64 5)=

----Name given to-Furuckuttee. See MAHOMEDAN LAW-DIVORCE-FURUCKUTTEE.

Not necessary but usual between persons of rank and

property.

Though writing is not necessary to the legal validity of a devorce under Mahomedan law, yet where a divorce takes place between persons of rank and property, and where valuable rights depends upon the marriage and are affected by the divorce, one would certainly expect that the parties, for their own security, would have some document which should afford satisfactory evidence of what they had done (884). KHAJA GONHUR ALI KHAN: KHAJAH AHMED KHAN. (1873) 2 Suth. 882=20 W. R. 214.

### FORMS OF-KHOOLA AND TALAK.

By the Mahomedan law divorce may be made in either of two forms: Talak or Khoola (395). (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM \*\*. LUTEEFUT-OON-NISSA. (1861) 8 M.I.A. 378 = 1 W.R. 67 = 1 Suth. 445 = 1 Sar 794.

-Irrevocability and completeness of -Distinction

According to existing usage, a divorce by Talak is not complete and irrevocable by a single declaration of the husband; but a divorce by khoola is at once complete and irrevocable from the moment when the husband repudiates the wife and the separation takes place (395). (Lord Kingsdown). MOONSHEE BUZUL-UL-RAHEEM v., LUTEE-FUT-OON-NISSA. (1861) 8 M.I.A. 378=1 W.R. 57=

1 Suth 445=1 Sar. 794.

### MAHOMEDAN LAW-(Contd.)

Divorce - (Contd.)

#### FURUCKUTTEE.

-What is a.

A Furuckuttee is a deed of divorcement (397). (Lord Kingsdesen.) MOONSHEE BUZUL-UL-RAHEEM v. LUTEE-FUT-OON-NISSA. (1861) 8 M.I.A. 378=1 W.B. 57= 1 Suth. 445=1 Sar. 794.

### KHOOLA-DIVORCE BY.

-Admission in pleadings of Dower-Suit by wife for Admission by husband in What amounts to.

A Mahomedan wife sued her husband for the recovery of her dyn-mohr, alleging that her husband had dissolved the marriage by divorcing her, and had obtained from her by force and duress two instruments, one, an Ibranamah, or release of her dyn-mohr, and, two, a khoolanamah, or deed securing her husband the stipulated consideration to be paid by a wife in a case of khoola divorce. The husband while denying a divorce by talak, not only did not deny but set up a divorce by khoola. He alleged distinctly, in his answer, that the plaintiff took from him a Furuckutte (a deed of divorcement), that she took from him also the subsistence money of her iddit, and gave him a receipt for it, and that she then quitted his house with the assent and under the care of her mother.

Held, on a construction of the pleadings, that it was the common case of both parties that a divorce had taken place, and that the only question was, whether the husband could insist on receiving the consideration for which he said that he had stipulated (397). (Lord Kingsdown.) MOONSHEE BUSUL-UL-KAHEEM v. LUTEEFUT-OON-NISSA.

(1861) 8 M.I.A. 378=1 W.R. 57=1 Suth. 445= 1 Sar. 794.

--- Nature and consequences of.

A divorce by khoola is a divorce with the consent, and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. In such a case the terms of the bargain are matter of arrangement between the husband and wife, and the wife may, as the consideration, release her dynmohr and other rights, or make any other agreement for the benefit of the husband (395). The divorce in such a case is the sole act of the husband, though granted at the instance of the wife, and purchased by her (396). (Lord Kinguloum.) MOONSHEE BUZUL-UL-RAHEEM 2., LUTEEFUT-OONNISSA. (1861) 8 M.I.A. 378=1 W.B. 57=1 Suth. 445=1 Sar. 794.

-Validity-Consideration-Non-payment by wife of -Effect.

The law might have provided that non-payment of the consideration should invalidate the divorce, but it is clear that the law is otherwise. The non-payment by the wife of the consideration for the divorce no more invalidates the divorce than in England the non-payment of the wife's marriage portion invalidates the marriage (396-7). (Lord Kinsdown.) MOONSHEE BUZUL-UL-RAHEEM v. LUTES-FUT-OON-NISSA. (1861) 8 M.I.A. 378=1 W.B. 57=1 Suth. 445=1 Sar. 794.

### KHOOLANAMAH.

Nature of Divorce not constituted by.

The Khoolanamah is a deed securing to the husband the stipulated consideration, but it does not constitute the divorce. It assumes it, and is founded upon it. The divorce is created by the husband's repudiation of the wife, and the consequent separation (396). (Lord Kingadown). MOON-SHEE BUZUL-UL-RAHEEM P. LUTEEFUT-OON-NISSA.

(1861) 8 M.I.A. 378=1 W.B. 57=1 Suth. 445= 1 Sar. 794

Divorce-(Contd.)

#### ORAL DIVORCE.

-Validity-Formalities necessary - Intention to divorce-Proof of-When necessary and when not.

According to Mahomedan law, a husband can effect a divorce whenever he desires. He may do so by words without any talaknama or written document, and no particular form of words is prescribed. If the words used are "express" or well understood as implying divorce, such as talak, no proof of intention is required. If the words used are ambiguous, the intention of the user must be proved. It is not necessary that the repudiation should be pronounced in the presence of the wife, or even addressed to her. The word "talak," if uttered once, would be sufficient to constitute an oral divorce (65-6). (Sir John Wallit.) MA MI v. KALLANDER AMMAL. (1926) 54 I.A. 61 =

5 Rang. 18 = 25 A.L.J. 65 = (1927) M.W.N. 80 = 38 M.L.T. (P.C.) 41=28 Punj. L.B. 109= 25 L. W. 342 = 100 I. C. 1 = 8 Pat. L.T. 280 = 31 C. W. N. 621 = 29 Bom. L R. 800 = A.I.R. 1927 P.C. 15 = 52 M. L. J. 376.

#### PROOF OF.

Where the question was whether a deceased Mahomedan had actually divorced the plaintiff, his wife, held, on the evidence affirming the High Court that a divorce was not proved (137-8). (Sir Barnes Peaceck.) MUSSUMAT MULLEEKA P. MUSSUMAT JUMEELA.

(1872) Sup. I.A. 135 = 11 B.L.R. 375 - 5 W.R. 23 = 3 Sar. 220 = III O.G. Sup. Vol. 82 = 2 Suth. 766.

-Held, on the evidence, that the divorce alleged had not been proved. KHAJAH GOUHUR ALI KHAN P. KHA-JAH AHMED KHAN, (1873) 2 Suth. 882 = 20 W.R. 214

-Held on the evidence that the defendants had failed either to establish that S, deceased, admitted that he had divorced his wife, the respondent, according to Mahomedan law, or to prove the words which he actually used in 1859, so as to enable a Court of law to determine whether they did or did not amount to a Mahomedan divorce (45). (L-rd Watson.) SKINNER v. SKINNER. (1897) 25 I.A. 34= 25 C. 537 (550) = 2 C. W. N. 209 = 7 Sar. 262.

#### SECLUSION OF WIFE AFTER.

-Object of-Period of-Maintenance provision for.

There is one condition which attends every divorce, in whatever way it takes place, namely, that the wife is to remain in seclusion for a period of some months after the divorce, in order that it may be seen whether she is pregnant by her husband, and she is entitled to a sum of money from her husband, called her iddat, for her maintenance during this period (395-6). (Lord Kingsdown.) M BUZUL UL-RAHEEM v. LUTEEFUT-OON-NISSA.

(1861) 8 M.I.A. 378=1 W.B. 57=1 Suth. 445= 1 Sar. 794.

#### TALAK-DIVORCE BY.

-Nature and consequences of.

A divorce by Talak is the mere arbitrary act of the hus band, who may repudiate his wife at his own pleasure, with or without cause. But if he adopts that course he is liable to repay her dowry, or dyn-mohr, and to give up any jewels or paraphernal'a belonging to her (395). (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM t. LUTEEFUT-OON-NISSA. (1861) 8 M.I.A. 378=1 W.B. 57=

# MAHOMEDAN LAW-(Costd.)

#### Dower.

AGREEMENT FOR-GENUINENESS OF-CONCURRENT FINDINGS AS TO.

AMOUNT OF.

CLASSES OF.

CONTRACT OF.

CONVEYANCE OF PROPERTY IN LIEU OF.

DEFERRED DOWER.

FATMI DOWER.

GIFT IN LIEU OF UNPAID.

INTEREST ON-AWARD OF, AS EQUITABLE COMPEN-

LIEN FOR UNPAID.

NATURE AND INCIDENTS OF.

OUDH-LAW APPLICABLE IN.

PAYMENT OF.

PROMPT DOWER.

KELEASE OF CLAIM TO. .

RELINQUISHMENT OF PROPERTY BY SON IN SATIS-FACTION OF.

RIGHT TO.

SUIT FOR.

WIDOW IN POSSESSION OF HUSBAND'S ESTATE IN LIEU OF CLAIM TO.

### Dower-Agreement for-Genuineness of-Concurrent Findings as to.

-P. C's interference with. (1) (Lord Justice Knight Bruce.) AMEER-OON-NISSA v. MOORAD-OON NISSA.

(1855) 6 M.I.A. 211 (227) = 1 Sar. 533. -(2) (Sir Montagne E. Smith.) RANEE KHAJOO-ROONISSA P. RANEE KYASOONISSA.

(1876) 2 I.A. 235 (237) = 15 B.L.R. 306 = 24 W.R. 163 = 3 Sar. 526 - 3 Suth. 182.

### Dower-Amount of.

AGREEMENT AS TO.

AMOUNT FIXED.

CONCURRENT FINDINGS AS TO.

DECISION OF INDIAN COURTS AS TO.

EVIDENCE OF.

EXTRAVAGANT AMOUNT.

SECOND MARRIAGE OF LADY.

# Dower-Amount of-Agreement as to.

MARRIAGE-AGREEMENT AT TIME OF.

-(See also MAHOMEDAN LAW-DOWER-AMOUNT OF-AMOUNT FIXED.)

-Proof of. See MAHOMEDAN LAW-MARRIAGE-PROOF OF. (1872) 8 M. J. 185.

-Proof of-Question raised 36 years after. In a suit by the appellant for payment of the amount of the dower debt due by the heirs of her late husband, the question was whether at the time of the appellant's marriage, which was about 36 years before the date of suit, an agreement had been made on her behalf with her husband that her dower was to be a lakh of rupees. There was admittedly no documentary evidence, and the appellant's case rested entirely on the recollection of persons who were present at the marriage,

Held that in such circumstances the oral evidence of an agreement must be clear and convincing in order to establish a claim against the estate of the man who was said to

have been a party to it (715).

Held further, affirming the High Court, that the appellant had failed to prove the agreement on which her claim was based (717). (Lord Salvesen.) MUSAMMAT HAFI-ZAN BIBI D. MUSAMMAT SUBA BIBI. (1922) 18 L.W. 670=37 C.L.J. 461=27 C. W. N. 854= 1 Suth. 445=1 Sar. 794. L. R. 4 P.C. 95=A.I.B. 1923 P.C. 29=44 M. L. J. 714.

Dower-Amount of-Agreement as to-(Contd.)

MARRIAGE-AGREEMENT AFTER.

- Validity of.

It is not necessary by Mahomedan law that dower should be agreed upon before marriage; it may be fixed afterwards. (Sir Montague E. Smith.) KAMARUNNISSA BIBL 2: HUS-SAINI BIBL. (1880) 3 A. 266 (274) – 3 Suth. 804 = 4 Sar. 185.

#### TIME FOR ENTERING INTO.

--- Before or after marriage.

It is not necessary by Mahomedan Law that dower should be agreed upon before marriage; it may be fixed afterwards. (Sir Montague E. Smith.) MUSSAMUT KAMARUNNISSA BIBLP. MUSSAMUT HUSAINI BIBL.

(1880) 3 Suth. 804 (808).

### Dower-Amount of-Amount fixed.

EVIDENCE OF.

- District of parties Imount automary in-Exidence of adminibility and value of.

In a case in which the question was whether, as alleged by a Mahomedan widow, the amount of her dower was fixed at Rs. 40,000. She examined witnesses who proved that the sum of Rs. 40,000 was in fact agreed upon on the marriage of the appellant with her deceased husband. Three cases, also coming from the District of the parties, were referred to from the Reports of the Sudder Dewanny Adawlut, where the sum of Rs. 40,000 was the amount of dower

With reference to the instances from the reports their Lordships observed. These instances cannot of course, be regarded as evidence in the cause, but as matter of history they are consistent with the testimony of the witnesses. Their Lordships must not be understood to decide, that the evidence of what was customary in the District would be sufficient in itself to fix the amount of dower, for if there had been no evidence of an agreed amount, it would have been necessary to make inquiries into the usual amount of dower in the family of the appellant (the widow); but it is impossible not to see, that this sum of Rs. 40,000 was a most usual amount to be fixed, and that fact gives probability to the statements of the witnesses for the widow, who proved that such was, in fact, the dower agreed upon on this marriage (388). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN P. SHEIKH HAMID HOSSEIN.

(1871) 14 M. I. A. 377=10 B. L. R. 45 (P. C.)= 17 W. R. 113.

-Kazit' register of marriages-Entry in-Admissibility and value of.

In a suit by a Mahomedan widow for the recovery of Rs. 50,000, the amount of her dower, alleged to have been agreed upon at her marriage with her deceased husband, the plaintiff offered in evidence, in addition to the testimony of the witnesses present at the marriage, the register of marriages kept by the Kazi, in which the marriage was recorded. The register appeared to have been kept since the annexation of the province, and all marriages were recorded in it; it contained columns for the names and description of the parties, the names of the vakils of the bride and bride-groom respectively, and the amount of the dower, together with the date of the marriage.

Held that the register was admissible and relevant evidence, within the meaning of S. 32 of the Evidence Act, as having been made by the Mujhtahid in the discharge of his professional duty (159-60). (Lord Hannen.) ZAKERI BE-GUM 2. SAKINA BEGUM. (1892) 19 I. A. 157=

19 C. 689 (692-3) = 6 Sar. 213.

A register kept by a Kazi, who was present at a Mahomedan marriage and containing an entry as to the amount fixed by the parties for dower is, if it is a genuine

#### MAHOMEDAN LAW-(Contd.)

Dower-Amount of-Amount fixed-(Contd.)

EVIDENCE OF-(Contd.)

and an honest document, and a faithful record of marriages kept from one event to the other and made up from notes taken at the actual ceremony, conclusive against either party as to the amount of dower, unless it can be established that there had been some mistake, or that the particular entry had been tampered with. (Lord Buckmatter.) MUSSUMAT FAKRUNNISSA 7: MOULVI-IZAMS SADIK.

(1921) 25 C. W. N. 866 (872-3)=63 I. C. 898= 17 N. L. B. 72.

-Unsatisfactory evidence-Amount to be awarded in case of.

Where, in a suit a Mahomedan widow asserted that the large sum of Rs. 40,000 was fixed for her dower, but the other side asserted that it was fixed only at 500 dirrums, and the High Court said that, though the amount of dower must have been considerable, they could not declare what the exact amount was, held that, on the view taken by the High Court, the widow was, at all events, entitled to a proper dower, to be ascertained according to Mahomedan law (385-6). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN P. SHEIKH HAMID HOSSEIN.

(1871) 14 M. I. A. 377-10 B. L. R. 45 (P. C.)= 17 W. B. 113,

In a suit by a Mahomedan widow for the recovery of Rs. 50,000, the amount of the plaintiff's dower, alleged to have been agreed upon at her marriage, ten witnesses were called in support of the plaintiff's case, of whom seven were present at the marriage. They all agreed that the dower was fixed at Rs. 50,000, and that that was the minimum dower used in the plaintiff's family. Their statements were all consistent with one another, except in one particular, namely, whether the dower was prompt or deferred.

Held that as the witnesses were speaking of what had occurred sixteen years before that discrepancy should not be considered to invalidate their testimony on the more important question in dispute, of the amount of dower agreed upon (159).

The question whether the dower was prompt or deferred, only affects the reliance to be placed on the witnesses recollections, as the plaintiff was in any case not bound to see for her dower till her husband's death (159). (Lord Hammer.) ZAKERI BEGUM v. SAKINA BEGUM.

(1892) 19 I. A. 157=19 C. 689 (692)=6 Sar. 213.

Witnesses present at marriage—Evidence of—Reieltion of—Grounds—Widow's failure to examine herself when

A Mahomedan widow sued for the recovery of Rs.50,000, the amount of her dower, alleged to have been agreed upon at the marriage. She examined ten witnesses in support of her case, seven of whom were present at the marriage. They all agreed that the dower was fixed at Rs. 50,000. The trial judge believed their evidence, and held that the dower was fixed at the said sum. On appeal, the High Court reduced the amount to Rs. 5,000 refusing to give credit to the plaintiff's witnesses. One of the reasons for their refusal was that the plaintiff herself had not given evidence.

Held that, having regard to the unwillingness of Mahomedan ladies to give evidence, and the fact that the dower would naturally be arranged by her relatives, several of whom were called, the plaintiff's absence as a witness should not be held to invalidate the testimony of those who were called (163). (Lard Hannen.) ZAKERI BEGUM v. SAKINA BEGUM. (1892) 19 I.A. 157 = 19 C. 689 (696) = 8 Sar. 213.

Dower-Amount of-Amount fixed-(Contd.)

PLEA THAT IT WAS A MERE SHAM NOT INTENDED TO BE ACTED UPON.

Appeal - Maintainability for first time in.

In a suit brought by a Mahomedan lady to recover a sum of Rs. 16 25,000, as the balance due on account of dower, alleged to have been settled upon the plaintiff by her late husband, the trial judge found on the evidence that the dain mohur was settled at one lac and eighty thousand, one moiety rupees, and the other gold mohurs, and he gave a decree for the plaintiff for the amount claimed with costs and interest. On appeal, his decree was affirmed.

No defence was set up in the court of original jurisdiction, upon the ground that the amount fixed was a mere sham, and that neither of the parties intended that it was to

be acted upon.

Held that it was not for a court of appeal to suggest or give effect to such a defence when it was never raised in the court of original jurisdiction, which, if the question had been there raised, might have laid down a distinct issue, and taken evidence upon the subject (141). (Sir Barnes Peacock.) MUSSUMAT MULLEEKA D. MUSSUMAT JUMEELA.

(1872) Sup. I. A. 135=11 B. L. R. 375=5 W. R. 23= 3 Sar. 220 = III O. G. Sup. Vol. 82 = 2 Suth. 766.

SMALL AMOUNT-PLEA BY OTHER HEIRS OF-EVIDENCE AGAINST.

-Possession of estate left with widow long after dower, if small, had been satisfied if.

The question was whether, as alleged by appellant, Mahomedan widow, her dower was fixed at Rs. 40,000, or, as alleged by the respondents, the other heirs of the deceased

husband, it was fixed only at 500 dirrums.

The husband died in March, 1851, without issue, leaving the appellant his only widow. On his death, the appellant was entitled to one-fourth share of his estate, and his sister was entitled to the other three-fourths. In April, 1851, the appellant instituted proceedings in the collectorate courts to obtain the entry of her name in the Register in place of her husband. She alleged in her petition that she was in possession of the entire estate of her husband by right of inheritance, and also on account of her dower. Objection was made on the part of the respondents, the sons of the deceased's sister, who had died in the interval, but it did not prevail; and the lands were registered by the Collector in the name of the appellant "without specification of share." That order was affirmed on appeal, and the respondents were directed to establish such claim as they had in the estate by a suit in the civil courts. Notwithstanding that the respondents had the fullest notice of the appellant's pretension to hold the entire estate of her husband for her dower, they took no step to dispute her claim, or to disturb her possession of the entire estate, for a period of nearly 10 years from the date of the above proceedings. Thereafter they instituted the suit out of which the appeal arose for the recovery of their three-fourths share of the deceased's estate, admitting the appellant's claim to one-fourth share. In that suit they alleged that her dower was fixed only at 500 dirrums.

The judges of the High Court treated the above conduct of the respondents as indicating a consciousness on their part that the dower had been fixed at a considerable amount. but they did not draw the further inference that it was also indicative of a consciousness on their part that what the appellant asserted to be the amount of dower was the

true and proper amount.

Held that the further inference might fairly be drawn from the said conduct of the respondents, viz., that it was Indicative of a consciousness on their part that what the appellant asserted to be the amount of dower was the

### MAHOMEDAN LAW-(Contd.)

Dower-Amount of-Amount fixed-(Contd.)

SMALL AMOUNT-PLEA BY OTHER HEIRS OF-EVIDENCE AGAINST-(Contd.)

be expected that they would have taken proceedings at an earlier period to dispute her claim (389). (Sir Montague F. Smith.) MUSSUMAT BEBEE BACHUN 2. SHEIKH HAMED HOOSEIN. (1871) 14 M.I.A. 377 ==

10 B.L.R. 45 (P.C.)=17 W.R. 113.

Dower - Amount of - Concurrent findings as to. -Privy Council's interference with.

The question as to the amount payable in respect of a dower is a pure question of fact, and the Privy Council will not interfere with the concurrent findings of the Courts below on that question. (Lord Dungdin.) MUHAMMAD WALL KHAN v. MUHAMMAD—MOHI-UD-DIN KHAN.

(1919, 23rd June) High Court File for 1919 (P.C.A. Nos. 103 and 104 of 1917).

Dower-Amount of-Decision of Indian Courts as to. -Privy Council's interference with.

In a suit brought by a Mahomedan lady to recover a sum of Rs. 16 25,000 as the balance due on account of dower alleged to have been settled upon the plaintiff by her late husband, the Principal Sudder Ameen gave a decree for the plaintiff for the amount claimed with costs and interest; and his decree was affirmed by the High Court on appeal.

On further appeal to the Privy Council by the defendants, held that, on the question of the amount of dower which was one of fact, there was no reason to interfere with the decision of the Courts below (140). (Sir Barnes Peaceck.) MUSSUMAT MULLEEKA D. MUSSUMAT JUMEELA.

(1872) Sup. I. A. 135 = 11 B.L.R. 375 = 5 W.B. 23-3 Sar. 220-III O.G. Sup. Vol. 82-2 Suth. 766.

Dower-Amount of-Evidence of.

-See Mahomedan Law-Dower-Amount of -AMOUNT FIXED,

Dower-Amount of -- Extravagant amount. CONTRACT FIXING.

-Enforceability in strictness of, against husband's estate-Regulation provinces.

There may, no doubt, be great inconvenience in allowing the heirs of a wife to ruin the husband by exacting one of the enormous dowers which are so frequently stipulated for in India. Nevertheless, it has been frequently ruled by the Courts of the Regulation Provinces, and their decisions have been confirmed by this tribunal, that such contracts are strictly enforceable against the husband's estate (828), MIRZA BEDAR BUKHT P. MIRZA KHURFUM BUKHT.

(1873) 2 Suth. 823 = 19 W.B. 315 = B. and J's No. 20 (Oudh).

-Reasonable amount to be allowed in case of-Issue express as to, and finding thereon-Necessity-Punjab Code.

In a suit by the son and one of the heirs of a deceased Mahomedan lady, for the recovery from his father of the plaintiff's share of the dower fixed by contract at the marriage, the plaintiff alleged and proved that the amount fixed by the contract was 9 lakhs of rupees, but, in deference to the law which prevailed in Oudh, by which the Courts of Justice were empowered to reduce extravagant dowers to such an amount as, having regard to the circumstances of the husband, they might deem reasonable, he had limited his claim (being three-tenths of the entire amount payable)

Held, in view of the provisions of the Punjab Code, that it was incumbent upon the Civil Judge to consider and determine what amount of dower it was reasonable, with reference to the husband's means, to award and that there appellant asserted to be an analysis and the proper amount, for, if that were not so, it might reasonably should have been an express issue on that point, and a

Dower-Amount of-Extravagant amount-(Contd.)

CONTRACT FIXING—(Contd.)

finding thereon binding on all the heirs (829). MIRZA BEDAR BUKHT P. MIRZA KHURRUM BUKHT,

> (1873) 2 Suth 823-19 W.R. 315= R. and J 's No. 20 (Oudh).

EVIDENCE AS TO AMOUNT BEING AN.

-Reduction of amount in case of-Discretion of Court.

The suit was by the widow of a Mahomedan zemindar to recover the sum of Rs. 50,000, the amount of the plaintiff's dower, alleged to have been agreed upon at her marriage with the deceased, and unpaid at the death of her husband.

The defendants contended, inter alia, that the contract of dower was regulated by the usages and customs of Oudh, and that by those usages and customs the agreed amount of dower, if excessive, might be reduced by the Court to an amount suitable to the circumstances and position of the husband and wife, and they claimed that if the agreed dower was Rs. 50,000, it was excessive and should be reduced.

The Sub-Judge came to the conclusion that the dower was fixed at Rs. 5,0000, and had not been paid. He also held that, even if the law of Oudh applied to the case, the amount of dower was not extravagant, and that no ground had been shown for reducing it.

Held, affirming the Sub-Judge, that, even if the usages and customs of Oudh applied to the marriage in question, no reason had been shown why the Sub-Judge should in the exercise of his discretion have reduced the dower in the particular case (165).

No evidence was given of the value of the husband's property, or any other relevant circumstances tending to shew that Rs. 50,000 was excessive (165). (Lord Hannen.) ZAKERI BEGUM P. SAKINA BEGUM.

(1892) 19 I.A. 157 = 19 C. 689 (698) = 6 Sar. 213. PRACTICE OF FIXING.

There is nothing in the Mahomedan law to limit the amount fixable for dower. The Mahomedan law books, the decided cases, and the experience of the country, shew that it is a fact that sums so apparently beyond the means of the parties are fixed as dower amongst. Mahomedans from the highest to the lowest. (Sir Barnet Peacock.) MUSSUMAT MULLEEKA P. MUSSUMAT JUMEELA.

(1872) Sup. I. A. 135 (140)=11 B.L.R. 375= 5 W. R. 23 = 3 Sar. 220 = III O. G. Sup. Vol. 82 = 2 Suth. 766.

-Reduction of amount-Court's powers as to-Oudk Lates Act, 1876,

It is so common a thing among Mahomedans in this part of the world (Oudh) to put into marriage contracts for dower sums far larger than the husband can pay, or than the wife expects to receive, that Courts of Justice are armed with large powers over that class of contract. By the Oudh Laws Act, 1876, it is enacted that in such cases the amount of the dower to be allowed by the Court should be reasonable with reference to the means of the husband and the status of the wife (147). (Lord Hobbouse.) PRINCE MIRZA SULEMAN KADR P. NAWAB MEHDI BEGAM SUR-REYA BAHU. (1893) 20 I.A. 144=21 C. 135= 6 Sar. 347 = R. and J.'s No. 132.

REASON FOR FIXING.

-One reason for fixing these excessive dowers is notoriously the desire to protect the woman from capricious repudiation (827). MIRZA BEDAR BUKHT MAHOMED ALI P. MIRZA KHURRUM BUKHT YAHYA ALI.

(1873) 2 Suth. 823=19 W.B. 315=

#### MAHOMEDAN LAW-(Contd.)

Dower-Amount of-Extryagant amount-(Contd.)

REASON FOR FIXING-(Contd.).

-Dower is often high among Mahomedans, to prevent the husband divorcing his wife, in which case he would have to pay the amount stipulated (165). (Lord Hanner.) ZAKERI BEGUM D. SAKINA BEGUM.

(1892) 19 I. A. 157 = 19 C. 689 (698) = 6 Sar. 213. REDUCTION OF-OUDH LAWS ACT OF 1876-

COURT'S POWERS UNDER.

-See MAHOMEDAN LAW-AMOUNT OF-EXTRA-VAGANT AMOUNT-EVIDENCE AS TO AMOUNT, ETC. (1892) 19 I.A. 157 (165) = 19 C. 689 (698).

-See Mahomedan Law-Amount of-Extra-

VAGANT AMOUNT - PRACTICE OF - REDUCTION OF AMOUNT. (1893) 20 I.A. 144 (147)=21 C. 135.

-Principles of-Contract for payment of amount in cash, and of annuity for term of widow's life-Reasonable amount in case of.

On the occasion of his marriage with the plaintiff, the defendant contracted to pay her ten lacs of rupees at once and an annuity of Rs. 150 per mensem for the term of her life. The amount stipulated for was found to be excessive with reference to the means of the husband and the status of the wife, and the question was what was the reasonable amount to be allowed for dower under the Oudh Laws Act

The District Judge looked at the case as a whole, considered what was the reasonable amount to be substituted for the entire contract which could not take effect and awarded a lump sum to cover all demands by the wife.

The Judicial Commissioner, on appeal, agreed that the sum awarded by the District Judge was a reasonable sum to be granted in cash. But he thought that the annuity ought also to be continued in addition, and directed the payment of the same also,

Held, reversing the Judicial Commissioner, that the decision of the District Judge was in conformity with the requirements of the Oudh Laws Act, and ought not to have been interfered with (149).

The Judicial Commissioner holds in one part of his judgment that the annuity is an integral part of the dower; but when he comes to fix the reasonable amount, he separates the two items; he takes a distinction between that part of the dower which was payable at once because no time fixed, and that which was payable by monthly instalments; and he thinks that the latter ought to be more specifically executed than the former. It appears to their Lordships that the District Judge took the course indicated by the Statutes, in considering whether the dower as a whole was excessive in reference to the means of the husband, and in considering what as a whole was a reasonable amount to be substituted. They are not intimating any general opinion against the award of an annuity in preference to, in or addition to, a sum down. Each case must depend on its own circumstances. In this case, however, they do not find any expression of opinion on the part of the Judicial Commissioner that, having regard to the defendant's means, the District Judge had awarded too little. He does not address himself in terms to that question (148-9). (Lord Hobboute). PRINCE MIRZA SULEMAN KADR P. NAWAB MEHDI BE-(1893) 20 I.A. 144= GUM SURREYA BAHU. 21 C. 135 = 6 Sar. 347 = B. & J.'s No. 132

REDUCTION OF-PUNJAB CODE, Ss. 10, and 11.

Applicability of - Powers under.

A Mahomedan of the Sooner sect, domiciled in Oudh, and a member of the royal family there, on his marriage, by a deed executed in the year 1838, settled a crore of rupees by R. and J.'s No. 20 (Oudh). way of dower. This dower was not demanded during the

Dower—Amount of—Extravagant amount—(Contd.) REDUCTION OF-PUNJAB CODE, Ss. 10 AND 11-(Contd.)

lifetime of the husband, but at his death, which event took place after the annexation of Oudh, in 1856, the widow claimed the whole amount, although it would exhaust the entire property of the settlor, and totally exclude his heirs from succeeding to any part of his estate. The Judicial Commissioners of Oudh applied the provisions of the Punjab Code to the case; and held that, according to that Code, the deed was to be construed to mean, nor the absolute sum settled for dower, which was from the position of the settlor an extravagant dowry, but an adequate provision for the wife; and directed the estate of the husband to be divided in moieties between the widow and the husband's heirs. Upon appeal, such decision affirmed by the Judicial Committee, who held,

First, that the Commissioners were right in applying the Punjab Code to the case; and

Secondly, that the Commissioners, under that Code, properly exercised their discretion in making an equitable division of the estate of the husband between the widow and the heirs (277-8). (Lord Kingsdown.) MULKAH DO ALUM NOWAB TAJDAR BAHOO v. MIRZA JEHAN KUDR.

(1865) 10 M I. A. 252=2 W. R. (P. C.) 53-1 Suth. 554 = 2 Sar. 106 = B. & J.'s. No. 2 (Oudh). -Applicability of, to contracts made proviously. Sec PUNJAB CODE, SS. 10 AND 11-APPLICABILITY.

(1865) 10 M. I. A. 252 (277).

-Effect-Oudh-Applicability of rules of those sections in.

Do the rules of the Punjab Code warrant a departure from the strict law, if law it be, by which in all cases a sum fixed as dower is to be enforced as an absolute debs? Upon this question no doubt can be entertained. They provide for a modification of the dower mentioned in a marriage-contract both in the case of a divorce and of the death of the husband. The rules laid down in S 10. cl. (iv), and in S, 11 of the Punjab Code have been and are acted upon in the Punjab in dealing with cases of dower, and they have been extended to Outh (276-7). (Lord Kingsdown.) MULKAH DO ALUM NOWAB TAJDAR BAHOO D. MIRZA JEHAN KUDR. (1865) 10 M. I. A. 252 = 2 W. R. (P. C.) 53 = 1 Suth. 554 = 2 Sar. 106 = R. & J.'s No. 2 (Oudh).

SETTLEMENT PROVIDING FOR-SUMS SECURED BY. -Bona fide debts to be paid with other debts of kushand or mere securities for adequate provision for wife.

It is unnecessary to decide the general question whether, when, under the Mahomedan law, extravagant sums far beyond the means of the bridegroom to satisfy are provided by settlement as dower, sums are to be treated as bone fide debts to be paid pari passu with other debts on the death of the husband, though they might sweep away the whole property from the heirs, or whether they are to be treated as securities for an adequate provision for the wife (270). (Lord Kingsdown.) MULKAH DO ALUM NOWAB TAJ-DAR BAHOO v. MIRZA JEHAN KUDR.

(1865) 10 M. I. A. 252=2 W. B. (P. C.) 63= 1 Suth. 554 = 2 Sar. 106 = R. & J.'s No. 2 (Oudh)

Dower-Amount of-Second marriage of lady.

Agreement to pay fair, proper and reasonable sum according to her rank-Amount allowed on first marriage if may be awarded under.

In a suit brought by the plaintiff-respondent against the father of the two appellants, who had been the husband by the second marriage of the respondent's mother, to recover the respondent's share of the mother's dower, it appeared that more than a year after the marriage, the husband executed a registered agreement, in which he said: " I promise

## MAHOMEDAN LAW-(Contd.)

Dower-Amount of-Second marriage of lady-(Contd.)

and engage faithfully, and according to the Mahomedan law, to pay the sum due on account of dower, as is customary among people of high rank, according to the amount agreed upon, fully and freely, and without being constrained thereto, between me and my wife aforesaid, in the presence of the persons present at the marriage.

Held that that agreement, no particular sum being mentioned, even assuming it were doubtful whether any express sum was agreed upon on the occasion of the marriage, at all events would amount to an agreement to pay a fair and proper sum, such as was reasonable, having regard to her rank (437).

The plaintiff's witnesses swore that the sum agreed upon at the time of the marriage was two lacs and Rupees, 75,000, The defendant's case was that on a second marriage it ought to be only a nominal sum, but of that he produced no evidence at all. The defendant himself admitted that in the family of the lady the usual amount of dower on a first marriage was one lac and Rs. 25,000; and the marriage settlement of the lady with her first husband showed that the dower that had been agreed to be paid by the first hushand was one lac and Rs. 25,000. And the Court below found that that sum was payable as and for dower.

Held, that in the circumstances of the case, there was no ground for saying that the amount fixed by the Court below Was Wrong. ARDOOL ALI KHAN P. MASSOOMA BEBEE.

(1871) 6 M. J. 436.

### Dower-Classes of.

· Prempt and deferred -- Meaning of .

The law allows the division of dower into two parts. one of which is called "prompt", payable before the wife can be called upon to enter the conjugal domicil; the other "deferred," payable on the dissolution of the contract by the death of either of the parties or by divorce (300). (Lord Parker.) HAMIRA RIBI P. ZUBAIDA BIBI.

(1916) 43 I.A. 294 = 38 A. 581 (588-9) = 14 A.L.J. 1055 = 20 M.L.T. 505 =

(1916) 2 M.W.N. 551 = 4 L. W. 602 = 21 C. W. N. 1 = 1 Pat. L. W. 57 = 18 Bom. L. R. 999 = 25 C.LJ. 517 = 36 I. C. 87 = 31 M.L.J. 799.

## Dower-Contract of.

-Law governing-Parties permanently resident at Patna-Marriage in Oudh-Oudh usages and customs-Applicability of.

The suit was by the widow of a deceased Mahomedan zemindar, resident at Patna, for the recovery of Rs. 50,000, the amount of the plaintiff's dower, alleged to have been agreed upon at her marriage with the deceased, and unpaid at the death of her husband. The marriage took place on 19-7-1867, at Lucknow in Oudh, where the deceased was staying on a visit. The deceased died at Patna on 14-11-1880.

The defendants contended that as the marriage took place at Lucknow the contract of dower was regulated by the usages and customs of Oudh.

Held, affirming the trial Judge, that the usages and customs of Oudh as to dower were not applicable to the marriage in question (165). (Lord Hannen.) ZAKERI BEGUM v. SAKINA BEGUM. (1892) 19 I. A. 157= 19 C. 689 (698) = 6 Sar. 213.

-Writing -Necessity.

Contracts of dower are sometimes committed to writing and sometimes not. Writing is not indispensable for a contract of dower (163). (Lord Hannan.) ZAKERI BEGUM D. SAKINA BEGUM. (1892) 19 I. A. 157= 19 C. 689 (696) = 6 Sar. 213.

### Dower-Conveyance of property in lieu of.

-Wife's case of -Release executed by seife on payment of dower -- Husband's case of - Proof of - Quantum.

The suit was by a Mahomedan lady against her busband and others, inter alpa, to recover possession of certain immoveable property.

The plaintiff's case was that upon her marriage with the defendant, the latter agreed to settle upon her a dower of one lac of rupees, of which one-half was to be prompt, and the other half deferred; that the defendant, not being able to pay down the amount of the prompt dower, conveyed to her in lieu thereof the suit lands; that she took possession of the property, and remained in posses-sion thereof till shortly before the suit, when she had been obliged, in consequence of her husband's cruelty and misconduct, to leave his house; and that the defendant gained over to his side the officials in charge of the documents, and thus ousted her from possession of the lands.

The defendant's case was that he had never settled any property in lieu of dower upon the plaintiff; that he had paid to her all her dower both prompt and deferred, and had taken release from her, and torn up the kabeenamah.

The questions for decision were (1) whether the defendant had executed in favour of the plaintiff the conveyance of the property relied upon by her in lieu of dower and (2) whether the release set up by the defendant was executed by the plaintiff.

On the first question the Courts below concurred in finding that the allegation made by the defendant that the entire amount of the dower had been paid, and that a release had been executed by the plaintiff could not be admitted. Their Lordships upheld that finding

On the second question the High Court held, reversing the Court below, the plaintiff's case proved. Their Lordships affirmed the decision of the High Court,

Strong evidence was adduced in support of the plaintiff's case as regards the execution of the document set out in the plaint, and, though the evidence of possession was slight, it was as much as could be reasonably expected in a case in which a husband and wife had undivided shares in the same property FUKHUROODEEN MAHOMED ARSUN CHOWDRY D. KUMROONISSA KHATOON.

(1872) 9 M. J. 141.

#### Dower-Deferred dower.

Payment of Time for-Contract express as to-Contract not providing for it-Time in case of-Fixing of-Circumstances to be considered in.

In the case of deferred dower, it is indisputable that the term to which payment is to be deferred may be fixed by the contract; that, for example, the husband is at liberty to stipulate that the dower shall not be payable until divorce. or his own death (827). Quere whether deferred dower, whenever no time for payment is expressly limited by contract, must be presumed to be payable on the dissolution of the marriage by the death of either husband or wife; or whether it becomes demandable only on the death of the husband (828). Clear proof of local usage might have some bearing upon the question; but it ought not to be determined by mere considerations of convenience (828). MIRZA BEDAR BUKHT P. MIRZA KHURRUM BUKHT.

(1873) 2 Suth. 823 = 19 W. B. 315 = R & J.'s No. 20 (Oudh).

-Payment of-Time for-General law as to-Punjab Code not abrogating-Frompt dower-Time of payment in case of.

As regards the question whether the dower is not payable except upon the dissolution of the marriage by divorce, or upon the death of the husband, with the consequence that no suit for its recovery by the representatives of the wife | MAT HAFIZAN BIBI v. MUSAMMAT SUBA BIBI.

### MAHOMEDAN LAW-(Contd.)

### Dower-Deferred dower-(Contd.)

will lie during the husband's lifetime, the general Mahomedan law on the point is not controlled or affected by the Punjab Code. The only articles which could have this effect are the 10th and 11th of S. 6 of the part entitled Principles of Law. These, like the other portions of this somewhat informal Code, consist of a statement or recital of what the general law is, followed by provisions for the modification of it, in its practical application to the Punjab. These recitals cannot be taken to have altered the law, because they contain an imperfect or inaccurate statement of it. And the particular articles under consideration certainly do not contain an exhaustive exposition of the Mahomedan law relating to dower, and the circumstances under which it becomes demandable. The first contemplates only the event of a divorce; the other that of the husband's death; neither makes any distinction between prompt and deferred dower; and both assume the demand to be excessive. If then by the general law, dower, whether prompt or deferred, may be claimed from the husband by the heirs of the wife on the dissolution of the marriage by her death, that part of the law is not abrogated by the Punjab Code; although it may be true that the power given to the courts to modify excessive dowers is capable of being exercised in such a case, as well as in the particular cases expressly mentioned in the recitals (827). MIRZA BEDAR BUKHT D. MIRZA KHURRUM BUKHT.

(1873) 2 Suth. 823=19 W. R. 315= R & J.'s No. 20(Oudh).

Prompt or-No express stipulation as to-Effect. When it is not expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand (829). MIRZA BEDAR BUKHT P (1873) 2 Suth. 823= MIRZA KHURRUM BUKHT. 19 W. R. 315 = R & J.'s No. 20 (Oudh).

-Release of right to-Plea by husband of-Onus of Proof of.

Where, in a suit by a Mahomedan wife to recover from her husband her dyn-mohr, alleging that that the husband had dissolved the marriage by divorcing her, the dissolution of the marriage was admitted by the husband, held, that it was for him to make out that the wife had given up the rights which prima facie resulted from the dissolution (397). (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM D. LUTEEFUT-OON-NISSA.

(1861) 8 M. I. A. 378=1 W. R. 57=1 Suth. 445= 1 Sar. 794.

---- Suit for-Defence to-Ibranamah and Khoolanamah obtained by force and froud from wife insufficient to afford.

Held that an Ibranamah and a Khoolanamah obtained by the husband by force and fraud from his wife were no more avail, when used by him as a defence against the claims of the wife for the recovery of her dyn-mohr on an allegation of divorce by him, than they would have had if the husband were suing upon them as plaintiff to enforce rights secured to him (399). (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM v. LUTEEFUT-UN-NISSA. (1861) 8 M. I. A. 378 = 1 W. B. 57 =

1 Suth. 445=1 Sar. 794.

Suit for-Limitation. See LIMITATION ACT OF, 1908, ART.

#### Dower-Fatmi dower.

-Nature of.

The sum of Rs. 107 represents the so-called "fatmi" dower or the legal minimum to which the widow of a Mahomedan is enti led (715). (Lord Salvesen.) MUSAM-

Dower-Fatmi dower-(Contd.)

(1922) 18 L. W. 670 = A. I. R. 1923 P. C. 29= 37 C. L.J. 461 = L. R. 4 P. C. 95 = 27 C. W. N. 854 = 44 M. L. J. 714.

### Dower-Gift in lieu of unpaid.

-Acceptance by wife of -No agreement as to-Election by her subsequently to accept-Effect. See MAHOMEDAN LAW-GIFT-TRUST-GIFT THROUGH (1916) 43 I. A. 212 (220) = 38 A. 627. MEDIUM OF.

-Factum of-Issue as to-Decision of-Exact amount of dower-Decision as to-Necessity.

On an issue as to whether an oral gift of an estate had been made by a Mahomedan in favour of his wife, the gift being sta ed to have been made in consideration of a dower of a certain amount, which remained unpaid, it is not necessary, in holding in favour of the gift, to affirm that that amount of the dower had been agreed upon prior to the marriage. (Sir Montague Smith.) KAMAR-UN-NISSA (1880) 3 A. 266 (274)= BIBI v. HUSSAINI BIBI. 3 Suth. 804 - 4 Sar. 185.

-Validity of -Amount states to be due-Error as to -Effect of.

A gift by a Mahomedan to his wife of all his property, which was considerable, was stated to have been made in consideration of a dower of Rs. 51,000 which remained unpaid. There was some question as to whether that large sum had been agreed upon at the time of the marriage, the suggestion being that it was only a nominal sum. It was, however, acknowledged that some dower had been agreed

Held, that the precise amount was not material to sustain the gift, because any amount would be a sufficient consideration for that purpose (808). (Sir Montague E. Smith.) MUSSAMUT KAMAR-UN-NISSA BIBLE. MUSSA-MUT HUSAINI BIBI. (1880) 3 Suth. 804 - 3 A. 266 -

-Validity-Delivery of possession-Necessity. See MAHOMEDAN LAW-GIFT-TRUST-GIFT THROUGH MEDIUM OF. (1916) 43 I. A. 212 (229-31)-38 A. 627 (643-4).

### Dower-Interest on-Award of, as equitable compensation.

-Widow's right to, in mit by husband's heir to recover from her possession of estate allowed to be taken by her to satisfy dower debt.

Where a widow is allowed to take possession of her husband's estate in order to satisfy her dower debt with the income thereof, it is either on the basis of some definite understanding as to the conditions on which she should hold the property, or on no understanding. If there is an agreement, express or implied, that she should not be entitled to claim any sum in excess of her actual dower, she must abide by its terms. But where there is no such understanding, and a claim for interest on the unpaid dower is made as in the present case the question arises whether, on equitable considerations, she should not be allowed some reasonable compensation, not only for the labour and responsibility imposed on her for the proper preservation and management of the estate, but also for forbearing to insist on her strict legal right to enact payment of her dower on the death of her husband. Their Lordships think that she is so entitled, and obviously compensation for forbearance to enforce a money payment is best calculated on the basis of an equitable rate of interest. This appears to be consis-tent with the chapter on "The Duties (Adab) of the Kazi" in the principal works on Mussulman law, which clearly shows that the rules of equity and equitable consider-

## MAHOMEDAN LAW-(Contd.)

Dower-Interest on-Award of as equitable com-pensation-(Contd.)

England are not foreign to the Mussulman system, but are in fact often referred to and invoked in the adjudication of cases (301-2). (Lord Parker.) HAMIRA BIBI v. ZUBAIDA (1916) 43 I. A. 294 - 38 A. 581 (588-90) =

14 A. L. J. 1055 = 20 M. L. T. 505 = (1916) 2 M. W. N. 651 = 4 L. W. 602 = 21 C. W N. 1= 1 Pat. L. W. 57 = 18 Bom. L. R. 999 = 25 C. L. J. 517-36 I. C. 87-31 M. L. J. 799.

Widow's suit for dozer against husband's heirs.

In decreeing a suit for dower by a Mahomedan widow against the heirs of her deceased husband, their Lordships made an allowance of 6 per cent, per annum to the representatives of the wife, not strictly as interest, but as the means of preventing her position being adversely prejudiced by the unsuccessful controversy raised by the heirs of the husband as to her rights (875). (Lord Buckmarter). MUSSUMAT FAKRUNNISSA P. MOULVI-IZARUS-SADIK. (1921) 25 C W. N. 866=63 I. C. 898=17 N. L. B. 72.

# Dower-Lien for unpaid.

-Nature of. See MAHOMEDAN LAW-DOWER-NATURE AND INCIDENTS OF.

## Dower-Nature and incidents of

-(See also MAHONEDAN LAW-DOWER-WIDOW IN POSSESSION OF HUSBAND'S ESTATE IN LIEU OF CLAIM TO-RIGHT TO RETAIN POSSESSION, ETC.)

-Charge on husband's estate-If and when a.

A widow's claim for unpaid dower, when it does not, by virtue of a liyemokasa executed by her husband, become a preferential charge on the estate, constitutes a debt payable peri pessis with the demands of other creditors, MUSSAMUT HUMEEDA P. MUSSAMUT BUDHEN.

(1872) 17 W. R. 525 (527) = 2 Suth. 599.

Charge if a.

Under the Mahomedan law, a widow claiming dower from her deceased husband's estate is in no better position than any ordinary creditor, and a bona fide purchaser for value from the heir would get an unassailable title. (Sir George Launder.) SAIVID QASIM HUSAIN v. HABIBUR RAHMAN. (1929) 56 I. A. 254 = 8 Pat. 926 =

27 A. L. J. 777 = 31 Bom. L. R. 879 = 33 C. W. N. 926 = 117 I. C. 10 = 6 O. W. N. 613 = 30 L. W. 198 = 50 C. L. J. 187 = 1929 M. W. N. 673 = 10 Pat. L. T. 851 = A. I. R. 1929 P. C. 174 = 57 M. L. J. 361.

-Lien for unpaid doncer -- Nature and incidents of. Dower is an essential incident under the Mussulman Law to the status of marriage. When it is unspecified at the time the marriage is contracted, it must be adjudged on definite principles. Regarded as a consideration for the marriage, it is, in theory, payable before consummation; but the law allows its division into two parts, one of which is called "prompt", payable before the wife can be called upon to enter the conjugal domicil; the other "deferred", payable on the dissolution of the contract by the death of either of the parties or by divorce. Naturally the idea of payment of interest on the deferred portion of the dower does not enter into the conception of the parties. But the dower ranks as a debt, and the wife is entitled, along with other creditors, to have it satisfied on the death of the husband out of his estate. Her right, however, is no greater than that of any other unsecured creditor, except that if she lawfully, with the express or implied consent of the husband, or his other heirs, obtains possession of the whole or part of his estate, to satisfy her claim with the rents and issues clearly shows that the clouds of Chancery in accruing therefrom, she is entitled to retain such possession

Dower-Nature and incidents of-(Contd.)

until it is satisfied. This is railed the widow's lien for dower, and this is the only creditor's lien of the Mussulman law which has received recognition in the British Indian Courts and at this Beard (300-1). (Lend Parker.) HAMIRA BIBL: ZUBAIDA BIBL. (1916) 43 I. A. 294 — 38 A. 581 (588 9) — 14 A. L. J. 1055 —

20 M. L. T. 505 - (1916) 2 M. W. N. 551 = 4 L. W. 602 - 21 C. W. N. 1 = 1 Pat. L. W. 57 = 18 Bom. L. R. 909 - 25 C. L. J. 517 = 36 I. C. 87 = 31 M. L. J. 799.

### Dower-Oudh-Law applicable in.

-Mahamalan law-Custom-Proof of.

On what grounds is the application of the rules laid down in the Articles of the Punjab Code to be excluded from the present case? If they are to be excluded, it must be on the ground that there is some Ital Ivis, or special custom, in Oudh by which the law of dower in that country differs from the General Mahomedan law. But no such custom is pertended (270). (Land Kingalawa), MULKAH DO ALUM NOWAB TAJDAR BAHOO P. MILZA TEHAN KUDR.

(1865) 10 M. I. A. 252 - 2 W. R. (P. C.) 53 = 1 Suth. 554 - 2 Sar. 106 - R. & J.'s No. 2 (Oudh)

#### Dower-Payment of.

-Additional gift—Transfer by way of—Presumption—Onus of proof—Property transferred substantially convenient in amount and character to descer claim.

Where there is a debt to a very large amount (in respect of dower, as in this case) and there is a delivery or transfer of something (Government paper) which is substantially in amount and character the equivalent of that which the debtor ought to have provided for the creditor, the presumption of law is that the thing given by the debtor to the creditor is given by way of payment and satisfaction, and not by way of additional gift leaving the original debt unsettled; and the onus is on the person who alleges that there was a gift in addition to the debt, to give sufficient and satisfactory evidence. IFTIKARUNNISSA BEGUM T. NAWAB AMJAD ALI KHAN.

(1871) 7 B. L. R. 643 (650) = 2 Sar. 659 = 6 M. J. 230 = 2 Suth 420 = R & J's No. 9 (Oudh).

- Presumption of from property being left with her to obtain payment by that possession and enjoyment of pro-

perty by her and her heirs for 15 years.

Where a Mahomedan widow was put in possession of the property of her husband in order to obtain by that posses sion payment of her dower (Rs. 10,000), and she, and, after her death, her heirs, continued in possession for 15 years, held that there was a very strong presumption that the dower was paid off (575). NAWAR MAHOMED AMEEROODDIN KHAN P. MOZUFFER HOSSEIN KHAN.

(1870) 5 B. L. R. 570 = 14 W. R. 5 = 2 Suth. 334 = 2 Sar. 585.

——Property left with widow to obtain—Suit against her heirs for recovery of—Accounts in—Taking of—Necessity—Basis of—Decree in—Form of.

In a suit to recover from the heir of a Mahomedan widow property left with the widow in order to obtain by that possession payment of her dower, the proper course would be to direct an account to be taken with a view to see if the dower had been poid, and in that event, to make the heir repay the difference; or, if otherwise, to order plaintiff to pay the difference as the terms of obtaining possession of the estate (575), NAWAB MAHOMED AMEERUDEEN KHAN 2. MOZUFFUR HOSSEIN KHAN.

(1870) 5 B. L. R. 570=14 W. R. 5=2 Suth. 334= 2 Sar. 585.

#### MAHOMEDAN LAW-(Contd.)

Dower-Payment of-(Contd.)

Time of Deferred dower—Time in case of. See MAHOMEDAN LAW—DOWER—DEFERRED DOWER— PAYMENT OF.

——Time of—Prompt dower—Time in case of. See MAHOMEDAN LAW—DOWER—PROMPT DOWER.

#### Dower-Prompt dower.

——Deferred or—No express stipulation as to—Effect.

So: Mahomedan Law—Dower—Deferred dower—
PROMPT OR. (1873) 19 W. B. 315.

——Meaning of. Sar MAHOMEDAN LAW—DOWER— CLASSES OF. (1916) 43 I. A. 294 (300-1) = 38 A. 581 (588-9).

 Nature of. Sec Limitation Act of 1908, ART. (1875) 2 I. A. 235 (239).

——Payment of—Time of. See Mahomedan Law— Dower—Deferred dower—Payment of—Time of —General law as to and Limitation act of 1908, Akt. (1872) Sup. I. A. 135 (140)= (1873) 19 W. B. 315

——Suit for—Limitation. See Limitation ACT OF 1908. ART.

——Suit for, by wife's heirs during husband's lifetime —Maintainability.

It cannot be maintained, as to dower which is prompt, and therefore exigible by the wife during the coverture, that by the general Mahomedan law, such dower is not payable except upon the dissolution of the marriage by divorce, or upon the death of the husband, and that consequently no suit for its recovery by the representatives of the wife will lie during the husband's lifetime (827). MIRZA BEDAR BUKHT P. MIRZA KHUKRUM BUKHT.

(1873) 2 Suth. 823 = 19 W. R. 315 = R. & J.'s. No. 20 (Oudh).

-Transfer of property by husband to wife in lieu of -Estate taken by her under.

On the occasion of his marriage with S, F a Mahomedan contracted to give her a certain dower, of which one-third was to be prompt. On the same occasion it was agreed that F should, in satisfaction of that portion of the dower which was prompt, make over to her twenty-two villages forming part of his zen indary; and he did accordingly make over the said villages to her by a kabinnamah. The transaction upon the face of the kabinnamah was a transfer of the said villages to S in satisfaction of the one-third of her agreed dower. It did not reserve any rent whatever. It did not make any mention of or provision for the payment of the Government revenue payable in respect of those particular villages; and though it did not contain any words of inheritance in the strict sense of the term, it did not contain any express direction that the enjoyment of the villages granted should be limited to any particular time. By an ikrarnamah executed a year after his marriage F created a sub-tenure or dependent talook out of the 22 villages as then constituted under the name of Bussoolpoor, on which he received a gross rent of Rs. 49.

In a suit brought by the successor in interest of F for enhancement of the rent of the said sub-tenure, held that the nature of the transaction evidenced by the kabinnamah afforded strong ground for the conclusion that the villages were intended to be made over to S absolutely, and for all time (173).

S was entitled to the third of her dower absolutely. She might have disposed of that as she pleased; and when, in lieu of that she took a grant of the villages, the presumption is that she was intended to take an absolute interest. It may seem strange that no provision was made expressly in

Dower-Prompt dower-(Contd.)

the instrument for the payment of the Government revenue. But the Zemindar may have been willing to take the whole of the Government revenue upon himself; and his doing this may have been an element in the settlement of the terms upon which the third of the dower was to be given up (173). (Sir James W. Colvile.) SADUT ALI KHAN P. KHAJEH ABDOOL GUNNEE. (1873) Sup. I. A. 165=

11 B. L. R. 203 = 19 W. R. 171 = 3 Sar. 229 = 2 Suth. 785

#### Dower-Release of claim to.

-Improbability of-Circumstances indicative of.

It is in the highest degree improbable that the wife should, within 10 years of her marriage, relinquish the large sum of 9 lakhs of rupees, constituting the amount of her dower contracted for for so small a sum as Rs. 10,000 (827). MIRZA BEDAR BUKHT D. MIRZA KHURRUM BUKHT.

(1873)2 Suth. 823 = 19 W. R. 315 = R. & J's. No. 20 (Oudh).

--- Onus of proof of. See MAHOMEDAN LAW-DOWER-DEFERRED DOWER-RELEASE OF CLAIM (1861) 8 M. I. A. 378 (397).

-Writing evidencing-Absence of-Presumption adverse from-Conditions.

It does seem incredible that, if the wife was entitled to a large dower, she should have given it up without the husband obtaining from her some writing or other authentic evidence of her having so released it, particularly as she had once before sued for the prompt dower and had obtained a decree and that suit was very formally compromised. KHAJAH GONHUR ALI KHAN P. KHAJAH AHMED (1873) 2 Suth. 882 (885) - 20 W. R. 214. KHAN.

#### Dower-Relinquishment of property by son in satisfaction of.

-Estate taken by widow under.

A relinquishment by the son of a Mahomedan of his share in his father's possession in satisfaction of the latter's widow's claim for dower would be prima facie absolute; and if it is absolute, the widow would take the whole property, subject to the claims of other creditors.

An arrangement between a Mahomedan widow (a claimant for unpaid dower) and son, whereby the latter relinquished his share in his late father's property, was construed by the High Court as giving the mother only a lifeinterest, the son retaining the legal reversion, but the Privy Council reversed the same on the ground that the creation of such a life-estate did not appear consistent with Mahomedan usage, MUSSAMUT HUMEEDA P. MUSSAMUT BUDLEN AND THE GOVERNMENT

(1872) 17 W. R. 525 (527) = 2 Suth. 599. Dower-Right to.

-Divorce-Right to entire dower on.

On divorce the wife would be entitled to her dower, not only to the prompt dower but to the whole of it. KHAJAH GONHUR ALI KHAN v. KHAJAH AHMED KHAN.

(1873) 2 Suth. 882 (885) = 20 W. R. 214.

-Release of. See MAHOMEDAN LAW-DOWER-RELEASE OF CLAIM TO.

-Scope of -Sale of immovable property of husband-Power of.

Under the Mahomedan law, a widow's right to dower does not confer upon her a saleable interest in the immoveable property of her husband. (Sir John Edge.) PARBATI v. MUZAFFAR ALI KHAN. (1912) 34 Å. 289 (293) = (1912) M. W. N. 417 = 11 M. L. T. 316 = 9 Å. L. J. 450 = 15 C. L. J. 468 = 14 Bom. L. B. 460 =

MAHOMEDAN LAW-(Centsl.)

Dower-Right to-(Could.)

-Withdrawal of wife from society of husband-Effect of.

In consideration of marriage, a Mahomedan promised to pay his wife a dower of the sum of ten lacs of rupees, and an annuity of Rs. 150 per mensem, for the term of her life, for the purpose of her personal expenses. Held that the wife's withdrawal from the society of her husband had, legally speaking, no effect on her claim to dower (147).

(Lord Hobbourg.) PRINCE MIRZA SULEMAN KADR v. NAWAR MEHIN BEGUN SURREYA BAHU.

(1893) 20 I. A. 144 = 21 C. 135 = 6 Sar. 347 = R. & J.'s. No. 132.

### Dower-Suit for.

DEFERRED DOWER.

See Under MAHOMEDAN -Suit for. -DOWER-DEFERRED DOWER.

LIMITATION.

-See LIMITATION ACT OF 1908, ARTS.

PROMPT DOWER.

-Suit for. Sec Under MAHOMEDAN LAW-DOWER-PROMPT DOWER.

WIDOW-SUIT BY, AGAINST HUSBAND'S HEIRS.

-Charge in respect of donoer debt-Decree creating-What amounts to-Competency of Court to pass such a deiree.

II, a Shia Mahomedan, executed certain deeds by which he disposed of his immovable properties. He died subsequently, leaving A, his sister, his sole heir. Shortly after his death, his widow instituted a suit against A, the persons interested in her husband's alienations, and certain other creditors of her husband. She claimed by her plaint that thuse alienations were invalid, and that she was entitled to recover her dower debt from the properties. She prayed for a decree for a certain sum, for a declaration that the properties specified in the Schedules to the plaint were "the heritage " of H, and that " the plaintiff be empowered to recover her decree from them." A specific issue was raised at the hearing of that suit, "whether the dower debt . . . can be realised from the properties mentioned in the plaint." The decree passed in the suit in favour of the widow ordered " and decreed that this suit be decreed with costs and interest . . . . that Rs. 40,000 and one gold mohur . . . be declared the dower debt of the plaintiff, that the properties entered in Schedules Nos. 1 and 2 to the plaint be treated to be the properties of H" (the husband) " from which the plaintiff is entitled (to recover) the decretal money."

Held that the decree, on its true construction, created a charge on the properties in respect of the dower debt of the widow.

The widow in her suit was not seeking merely to be put in a position to execute a money decree against the estate, but was asking the Court by its decree to imprint upon the properties a specific liability to satisfy the dower debt, or in other words, to charge the properties with the payment of this particular debt.

Semble it was within the competence of the Court in the widow's suit to make a declaration creating a charge. (Sir George Lounder.) SAIYID QASIM HUSAIN v. HABIBUR (1929) 56 I.A. 254 = 8 Pat. 926 = RAHMAN.

27 A. L. J. 777=31 Bom. L.R. 879=33 C. W. N. 926= 117 I. C. 10 = 6 O. W. N. 613 = 30 L. W. 198 = 50 C. L. J. 187 = 1929 M.W.N. 673 = 10 Pat.L.T. 851 =

A. I. B. 1929 P. C. 174 = 57 M. L. J. 361.

-Declaration in, of her marriage with alleged hus-16 C. W. N. 913 = 15 I. C. 196 = 23 M. L. J. 11. hand-Propriety of Agreement for dower held not proved.

Dower-Suit for-(Cental.)

Whom-Suit by Agment Husband's Heirs-(Contd)

The appeal arose out of a suit brought by the plaintiff, claiming dower which, she alleged, was settled upon her at the time of her alleged marriage with F. against the wife of B and two of her sons by that wife. The suit necessarily involved the consideration of the question of marriage, and, accordingly, two issues were settled, one raising the question whether the plaintiff had been married to B, and the other, raising the question whether the amount of dower which she claimed was really agreed upon at the time of the alleged marriage.

The trial Judge found, on the evidence, both issues

against the plaintiff and dismissed the suit.

On appeal, the High Court agreed with the Court below in the finding as to the dower, but came to an opposite conclusion on the issue of marriage. They accordingly modified the decree of the trial Judge to that extent, and in their own decree inserted a declaration that the plaintiff was married to B.

Quart, whether the declaration as to marriage was warranted by the original plaint, which simply sought relief by recovery of the dower. SHOJANT ALI KHAN F. MUSSAMUT MUKHDOOM JAN. (1872) 8 M. L. 185.

Evidence-Litigation between husband and write Depositions in-Admissibility of.

In a suit for the recovery of dower brought by a Mahomedan widow against the heirs of her deceased husband, the question was as to the amount fixed for dower. The husband had, during his lifetime, brought a suit against the wife for cancellation of an award which purported to put her in possession of the husband's property in time of her claim to dower.

Held that the depositions in the prior suit were not ad missible in evidence.

They can only be used either for the purposes of crossexamination or for purposes of admissions made as against a litigant party, or of course in case of a witness being dead or unable to be found. (Lord Buckmatter.) MUSSUMAT FAKRUNNISSA D. MOULVI-IZARUS-SADIK.

(1921) 25C.W.N. 866 (872) - 63 I.C. 898 = 17 N.L.R. 72.

-Evidence-Litigation between husband and wife-Husband's conduct and statements in-Effect of.

In a sult for the recovery of dower brought by a Mahomedan widow against the heirs of her deceased husband the question was as to the amount fixed for dower. The husband had, during his lifetime, brought a suit against the wife for cancellation of an award which purported to put her in possession of the husband's property in lieu of her claim to dower.

Held that, whatever misconduct the husband had been guilty of in regard to the trial of the earlier suit was not misconduct by which the heirs would be affected, and that a statement made by him would not operate against them by way of estoppel. (Lord Buckmaster.) MUSSUMAT FAKRUNNISSA P. MOULVI-IZARUS-SADIK.

> (1921) 25 C. W. N. 866 (873) = 63 I. C. 898 = 17 N. L. R. 72.

Heir at land's alienations of estate before and pending -Validity of-Distinction-Lis pendens-Applicability of rule of.

A Mahomedan of the Soonee sect died, leaving behind him three widows and a son. The widows claimed large sums of money on account of dower. But before any proceedings had been taken by the widows to recover their dower, the son, who was in possession substantially of the whole of the deceased's property, mortgaged a portion thereof to secure the repayment of a sum of money advanced to him by the

### MAHOMEDAN LAW-(Contd.)

Dower-Suit for-(Contd.)

WIDOW-SUIT BY. AGAINST HUSBAND'S HEIRS-(Contd.)

mortgagee. The widows then obtained a decree that the son must account for the assets of the estate of the deceased which had come to his hands, and that to the extent of those assets he was liable to pay the amount due to the widows in respect of their dower, the widows, in respect of their claim ranking para passu with other ordinary creditors of the estate.

Held that the mortgage bond executed by the son gave the mortgagee a title to the estate which had been mortgaged by the bond before the institution of the suits by the widows, and that the rights of the mortgagee and of those who claimed under the sale in execution of his decree were not affected by any of the proceedings in the widow's suits (223).

The son had, pending the suits brought by the widows, executed another mortgage bond to another person, and the appellant in the other appeal claimed under a sale in execu-

tion of a decree upon that mortgage bond.

Held that, there was a great distinction between the position of the mortgagee under the later mortgage and that of the mortgagee under the earlier mortgage, and that the mortgagee under the later mortgage and all persons claiming under him, or under the sale in executionof the decree upon his bond, were bound by the decree in the suit instituted by the widows before the bond was executed (224). (Sir Barnet Peaceck.) SYUD BAZAYET HOSSAIN P. DOOLI CHUND.

(1878) 5 I. A. 211 = 4 C. 402 (409-10) = 3 Sar. 853.

-Interest on dower in-Award of, as equitable compensation. See MAHOMEDAN LAW-DOWER-INTEREST ON. (1921) 25 C. W. N. 866 (875).

-Subsequent suit by her as heiress-Maintainability-C. P. C. of 1908. O. 2, R. 2-Effect.

The plaintiff-respondent, the widow of a deceased Mahomedan, sued to recover the entire property left by him from the defendant, his brother, who had taken possession of the same on the death of the deceased. The plaintiff alleged that, according to the custom and the entries made in the settlement sorjibulars, she was entitled to succession and to inherit the entire property left by her deceased hus-

The plaintiff had previously brought a suit against the defendant, in which she claimed Rs. 30,000 for dower. A decree for Rs. 166 was made in that suit in an appeal by the plaintiff from the order of the District Judge who had dismissed the suit. The question for decision was whether the subsequent suit was wholly barred under S. 43 of C. P. C. of 1882 by the decree in the dower suit.

Held that it was not (158.9).

The dower suit did include the whole of the claim in respect of the cause of action in the suit, viz., the right to dower and the non-payment of it. No portion of that claim was either relinquished or omitted. It cannot be said that the claim of the plaintiff as heir of her husband to the whole of his property was a portion of her claim to dower. The causes of action in the dower suit and in the present suit are distinct, and it was pointed out by this Committee in case of the Rajah of Pittapur (L. R. 12 I. A. 119) that the corresponding section in the C. P. C. of 1859 does not say that every suit shall include every cause of action or every claim which the party has, but every suit shall include the whole of the claim arising out of the cause of action, mean ing the cause of action for which the suit is brought (158-9). (Sir Richard Couch.) MAHOMED RIASAT ALI C. (1893) 20 I. A. 155= MUSSUMAT HASIN BANU.

21 C. 157 (162-3) = 6 Sar. 374= B. & J.'s. No. 133 (Oudh).

Dower-Suit for-(Could.)

WIDOW'S SON AND HEIR-SUIT BY.

—Discharge—Plea by husband of—Ouns of proof of.

Where, in a suit by the son and one of the heirs of a deceased Mahomedan lady, to recover from his father the plaintiff's share of the dower contracted to be paid by the defendant to the deceased, the plaintiff proved the contract for the payment of the dower set up by him, held that it lay upon the defendant to prove that his wife's claim for dower had been satisfied by him in her lifetime, and that the burden of proof was not made lighter by the circumstance that he falsely disputed the contract for the payment of dower and contended that the obligation, which he professed to have satisfied, was a very different one (826). MIRZA BEDAR BUKHT MAHOMED ALI BAHADOOR. MIRZA KHURRUM BUKHT YAHVA ALI KHAN BAHADOOR.

(1873) 2 Suth. 823 = 19 W. R. 315 = R. & J.'s. No. 20 (Oudh).

Dower-Widow in possession of husband's estate in lieu of claim to.

ASSIGNMENT OF DOWER DEBT AND OF RIGHT TO HOLD POSSESSION TO ANOTHER.

Effect of, on her right to retain persession of estate.

By assigning to another her dower-debt and by giving up to him possession of her husband's estate held by her in lieu of that debt, a Mahomedan widow undoubtedly loses the right to hold the possession of such estate (159). (Lord Atkinson.) MAINA BIBLE. CHAUDHRI VAKIL AHMAD.

(1924) 52 I. A. 145 = 47 A. 250 = L. R. 6 P.C. 25 = 2 O. W. N. 180 = 27 Bom. L. B. 796 = 23 A. L. J. 115 = A.I.B. 1924 P.C. 63 = 86 I. C. 579 = 48 M. L. J. 667.

-Power of.

Quare whether a Mahomedan witlow in possession of her husband's estate in lieu of her claim to dower, is legally competent to assign to another her dower-debt and her right to hold possession of her husband's estate until that debt was paid (159). (Lord Atkinson.) MAINA BIBLE. CHAUDHRI VAKIL AHMAD. (1924) 52 I. A. 145

47 A. 250 = 6 L.B. P. C. 25 - 2 O. W. N. 180 = 27 Bom. L.B. 796 = 23 A. L. J. 115 = A.I.R. 1925 P.C. 63 - 86 I.C. 579 = 48 M L.J. 667.

RIGHT TO RETAIN POSSESSION TILL DOWER DEBT IS SATISFIED.

--- Basis of Hypothecation of estate for dower-Theory of Correctness of.

The claim of a Mahomedan widow to hold the estate of her husband to satisfy her dower cannot be founded upon an original hypothecation of the estate for her dower, for such a right does not arise by the Mahomedan law as a consequence of the gift of dower (383-4). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN V. SHEIKH HAMID HOSSEIN. (1871) 14 M. I. A. 377 = 10 B.L.B. 45 (P. C.) = 17 W. B. 113.

Basis and extent of.

Whatever the right of a Mahomedan widow in possession of her husband's estate to retain that possession until her dower is satisfied may be called, it appears to be founded on the power of the widow, as a creditor for her dower, to hold the property of her husband, of which she has lawfully, and without force or fraud, obtained possession, until her debt is satisfied, with the liability to account to those entitled to the property, subject to the claim for the profits received (384). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN v. SHEIKH HAMID HOSSEIN.

(1871) 14 M. I. A. 377 = 10 B.L.B. 45 (P.C.) =

MAHOMEDAN LAW-(Contd.)

Dower-Widow in possession of husband's estate in lieu of claim to-(Contd.)

RIGHT TO RETAIN POSSESSION TILL DOWER DEBT IS SATISFIED—(Contd.)

Nature of -Lien if and when a.

Quare whether the right of a Mahomedan widow in possession of her husband's estate to retain that possession until her dower is satisfied is a lien in the strict sense of the term (384). (Sir Montagne E. Smith.) MUSSUMAT BEBEE BACHUN v. SHEIKH HAMID HOSSEIN.

(1871) 14 M. I. A. 377=10 B.L.R. 45 (P. C.)= 17 W. R. 113.

Nature of Lieu of veidate for unpaid decer.

If the widow lawfully, with the exoress or implied consent of the husband, or his other heirs, obtains possession of the whole or part of his estate, to satisfy her claim with the rents and issues accruing therefrom, she is entitled to retain such possession until it is satisfied. This is called the widow's lien for dower, and this is the only creditor's lien of the Mussulman law which has received recognition in the British Indian Courts and at this Board (300-1). (Lord Parker.) HAMIRA BIBLE, ZURAIDA BIBL.

(1916) 43 I. A. 294 = 38 A. 581 (588-9) = 14 A. L. J. 1055 = 20 M. L. T. 505 = 4 L. W. 602 = (1916) M.W.N. 551 = 21 C. W. N. 1 = 1 Pat. L. W. 57 = 18 Begn. L. R. 999 = 25 C.L.J. 517 = 36 I. C. 87 = 31 M. L. J. 799.

-Nature and basis of Widow if a mortgagee, usufructuary or other.

The right of a Mahomedan widow who has obtained actual and lawful possession of her husband's estate under a claim to hold it as heir and for her dower, to retain that possession until her dower is satisfied, whatever that right may be called, appears to be founded on the power of the widow as a creditor for her dower to hold the property of her husband of which she has lawfully and without force or fraud obtained the possession until her debt is satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received. Neither the possession of the property nor the right to retain that possession when acquired is conferred upon the widow by the agreement or bounty of her deceased husband. The possession of the property being once peaceably and lawfully acquired, the right of the widow to retain it till her dower-debt is paid is conferred upon her by the Mahomedan law. The husband, when he grants dower to the wife, cannot, by any original hypothecation of his property, secure to her the payment of it. The widow who holds possession of her husband's property until she has been paid her dower has no estate or interest in the property as has a mortgagee under an ordinary mortgage. There are essential differences between the position of a Mahomedan widow entitled to dower, who enters upon her deceased husband's property lawfully and peaceably, and only claims to retain that possession till her dower-debt is satisfied, and the position and right of a mortgagee usufructuary or other to whom an owner pledges his property to secure the repay-ment of a debt. There is no real or true analogy between the two (151). (Lord Atkinson.) MAINA BIBI v. CHAU-II. AHMAD. (1924) 52 I. A. 145= 47 A. 250 = 6 L.B. P.C. 25 = 2 O.W.N. 180= DHRI VAKII, AHMAD,

47 A. 250 = 6 L.R. P.C. 25 = 2 O.W.N. 180 = 27 Bom. L.B. 796 = 23 A.L.J. 115 = A I.R. 1925 P.C. 63 = 86 I.C. 579 = 48 M.L.J. 667.

SUIT BY HUSBAND'S HEIRS TO RECOVER POSSESSION FROM HER.

Decree for possession in, conditioned on payment within time fixed of balance of dower debt-Non-compli-17 W. B. 113.

Dower—Widow in possession of husband's estate in lieu of claim to—(Contd.)

SUIT BY HUSBAND'S HEIRS TO RECOVER POSSES-SION FROM HER—(Contd.)

Immediately on the death of a Mahomedan, his widow took possession of his immoveable property claiming to Thereupon the heirs hold it in lieu of her dower-debt. of the deceased sued the widow for immediate possession of their share of the property, alleging that the dowerdebt had long previously been paid from the property mentioned in the lists annexed to the plaints. In that suit a decree was passed directing that the plaintiffs should be put in possession of a specified share of the property on condition that they paid the widow a certain amount, being the balance of her dower-debt, within a date fixed, and that, in default of the plaintiffs making the said payment, their suit should be dismissed with costs. The plaintiffs defaulted to pay the amount within the specified date, and the suit in which the decree was made accordingly stood dis-

Held, that the failure of the plaintiffs to make the payment of the amount decreed to be due to the widow did not convert her into the absolute owner of the immoveable property of her deceased husband of which she had been in possession, nor did it confer upon her any proprietary interest in it or any right to dispose of it (159-60). (Lord Atkinson.) MAINA BIBLE. CHAUDHRI VAKIL AHMAD.

(1924) 52 I.A. 145 = 47 A. 250 = 6 L.R. P.C. 25 = 2 O.W.N. 180 = 27 Bom. L.R. 796 = 23 A.L.J. 115 = A.I.R. 1925 P.C. 63 = 86 I.C. 579 = 48 M.L.J. 667.

— Dismissal of, for non-payment of balance of decorr as per decree—Suit subsequent by them for recovery of property—Maintainability—Res judicata.

Immediately on the death of a Mahomedan, his widow took possession of his immoveable property claiming to hold it in lieu of her dower-debt. Thereupon the heirs of the deceased sued the widow for immediate possession of their share of the property, alleging that the dower-debt had long previously been paid from the property. It was, however, found that a portion of the dower-debt still remained unsatisfied, and a decree was passed directing that the plaintiffs should be put in possession of the property on condition that they paid the widow a certain sum, the balance of the dower-debt found to be due to her, within a date fixed, and that, in default of the plaintiffs making the said payment, their suit should be dismissed with costs. The plaintiffs defaulted to make the payment within the date fixed, and their suit accordingly stood dismissed.

In a suit subsequently instituted by the plaintiffs against the widow and donees of the property from her for the recovery of possession of the same either unconditionally or conditional on their paying such balance as might be found due to the widow for her dower-debt, held that the suit was not barred under S. 11 of C. P. C. of 1908 by reason of the

dismissal of the prior suit (156-7).

The right to get immediate possession of land at the date when a suit to recover it is, in fact, instituted, is a wholly different thing, a wholly different res. from the right to recover it at some future time, and possibly under wholly altered circumstances. The non-fulfilment of the condition attached to the decree in the earlier suit only extinguished the right to recover immediate possession as actually claimed, and could not and did not extinguish the right of the plaintiffs to the inheritance of, or their rights to recover possession of, the lands at some future time. That fact prevents S. 11 of C. P. C. of 1908 from applying. The matter in issue in the first suit was not directly and substantially raised in issue in the second (157). (Lord Atkinson.) MAINA BIBI v. CHAUDHRI VAKIL AHMAD.

### MAHOMEDAN LAW-(Contd.)

Dower—Widow in possession of husband's estate in lieu of claim to—(Contd.)

SUIT BY HUSBAND'S HEIRS TO RECOVER POSSES-SION FROM HER—(Contd.)

(1924) 52 I. A. 145=47 A. 250=6 L. R. P. C. 25= 2 O. W. N. 180=27 Bom. L. R. 796=23 A. L. J. 115= A. I. R. 1925 P. C. 63=86 I. C. 579= 48 M. L. J. 667.

——Widon's marriage—Denial false of—Suit on foot of —Amendment of plaint in appeal so as to make suit one for plaintiff's share and for accounts—Permissibility—Discretion of Court.

The plaintiff, claiming to be the sole heir of a deceased Mahomedan, sued to recover the real and personal estate of the deceased, and for mesne profits. The respondent, who was in possession, claimed to be the wedded wife of the deceased and to be entitled to a sum of Rs. 46,000 for her dower. The plaintiff denied that the respondent was the wrdded wife of the deceased and that she was entitled to any dower. He did not claim in the alternative, that if the marriage of the respondent, and the deed of dower were proved, then that he might have his share of the estate.

Their Lordships observed: It is possible it might have been competent to the court below, in their discretion, to have entertained such a question, but it was a matter of discretion for the Judge of the Sudder Dewanny Adawlut (230). (Lard Justice Knight Bruce.) AMEER-OON-NISSA T. MOORAD-OON-NISSA. (1855) 6 M. I. A. 211=1 Sar. 533.

- Wistow's marriage—Denial false of—Suit on foot of Decree dismissing—Plaintiff's right to relief on foot of establishment of marriage and of deed of dower—Rettration in decree as to—Necessity.

The plaintiff, claiming to be the sole heir of a deceased Mahomedan, sued to recover the real and personal estate of the deceased, from the respondent, who, he alleged, was not the wedded wife of the deceased. The respondent claimed to be the wedded wife of the deceased and to be entitled to a sum of Rs. 46,000 for her dower under a deed of dower executed by the deceased in her favour. The plaintiff denied that the respondent was the wedded wife of the deceased and that she was entitled to any dower. He did not claim in the alternative, that if the marriage of the respondent, and the deed of dower were proved, then that he might have his share of the estate. He did not ask for an account. He also excluded all the moveable estate, and that position of the immoveable estate of which he himself had obtained possession.

The Courts below finding in favour of the respondent on the questions of (1) her marriage, and (2) her dower, dis-

missed the suit.

Held that, in the circumstances of the case, the right and convenient course was to dismiss the suit but that a declaration ought to be added that the dismissal was to be without prejudice to the right of the plaintiff to bring a suit for an account and administration of the deceased's estate consistent with the establishment of the marriage and the deed of dower (230-1). (Lord Justice Kinight Bruce.) AMEER-OON-NISSA 2. MOORAD-OON-NISSA.

(1855) 6 M. I. A. 211 = 1 Sar. 533.

SUIT BY OTHER HEIRS FOR RECOVERY OF THEIR SHARES OF ESTATE FROM.

Decree in-Form of Dower due to widow unsalitfied - Mesne profits and accounts not prayed for in suit.

The respondents were the sister's sons of a deceased Mahomedan, and the appellant was his widow. The respondents were entitled to three-fourths share of the deceased's estate in right of their mother, and the appellant was admittedly

Dower-Widow in possession of husband's estate in lieu of claim to-(Contd.)

SUIT BY OTHER HEIRS FOR RECOVERY OF THEIR SHARES OF ESTATE FROM-(Contd.)

entitled to the other fourth share. But the appellant got possession of the entire estate of her husband and claimed to hold it by inheritance, and also on account of her dower. Nearly 10 years after she had been in possession, the respondents sued to recover from her their three-fourths share of the deceased's estate. On appeal the Privy Council found that the appellant was entitled to a dower of Rs. 40,000, and held that she was entitled to remain in possession till her dower debt was satisfied. Their Lordships considered whether they ought to direct an account to be taken in the

Considering, however, the way in which the litigation had been conducted, that no account was ever even asked for by the respondents, and that mesne profits were not even claimed in the suit, their Lordships were of opinion that the proper course to be taken was to dismiss the suit as against the appellant, without prejudice to any suit that might be instituted by the respondents for an account and administration of the deceased's estate, consistently with the declaration as to the appellant's dower (390). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN D. SHEIKH (1871) 14 M. I. A. 377= HAMID HOSSEIN. 10 B. L. R. 45 (P. C.) = 17 W. R. 113.

-Decree setting off unascertained amount of balance of dower against unascertained amount of mesne profits

realized by widow-Propriety.

The respondents were the sister's sons of a deceased Mahomedan, A, and were in right of their mother entitled to a three-fourths share of A's estate. The appellant was the widow of A, and was, as such, entitled to the other fourth share of his estate. She, however, managed to obtain lawful possession of the entire estate of her husband and claimed to hold it as heir and for her dower. The respondents sued the appellant to recover their shares of A's estate, admitted her right as widow to one-fourth share. The appellant instituted another suit against the respondents to establish her claim to dower. In both the suits, the appellant urged that her dower was fixed at Rs. 40,000 and one gold mohur, but the respondents asserted that it was only 500 dirrums.

The Principal Sudder Ameen held, on the evidence, that the appellant had not made out that the dower was fixed at Rs. 40,000; and he also held that the statement of the respondents that the dower was fixed at 500 dirrums, " was conjectural". On appeal the Judges of the High Court were of opinion, that they could not declare that the appellant was entitled to demand the amount claimed by her. They said that the amount of dower must have been considerable, but that they could not declare what the exact amount was. They, therefore, held that it would be just and equitable to order that the respondents received no mesne profits, except what accrued since the institution of their suit. With that modification they confirmed the judgment below.

Held that the judgment of the High Court was neither a final nor satisfactory determination of the main question in

the suit (385).

On the view taken by the High Court, the widow was, at all events, entitled to a proper dower, to be ascertained according to Mahomedan law. But no attempt was made to arrive at what would be the proper dower, nor was any account taken of the proceeds of the estate. It is obvious, therefore, that the Court has set off one unascertained sum against another unascertained sum. This mode of settlement, if suggested to the parties as a compromise, might perhaps have been, with their assent, a fit end of the litigation; but it cannot properly be made the basis of a decree

MAHOMEDAN LAW-(Contd.)

Dower-Widow in possession of husband's estate in lieu of claim to-(Contd.)

SUIT BY OTHER HEIRS FOR RECOVERY OF THEIR SHARES OF ESTATE FROM-(Contd.)

between hostile litigants (386). (Sir Montague E. Smith) MUSSUMAT BEBFE BACHUN P. SHEIKH HAMID HOS-SEIN. (1871) 14 M. I. A. 377 = 10 B. L. R. 45 (P. C.)=

17 W. R. 113. -Decree to plaintiff in-Satisfaction of dower-Condition as to-Necessity.

A Mahomedan widow, who has obtained actual and lawful possession of the estates of her husband under a claim to hold them as heir and for her dower, is entitled to retain that possession until her dower is satisfied, and the other heirs of the deceased cannot recover the possession of their shares unless that satisfaction has taken place (384). (Sir Montague E. Smith.) MUSSUMAT BEBEE BACHUN v. SHEIKH HAMID HOSSEIN. (1871) 14 M. I. A. 377 =

10 B. L. R. 45 (P. C.)= 17 W. R. 113.

### Estates recognised by.

#### LIFE ESTATE.

-The creation of a life estate does not seem to be consistent with Mahomedan usage, and there ought to clear proof of so unusual a transaction. MUSSAMAT HUMEEDA P. MUSSAMAY BUDLEN. (1872) 17 W. B. 525 (527) = 2 Suth. 599.

-It was plainly not the intention of the settlor (a Mahomedan) to create a series of life-rents, a kind of estate which does not appear to be known to Mahomedan Law (178). (Lord Watson.) ABDUL GAFUR P. NIZAMUDIN.

(1892) 19 I. A. 170=17 B. 1 (5)=6 Sar. 238.

VESTED REMAINDER.

See MAHOMEDAN LAW-VESTED REMAINDER. Father.

-Daughter-Gift to-Benami or not. See MAHO-MEDAN LAW - BENAMI TRANSACTION - FATHER-DAUGHTER.

#### SON.

-Gift to-Benami or not. See MAHOMEDAN LAW BENAMI TRANSACTION-FATHER-SON-GIFT TO.

Purchase in name of-Benami or not. See MAHO-MEDAN LAW-BENAMI TRANSACTION-FATHER-SON -PURCHASE IN NAME OF.

#### Fazule.

-Meaning of.

In Wilson's Glossary the word " Fazuli " is thus defined: In Mahomedan Law, an unaccredited agent, one who acts for another without authority, and whose transactions are invalid unless confirmed by the principal." The wor.! appears also from the Glossary to be used as an adjective to denote contracts requiring such confirmation (195). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA D. MAHOMED USHKURRU KHAN.

(1873) Sup. I. A. 192 = 26 W. B. 26 = 2 Suth. 830 = 3 Sar. 244 = 8 Mad. Jur. 306 = B. & J's No. 21 (Oudh).

### Fazolee marriage.

-See MAHOMEDAN LAW-MARRIAGE-FAZOLEE MARRIAGE ..

### Fazuli sale-Hanafi doctrine of.

Basis scope and effect of.

A Fazoolee or dependent sale under the Mahomedan law (that is, a sale by an unauthorised person remaining dependent on the sanction of the owner) remains wholly uneffective until it receives the "confirmation" of the owner, to whom alone belongs the power of "confirming" it. If he

Fazuli sale-Hanafi doctrine of-(Contd.)

dies before he has "confirmed" it, the transaction falls to the ground, as the right to adopt the fazulis "act does not pass to his heirs (90). The Hanafi doctrine relating to a sale by an unauthorised person remaining dependent on the sanction of the owner refers to a case in which such owner is tui juris possessed of the capacity to give the necessary sanction and to make the transaction operative. The doctrine appears clearly to be based on the analogy of an agent who acts in a particular matter without authority, but whose act is subsequently adopted or ratified by the principal which has the effect of validating it from its inception (90-1). (Mr. Ameer Alic.) EMAMBANDL = MUTSADDL.

(1918) 45 I. A. 73 - 45 C. 878 (899.901) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 P. L. W. 276 = 47 I.C. 513 = 35 M. L. J. 422

-- Minors - Applicability to.

Their Lordships do not find any reference in the doctrines relating to fazuli sales, so far as they appear in the Hidaya or the Fatwai Alamgiri, to dealings with the property of minors by persons who happen to have charge of the infants and their property in other words, the "de facto guardians". The idea of agency in relation to an infant is as foreign to Mahomedan law as to every other system (90-1). (Mr. Ameer Ali.) IMAMBANDI P. MUTSADDI.

(1918) 45 I. A. 73 = 45 C. 878 (901) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 P. L. W. 276 = 47 I. C. 513 = 35 M. L. J. 422.

### Furuckuttee.

What is a See MAHOMEDAN LAW-DIVORCE— FURUCKUTTEE. (1861) 8 M. I. A. 378 (397).

### Gift

ABSOLUTE GIFT.

BANK DEPOSIT NOTES-GIFT OF.

BENEFICIAL OWNERSHIP-TRANSFER OF.

BEQUEST AND.

CLAIM UNDER, GENERALLY -- GIFT BY DEED-CASE SUBSEQUENT OF.

CONDITION.

CONSIDERATION.

CONTRACT FOR CONSIDERATION OR.

DEATH-BED CIFT.

DEED OF.

DELIVERY OF POSSESSION.

FATHER-DAUGHTER.

FATHER-SON.

FORMALITIES NECESSARY FOR-COMPLIANCE WITH.

GIFT FOR CONSIDERATION.

HUSBAND-WIFE-GIFT TO.

INTENTION OF DONOR-ASCERTAINMENT OF.

LAW ORIGINAL AS TO.

LIFE ESTATE BY-TRANSFER OF.

LIFE INTEREST IN USUFRUCT OF PROPERTY GIFTED

-RESERVATION BY DONOR OF.

MINOR.

MUSHA.

PROPERTY UNDER ATTACHMENT-GIFT OF.

TRUST-GIFT THROUGH MEDIUM OF.

VALIDITY OF.

WIFE-GIFT TO-ESTATE CONVEYED.

WRITING-NECESSITY.

### Gift-Absolute gift.

## MAHOMEDAN LAW-(Contd.)

Gift-Absolute gift-(Contd.)

Semble a gift by a Mahomedan to his wife of Government promissory notes subject to a condition that she is to have the interest only for life and that after her death there is to be a trust in perpetuity for all her heirs to all time is, according to Mahomedan law, in its legal effect, a gift to her absolutely, the condition being void (122). (Sir Robert P. Collier.) PRINCE SULEMAN KADR P. DORAB ALI KHAN.

(1881) 8 I.A. 117=8 C. 1 (7)= 4 Sar. 267 B. & J's No. 64 (Oudh).

-Restraint upon alienation-Validity of.

Where there is an absolute gift of property with a clause prohibiting an alienation thereof by the donee, the prohibition against alienation is void in law and cannot affect either the donee himself or his creditors (178). (Lord Walson.) ABDUL GAFUR v. NIZAMUDIN.

(1892) 19 I.A. 170=17 B. 1 (5)=6 Sar. 238. Bank deposit notes—Gift of.

Delivery of notes when not amounting to-Donatio mortis causa-Validity.

Where the question was whether there had been a completed transfer by a deceased Mahomedan of a sum of money owing to him on deposit notes of the Bank of Bengal (the notes not being in a form which would entitle the bearer thereof to the debts created thereby as transferee thereof) and it appeared that the deceased being indisposed (but not apparently in contemplation of his early death) handed his widow the notes with certain formalities and added, " after taking a bath I will go to the bank and transfor the papers to your name," but that he never did transfer the notes in the bank or do any act to complete his widow's title, held that the effect of handing the notes was not to transfer the debts or to give the widow the dominion over them, or to enable her to recover the money secured by the notes and that the evidence showed at the most only an intention to make such a transfer (202-3).

Owere whether a donatio mortis causa in the English sense is known to the Mahomedan law (203). (Lord Davey.) AGA MAHOMED JAFFER BINDANEEM v. KOOLSOM BEE BEE. (1897) 24 I.A. 196=25 C. 9 (17)=1 C.W N. 449=7 Sar. 199=7 M. L. J. 115.

### Gift-Beneficial ownership-Transfer of.

-Intention as to-Necessity.

Though the transfer of a legal title will satisfy that provision of the Mahomedan law which relates to the point of Seizen, in its legal and technical sense, yet that alone will not suffice where no intention exists to transfer the beneficial ownership either present or future (544). (Sir Edward Williams.) NAWAB UMJAD ALLY KHAN T. MUSSUMAT MOHUNDEE BEGUM. (1867) 11 M.I.A. 517=

10 W. R. P. C. 25=2 Suth 98=2 Sar. 315= R. & J's No. 7 (Oudh).

#### Gift-Bequest and.

-Distinction.

In Mahomedan law the broad distinction between a gift (hiba) and a bequest (wasiat) is that in the case of a gift the immediate right of property in the subject of the gift is conferred, and in the case of a bequest the vesting of the right of property is postponed. (Sir John Edge.) MOHAMMAD ABDUL GHANI C. FAKHR JAHAN BEGAM.

(1922) 49 I. A. 195 (207) = 44 A. 301 (313-4) = 23 O. C. 95 = 31 M. L. T. 21 = 9 O. L. J. 369 =

27 C. W. N. 53=24 Bom. L.B. 1268=20 A. L. J. 994= A I.R. (1922) P. C. 281=37 C. L. J. 1=68 I. C. 254=

43 M. L. J. 458. Gift-Claim under, generally-Gift by deed-Case

subsequent of.

No inconsistency between,

Gift-Claim under, generally-Gift by deed-Case subsequent of-(Contd.)

There is no inconsistency between making a claim in respect of a gift, and afterwards, when inquiry is made, stating that the gift was by deed. Suing that Mahomedan law does not require any deed, and the alleged deed was not forthcoming, it was not dishonest or discreditable though it may have been unwise, to make the first claim on the more general ground (127). (Sir Arthur Hobbonuc.) PRINCE MIRZA JEHAN KADR BAHADUR P. NAWAB BAD-(1885) 12 I. A. 194= SHOO BAHOO SAHIBA. 12 C. 1 (9)=4 Sar. 630.

#### Gift-Condition.

-Repugnant Condition attacked to gift-Effect-Condition and not gift bad.

Where a father made a gift of property to his son subject to a reservation in his favour of the right to the usufract of the property for his life, held, that, if the agreement for the reservation of the interest to the father for his life was treated as a repugnant condition, repugnant to the whole enjoyment by the donce, the Mahomedan law defeated not the grant, but the condition (547-8). (Sir Eduard V., Williams.) NAWAB UMJAD ALLY KHAN P. MUSSUMAT (1867) 11 M. I. A. 517-MOHUNDEE BEGUM.

10 W.R. P. C. 25 - 2 Suth 98 - 2 Sar. 315 -R & J's No. 7 (Oudh)

-See also MAROMEDAN LAW-GIFT-ARSOLUTE GIFT.

#### Gift-Consideration.

Gift for, See MAHOMEDAN LAW-GIFT FOR CONSIDERATION.

Necessity-Change of possession-Sufficiency of

If possession is changed in conformity with the terms of a gift, that change on possession will be sufficient to support it even without consideration. (Sir Montague E. Smith.) KAMARUNNISSA BIBI D. HUSAINI BIBI.

(1880) 3 A. 266 (274) = 3 Suth. 804 - 4 Sar. 185.

### Gift-Contract for consideration or.

-Test-Delivery of possession in case of contract for consideration-Necessity.

Held that agreements whereby the members of a Mahomedan family other than I and his son surrendered their claims to property of considerable value and stayed their suit in consideration of a firm contract securing to them annuities to an amount exceeding Rs. 1,30,000, and continuing such annuities to their heirs were not gifts but were contracts for valuable consideration.

Held further that such an agreement if made for valuahle consideration was not subject to the restrictions affecting gifts among Mahomedans, but was a contract creating a charge on lands, which might be enforced like other charges by the courts. (Viscount Care.) KHAJEH SOLE-

MAN QUADIR P. SALIMULLAH BAHADUR. (1922) 49 I.A. 153 (166-7) = 49 C. 820 (836) = 37 C.L.J. 56=21 A.L.J. 1 = A.I.B. (1922) P.C. 107= 31 M.L.T. 79=4 U.P.L.B. (P.C.) 70= 24 Bom. L.B. 1257=27 C.W.N. 101= 69 I.C. 138 - 43 M.L.J. 385.

## Gift-Death bed gift.

-Concurrent findings as to whether deed is or is

No interference by Privy Council with, even if evidence such as might justify either view without any clear preponderance of probability. (Lord Colliers.) FATIMA BIBI :: BAKSH. (1908) 35 I.A. 67 (72) = 35 C. 271 (274) = 3 M.L.T. 110 = 7 C.L.J. 122 = ARMAD BAKSH.

12 O.W.N. 214=10 Bom. L.B. 50= 14 Bur. L.B. 268 = 18 M.L.J. 6.

## MAHOMEDAN LAW-(Contd.)

Gift-Death-bed gift-(Contd.)

-Question as to whether deed is a-Fact or law-Concurrent findings as to-Prity Council's interference with.

Concurrent findings of the courts below that a gift by a Mahomedan was not made ander pressure of the sense of the imminence of death, that is, that the gift was not a death-bed gift, affirmed with the observation: The ques-tion is a pure question of fact. The law applicable is not in contraversy. (Lord Robertson.) IBRAHIM GOOLAM ARIFF :: SAIBOO. (1907) 34 I.A. 167 (177) =

35 C. 1 (22) = 2 M.L.T. 479 = 6 C.L.J. 695 = 11 C.W.N. 973= 9 Bom L.R. 872=4 A.L.J. 572= 4 L.B.R. = 9 Sar. 311 = 17 M.L.J. 408.

-Test of deed being a.

Where a question is raised as to whether a gift by a Mahomedan is invalid under the law of Marz ul-maut, the test which is decisive of the point is. Was the deed of gift executed by the deceased under apprehension of death? (Lord Colliers.) FATIMA BIBLY, AHMED BAKSH,

(1908) 35 I.A. 67 (72) = 35 C. 271 (274) = 3 M.L.T. 110 = 7 C.L.J. 122 = 12 C.W.N. 214 = 10 Bom. LR. 50 = 14 Bur. LR. 268 = 18 M.L.J. 6.

#### Gift-Deed of.

-Case subsequent of-Original claim under gift generally-No inconsistency between. See MAHOMEDAN LAW -GIFT-CLAIM UNDER GENERALLY.

(1885) 12 I.A. 123 (127) = 12 C. 1 (9).

Deed amounting to a.

A deed executed by a Mahomedan was in the following words :- "As I have divorced my wife, her son. Jet Sing, by illicit intercourse, is hereby disinherited: I have therefore adopted you" (the appellant). Then there followed after the signature these words:—"I have adopted Rana Jeswunt Sing" (the appellant) "to succeed to my property and title; no one shall interfere in this adoption. I have also made provision for all my wives by assigning a portion of land for their maintenance; they shall not be annoyed in any way, but considered as the mothers of Jeswunt Sing, and so treated and maintained. I have no son, and the heir to the estate is my brother Rana. Chutter Sing, whose son, Jeswant Sing, I have adopted."

Held that the instrument could not be treated as a deed of gift which passed any property to the appellant (257.8).

Their Lordships feel great difficulty in saying that any gift absolutely was here intended. The words are. "I have adopted Rana Jeswant Sing to succeed to my property." When is he to succeed-after his death? Where is the relinquishment or any giving up of the property? There is none. If these words were intended to pass the property, there is a complete absence of any relinquishment by donor or of seisin by the donee (257-8). (Lord Langdale.) JES-WANT SING JEE P. JET SING JEE.

(1844) 3 M.I.A. 245 = 6-W.B. 46 P.C. = 1 Suth. 150 = 1 Sar. 274.

- Execution of, with postponement of possession-Effect

In the case of Mahomedans who have very restricted powers of testamentary disposition, the execution of deeds of gift with postponement of possession may well take the place of revocable legacies, the transfer of possession being dependent on the future conduct of the donees (31). (Sir John Wallis.) MA MI P. KALLANDER AMMAL.

(1926) 54 I.A. 23 - 5 Rang. 7 = 25 A.L.J. 69 = (1927) M.W.N. 76 = 38 M.L.T. (P.C.) 53 = 4 O.W.N. 300 = 25 L.W. 679 = 6 Bur. L.J. 59 = 29 Bom. L.R. 772 = 100 I C. 32 = A.I B. (1927) P.C. 22=52 M.L.J. 362

Gift - Deed of - (Contd.)

-Genuineness of -Proof -Quantum.

The suit property originally belonged to I', a Mahomedan lady. On her death, it was entered in he name of her daughter, the appellant's first wife. On her death a dispute arose as to the title to the property between the appellant, who had married a second wife, and the respondents, his daughters by his deceased first wife. The appellant claimed to be entitled to the same under a deed of gift alleged to have been executed in his favour by I'.

Held, affirming the Courts below, that the deed of gift set up was a fabricated document. (Mr. Pemberton Leigh.) KADIR BAKSH KHAN v. MUSSUMATAIN FUSSEER-OON-NISSA. (1853) 5 M.I.A. 413 = 1 Suth. 241.

### Gift-Delivery of possession.

(See also GIFT-VALIDITY OF.)

ADMISSION IN DEED OF DELIVERY OF POSSESSION TO DONEE.

-Sufficiency of.

Where in a deed of gift the donor declared that she had made the donee possessor of all properties given by the deed, that she had abondoned all connection with them, and that the donee was to have complete control of every kind in respect thereof, held that the admission in the deed was binding upon the donor's heir and all persons claiming through him (216). (Sir Barnes Peaceck.) SHEIKH MUHAMMAD MUMTAZ AHMED P. ZUBAIDA JAN

(1889) 16 I.A. 205 = 11 A. 460 (475) = 5 Sar. 433. MUTATION OF NAMES—ORDER FOR, NOT

OBJECTED TO.

—Patware's report as to execution of deed and transfer of possession—Value of.

F executed a deed of gift in favour of her daughter, Z. F subsequently presented, through her authorised agent, a etition for mutation of names in favour of Z, the petition reciting the deed of gift and stating that Z had been put into proprietary possession of the property conveyed thereby. The Tasildar, acting under the orders of the Assistant Collector, had the petition proclaimed and an enquiry as to possession made. That was done, and the village patwari reported that F had made a gift of her own rights to Z, and that the latter had duly obtained possession of the property conveyed. The Tasildar reported to the same effect. All this was done during the lifetime of Z. Notwithstanding the proclamation, however, none of the persons who claimed to be real heirs of F, raised any objection to the mutation. And an order for mutation of names was granted, but after the death of Z.

Held that the order for mutation was important as shewing that no objection was made to the mutation, and that the report of the patwari made during the lifetime of Z as to the execution of the deed of gift and of the transfer of possession under it which had been adopted by the Tahsildar was also adopted and acted upon by the Deputy Collector (216-7). (Sir Barnes Powers.) SHEIKH MUHAMMAD MUMTAZ AHMED T. ZUBAIDA JAN.

(1889) 16 I.A. 205 = 11 A. 460 (476-7) = 5 Sar. 433.

MUTATION OF NAMES NOT NECESSARY FOR.

-Necesity

Mutation of names in the Collector's office is not actually necessary to complete the transfer of possession under a deed of gift (217). ((Sir Barnes Peacock.) SHEIKH MUHAMMAD MUMTAZ AHMED v. ZUBAIDA JAN.

(1889) 16 I.A. 205 = 11 A. 460 (476-7) = 5 Sar. 433

NECESSITY OF.

According to the Mahomedan Law, a deed of gift without consideration is not valid unless accompanied by a

### MAHOMEDAN LAW-(Contd.)

Gift-Delivery of possession-(Contd.)

NECESSITY OF-(Contd.)

delivery of the thing given, as far as that thing is capable of delivery, or, in other words, by what is termed in the books a seisin on the part of the donee (307). (Sir Robert P. Collier.) RANEE KHUJOOROONISSA v. MUSSAMUT ROUSHUN JEHAN. (1876) 3 I.A. 291 = 2 C. 184 (197) = 26 W R. 36 = 3 Sar. 629.

——Under the Mahomedan Law, a deed of gift simply is invalid, unless accompanied by delivery of the thing given so far as it is capable of delivery. (Sir Ford North.) CHAUDHRI MEHDI HASAN v. MUHAMMAD HASAN.

(1906) 33 I.A. 68 = 28 A. 439 (448-9) = 10 C.W.N. 706 = 3 A.L.J. 405 = 8 Bom. L.R. 387 = 9 O.C. 196 = 1 M.L.T. 3 = 4 C.L.J. 295 = 9 Sar. 27.

-Contract for consideration.

The rule of Mahomedan Law which requires that a gift shall be accompained by delivery is not applicable to contracts for valuable consideration. (Viscount Cave). KHA-JAH SOLEHMAN QUADIR v. SALIMULLAH BAHADUR.

(1922) 49 I. A. 153 (166) = 49 C. 820 (836) = 37 C.L.J. 56 = 21 A.L.J. 1 = A. I.R. (1922) P.C. 107 = 31 M. L. T. 79 = 4 U.P.L.R. (P.C.) 70 = 24 Bom. L.R. 1257 = 27 C.W.N. 101 = 69 I. C. 138. 43 M. L. J. 385.

Dower—Gift to wife in lieu of. See MAHOMEDAN LAW—GIFT—TRUST—GIFT THROUGH MEDIUM OF. (1916) 43 LA. 212 (229-31)=38 A. 627 (643-4).

Father—Minor son—Gift to. See MAHOMEDAN LAW-GIFT FATHER—SON—MINOR SON—GIFT TO.

— Minor—Gift by father or other guardian to. SM MAHOMEDAN LAW—GIFT—MINOR—GIFT BY FATHER OR OTHER GUARDIAN TO.

—Minor—Gift by maternal grandfather to—Father of minor alive and retaining guardianship. St. MAHOMEDAN LAW—GIFT—MINOR—GIFT BY MATERNAL GRAND FATHER TO. (1928) 55 I. A. 171=52 B. 316.

Before the passing of the Transfer of Property Act, 1882,

the rule of Mahomedan Law requiring gifts to be perfected by possession was applicable in India, and this rule is preserved by S. 129 of that Act (27). (Sir John Wallis). MA MI P. KALLANDER AMMAL. (1926) 54 I. A. 23=

5 Rang. 7 = 25 A.L.J. 69 = (1927) M.W.N. 76 = 38 M.L.T. (P. C.) 53 = 4 O.W.N. 300 = 25 L.W. 679 = 6 Bur. L. J. 59 = 29 Bom L. R. 772 = 100 I.C. 32 = A. I. R. (1927) P. C. 22 = 52 M.L.J. 362.

- Transfer of Property Act and Trusts Act-Effect
of, in case of registered deeds.

It has been contended that the rule of Mahomedan Law that a voluntary gift is void unless it is accompanied by a delivery of such possession as the subject of the gift is susceptible of was altered or qualified by the combined operation of the Transfer of Property Act (Ss. 122, 123 and 125) and the Indian Trusts Act (Ss. 55 and 56). It has been insisted that, if the deed of gift of immoveable property be duly registered, delivery of possession is not necessary to make the gift valid, or, if necessary, may be effected at any time during the donor's life, provided he be then capable of giving the property. S. 122 of the Transfer of Property Act still requires a "transfer" to be made of the subject of the gift. This would prima facic mean a valid transfer, and would therefore require the transfer to be accompanied by delivery of possession. But it is argued that there can be

Gift -Delivery of possession-(Contd.)

NECESSITY OF-(Contd.)

no delivery without acceptance by the donee of the gift, that it implies acceptance, and as acceptance may take place at any time during the donor's life under the conditions mentioned, it follows that the required delivery of possession may take place at any time during his life under the same conditions. This line of argument is unsound (222-3), (Lord Atkinson). SADIK HUSSAIN KHAN 2. HASHIM ALI KHAN. (1916) 43 I.A. 212 = 38 A. 627 (645-7) = (1916) 2 M.W. N. 577 = 21 M.L.T. 40 = 6 L. W. 378 =

21 C.W.N. 133 = 25 C. L. J. 363 = 14 A.L.J. 1248 = 18 Bom. L.R. 1037 = 19 O. C. 192 = 1 Pat. L.W. 157 = 36 I.C. 104 = 31 M.L.J. 607.

—Trust -Gift through medium of. See MAHOMEDAN LAW-GIFT-TRUST-GIFT THROUGH MEDIUM OF. (1916) 43 I. A 212 (229 31) = 38 A. 627 (643 4).

Wakf or gifts for charitable or religious purposes.

The Mahomedan Law, which only allows a testator restricted powers of disposition over his property, contains no such restriction as regards gifts interview but does not recognise such gifts as valid unless possession is given to the donee. This also applies to wakfs or gifts for religious or charitable purposes, at any rate among Shias (36). (Sir John Wallis). ABADI BEGUM P. KANIZ ZAINAR.

(1926) 54 I. A. 33 = 6 Pat. 359 = 45 C.L.J. 408 = 25 L.W. 710 = 25 A.L.J. 51 = (1927) M. W. N. 12 = 4 O.W.N. 153 = 38 M.L.T. (P.C.) 33 = 8 Pat. L.T. 107 = 99 I.C. 669 (2) = 31 C.W.N. 365 = 29 Bom. L.R. 763 = A.I.R. 1927 P. C. 52 = 52 M. L. J. 430

PROVISION IN DEED AUTHORIZING DONLE TO TAKE POSSESSION.

Possession subsequently taken by him pursuant to-

Where a Mahomedan lady, who executed a hibbanama did all she could to perfect the contemplated gift, the gift was attended with the utmost publicity, the hibbanama itself authorising the donee to take possession, and the donee did subsequently take possession of the property gifted, held, that the gift was not invalid on the ground that the donor had not possession, and did not herself give possession at the time of the gift (95). (Lard Matemaghten). MAHOMED BUKSH KHAN v. HOSSEIN BUST. (1888) 15 LA. 81-15 C. 684 (701.2) = 5 Sar. 175.

REVENUE PAYING VILLAGES—SHARES IN—GIFT BY MOTHER TO DAUGHTER OF.

Delivery sufficient in case of Mother herself not having actual possession but merely being in receipt of rents

and profits.

A Mahomedan lady, who had merely proprietary, not actual possession of certain shares in revenue-paying villages, that is to say, who was merely in receipt of the rents and profits, executed a deed of gift in respect thereof in favour of her daughter. In the deed the donor declared that she had made the donee possessor of all properties given by the deed, that she had abundoned all connection with them and that the donee was to have complete control of every kind in respect thereof, and directed the daughter's husband, who was the general manager of both mother and daughter, to give effect to the deed.

Held that sufficient possession was taken on behalf of the daughter to render the gift effectual (215-6). (Sir Barnes Peacook.) SHEIKH MUHAMMAD MUMTAZ AHMAD v. ZUBAIDA JAN. (1889) 16 I.A. 205 = 11 A. 460 (475-6) = 5 Sar. 433.

SUFFICIENCY OF,

Consideration—Necessity of, in such a case. See MAHOMEDAN LAW—GIFT—CONSIDERATION—NECES-SITY. (1880) 3 A. 266 (274).

## MAHOMEDAN LAW-(Contd.)

Gift -Delivery of possession-(Contd.)

ZEMINDARY-GIFT OF ENTIRE

-Possession taken of part only-When sufficient deli-

A Mahomedan widow executed a deed of gift in favour of L, her husband's brother, the material part of the deed being as follows:—

I. make a gift of the moveable and immoveable property, the entire Zamindari and lambardari estate, etc., in favour of L. the detail whereof is being given below, with the exception of the villages and Sir lands, etc., of the estates, specified below, which shall, during my lifetime, remain in my and my relations' possession, free of rent and without payment of Government revenue; and I do hereby invest the donee with the power to have the mutation of names effected in his favour. Now I have nothing to do with the gifted property and estate. I shall keep the villages and Sir lands, which have been exempted hereunder, for my lifetime without the power of alienation by mortgage, sale and gift; and after me, the donee shall also be the owner of the said exempted property. The donee shall pay the Government revenue of the said exempted estate from the ilaga."

It was contended that in so far as the deed purported to be a gift of the exempted property it was void on the ground that no possession was actually taken of that particular property, and no mutation of names in respect—of that particular property was obtained by L until the widow had died.

On the execution of the deed of gift, Z did obtain mutation of names in his favour of all the other Zemindari property, and from the date of the deed until the widow died, he paid the Government revenue which became due in respect of the exempted property. He did not, however, until the widow's death take physical possession of the property in question, or apply for mutation of names in his favour in respect thereof.

II.dd, affirming the Court below, that I. must be regarded as having been constructively in possession although not in physical possession, of the corpus of the property in dispute from the date of the deed until the date of the death of the widow, and that the gift was a valid gift,

In their Lordships' opinion the whole Zamindari property mentioned in the deed, and not parts of it only, must, for the purposes of this case, he regarded as one property, the taking possession of any part of it being constructively a taking possession of the whole. (Str felin Edge.) MO-HAMMAD ABDUL GHANLE, FAKHR JAHAN BEGAM,

(1922) 49 I.A. 195 (209 10) = 44 A. 301 (315-6) = 25 O. C. 95 = 31 M. L. T. 21 = 9 O.L.J. 369 = 27 C.W.N. 53 = 24 Bom. L. R. 1268 = 20 A. L. J. 994 = A.I.B. 1922 P.C. 281 = 37 C.L.J. 1 = 68 I. C. 254 = 43 M. L. J. 453.

ZEMINDARY VILLAGES OR PARCELS OF LAND— UNDIVIDED SHARES IN—GIFT OF.

Rent or income of such shares-Receipt or appro-

In the case of a gift of undivided shares in Zemindari villages and parcels of land, physical possession is impossible, and the receipt or the appropriate portion of the rent or income issuing out of or derived from them is the only form the necessary possession could assume. The validity of the gift of those items of property would depend, therefore, upon whether the doness, to the exclusion of all other persons, entered into the receipt or enjoyment of those rents or income (222). (Lord Atkinson.) SADIK HUSAIN KHAN P. HASHIN ALI KHAN. (1916) 43 I. A. 212 = 32.4 \$697-(1016) 0.0 M. W.

38 A. 627=(1916) 2 M. W. N. 577=21 M. L. T. 40=6 L. W. 378=21 C. W. N. 133=25 C. L. J. 363=14 A. L. J. 1248=18 Bom. L. B. 1037=19 O.C. 192=1 Pat. L. W. 157=36 I. C. 104=31 M. L. J. 607,

#### Gift-Father-Daughter.

Gift to - Benami or not. See MAHOMEDAN LAW-BENAMI TRANSACTION -- FATHER -- DAUGHTER.

#### Gift-Father -- Son.

- Gift to Benami or not. See MAHOMEDAN LAW-BENAMI TRANSACTION - FATHER-SON-GIFT TO.

Gift to-Validity of-Consideration-Absence of .

No intention to pass property at once.

Held that a deed of gift by D. H., a Mahomedan, purporting to give to his eldest son, E. one third of his property, was invalid, because it was not a real one, no real consideration passed for it, there was no intention on the part of the donor to part with the property at once to his son, the donee, and both father and son endeavoured to evade the Mahomedan law, by representing that to be a present transfer of property which was intended only to operate after the father's death (309). (Sir Robert P. Collier.) RANEE KHUJOOROONISSA E. MUSSAMAT ROUSHUN JEHAN. (1876) 3 I. A. 291-2 C. 184 (198) = 26 W. R. 36-3 Sar. 629.

——Minor son—Gift to—Delivery of possession—Necessity. So: MAHOMEDAN LAW—GIFT—MINOR—GIFT BY FATHER OR OTHER GUARDIAN TO.

(1875) 2 I. A. 87 (104).

(1928) 55 I. A. 171 - 52 B. 316.

## Gift-Formalities necessary for-Compliance with.

-- Onns of Proof of.

By the Mahomedan law a holder of property may in his lifetime give away the whole or part of his property if he complies with certain forms; but it is incumbent upon those who seek to set up such a transaction to show very clearly that those forms have been complied with. It may be by deed of gift simply, or by deed of gift coupled with consideration. (Sir Ford North.) CHAUDHRI MEHDI HASAN 7. MUHAMMAD HASAN. (1906) 33 I. A. 68=

28 A. 439 (448-9)= 10 C. W. N. 706=3 A. L. J. 405= 8 Bom. L. R. 387=9 O. C. 196=1 M. L. T. 163= 4 C. L. J. 295=9 Sar. 27.

## Gift for consideration.

Volidity of—Conditions— Distinction. See MAHO-MEDAN LAW—GIFT FOR CONSIDERATION—GIFT WITH-OUT CONSIDERATION. (1916) 43 I. A. 212 (221) = 38 A. 627.

## Gift-Husband-Wife-Gift to.

---- Delivery of possession - Necessity.

Quaere how far the Mahomedan law requires change of possession to perfect a gift by a husband to a wife of very tender years (42). (Lord Hobbouse.) SYED ASHGAR REZA v. SYED MEHDI HOSSEIN KHAN.

(1893) 20 I. A. 38 = 20 C. 560 (568) = 6 Sar. 283.

Mutation of names on—Husband's acts subsequent with reference to property—Presumption of their being on behalf of wife.

In the case of a gift of immoveable property by a Mahomedan husband to his wife, once mutation of names has been proved, the natural presumption arising from the relation of husband and wife existing between them is that the usband's subsequent acts with reference to the property

### MAHOMEDAN LAW-(Contd.)

Gift-Husband-Wife-Gift to-(Contd.)

were done on his wife's behalf and not his own (30). (Sir John Wallis.) MA MI v. KALLANDER AMMAL.

(1926) 54 I. A. 23 = 5 Rang 7 = 25 A. L. J. 69 = (1927) M. W. N. 76 = 38 M. L. T. (P. C.) 53 = 4 O. W. N. 300 = 25 L. W. 679 = 6 But. L. J. 59 = 29 Bom. L. R. 772 = 100 I. C. 32 = A. I. R. 1927 P. C. 22 = 52 M. L. J. 362.

-Oral gift-Capacity to make-Proof of.

In a case in which an oral gift by a deceased Mahomedan in favour of his widow was set up, its validity was attacked on the ground that, at the time of the alleged gift, the deceased was in a state of mind in which he could not comprehend the full effect of the act he was doing, and that, in fact, he was imposed upon by his wife, and by her brother, who had for sometime managed the deceased's estate, held, on the evidence, that the deceased was perfectly able to comprehend such a transaction as a gift of his property to his wife (271). (Sir Mon'ague Smith.) KAMAR-UN-NISSA BIBLE. HUSSAINI BIBL.

(1880) 3 A. 266 = 4 Sar. 185 = 3 Suth. 804.

Possession held by him down to and after her death and transferred by him to her sons before his own death— Sufficiency of.

A. a Mahomedan who had purchased property benami in the name of K, caused the formal and ostensible ownership of the property to be transferred from K to A's wife, who was very young, "a mere child," at the time A's true intention in doing so was to give her a beneficial title to the property. A's wife never had any separate possession or enjoyment of the property, which was managed by A along with his own property till long after his wife's death. It appeared, however, that some time before A's death, the precise date being uncertain, he transferred possession of the property to his sons by his said wife.

Meld that the possession by the said sons, which was found to have existed some time prior to the death of A might be sufficient to satisfy the rules of Mahomedan Law as to delivery of possession (49). (Lard Hobboure.) SYED ASHGAR REZA 2. SYED MEHDI HOSSAIN KHAN.

(1893) 20 I. A. 38 = 20 C. 560 (574) = 6 Sar. 283.

Gift-Intention of donor-Ascertainment of.

-Mede of.

The intention of the donor is to be ascertained by reading the terms of the deed as a whole, and giving to them the natural meaning of the language used. (Sir Lancelet Sanderson.) AMJAD KHAN P. ASHPAF KHAN.

(1929) 56 I. A. 213 - 4 Luck 305 - 6 O. W. N. 483 = 27 A. L. J. 571 = 33 C. W. N. 753 = 31 Bom. L. R. 809 = 116 I. C. 405 = 30 L. W. 91 = A. I. B. 1929 P. C. 149 = 57 M. L. J. 439.

### Gift-Law original as to.

Object of Applicability to modern conditions of.

In considering what is the Mahomedan law on the subject of gifts interviews, their Lordships have to bear in mind that when the old and admittedly authoritative texts of Mahomedan Law were promulgated, there were not in the contemplation of any one any Transfer of Property Acts, any Registration Acts, any Revenue Courts to record transfers of the possession of land, or any Zamindari estates large or small, and that it could not have been intended to lay down for all time what should alone be the evidence that titles to lands had passed. The object of the Mahomedan law as to gifts apparently was to prevent disputes as to whether the donor and the donee intended at the time that the title to the property should pass from the donor to the donee, and that the handing over by the donor and the acceptance by the donee of the property should be good

Gift-Law orginal as to-(Contd.)

evidence that the property had been given by the donor and had been accepted by the donee as a gift, (Sir John Edge.) MOHAMMAD ABDUL GHANI V. FAKHR JAHAN BEGAM. (1922) 49 I. A. 195 (209) = 44 A. 301 (315) =

25 O. C. 95 = 31 M. L. T. 21 = 9 O. L. J. 369 = 27 C. W. N. 53 = 24 Bom. L. R. 1268 = 20 A. L. J. 994 = A. J. R. 1922 P. C. 281 = 37 C. L. J. 1 = 68 I. C. 254 = 43 M. L. J. 453. Gift-Life estate by-Transfer of.

-Validity -Hanafi school.

Quaere: Whether under the Hanafi school of Mahomedan Law a transfer of a life estate could not be made by means of a gift; in other words, whether under the said law there could not be a transfer of any interest in property by way of gift inter vivos except an absolute interest. (Sir Laucelot Sanderson.) AMJAD KHAN : ASHRAF KHAN.

(1929) 56 I. A. 213 = 4 Luck. 305 = 6 O. W. N. 483 = 27 A. L. J. 571 = 33 C. W. N. 753 = 31 Bom. L.R. 809 = 116 I. C. 405 = 30 L. W. 91 - A. I. R. 1929 P. C. 149 -57 M. L. J. 439.

Gift-Life interest in usufruct of property gifted-Reservation by donor of.

Agreement for-Enforceability of-Agreement for consideration.

When a Mahomedan father made a gift of property to his son subject to the reservation in favour of the father of the right to the usufruct of the property for his life, held that, if the arrangement for the reservation of the life interest in the usufruct was founded on a valid consideration, the son's undertaking was valid, and could be enforced against him in the Courts of India as an agreement raising a trust, and constituting a valid obligation to make a return of the proceeds during the time stipulated (548). (Sir Edward V. Williams). NAWAB UMJAD ALLY KHAN F. MUSSUMAT MOHUNDEE BEGUM.

(1867) 11 M.I.A. 517 - 10 W.R. P.C. 25 = 2 Suth. 98 = 2 Sar. 315 - R. & J's. No. 7 (Oudh).

Validity of gift-Effect on.

A real transfer of property by a donor in his lifetime under the Mahomedan law, reserving not the dominion over the corpus of the property, nor any share of dominion over the corpus, but simply stipulating for and obtaining a right to the recurring produce during his lifetime, is a complete gift by the Mahomedan law (547). (Sir Edward V. Wil-liams). NAWAB UMJAD ALLY KHAN D. MUSSUMAT (1867) 11 M.I.A. 517= MOHUNDEE BEGUM. 10 W.R. P. C. 25 = 2 Suth. 98 = 2 Sar. 315 = B. & J's. No. 7 (Oudh).

The reservation in a deed of gift executed by a Mahomedan of the usufruct of the property gifted for the donor's own use during his lifetime does not by itself make the gift of the property void under Mahomedan Law. This is so whether the parties are Shias or Sunnis. (Sir John Edge.) MOHAMMAD ABDUL GHANI D. FAKHRA JAHAN BEGAM. (1922) 49 I.A. 195 (208) = 44 A. 301 (314) =

25 O.C. 95 = 31 M.L.T. 21 = 9 O.L.J. 369 = 27 C.W.N. 53 = 24 Bom. L.B. 1268 = 20 A.L.J. 994 = A.I.B. 1922 P.C. 281 = 37 C.L.J. 1 = 68 I.C. 254 = 43 M.L.J. 453.

#### Gift-Minor.

GIFT BY FATHER OR OTHER GUARDIAN TO.

Delivery of possession not necessary in case of. The High Court held that "when the guardian of a minor is himself the donor, and in possession of the property, no formal delivery and seisin is required." It was not denied that the High Court had on this point taken a correct view of the law, nor do their Lordships doubt that where there

## MAHOMEDAN LAW-(Contd.)

Gift-Minor-(Contd.)

GIFT BY FATHER OR OTHER GUARDIAN TO-(Contd.)

is, on the part of a father or other guardian, a real and hour fide intention to make a gift, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minor (104). (Sir Montagne E. Smith). AMEERONISSA KHA-TOON P. ABEDOONISSA KHATOON. (1875) 2 I.A. 87=

15 B.L.R. 67 = 23 W R. 208 = 3 Sar. 423 =

3 Suth. 87 -Delivery of possession not being necessary in case of -Extension of principle of - Permissibility.

The exception made by the Mahomedan Law, in the case of a gift to a minor by his father or other guardian, to the rule requiring that a gift should be accompanied by delivery of possession, ought not to be extended. (Sir Lancelot Sanderson.) MUSA MIYA P., KADAR BAX.

(1928) 55 I.A. 171 = 52 B. 316 = 26 A.L.J. 457 = 30 Bom. L.R. 766 = 32 C.W.N. 733 = 47 C.L.J. 517 = 28 L.W. 33=109 I.C. 31=A.I.R. 1928 P.C. 108= 54 M.L.J. 655 (661).

GIFT BY MATERNAL GRANDFATHER TO.

-Delivery of possession-Accessity-Father of minor alite and retaining guardianship.

When the father and natural guardian of two Mahomedan minors was alive, and was in a position to exercise his rights and powers as a parent and guardian and to take possession of property gifted to his children on their behalf, held that the maternal grandfather of the minors could not be held to be their guardian within the meaning of the exception to the rule of Mahomedan law requiring that a gift should be accompanied by delivery of possession, merely because the maternal grandfather, being a man of property and alde and willing to support in his own house his daughter, her husband and family, allowed them to live in his own house, maintained them, if not entirely, at any rate, to a large extent, and maintained and brought minors from the time of their birth until his death, and that a gift by him (the maternal grandfather) to the minors was, there-fore, not complete without delivery of possession or relinquishment of control over the property by the maternal grandfather. (Ser Lancelet Sanderson.) MUSA MIYA p. KADAR BAX. (1928) 55 I.A. 171 = 52 B. 316 =

26 A.L.J. 457 = 30 Bom. LR. 766 = 32 C.W.N. 733 = 47 C.L.J. 517 = 28 L W. 33 = 109 I.C. 31 = A.I.B. 1928 P.C. 108 - 54 M.L.J. 655.

### Gift-Musha.

DOCTRINE OF-APPLICABILITY OF.

-Commercial towns-Freehold property in great. See MAHOMEDAN LAW-GIFT-MUSHA-DOCTRINE OF-APPLICABILITY-COMPANY SHARES.

(1907) 34 I. A. 167 (178)=35 C. 1 (23-4).

-Company shares - Commercial totons- Freehold

property in great.

Even if the duty of the Courts were to construct a prohibition of gifts of undivided shares of what is divisible, which should be applicable to the conditions of modern life. it would seem impossible in the case of shares in Companies and extremely difficult in the case of freehold property in a town, to carry it out. The doctrine, which in its origin applied to very different subjects of property, ought not to he applied to shares in companies, and freehold property in a great commercial town (178). (Lord Robertson). IBRA-HIM GOOLAM ARIFF D. SAIBOO.

GOOLAM ARIFF P. SAIBOO. (1907) 34 I.A. 167 = 35 C 1 (23-4) = 2 M.L.T. 479 = 6 C.L.J. 695 = 11 C.W.N 973 = 9 Bom. L.B. 872 = 4 A.L.J. 572 = 4 L.B.B. 154 = 9 Sar. 311 = 17 M.L.J. 408.

Gift-Musha-(Contd.)

DOCTRINE OF-APPLICABILITY OF-(Contd.)

- Co sharer - Gift by one, to another,

The Mahomedan doctrine of Moosha is this: that a gift of an undivided share in a subject capable of division is not good because it would lead to confusion. This has no application to a case in which one of three Mahomedan cosharers gives his share before division to either of the other two.

To extend the doctrine, which itself was a very refined one, to such a case would be a refinement on a refinement, amounting almost to a reductio ad absurdum (95). (Lord Macnaghten). MAHOMED BUKSH KHAN 1: HOSSEINI BIBI. (1888) 15 I.A. 81 = 15 C. 684 (701) = 5 Sar. 175.

——Instances of, given by text-writers. Sc. MAHOME-DAN LAW—GIFT—MUSHA—DOCTRINE OF—REASONS FOR. (1875) 2 I.A. 87 (105).

-Progressive state of society.

The doctrine of Mahomedan law relating to the invalidity of gifts of Musha is wholly unadapted to a progressive state of society, and ought to be confine I within the strictest rules. (1) (Sir Barnes Postock). SHEIKH MUHAMMAD MUMTAZ AHMAD v. ZUBAIDA JAN. (1889) 16 I.A. 205 (215) = 11 A. 460 (475) = 5 Sar 433.

(2) (Lord Robertian). IBRAHIM GOOLAM ARIFF 7. SAIBOO. (1907) 34 I.A. 167 (178) = 35 C. 1 (23-4) = 2 M.L.T. 479 = 6 C.L.J. 695 = 11 C.W.N. 973 = 9 Bom. L.R. 872 = 4 A.L.J. 572 = 4 L.B.R. 154 = 9 Sar. 311 = 17 M.L.J. 408.

- Kangoon Mahomedans.

Quarre, whether the law of Musha applies to the succession of Mahomedans who reside in Rangoon. (Lord Robert-ton). IBRAHIM GOOLAM ARIFF P. SAIBOO.

(1907) 34 I.A. 167 (177) = 35 C. 1 (23) = 2 M.L.T. 479 = 6 C.L.J. 695 = 11 C.W.N. 973 = 9 Rom. L.R. 872 = 4 A. L. J. 572 = 4 L. B. B. 154 = 9 Sar. 311 = 17 M.L.J. 408.

-Undivided shares-Donor giving to donce all his own interest in.

It was contended that the rule of Mahomedan law that a gift of musha, or an undivided part in property capable of partition, was invalid only applied to cases where the donor himself retained some share of the property, and not to those where the owner gave all his own interest in undivided shares to the donee. The authorities on Mahomedan law do not seem to be agreed on this point, and their Lordships in the view they take, do not think it necessary to enter upon the consideration of it (106), (Sir Montagne E. Smith). Americani of it (106), (Sir Montagne E. Smith). Americani (1875) 2 I. A. 87 = 15 B. I. R. 67 = 23 W.B. 208 = 3 Sar. 423 = 3 Suth. 87.

—Zemindaries—Gift of definite shares in—Land itself undivided, but shares in their nature separate estates with separate and defined rents.

A legal objection to the validity of these gifts was made on the ground that the gift of musha, or an undivided part in property capable of partition, was, by Mahomedan law, invalid. In the present case the subjects of the gift are definite shares in certain zemindaries, the nature of the right in them being defined and regulated by the public Acts of the British Government. The High Court, after stating that the shares "were for revenue purposes distinct estates, each having a separate number in the Collector's books, and each being liable to the Government only for its own separately assessed revenue," and further, that the proprietor collected a definite share of the rents from the ryots, and had a right to this definite share and no more, held that the rule of the

MAHOMEDAN LAW-(Contd.)

Gift-Musha-(Contd.)

DOCTRINE OF-APPLICABILITY OF-(Contd.)

Mahomedan law did not apply to property of this description (105).

This view of the High Court is correct. The principle of the rule and the reasons on which it is founded do not in their Lordships' judgment apply to property of the peculiar description of these definite shares in Zemindaries, which are in their nature separate estates, with separate and defined rents. It was insisted that the land itself being undivided and the owners of the shares entitled to require partition of it, the property remained musha. although this right may exist, the shares in Zemindaries appear to their Lordships to be, from the special legislation relating to them, in themselves and hefore any partition of the land, definite estates, capable of distinct enjoyment by perception of the separate and defined rents belonging to them, and therefore not falling within the principle and reason of the law relating to musha (105-6). (Sir Montague E Smith.) AMEERONISSA KHATOON 2. ABEDOONISSA KHATOON. (1875) 2 I. A. 87 = 15 B. L. B. 67 = 23 W. R. 208 = 3 Sar. 423 = 3 Suth. 87.

DOCTRINE OF-CONSTRUCTIVE APPLICATION.

-Permissibility.

The attitude of the law towards the doctrine of muthal does not involve any constructive application of the doctrine. The doctrine is wholly unadapted to a progressive state of society, and ought to be confined within the strictest limits. (Lord Robertson). IBRAHIM GOOLAM ARIFF D. SAIBOO.

(1907) 34 I. A. 167 (178) = 35 C. 1 (23) = 2 M. L. T. 479 = 6 C. L. J. 695 = 11 C. W. N. 973 = 9 Bom. L. B. 872 = 4 A. L. J. 572 = 4 L. B. B. 154 = 9 Sar. 311 = 17 M. L. J. 408.

DOCTRINE OF-REASONS FOR.

Applicability of rule-Instances given by text

A legal objection to the validity of these gifts was made on the ground that the gift of musha, or an undivided part in property capable of partition, was, by Mahomedan law, invalid. That a rule of this kind does exist in Mahomedan law with regard to some subjects of gift is plain. The Hedaya gives the two reasons on which it is founded. First, that complete seisin being a necessary condition in cases of gift, and this being impracticable with respect to an indefinite part of a divisible thing, the condition cannot be performed; and, secondly, because it would throw a burden on the donor he had not engaged for, viz., to make a division. Instances are given by text writers of undivided things which cannot be given, such as fruit unplucked from the tree and crops unsevered from the land. It is obvious that with regard to things of this nature separate possession cannot be given in their undivided state, and confusion might thus be created between donor and donee which the law will not allow (105). (Sir Montagut E. Smith.) AMEERONISSA KHATOON 7. ABEDOONISSA KHATOON.

(1875) 2 I. A. 87=15 B. L. B. 67=23 W. B. 208= 3 Sar. 423=3 Suth. 87.

#### INVALID GIFT OF.

--- Possession given and taken under-Effect-Change of possession subsequent-Gift not rendered invalid by.

Possession given and taken under an invalid gift of musha transfers the property according to the doctrines of both the Shiah and Soonee schools (215). If possession were once taken and the deed of gift took effect no subsequent change of possession would invalidate it (216). (Sir Barnes Peaceck.) SHEIKH MUHAMMAD MUMTAZ AHMAD v. ZUBAIDA JAN. (1889) 16 I. A. 205=11 A. 460 (476)=5 Sar. 438.

Gift—Property under attachment—Gift of.

Walidity of.

Quaere whether, in the case of an estate under attachment, a sufficient seisin in it remains to the donor which he can impart to the donee (307). (Sir Robert P. Collier.)

RANEE KHUJOONISSA 2. MUSSAMUT ROUSHUN JEHAN.

(1876) 3 I. A. 291-2 C. 184 (197) = 26 W. R. 36-3 Sar. 629.

Gift-Trust-Gift through medium of.

Validity-Delivery of possession-Necessity-Down-Gift to wife in lieu of-Validity without delivery of possession of.

The parties to a trust indenture executed by a deceased Mahomedan and registered were, the deceased of the first part; F, his second wife, of the second part; and M and F aforesaid, described as trustees, of the third part. The deed recited that a balance was due to F out of the amount of dower agreed upon at the time of the deceased's marriage with her; that the deceased was desirous of making the settlement thereafter appearing to prevent disputes between F and her children, on the one hand, and the children of the deceased's first marriage, on the other; that it was agreed between the parties thereto that the intended settlement should be in full payment and satisfaction of the dower payable by him, as therein mentioned. The settlor, in consideration of the premises and in payment and discharge of the balance of the dower payable by him, conveyed to the trustees and their heirs all the properties in the schedule to the deed mentioned to hold the same in trust to pay the income of the same to the said F during her life for her sole and separate use, subject to the cost of maintaining and educating his children by her, and after her death in trust for all the aforesaid children being at his, the settlor's death, as tenants in common, in equal shares.

The deed did not contain any formal release of F's right to payment of the unpaid balance of her dower. It was executed by the deceased alone and no proof whatever, independent, of the deed, was given that any agreement such as was mentioned in it was ever entered into between the settlor and F to the effect that she would accept the provision purported to be made for her by it in satisfaction and discharge of her claim for the upaid balance of her dower.

Held that an agreement by F that she would accept the provision purported to be made for her by the deed in satisfaction and discharge of her claim for the unpaid balance of her dower was the only consideration moving to the settlor given for the grant he made, and that unless and until that agreement was proved to have been entered into, the grant and conveyance to the trustees must be taken to be a purely voluntary gift, depending for its validity upon delivery of possession required by Mahomedan law in the case of such gifts (219-20, 231).

Held further that, though the deed should be merely voluntary, I might, acting with full knowledge of her rights, deliberately elect to take the benefits conferred upon her by it in lieu of the balance of her dower, and that, if she did so elect, she would be bound by the choice thus made, but that that election could not create the agreement between her and her husband, which was the sole consideration for the deed, and could not enlarge the operation of the deed itself, and that notwithstanding it, the grant to the trustees would still remain a purely voluntary gift (220) Subsequent election could not be held to be a subtitute for the original consideration (220). (Lord Atkinson). SADIK HUSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212 (229 31) = 38 A. 627 (643 4) = (1916) 2 M. W. N. 677 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. B. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

MAHOMEDAN LAW-(Contd.)

Gift-Validity of.

-Conditions.

Under the Mahomedan law it is requisite that a gift should be accompanied by delivery of possession, and that seizin should take effect immediately, or if at a subsequent period, by desire of the donor. A gift cannot be implied—it must be express and unequivocal—and the intention of the donor must be demonstrated by his entire relinquishment of the thing given; and the gift is null and void where he continues to exercise any act of ownership over it (257). (Lord Langdale.) JESWUNT SING JEE v. JET SINGH JEE. (1844) 3 M. I. A. 245=

6 W. R. 46 P. C. = 1 Suth. 150 = 1 Sar. 274.

For a valid gift inter rytus under the Mahomedan law, three conditions are necessary: (a) manifestation of the wish to give on the part of the donor; (b) the acceptance of the donee, either impliedly or expressly; and (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively". (1) (Str John Edge). MOHAMMAD ABDUL GHANI v. FAKHR JAHAN BEGAM. (1922) 49 I. A. 195 (209) = 44 A. 301 (315) =

25 O C. 95 - 31 M.L.T. 21 - 9 O.L.J. 369 = 27 C.W.N. 53 - 24 Bom. L. R. 1268 - 20 A.L.J. 994 = A I.R. 1922 P. C. 281 - 37 C.L.J. 1 - 68 I.C. 254 = 43 M.L.J. 453.

(2) (Sir Lancelet Sanderson), AMJAD KHAN v. ASHRAF KHAN. (1929) 56 I. A. 213 = 4 Luck. 305 = 6 O. W. N. 483 = 27 A.L.J. 571 = 38 C.W.N. 753 = 31 Bom. L. R. 809 = 116 I.C. 405 = 30 L. W. 91 = A. I. R. 1929 P.C. 149 = 57 M.L.J. 439,

—Consideration—Necessity—Delivery of possession— Sufficiency of. See Mahomedan Law—GIFT—Consi-Deration—Necessity. (1880) 3 A. 266 (274).

——Delivery of possession—Necessity of. See Maho-MEDAN LAW—GIFT—DELIVERY OF POSSESSION.

——Life interest in usufruct of property gifted—Reservation by donor of—Effect of. See MAHOMEDAN LAW—GIFT—LIFE INTEREST IN USUFRUCT OF PROPERTY GIFTED—RESERVATION BY DONOR OF—VALIDITY OF GIFT.

--- Transfer of Property Act-Chapter VII-Provi-

The provisions in the Transfer of Property Act (Chapter vii) as to gifts have no bearing upon the question of the validity of gifts under the Mahomedan Law, because S. 129 of that Act provides that nothing contained in that chapter should be deemed to affect any rule of Mahomedan law.

(Sir Fard North). CHAUDHRI MEHDI HASAN 7.

MUHAMMAD HASAN. (1906) 33 I.A. 68 20

28 A. 439 (448.9)=10 C.W.N. 706=3 A.L.J. 405= 8 Bom. L.R. 387=9 O.C. 196=1 M.L.T. 163= 4 C.L.J. 295=9 Sar. 27.

Gift-Wife-Gift to-Estate conveyed.

Life interest in entire property with power of alienation in respect of a third.

M, who was a Hanafi Mussulman and who owned proprietary shares in 11 villages, made a will on 18-1-1894, and on the same day executed what was called an agreement, by which he made a declaration that he would remain in possession of the properties comprised in the will as long as he lived, but that he should not have power to alienate the same. On 17-1-1905, he executed a deed, the material portion of which was as follows:—

"Whereas I am in possession and occupation of the same" (that is, the proprietary shares mentioned above) "and whereas in respect of the same I have already executed a will and an agreement, dated 18-1-1894, but as I want to avoid any difficulty to my wife, in obtaining pos session over the willed property after me, I, therefore, by

Gift-Wife-Gift to-Estate conveyed-(Contd.)

means of this document. have made a gift without consideration of my entire property detailed below with all external and internal rights and without the exception of any right or part, to my wife .... subject to the condition that, out of the entire property mentioned in the deed of gift she shall remain in possession of shares worth Rs. 5,000 with power to make at her pleasure any sort of alienation like mortgage, sale or gift in respect thereof and that, as to the rest, worth Rs. 10,000, she shall not possess any power of alienation but she shall remain in possession thereof for her lifetime. After the de. t's of the donce the entire property gifted away by this document shall revert to the donor's collaterals. A, B, and their heirs, in equal shares, and these heirs of mine shall become owners with full proprietary powers, and the own heirs of the donee lady shall not inherit the same and the donce and my aforesaid heirs have accordingly agreed and consented to this. I have put the lady donce in possession of the property gifted to her, and therefore from to-day I have ceased to possess any right or claim in respect of the gifted property, and my wife from to-day became owner and possessor of the aforesaid property in accordance with the terms of this deed. Held that the deed of 17-1-1905 did, on its true con-

Held that the deed of 17-1-1905 did, on its true construction, afford clear proof that the donor intended to make and did make a gift to his wife of a life interest only in the entire property comprised in the deed together with a power of alienation in respect of one-third of the property.

The donor by the terms of the deed purported to make a gift without consideration to his wife of the entire property detailed therein; he divided the property into two parts, one-third and two-thirds, with a view to giving his wife a power to alienate the one-third of the property or any part thereof by way of mortgage, sale or gift. The provision as to reversion is not limited to the two thirds over which the wife was to have no power of alienation, but it related to the "entire property gifted away by this document." The "entire property" was to revert to the collaterals, but it would, of course, be subject to any mertgage, sale or gift which the wife had power to make during her lifetime in respect of the one-third of the property. (Sir Lancelof Sanderson). AMJAD KHAN F. ASHRAF KHAN,

(1929) 56 I.A, 213=4 Luck. 305=6 O.W.N. 483= 27 A.L.J. 571=33 C.W.N. 753= 31 Bom. L. R. 809=116 I.C. 405=30 L.W. 91= A. I. R. 1929 P. C. 149=57 M.L.J. 439.

### Gift-Writing-Necessity.

——Mahomedan law does not require any deed (127).

(Sir Arthur Hobbouse.) PRINCE MIRZA JEHAN KADR-BAHADUR: NAWAL BADSHOO BAHOO SAHIBA.

(1885) 12 I. A. 124 = 12 C. 1 (9) = 4 Sar. 630.

#### Gift for consideration.

- Ariatnama - Distinction-Test-Deed-Construc-

A Mahomedan lady was a co-sharer in certain villages with F, her husband's brother. She did not enter into possession or receipt of the profits of her share of the estate, but received allowances of money and grain. She did not, however, give up her claim to a share of the estates. F executed a deed in favour of the lady, whereby he made a gift of two villages in lieu of the allowance which she was in receipt of till then, and put her in possession. The deed went on to say that the lady "may manage the said villages for herself, and apply their income to meet her necessary expenses and to pay the Government revenue." and that "F and his heirs would make no objection or opposition." Then, written by way of postcript, F said:—"I declare that these villages have been given in lieu of the

### MAHOMEDAN LAW-(Contd.)

Gift for consideration-(Contd.)

former Rs, 500 cash and 100 maunds of grain, and that henceforth the said money and the grain shall not be given."

The lady executed an ikrarnamah of even date with the above deed; and the two instruments evidently formed but one transaction. The ikrarnamah recited the allotment of the two villages to her in lieu of her maintenance, and contained an important clause by which she disclaimed and relinquished all her right as a co-sharer to the whole of the ancestral estate.

Held, affirming the Courts below, that the transaction evidenced by the deeds was a gift for consideration and that the words "I do declare and record that the aforesaid sister-in-law may manage....and to pay the Government revenue" had not the effect in cutting down the gift to an ariat (38).

Those words used after words of absolute gift must be read as descriptive of the motive or consideration of the gift, and ineffectual to control the operation of technical words of gift (38-9). (Sir Montd gut E. Smith). HAJI MAHOMED FAIZ AHMED KHAN r. HAJI GHULAM AHMED KHAN. (1881) 8 I.A. 25 = 3 A. 490 (503-4) = 4 Sar. 218.

——Formalities necessary for—Compliance with—Onus of—Proof of. See MAHOMEDAN LAW—GIFT—FORMALI-TIES NECESSARY FOR.

(1876) 3 I.A. 291 (307-8) = 2 C. 184 (197)-

- Gift without consideration-Validity of-Conditions
- Distinction.

A gift made by a deed which is voluntary is void under the Mahomedan Law, unless it is accompained by a delivery of such possession as the subject of the gift is susceptible of. According to that law, a holder of property may in his lifetime give away the whole or part of it if he complies with certain forms, but it is incumbent on those who seek to set up such a transaction to prove that those forms have been complied with, and this will be so whether the gift be made with or without consideration. If the latter, then unless it be accompanied by delivery of the thing given, so far as it is capable of delivery, it will be invalid. If the former, delivery of possession is not necessary, but actual payment of the consideration must be proved, and the bone fide intention of the donor to divest himself in praesenti of the property and to confer it upon the donee must also be proved (221). (Lord Atkinson.) SADIK HUSAIN KHAN ". HASHIM ALI KHAN. (1916) 43 I. A. 212 = 38 A. 627= (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133=25 C. L. J. 363=14 A. L. J. 1248= 18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

- Validity of -Conditions-Delivery of possession-

When a gift is coupled with consideration, delivery of possession is not necessary for its validity. But actual payment of the consideration, and the bona fide intention of the donor to divest himself in praesenti of the property, and to confer it upon the donee, must be proved. (Sir Ford North.) CHAUDRI MEHDI HASAN v. MUHAMMAD HASAN. (1906) 33 I. A. 68=28 A. 439 (448-9)=10 C. W. N. 706=3 A. L. J. 405=8 Bom. L. B. 387=9 O. C. 196=1 M. L. T. 163=4 C. L. J. 295=9 Sar. 27.

It was contended that this was a deed of gift for a consideration, and therefore that the delivery of possession was not necessary. It was, however, conceded that in order to make the deed valid in this view of the case, two conditions at all events must concur, viz. an actual payment of the

Gift for consideration -(Contd.)

consideration on the part of the donce, and a home fide intention on the part of the donor to divest himself in practenti of the property, and to confer it upon the dance. Undoubtedly, the adequacy of the consideration is not the question. A consideration may be perfectly valid which is wholly inadequate in amount when compared with the thing given. Some of the cases have gone so far as to say that even a gift of a ring may be a sufficient consideration; but whatever its amount, it must be actually and bona fide paid (307-8). (Sir Robert P. Collier.) RANEE KHUJOOROO-NISSA v. MUSSAMUT ROUSHUN JEHAN.

(1876) 3 I. A. 291 = 2 C. 184 (197) = 26 W. R. 36 = 3 Sar. 629.

See MAHOMEDAN LAW. (1) MARRIAGE-GIRL AND (2) MINOR-GIRL.

#### Hiba-bil ewaz.

-Transfer by way of-Nature of-Sale and not a gift. (Mr. Ameer Ali.) HITENDRA SINGH P. RAMESHWAR SINGH BAHADUR, (1928) 55 I. A. 197-7 Pat. 500= 26 A. L. J. 652 = 48 C. L. J. 83 = 28 L. W. 12 = 32 C. W. N. 762=9 Pat. L. T. 295=109 I. C. 858=

#### Husband and Wife.

(See ALSO MAHOMEDAN LAW--INHERITANCE-WIFE).

BENAMI TRANSACTIONS BETWEEN.

RESTITUTION OF CONJUGAL RIGHTS-HUSBAND'S SUIT FOR.

RESTITUTION OF CONJUGAL RIGHTS--SUIT FOR-LAW APPLICABLE TO.

RESTITUTION OF CONJUGAL RIGHTS - WIFE DECREE FOR RESTITUTION AGAINST-ENFORCE-

RIGHT OF FORMER AS AGAINST LATTER. RIGHT OF LATTER AGAINST FORMER. STATUS AND RIGHTS OF WIFE.

TRANSACTIONS BETWEEN.

BENAMI TRANSACTIONS BETWEEN.

-See MAHOMEDAN LAW-BENAMI TRANSACTION-HUSBAND.

RESTITUTION OF CONJUGAL RIGHTS-HUSBAND'S SUIT FOR.

-Cruelty-Defence of-Evidence of-Magnitrate-Wifes complaint to-Proceeding on-Evidence of-

Admissibility and value of. The proof of personal cruelty in this case (suit by a Mahomedan husband for restitution of conjugal rights) rests almost entirely on the proceeding of the Magistrate. proceeding (in which, on a complaint by the wife of illusage on the husband's part, she was allowed by the Magistrate to leave his house,) is neither one inter partes nor even a conviction of the appellant upon a criminal charge. It was treated by the Nizamut Adawlut as being the record of an act done by a police officer, and not the judicial proceeding of a Magistrate. It is therefore difficult to see how, in strictness, it can be evidence at all against the husband; but at most it proves only that the Magistrate set the lady free from what he considered improper restraint. To establish a case of cruelty as a defence to the suit, the wife might have called the Magistrate to speak to the state in which he found her when he set her free (616). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM 2. SHUM-SOONNISSA BEGUM. (1867) 11 M. I. A. 551=

MAHOMEDAN LAW-(Contd.)

Husband and Wife-(Contd.)

RESTITUTION OF CONJUGAL RIGHTS-HUSBAND'S SUIT FUR-(Contd.)

Cruelty-Defence of-Issue as to-Necessity.

If, to a suit for restitution of conjugal rights by a husband, cruelty is relied upon as a defence, there should be a distinct issue as to the fact of cruelty (617). (Sir James Celvile.) MOONSHEE BUZLOOR RUHEEM v. SHUMSOON-NISSA REGUM. (1867) 11 M. I. A. 551=

8 W. R. P. C. 3-2 Suth. 59-2 Sar. 259

Crucity-Defence of-Nature of crucity to be proceed. The Mahomedan Law, on a question of what is legal cruelty between man and wife, would probably not differ materially from our own, of which one of the most recent expositions is the following :-" There must be actual violence of such a character as to endanger health or safety; or there must be a reasonable apprehension of it." "The Court," as Lord Stowell said, " has never been driven off this ground." (611-2).

In a suit, therefore, by a Mussulman husband against his wife for restitution of conjugal rights, if the defence of the wife be cruelty, she must prove cruelty of the kind just described (612). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM P. SHUMSOONNISSA BEGUN.

A. I. R. 1928 P. C. 112 = 55 M. L. J. 615. (1867) 11 M. I. A. 551 = 8 W. R. P. C. 3 = 2 Suth. 59 = 2 Sar. 259.

-Defences open to wife in.

It by no means follows that to a suit for the restitution of conjugal rights by a Mussulman husband against his wife, the latter has not other defences to the suit (than cruelty) which would not be admitted by our Ecclesiastical Courts in a suit for the restitution of conjugal rights. The marriage tie amongst Mahomedans is not so indissoluble as it is amongst Christians. The Mahomedan wife has rights which the Christian-or at least the English-wife has not against her husband. An Indian Court might well admit defences founded on the violation of those rights, and either refuse its assistance to the husband altogether, or grant it only upon terms of his securing the wife in the enjoyment of her personal safety, and her other legal rights; or it might, on a sufficient case, exercise that jurisdiction which is attributed to the Kazee by the Futwa (if the law, indeed, warrants such a jurisdiction), of selecting a proper place of residence for the wife, other than her husband's house (612).

Their Lordships do not mean to lay down that it was sufficient for the decision of the case to show that, according to the Mahomedan Law, the husband has a right to the custody of his wife, or that there was no answer to his suit unless it could be shown that the wife had been separated from him either by Talak or Kolah, either of which would dissolve the vinculum. It seems to their Lordships clear that, if cruelty in a degree rendering it unsafe for the wife to return to her busband's dominion were established, the Court might refuse to send her back. It may be, too, that gross failure by the husband of the performance of the obligations which the marriage contract imposes on him for the benefit of the wife, might, if properly proved, afford good grounds for refusing to him the assistance of the Court. And there may be cases in which the Court would qualify its interference by imposing terms on the husband. But all these are questions to be carefully considered, and considered with some reference to Mahomedan Law (615-6). (Sir James W. Some reference to Salaria Some reference to Shum-Colvile.) Moonshee Buzloor Ruheem v. Shum-Soonnissa Begum. (1867) 11 M. I. A. 551= 8 W. B. P. C. 3=2 Sath. 59=2 Sar. 259.

- Maintainability-Civil Courts-Jurisdiction.

Upon authority, as well as principle, their Lordships have 8 W. B. P. C. 3=2 Suth. 59= 2 Sar. 259. no doubt that the Mussulman husband may institute a suit

Husband and Wife-(Contd.)

RESTITUTION OF CONJUGAL RIGHTS-HUSBAND'S SUIT FOR-(Contd.)

in the Civil Courts of India for a declaration of his right to the possession of his wife, and for a sentence that she return to cohabitation (610). (Six James W. Colvile) MOONSHEE BUZLOOR RUHEEM v. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. R. P. C. 3 = 2 Suth. 59 - 2 Sar. 259.

RESTITUTION OF CONJUGAL RIGHTS—SUIT FOR— LAW APPLICABLE TO.

Malemedan law -Equity and good conscience.

A suit by a Mussulman bushand against his wife for restitution of conjual rights must be determined according to the principles of the Mahomedan law, This proposition follows not merely from the imperative words of S. 15 of Beng, Reg. IV of 1793, but from the nature of the thing. For since the rights and duties resulting from the contract of marriage may vary in different communities, so, especially in India, where there is no marriage law, they can be only ascertained by reference to the particular law of the contracting parties (610). The determination of any suit of this kind requires careful consideration of the Mahomedan law, as well as strict proof of the facts to which it is to be applied (612). Their Lordships most emphatically dissent from the conclusion that cases of this kind are to be decided without reference to the Mahomedan law, but according to what is termed, "equity and good conscience," i.e., according to that which the Judge may think the principles of natural justice require to be done in the particular case. It is opposed to the whole policy of the law in British India, and particularly to S. 15 of Beg. Reg. IV of 1793, which directs, that in suits regarding marriage and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahome lans, the Hindu laws with regard to Hindoos, are to be considered as the general rules by which Judges are to form their decisions; and their Lordships can conceive nothing more likely to give just alarm to the Mahomedan community than to lean by a judicial decision, that their law, the application of which has been thus secured to them, is to be over-ridden upon a question which so materially concerns their domestic relations. Their Lordships object to the general supersession of the Mahomedan law as the ratio decidendi in cases of this description (614-5).

Quaere, as to the law to be applied in cases in which the Mahomedan law was in plain conflict with the general Municipal law, or with the requirements of a more advanced and civilised society,—as for instance, if a Mussulman had insisted on the right to slay his wife taken in adultery (614-5). (Sir James W. Celvile.) MOONSHEE BUZLOOR RUHEEM 7. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. R. P.C. 3 = 2 Suth. 59 = 2 Sar. 259.

RESTITUTION OF CONJUGAL RIGHTS—WIFE—
DECREE FOR RESTITUTION AGAINST—
ENFORCEMENT OF.

Mode of. St. C. P. C. OF 1908—O. 21, R. 32.

RIGHT OF FORMER AS AGAINST LATTER.

The matrimonial law of the Mahomedans, like that of every ancient community, favours the stronger sex. The husband can dissolve the tie at his will, subject to the condition of paying the wife her dower and other allowances; but she cannot separate herself from him, except under the arrangement called Khoola, which is made upon terms to which both are assenting parties, and operates in law as the divorce of the wife by the husband. It cannot be doubted that, whilst the tie subsists, his power over her is consider-

MAHOMEDAN LAW-(Contd.)

Husband and wife-(Contd.)

RIGHT OF FORMER AS AGAINST LATTER—(Contd.) able. The cases are to the effect that he may compel her to return to his house if she has left it. We do not find this expressed in the Hedayah; but it seems implied throughout that she, from the time she enters his house, is under restraint, and can only leave it legitimately by his permission or upon a legal divorce or separation made with his consent. In fact, the principle of keeping a man's harem in seclusion and under his control is so essental a part of the framework of oriental society, that it is naturally assumed and taken for granted by the Mussulman expounder of the law (610-1). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM v. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. R. P. C. 3 = 2 Suth. 59 = 2 Sar. 259.

RIGHT OF LATTER AGAINST FORMER.

-Status and rights of wife.

On the other hand, the Mahomedan law assures to the wife considerable rights as against her husband. She may insist on maintenance according to her rank and ability; and if he fails to give it, she may enforce that right before the Kazee. If he has power to keep her within the zenana and to prevent access to her, subject to certain qualifications, he is bound to provide her with a separate apartment, exclusively appropriated to her use. As to personal violence, there are certainly passages in the Hedayah which imply that the husband may use it for correction; but this right of corporal chastisement is expressly said to "be restricted to the condi-tion of safety". The marriage tie amongst Mahomedans is not so indissoluable as it is amongst Christians. The Mahomodan wife, as has been shown above, has rights which the Christian-or at least the English-wife has not against her husband (611-2). (Sir James W. Colvile.)
MOONSHEE BUZLOOK RUHEEM v. SHUMSOONNISSA BEGUM. (1867) 11 M. I. A. 551=8 W. B. P. C. 3= 2 Suth. 59 = 2 Sar. 259.

STATUS AND RIGHTS OF WIFE.

See MAHOMEDAN LAW—HUSBAND AND WIFE—
RIGHT OF LATTER AGAINST FORMER.

TRANSACTIONS BETWEEN.

-Suspicion attaching to.

The transaction is open to all the suspicions which attach to transactions between a Mahomedan and his wife (56). (Sir James W. Celvile.) JUGGERNATH SAHOO v. SYUD SHAH MAHOMED HOSSEIN. (1874) 2 I. A. 48=14 B. L. B. 386=23 W. B. 99=3 Sar, 419=3 Suth. 61.

Ibranamah.

An ibranamah is a deed by which a Mahomedan wife releases her claim to dynmohr as against her bushand. (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM r. LUTEEFUT-OON-NISSA. (1861) 8 M. I. A. 378 = 1 W. R. 57 = 1 Suth. 445 = 1 Sar. 794.

Iddat.

Illegitimate child.

Acknowledgment of. See MAHOMEDAN LAW-ACKNOWLEDGMENT—ILLEGITIMATE CHILD

- Legitimate or, See MAHOMEDAN LAW-LEGITI-MACY.

Inheritance.

ADOPTED SON. ANCESTRAL PROPERTY. BROTHER.

Inheritance-(Contd.)

CROWN-RIGHT OF, TO THREE-FOURTHS OF THE PROPERTY.

CUSTOM OF.

DAUGHTER.

DAUGHTER'S CHILDREN AND DESCENDANTS-AG-NATIC COLLATERAL RELATIONS.

DIRECT HEIR-EXCLUSION OF.

DISCLAIMER OF RIGHT OF.

DIVISION OF.

EXCLUSION FROM.

GRANDFATHER'S PROPERTY- GRANDSON'S CLAIM TO SHARE IN-DEATH OF FATHER-DATE OF.

HUSBAND.

LAW OF.

LAW OF, APPLICABLE.

MISSING HEIR.

MOTHER

PARTITION OF.

RELINQUISHMENT OF RIGHT OF.

RENUNCIATION OF RIGHT OF.

REPRESENTATION.

RESIDUARY HEIR.

RETURN.

RIGHT OF.

SECT OF DECEASED, SHIA OR SUNNI.

SISTER'S DAUGHTER OF DECEASED-SUIT ON FOOT OF PLAINTIFF BEING.

SLAVE EMANCIPATED.

WIDOW.

WIFE

WILLA RULE.

WOMAN DYING WITHOUT ISSUE.

#### Inheritance—Adopted son.

Right of.

In one of the orders appealed from, a provision was made out of the estate for an adopted son, though admittedly such son was not properly one of the heirs. This must be corrected by directing the division to be amongst the heirs (278). (Lord Kingidown.) MULKAH DO ALUM NAWAB TAJDAK BOHOO P. MIRZA JEHAN KUDR.

(1865) 10 M. I. A. 252=2 W. R. (P. C.) 55= 1 Suth. 554 = 2 Sar. 106 = B. & J.'s No. 2 (Oudh).

#### Inheritance-Ancestral property.

Custom of succession governing-Applicability to self-acquisition of-Presumption-Onus of proof.

If a custom governs the succession to the ancestral estate, the presumption is that it attaches also to the personal acquisitions of the last owner left by him on his death; and it is for the person who asserts that these properties follow a line of devolution different from that of the ancestral estate to establish it. (Mr. Ameer Ali.)
MURTAZA HUSAIN KHAN D. MAHOMED YASIN ALI KHAN. (1916) 43 I. A. 269 (282)=38 A. 552 (568)=

14 A. L. J. 1083 = 20 M. L. T. 362 =

(1916) 2 M. W. N. 555=4 L. W. 538= 1 Pat. L. W. 122=21 C. W. N. 410=25 C. L. J. 1= 18 Bom. L. B. 884=19 O. C. 290=36 I. C. 299= 31 M. L. J. 804.

-Self-acquisition - Mithakthara law distinction between-Inapplicability of.

The Mahomedan law makes no distinction between ancestral and self-acquired property, and recognists no principle of differentiation in the matter of lineal and collateral succession, as is the case under the Mithakshara. which divides inheritance into "unobstructed and obstruct-

### MAHOMEDAN LAW-(Contd.)

Inheritance-Ancestral property-(Contd.)

self-acquired, follow one rule of devolution. (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN 2. MAHOMED YASIN ALI KHAN. (1916) 43 I. A. 269 (282)=

38 A. 552 (568) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555=4 L. W. 538=

1 Pat. L. W. 122 - 21 C. W. N. 410 - 25 C. L. J. 1 = 18 Bom. L. R 884 = 19 O. C. 290 = 36 I. C. 299 = 31 M. L. J. 804.

### Inheritance-Brother.

Right of-Sheeak School.

According to the rules of succession of the Sheeah sect a brother cannot inherit to a brother having daughters (473.4, 477). (Mr. Baron Parke.) RAJAH DEEDAR HOSSEIN v. RANEE ZUHOOR-OON-NISSA. (1841) 2 M. I. A. 441= 2 Suth. 993 = 1 Sar. 217.

Inheritance-Crown-Right of, to three fourths of the property.

No residuaries.

Quarre whether, if there were no residuaries, the threefourths of the property of a deceased person would necessarily go to the Crown (527). HURMUT-OOL-NISSA BEGUM P. ALLABDIA KHAN AND HAJEE HIDAYAT.

(1871) 2 Suth. 525 = 17 W. R. 108.

## Inheritance-Custom of.

(N.B .- Cases under custom; Hindu Lato-Custom; and Hindu Late-Inheritance-Custom, may also be usefully referred to.)

ANCESTRAL PROPERTY-CUSTOM GOVERNING-AP-PLICABILITY TO SELF-ACQUISITION.

ELDEST SON-EXCLUSION OF OTHER HEIRS BY.

EVIDENCE OF.

FEMALES-EXCLUSION OF-CUSTOM OF.

HINDU CUSTOMS-RETENTION OF,

IGNOBLE WIVES-SONS OF-EXCLUSION OF.

LAW-CUSTOM AT VARIANCE WITH.

PLEA OF-VALIDITY.

SONS (INCLUDING ADOPTED SONS) AND DAUGHTERS -PREFERENCE TO OTHER HEIRS OF.

WIDOW-EXCLUSION OF.

WIDOWS-SUCCESSION BY EACH OF, IN DEFAULT OF MALE HEIRS AND DAUGHTERS, TO A LIFE ESTATE IN A MOIETY OF HUSBAND'S ESTATE WITH REVER-SION TO MALE AGNATES OF HUSBAND.

WIFE-GHAIR KUF WIFE-EXCLUSION OF.

ANCESTRAL PROPERTY-CUSTOM GOVERNING-APPLICABILITY TO SELF-ACQUISITION OF.

Presumption-Onus of proof. See MAHOMEDAN LAW-INHERITANCE-ANCESTRAL PROPERTY-CUS-TOM OF SUCCESSION GOVERNING.

(1916) 43 I. A. 269 (282) = 38 A. 552 (568). ELDEST SON-EXCLUSION OF OTHER HEIRS BY.

Custom of family-Existence of-Concurrent findings against-Not interfered with, by P. C. (Sir Richard Couch.) MAHOMED ISMAIL KHAN v. FIDAYAT-UN-NISSA. (1886) 8 A. 516.

### EVIDENCE OF.

-Families connected together so as to form one community-Custom in one of-Evidential value of, as to custom in the other or others.

Where two families both descended one in the male and the other in the female line from the same ancestor had lived so long under the same conditions in the same place and had been so closely connected together as to be treated as one community, held that evidences of the custom ed heritage". All classes of property, whether ancestral or observed by one family in supersession of the ordinary

Inheritance-Custom of -(Contd.)

EVIDENCE OF - (Cont.d.)

Mahomedan law was of high evidential value as to the custom in the other.

Wajib ul-arz-Entries in-Value of.

The Wajib-ul-arz (or records of rights), when properly used, afford most valuable evidence of custom and are much more reliable than oral evidence given after the event. Where, however, they contain statements which would appear to have been concocted by the persons making them in their own interest, they are to be disregarded, being worse than useless.

FEMALES-EXCLUSION OF-CUSTOM OF.

——SM MAHOMEDAN LAW—INHERITANCE—CUSTOM OF—PLEA OF. (1922) 49 I. A. 119 (121, 125) = 45 M. 308 (311-2).

-Evidence.

Nor are their Lordships prepared to accept without qualification the statement that it is necessary to reject as useless for proving the custom (by which, in the event of intestacy, daughters of the deceased are excluded in favour of their brothers, and sisters in favour of male paternal collaterals) " all those instances where we have no evidence that the deceased left any estate at all, or where there is no evidence to show its nature or value, or the amount of liabilities against it, e.g., whether or not it consisted merely of a Jagir, or mafi land, or of heirlooms, or of land heavily mortgaged, or of the family demesne; where there is no proof and no admission that the lady said to have been excluded had a legal claim to a share under the ordinary law; where, in case of a married lady, we have no evidence showing the actual amount of dowry received; where, in case of unmarried ladies, there is no proof that they knew of the custom and stood aside in obedience to it. And in all those cases where a witness states that he has himself excluded his own sisters, or nieces, our judgment as to the value of such statement as evidence of the custom having been enforced must be held in syspense until there is also evidence before as that the ladies had independent advice, and, with full and intelligent knowledge of the custom voluntarily acquiesced in their exclusions." An example of each of the conditions there laid down ought certainly to be established by some witness, but it is not, in their Lordships' opinion, necessary that all should be proved in every case, as this might greatly weaken the evidence by tradition to which in a custom of the character under consideration great weight is due (15).

In determining whether claims are not met because the rights to which they relate do not exist, or whether they are put on one side because, in the circumstances, there is no need that they should be asserted, the position and relationship of the different members of the family must always be

considered (17).

It ought not to be assumed that a custom fails because certain of the instances brought forward in its support may be referable to other causes than the custom relied upon; nor again, because in certain respects some of the witnesses may be found untrustworthy (18).

In every case of this kind the burden of proof lies heavily upon the plaintiff (the party setting up the custom), and, though his evidence may consist of a number of striking instances in support of his case, it receives a severe blow when prominent members of the families concerned deny that the custom exists (19),

The best evidence associated with any such custom as that alleged would be found in connection with the division

of land (20).

The argument put forward by the defendant that, in many of the cited instances, the women said to have been

### MAHOMEDAN LAW-(Contd.)

Inheritance-Custom of-(Contd.)

FEMALES—EXCLUSION OF—CUSTOM OF—(Contd.) excluded have been provided with dowries either in the lifetime of the owner of the estate, on the division of which they received no benefit, or after his death by a male relation, and that this was equivalent to and must be taken as a recognition of their right to share, is one to which their Lordships are unalle to accede. It is quite possible that the husband of a wife who had been suitably dowered would not desire to claim rights of inheritance against those by whose generosity or at whose expense the dower had been provided, but this would not involve the conclusion that the right to share existed and had been satisfied by the dower (20).

Again, such an argument, though it might affect inheritance as between father and daughter, would not cover the present case, for if a daughter had been dowered by her father, and this were treated as equivalent to an advancement of her share in his estate, this would not affect a claim like the present put forward by a woman to a share in her brother's estate by whom she had never been dowered at all (20). (Lord Buckmaster.) ABDUL HUSSEIN KHAN p. BIBI SONA DERO. (1917) 45 I. A. 10=

45 C. 450 (464 8) = 22 C.W.N 353 = 23 M. L T. 117 = 16 A. L. J. 17 = 27 C. L. J. 240 = 20 Bom L.B. 528 = 4 Pat. L. W. 27 = 43 I. C. 306 = 34 M. L. J. 48.

-Lubbai Mahomedans - Custom among-Onus of proof of-Madras Civil Courts Act III of 1873, S. 16-Effect.

The litigants were Lubbai Mahomedans of the Sunni sect, and the contest was as to the devolution of the estate of one H. The decision of the rival claims depended upon whether the devolution of H's estate was governed by Mahomedan law as the plaintiffs contended or by a rule of descent excluding females as the contesting defendants maintained.

Held, that the litigants being Mahomedans to whom the Madras Civil Courts Act III of 1873 applied, the presumption, under S. 16 of that Act, was that the Mahomedan law governed all questions of succession among them, and that the onus lay on the contesting defendants of proving a valid custom at variance with that law, and not on the plaintiff to prove an abandonment of the Hindu rule of exclusion set up (124).

Held further, on the evidence, that the defendants had failed to establish a custom or usage excluding females from succession. (Sir Lawrence Jenkins.) MUHAMMAD IBRA-HIM ROWTHER 2: SHAIKH IBRAHIM ROWTHER.

(1922 49 I. A. 119=45 M. 308 (314)=30 M.L.T. 85= 15 L.W. 354=26 C.W.N. 793=(1922) M. W. N. 470= 36 C.L.J. 64=24 Bom. L. R. 944=67 I.C. 115= A.I.B. 1922 P.C. 59=43 M. L. J. 69.

-Onus of proof of.

In a case in which the plaintiff, a Mahomedan, set up a custom by which, in the event of intestacy, daughters of the deceased were excluded in favour of their brothers, and sisters in favour of male paternal collaterals, held (1) that the burden of proof lay heavily upon the plaintiff (19); and (2) that, although there was much reason in history for the custom alleged, and some evidence by which it received support, yet on the whole the evidence fell short of the standard to which it must attain in order to succeed in altering the devolution determined by a family custom (20-1). (Lord Buckmaster.) ABDUL HUSSAIN KHAN v. BIBI SONA DERO. (1917) 45 I. A. 10 = 45 C. 450 (468-9)=

22 C.W.N. 353 = 23 M.L.T. 117 = 16 A.L.J. 17 = 27 C.L.J. 240 = 20 Bom. L. B. 528 = 4 Pat. L.W. 27 = 43 I.C. 306 = 34 M. L. J. 48

Inheritance-Custom of-(Contd.)

HINDU CUSTOMS-RETENTION OF.

Proof of.

In a case relating to the succession to the estate of a deceased Mahomedan, the question was whether Hindu

customs were preserved in the family.

The fact of the family having been at one time Hindus was not only not proved, but it was negatived by some of the witnesses. It was not only also proved that any Hindu laws had been preserved and acted upon in the family as customs. In fact the proof of the existence of any customs in the family entirely failed. It further appeared that the deceased was himself a strict Mahomedan.

Held, that there was no foundation for the contention, and that the rights of the parties must be determined by the rules of Mahomedan law as applicable to the facts of the case (11). (Sir Montague E. Smith.) NAWAB MUHAM-MAD AZMAT ALI KHAN P. MUSSUMAT LALLI BEGUM,

(1881) 9 I. A. 8 = 8 C. 422 (427) = 4 Sar. 310 = 17 P.R. 1882 (Civil).

IGNOBLE WIVES-SONS OF-EXCLUSION OF.

Illegitimate sons.

In this case the Commissioner found that amongst the Mandals, to which the family of the parties belonged, a custom existed by which illegitimate sons of ignoble mothers, though recognised as sons, got no share. But the Chief Court distinctly came to a different conclusion upon

Held, that the evidence afforded no foundation upon which the Commissioner could properly base his finding (10). (Sir Montague E. Smith.) NAWAB MURAMMAD AZMAT ALI KHAN D. MUSSUMAT LALLI BEGUM.

(1881) 9 I. A. 8 = 8 C. 422(426-7) = 4 Sar. 310 =

17 P.B. 1882.

-Legitimate sons.

In this case the Courts below found that amongst the Mandals, to which the family of the parties belonged, no custom prevailed excluding from inheritance the legitimate sons of ignoble wifes, and that there was no distinction as to the right to inherit between the sons of noble and igno-

Their Lordships affirmed the finding of the Courts below (10-11). (Sir Montague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN v. MUSSUMAT LALLI BEGUM.

(1881) 9 I. A. 8 = 8 C. 422 (426-7) = 4 Sar. 310 = 17 P.B. 1882 (Civil).

LAW-CUSTOM AT VARIANCE WITH.

Evidence of - Admissibility-Bengal Civil Courts of 1887-Effect. See BENGAL ACTS-NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT OF 1887. (1912) 18 I.C. 571. S. 37.

Existence in Outh of - Presumption-Onus of

proof.

The prevalence of customary rules of succession in the Province of Oudh has been recognised in the statute law of Oudh, as well as of the Punjab and the North-Western Province, which provides that in matters of succession the ordinary rules of Mahomedan and Hindu law are only to be applied in the absence of such customs, though the custom set up must be proved by satisfactory evidence, but without insisting on the rigorous and technical rules which would be applicable to such a case in England. There is, therefore, in the Province of Oudh, no presumption against the existence of a custom of succession superseding the ordinary rules of Mahomedan law.

Validity of -Onus of proof of.

It is now established that there may be a custom at

### MAHOMEDAN LAW-(Contd.)

Inheritance-Custom of-(Contd.)

LAW-CUSTOM AT VARIANCE WITH-(Contd.)

But the custom must be proved (124). (Sir Lawrence Jonkins.) MUHAMMAD IBRAHIM KOWTHER v. SHAIKH IBRAHIM ROWTHER. (1922) 49 I.A. 119=

45 M. 308 (314-5) = 30 M.L.T. 85 = 15 L.W. 354 = 26 C.W.N. 793 = (1922) M.W.N. 470 = 36 C.L.J. 64 = 24 Bom. L.R. 944 = 67 I.C. 115 = A.I.R. 1922 P.C. 59 = 43 M.L.J. 69

#### PLEA OF-VALIDITY.

Test-Females-Exclusion of-Custom of.

The dispute was as to the devolution of the estate of a deceased Labbai Mahomedan of the Sunni sect. The question was whether the devolution of the deceased's estate was governed by Mahomedan law as the plaintiffs coatended or by a rule of descent excluding females as the contesting defendants maintained. The contesting defendants set up what they called an immemorial custom and ancient usage. In their written statement they pleaded as follows: Para. 15.-It has been the immemorial custom and ancient usage in the Mahomedan families in the district of Coimbatore in general and in the families of these defendants and the relations in particular that they have followed the Hindu law as regards the law of property and succession and partition. Only the male members are entitled to succeed to the properties of their ancestors and females are excluded from inheritance when there are males. Besides it is also the custom in the Mahomedan families to give some amount including jewels at the time of or immediately after marriage to the female members in lieu of their shares; and consistently with that usage defendants' father gave jewels, cash, and other moveables worth about Rs. 4,000 to the mother of the second plaintiff immediately after the marriage and the plaintiffs conduct in not adverting to this in the plaint is fraudulent. Para, 16,-According to that immemorial custom and usage the plaintiffs have no right to claim a share in the share of P. Ammal while P. Ammal berself had no share. Para. 17.—It has been the custom also in the family of the plaintiffs."

Held that the custom or usage as pleaded was open to objection and that the defendant's contention was liable to be rejected on that ground. (Sir Lawrence Jenkins.) MUHAMMAD IBRAHIM ROWTHER 2. SHAIKH IBRAHIM

WTHER. (1922) 49 L. A. 119 (121. 125) = 45 M. 308 (311-2) = 30 M. L. T. 85 = 15 L. W. 354 = 26 C. W. N. 793 = (1922) M. W. N. 470 =

36 C. L. J. 64 = 24 Bom. L. R. 944 = A. I. B. 1922 P. C. 59 = 67 I. C. 115 = 43 M. L. J. 69.

SONS (INCLUDING ADOPTED SONS) AND DAUGHTERS-PREFERENCE TO OTHER HEIRS OF.

Custom of, among Sheikh kidwans-Existence of-Concurrent findings as to-Privy Council's interference with. (Sir Richard Couch.) HAIDAR ALI v. TASSADUK RASUL (1890) 17 I. A. 82 (89)=18 C. 1 (10)= 5 Sar. 529 = R. & J.'s No. 119.

WIDOW-EXCLUSION OF.

-Custom of. See MAHOMEDAN LAW-INHERI-TANCE-WIDOW-EXCLUSION OF.

(1881) 9 I. A. 8 (10)=8 C. 422 (426-7).

WIDOWS-SUCCESSION BY EACH OF IN DEFAULT OF MALE HEIRS AND DAUGHTERS, TO A LIFE ESTATE IN A MOIETY OF HUSBAND'S ESTATE, WITH REVERSION TO MALE AGNATES OF HUSBAND.

Custom of-Proof of.

M died without issue in 1865, leaving two widows, the It is now established that there may be a death of her co-widow, who was the senior whom. The variance even with the rules of Mahomedan law, governing leath of her co-widow, who was the senior whom. The variance even with the rules of Mahomedans. Ist plaintiff, the nearest male agnate of M, sued for the resurvivor of whom died in 1911, nearly 40 years after the death of her co-widow, who was the senior widow. The

Inheritance-Custom of-(Contd.)

WIDOWS—SUCCESSION BY EACH OF IN DEFAULT OF MALE HEIRS AND DAUGHTERS, TO A LIFE ESTATE IN A MOIETY OF HUSBAND'S ESTATE, WITH REVER SION TO MALE AGNATES OF HUSBAND—(Cont.).

covery of the shares of .M in certain villages, alleging a customary rule of succession which superseded the Mahomedan law and entitled the 1st plaintiff to succeed to .M's estate as his nearest male agnate on the death of the junior widow.

In the year 1870 the Wajib-ul-arz or records of the suit villages were completed; and in them, pursuant to the directions in Oudh Circular No. 20 of 1863, the customary rules of succession observed by the co-sharers in those villages were recorded and attested by or on behalf of the co-sharers. They supported the plaintiff's case that the widows succeeded only to a life interest, though they included an unfounded claim on the part of the widows to full powers of disposition over the estate.

Held, reversing the Chief Court and restoring the Subordinate Judge, that the plaintiffs had established the existence of a customary rule of succession in the family of the parties to the suit under which in default of male heirs and of daughters, each of the widows took an interest for life in a moiety of her husband's estate with reversion to the male

agnates of the husband.

In their Lordships' opinion the fact that on the death of M in 1865 his widows were allowed to succeed to his estate without any claim by his other heirs, and in accordance with the custom recorded a few years later in the Wajib-ularz of the villages forming part of his estate sufficiently establishes that the ordinary rules of Mahomedan law were superseded in this family by a customary rule of succession; and they are unable to agree that these Wajib-ul-arz are of no use to the plaintiffs, merely because they include an unfounded claim on the part of the widows to full powers of disposition over estate.

Semble, the Wajib-ul-arz did not establish a right of survivorship between the widows. (Sir John Wallis.) SHEIKH ROSHAN ALI KHAN P. CHAUDHRI ASGHAR ALL.

(1930) 57 I A. 29 = 7 O.W.N. 81 = 121 I.C. 517 = 31 L.W. 570 = A.I.R. 1930 P.C. 35 = 58 M.L.J. 156.

WIFE-GHAIR KUF WIFE-EXCLUSION OF.

Custom of—Evidence. See MAHOMEDAN LAW— MARRIAGE—GHAIR KUF MARRIAGE.

(1966) 33 I. A. 107 (115-6) = 28 A. 496 (506). Inheritance—Daughter.

INHERITANCE TO-MOTHER'S RIGHT OF-SLAVERY AT TIME OF DAUGHTER'S BIRTH-DISQUALIFICATION ON GROUND OF STATUS OF.

-British acts relating to slavery-Effect of.

Quare whether by the Mahomedan law the fact that the mother was at the time of her daughter's birth a slave of the paternal grandmother of her daughter would exclude her from inheriting to the estate of her daughter on her death (199-200). Quare as to the effect of the British Acts relating to slavery upon the capacity of the mother to inherit from her daughter, if it had been proved that she was a slave at the time of her daughter's birth (201). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA to MAHOMED USHKURREE KHAN.

(1873) Sup. I A. 192 = 26 W. R. 26 = 2 Suth. 830 = 3 Sar. 244 = 8 Mad. Jur. 306 = R. & J.'s No. 21 (Oudh).

——Plea of—Onus of proof of—Legitimacy of daugh.

ter-Recognition of -Effect.

The appeal arose out of a suit relating to the right to inherit the property of A, a Mahomedan lady. One of the questions for decision was whether P, her mother, was enti-

### MAHOMEDAN LAW--(Contd.)

Inheritance-Daughter-(Contd.)

INHERITANCE TO—MOTHER'S RIGHT OF—SLAVERY AT TIME OF DAUGHTER'S BIRTH—DISQUALIFICA-TION ON GROUND OF STATUS OF—(Contd.)

tled to a share of her property. The objection made to the title of P to inherit was, that she was a slave of the pater-

nal grandmother of A, when A was begotten,

There was no evidence that P was a slave as asserted. Her status of slavery was not directly proved, and the circumstances rather repelled than supported the presumption, that that disqualifying status existed. It was admitted, on all hands, that A was not treated as the spurious offspring of her tather, but as his lawful daughter, and as such entitled to inherit a share of his property. The appellants, who objected to the title of P to succeed, wholly failed to prove her status, or that if she was the slave of the grandmother of A, that the latter (grandmother) gave her over, for a time, to the embraces of her son.

All that was proved with certainty was, that A was treated as the legitimate child and one of the co-heirs of her father, and that P was her mother, and therefore presumably confitted to inherit to her. The grandmother of A had in the strongest way recognised her as a legitimate child of her son. She was so brought up in the family, and the ceremony of her marriage was performed with much pomp and ceremony.

Held that, though there was no direct evidence to support the presumption of marriage between P and A's father, the admission of the legitimacy of A by the appellants, to be implied from their conduct, was amply sufficient, after the deaths of the child and her father, for the purpose, and

stood in the place of proof against them (201).

It is to be observed that there would be no unsurmountable obstacle to such a presumption in this case, even if it had been proved that I' had been the slave of A' grandmother, for her mistress might have been emancipated her for the purpose of making the relations between her son and the girl lawful. After the acknowledgments above refered to, A's grandmother and the appellants who act with her ought so have been prepared with strong and conclusive evidence to rebut the presumption raised by their own acts and conduct; and in the absence of such evidence they think the presumption must prevail (201). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA 1. MAHOMED USHKURREE KHAN.

(1873) Sup. I.A. 192 = 26 W.R. 26 = 2 Suth. 830 = 3 Sar. 244 = 8 Mad. Jur. 366 = R & J.'s No. 21 (Oudh).

MOTHER--INHERITANCE TO, ALONG WITH CHILDREN OF PREDECEASED SON.

Share on.

A Mahomedan lady died leaving a daughter, and three children, two sons and one daughter, of a predeceased son. Held that, by the Mahomedan law of inheritance, the daughter of the deceased was entitled to one half of her mother's property, and the other half would descend to the children of the predeceased son of the deceased (11). (Mr. Justice Erskine.) Sheikh Imdad Ali r. Mussumat Kootly Begum. (1842) 3 M.I.A. 1 = 6 W.B. (P.C.) 24=1 Suth. 124=1 Sar. 227.

MUTA AND NIKA MARRIAGES-DAUGHTERS OF.

-Right of to father's estate-Shiah school.

Where a Mahomedan of the Shia school had contracted a Muta marriage with a woman and had several children by her, of whom two daughters were alive, and afterwards married her by nikah and had a daughter by her, held that the two daughters of the deceased born during the continuance of the muta were also legitimate and entitled to an equal share with the daughter born of the nikah marriage.

Inheritance - Daughter-(Contd.)

MUTA AND NIKA MARRIAGES—DAUGHTERS OF— (Contd.)

(Lord Parker.) SHOHARAT SINGH v. MUSSAMAT JAFRI BIBI. (1914) 1 L. W. 965 = 16 M. L. T. 517 -

19 C. W. N. 225 = 21 C. L J. 4 = 17 Bom L. R. 13 = 24 I. C. 499 = 13 A. L. J. 113 = (1915) M. W. N. 389 = 27 M. L J. 89.

### Inheritance -- Daughter's children and descendants--Agnatic collaterals.

--- Preference-Shinh Law.

Under the Shiah Law daughter's children and descendants are not excluded from inheritance in favour of agnatic collaterals. The grand-daughter is thus as much a "legal heir" under the Shiah Law as the daughter. (Mr. Americalis) BIBI AKHTARI BEGUM v. DILJIAN ALL.

(1922) 18 L W. 193 = (1923) M.W.N. 793 = 32 M.L.T. (P.C.) 181 - L.R.4 P.C. 90 -A. I. R. 1923 P.C. 11 = 71 I.C. 631 = 45 M.L.J. 359 (362).

### Inheritance-Direct heir-Exclusion of.

-Next heir's right in case of.

Under the Mahomedan law, a disqualifying cause which excludes the direct heir from taking the inheritance does not form a bar to the succession of the next heir, the heir presumptive. Where, therefore, the daughter, who would be entitled to the inheritance, is disqualified, her daughter takes it. (Mr. Ameer Ali.) BIBL AKHTARI BEGUME: DILJIAN ALI. (1922) 18 L. W. 193-

(1923) M.W.N. 793 = 32 M.L.T. (P.C.) 181 = L.R. 4 P. C. 90 = 71 I. C. 621 = A. I. R. 1923 P.C. 11 = 45 M.L.J. 359 (362).

Inheritance—Disclaimer of right of.

—See MAHOMEDAN LAW-INHERITANCE--RIGHT

OF—RENUNCIATION OF.

#### Inheritance-Division of.

-Award effecting — Missing heir—Reservation of there to, and his children—Finding that he was alice at the time—Effect—Admission by other heirs of his being alice at the time if amounts to.

An arbitrator appointed to divide the property of M, a deceased Mahomedan, among those whom he should find entitled to share in it, made his award in February, 1888, and in it he included M and his children among "the heise and legatees" among whom the estate of the deceased was to be divided. M was a son of M and had been admittedly missing from 1870. M died in 18-4. The question was whether the proceedings in the arbitration could be regarded as an admission on the part of the other heirs, or as a finding by the arbitrator, that M was then alive.

The arbitrator was not examined. There was nothing to show that A was a party to the reference.

Held, that the proceedings in the arbitration could not be regarded as an admission on the part of the other hers, or as a finding by the arbitrator, that A was then alive (180).

The effect of the award was to recognise that A was missing, and to set aside his share until he should be found, or be proved or declared by competent authority to be dead. The statement in the award as to the number of sons left by M, which number included A, could not by itself be treated as proof that the arbitrator had satisfied himself that all M's children were then alive. The reservation of a share to A and his children was intelligible on the ground that, according to the Mahomedan law, a share ought to be reserved for a missing heir (180). (Six Andrew Scotle.)

MOOLLA CASSIM bin MOOLLA AHMAD v. MOOLLA

ABDUL RAHIM. (1905) 32 I.A. 177 = 33 C. 173 (178-9)=

2 C.L.J. 236 = 10 C.W.N. 33 = 7 Bom. L B. 892 = 2 A.L.J. 798 = 4 L.B.R. 77 = 8 Sar. 893 = 15 M.L.J. 317.

### MAHOMEDAN LAW-(Contd.)

Inheritance-Division-of-(Contd.)

——Debts of deceased—Payment of, condition precedent, See MAHOMEDAN LAW—DEBTS OF DECEASED.

- Equality among heirs—Necessity of—Unequal distribution—Validity of. See MAHOMEDAN LAW—WILL— DISTRIBUTION AMONG HEIRS BY.

(1876) 3 I.A. 291 (307) = 2 C. 184 (196).

According to Mahomedan law, a share ought to be reserved for a missing beir (180). (Six Andrew Scotle.)
MOOLLA CASSIN bin MOOLLA AHMAD 2: MOOLLA ABDUL RAHIM. (1905) 32 I.A. 177 = 33 C. 173 (179) =

2 C.L.J. 236 = 10 C.W.N. 33 = 7 Bom. L.R. 892 = 2 A.L.J. 798 = 4 L.B.R. 77 = 8 Sar. 893 = 15 M.L.J. 317.

Particular basis—Division on a—Claim subsequent inconsistent therewith—Maintainability—Estoppel,

Two Mahomedan brothers, who, together with their mother, succeeded to the properties left by their father, effected a division by means of an arbitration of all the properties of the deceased to the exclusion of their mother. Each of the brothers received a full half of the whole properties of the deceased and entered into possession of his share. Some time after there was an exchange between the brothers in regard to some of the properties so divided. On the death of the mother, one of the brothers sued to recover from the heirs of the other brother, who had died before them, his share of the properties of his father to which his morher would have been entitled as and for her share, ignoring the arbitration proceedings between him (plaintiff) and his deceased brother. Held that plaintiff was estopped by his own proceeding in the arbitration from putting forward such a claim.

He (plaintiff) received his full half of the whole properties belonging to Allah Baksh (the father) upon the footing of the exclusion of the mother, and entered into possession of his share. He cannot now be allowed to come back and say he will take as heir to his mother what was by his own act not allotted to her but was divided between himself and his brother. (Lord Dungdin.) MUHAMMAD WALI KHAN v. MUHAMMAD MOHI-UD-DIN KHAN.

(1919) 11 L.W. 421 (424),

Shares-Widows 3, son 1, and daughter 1 of deceased -Rights of-Some sect.

On the death of a Mahomedan of the Soonee sect, leaving three widows and a son and a daughter, the three widows become entitled under the Mahomedan law as harers to one-eighth of the estate of the deceased, and the son to seven-eighths of the estate. The daughter is not entitled to anything (219). (Sir Barnes Peacock.) SYUD BAZAYET HOSSEIN D. DOOLI CHUND.

(1878) 5 I.A. 211=4 C. 402 (405)=3 Sar. 853.

### Inheritance—Exclusion from.

#### CUSTOM OF.

—Eldest son—Exclusion of other heirs by. See MA-HOMEDAN LAW—INHERITANCE—CUSTOM OF—ELDEST SON.

---Females-Exclusion of. See MAHOMEDAN LAW-INHERITANCE-CUSTOM OF-FEMALES.

Ignoble wives-Sons of. See MAHOMEDAN LAW-INHERITANCE-CUSTOM OF-IGNOBLE WIVES,

- Widow. See MAHOMEDAN LAW-INHERITANCE
- WIDOW-EXCLUSION OF.

Wife-Ghair kuf wife-Exclusion of. See MAHO-MEDAN LAW-MARRIAGE-GHAIR KUF MARRIAGE.

(1906) 33 I. A. 107 (115-6) = 28 A. 496 (508).

Inheritance - Exclusion from - (Contd.)

DIRECT HEIR-EXCLUSION OF.

Next heir's right in case of. See MAHOMEDAN LAW-INHERITANCE - DIRECT HEIR

SOME SHARERS-EXCLUSION OF -BENEFIT OF,

Right to.

Their Lordships confirmed the decision of the lower appellate Court that where daughters of a deceased Mahomedan were excluded from inheritance by custom, the daughters should be treated as non-existent, and the exclusion of daughters should operate for the benefit of other persons, who became heirs in default of daughters. (Sir Arthur Wilson.) MUHAMMED KAMIL P. IMTIAZ FATIMA.

10 C. L. J. 297 = 14 C. W. N. 59 = 11 Bom. L. R. 1210 = 4 I. C. 457 = 13 O. C. 183 = 19 M. L. J. 697.

Inheritance-Grandfather's property-Grandson's claim to share in-Death of father-Date of.

Presumption as to-Onus of proof of. See EVI-DENCE ACT. S. 108-MAHOMEDAN LAW-INHERIT-(1905) 32 I. A. 177 (179) = 33 C. 173 (178-9). Inheritance-Husband.

-See MAHOMEDAN LAW-INHERITANCE-WIFE.

### Inheritance-Law of.

-Alteration of -Transfer resulting in-Validity. See HINDU LAW—INHERITANCE—LEGAL COURSE OF; (2) HINDU LAW - WILL - INHERITANCE - LEGAL COURSE OF; AND (3) MAHOMEDAN LAW-INHERIT-ANCE-LAW OF-FRAUD UPON.

Applicability of-Kanchans-Applicability to. See KANCHANS-ADOPTION. (1893) 20 I. A. 193 (202) n 21 C. 149.

Custom at variance with. See MAHOMEDAN LAW -INHERITANCE-CUSTOM OF-LAW.

-Fraud upon-Transfer amounting to-Alienation

inter vivos to alter succession if a-Validity.

Where a gift was made by a Mahomedan father to his son with the object of giving the son a larger share of the father's property than would come to him by succession ab intestate, and the court below treated the transaction as fraudulent in contemplation of law, and done in evasion of its provisions, which limit the testamentary power of a Mahomedan, and aim in some degree at equality of a decision among the descendants ab intestato, their Lordships observed as follows:-The law of succession ab intestate applies only to the assets which constitute the succession. If the law allows alienation to defeat a succession, the question, whether a subject of property is part of the assets, or not, raises simply the question, whether the transfer of it is legally complete. The design to alter, and so in one sense to defeat, the disposition of property, is simply a design to conform to the law, whilst working out an unforbidden design. If, therefore, the law suffer a father by an act, inter vives, to alter his succession his exercise of that power cannot be deemed a fraud upon the law (546-7). (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN v. MUSSUMAT MOHUNDEE BEGUM.

(1867) 11 M. I. A. 517 = 10 W. R. (P. C.) 25 = 2 Suth. 98 = 2 Sar. 315 = R. & J.'s No. 7 (Oudh).

-Transfer interfering with-Formalities necessary

for-Observance of-Onus of proof of.

The policy of the Mahomedan law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specified portion, as much as a third, to a stranger. But it also appears that a holder of property may,

### MAHOMEDAN LAW-(Contd.)

Inheritance-Law of-(Contd.)

to a certain extent, defeat the policy of the law by giving in his lifetime the whole or any part of his property to one of his sons, provided he complies with certain forms. It is incumbent, however, upon those who seek to set up a proceeding of this sort, to shew very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been complied with (307). (Sir Robert P. Collier.) RANEE KHUJOOROONISSA 2. MUSSAMUT ROUSHUN (1876) 3 I. A. 291 = 2 C. 184 (1967) = 26 W. R. 36 = 3 Sar. 629.

### Inheritance-Law of, applicable.

Late in force when succession opens.

The question who is entitled to succeed to the property of a person is determinable by the law as it stood when the Succession opened (142). (Sir James W. Colvile.) SAVAD MIR UJMUDIN KHAN 2. ZIA-UL-NISSA BEGAM.

(1879) 6 I. A. 137 = 3 B. 422 (429) = 5 C. L. B. 11 = 4 Sar. 37 = 3 Suth. 633.

Sect to which parties belong-Law of, See BENGAL REGULATIONS-INHERITANCE REGULATION XI OF 1793, S. 15-INHERITANCE.

(1841) 2 M. I. A. 441 (477-8).

### Inheritance-Missing heir.

-Death of-Date of-Admission of-What amounts to. See MAHOMEDAN LAW-INHERITANCE - DIVISION OF-AWARD EFFECTING. (1905) 32 I. A. 177 (180)= 33 C. 173 (178-9).

-Death of-Date of-Evidence. See MAHOMEDAN LAW-INHERITANCE-DIVISION OF-AWARD EFFECT-(1905) 32 I. A. 177 (180) = 33 C. 173 (178-9).

Share to-Reservation of, on division of inheritance -Necessity. See Mahomedan Law-Inheritance-Division of-Missing Heir.

(1905) 32 I. A. 177 (180) = 33 C. 173 (179).

### Inheritance-Mother.

-See MAHOMEDAN LAW-INHERITANCE-DAUGH-TER.

#### Inheritance-Partition of.

-See MAHOMEDAN LAW-INHERITANCE - DIVI-SION OF.

### Inheritance-Relinquishment of right of.

-See MAHOMEDAN LAW-INHERITANCE-RIGHT OF-RENUNCIATION OF.

### Inheritance—Renunciation of right of.

-See MAHOMEDAN LAW-INHERITANCE-RIGHT OF-RENUNCIATION OF.

#### Inheritance- Representation.

Brother's representation by his daughter-Custom of -Evidence of-Custom of uncle's representation by his daughter if.

In a Mahomedan family in which custom was followed in matters of inheritance, the plaintiff alleged that the principle of representation was sanctioned by the custom and she claimed that, by virtue of it, she, as the brother's daughter of the deceased, in the absence of male issue, represented him and stood in his place. It was shown that sex was not a bar to representation and that an uncle's daughter was entitled to be her father's representative for the purpose of inheritance. But no instance was proved of an actual succession by a brother's daughter.

Held that if there was a rule that entitled an uncle's daughter to be her father's representative for the purpose of inheritance, it would be anomalous and arbitrary to with-

Inheritance-Representation-(Contd.)

hold from a brother's daughter the same right (177). (Sir Lawrence Jenkins.) HASHMAT ALI v. MT. NASIB-UL-NISA. (1924) 52 I. A. 172 = 6 Lah. 117 =

30 C. W. N. 196 = 26 P. L. R. 192 = 88 I. C. 114 = A. I. R. 1925 P. C. 99.

-Children predeceased-Children of-Right of-

Exclusion of, by their uncles and aunts.

It is a well-known principle of Mahomedan law that if any of the children of a man die before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and anuts (179). (Sir Andrew Scoble.)
MOOLLA CASSIM bin MOOLLA AHMED v. MOOLLA ABDUL RAHIM. (1905) 32 I. A. 177 = 33 C. 173 (178) =

2 C. L. J. 236 = 10 C. W. N. 33 = 7 Bom. L. R. 892 = 2 A. L. J. 798=4 L. B. R. 77=8 Sar. 893= 15 M. L. J. 317.

#### Inheritance-Residuary heir.

-Suit by person claiming to be-Relationship of-Proof of-Quantum-Long possession with defendant (widow of deceased)-Presumption in her favour.

Plaintiff sued to recover from defendant (a widow) threefourth of an estate, alleged to have been left by the defendant's deceased husband. Plaintiff's claim was as a residuary. It was found that the defendant had been in posses. sion of the whole estate for about eleven years. It also appeared that in certain proceedings in the Revenue Department held immediately after the death of the deceased, in which the defendant (widow) set herself up as the sole heiress of the deceased, the plaintiff did not put forward his claim to the three-fourths share, though he was aware of such proceedings. It was also found that the defendant (widow) got the registry in the Government Books transferred in her sole name. Nor did the plaintiff take any objection on that occasion. The defendant had thus been in undisturbed possession for more than eleven years There was also some documentary evidence in corroboration of the case set up by the defendant. The Judicial Commit-tee, under the circumstances, observed that there was a strong presumption in favour of the title of the defendant supported by long possession, and the conduct of the plaintiff, that the plaintiff failed to discharge the burden of proving his title; and held that the plaintiff, who had sanctioned long possession with the defendant, should not be allowed lightly to disturb it or to escape from those legitimate inferences and presumptions which, on a conflict of evidence, arose from his own acts and conduct. MUSSAMUT HURMUT-OOL-NISSA BEGUM P. ALLAHDIA KHAN,

(1871) 17 W. B. 108 (112) = 2 Suth. 525.

## Inheritance-Return.

- See MAHOMEDAN LAW-WIDOW-RETURN.

### Inheritance-Bight of.

### RENUNCIATION OF.

Estoppel based upon-Onus of proof of.

The onus of proving that a person entitled to a share in the estate of a deceased Mahomedan either relinquished his claim or was estopped from pressing it is on the party who sets up such a case. (Sir Arthur Wilson.) MUHAMMAD KAMIL v. IMTIAZ FATIMA.

(1909) 36 I.A. 210 (220) = 31 A. 557 (571) = 10 C.L.J. 297=14 C.W.N. 59=11 Bom. L. B. 1210= 4 I.C. 457=13 O.C. 183=19 M.L.J. 697.

Express renunciation-Implication thereof-Conduct justifying.

According to the Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be express, but may be implied, from the ceasing | him by the plaintiff (169).

## MAHOMEDAN LAW-(Contd.)

Inheritance-Right of-(Contd.)

RENUNCIATION OF-(Contd.)

or desisting from prosecuting a claim maintainable against another. MUSSAMAT HURMUT-OOL-NISSA BEGUM v. ALLAHMA KHAN.

(1871) 17 W. R. 108 (112) = 2 Suth. 525.

- Express renunciation - Implication thereof - Evidenice.

According to Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be expressed but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another (53;). HURMUT-OOL-NISSA BEGUM v. ALLAH-DIA KHAN AND HAJI HIDAYAT.

(1871) 2 Suth. 525 = 17 W.R. 108.

-Valuable consideration-Renunciation for - Deed of -Nature and effect of -Claim inconsistent with-Maintainability-Conditions.

The appeal arose out of a suit brought by the respon-dent, the Nawab Nazim of Bengal, against the heirs of one .V deceased, to recover possession of the zemindaree, Pergunnah G.

The zemindaree to which the respondent laid claim was purchased by A, the widow of a former Nawab Nazim. It was purchased by her at a revenue sale benamee, in the name of M, and it was her (A') property at the time of her death. M was one of her heirs according to the Mahomedan law. On the death of A, the plaintiff-respondent claimed to be entitled to succeed to her properties, including the suit zemindary, according to the long-established custom of his family. Thereupon M executed a document called a *ladoceinamah* in favour of the plaintiff by which he (M) acknowledged that neither he nor his heirs, except for his support and maintenance and that of his children and dependents, had any sort of claim to all or any of the properties of the said .4, and prayed that proper orders might be passed for the support of himself and of his children and defendants. Thereupon the plaintiff ordered a perwannah to be delivered to M which declared that the olaintiff should grant to M and his heirs, from generation to generation, Rs. 600 per month, upon condition that he should always remain submissive to the plaintiff, and never depart from his arrangement. The plaintiff also paid M an advance of Rs. 2,000 on account of the monthly allowance of Rs. 600 granted.

Held that M and his heirs were bound by the ladawynamah and were precluded from setting any title to the properties of A. including the suit zemindaree, against the plaintiff (169).

The ladawinamah and the perwannah amounted to a valid contract by which the plaintiff and M were respectively bound. Even assuming that upon the death of A her property did not go over to the plaintiff according to usage, and that M executed the ladawinamah in ignorance of his strict right, still as the plaintiff acted bona fide under the belief that he had succeeded to the property of A and executed the perwannah upon the faith of the ladatoi disclaimer, the defendants would be bound by them. Even if the ladareinamah did not amount to a grant, it contained an agreement not to set up any claim to the property, and being founded upon a sufficient consideration, was binding upon the heirs of N, and precluded them from setting up a claim to the property. In any view of the case, M or his heirs could not assert any title to the property without setting aside the ladawinamah, and this they could not do, except upon the terms of returning the Rs. 2,000 which were paid upon the faith of the arrangement, and as a payment in advance on account of the allowance granted to

Inheritance-Right of-(Contd.)

RENUNCIATION OF-(Contd.)

As to the plaintiff's not having acted upon the ladareinamah since the payment of the Rs. 2,000, it appears that .W and his representatives subsequently repudiated the arrangement, and the fact of the plaintiff's not having during that period continued to make the monthly allowance according to the terms of the perwannah did not release M and his heirs from the ladawinamah (169). OOM-RAO BEGUM P. NAWAB NAZIM OF BENGAL,

(1875) 3 Suth. 165 = 24 W R 28.

### SLAVERY-STATUS OF-EFFECT OF.

-British Acts relating to slavery-Effect of, See MAHOMEDAN LAW-INHERITANCE-DAUGHTER-IN-HERITANCE TO.

### Inheritance-Sect of deceased. Shia or Sunni-

#### FEMALE-SECT OF.

-Marriage with Shia-Lady Sunni before and after dissolution of marriage-lady a Shia during married life-Death of, at same time us her husband-Effect.

The question was as to the right to succeed to an immoveable estate of IV, a Mahomerlan lady, who died childless and intestate in the year 1881. That depended upon whether IV was, in point of fact, a Shia or a Sunni. was for many years the wife of a staunch member of the Shia sect, who died in the year 1865.

The evidence applicable to the period preceding the death of IV's husband tended, thought not strongly, to the inference that, from her birth until her marriage, IV was a Sunni. It was not matter of dispute that, during the whole of her married life, her outward acts and observances amounted to a profession of the Shia faith. The evidence applicable to the period following the dissolution of her marriage pointed strongly to the conclusion that, throughout her widowhood, she was a member of the Sunni sect, having returned to the religion of her youth, and discarded that which was temporarily imposed upon her by the necessities of her position as a Shia wife.

Held that the true inference from the above facts was that IV died a Sunni, and that the succession to her estate was accordingly governed by the Sunni rule of descent (81).

Quaere as to what would have been the sect of W if she had died on the same day as her husband, and as to what would have been the rule of succession applicable in such a case (81). (Lord Watson.) MUSSAMMAT HAVAT-UN-NISSA v. SAYVID MUHAMMAD ALI KHAN,

(1890) 17 I. A. 73 = 12 A. 290 (300-1) = 5 Sar. 521.

-Presumption-Lady proved to have been Sunni during widowhood and to have died a Sunni-Father and husband Shins.

The question was as to the right to succeed to the immoveable estate of W. a Mahomedan lady, who died childless and intestate in July, 1881. That question depended upon whether W was, in point of fact, a Shia or a Sunni. W was for many years the wife of a staunch member of the Shia sect, who died in the year 1865. The appellants (plaintiffs) were, if the deceased IV was a Shia, admittedly her legal heirs; while, if she was a Sunni, the defendantrespondent would be admittedly entitled to take her estate to the exclusion of the appellants. The respondent was in possession, and had been duly registered as owner in the books of the revenue authorities, and the appellants sought by the suit to eject him.

The facts proved by the evidence with respect to the religious observances of the deceased W after her husband's death, all supported the conclusion that she was a Sunni at the time of her own decease,

### MAHOMEDAN LAW-(Contd.)

Inheritance-Sect of deceased. Shia or Sunni-(Contd.)

FEMALE-SECT OF-(Contd.)

Held that, notwithstanding those facts, if it were established that the father of W was a Shia, there would be a very strong presumption that she was educated in his faith, and continued in it until her marriage, and that the onus might he cast upon the respondent of showing that on the dissolution of her marriage she left the Shia and joined the Sunni sect (77). (Lord Watson.) MUSSAMMAT HAYAT-UN-NISSA 2. SAYYID MUHAMMAD ALI KHAN.

(1890) 17 I.A. 73=12 A. 290 (297)=5 Sar. 521.

-Sunni during widowhood and at death-Proof of-Quantum.

The question was as to the right to succeed to the im-movable estate of IV, a Mahomedan lady, who died childless and intestate in the year 1881. That question depended upon whether the deceased was, in point of fact, a Shia or a Sunni. She was for many years the wife of II, a staunth member of the Shia sect, who died in the beginning of the year 1865.

The evidence shewed that, after her husband's death, W made a journey to Ajmere, in order to visit a Sunni Shrine in the company of a "Pir." or spiritual guide of the Sunni sect, whose office and its functions were unknown among the Shias. It also shewed that on her way to Ajmere the deceased partook of the holy meals, which are intended for Sunnis, in the house of the Pir. There was also oral evidence, not so clear or reliable as that which related to the Ajmere pilgrimage, but tending in the same direction, to the effect that the deceased, during her widowhood, regularly observed the eleventh day of each month, and held Maulud Shariff meetings in her house, those being admittedly Sunni

Held that the facts proved, with respect to the religious observances of the deceased W after her husband's death, all supported the conclusion that she was a Sunni at the time of her own decease (77). (Lord Watson.) MUSSAMMAT HAYAT-UN NISSA D. SAYYID MUHAMMAD ALI KHAN.

(1890) 17 I.A. 73=12 A. 290 (296-7)=5 Sar. 521.

#### MALE-SECT OF.

-Evidence-Treatment by all interested parties immediately after his death-Value of.

The fact that a Mahomedan's succession was, immediately after his decease, treated as that of a Sunni by all parties interested, who were also those most nearly connected with him by ties of blood or affinity, would be well-nigh conclusive, if it stood alone, as to the sect of which he was a member; and, in the absence of other evidence, would naturally lead to the conclusion that, before her marriage, his daughter was also a Sunni (79). (Lord Watton.) MUSSAMMAT HAYAT-UN-NISSA P. SAYYID MUHAMMAD ALI KHAN. (1890) 17 LA. 73 = 12 A. 290 (299-300)=

#### TESTS.

-The finding of the Courts below that the deceased Mahomedan, the succession to whose estate was in question in the case, was of the Shiah, and not of the Sunni, persuasion, was accepted by their Lordships (12).

Although the holding of religious opinion is a matter of personal faith, and ordinarily it may not be easy to determine what the nature of that faith may be, yet where the question lies between two sects so sharply divided in ritual and observances, performance of prayers, and public declarations of faith as the Sunni and the Shia, it is readily capable of being determined by definite evidence of action,

Inheritance-Sect of deceased, Shia or Sunni-(Contd.)

TESTS-(Contd.)

conduct, and observance (12). (Lord Buckmaster.) ABDUL HUSSEIN KHAN P. BIBI SONA DERO.

(1917) 45 I.A. 10 = 45 C. 450 (457-8) = 22 C.W.N. 353 - 23 M.L.T. 117 - 16 A.L.J. 17 -27 C.L.J. 240 = 20 Bom. L.R. 528 = 4 Pat. L.W. 27 = 43 I.C. 306 = 34 M.L.J. 48.

Inheritance-Sister's daughter of deceased-Suit on foot of plaintiff being.

-Written statement denying that plaintiff's mother was deceased's sister at all-Plea at trial that plaintiff some daughter of sister's husband by another wife-Effect.

In a case in which the plaintiff claimed the property of a deceased Mahomedan lady on the ground of her being the sister's daughter of the deceased, the defendants, who, either knew the real facts from the first or could easily have ascertained them, pleaded in their written statement that the plaintiff's mother was not a sister of the deceased at all. At the trial, however, they went further and set up that the plaintiff was not the daughter of her alleged mother but was the daughter of that alleged mother's husband by another of his wives. That further development in their case was obviously due to the fact that the documentary evidence clearly showed that the plaintiff's alleged mother was a sister of the deceased.

Held that the defendants' failure to put forward, in the first instance, the plea put forward by them at the trial, in the circumstances of the case, greatly impaired the effect of the purely oral evidence by which they sought to prove that part of their case (36). (Sir John Wallis.) ABADI REGUM P. KANIZ ZAINAB. (1926) 54 I.A. 33 = 6 Pat. 359= 45 C.L.J. 408 - 25 L.W. 710 - 25 A.L.J. 51 =

(1927) M.W.N. 12-4 O.W.N. 153-38 M.L.T. (P.C.) 33 = 8 Pat. L.T. 107 = 99 I.C. 669 (2) = 31 C.W.N. 365 = 29 Bom. L.B. 763 = A.I.R. 1927 P.C. 52-52 M.L.J. 430

Inheritance-Slave emancipated.

-Inheritance to. Sr. MAHOMEDAN LAW-INHERI-TANCE-WILL A RULE.

#### Inheritance-Widow.

-[See also INHERITANCE-CUSTOM OF-WIDOWS.] CHILDLESS WIDOW-RIGHT OF.

Shia law.

Under the Shiah law, a widow who had not borne to her deceased husband a child who survived him takes no interest in the immoveable property of the busband. (Sir John Edge.) PARBATI D. MUZAFFAR ALI KHAN.

(1912) 34 A. 289 (293-4) = (1912) M.W.N. 417 = 11 M.L.T. 316=9 A.L.J. 450=15 C.L.J. 468= 14 Bom. L.R. 460 = 16 C.W.N. 913 = 15 I.C. 196 = 23 M.L.J. 11.

Shia law-Sunni law-Distinction.

Under the Shia law, the childless widows of a deceased Mahomedan have no right of inheritance, and are only entitled to maintenance from his estate. Under the Sunni law, however, those widows would be proper heirs, entitled to a share of his estate along with his other representatives (78). (Lord Watson.) MUSSAMMAT HAVAT-UN-NISSA D. SAYVID MUHAMMAD ALI KHAN.

(1890) 17 I.A. 73=12 A. 290 (298)=5 Sar. 521 EXCLUSION OF-CUSTOM OF.

Proof of.

In this case the courts below found on the evidence that amongst the Mandals, to which the family of the parties belonged, a custom to exclude widows from a share of the MAHOMEDAN LAW-(Contd.)

Inheritance-Widow-(Contd.)

EXCLUSION OF-CUSTOM OF-(Contd.)

inheritance was proved, and they, therefore, rejected the claim of the 1st respondent to inherit the estate of her

Their Lordships affirmed the judgments below on that point (10). (Ser Montague E. Smith.) NAWAB MUHAM-MAD AZMAT ALI KHAN F. MUSSUMAT LALLI BEGUM.

(1881) 9 I.A. 8 - 8 C. 422 (426 7) - 4 Sar. 310 = 17 P.R. 1882 (Civil).

LIFE INTEREST IN MOVEABLES AND IMMOVEABLES OF HER HUSBAND.

-Right to-Wajib ul-ar:-Construction.

The plaintiff-respondent, the widow of a deceased Mahomedan, seed for a declaration of her right to inherit the entire property left by the deceased and for recovery of possession of the same from the defendant, the brother of the deceased, who had taken possession of the same on the death of the deceased. The plaintiff alleged that she, according to the custom and the entries made in the Settlement wajib-ul-arz, was entitled to succession and to inherit the entire property left by her deceased husband. The plaintiff's claim included moveables and cash and deposit money,

The wajib-ul-are referred to in the plaint was of a village. in form of a joint zemindari tenure, of which the deceased had a half share. It contained in paragraph 4, relating to right of transfer and inheritance, the following statement:

A daughter, or her issue, does not get any share. If the deceased co-sharer have no male issue, but a female issue only, then indeed in that case the female issue can get a share. If all the wives be childless, they shall for their lifetime remain in possession of the deceased's inheritance in equal shares, with proprietary power,"

Held that the custom stated in the wajib-ul-arz applied to moveable property as well as to immoveables and that the court below erred in not including the moveable property in the declaration that the plaintiff had a life interest (159).

The decree of the court below was accordingly amended by making the declaration apply also to the moveables and the cash and deposit money (159). (Sir Richard Couch.) MAHOMED RIASAT ALI v. MUSSUMAT HASIN BANU.

(1893) 20 I.A. 155 = 21 C. 157 = 6 Sar. 374 = R. & J.'s No. 133 (Oudh).

RETURN.

-Right to.

Under the Mahomedan Law, the widow, who is generally included with the other sharers in the term "heirs," is not, like sharers, entitled in the absence of "residuaries" to a "return." (Sir Robert P. Collier.) MIRZA HIMMUT BAHADOOR P. MUSSUMAT SAHARZADEE BIGUN.

(1873) 1 L. A. 23 (33) = 13 B. L. B. 182= 21 W. R. 113=3 Sar. 331,

-Right to share in.

As a general rule, a widow takes no share in "the return", i.e., on failure of residuaries; but some authorities seem to hold that if there are no heirs by blood alive, the widow would take the whole estate to the exclusion of the fisc. MUSSAMUT HURMUT-OOL-NISSA BEGUM 2. ALLAHDIA (1871) 17 W. R. 108 (110)=2 Suth. 525.

RIGHT TO WHOLE ESTATE OF.

-No heirs by blood alive.

As a general rule, a widow takes no share in "the return". But some authorities seem to hold that, if there are no heirs by blood alive, the widow would take the whole estate to the exclusion of the fisc (527). HURMUT-OOL-NISSA BEGUM v. Allahdia Khan and Hajee Hidayat.

(1671) 2 Suth. 525=17 W. R. 108.

Inheritance-Widow-(Contd.)

#### SHARE OF.

— A Mahomedan widow would be entitled to a fourth part of her deceased husband's e-tate, the other three parts going to his heirs (224). (Lord Justice Knight Bruce.) AMEER-OON-NISSA v. MOORAD-OON-NISSA.

(1855) 6 M. I. A. 211 = 1 Sar. 533.

H and F succeeded to the estates of their grandfather, a Mahomedan, their father having died in the grandfather's lifetime, leaving a widow, the mother of H and F, who was living. Then H died, leaving a widow, IV.

Hild that, on the death of H, his share in the estates which descended from his grandfather would fall, according to Mahomedan law, to his brother, F, his mother and his widow, W, as co-sharers; the latter as widow being entitled to a fourth (33). (Sir Montague E, Smith.) HAJI MAHOMED FAIZ AHMED KHAN v. HAJI GHULAM (1881) 8 I. A. 25 = 3 A. 490 (498) = 4 Sar. 218.

#### Inheritance-Wife.

——Ghair kuf wife—Woman of Sheikh family married to man of Syed family if a—Exclusion from inheritance of —Custom of—Evidence, See MAHOMEDAN LAW—MARRI-AGE—GHAIR KUF MARRIAGE.

(1906) 33 I. A. 107 (115-6) = 28 A. 496 (506).

- Husband's right to inherit from Pagoolee marriage -Girl's death before assenting to Effect - Proof of assent -Onantum.

The appeal arose out of a suit relating to the right to inherit the property of A, a Mahomedan lady. One of the questions for decision was whether the marriage of A with the 1st respondent was perfect at her death so as to confer

a right on him, as her husband, to inherit.

The ceremony of a marriage between A and the 1st respowlent was performed on 16-10-1859, in the Facedice (translated, nominal) form. Both were then minors, and were so treated; the evidence was that she was eight years and some months old, be about nine. A's father was then dead, and the marriage was contracted by .M. her grandmother. It was celebrated with great pomp in the presence of the grandmother and the relatives of the girl. A's mother associated in the marriage. She was not directly consulted, but she was quite agreeable. Soon after the marriage Mtook A to Arabia to visit the holy places, and the girl (A) died there without having met or communicated with her husband since the marriage. Before her death A had attained the age of puberty; but there was no evidence that, after attaining it, the subject of the marriage was ever presented to her, or that she expressed in any way assent to or dissent from it.

Held that, by the law of Shiah School which governed the case, the marriage of A. unless her assent after attaining puberty could be shown, was imperfect, and could, if she died before such assent, create no rights or obligations (196-7).

Held further that, according to the Shiah doctrine, the girls must have arrived at puberty, and also be of mature understanding when her assent was given; and that, assuming A to have been by age and understanding capable of assenting, there was no sufficient evidence of the fact of her assent to satisfy the requirement of the law (197).

In this case there is neither evidence of express assent nor of facts from which it may be presumed. The girl was taken to Arabia, far from her betrothed husband, and there is no proof that the marriage was ever brought to her atten tion, or that she by word or conduct in any way recognised or ratified it (197-8).

### MAHOMEDAN LAW-(Contd.)

Inheritance-Wife-(Contd.)

Their Lordships are therefore of opinion that the evidence fails to show that the Fazoolee marriage had become perfect before A's death, and consequently that the claim of the 1st respondent to inherit as her husband has not been established (198). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA P. MAHOMED USHKURREE KHAN.

(1873) Sup. I A. 192=26 W. B. 26=2 Suth. 830= 3 Sar. 244=8 Mad. Jur. 306=B. & J.'s No. 21 (Oudh). ——Ignoble wife—Sons of—Exclusion of. See Maho-MEDAN LAW—INHERITANCE—CUSTOM OF—IGNOBLE WIVES.

#### Inheritance-Willa rule.

---Effect on Slavery Act V of 1843. See SLAVERY ACT V OF 1843-MAHOMEDAN LAW.

(1879) 6 L. A. 137 (142-4) = 3 B. 422 (429-30).

——Emancipated slave—Inheritance to—Natural heirs
—Heirs of emancipator—Rights of—Act V of 1843—Effect.

Quaere, whether by the Willa rule of the Mahomedan law
the natural heirs of the emancipated were excluded by the
heirs of the emancipator of the emancipated (140-1). (Sir
fames W. Colvile.) SAYAD MIR UJMUDIN KHAN v.
ZIA-UL-NISSA BEGUM. (1879) 6 I. A. 137=
3 B. 422 (427-8) = 5 C.L.B. 11=4 Sar. 37=3 Suth. 633.

### Inheritance-Woman dying without issue.

——Inheritonce to—Paternal grandmother, mother, and half-brothers and sisters—Rights of—Shares of—Shia school.

Held that, by the Shiah School of law, on the death of a Mahomerian lady without issue and leaving her surviving her paternal grandmother, mother, and half-brothers and sisters, the grandmother was not entitled to inherit, the mother was entitled, as the surviving parent, to a third share of her daughter's property, and the half-brothers and sisters of the deceased were entitled to the residue (201). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA P. MAHOMED USHKURREE KHAN. (1873) Sup. I. A. 192=
26 W. B. 26=2 Suth. 830=3 Sar. 244=

26 W. R. 26=2 Suth. 830=3 Sar. 244 8 Mad. Jur. 306=R. & J.'s No. 21 (Oudh).

#### Interest.

——Dower—Interest on—Award of, as equitable compensation. See MAHOMEDAN LAW—DOWER—INTEREST ON.

-Forhearence to enforce money payment-Compensa-

Conpensation for forbearance to enforce a money payment is best calculated on the basis of an equitable rate of interest. This appears to be consistent with the chapter on "The Duties (Adab) of the Kazi" in the principal works on the Mussulman law, which clearly shows that the rules of equity and equitable considerations commonly recognised in the Courts of Chancery in England are not foreign to the Mussalman system, but are in fact often referred to and invoked in the adjudication of cases (301-2). (Lord Parker.) HAMIRA BIBI 2: ZUBAIDA BIBI.

(1916) 43 I. A. 294 = 38 A. 581 (589) = 14 A. L. J. 1055 = 20 M. L. T. 505 = (1916) 2 M. W. N. 551 = 4 L. W. 602 = 21 C.W. N. 1 = 1 Pat. L. W. 57 = 18 Bom. L. R. 999 = 25 C.L. J. 517 = 36 I. C. 87 = 31 M. L. J. 799.

## Joint Family Property-Self-acquisition.

—Hindu law presumption as to, in case of purchase by one of two brothers living as one family—Inapplicability to Mahomedans of. See Mahomedan LAW—CO-HEIRS—PURCHASE BY ONE OF. (1919) 11 L. W. 421 (423).

#### Kharch i pandan.

—Nature and incidents of. See MAHOMEDAN LAW— MARRIAGE—KHARCH-I-PANDAN.

(1910) 37 I. A. 152 (159) - 32 A. 410 (414).

#### Khoolanamah.

——Nature of—Divorce not constituted by, See MAHO-MEDAN LAW—DIVORCE—KHOOLANAMAH.

(1861) 8 M. I. A. 378 (396).

#### Land of one person.

——Building erected by third party on—Consent of owner of land to such building not obtained—Effect—Rights of parties in case of. See LAND—BUILDING ERECTED. ETC: (1901) 28 I. A. 121 (134) = 26 B. 1 (15-6).

-Trees planted by third party on-Rights of parties -Consent of owner of land to such planting not obtained.

Under the Mahomedan law, the owner of land on whose property another person erects a building, or in whose property another person plants trees, without his consent, is not entitled to the building or the trees as having become attached to the land, but is only entitled to have the building or the trees removed and the land restored to its original state. If removal be injurious to the land, the proprietor of the land has the option of paying to the proprietor of the trees or the building a compensation equal to their value, and thus possessing himself of them (134). (Lord Hobboute.) SECRETARY OF STATE FOR FOREIGN AFFAIRS v. CHARLESWORTH, PILLING & CO.

(1901) 28 I. A. 121 = 26 B. 1 (15-6) = 8 Sar. 1.

#### Legitimacy.

--- (See also HINDU LAW-LEGITIMACY; AND LEGITI-MACY).

ANTE-NUPTIAL CHILD—CHILD BORN OUT OF WED-LOCK.

CONCUBINE'S CHILD.

CONCURRENT FINDINGS AS TO.

EVIDENCE OF.

ILLEGITIMATE CHILD-ACKNOWLEDGMENT OF.

ILLEGITIMATE CHILD NOT ACKNOWLEDGED BY FATHER—PLEA IN PRIVY COUNCIL APPEAL OF.

LEGITIMATION-DISTINCTION.

ONUS OF PROOF OF.

PRESUMPTION OF.

PROOF OF.

SLAVE GIRL-CHILDREN BEGOTTEN OF-STATUS OF.

ANTE-NUPTIAL CHILD—CHILD BORN OUT OF WED-LOCK.

-- Legitimacy of.

An ante-nuptial child is illegitimate. A child born out of wedlock is illegitimate (113). (Sir fames W. Colvile.)
ASHRUFOOD DOWLAH AHMAD HOSSEIN KHAN v.
HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94 = 7 W. B. (P. C.) 1=1 Suth. 659 = 2 Sar. 223 = B. & J.'s No. 5 (Oudh).

### CONCUBINE'S CHILD.

-Legitimacy of-Condition.

The child of marriage is legitimate as soon as born. The child of a concubine may become legitimate by treatment as legitimate (113.4). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMAD HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M.I. A. 94

7 W. B. (P. C.) 1=1 Suth. 659=2 Sar. 223= B. & J.'s No. 5 (Oudh).

### MAHOMEDAN LAW-(Contd.)

Legitimacy-(Centd.)

CONCURRENT FINDINGS AS TO.

—No interference by Privy Council with except upon clear proof of legal miscarriage. (Dr. Lushington.) KHA-JAH HIDAVAT OOLLAH P. RAI JAN KHANUM.

(1844) 3 M. I.A. 295 (316-7) = 6 W. R. (P. C.) 52= 1 Suth. 157-1 Sar. 282.

#### EVIDENCE OF.

— Daughter—Marriage procision for—Difference as regards, from that made for aimittedly legitimate daughters—Evidentiary value of, as regards her legitimacy.

In a case in which the question was whether the respondent was the wife of S, it appeared that there was a difference between the provision made by S for the respondent's daughters on the occasion of their marriages and a similar provision made by him for another daughter of his admitted to be legitimate. It was argued that that circumstance showed that S knew that the respondent's daughters could not share in his estate.

Held that, for that point to be effectual, it must be shown that such a position was irreconcilable with the relationship, and not merely that it was improbable that if the relationship had existed such arrangements would have been made (534). (Lord Buckmatter.) IRSHAD ALL r. MUSSUMAT KAIMAR. (1917) 22 C. W. N. 530 = 46 I. C. 217 =

(1918) M.W.N. 394 = 21 O.C. 86 = 5 O.L. J. 197 = 28 C. L. J. 173 = 20 Bom. L. R. 790 = 24 M. L. T. 86.

Family repute—Statement of member of family touching souship or heirship—Admissibility—Evidentiary value,

In a case in which the question was whether M was the legitimate son of a Nawab by a muta wife, it appeared that in many documents one of the admitted nikkai wives of the Nawab made statements touching the sonship or heirship of M, held that, according to Mahamedan law, if a member of a family, such as the admitted nikkai wife was of her husband's family, made statements touching the sonship or heirship of a person, those statements were good evidence of the family repute concerning him (234-5). (Lord Atkinson,) SADIK HUSSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212 - 38 A. 627 (661) = (1916) 2 M. W., N. 577 = 21 M. L. T. 40 = 6 L.W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. B. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

-Father's deed admitting paternity-Value of-Statement in it that child is child of illicit intercourse-

The question was whether the respondent was the child of one P, a Mahomedan lady. The appellant contended that he was not. The appellant claimed under a deed executed by the deceased husband of P, and in that deed the deceased spoke of the respondent as the son of P, by illicit intercourse.

Held that, though that declaration in the deed might not be a true declaration as to the allegation of illicit intercourse, it was conclusive against the contention that the respondent was not the son of P (259-60). (Lord Langdale.) JESWANT SING JEE 2. JET SINGJEE.

(1844) 3 M. I. A. 245=6 W. B. (P. C.) 46= 1 Suth. 150=1 Sar. 274.

- Father's treatment-Value of.

The treatment of the respondent by the deceased appears for many years to have been that of a son by its father; this, however, is inconclusive in itself, since a son conceived before marriage, and whom his father desired to recognise at some time as a legitimate son, would receive similar treat-

Legitimacy-(Contd.)

EVIDENCE OF-(Cont.)

ment (118). (Sir James W., Colville.) ASHRUFOOD DOW-LAH ARMED HOSSEIN KHAN F. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94-7 W. R. (P. C.) 1-

1 Suth 659 = 2 Sar. 223 = R & J.'s No. 5 (Oudh).

——Father's treatment of mother as reale and of son as legitimate on amounting to eval exidence of a declaration —What amounts to—Value of.

The question was whether the respondent was the lawful wife of F, and her son his lawful son.

The evidence clearly and indisputably shewed that the respondent was actually residing during a period of seven years in the female department of F; that she was so residing for a twelve month anterior to the birth of that child taking place; that she so resided, recognised to a certain extent, undoubtedly, as the wife of F; that the child was born under his coof; and that that child continued to be maintained in his house without any steps being taken on the part of F or of any one else to repudiate his title to the legitimacy as the offspeing of F.

Held, that there was a consecutive course of treatment both of the mother and of the child for a period of between 7 and 8 years under circumstances in which it appeared to their Lordships to be next to impossible that such a mode of treatment could have been adopted except upon the presumption of the cohabitation, and of the son being the issue of the loins of F, and that that was at least tantamount to an oral evidence of a declaration (321-3). (Dr. Luchington.) KHAJAH HIDAYUT OOLLAH E, KAI JAN KHANUN.

(1844) 3 M. I. A. 295 = 6 W. R. (P. C.) 52 = 1 Suth 157 = 1 Sar. 282

——Grandchildren's legitimary — Grandmether's ancertions as to, and as to there right to inherit—Value vi—Lax notions of several relationship in family—Effect.

The question was whether the respondent's mothers. S and II', were the legitimate daughters of Z, a son of II', a Mahomedan lady, and were as such the heirs of II'. There was evidence of express assertions by II' that S was the daughter of a mutai wife, and that J, the mother of II', was a mutai wife. As against those assertions evidence was given by witnesses at the trial, the effect of which was that in the family to which II' belonged very lax views as to sexual relations prevailed, and that for social purposes at least, legitimate and illegitimate children were treated alike.

Held, that such evidence could have no bearing upon statements by H that S and W were her granddaughters and heirs, and that they could have no tendency to neutralise the express assertions of H refused to above (206-7).

Quare what effect the evidence in question would have if the case in favour of legitimacy had rested only on evidence of treatment in the family (106). (Sir Arthur Wilson.) BAKER ALI KHAN v. ANJEEMAN ARA BEGAM.

(1903) 30 I. A. 94 = 25 A. 236 (249-50) = 7 C. W. N. 465 = 5 Bom. L. R. 410 = 8 Sar. 397.

-Lear-born and debased terman—Son of National by
-Treatment in domestic circle of, different from that of
legitimate children of wife of higher rank—No exidence
against legitimacy of that son.

Under the Mahomedan law, and indeed under the English law, the legitimate son of the most low-born, debased, and degraded, woman to whom a man could be lawfully united has just the same proprietary right in his father's property as if his mother had been the most well-born and the purest. But it is rather against human nature to suppose that this equality before the law should secure equality of treatment in the domestic circle (231).

Held, therefore, that the fact that a person claiming to be the legitimate son of a Nawab and of a low-born woman

MAHOMEDAN LAW-(Contd.)

Legitimacy-(Contd.)

EVIDENCE OF-(Contd.)

(his wife by Muta) was treated by the Nawab, and especially by his family, with less care, kindness, consideration and respect than the sons of the high-born ladies to whom the Nawab had been united by nikkai marriages, furnished no proof of his illegitimacy (231). (Lord Atkinson.) Sadik Hussain Khan v. Hashim Alikhan.

(1916) 43 I. A. 212=38 A. 627 (657.8)= (1916) 2 M. W. N. 577=21 M. L. T. 40=6 L. W. 378= 21 C. W. N. 133=25 C.L. J. 363=14 A. L. J. 1248= 18 Bom. L. R. 1037=19 O. C. 192=1 Pat. L. W. 157= 36 I. C. 104=31 M. L. J. 607.

- Rules of, applicable-Mussulman lawyers-Rules which would be applied by.

In considering this question of Mahomedan law (that is, the question of legitimacy) Courts must, at least to a certain extent, be governed by the same principle of evidence which the Mussalman lawyers themselves would apply to the consideration of such a question inasmuch as the subject is intimately connected with family feelings and usages. (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN r. HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 (107-8) = 7 W. B. (P. C.) 1= 1 Suth. 659 = 2 Sar. 223 = R. & J.'s No. 5 (Outh). Siders of boy whose legitimacy in question— Marriages of with respectable men and with due formali-

ties-Value of.

On a question as to the legitimacy of A, the fact that two of his sisters, whose legitimacy was as much open to question as his own, were married to respectable men, and that their marriages were conducted with due formalities, is a point worthy of consideration, but it would be easy to attribute too much weight to it. (Sir Arthur Wilton.) GHAZANFAR ALI KHAN T. KANIZ FATIMA.

(1910) 37 I. A. 105 (109·10) = 32 A. 345 (350) = 8 M. L. T. 59 = 11 C L. J. 649 = 14 C. W. N. 690 = 7 A. L. J. 579 = 12 Bom L. R. 447 = 13 O. C. 170 = 6 I. C. 674 = 20 M. L. J. 579.

ILLEGITIMATE CHILD—ACKNOWLEDGMENT OF.

Effect. See under MAHOMEDAN LAW—ACKNOWLEDGMENT.

ILLEGITIMATE CHILD NOT ACKNOWLEDGED

BY FATHER—PLEA IN PRIVY COUNCIL APPEAL OF.

Maintainability — Paternity itself disputed in

pleadings and in Courts below.

In their plaint and in the case presented by them to the Courts below, the plaintiffs persisted in the case that the defendant was not in any sense the son of W, that W was incapable of procreating children, that the defendant was a stranger brought in by means of a conspiracy, and that he was really the son of another. The Courts below found against the plaintiffs and held that the defendant was the legitimate son of W. On appeal to the Privy Council, the plaintiffs admitted the paternity of the defendant, but raised the contention that, though the natural son of W, the defendant was only his illegitimate and not his legitimate son and was never recognised by his father, a Mahomedan. The evidence in the case was not sufficient for the decision of that contention.

Held that the plaintiffs could not be allowed to raise that new contention for the first time before the Privy Council. KHAJAH HABEEB OOLLAH 2. KHAJAH GONHUR ALLY KHAN. (1872) 18 W. B. 523 =

5 Sar. 699 (700.1) = 2 Suth. 732.

LEGITIMATION—DISTINCTION.

Legitimation unknown to Mahomedan law. Sa.

LEGITIMACY—LEGITIMATION.

(1921) 48 I. A. 114 (120-1)=48 C. 856 (864).

Legitimacy-(Contd.)

ONUS OF PROOF OF.

In a suit instituted by the sons of a deceased Mahomedan for a declaration that a mortgage made by M, who claimed to be the step-brother of the plaintiffs, of his share in all the family property was a nullity, on the ground that the said M was not entitled to any share in the family property, first, by reason of the provisions of a certain indenture executed by the decease i, and secondly, because M was not the legitimate son of the deceased, held that the burden of proving M's illegitimacy rested, according to the pleadings in the first instance at all events, on the plaintiffs (231). (Lord Atkinson.) SADIK HUSSAIN KHAN P. HASHIN ALI KHAN. (1916) 43 I.A. 212=

38 A. 627 (657-8) = (1916) 2 M. W. N. 577 = 21 M. L. T. 40-6 L. W. 378-21 C. W. N. 133-25 C. L. J. 363-14 A.L.J. 1248-18 Bom. L. R. 1037-19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

Summary suit for administration of father's estate -Award of possession of a share in-Effect.

Respondent, who claimed to be a son of A as the issue of a Mootah or inferior marriage, and as having been acknowledged by A, in his lifetime, as his son, was put in possession of a third share of the property of A by a decree in a summary suit for the administration of his estate. Thereupon, the plaintiffs admitted to be the son and daughter of A, sued for a declaration of the illegitimacy of the respondent, claiming their father's property as his sole heirs. It was admitted on the pleadings that a Mootah marriage at some time had been contracted between the deceased A and the respondent's mother, but the plaintiffs stated in effect that the conception and birth of the respondent preceded that marriage.

Held that the onus of proof lay on the respondent, on the pleadings in the cause, to prove his mother's marriage. and his own legitimacy as a child of that marriage (118).

The title of the respondent, if established by the summary suit for the administration of the estate, was one in privity with the appellants' (plaintiffs') title. The mere fact of possession of a portion of the disputed property by either party was not a matter of any importance to the decision of the question on whom the burden of proof rested in the cause; that depended on the nature of the issues (108-9). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 = 7 W. R. (P.C.) 1= 1 Suth. 659 = 2 Sar. 223 = R. & J.'s No. 5 (Oudh).

PRESUMPTION OF.

-Acknowledgment-Presumption from-Basis of and limits to.

These presumptions (of legitimacy from marriage and from acknowledgment) are inferences of fact. They are built upon the foundations of the law, and do not widen the grounds of legitimacy by confounding concubinage and marriage (113). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN D. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94=7 W. B. (P. C.) 1= 1 Suth. 659 = 2 Sar. 223 = R. & J.'s No. 5 (Oudh).

Acknowledgment and treatment-Presumption from -Applicability-Adulterous intercourse-Issue of-Proof of children being-Effect.

Plaintiff-respondent, the son of one E. a Sherwani Pathan, sued the appellants for recovery of possession of certain property of the said E. Appellants claimed the ownership of the suit property as being the sons of E by his second wife, and therefore the step-brothers of the plaintff. Their case was that they were the children of one Mahmuda Begum, a Sherwani Pathan and a daughter of Mansur Khan,

## MAHOMEDAN LAW-(Contd.)

Legitimacy-(Contd.)

PRESUMPTION OF -(Contd.)

who was himself a Sherwani Pathan, and that their mother was the lawful wife of E. The plaintiff's case, on the other hand, was that the appellants were the sons of E by Mussamat Durga, a Hindu married woman and the wife of one Cheta Dhobi, who was still alive at the time of the births of the appellants respectively.

The evidence admittedly showed that the connection between the appellant's mother and E had commenced many years, probably 50 years, before the trial, and that it continued regularly for about 40 years till the woman's death at E's house, about 4 years before the commencement of the action; that the appellants were brought up and treated by E as his legitimate sons, and that the plaintiff himself treated the n in every way during his father's lifetime as if they were his step-brothers.

The appellate Court held, and there was ample evidence to justify the conclusion at which the appellate Judges arrived, that the appellants were not the legitimate children of E, but were his children by a woman who was at the time proved to have been matried, and that therefore no rules of presumption of legitimacy or marriage could avail the appellants.

Their Lordships affirmed the appellate Court, which had reversed the Sub-Judge.

Whatever presumption may be raised from the facts (disclosed by the evidence as to treatment and recognition above set forth) cannot prevail against the conclusions, if they are supported by the evidence, that, as alleged by the plaintiff, the appellants were the children of a Hindu married woman whose husband was still alve at the time of the births of the appellants. (Lord Carron.) NUH-ULLAH KRAN r. MD. SHAFIQ-ULLAH KHAN.

(1929) 33 C. W. N. 900 = 117 I. C. 6= A. I. R. 1929 P. C. 212 = 57 M.L.J. 522.

-Child bern in wedlock.

The question was whether the respondent was the son of a Mahomedan, named (', by P. Admittedly the respondent was the child of P. There was no denial that P was the wife of U, and there was no evidence which could be relied upon to show that the most ordinary presumption ought not to prevail in the case.

Held that, the case being one of a child born in wedlock, it must be deemed to be the child of the husband (259). (Lord Langdale.) JESWUNT SING JEE P. JET SING JEE. (1844) 3 M.I.A. 245 = 6 W.R. (P.C.) 46 =

1 Suth. 150=1 Sar. 274.

-Circumstances justifying.

According to the Mahomedan law, the legitimacy or legitimation of a child of Mahomedan parents may properly be presumed or inferred from circumstances without proof, or at least without any direct proof, either of a marriage between the parents, or of any formal act of legitimation (159), (Lord Justice Knight Bruce.) MOHAMED BANKER HOO-SAIN KHAN P. SHURFOON NISSA BEGUM.

(1860) 8 M.I.A. 136=3 W.R. 37= 1 Suth. 400 = 1 Sar. 728.

Conditions.

Where a child has been born to a father, of a mother where there has been not a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to such a marriage, then, according to the Mahotnedan law, the presumption is in favour of such marriage having taken place (318). (Dr Luthington.) KHAJAH HIDAYUT OOLLAH P. RAI JAN KHANUM.

(1844) 3 M.I.A. 295=6 W.B. (P.C.) 52= 1 Suth. 157=1 Sar. 282.

Legitimacy-(Contd.)

PRESUMPTION OF-(Contd.)

-A Court would not be justified, though dealing with this subject of legitimacy, in making any presumptions of fact which a rational view of the principles of evidence would exclude. The presumption in favour of marriage and legitimacy must rest on sufficient grounds, and cannot be permitted to override overbalancing proofs, whether direct or presumptive (114). (Sir James W. Celvile.) ASHRUFOOD DOWLAH AHMED HOSSAIN KHAN 7. HYDER HOSSEIN (1866) 11 M.I.A. 94 = 7 W.R. (P.C.) 1= KHAN. 1 Suth. 659 - 2 Sar. 223 - R. & J.'s No. 5 (Oudh).

-Exidence displacing-Father's denial of souship if, Had this deed of renunciation by the father been evidence on which reliance could be placed as to the devial of sonship which it contained, then it might have sufficed to displace a mere presumption of legitimacy, founded on treatment as a son of one in truth illegitimate. It might be designed and suffice to remove a growing repute (112). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN r. HYDER HOSSEIN KHAN. (1866) 11 M.I.A. 94-7 W.B. (PC.) 1=

1 Suth. 659 = 2 Sar. 223 = R. & J.'s No. 5 (Oudh).

-Marriage-Presumption from-Scope of and limits

The presumption of legitimacy from marriage follows the bed, and whilst the marriage lasts, the child of the woman is taken to be the husband's child; but this presumption follows the bed, and is not antedated by relation (113). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN : HYDER HOSSEIN KHAN.

(1866) 11 M.I A. 94 = 7 W.R. (P.C.) 1 = 1 Suth. 659 = 2 Sar 223 = R & J.'s No. 5 (Oudh).

-Muta marriage-Children of-Legitimacy of-Presumption. See MAHOMEDAN LAW-MARRIAGE-MUTA MARRIAGE-CHILDREN OF - LEGITIMACY OF-PRE-SUMPTION. (1914) 27 M.L.J. 89 (92).

#### PROOF OF.

-Where the question was whether the appellant was the lawful son of O, a deceased Mahomedan. held there was no proof that the appellant's mother was ever married, nor proof that she ever represented herself as a married woman, or as a widow, nor proof of any acknowledgment on the part of O by word or deed, by language or conduct, that he was her husband, or the father of her son (1589). (Lord Justic Knight Bruce.) MAHOMED BANKER HOOSSAIN KHAN v. SHURFOON NISSA BEGUM.

(1860) 8 M.I.A. 136 = 3 W.B. 37 = 1 Suth. 400 = 1 Sar. 728.

-Held, on the evidence, reversing the Court below, that the respondent had failed to prove his mother's marriage with the deceased A, and his own legitimacy as a child of that marriage (118-9). (Sir James W. Celvile.) ASHRU-FOOD DOWLAH AHMED HOSSAIN KHAN P. HYDER HOSSAIN KHAN. (1866) 11 M.I.A. 94=

7 W.R. (P.C.) 1=1 Suth. 659=2 Sar. 223= R. & J.'s No. 5 (Oudh).

Held, on the evidence reversing the Sudder Court and restoring the trial Judge, that the plaintiff, D, was the lawful wife of A, a deceased Mahomedan Zemindar, and that her infant son was his legitimate son (1934). (Sir Richard Kindersely.) WISE r. SUNDULOONISSA CHOWDRANEE.

(1867) 11 M. I. A. 177=7 W. R. (P. C.) 13= 1 Suth. 667 = 2 Sar. 249.

-Held, affirming the Court below, that the respon dent's mothers were the legitimate daughters of Z, a son of H, and that the respondents were as such the heirs of H

### MAHOMEDAN LAW-(Contd.)

Legitimacy-(Contd.)

PROOF OF-(Contd.)

(107). (Sir Arthur Wilson.) BAKER ALI KHAN 1. ANJUMAN ARA BEGUM.

(1903) 30 I. A. 94 = 25 A. 236 (250) = 7 C. W. N. 465= 5 Bom. L. R. 410 = 8 Sar. 497.

-The question was whether the appellant was to be regarded as the legitimate son of his father. There was no dispute about his parentage. The sole question was whether on the evidence in the case, coupled with all legitimate presumptions, it was shown that the appellant was born in wedlock.

There was no evidence of marriage between the parents

of the appellant.

Held, affirming the Court below, that the appellant had not proved that he was born in wedlock. (Sir Arthur Wilson.) GHAZANFAR ALI KHAN v. KANIZ FATINA.

(1910) 37 I.A. 105 = 32 A. 345 = 8 M. L T. 59= 11 C.L.J. 649=14 C. W. N. 690=7 A.L.J. 579= 12 Bom. L. B. 447=13 O C. 170=6 I. C. 674= 20 M.L.J. 579.

-//eld, on the evidence, reversing the Court below, and affirming the trial Judge, that the plaintiff A, was the son of S by his wife, M. (Sir John Edge.) MAHOMED ABDUL AZIZ 1. MIR TASSADUQ HUSAIN.

(1917) 21 C. W. N. 873 = 7 L.W. 66= (1917) M.W.N. 529 = 42 I.C. 3.

-Muta marriage -- Son of Nawab by. See MAHO-MEDAN LAW-MARRIAGE-MUTA MARRIAGE-SON OF (1916) 43 I.A. 212 (234)= NAWAB BY. 38 A. 627 (658-9).

-Marriage-Direct evidence of-Acknowledgment-Evidence of - Proof by means other than-Possibility of.

The question was whether the mothers of the respondents, S and IV, were the legitimate children of Z, inasmuch as the respective mothers of those ladies, A and J, were his wives, married to him in the mutai or temporary form, which is accepted as valid by the Shiah law by which the parties were governed.

There was no direct evidence of either of the marriages of H or J, and there was no evidence of acknowledgment of the children (S and W) by their father, they being very

young at the time of his death.

Held that nevertheless the marriage and legitimacy might be proved in such cases by other means (104). (Sir Arthur Wilson.) BAKER ALI KHAN v. ANJUMAN ARA BEGAM. (1903) 30 I A. 04 = 25 A. 236 (247)= 7 C.W.N. 465 = 5 Bom. L.B. 410 = 8 Sar. 397.

Pregnancy-Seventh month of-Celebration of, and

of birth of son-Proof of-Sufficiency of.

The celebration of the seventh month of pregnancy and the celebration of the birth of the son are sufficient to prove the marriage and the legitimacy of the son. (Sir Richard (1867) 11 M.I.A. 177 (182)= Kindersely.) 7 W.R. (P.C.) 13=1 Suth. 667=2 Sar. 249.

SLAVE GIRL-CHILD BEGOTTEN OF-STATUS OF.

-Rights of mother-Shiah and Sunnee Laws-Distinction-One's own slave-Slave of another-Children begotten of-Distinction.

According to the Sunnee school of law, if a man bas a child by his own slave, the child, without marriage, is deemed to be lawfully begotten, and is entitled to inherit as a cosharer with children born in marriage-the mother in such case becoming oom-i-walad, and entitled to emancipation on the death of her master. These consequences, however, according to some authorities, occur only in the case of a master having a child by his own slave, for it is said to be

Legitimacy-(Contd.)

SLAVE GIRL-CHILD BEGOTTEN OF-STATUS OF-(Contd.)

unlawful for a man to have connection with the slave of another, especially with his mother's slave, and that the parentage of a child born of such connection, although begotten in error, cannot be established to belong to him (200).

There is some authority for the proposition that among the Shiahs a child begotten of a slave-girl, of whom the true owner had parted with the usufract to the father of the child, stands on the same footing as the child of a man by his own slave (200). (Sir Montague E. Swith.) NEWAB MULKA JEHAN SAHIBA v. MAHOMED USHKURREE KHAN. (1873) Sup. I. A. 192 = 26 W. R. 26 =

3 Sar. 244 = 8 Mad. Jur. 306 = R. & J.'s No. 21 (Oudh) = 2 Suth. 830.

#### Lien

-Creditor's lien of Mahamedan Law recognised by British Indian Courts-Widow's lien for dower only.

The widow's lien for dower is the only creditor's lien of the Mussulman Law which has received recognition in the British Indian Courts and at this Board (301). (Lord Parker.) HAMIRA BIBI v. ZUBAIDA BIBI.

(1916) 43 I. A. 294 = 38 A. 581 (588-9) = 14 A. L. J. 1055 = 20 M. L. T. 505 =

(1916) 2 M. W. N. 551 = 4 L. W. 602 = 21 C. W. N. 1 = 1 Pat. L. W. 57 = 18 Bom L. R. 999 = 25 C. L. J. 517 = 36 I. C. 87 = 31 M. L. J. 799.

### Life estate.

- Legitimacy-Evidence of Near relatives-Evidence of Value of.

On an issue as to legitimacy no better class of evidence can be produced than the evidence of near relatives of the parties concerned. (Lord Carson.) NUH-ULLAH KHAN P. MAHOMED SHAFIQ-ULLAH KHAN.

(1929) 33 C. W. N. 900 = 30 L. W. 196 = 117 I. C. 6 = A. I. B. 1929 P. C. 212 = 57 M. L. J. 522.

#### Maintenance.

RATE OF-AGREEMENT FIXING.

- Binding nature of Claim inconsistent with-

The plaintiff (respondent), the younger son of a deceased Mahomedan, sued the defendant (appellant), his elder brother, for the recovery of arrears of maintenance at Rs. 140 a month, and a declaration of his right to maintenance in perpetuity, and to have it judicially declared that the maintenance was a debt due from the estate of his deceased father to which the defendant alone was held to be entitled.

It appeared that originally a sum of Rs. 140 a month had been allowed for plaintiff's maintenance but that subsequently, in consequence apparently of the state of the property, an agreement was made between the plaintiff and the defendant by which the plaintiff agreed to receive less for a period. The suit was not brought upon that agreement; but the plaintiff's case was mainly supported by that agreement. It was put forward at the outset of the case as his evidence by the pleader who appeared for him.

Held, that the plaintiff ought not to be allowed to recover more than he agreed by that agreement to receive (49.50).

If the plaintiff had had to sue upon the agreement he could only have recovered that. He has sued in a different way; but their Lo.dships are of opinion that this is all that he ought to recover in the present suit (50). (Sir Richard Couch.) AHMED HOSSEIN KHAN v. NIHALUDDIN KHAN. (1883) 10 I. A. 45=9 C. 945 (951)=13 C. L. B. 330=4 Sar. 442=B. & J.'s No. 72 (Oudh).

## MAHOMEDAN LAW-(Contd.)

Maintenance-(Contd.)

RATE OF-AGREEMENT FIXING-(Contd.)

Suit for maintenance not based on Objection to-Privy Council appeal - Maintainability for first time in.

The plaintiff (respondent), the younger son of a deceased Mahomedan, sued the defendant (appellant), his ekler brother, for the recovery of arrears of maintenance at Rs. 140 a month, and a declaration of his right to maintenance in perpetuity, and to have it judicially declared that the maintenance was a debt due from the estate of his deceased father to which the defendant alone was held to be entitled.

It appeared that originally a sum of Rs. 140 a month had been allowed for plaintiff's maintenance but that subsequently, in consequence apparently of the state of the property, an agreement was made between the plaintiff and the defendant by which the plaintiff agreed to receive less for a period. In support of his case the plaintiff relied mainly upon the said agreement.

Before their Lordships, the defendant contended that a suit should have been brought upon the said agreement and not in the form in which it was brought. No such objection, however, was taken in the defendant's appeal to the court below.

Held that the objection could not be raised for the first time before their Lordships (47).

If there had been ground for this objection, it might and should have been taken when the defendant appealed to he Commissioner (the Court below). It was said that he could not know of the objection when the written statement was filed, because the agreement was produced for the first time at the hearing of the cause when evidence was given, and it had not been filed; but after the hearing, and after the production of the agreement, the defendant knew perfectly well that it was being used against him, and when he made his appeal to the Commissioner he could have taken this objection. If there is any ground for the objection it cannot be taken in the present stage of the proceedings (47), (Sir Richard Couch.) Ahmed Hossein Khan v. Niha-Luddin Khan. (1883) 10 L A. 45 =

9 C. 945 (949-51) = 13 C.L.R. 330 = 4 Sar. 442 = R. & J.'s No. 72 (Oudh).

SUIT BY YOUNGER BROTHER FOR, AGAINST ELDER IN POSSESSION OF PATERNAL ESTATE.

Maintainability-Prior suit against father on different cause of action-Dismissal of-Effect.

The plaintiff (respondent), the younger son of a deceased Mahomedan, sued the defendant (appellant), his elder brother, for the recovery of arrears of maintenance, and a declaration of his right to maintenance in prepetuity, and to have it judicially declared that the maintenance was a debt due from the estate of his deceased father to which the defendant alone was held to be entitled. The defendant pleaded that the suit was barred by res judicata. The document on which he relied appeared to be an order made in a suit brought by the plaintiff against his father in which he claimed to be entitled to a monthly allowance for maintenance founded on some ikrarnama, which would appear to have been executed by his grandmother, who had the management of the property in consequence of the father being incapable of taking care of his affairs.

Held that the order was not one which would be residuated in the suit (47). The order was not an adjudication between the plaintiff and the defendant but between the plaintiff and his father, and it was altogether upon a different cause of action (47). (Sir Richard Couch.) AHMED HOSSEIN KHAN v. NIHALUDDIN KHAN.

(1883) 10 I. A. 45=9 C. 945 (948) = 13 C. L. B. 330= 4 Sar. 442 = B. & J.'s No. 72 (Oudh).

Majority.

Male members of family—Mortgage of ancestral property by - Female members' right to dispute validity of, as regards their shares.

 Estoppel—Circumstances not amounting to—Females purdanashin lastics.

The appellants were the female members of a Mahomedan family which in matters of worship had adopted the Hindu religion. There was no evidence that there was any custom in the family by which the Mahomedan law in regard to the descent of property had been altered or varied.

The respondent took a mortgage of ancestral property from the male members of the family. He made no inquiry of any of the female members or of their husbands. They were purdamathin ladies, and naturally left the management

of the property in the hands of the males,

In a suit brought by the respondent to enforce his security against the family property, making both the males and the females parties, the High Court passed a decree against the females as well as against the males. The learned Judges of the High Court held that the male members "represented" the females in the transaction, because the females had not actively interfered with the property, and it appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females. There was, however, nor indeed was there any suggestion, at least in the evidence, that the appellants or any of them had misled the respondent either by word or conduct.

Held, reversing the High Court, that its decree was against all principle and authority. (Lord Macnaghten.) AZIMA BIBL P. SHAMALANAND. (1912) 40 C. 378 = 17 C.W.N. 121 = 13 M.L.T. 159 = (1913) M.W.N. 125 = 11 A.L.J. 169 = 17 C.L.J. 303 = 15 Bom. L.B. 423 = 17 I.C. 758 = 25 M.L.J. 55.

#### Marriage.

(See also MAHOMEDAN LAW-LEGITIMACY AND MARRIAGE.)

ADMISSION AS TO,

CEREMONY OF-LAW GOVERNING.

DECLARATION OF, IN WIDOW'S SUIT FOR DOWER AGAINST HER HUSBAND'S HEIRS.

EVIDENCE OF.

FAZOOLEE MARRIAGE.

FINDING OF, ON EVIDENCE AND ON CONDUCT OF OPPONENT IN FABRICATING DOCUMENTS TO DIS-PROVE MARRIAGE.

GHAIR KUF MARRIAGE.

GIRI

KHARCH-I-PANDAN.

MINOR.

MUTA MARRIAGE.

NIKA MARRIAGE.

ONUS OF PROOF OF.

PERSONS WITH WHOM, NOT ALLOWED.

PRESUMPTION OF.

PROOF OF.

SHADI MARRIAGE.

VALIDITY OF.

#### Marriage-Admission as to.

HUSBAND-ADMISSION OF MARRIAGE BY.

- Deceased husband-Admission by-Decesion based upon-Propriety.

It would be extremely dangerous to rely upon admissions made by a deceased man of his marriage when he could not be brought to contradict them, and when these admissions are not supported by trustworthy evidence of the fact of

#### MAHOMEDAN LAW-(Contd.)

Marriage-Admission as to-(Contd.)

HUSBAND—ADMISSION OF MARRIAGE BY—(Contd.)
the marriage or of other facts which would tend to show
that a marriage had taken place. SHOJANT ALI KHAN v.
MUSSAMAT MUKDHOM JAN. (1872) 8 M.J. 185.

—Deceased bushand—Admission by—Evidentiary
value of.

The question was whether the respondent K, was the

wife of S, who died in July 1909.

A was born in the prostitute caste. In 1872, criminal proceedings were taken against S by M, K's sister, for abduction of her sister and for wrongfully confining her in his house. Pending those proceedings, S instituted matrimonial proceedings against K, alleging that she was his wife and seeking restitution of conjugal rights. The suit and the criminal proceedings were settled by an agreement of 30—7—1872 between K and S. That agreement recited that a marriage had been made between them on 11—6—1869, and that K was the lawful wedded wife of S. It also set our provisions for the maintenance of K and for the terms on which they should live thereafter. The document was then executed and duly recorded.

Held, that the statement in the agreement that a marriage ceremony had in fact taken place on a particular date sught, prima facie, to be accepted, unless it could be shown by independent evidence to be false (532-3). (Lord Buckmaster.) IRSHAD ALL v. MUSSUMAT KARIMAN.

(1917) 22 C.W.N. 530 = 28 C.L.J. 173 = 20 Bom. L.R. 790 = 24 M.L.T. 86 = (1918) M.W.N. 394 = 5 O.L.J. 197 = 46 I.C. 217 = 21 O.C. 86.

Down debt due to alleged wife—Suit by her sons for, after her death—Husband's confession of judgment in —Admission if—Suit collusive one intended to get up to deace—Effect.

In a case in which the appellants were proved to be the illegitimate sons of one E by a Hindu married woman whose husband was still alive at the time of their births, it appeared that the appellants had, on the death of their mother, sued E for the recovery of Rs. 170, alleged to be dower debt due to their late mother, and that E confessed judgment in that suit. That fact was claimed by the appellants as an admission by E of the fact that that the appellants mother was his latful wife. All the Judges of the High Court, however, found that that suit was a collusive one, and that having regard to the insignificant amount and the fact that E allowed himself to be sued and a judgment obtained, it could not be doubted that the sole object of the litigation was to have a record which could be put forward as supporting the factum of E's marriage with appellant's mother.

Their Lordships agreed with the High Court. (Lard Carsen.) NUH-ULLAH KHAN v. MD. SHAFIQ-ULLAH KHAN. (1929) 33 C.W.N. 900 = 117 LC. 6 = A.I.B. 1929 P.C. 212 = 57 M.L.J. 522.

WIFE-ADMISSION AGAINST MARRIAGE BY.

The question in the case was whether M sued as a minor under the guardianship of her mother G, was the legitimate daughter of A by G. That question depended upon whether G was free to marry and did in fact marry A. A certified copy of a statement by G taken before a Magistrate was relied upon as conclusively disproving the case that G was free to marry and did in fact marry A.

The heading of the statement was in these words:—"G, wife of E,..., on solemn affirmation"—and it contained the following passage:—"I have lived with A these 12 or 14 years. I lived with him before his wife died, two years

before that event."

Marriage-Admission as to-(Contd.)

WIFE-ADMISSION AGAINST MARRIAGE BY-(Contd.)

The Court below held that the statement with the heading was an admission by G that she had not been divorced by E and that she was not married to .1. The Court below was of opinion that the passage in the statement that G had "lived" with A for 12 or 14 years merely meant that "she had co-habited with him." Relying solely on this statement the court below reversed the judgment of the trial judge in favour of M.

Held, reversing the judgment of the court below, that the construction put upon the passage in the statement was harsh and uncalled for, and that the statemeat was not cu-

titled to any weight as against .1/3 claim.

G seems for some reason or other to have been asked how long she had been living with A and to have answered correctly enough "for 12 or 14 years." It is difficult to suppose that the Magistrate, if it was the Magistrate by whom the question was asked, intended to convey any imputation on the witness, and equally difficult to suppose that the witness intended by her answer to make a confession of immorality, (Lord Macnaghten). MUSSUMAT MAQBULLAN D. AHMAD HUSSAIN. (1903) 31 I.A. 38=

26 A. 108 (117.9) = 8 C.W.N. 241 = 6 Bom. L.R. 233 = 8 Sar. 583

### Marriage-Ceremony of-Law governing.

-Husband and wife of different schools-Ceremony in case of, usually be according to the school to which the husband belongs. KHAJAH GONHUR ALI KHAN P. KHAJAH AHMED KHAN. (1873) 2 Suth. 882 (885) -20 W B. 214.

### Marriage-Declaration of, in widow's suit for dower against her husband's heirs.

Propriety of-Agreement for dower held not proved. See MAHOMEDAN LAW-DOWER-SUIT FOR-WIDOW -SUIT BY, AGAINST HER HUSBAND'S HEIRS-DECLARA-TION IN, ETC. (1872) 8 M.J. 185.

### Marriage-Evidence of.

(See also MAHOMEDAN LAW-LEGITIMACY-(1) EVIDENCE OF, AND (2) PROOF OF.]

-Admission as to, by husband or wife. See MAHO-MEDAN LAW-MARRIAGE-ADMISSION AS TO.

Concubinage-Clan proclivity towards-Evidence of -Admissibility.

On an issue as to whether a man and a woman were or were not married to each other, evidence of a clan proclivity in the clan to which the parties belonged rowards concubinage rather than marriage is inadmissible. A court of law would not on such evidence pronounce a view to the effect that there was a clan proclivity towards concubinage rather than marriage. (I ord Shaw). MOHABBAT ALI KHAN D. MAHOMED IBRAHIM KHAN.

(1929) 56 I.A. 201 = 10 Lah. 725 = 27 A.L.J. 465 = 33 C.W.N. 645 = 30 Bom. L.R. 846 = 6 O.W.N. 517 = 30 L.W. 97 = 117 I C. 17 = 50 C.L.J. 89 = (1929) M W.N. 676 = A.I R. 1929 P. C. 135 =

57 M. L. J. 366.

Court of Wards in management of husband's estate -Manager of- Report of, stating lady to be wife of ward and recommending allowance to her-Value of.

The question was whether the respondent was the lawful

wife of one F.

In 1816 the property and the person of F were placed under the protection of the Court of Wards. While the management of the Court of Wards continued, Mr P, in the discharge of his duty as Collector, wrote a letter to the Court of Wards proposing to them a settlement out of the Lawyers-Applicability of.

## MAHOMEDAN LAW -(Contd.)

Marriage-Evidence of-(Contd.)

estate of F; and after having mentioned certain circumstances relating to the amount of property, he recommended the sum to be allotted for the expenses of F and his family to be fixed at Rs. 200 a month, namely, Rs. 120 for F, his two wives (including the respondent), and his mother, Rs. 30 for the servants' wages, and 50 rupees for the support of a number of females who had long lived in, and been maintained by, the family, and to whom he stated that a sum equal to what he proposed had been for some time past allowed. He added:- "This last item I have not recommended without carefully ascertaining that there are such persons who, from having been all along supported by the Zemindar "(F), "may be considered as entitled to an allowance," The Court of Wards acted upon that report, and the respondent continued to receive an allowance after the rate of 10 supees a month from the year 1817 up to the year 1824, when F died.

Held, that taking Mr. P's report as evidence of the fact that the respondent was the wife of F, it was evidence to the effect, that so far as Mr P's investigation had extended, it justified him in making the representation which he made in the discharge of his duty to the Court of Wards (320-1). (Dr. Lushington.) KHAJAH HIDAYUT OOLLAH P. RAI JAN KHANUM. (1844) 3 M.I.A. 295 ==

6 W.R. 52 P C. = 1 Suth. 157 = 1 Sar. 282. Daughter of woman passing as daughter of alleged hushand - Alleged hushand giving her away in marriage-

Evidence of Value of.

On an issue as to whether the plaintiff had been married to B. held that the fact that there was a daughter of the plaintiff who passed as the daughter of B, whom he gave away upon her marriage was by no means a conclusive fact, because if she was his daughter or he believed her to be so, although illegitimate, he might have been induced from motives of affection, to give her away on her marriage, SHOJAUT ALI KHAN P. MUSSAMUT MUKDHOOM JAN.

(1872) 8 M. J. 185.

-Hushand's will-Draft of, omitting mention of wife and issue-Admissibility of-Draft not written by

On a question as to whether the respondent A was the wife of a deceased Mahomedan by a nike marriage, and the other respondent was the issue of the said marriage, held that the draft of a will executed by the deceased subsequent to the said marriage and containing no mention of the respundents was inadmissible in evidence to disprove the marriage, because the draft was not written by the deceased (129)

The draft was not a written statement made by the de-Ceased (129). (Lora Robertson.) HAJI SABOO SIDICK v. AYESHARAI (1903) 30 I.A. 127 = 27 B. 485 = 7 C.W.N. 665=5 Bom. L.B. 475=8 Sar. 477.

Issue of woman-Treatment of, publicly and privately as lawful issue of alleged father-Value of.

The circumstance that a person was in fact treated pullicly and privately as another's lawful issue is not in itself conclusive to establish that a lawful marriage had taken place between his parents (532). (Lord Buckmaster.) IRSHAD ALLE, MUSSUMAT KARIMAN.

(1917) 22 C.W.N. 530 = 46 I.C. 217 = (1918) M.W.N. 394 - 21 O.C. 86 - 5 O.L.J. 197 = 28 C.L.J. 173=20 Bom. L.B 790=24 M.L.T. 86.

-Kaze present at marriage-Examination of, or explanation satisfactory of omission to examine him-Necessity. Khajah Gouhur Ali Khan 2. Khajah Ahmed (1873) 2 Suth. 882 (885) = 20 W.B. 214. -Principles of -Principles applicable by Mussulman

### MAHOMEDAN LAW-(Cental.)

Marriage - Evidence of - (Conta.)

In considering this question of Mahomedan Law, viz, whether the re-pondent, a Mahomedan lady, was the lawful wife of her aileged bushand, we must, at least to a certain extent, he governed by the same principles of evidence which the Mussulman lawyers themselves would apply to the consideration of such a question (318). (Dr. Ludington,) KHAJAH HIDAYUT OOLLAH v. RAI JAN KHANUM. (1844) 3 M.I.A. 295 = 6 W.R. 52 P.C. = 1 Suth. 157 = 1 Sar, 282.

——Purdah—Woman not living and remaining behind the—When insufficient to counteract evidence of marriage. See MAHOMEDAN LAW—MARRIAGE—PRESUMPTION OF —PURDAH. (1929) 56 I.A. 201—10 Lab. 725.

----Wife's petition on eve of husband's second marriage asserting her status and complaining of attempted second marriage-Value of.

The question was whether the respondent was the lawful wife of one F. She alleged that the marriage between them took place in 1797, and that, on the day of the marriage, F executed a deed of marriage settlement in her favour.

In 1813, when F was about to be married to the original appellant, the respondent, who opposed that union, presented a petition to the Zillah court, stating herself to be the wife of F, and setting forth the marriage settlement in her favour. She represented in that petition that F was kept away and not permitted to return to his own house, that there were a number of persons who had attempted to confine her, and not to permit her to go to F, and that he was about to marry another wife. She prayed that her husband might be prevented from granting a deed of marriage settlement without her concurrence. That petition was, however, rejected on the ground that, even supposing the whole facts contained in it to be true, the Court would not be justified in interfering for the purpose of preventing the contemplated marriage.

Held, that the petition was a document of the very greatest importance in the determination of the question (318.9).

The petition is an assertion of facts in conformity with the subsequent statement of this very person. The statement in it is made before there is any anticipation of a litigation of this description, and at a period when F is not considered or deemed to be incompetent. It is addressed to a competent court, and she must, if she anticipated any good result from the presentation of that petition, have also anticipated that the facts contained in that petition might be the subject of judicial examination. She therefore offers in the year 1813 to subject her claim (which is in substance the same as her claim now) to the examination of a Court competent to decide upon it (319), (Dr. Lushington.) KHAJAH HIDAYUT OOLLAH 7: RAI JAN KHANUM.

(1844) 3 M.I.A. 295=6 W.R. 52 P.C. = 1 Suth. 157=1 Sar. 282.

—Witnesses to marriage—Credibility of—Particulars relating to marriage—Inability to speak to—Effect—Lapse of time—Question raised after.

The Court below points out that the witnesses who deposed to G's marriage could not fix the year or even the season of the year when it took place. That does not seem very extraordinary. After the lapse of so many years, when there was nothing in the circumstances of the marriage to impress their memory, they may well have borne in mind that there was a marriage without being able to recall anything in particular about it. (Lord Macnaghten.) MUSSUMMAT MAGBULLAN 2. AHMAD HUSAIN. (1903) 31 I.A. 38=26 A. 108 (116-7)=8 C.W.N. 241=6 Bom. L.R. 233=

MAHOMEDAN LAW-(Contd.)

Marriage-Fazolee marriage.

- Girls' assent to-Evidence of, required-Presumption of assent-Circumstances justifying-Shia law.

It appears that the girl's assent to a Fazolee marriage, if a virgin, may be inferred from her silence when the matter is propounded to her; but a woman who is not must be put to the trouble of giving expression by actual speech to her assent. The mention of this distinction (which involves a concession to the modesty of a virgin) strongly indicates the view of the Sheeah School that assent must be evidenced in such a way as to leave no doubt that it is the act of the mind and will. Their Lordships, however, do not mean to hold that it must, in all cases, be shown that the question of the marriage was distinctly propounded to the girl. They have no doubt that assent may, in some cases, be presumed from the conduct and demeanour of the parties after they have attained puberty and mature under-standing. Circumstances may obviously exist which would properly lead to the inference that the marriage had been recognised and ratified, although no distinct assent could be proved (197). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA P MAHOMED USHKURREE KHAN.

(1873) Sup. I.A. 192 = 26 W.R. 26 = 3 Sar. 244 = R.& J's. No. 21 (Oudh) = 8 M. J. 306 = 2 Suth. 830. —Girl's dissent from—Declaration of option of—

Soonnee and Shia laws at to—Distinction.

As regards Fazolee marriages the law of the Soonnees appears to adopt a very stringent rule requiring the option of dissent to be declared by the girl as soon as puberty is developed. But the doctrine of the Sheeahs seems to be that the matter ought to be propounded to her, so that she may advisedly give or withhold her assent. This is a rational provision of law, for assent ought to be the expression of the mind and will of the girl upon the marriage when it is brought to her notice, and is present to her understanding (197). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA v. MAHOMED USHKURREE KHAN.

(1873) Sup. I.A. 192=26 W.B. 26= 2 Suth. 830= 3 Sat. 244=8 M. J. 306=B. & J.'s. No 21 (Oudh). —Girl's right to reject—Custom negativing—Prof of—Quantum.

An attempt was made to prove a usage in the royal and noble families of Oudh that a girl married as a minor could not reject the marriage, although her guardians, who had assented to it, might be of a lower degree than her father or grandfather; but the evidence entirely falled to prove a usage having the force of law. The utmost that the Mahomedan gentleman who were examined proved was, that it would be unusual and unbecoming for a girl to reject such a marriage. But the question is not what the girl would have done, as a matter of propriety, if she had lived, and the question had been propounded to her, but what by law she had the power to do, if she chose to exercise it. All these witnesses acknowledged that they must be governed by the law of the Sheeah school; and their evidence almost involved the assumption that the girl would have had a right by law to disaffirm the marriage. but that it would be unbecoming in her to avail herself of it (198). (Sir Montague E. Smith). NEWAB MULKA JEHAN SAHIBA P. MAHOMED USHKURREE KHAN.

(1873) Sup. I.A. 192=26 W.R. 26=2 Suth. 830= 3 Sar. 244=8 M. J. 306= R. & J.'s No. 21 (Oudh).

--- Incidents and effect of-Shia and Soonee laws-

anything in

USSUMMAT

1 I.A. 38 = 

L.B. 233 = 
8 Sar. 583.

Distribution.

According to the Sheeah doctrine, a Fazolee marriage requires the assent of the minor, after attaining puberty and mature understanding, to perfect it, and, in the event of death intervening before such assent is given, the marriage requirements of the minor, after attaining puberty and mature understanding, to perfect it, and, in the event of death intervening before such assent is given, the marriage

Marriage-Fazolee marriage-(Contd.)

Semble according to the Soonnee law, a marriage between nunors of the kind now in question requires dissent to annul it; and in the event of one of the minors dying, the marriage remains in force, and the incidents of inheritance and dower attach, as upon a marriage between persons of full age (196). (Sir Montagne E. Smith). NEWAB MULKA JEHAN SAHIBA P. MAHOMED USHKURREE (1873) Sup. I.A. 192-26 W. R. 26-KHAN. 2 Suth 830 = 3 Sar. 244 = 8 M. J. 306 =

R. & J.'s No. 21 (Oudh). Legality and binding character of-Shia law.

By the law of the Sheeah school a Fazolee marriage is not illegal. It is perfectly legal as far as it goes, but does not become effectual in case the necessary ratification is wanting (198). (Sir Montague E. Smith). NEWAB MULKA JEHAN SAHIBA P. MAHOMED USHKURREE KHAN.

> (1873) Sup. I.A. 192 = 26 W. R. 28 = 2 Suth. 830 = 3 Sar. 244 = 8 M. J. 300 = R. & J.'s No. 21 (Oudh).

-Nature of.

Under the Mahomedan law guardians of a minor of a lower degree than the father or grandfather, as the mother or grandmother, can only contract a Fazolee marriage, that is, one incomplete for want of sufficient authority (194-5). (Sie Montague E. Smith). NAWAB MULKA JEHAN SAHIBA D. MAHOMED USHKURREE KHAN.

(1873) Sup. I.A. 192 = 26 W.B. 26 =

2 Suth. 830 = 3 Sar. 244 = 8 M.J. 306= R. & J.'s No. 21 (Oudh).

Marriage-Finding of, on evidence and on conduct of opponent in fabricating documents to disprove marriage.

-Reversal of , without considering question of genuineness of those documents-Propriety.

The appeal arose out of a suit brought to establish the marriage of D, the first plaintiff, with A, a deceased Mahomedan Zemindar, and the parentage and legitimacy of her infant son, the second plaintiff, as son and heir of A; and consequently the titles of both to succeed to A, the widow to her share, and her son as a residuary legatee and heir

The defendants were the widow of A, his son, and the husband of a deceased daughter of A, who survived him, and was entitled to share in his estate. Besides denying the marriage of D and the legitimacy of her son, the widow of A set up a will alleged to have been executed by A, which, if true, would have completely deprived a second wife of A and her son of any portion of his estate. She also relied upon a kabooliat executed to her by D, which, if genuine, would have been an acknowledgment of her title by D. The plaintiffs alleged all those documents to be forgeries.

The trial Judge decided in favour of the marriage of D, and of the legitimacy of her infant son. He believed the evidence of the witnesses examined for the plaintiff. He was of opinion that the documents set up by the defendants to defeat the plaintiff's claim in any event were fabricated, and that the conduct of the defendants in fabricating the documents with the object was corroborative to some extent of the truth of the plaintiff's story.

On appeal, the Sudder Court reversed the decision below. But the learned Judges of that Court, instead of reviewing the whole case and expresssing their opinion upon all the points on which the Court below had based its conclusions, which were conclusions of fact, narrowed their enquiry to the simple question whether the plaintiff, D, had proved her marriage. They never addressed themselves to the

### MAHOMEDAN LAW -(Contd.)

Marriage—Finding of, on evidence and on conduct of opponent in fabricating documents to disprove marriage-(Contd.)

question of the genuineness of the documents set up by the defendants.

Held that the bearing of the question of the genuineness of the documents set up by the defendants on the issue as to the marriage was direct and important, and that the Sudder Court were in error in deciding the issue as to the marriage without considering the question of the genuineness of those documents (188). (Sir Richard Kindersely). WISE v. SUNDULOONISSA CHOWDRANEE.

(1867) 11 M.I.A. 177=7 W. R. P.C. 13= 1 Suth. 677 = 2 Sar. 249.

### Marriage-Ghair kuf marriage.

-Marriage between a man of Syed family and a tooman of Sheikh family if a-Exclusion from inheritance of wife in case of such marriage-Custom of-Evidence of. A amjib-ul-arz of a village stated, under the heading "Transfer of Property and Right of Inheritance":

A married wife belonging to a (ghair kuf) different caste and an unmarried wife, or their descendants will, provided they bear good conduct, be entitled to maintenance according to their status, and they will not be entitled to any share whether the property be partitioned or unpartitioned."

R. who had signed the toujubul-arz, was by family a Syed. His wife, IV, was by family a Sheikh, and the social position of her father appeared from the evidence to have been good.

Held that assuming that the entry in the wajib-ul-arz was sufficient to establish a custom by which a ghair kul wife was excluded from inheritance, the marriage between R and W would not fall within the ban implied by the term "ghair kuf". (Sir Arthur Wilson). SHEIKH HUB ALI v. WAZIR-UN-NISSA. (1906) 33 I.A. 107 (115-6) =

28 A. 496 (506)=3 C.L.J. 601=10 C.W.N. 778= 3 A.L.J. 712=1 M.L.T. 297.

Marriage-Girl.

FAZOLEE MARRIAGE.

-See Mahomedan Law-Marriage-Fazoles MARRIAGE.

### MAJOR GIRL-MARRIAGE BY.

-Guardian's consent to-Necessity.

A Mahomedan girl, who is a major, is legally entitled to please herself, to marry the man of her own choice, despite family or social opposition. Her guardian's consent to the marriage would be unnecessary (28). (Lord Atkinson). MUSSAMMAT ATKIA BEGUM P. MAHOMED IBRAHIM RASHID NAWAB.

AB. (1916) 6 L.W. 28= (1917) M. W. N. 261=21 C. W. N. 345= 36 I.C. 20 = 10 Bur. L.T. 79.

MINOR GIRL.

-- Contract on behalf of-Right to enter into-Father or grandfather-Guardians of lower grade like mother or grandmother-Right of. See MAHOMEDAN LAW-MAR-RIAGE-MINOR-CONTRACT ON BEHALF OF.

(1873) Sup. I. A. 192 (194-5). -Marriage with-Guardian's consent to-Necessity. Under the Mahomedan law, a ceremony of marriage performed between a Mahomedan adult and a minor Maho medan girl would, however, regular in other respects, be ineffectual to create a valid marriage unless the guardian of the minor had previously consented to the marriage. This consent is an essential. (Lord Atkinson), MUSSAMMAT ATKIA BEGUM P. MUHAMMAD IBRAHIM RASHID NAWAB. (1916) 6 L.W. 26 (28)=(1917) M.W.N. 261= 21 C.W.N. 345 = 36 I. C. 20 = 10 Bur. L.T. 79.

Marriage-Girl-(Contd.)

MINOR GIRL-(Contd.)

Right to give, in marriage—Paternal uncle—Maternal grand-mother authorised by minor's father—Right of. Under the Mahomedan Law, after the death of the parent of a minor girl, her paternal uncle only could give her in marriage. Her maternal grandmother could not, even if authorised by the father of the minor. (Lord Atkinson.) MUSANMAT ATKIA BEGUM v. MUHAMMAD IBRAHIM RASHID NAWAB.

(1916) 6 L.W. 26 (36) = (1917) M.W.N. 261 = 21 C.W.N. 345 = 36 I.C. 20 = 10 Bur. L. T. 79

PUBERTY-ATTAINMENT OF, BEFORE MARRIAGE AND CONSENT THERETO.

- Onus of proof of, in suit for restitution of conjugal rights.

In a suit by the respondent against the appellant for restitution of conjugal rights, the question was whether the appellant was at the time of her alleged marriage with the respondent an adult and competent to give her consent thereto, and whether she did in fact give her consent to the marriage.

Held that the onus was on the respondent to prove affirmatively, first, that the appellant had attained puberty before the date of the alleged marriage; and second, that she had herself consented to the marriage and the performance of the ceremony.

Held further that the respondent had utterly failed to establish the said two points. (Lord Atkinson.) MUSAMMAT ATKIA BEGUM 2. MUHAMMAD IBRAHIM RASHID NAWAB. (1916) 6 L.W. 28 (42) = (1917) M.W.N. 261 = 21 C.W.N. 345 = 36 I.C. 20 = 10 Bur. L. T. 79.

#### Marriage-Kharch i-pandan.

Prior to, and in consideration of, the plaintiff's marriage with the defendant's son, the defendant executed an agreement which recited that the marriage was fixed for the following November, and that "therefore" the defendant declared of his own free will and accord that he "shall continue to pay Rs. 500 per month in perpetuity" to the plaintiff for "her betel-leaf expenses, etc., from the date of the marriage, i.e., from the date of the income of certain properties therein specifically described, which he then proceeded to charge for the payment of the allowance.

Owing to the minority of the plaintiff, her "reception" into the conjugal domicile to which reference was made in the agreement did not take place until 6 years later, that is in 1883. The husband and wife lived together until 1896, when, owing to differences, she left her husband's house, and resided separately.

Held, on the construction of the agreement, that the defendant bound himself unreservedly to pay to the plaintiff the allowance fixed; that it was not a condition of the agreement that it should be paid only whilst the plaintiff was living in the husband's house, or that the defendant's liability should cease whatever the circumstances under which she happened to leave it.

The only condition relates to the time when, and the circumstances under which, defendant's liability would begin. That is fixed with reference to her first entry into her husband's house, when, under the Mahomedan law, the respective matrimonial rights and obligations come into existence. No other reservation was made. (Mr. Ameer Ali.) KHWAJA MUHAMMAD KHAN v. HUSEINI BEGUM.

(1910) 37 I.A. 152=32 A. 410=8 M.L.T. 147=

MAHOMEDAN LAW-(Contd.)

Marriage-Kharch-i-pandan-(Contd.)

12 C.L.J. 205=14 C.W.N. 865=12 Bom. L.R. 638= 7 A L.J. 871=7 I.C. 237=20 M.L.J. 614.

-Nature and incidents of-Husband's control over-English Law-Pin-money in-Distinction.

Kharch-i-pandan, which literally means "betel-box expenses", is a personal allowance to the wife customary among Mahomedan families of rank, especially in Upper India, fixed either before or after the marriage, and varying according to the means and position of the parties. When they are minors, the arrangement is made between the respective parents and guardians. Although there is some analogy between this allowance and the pin-money in the English system, it appears to stand on a different legal footing, arising from difference in social institutions. Pinmoney, though meant for the personal expenses of the wife, has been described as "a fund which she may be made to spend during the coverture by the intercession and advice and at the instance of the husband." No obligation of that nature is attached to the allowance called Kharch-i-pandan. Ordinarily, of course, the money would be received and spent in the conjugal domicile, but the husband has hardly any control over the wife's application of the allowance, either in her adornment or in the consumption of the article from which it derives its name. (Mr. Ameer Ali.) KHWAJA MUHAMMAD KHAN P. HUSAINI BEGUM.

(1910) 37 I.A. 152 (159) = 32 A. 410 (414) = 8 M.L.T. 147 = 12 C. L. J. 205 = 14 C. W N. 865 = 12 Bom. L. R. 638 = 7 A.L. J. 871 = 7 I. C. 237 = 20 M. L. J. 614.

#### Marriage-Minor.

- Contract on behalf of Right to enter into Father or grandfather - Guardians of Iower grade like mother or grand-mother - Right of.

Under the Mahomedan Law the marriage of a minor contracted by the father or grandfather is binding and irrevocable, they having the legal right to contract for the minor; but this irrevocable power of contract does not belong to guardians of a lower degree, as the mother or grandmother, who can only contract a Fazolee marriage, that is, one incomplete for want of sufficient authority (194-5). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA.

2. MAHOMED USHKURREE KHAN.

(1873) Sup. I. A. 192=26 W.B. 26= 2 Suth. 830=3 Sar. 244=8 M. J. 306= R. & J.'s No. 21 (Oudh)

— Girl—Marriage of. See MAHOMEDAN LAW-MARRIAGE—GIRL.

### Marriage-Muta marriage.

CHILDREN OF-LEGITIMACY OF.

Acknowledgment by father—Proof of—Necenity.

It was also urged in India as matter of law that a child of a muta marriage is not legitimate without proof of acknowledgment by the father; but this contention was abandoned before their Lordships (103). (Sir Arthur Wilson.) BAKER ALI KHAN v. ANJUMAN ARA BEGAM (1903) 30 I.A. 94 = 25 A. 236 (247) = 7 C.W.N. 465 = 5 Bom. L.B. 410 = 8 Sar. 397.

Presumption of Permissibility—Co-habitation of parents proved to have commenced in muta marriage.

Where the co-habitation of the parents is proved to have commenced in a muta marriage, then, in default of evidence to the contrary, such marriage must be taken to have subsisted throughout the period of their co-habitation, so that children born during that period would be considered to be

Marriage - Muta marriage - (Contd.)

CHILDREN OF-LEGITIMACY OF-(Contd.)

legitimate (92). (Lord Parker.) SHOHARAT SINGH 2. MUSSAMAT JAPRI BIBI. (1914) 1 L. W. 965 = 16 M. L. T. 517 = 19 C. W. N. 225 = 21 C. L. J. 4 =

17 Bom, L. R. 13 = 13 A. L. J. 113 = (1915) M.W.N. 389 = 24 I. C. 499 = 27 M. L. J. 89.

-Proof of.

In a case in which the question was whether M was the legitimate son of a Nawab by a muta wife, held, on the evidence, reversing the Court below, that he was (234). (Lord Athinson.) SADIK HUSSAIN KHAN P. HASHIM ALI KHAN. (1916) 43 I.A. 212 = 38 A. 627 (658-9)—(1916) 2 M.W.N. 577 = 21 M.L.T. 40 = 6 L.W. 378 = 21 C.W.N. 133 = 25 C.L.J. 363 = 14 A.L.J. 1248 = 18 Bom. L.R. 1037 = 19 O.C. 192 = 1 Pat. L.W. 157 = 36 I.C. 104 = 31 M.L.J. 607.

CONTINUANCE OF, DURING PERIOD OF CO-MABITA-

—— Presumption of—Co-habitation commencing in such marriage.

When once it is proved that the co-habitation of a Mahomedan man and a Mahomedan woman commenced in a muta marriage, the proper inference would, in default of evidence to the contrary, be that the muta continued during the whole period of co-habitation (91). (Lord Parker.) SHOHARAT SINGH v. MUSSAMAT JAFRI BIBL.

(1914) 1 L. W. 965 = 16 M. L. T. 517 = 19 C.W.N. 225 = 21 C.L.J. 4 = 17 Bom. L.R. 13 = 13 A.L.J. 113 = (1915) M.W.N. 389 = 24 I.C. 499 = 27 M.L.J. 89.

### DATE OF, BEFORE OR AFTER PREGNANCY.

In a case in which the legitimacy of the respondent was in question it was admitted on the pleadings that a Moottah marriage at some time had been contracted between the respondent's mother and his alleged father. There was, however, a total failure of proof whether marriage preceded or followed pregnancy. The Court below removed the difficulty by a presumption of an antecedent marriage. The question was whether the defect of the evidence in the case could be supplied by a presumption placing that marriage itself at a time anterior to pregnancy.

Held that, in considering the propriety of strengthening the weakness of the direct proof by such a presumption, it was material to observe that the mother was living at the time of the trial, and that the date of her marriage was a fact which she was competent to prove, as well as the time of the birth of her child (110-1).

No explanation has been afforded by the Judges who have heard this cause why the evidence fails on these important points, or why that is to be worked out by a presumption from marriage which living testimony might support, especially in a case where the treatment has been interrupted, and an impediment of more or less weight interposed by the reputation of the parentage by the reputed father. It would be an easy matter to legitimise a child conceived before marriage by withholding proof of the time of marriage, and resting on an inference from the marriage itself (110-1). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 = 7 W. B. P. C. 1 = See Under M
1 Suth. 659 = 2 Sar. 223 = B. & Js. No. 5 (Oudh). ONUS OF PROOF OF.

### MAHOMEDAN LAW-(Contd.)

Marriage-Muta marriage-(Contd.)

NIKAH MARRIAGE-INCIDENTS OF.

- Distinction.

A muta marriage is, according to the law which prevails among Shiahs, a temporary marriage, its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property, but children conceived while it exists are legitimate and capable of inherting from their father. A nikah marriage is a religions ceremony, and confers on the woman the full status of wife, and children born after it are legitimate. (Lord Parker.) SHOHARAT SINGH v. MUSSAMAT JAFRI INEL. (1914) 1 L.W. 965 = 16 M.L.T. 517 =

19 C.W.N. 225 = 21 C.L.J. 4 = 17 Bom. L.R. 13 = 13 A.L.J. 113 = (1915) M.W.N. 389 = 24 I.C. 499 = 27 M.L.J. 89 (91.)

TERM OF.

-Extension by agreement of.

The term for which a mula marriage is contracted may from time to time be extended by agreement (91). (Lord Parker). SHOHARAT SINGH P. MUSSAMAT JAFRI BIBI

(1914) 1 L. W. 965 = 16 M.L.T. 517 = 19 C.W.N. 225 = 21 C.L.J. 4 = 17 Bom. L. B. 13 = 13 A.L.J. 113 - (1915) M.W.N. 389 = 24 I.C. 499 = 27 M.L.J. 89.

### Marriage-Nika marriage.

- Evidence against-Will subsequent by husband-Omission of wife in-Value of.

The omission, in a will made after an alleged nika marriage, of all mention of the nika wife, is, so far as it goes, an
item of evidence against the marriage having taken place;
but its cogency must depend on whether the circumstances
of the marriage made it natural that the wife should be an
object of the husband's testamentary bounty and improbable
that he should have left her to depend on her legal right to
maintenance. In this case it was held that the circumstances of the marriage made it not unlikely that the testator
would have taken the latter course. (Lord Robertson.)
HAJI SABOO SIDICK 2. AYESHABAL.

(1903) 30 I. A. 127 (128) = 27 B. 485 = 7 C. W. N. 665 = 5 Bom. L. R. 475 = 8 Sar. 477.

——Muta marriage—Incidents of — Distinction. See MAHOMEDAN LAW—MARRIAGE—MUTA MARRIAGE— NIKA MARRIAGE. (1914) 27 M. L. J. 89 (91). —Public matine Songitress—Marriage by Mahomedan

of rank with—Presumption—Onus of proof.

There is no other intrinsic improbability, then, in this story of his having married, by a nike marriage, a girl of

this profession (of public native songstress), than that which attaches to it as a disreputable connection with one who probably would have made no difficulty about entering his Zenana on easier terms. This is an improbability not of a light character, and the evidence to support it ought to be evidence probable in itself and free from suspicion (187). (Sir Richard Kindersley.) WISE v. SUNDULONNISSA CHOWDRANEE. (1867) 11 M. I. A. 177 = 7 W. B. P. C. 13 = 1 Suth. 667 = 2 Sar. 249.

Shadi marriage-Statuses of wives under-Distinc-

There is no authority for the position that a simple nikal marriage amongst Mahomedans would indicate inferiority on the part of the wife to one "married with the publicity of a Shadi marriage" (163). (Lord Hannen.) ZAKERI BEGUM P. SAKINA BEGUM. (1892) 19 I. A. 157 = 19 C. 689 (696) = 6 Sar. 213.

#### Marriage-Onus of proof of.

-- See Under Mahomedan Law-Legitimacy-

Marriage - Persons with whom, not allowed.

### Marriage-Presumption of.

----(See also MAHOMEDAN LAW-LEGITIMACY-PRESUMPTION OF).

ACKNOWLEDGMENT OF CHILDREN OF WOMAN BY HER ALLEGED HUSBAND.

CONCUBINE—WOMAN ORIGINALLY A.

CONCUBINAGE -CLAN PROCLIVITY TOWARDS-EVI-DENCE OF.

EVIDENCE SUFFICIENT TO RAISE.

IMPREGNATION-MARRIAGE AT TIME OF.

LAPSE OF TIME-PRESUMPTION FROM.

MUTATION OF NAMES IN FAVOUR OF ANOTHER WIFE

-NON-OPPOSITION OF ALLEGED WIFE TO.

PRIOR MARRIAGE.

PROSTITUTE CASTE-WOMAN OF.

PUBLIC OFFICIAL DECLARATION OF MARRIAGE AND OF LEGITIMATION OF ISSUE THEREOF.

PURDAH-WOMAN NOT LIVING AND REMAINING BEHIND THE.

ACKNOWLEDGMENT OF CHILDREN OF WOMAN BY HER ALLEGED HUSBAND.

——Presumption from. See MAHOMEDAN LAW—ACK-NOWLEDGMENT — SON — ACKNOWLEDGMENT OF — EFFECT OF—MOTHER'S STATUS.

----Treatment of them by him as his children-Presumption of marriage from-Propriety-Direct evidence of marriage unsatisfactory.

The question was whether there was a marriage between the late Nawab and the 1st respondent before the births of

the plaintiffs.

The direct evidence of the marriage was not very satis factory, and was in some respects contradictory. Still, there was positive evidence that a ceremony of marriage did take place before the births of the children. That direct evidence was met by the negative evidence of witnesses who said that if such a ceremony had taken place they must have known of it. From that state of the evidence, if it had stood alone, it would have been difficult to affirm that a marriage had been established.

Quare: whether in that state of the case evidence of the treatment of the minor plaintiffs by the Nawab as his sons, and acknowledgments made by him that they were his sons, did not afford such a strong presumption of marriage as to entitle the testimony of the witnesses who spoke to the marriage to credit which otherwise it would not have possessed (11-12). (Sir Montague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN v. MUSSAMUT LALLI BEGUM. (1881) 9 I. A. 8 = 8 C. 422 (428) = 4 Sar. 310 = 17 P. B. 1882 (Civil).

### COHABITATION CONTINUED-PRESUMPTION FROM.

— Where a child has been born to a father, of a mother where there has not been a mere casual concubinge, but a more permanent conviction, and where there is no insurmountable obstacle to such a marriage, then according to the Mahomedan Law, the presumption is in favour of such

### MAHOMEDAN LAW-(Contd.)

Marriage-Presumption of-(Contd.)

CO-HABITATION CONTINUED—PRESUMPTION FROM —(Contd.)

marriage having taken place. (Lord Shaw.) MOHABBAT ALI KHAN v. MAHOMED IBRAHIM KHAN.

(1929) 56 I. A. 201=10 Lah. 725=27 A. L. J. 465=33 C. W. N. 645=30 Bom L. R. 846=6 O. W. N. 517=30 L. W. 97=117 I. C. 17=50 C. L. J. 89=(1929) M. W. N. 676=A. I. R. 1929 P. C. 135=57 M. L. J. 366.

-----Concubinage-Clan proclinity towards-Evidence of --Effect of.

While recognising the force of a presumption of marriage arising from a permanent connection the court below held that in the case of a family like the one before it which paid scant regard to the matrimonial tie in the begetting of children from women of low caste, the presumption was so small as to be practically negligible. Held that no countenance could be given to the view of the Court below.

A Court of law would not on evidence of a clan proclivity in the clan to which the parties towards concubinage rather than marriage pronounce a view that there was a clan proclivity towards concubinage rather than marriage, and therefore that marriage and the legal presumptions in favour of it cannot be sustained. (Lord Shaw.) MOHABBAT ALI KHAN P. MAHOMED IBRAHIM KHAN.

(1929) 56 I. A. 201 = 10 Lah. 725 = 27 A. L, J. 465 = 33 C. W. N. 645 = 30 Bom. L. R. 846 = 6 O. W. N. 517 = 30 L. W. 97 = 117 I. C. 17 = 50 C. L. J. 89 = (1929) M. W. N. 676 = A. I. R. 1929 P. C. 135 = 57 M. L. J. 366.

Prolonged cohabitation might give rise to a presumption of marriage, but that presumption is not necessarily a strong one, and it does not apply to a case in which the mother before she was brought to the father's house was admittedly a prostitute. (Sir Arthur Wilson.) GHAZANFAR ALI KHANP. KANIZ FATIMA. (1910) 37 I. A. 105 (109)=

32 A. 345 (350) = 8 M. L. T 59 = 11 C. L. J. 649 = 14 C. W. N. 690 = 7 A. L. J. 579 = 12 Bom. L. B. 447 = 13 O.C. 170 = 6 L. C. 674 = 20 M. L. J. 579.

The mere continuing to live with a woman of the prostitute caste is not sufficient to establish a presumption of marriage (532). (Lord Buckmatter.) IRSHAD ALI v. MUSSUMAT KARIMAN. (1917) 22 C. W. N. 630=

46 I. C. 217 = (1918) M. W. N. 394 = 21 O. C. 86 = 5 O. L. J. 197 = 28 C. L. J. 173 = 20 Bom. L. B. 790 = 24 M. L. T. 86.

#### CONCURINE-WOMAN ORIGINALLY A.

No presumption in case of, merely on ground of lapse of time and propriety of conduct.

A woman, who was once a concubine, cannot be converted by judicial presumptions into a wife, merely by lapse of of time and propriety of conduct, and the enjoyment of confidence with powers of management reposed in her. The ordinary legal presumption is, that things remain in their original state (209).

A Mahomedan co-habited for many years with a Mahomedan woman who had been a prostitute and who lived in his house. At his death she claimed to be his wife, and called witnesses to prove an actual marriage which fact she failed to establish.

Held that, under such circumstances, a marriage between the two could not be presumed. (Sir James W. Colvile.)

MUSSUMAT JARINT-OOL-BUTOOL. v. MUSSUMAT HOSE-INEE BEGUM. (1867) 11 M. I. A. 194 = 2 Sar. 243 = 10 W. B. P. C. 10 = 2 Suth. 56.

Marriage-Presumption of-(Contd.)

CONCUBINAGE—CLAN PROCLIVITY TOWARDS—EVID-ENCE OF.

(1929) 56 I. A. 201 = 10 Lah. 725.

#### EVIDENCE SUFFICIENT TO RAISE.

- Slight evidence of marriage or lawful consort.

The disinclination of the Mahomedan law to bastardize children has sanctioned the presumption from slight evidence of marriage or lawful consort (200-1), (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA P. MAHUMED USHKURREE KHAN. (1873) Sup. I. A. 192 = 26 W. R. 26 = 2 Suth. 830 = 3 Sar. 244 = 8 M. J. 306 = R. & J's. No. 21 (Oudh).

IMPREGNATION-MARRIAGE AT TIME OF.

-Presumption of Law or fact.

If the subsequent marriage were adjudged to have relation back, by presumption of law, to the time of impregnation, then such a praesumptio juris would destroy altogether the difference between a law which admits to inheritance and a law which excludes from inheritance an ante-nuptial child. As a presumption of fact such a presumption is admissible, but then it must be subject to the application of the ordinary principles of evidence (117). (Sir fames W. Celvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94-7 W. R. P. C. 1-1 Suth. 659-2 Sar. 223-2. & J's. No. 5 (Oudh).

LAPSE OF TIME-PRESUMPTION FROM.

- Evidence insufficient to prove marriage notwith-

A person who claims to recover property alleging himself to be the legitimate son of the last male owner of the property must bring forward satisfactory evidence in support

of the alleged marriage of his mother.

Held that, after making all due allowances for the difficulties occasioned by the lapse of time and the deaths of persons who might have thrown light upon the question, their Lordships were unable to hold that the alleged marriage was proved. (Lord Nacnaghten.) AMJAD ALI KHAN v. NAWAB ALI KHAN. (1908) 5 C.L.J. 1 =

2 M.L.T. 477=9 Bom. L. R. 264= 17 M. L. J. 56

- Propriety of - Conduct of parties inconsistent with relation of husband and wife.

It was urged that every presumption ought to be made in favour of marriage when there had beeu a lengthened cohabitation, especially in a case when the alleged marriage took place so long ago that it must be difficult if not impossible, to obtain a trustworthy account of what really occurred. There would be much force in this argument—indeed, it would be almost irresistible—if the conduct of the parties were shewn to be compatible with the existence of the relation of husband and wife. In cases like the present conduct is a very good test, and a safer guide than the recollection or imagination of interested or biased witnesses (65). (Lord Managhten). ABDOOL RAZACK 2. AGA MAHOMED JAFFER BINDANEEM. (1894) 21 I. A. 56

21 C. 666 (6745) = 6 Sar. 389 = 4 M. L. J. 131.

MUTATION OF NAMES IN FAVOUR OF ANOTHER WIFE— NON-OPPOSITION BY ALLEGED WIFE TO.

Presumption against her marriage from—Propriety.

The question was whether the plaintiff, L, had been married to A, a deceased Mahomedan Zemindar. An admitted widow of A was one of the defendants in the suit, and she, besides pleading that D had never been married to

### MAHOMEDAN LAW-(Contd.)

Marriage-Presumption of-(Contd.)

MUTATION OF NAMES IN FAVOUR OF ANOTHER WIFE—NON-OPPOSITION BY ALLEGED WIFE TO —(Contd.)

A, set up a will by A giving the whole of his estate to her for good consideration. It appeared that a few months after the death of A, the defendant-widow applied for mutation of names with regard to A; estate on the production of the will, and that mutation was ordered without any opposition on the part of D. There was, however, nothing to show that D was aware of the mutation proceedings. Nevertheless the Court below held that D; non-opposition to the mutation of names told against her case of marriage.

Held that the inference was not legitimate (189.90). It would be too much to presume D, a native lady whose very status was disputed, and without means, armed at all points with means of knowledge, and pecuniary means, and friends able to assist her then (189.90). (See Richard Kindersley.) WISE v. SUNDULOONISSA CHOWDRANEE.

(1867) 11 M. I. A. 177 = 7 W. R. P. C. 13 = 1 Suth. 667 = 2 Sar. 249.

#### PRIOR MARRIAGE.

-Presumption as to, from subsequent marriage.

A subsequent marriage, so far from furnishing a ground for presuming a prior marriage, prima facie, at least, excludes that presumption (117-8). (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSFIN KHAN. (1866) 11 M. I. A. 94 = 7 W. R. P. C. 1 = 1 Suth. 659 = 2 Sar. 223 =

R. & J.'s. No. 5 (Oudh).

PROSTITUTE CASTE-WOMAN OF.

The question was whether K was the wife of S deceased. A was born in the prostitute caste. A greater part of the workal evidence consisted in evidence as to K's original occupation, of the humble and ignoble character of her origin and surroundings, and from that it was sought to draw the inference that marriage with a person in his position and with the prospects of S was in the last degree improbable.

Their Lordships observed:—Improbable it may have been, but S was undoubtedly under the spell of infatuation for K, and it is impossible to measure by standards of probabilities what might have been done in those circumstances by a man to secure for himself permanently and as of right the society of the woman he so greatly desired (534-5). (Lord Buckmaster.) IRSHAD ALL D. MUSSUMAT KARIMAN. (1917) 22 C. W. N. 530 = 46 I C. 217 = 28 C. L. J. 173 = 20 Bom. L. R. 790 = 24 M. L. T. 86 = (1918) M. W. N. 394 = 5 O. L. J. 197 = 21 O. C. 86.

PUBLIC OFFICIAL DECLARATION OF MARRIAGE AND OF LEGITIMATION OF ISSUE THEREOF.

-Omission to make-Presumption adverse from-

In a case in which the question was whether the plaintiff, D, had been married to A, a deceased Mahomedan Zemindar, the Sudder Court held against the marriage on the ground, amongst others, that A took no steps in his lifetime to make a public official declaration of his nicka marriage with D, and of the legitimation of his child by her. That child was little more than 3 years old when A died. He died suddenly, of a suddenly contracted disease, cholera,

#### MAHOMEDAN LAW-(Centil.)

Marriage -- Presumption of -(Contd.)

PUBLIC OFFICIAL DECLARATION OF MARRIAGE
AND OF LEGITIMATION OF ISSUE THEREOF—
(Contd.)

Held that no inference against the marriage could reasonably be drawn from such light data (189). (Sir Richard Kindersley.) WISE v. SUNDULOONISS V. CHOWDRANEE. (1867) 11 M. I. A. 177 = 7 W. R. P. C. 13 = 1 Suth. 667 = 2 Sar. 249.

PURDAH-WOMAN NOT LIVING AND REMAINING BEHIND THE.

- Effect.

It is no part of the law of India that to have lived and to remain behind the *furdah* is a necessary part of a lady's legal marriage or a conclusive evidential fact. It is a circumstance to be considered when the fact of the marriage is in issue. But that issue is to be determined on a broad conspectus of the whole situation, including of course the *purdah* item.

Held that, in the caes before their Lordships, the pardah item was by no means sufficient to interfere either with the presumptions of law or the balance of the proof of fact. (Lord Shaw.) MOHABBAT ALI KHAN v. MOHABBAT IBRAHIM KHAN. (1929) 56 I. A. 201 = 10 Lah. 725 = 27 A. L. J. 465 = 33 C. W. N. 645 = 30 Bom. L. R. 846 = 6 O. W. N. 517 = 30 L. W. 97 = 117 I. C. 17 = 50 C. L. J. 89 = (1929) M. W. N. 676 = A. I. R. 1929 P. C. 135 = 57 M. L. J. 366.

Marriage-Proof of.

——[See also MAHOMEDAN LAW-LEGITIMACY (1) EVIDENCE OF & (2) PROOF OF AND MAHOMEDAN LAW —MARRIAGE—EVIDENCE OF.]

—Held, on the evidence in the case, that W (a Mahomedan lady) was lawfully married to R, and that therefore she and her daughter by R were his heirs under the Mahomedan Law. (Sir Arthur Wilson.) SHEIKH HUB ALL 2. WAZIR-UN-NISSA. (1906) 33 I. A. 107 (114-5)

28 A. 496 (505) = 3 C.L. J. 601 = 10 C. W. N. 778 = 3 A. L. J. 712 = 1 M. L. T. 297.

——In a case in which the question was whether the respondent was the wife of one S, deceased, and her three children were his legitimate offspring, held, on the evidence, affirming the Court below which had reversed the trial Judge, that the respondent was the wife of S and that her children were his legitimate offspring. (Levid Buckmarter.)

IRSHAD ALI v. KARIMAN. (1917) 46 I. C. 217 = (1918) M. W. N. 394 = 22 C. W. N. 530 = 21 O. C. 86 = 5 O. L. J. 197 = 28 C. L. J. 173 = 20 Bom. L. R. 790 =

Divorce by one husband under-Marriage with

Held, reversing the judgment of the Court below and restoring that of the trial Judge, that G, the mother of the appellant, had been divorced by her former husband, E, and re-married A, and that the appellant, the issue of the remarriage, was the legitimate daughter of A and was entitled to succeed to his estate as such. (Lord Macnaghton.) MUSSUMMAT MAQBULLAN T. AHMAD HUSAIN.

(1903) 31 I. A. 38 = 26 A. 108 = 8 C. W. N. 241 = 6 Bom. L. R. 233 = 8 Sar. 583.

Proof of.

The questions for decision were (1) whether the plaintiff had been married to the deceased B, & (2) whether the amount of dower which the plaintiff claimed was really agreed upon at the time of the alleged marriage.

The trial Judge found, on the evidence, against the plaintiff on both questions, and dismissed her suit which was for the recovery of dower.

### MAHOMEDAN LAW-(Contd.)

Marriage-Proof of-(Contd.)

On appeal, the High Court held with the trial Judge on the question of dower, but reversed him on the question of marriage.

Their Lordships reversed the High Court on the question of marriage and restored the decree of the trial Judge in its entirety SHOJANT ALI KHAN 7. MUSSAMAT MUKDHOOM JAN. (1872) 8 M. J. 185.

### Marriage-Shadi marriage.

— Nika marriage—Statuses of wives under—Distinction. See MAHOMEDAN LAW—MARRIAGE—NIKA MARRIAGE—SHADI MARRIAGE. (1892) 19 I. A. 157 (163)= 19 C. 689 (696).

### Marriage-Validity of.

——Alien in religion.

In all cases where, according to Mahomedan law, unbelief or difference of creed is a bar to marriage with a true believer, it is enough if the alien in religion embraces the Mahomedan faith. Profession with or without conversion is necessary and sufficient to remove the disability (64). (Lord Macanghten.) ABDOOL RAZACK v. AGA MAHOMED JAFFER BINDANEEM. (1894) 21 I. A. 56 = 21 C. 666 (673) = 6 Sar. 389 = 4 M. L. J. 131,

——Buddhist woman.

It being admitted in the Courts below that the marriage of a Mahomedan with a Buddhist woman would be invalid, their Lordships refused to allow the appellant to raise the question whether such a marriage would be valid, on the ground that, according to the tenets of Buddhism, Buddhists came under the same category as Jews and Christians with whom undoubtedly Mahomedans might intermarry (64-5). (Lord Macnaghten.) ABDOOL RAZACK r. AGA MAHOMED JAFFER BINDANEEM. (1894) 21 I.A. 56=

21 C. 666 (674) = 6 Sar. 389 = 4 M. L. J. 131.

Christian wideco-Christian husband of living Christian wife-Marriage between, in Mahomedan form-Validity-Conversion prior of both to Mahomedanism.

The appellant was the widow of a deceased Christian, and was herself a Christian. One J, who was also a Christian, was the husband in Christian marriage of a living Christian wife. J was anxious to marry the appellant. The appellant became a Mahomedan, J became a Mahomedan, and having thus qualified himself for the enjoyment of polygamous privileges, he contracted in Mahomedan form a Mahomedan marriage with the appellant.

Their Lordships observed that the High Court were well warranted in entertaining doubts of the legality of that marriage (324). (Lord Justice James.) SKINNER v. ORDE.

(1871) 14 M. I. A. 309 = 17 W. R. (P. C.) 77 = 10 B. L. R. 125 (P. C.) = 8 Moo. P. C. N. S. 261 = 2 Suth. 521 = 3 Sar. 34.

—Converts to Christianity—Marriage in Christian form between—Reconversion to Mahomedanism—Remarriage in Mahomedan form—Validity.

S, an adherent of the Mahomedan faith, became a professing Christian, and married in the Christian form B, who was originally also an adherent of the Mahomedan faith but who also became before the marriage a professing Christian. Sometimes after the marriage both spouses reverted to their own original creed, Mahomedanism, went through the form of marriage a second time, according to the Mahomadan law, and continued in the practice and profession of the Mahomedan faith until the death of the S. Shortly after the second marriage, B was suspected of adultery, began to live apart from S and with her alleged paramour with whom she lived till the death of S long after and by whom (paramour) she had a number of children. The second marriage in the Mahomedan form was not however

Marriage-Validity of-(Contd.)

dissolved by a Mahomedan divorce. In a suit brought by B to obtain a widow's share under Mahomedan law in the estate of S, held, that, inasmuch as the personal status of S at the time of his death was that of a Mahomedan, and B's personal status was that of his wife under the same law, she was entitled to a share in his estate, and that a will, which was executed by him and which purported to exclude her, was invalid under the Mahomedan law. (Lord Watson.) SKINNER: SKINNER. (1897) 25 I. A. 34 = 25 C. 537 = 2 C. W. N. 209 = 7 Sar. 262.

—Perdah—Woman's living and remaining behind the

Necessity. See MAHOMEDAN LAW—MARKIAGE - PRESUMPTION OF—PURDAH. (1929) 56 I. A. 201 =

10 Lah. 725,

- Temporary marriage-Shia seet.

Among the Shia sect there appears to be a power of taking a mere temporary wife (313). (Sir Robert P. Collier.) RANEE KHAJOOROONISSA P. MUSSAMUT ROUSHUN JEHAN. (1876) 3 I. A. 291 = 2 C. 184 (200-1) = 26 W. R. 36 = 3 Sar. 629.

#### Minor

AGENCY IN RELATION TO. BOY. GIRL. GUARDIAN OF. GUARDIANSHIP OF. INFANT—ORPHAN.

### Minor-Agency in relation to a.

— The idea of agency in relation to an infant is as foreign to Mahomedan law as to every other system (91). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI.

(1918) 45 I. A. 73 = 45 C. 878 (901) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. R. 1022 = 16 A.L.J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 Pat. L.W. 276 = 47 I. C. 513 = 35 M. L. J. 422.

#### Minor-Boy.

-Brother of -Sale of minor's property by, for payment of ancestral debt, but not made of necessity and not beneficial to minor-Validity of.

Held, that a sale of a Mahomedan minor's property by his brother, which, although made for the payment of an ancestral debt; was not made of necessity, and was not beneficial to the minor, and which was not acquiesced in by the minor on coming of age, was void ab initio (55-6.) (Lord Robson.) MATA DIN P. AHMAD ALL.

(1911) 39 I. A. 49 = 34 A. 213 (221 2) = (1912) M. W. N. 183 = 16 C. W. N. 338 = 13 I. C. 976 = 11 M. L. T. 145 = 9 A.L. J. 215 = 15 C. L. J. 270 = 14 Bom. L. B. 192 = 15 O. C. 49 = 23 M. L. J. 6.

Guardian of. See MAHOMEDAN LAW-MINOR-

— Guardianship of. See MAHOMEDAN LAW-MINOR -GUARDIANSHIP OF.

-Majority of -Age of.

Fifteen is the age at which, by the general Mahomedan law, a person will be competent to act for himself (108). (Sir hontague E. Smith.) AMEEROONNISSA KHATOON 2. ABIDOONNISSA KHATOON. (1875) 2 I. A. 87 =

15 B. L. R. 67=23 W. R. 208=3 Sar. 423= 3 Suth. 87.

——Marriage of. See MAHOMEDAN LAW—MARRIAGE
—MINOR.

### MAHOMEDAN LAW-(Centd.)

Minor-Girl.

GUARDIAN OF.

——See Mahomedan Law—Minor—Guardian of, Guardianship of,

——SA: MAHOMEDAN LAW — MINOR—GUARDIAN-SHIP OF.

MAJOR.

-- When becomes a-Onus of proof of.

According to Mahomedan law a girl becomes a major on the happening of either of two events; first the completion of her fifteenth year, and, second, on her attainment of a state of puberty at an earlier period. The burden of proving that a girl has in either of these ways reached her majority rests upon those who allege it and rely upon it, (Lord Atkinson.) MUSAMMAT ATKIA BEGUM r. MAHOMED IBRAHIM RASHID NAWAR.

(1916) 6 L. W. 26 (28-9) = (1917) M.W.N. 261 = 21 C.W.N. 345 = 36 I.C. 20 = 10 Bur.L.T. 79.

MARRIAGE OF.

See MAHONEDAN LAW-MARRIAGE-GIRL.

PUBERTY-ATTAINMENT OF-DATE OF.

— Age of — Nine. (Lord Sulvesen.) SADIQ ALI KHAN p. Jai Kishori. (1928) 47 C. L. J. 628 = 26 A. L. J. 685 = 32 C. W. N. 874 = 5 O. W. N. 547 = 28 L.W. 17 = 109 I. C. 387 (2) = 30 Bom. L. R. 1346 = A.I.R. 1928 P.C. 152 = 55 M.L.J. 88 (94).

Exidence of Medical examination of girl 12 months after alleged date—Value of —Refusal of girl to submit to such examination – Inference adverse from—Propriety of.

The question was whether the appellant, at the time of her marriage with the respondent on 20th July 1907, had attained puberty and was an adult. Pending the suit, the respondent applied to the trial Judge in September 1908 for the appointment of a lady-doctor to examine the appellant in order to ascertain, first, whether the appellant had then attained puberty and was an adult, and how long she had been so; and, second, whether she was still a virgin or a married woman. The application was, on objection by the appellant, rejected by the trial Judge. The learned Judges of the High Court on appeal thought that the appellant's refusal to submit to that examination was very significantthat it showed the respondent's bona fides in the truth of his case; that he was suggesting a test which, if his case was false, would have put him out of court, that a lady doctor could have given most valuable evidence on those points, even without a minute examination as to whether the appellant was a virgin or not, and that a medical examination would have been of the utmost value.

On appeal their Lordships held that they were unable to adopt the view of the learned Judges of the High Court as to the critical nature of the test proposed. or the result of the examination or the significance of the refusal to undergo it.

The examination might have settled the question whether the appellant was, when examined, a virgo intacta or not, and to that extent might have tended to corroborate the respondent's allegation that he had lived and co habited with the appellant; but their Lordships utterly fail to see how, if she had been then found not to be a virgo intacta, it would necessarily have enabled any lady-doctor to have determined whether or not she had reached puberty twelve months previously; nor, indeed, how that question could have been determined with certainty even if she had in September 1908 been found to be a virgo intacta. (Lord Atkinson.) MUSAMMAT ATKIA BEGUM v. MUHAMMAD IBRAHIM RASHID NAWAB.

(1916) 6 L. W. 26 (35) = (1917) M.W.N. 261 = 21 C.W.N. 345 = 36 I.C. 20 = 10 Bur. L. T. 79.

Minor - Girl-(Contd.)

PUBERTY-ATTAINMENT OF-DATE OF-(Contd.)

Presumption.

In the absence of evidence to the contrary the presumption of the Mahomedan law is that a girl attains puberty when she reaches the age of nine years (194). (Sir Montague E. Smith.) NEWAB MULKA JEHAN SAHIBA v. MAHOMED USHKURRU KHAN.

(1873) Sup. I. A. 192 = 26 W.R. 26 = 2 Suth. 830 = 3 Sar. 244 = 8 Mad. Jur. 306 - R. & J.'s No. 21 (Oudh).

SHARE OF, IN FATHER'S ESTATE—SALE OF, BY BROTHERS IN MANAGEMENT THEREOF.

——Suit by her to recover—Limitation, See LAMITA-TION ACT OF 1908, S. 10—TRUSTEE WITHIN MEAN-ING OF—MAHOMEDAN FAMILY.

(1888) 15 I. A. 220 = 16 C. 161 (169).

#### Minor-Guardian of.

APPOINTED GUARDIAN-EXECUTOR.

—Sale of immovable property of infant—Pewer of.

The following rule lays down the conditions governing the sales by the executor (i.e., the appointed guardian) of the immoveable property of an infant "and, according to modern decisions, the sale of immoveable estate by an executor is lawful only in one of the three cases following: that is, where there is a purchaser willing to give double its value, or the sale is necessary to meet the minor's evergencies, or there are debts of the deceased and no other means of paying them" (91).

Having regard to the object in view, this dictum appears to their Lordships to apply to all forms of property which, like a'kar, combine both security and permanency. But it does not exclude the discretion of the judge to sanction any alteration of investment in the interests of the infant (91). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI.

(1918) 45 I. A. 73 = 45 C. 878 (901.2) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. B. 1022 = 16 A. L. J. 800 = (1919 · M. W. N. 91 = 24 M. L. T. 330 =

5 Pat L. W. 276=47 I. C. 513=35 M. L. J. 422. DE FACTO GUARDIAN.

-Alienation of immoveable property of infent -- Pencer

Under the Mahomedan law the power of dealing with immoveable property of a minor by way of pledge or sale is confined to the de jure guardians (87). A person who has charge of the person or property of a minor without being his legal guardian, and who may, therefore, he conveniently called a "de farto guardian" has no power to convey to another any right or interest in immoveable property which the transferee can enforce against the infant; nor can such transferee if let into possession of the property under such unauthorised transfer, resist an action in eject ment on behalf of the infant as a trespasser. It follows that, being himself without title he cannot seek to recover property in the possession of another equally without title (92-3).

Acts which may be done by a de facto guardian (86-7, 91-2). (Mr. Ameer Ali.) ISIAMBANDI F. MUTSADDI. (1918) 45 I. A. 73 = 45 C. 878 (903) = 23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. B. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 P.L.W. 276 = 47 I. C. 513 = 35 M. L. J. 422.

——Fazolee Sale—Hanafi doctrine of—Applicability of.

See Mahomedan Law— Fazolee Sale — Hanafi
DOCTRINE OF—Minor. (1918) 45 I. A. 73 (90-1) =

45 C. 878 (899-901).

----Non-relation in charge of infant if a.

The term " de facto guardian" that has been applied to an outsider or non-relative who happens to have charge for the time being of an infant is misleading; it connotes the

### MAHOMEDAN LAW-(Contd.)

Minor-Guardian of-(Contd.)

DE FACTO GUARDIAN-(Contd.)

idea that people in charge of a child are by virtue of that fact invested with certain powers over the infants' property. This idea is quite erroneous; and the judgment of the Board in 39 I. A. 49 clearly indicated it (83). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI.

(1918) 45 I. A. 73 = 45 C. 878 (892) = 23 C. W. N. 50 = 28 C L. J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 =

5 Pat. L. W. 276 = 47 I. C. 513 = 35 M. L. J. 422. Sale by, made of necessity or for payment of ancestral

debt and beneficial to minor-Void or voidable.

Quarte whether, according to Mahomedan law, a sale by a de facto guardian, if made of necessity, or for the payment of an ancestral debt affecting the minor's property, and if beneficial to the minor, is altogether void or merely voidable (55). (Lord Robson.) MATA DIN v. AHMAD ALL. (1911) 39 I. A. 49 = 34 A. 213 (221-2) =

(1912) M. W. N. 183=16 C. W. N. 338=13 I. C. 976= 11 M. L. T. 145=9 A. L. J. 215=15 C. L. J. 270= 14 Bom. L. B. 192=15 O. C. 40=23 M. L. J. 6.

DE JURE GUARDIAN.

- Alienation by Powers of Limits on Movembe

and immercable property-Distinction.

Under the Mahomedan law, the powers (of dealing with a minor's property) of even the de jure guardians are confined within legal limits. For example, whiist an executorguardian may "sell or purchase moveables on account of the orphan under his charge either for an equivalent or at such a rate as to occasion an inconsiderable loss, "dealings with his immoveable property are subjected to strict conditions. The reason for the restrictions is thus given in the Hedaya: "The ground of this" (the difference in the power of dealing with the two kinds of property) " is that the sale of moveable property is a species of conservation, as articles of that description are liable to decay, and the price is much more easily preserved than the article itself. With respect, on the contrary, to immoveable property, it is in a state of conservation in its own nature whence it is unlawful to sell it-unless, however, it is evident that it will otherwise perish or be lost, in which case the sale of it is allowed." In fact, the Mussalman law appears to draw a sharp distinction between moveable and immoveable property in respect of the powers of guardians, as will be seen from the following passage in Paillie's Digest: "With regard to the executor of a mother or a brother,-when a mother has died leaving property and a minor son, and having appointed an executor. or a brother has died leaving property and a minor brother, and having appointed an executor, the executor may lawfully sell anything but a'kar (immoveable property, including houses, groves, orchards. etc.) belonging to the estate of the deceased, but can neither sell the a'kar, nor lawfully buy any thing for the minor but food and clothing, which are necessary for his preservation. The executor of a mother has no power to sell anything that a minor has inherited from his father, whether moveable or immoveable. and whether the property be involved in debt or free from it. But what he has inherited from herself when it is free from debts and legacies, the executor may sell what is moveable, but he cannot sell a'kar. If the estate is involved in debts or legacies, and the debt is such as to absorb the whole, he may sell the whole, the sale of a'kar coming within his power; and if the debt does not absorb the whole, he may sell as much of it as is necessary to defray the debts, and as to his power to sell the surplus there is the same difference of opinion as has been stated above" (84-5). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI.

(1918) 45 I. A. 73=45 C. 878 (898-908)=

Minor-Guardian of-(Contd.)

DE JURE GUARDIAN-(Contd.)

23 C. W. N. 50 = 28 C. L. J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330=5 Pat. L.W. 276=47 I.C. 513= 35 M. L. J. 422.

Right to be a-Mother -- Right of.

The father alone, or, if he be dead, his executor (under the Sunni law) is the legal guardian. If the father dies without appointing an executor, and his father is alive, the guardianship of his minor children devolves on their grandfather. Should he also be dead, and have left an executor, it vests in him. In default of these de jure guardians, the duty of appointing a guardian for the protection and preservation of the infant's property devolves on the judge as the representative of the sovereign. No one else has any right or power to intermeddle with the property of a minor, except for certain specified purposes, the nature of which is clearly defined (84). When the mother is the father's executrix, or is appointed by the Judge as guardian of the minors, she has all the powers of a de jure guardian. Without such derivative authority, if she assumes charge of their property of whatever description and purports to deal with it, she does so at her own risk, and her acts are like those of any other person who arrogates an authority which he does not legally possess. She may incur responsibilities, but can impose no obligations on the infant. This rule, however, is subject to certain exceptions provided for the protection of a minor child who has no de jure guardian (85-6). (Mr. Ameer Ali.) IMAMBANDI v. MUTSADDI.

(1918) 45 I. A. 73=45 C. 878 (893 4) = 23 C. W. N. 50= 28 C. L. J. 409 = 20 Bom. L. R. 1022 = 16 A. L. J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 330 = 5 Pat. L. W. 276 = 47 I. C. 513 = 35 M. L. J. 422

IMMOVEABLE PROPERTY-GUARDIAN OF-SALE BY.

-Dispute as to title to whole property-Sale of portion

to secure title as to remainder-Validity.

In a suit brought by the plaintiffs to have it declared that a deed of sale executed by their father was invalid, and for possession of one anna share in talook Wari, which was the subject of that deed, it appeared that the title to property of which the share sold formed part was disputed, that by the sale of the part the dispute was put an end to and thus a settlement obtained of the remainder, and that the sale was for a fair price.

Held, differing from the High Court, that it was within the power of the guardian to make the sale (102-3), (Sir Richard Couch.) KALI DUTT JHA = SHAIK ABDOOL. ALI. (1888) 16 L. A. 96 = 16 C. 627 (634.5) = 5 Sar. 326.

-No dispute as to title-Validity of sale in case of-Conditions.

It is not a case of a sale by a guardian of immoveable property of his ward, the title to which was not disputed, in which case a guardian is not at liberty to sell except under certain circumstances (102), (Sir Richard Couch.) KALI DUTT JHA v. SHAIK ABDOOL ALI. (1888) 16 I. A. 96 = 16 C. 627 (634)=5 Sar. 326.

#### Minor-Guardianship of.

-Mother-Person and property of minor-Right in

respect of -Alienation-Power of.

Under the Mahomedan law the mother entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian; the father alone, or, if he be dead, his executor (under the Sunni law), is the legal guardian. The mother has no larger powers to deal with her minor child's property than any outsider or non-relative who happens to have charge for the time being of the infant (83).

### MAHOMEDAN LAW-(Contd.)

Minor-Guardianship of-(Contd.)

When the mother is the father's executrix, or is appointed by the Judge as guardian of the minors, she has all the powers of a de jure guardian. Without such derivative authority, if she assumes charge of their property of whatever description and purports to deal with it, she does so at her own risk, and her acts are like those of any other person who arrogates an authority which he does not legally possess.. She may incur responsibilities, but can impose no obligations on the infant. This rule, however is subject to certain exceptions provided for the protection of a minor child who has no de jure guardian (85.6).

Even where the mother believes she is vested with authority as her husband's executrix, and in that belief purports to deal with the minor's property, a purchaser let into possession by her is liable to be ejected at the instance of the minor. Her own subsequent denial of authority does not affect the purchaser's position; but if the transaction is impagned by the rightful owner, namely, the infant, the onus is on the vendee to establish the foundation of his title, that is, that his vendor possessed in fact the authority under

which she purported to act (92).

A pledge by her of the property of her infant child is not lawful, unless she be the executrix (of the father) or be authorised therefor by the guardian of the minor, or the judge should grant her permission to do so (92).

The power to sell cannot be wider than the power to mortgage, and a mother has, therefore, no power as de facto guardian of her infant children to alienate or charge their immoveable property. (Mr. Ameer dli.) IMAMBANDI v. (1918) 45 I.A. 73 = 45 C. 878 (893-7)= MUTSADDI.

23 C.W.N. 50 = 28 C.L.J. 409 = 20 Bom. L.R. 1022 = 16 A.L.J. 800 - (1919) M.W.N. 91 - 24 M.L.T. 330 -5 P.L.W. 276 = 47 I.C. 513 = 35 M.L.J. 422.

-Right to-Brother-Right of.

According to the Mahomedan law, in the absence of duly appointed testamentary guardians the care of a minor's property would devolve first of the father and his executor, next on the paternal grandfather and his executor, and failing these, the right of nomination of a guardian would rest in the ruling power and its administration." The brothers of the minor have no right whatever to act except under the authority of an appointment by the Court. (Lord Robson.) MATA DIN P. AHMAD ALI.

(1911) 39 I.A. 49 (55) = 34 A. 213 (221) = (1912) M.W.N. 183 = 16 C.W.N. 338 = 13 I.C. 976 = 11 M.L.T. 145= 9 A.L.J. 215=15 C.L.J. 270= 14 Bom. L.R. 192 = 15 O.C. 49 = 23 M.L.J. 6.

### Minor-Infant-Orphan.

-Acts which may be done for-Person in charge of infant-Alienation of infant's property by-Power of-Moveable and immoveable property-Distinction.

A fatherless child is designated in the (Mahomedan) law books an "infant-orphan." The Hedaya classifies the acts that may have to be done by an infant under three heads. It says: Acts in regard to infant-orphans are of three descriptions, 1viz., (1) Acts of guardianship, such as contracting an infant in marriage, or selling or buying goods for him, a power which belongs solely to the walee,or natural guardian, whom the law has constituted the infants' substitute in those points; (2) acts arising from the wants of an infant, such as buying or selling for him on occasions of need, or hiring a nurse for him, or the like, which power belongs to the maintainer of the infant, whether he be the brother, uncle, or (in the case of a foundling) the mooltakit, or taker-up, or the mother, provided she be the maintainer of the infant; and as these are empowered with respect to such acts, the wallee, or natural guardian, is also empowered with respect

Minor-Infant-Orphan-(Contd.)

to them in a stil! superior degree; nor is it requisite, with respect to the guardian, that the infant be in his immediate protection; (5) acts which are purely advantageous to the infant, such as accepting presents or gifes, and keeping them for him, a power which may be exercised either by a mooltakit, a brother, or an uncle, and also by the infant himself, provided he be possessed of discretion, the intention being only to open a door to the infant's re-civing benefactions of an advantageous nature (86).

The examples given under the second head indicates the class of cases in which the acts of an unauthorised person who happens to have charge of a child are held to be binding on the infant's property. They also held to explain and illustrate the extent of such "de facto guardian's" powers. The permissibility of these acts depends on the emergency which gives rise to the imperative necessity for incurring liabilities without which the life or the child or his perishable goods and chattels may run the risk of destruction. For instance, he may stand in immediate need of aliment, clothing, or nursing; these wants must be supplied forth with. He may own "slaves" or live-stock; food and fodder must be immediately procured. And these imperative wants may recur from time to time. Under such circumstances power is given to the lawful guardian to incur debts or to raise money on the pledge of the minor's goods and chattles. And this power, in the absence of a de jure guardian, the law extends to the person who happens to have charge of the child and of the child's property, though not a constituted or authorised guardian (867).

There is no reference to the pledge or sale of immoveable property, as the power of dealing with that class of property is confined to the de jure guardians, and is treated in the

Fatwai Alamgiri in a separate chapter (87).

It is to be observed that under the third "description" of acts that may be needful for an infant, a person in charge of a child, although not a de jure guardian, may validly accept on behalf of his ward an unburdened County, it being an act "purely advantageous" to the child, to use the expression of the Hedaya (87), (Mr. Ameer Alt.) IMAMBANDI 2. MUTSADDI

(1918) 45 I. A. 73 = 45 C. 878 (895-7) = 23 C.W.N. 50 = 28 C. L. J. 409 - 20 Bom L.R. 1022 - 16 A. L. J. 800 = (1919) M.W.N. 91-24 M.L.T. 330-5 Pat. L.W. 276-47 I.C. 513 = 35 M. L. J. 422.

### Mooltakit.

-Meaning of.

A "mooltakit" is a person who undertakes to bring up a foundling or an orphan-child (86). (Mr. Ameer Ali.) IM AMBANDI 2. MUTSADDI.

(1918) 45 I. A. 73-45 C. 878 (895) = 23 C. W. N. 50 = 28 C. L. J. 409 - 20 Bom. L R. 1022 = 16 A. L.J. 800 = (1919) M. W. N. 91 = 24 M. L. T. 300 = 5 Pat. L. W. 276 = 47 I. C. 513 = 35 M. L. J. 422.

#### Mutwali.

-See MAHOMEDAN LAW-(1) RELIGIOUS ENDOW-MENT AND (2) WAKE.

#### Pawn.

-Contingent loss-Deposit of security in respect of-Nature of—Writing—Actual delivery — Necessity. See MAHOMEDAN LAW—TRUST—PAWN.

(1862) 9 M. I. A. 303 (321).

### Pension in perpetuity.

of-Validity-Private individual--Settlement Sovereign power-Settlement by-Distinction,

A settlement creating pensions in perpetuity could not under the Mahomedan law be validly made by a private in-

### MAHOMEDAN LAW-(Contd.)

Pension in perpetuity-(Contd.)

dividual, but can take effect as a contract or treaty between two sovereign powers (182). (Sir Barnes Peacock.) NAWAB SULTAN MARIAM BEGUM v. NAWAB SAHIB MIRZA.

(1889) 16 I. A. 175 = 17 C. 234 (245) = 5 Sar. 422 Prostitution.

-Continuance of, as a family business-Custom of-Validity of-Right based on custom-Enforceability of.

The suit related to the inheritance of a Mahomedan woman named B. The contest was between the brothers and sisters of the deceased. One of the sisters got into possession of the property of the deceased, and two suits were instituted against her, one by the two brothers, and the other by two of the other sisters, of the deceased for the

recovery of their shares in her estate.

All the parties to the dispute belonged to the tribe of Kanchans. In that tribe the business of brothel-keeping and prostitution was carried on by families or communities who were re-united by adoption. B had left her own family to be adopted by one D, who was the head of another establishment of the same kind. She succeeded to D's property; and as D was dead, and her brothel had ceased to have any members except B herself, the plaintiff sisters alleged that on B's death her estate was distributable in equal shares among her brothers and sisters. The brothers contended that the ordinary Mahomedan law was applicable to the case, and that they were entitled to two shares each, while the sisters were entitled only each to one share. The defendant sister's contention was that as B had been adopted by D, no right of inheritance could devolve upon any member of her (B's) father's family either by Mahomedan Law or by custom.

The District Judge found that B had been adopted by D according to the custom of the Kanchans, and that according to that custom the effect of the adoption was to sever B completely from her own natural family. But he nevertheless held that the property of the deceased (B) was distributable according to Mahomedan law, his view of the law being that all the rules and customs of the kanchans aimed at the continuance of prostitution as a family business, that they had a distinctly immoral tendency, and should not be enforced in Courts of Justice. He therefore held that the whole transaction was null and void and that

there was no severance of B from her family

Their Lordships affirmed the law as laid down by the District Judge (201). (Lord Hobbonse.) GHASITI AND (1893) 20 I. A. 193= NANHI JAN P. UMRAO JAN. 21 C. 149 = 6 Sar. 370 = 52 P.B. 1893.

Practice of-Legality of.

As regards Mahomedans, prostitution is not looked upon by their religion or their laws with any more favourable eye than by the Christian religion and laws (202). (Lord Hobhouse.) GHASITI AND NANHI JAN v. UMRAO JAN.

(1893) 20 I.A. 193=21 C. 149=6 Sar. 370= 52 P.B. 1893.

#### Puberty.

LAW - MINOR-GIRL-PU-- See MAHOMEDAN BERTY.

#### Rafadin.

-Meaning of.

Rafadin is a ceremonial gesture of raising the hands to the ears at a particular point of the service (64). (Lerd Hobboute.) FOZUL KARIM v. HAJI MOWIA BUKSH.

(1891) 18 I. A. 59=18 C. 448 (454)=6 Sar. 19.

### Religion and Law.

Mixing up together of.

In the Mahomedan Communities law and religion are mixed up together to a very great extent (86). (Lord Hob-

Religion and Law-(Contd.)

house.) ABUL FATA MAHOMED ISHAK P. RUSSOMOY DHUR CHOWDHRY. (1894) 22 I.A. 76-22 C. 619 (631)=6 Sar. 572

Religious Endowment.

DEDICATION TO

FOUNDER'S WISHES-GIVING EFFECT TO-DUTY OF

IMAM.

KONKAH.

LAW APPLICABLE TO.

MOSOUE.

MUTWALI.

OBJECTS OF -SPIRITUAL DUTIES IF INVOLVED IN.

PRIVATE AND PUBLIC TRUSTS-FOUNDER'S WISHES. RELIGIOUS ENDOWMENTS ACT OF 1863-ENDOW-MENT OF A PUBLIC CHARACTER WITHIN MEANING OF.

SAJJADANASHIN.

### Religious Endowment-Dedication to.

Absolute dedication-Charge in favour of trust.

In this case one of the questions decided by the Courts below and raised before the Privy Council was whether the legal effect of a deed by which a Mahomedan lady devised property to her grandson M, upon trust for the performance of certain religious duties and ceremonies in accordance with the Mahomedan religion was to create an absolute trust or to vest the whole property in M absolutely for his own personal benefit subject to the trusts specified therein (6). (Sir Barnes Poscock.) BISHEN CHAND BASAWAT D. SYED NADIR HOSSEIN. (1887) 15 I. A. 1 = 15 C. 329 (337)=5 Sar. 113.

-Different sects-Common use of-Dedication for-Appropriation of dedicated property by one of sects only-What amounts to-Effect of. See JAINS-RELIGION OF. (1925) 50 M.L.J. 631 (634-5). GENERALLY.

-Extent of-Surplus income-Trustee's right to-Decision as to-Propriety of-Parties interested not before Court.

Where by a document called a will, or a deed, a Maho medan lady devised property to M, upon trust for the performance of certain religious duties and ceremonies in accordance with the Mahomedan religion, and a suit was instituted by M's successor as trustee for a declaration that no portion of the corpus of the estate devised could be attached and sold in execution of a decree for the debt of M, their Lordships, in view of the fact that all parties interested were not before the Court declined to decide as to the extent of the religious trusts, or whether any surplus profit after the performance of those trusts would belong to M or the trustee substituted by him (9). (Sir Barnes Peacock). BISHEN CHAND BASAWAT P, SYED NADIR HOS-(1887) 15 I. A. 1-15 C 329 (340) = SEIN. 5 Sar. 113.

-Mosque-Dedication to. See MAHOMEDAN LAW-RELIGIOUS ENDOWMENT-MOSQUE-DEDICATION TO. -New dedication-Creation of-Existing trust--Dedication to-Distinction. See MAHOMEDAN LAW-RELL-GIOUS ENDOWMENT-MOSQUE - DEDICATION TO-MAHOMEDANS GENERALLY. (1916) 43 I.A. 127 (135) = 43 C. 1085

Property subject of -Application of, to its right use

-Government's duty to see to-Regulation XIX of 1810. It appears, by Regulation XIX of 1810, that it is the duty of every Government to provide that the endowments for pious and beneficial purposes be applied according to their real intention; the local agents are appointed to ascertain

### MAHOMEDAN LAW-(Contd.)

Religious Endowment—Dedication to—(Contd.)

and report the names of trustees, managers, and superintendents, whether under the designation of Mutwaly or any other, and all vacancies, and to recommend fit persons where the nomination devolves on the Government. That the Board of Commissioners may appoint such persons or make such other provision for the superintendence, management or trust as may be thought fit. The endowment in this case was a perpetual endowment, and the duty of the Government to preserve its application to the right use was a public and perpetual duty (422-3). (Mr. Justice Bosanquet). JEWUN DOSS SAHOO : SHAH KUBUR-OOD-DEEN.

(1841) 2 M.I.A. 390-6 W.R. 3-1 Suth. 100-

1 Sar. 206

Question as to-Decision of, in absence of parties entitled to represent endocoment-Propriety.

In a sait by a person having possessory title for a declaration of his title to the suit property and for an injunction restraining defendant from unlawfully interfering with his possession, the defendant pleaded that the property was debutter property and that he was shebait thereof. It was, however, found that defendant was not shehait and that he had no sort of right to or interest in the suit property.

Held that, as the only defendant was not entitled to maintain the endowment and the persons representing the same would not be bound by an adverse decision, there should be no decision of the question whether or no the suit property had been validly dedicated to religious or charitable purposes (107). (Sir Richard Couch). ISMAII. ARIFF 2: MAHOMED GHOUSE. (1893) 20 I.A. 99=

20 C. 834 (843) = 6 Sar 305.

# Religious Endowment—Founder's wishes— Giving effect to—Duty of Court.

-Private and Public trusts-Objects of benefaction-Management of endowment-Distinction.

The Mussalman Law, like the English Law, draws a wide distinction between public and private trusts. Generally speaking, in the case of a waqf or trust created for specific individuals, or a determined body of individuals, the dazi, whose place in the British Indian system is taken by the Civil Court, has in carrying the trust into execution to give effect so far as possible to the expressed wishes of the founder With respect, however, to public religious or charitable trusts, of which a public mosque is a common and well-known example, the kazz's discretion is very wide. He may not depart from the intentions of the founder or from any rule fixed by him as to the objects of the benefaction; but as regards management which must be governed by circumstances he has complete discretion. He may defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but his primary duty is to consider the interests of the general body of the public for whose benefit the trust is created. He may in his judicial discretion vary any rule of management which he may find either not practicable or not in the best interests of the institution (134). (Mr. Ameer Ali.) MAHOMED ISMAIL ARIFF E. AHMED MOOLLA DAWOOD,

(1916) 43 I. A. 127 = 43 C. 1085 (1100-1) = 20 C.W.N. 1118 = 24 C.L.J. 198 = 10 M.L.T. 110 = (1916) 1 M. W. N. 460 - 14 A.L.J. 741 = 4 L.W. 269 = 18 Bom. L. B. 611 = 9 Bur. L. T. 141 = 35 I. C. 30 = 31 M. L. J. 290.

### Religious endowment-Imam.

- See MAHOMEDAN LAW-RELIGIOUS ENDOW-MENT-MOSQUE-IMAM OF.

### Religious Endowment-Konkah.

-Existence of -Proof of.

Held, on the evidence, that there was at Tanusa in the District of Dera Ghazi Khan in the Punjab a religious institution (a khankah or mazali gaddi) for devotional exercises, and the instruction of pupils in the Mahomedan faith. (Viscount Care). MUHAMMAD HAMID F. MIAN MAH-MUD. (1922) 50 I. A. 92 (103) = 4 Lah. 15= 32 M.L.T. 52=25 Bom. L. R. 660=38 C.L.J. 231= 27 C.W.N. 701-1 P.W.B. 1923-

A.I.R. (1922) P. C. 384 = 77 I.C. 1009 = 44 M.L.J. 149.

-Nature and origin of -Saijadanishin-Position of -Succession to office of -Rules governing.

A khankah is a monastery or religious institution where dervishes and other seekers after truth congregate for religious instruction and devotional exercises. It has generally been founded by a dervish or a suft professing esoteric beliefs, whose teachings and personal sanctity have attracted disciples whom he initiates into his doctrines. After his death, he is often revered as a saint, and his humble takia (or abode) grows into a khankah and his durgah (or tomb) into a rawzah (or shrine.) The khankah is usually under the governance of a sajjadanashin (the one seated on the prayer mat), who not only acts as mutawalli (or manager) of the institution, and of the adjoining mosque, but also is the spiritual preceptor of the adherents. The founder is generally the first Sajjadanishin, and after his death the spiritual line (silsilla) is extended by a succession of sajjadanishins, generally members of his family chosen by him or according to directions given by him in his lifetime, or selected by the fakirs and murids, and formally installed; and the income of the institution is usually received and expended by them. (Viscount Care.) MUHAMMAD HAMID P. MIAN MAHMUD. (1922) 50 I. A. 92 (96) = 4 Lah. 15= 32 M. L. T. 52 = 25 Bom. L. R. 660 = 38 C. L. J. 231 =

27 C. W. N. 701 = 1 P. W. R. 1923 = A. I. R. 1922 P. C. 384 = 77 I. C. 1009 = 44 M. L. J. 149.

-Property dedicated to -Private property of Saijadanashin or-Distinction-Evidence.

The question was what properties were made waqf and dedicated to the religious purposes of a konkah. The properties with reference to which the question arose were (1) the shine of the saint, with its astana, the place of worship for the sajjada, and the surrounding hujras and gates; (2) the mosque, with its inner and outer court-yards, wells, tanks, hujras, and schools, and the maharwi bungalow; and (3) the remaining properties in dispute, such as the serais and langars.

Held, on the evidence, that the properties comprised in 1 and 2 were waqf, but that the properties comprised in item (3) stood in a different position and were private properties and partible. (Viscount Care.) MUHAMMAD HAMID 2. MIAN MAHMUD. (1922) 50 I. A. 92 (104-5) = 4 L. 15= 32 M. L. T. 52=25 Bom. L. R. 660=38 C. L. J. 231= 27 C. W. N. 701=1 P. W. R. 1923=

A. I. R. 1922 P. C. 384=77 I. C. 1009=

44 M. L. J. 149. Sajjadanashin of-Alienation improper by-Property subject of-Successor's suit to recever-Money advanced to alienor-Refund of - Necessity-Conditions.

The plaintiff, the Sajjadanashin of a khankah or religious house, sued for the recovery of property inalienably appro-priated to the support of the khankah. The property was transferred to the defendant by the plaintiff's predecessor in office by way of conditional sale for the repayment of advances made to that predecessor. Subsequently, that predecessor, in consideration of a fresh advance made to him, purported to convey the property to the defendant absolute-

### MAHOMEDAN LAW-(Contd.)

### Religious Endowment-Konkah-(Contd.)

ly. No portion of the advances thus made was shown to have been applied to the use of the khankah.

Held that the plaintiff could not be required to account for the sums thus advanced by the defendant, as a condition of his recovering the suit property, even if the defendant had not been fully repaid by the long possession of his property (423.) (Mr. Justice Bosanquet.) JEWUN DOSS SAHOO v. SHAH KUBUR-OOD-DIN.

(1841) 2 M.I A. 390 = 6 W.R. 3 = 1 Suth. 100= 1 Sar. 206.

### Religious Endowment-Law applicable to.

-English or other foreign legal conceptions-Importation of-Permissibility. See HINDU LAW-RELIGIOUS ENDOWMENT-LAW APPLICABLE TO-USAGE OF INSTI-TUTION-ENGLISH OR OTHER FOREIGN LEGAL CONCER TIONS. (1921) 48 I.A. 302 (310) = 44 M. 831 (839)

### Religious Endowment-Mosque.

DEDICATION TO. FOUNDER OF.

IMAM OF.

INTEREST IN-DIRECT INTEREST.

SCHEME FOR.

UNBELIEVERS.

WORSHIP IN.

#### DEDICATION TO.

God-Mosque dedicated to-Appropriation of, to unt of particular sect-Permissibility.

Quare whether a mosque, being dedicated to God, is for the use of all Mahomedans, and cannot lawfully be appropriated to the use of any particular sect (69). (Lord Hothouse.) FUZUL KARIM v. HAJI MOWLA BAKSH.

(1891) 18 I. A. 59=18 C. 448 (458-9)=6 Sar. 19.

-Mahomodans generally-Particular sect-Dedication to-Evidence.

Held, on the evidence in the case, that it had not been established that the mosque in question was intended for Hanifis only, and not for all Sunnis or for all Mahomedans 68.) (Lord Hobbouse). FUZUL KARIM v. HAJI MOWLA BAKSH. (1891) 18 I. A. 59 = 18 C. 448 (457) = 6 Sar. 19.

-Held, on the evidence affirming the Court below, that the suit mosque as originally founded was a public mosque, dedicated to the performance of worship by all Sunni Mahomedans without restriction as to place of origin, and that it was not a Randheria mosque, dedicated to the performance of worship only by the Randherian sect of Mahomedans, and that certain transactions of the years 1871 and 1872 and a trust deed of 1872 relied upon as having effected a change and as creating a new dedication had not that effect (135). (Mr. Ameer Ali.) MAHOMED ISMAIL ARIFF v. (1916) 43 I. A. 127= AHMED MOOLLA DAWOOD.

43 C. 1085 = 20 C. W.N. 1118 = 24 C. L. J. 198 = 20 M. L. T. 110 = (1916) 1 M. W. N. 460 = 9 Bur.L. T. 141=14 A. L. J. 741=18 Bom. L. B. 611=

4 L. W. 269 = 35 I. C. 30 = 31 M. L. J. 290. -Mahomedans generally—Particular sect—Dedication

to-Findings as to-Fact or law. See C. P. C. OF 1908, S. 100-RELIGIOUS ENDOWMENT-MOSQUE. (1891) 18 I. A. 59 (67) = 18 C. 448 (457).

--- New dedication -- Creation -- Existing trust -- Dedica-tion to-- Distinction -- Test. See MAHOMEDAN LAW-RELIGIOUS ENDOWMENT-MOSQUE-DEDICATION TO -MAHONEDANS GENERALLY-PARTICULAR SECT.

(1916) 43 I. A. 127 (135)=43 C. 1085.

FOUNDER OF.

-Who is.

The site of the suit mosque was formerly occupied by bamboo Structure built in 1854 by one M. It was dedicated

Religious Endowment-Mosque-(Contd.)

FOUNDER OF-(Contd.)

to the same purpose and bore the same name as the suit Temple-WORSHIP IN-PERSON NOT ENTITLED TO masonry mosque. It was burnt down three years later, when PARTICIPATE IN -INTRUSION INTO TEMPLE OF. Mreplaced it with a building made of wooden planks. That continued to be the public place of worship until 1872, when the suit masonry mosque was erected. The land on which the mosque was first built was afterwards added to by purchases made by M or by his fellow townsmens, who made over the same to him as the custodian of the mosque. In 1862 a brother of M and two other persons obtained from the Government a grant in respect of certain other plots which were also added or attached to the existing mosque. In about 1872 the masonry mosque was erected.

Held, that, although .W had been assisted by several of his compatriots in acquiring the land on which the bamboo mosque was built, he was to all intents and purposes its original founder (136). (Mr. Ameer Ali.) MAHOMED ISMAIL

ARIF D. AHMAD MOOLA DAWOOD.

(1916) 43 I. A. 127 = 43 C. 1085 = 20 C. W. N. 1118 = 24 C. L. J. 198 = 20 M. L. T. 110 = (1916) 1 M. W. N. 460 = 9 Bur. L. T. 141 = 14 A. L. J. 741 = 18 Bom. L. B. 611 = 4 L. W. 269 = 35 I. C. 30 = 31 M. L. J. 290. IMAM OF.

Amil-bil-Hadis if can be.

Held that there was no evidence that an Amil-bil-Hadis was prohibited by the constitution of the suit Mosque from being its Imam (68). (Lord Hobkowie.) FUZUL KARIM v. HAJI MOWLA BUKSH. (1891) 18 I.A. 59= 18 C. 448 (457) = 6 Sar. 19.

-Qualifications for being-Finding as to-Fact or Law. See C. P. C. OF 1908, S. 100-RELIGIOUS EN-(1891) 18 I.A. 59 (67)=18 C. 448 (457).

-Removal from office of-Grounds-Worship in mosque-Accustomed mode of-Change of-Removal on ground of. See MAHOMEDAN LAW-RELIGIOUS EN-DOWMENT-MOSQUE - WORSHIP IN- ACCUSTOMED (1891) 18 L. A. 59 (68) = 18 C. 448 (458). MODE OF.

-Removal from office of-Grounds-Worship in mosque-Ceremonials of -Introduction new of-Removal on ground of. See MAHOMEDAN LAW-RELIGIOUS EN-DOWMENT-MOSQUE-WORSHIP IN- CEREMONIALS (1891) 18 I. A. 59 (69-70) -- 18 C. 448 (459).

-Unbelievers-Exclusion of-Duty as to. See TRUST -PERSONS NOT ENTITLED TO BENEFIT OF. (1925) 53 LA. 42 (54-5) = 3 R. 582.

-Unbelievers-Intrusion into mosque of-Trespass for -Suit for-Right of. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE-WORSHIP IN-PERSONS NOT ENTITLED TO PARTICIPATE IN-INTRUSION, ETC.

(1925) 53 I. A. 42 (56-7) = 3 R. 582.

INTEREST IN-DIRECT INTEREST.

-Meaning of-Persons having. See C. P. C. OF 1908 -S. 92-INTEREST IN THE TRUST.

(1924) 51 I. A. 282 - 47 M. 884.

SCHEME FOR.

-See C. P. C. OF 1908, S. 92-MOSQUE. UNBELIEVERS.

-Exclusion of - Trustee's duty as regards. See TRUST -PERSONS NOT ENTITLED TO BENEFIT OF.

(1925) 53 I. A. 42 (54-5) = 3 R. 582.

-Intrusion into mosque of-Trespass for-Suit for-Right of, of trustee and of beneficiaries-Injunction against unbeliever-Suit by beneficiaries for-Maintainability. See HINDU LAW-RELIGIOUS ENDOWMENT-

### MAHOMEDAN LAW-(Contd.)

Religious Endowment-Mosque-(Contd.)

UNBELIEVERS-(Contd.)

(1925) 53 I. A. 42 (56-7) - 3 R. 582. WORSHIP IN.

-Accustomed mode of - Change in-Trustee's power of -Removal from office on ground of.

The judgment of the High Court, however, may mean that there is some rule of law to the effect that when public worship has been performed in a certain way for twenty years, there cannot be any variance from that way, in so much that the officiating minister who is guilty of a variance is ipto facto disqualified for his office. If that is the meaning of the judgment, their Lordships hold that it is not well founded in law. It cannot be that an Imam should be so bound by his own or his predecessor's previous practice in worship that he cannot make the slightest variation from it in gesture, intonation, or otherwise, without committing an offence. Even a code of ritual can hardly be so minute as absolutely to exclude all individual peculiarity or discre-tion; and here there is no code of ritual at all. If the principle above stated were allowed, it would follow that the practice of a single Imam might be so stereotyped as to become the constitution of the mosque, and that a single member of the congregation might, against the wishes of the rest, insist that no variation however innocent or however minute should be made. The question in each case of dispute must be as to the magnitude and importance of the alleged departure (68). (Lord Hobbonse.) FUZUL KHAN v. HAJI MOWLA BAAKSH. (1891) 18 I. A. 59= 18 C. 448 (458) = 6 Sar. 19.

-Ceremonials of Introduction of new-Removal of imam from office on ground of-Sunni mosque-Loud-toned Amen and Rafadin-Introduction of.

There is no rule of Mahomedan law or usage among Sunni communities warranting the view that the introduction of the loud-toned Amen and Rafadin show such a change of tenets, or is in itself such an important departure from custom, as to disqualify the Imam from acting in a Mosque where those ceremonies had not previously been used (69-70). (Lord Hobbouse.) FUZUL KARIM v. HAJI MOWLA Baksh. (1891) 18 I. A. 59=18 C. 448 (459)=6 Sar. 19

-Persons not entitled to participate in-Exclusion of-Trustee's duty as to. Src TRUST-PERSONS NOT ENTI TLED TO BENEFIT OF. (1925) 53 I. A. 42 (54-5)-3 R. 582

Persons not entitled to participate in-Intrusion into mosque of-Trespass for-Suit for-Right of, of trustee and of beneficiaries-Injunction against intruders-Suit by beneficiaries for-Maintainability. See HINDU LAW-RELIGIOUS ENDOWMENT- TEMPLE-WORSHIP IN-PERSONS NOT ENTITLED TO PARTICIPATE IN-INTRUSION, ETC. (1925) 53 I. A. 42 (56-7) = 3 R. 582.

-Right of-Exclusive right of class-Law of Mauritins-Charter of incorporation obtained by portion of congregation disregarding right of rest-Remedy of latter-Unincorporated religious association-Right to suc-French Civil Code-Ordinance 6 of 1838-Arts. 210 and 212-Sanction of Government-Criminal Association-Suit to set aside scheme of management-Crown, if necessary party-Prerogative-Power of Court to settle scheme.

In 1877 and on subsequent dates several purchases of properties were made by Cutchee merchants purporting to act on behalf of the Cutchee Mahomedans alone, but this practice was not consistently followed in later times, and though the Cutchees, being the richest members of the congregation, contributed individually in the proportion to their means

Religious Endowment-Mosque-(Contd.)

WORSHIP IN- (Cont.)

considerable contributions were also made in the aggregace by the Hallaye and Sourtee Mahomedans. The administration of the affairs of the mosque was left mainly. if not entirely, in the hands of Cut-hee. Mahomedans because they were leading merchants but not because they belonged to that particular class of Mahomedans. In 1893, 93 Cut hees executed deeds forming themselves into a society, (which they subsequently incorporated) consisting of Catchee merchants alone and excluding the other classes for all future time from worship of the society and the management of the mosque, for which surpose they appointed a committee of management out of their own body with extensive powers of selling and letting properties other than the mo-que and its accessories. All the properties they declared to have vested exclusively in the society:

Held, that a portion of the congregation had no right by forming a new association to transfer all the property to the new association and exclude the rest of the congregation from membership and from participation in the management of the affairs of the mosque. The charter of incorporation obtained by the Defendants did not legalise their position, as the only association which could claim to be legalised was the congregation on whose behalf the mosque had been

founded.

That the rule laid down in the French Civil Code (which is in force in Mauritius) that a religious community does not constitute a "civil person "and cannot without being authorised by the State hold property has not always been carried out to its logical conclusions and the Court will grant relief to aggrieved members of an unauthorised religious community against their fellow members.

That having regard to the existing law of Mauritius the Court in setting aside the deeds and the scheme of management set up by the Defendants could not proceed to frame a new scheme of management such as would be entirely free from legal objection. In the absence of any reason to fear that the restoration of the statu quo auto would lead to maladministration, this should be left to the congregation to settle amicably, and give effect to, by obtaining a charter of incorporation.

That in a suit by some of the aggrieved Hallayes and Soortees to set aside the deeds set up by the Defendants the Crown was not a necessary party as the law of Mauritius does not require that the Crown should be impleaded and the prerogatives of the Crown would not be affected by the

decision in the suit.

That in any case the objection that the Crown had not been made a party ought to have been taken in the lower

Quaer:-Whether a congregation formed for the purposes of prayer and religious worship requires the sanction of the Government, so that without such sanction it becomes an illegal association, in the sense of being criminal, within the meaning of Arts, 210 and 212 of the Ordinance 6 of 1838? (Sir J. H. De Villiers). IBRAHIM ESMAEL F. ABDOOL CARRIM PERMAMODE. (1908) 35 I. A. 151= 13 C. W. N 26-4 M. L. T. special p. 25-1 I. C. 314.

-Sunni Mosque Loud-tone Amen and Rafadin-Introduction Amen of-Propriety of-Removal of imam from office on ground of. See MAHOMEDAN LAW-RELIGIOUS ENDOWMENT-MOSQUE-WORSHIP IN-CEREMONIALS OF. (1891) 18 I.A. 59 (69-70) = 18 C. 448 (459).

#### Religious Endowment-Mutwali.

-(See also MAHOMEDAN LAW - WAKF - MUT-WALI).

### MAHOMEDAN LAW-(Contd.)

Religious Endowment-Mutwali-(Contd.)

APPOINTMENT OF-CONSENT DECREE REGARDING-CONSTRUCTION - LAW OF PARTIES - RIGHTS

FEMALE IF CAN BE A.

FOUNDER'S LINEAL DESCENDANTS.

NON-MAHOMEDAN-UNORTHODOX MAHOMEDAN.

SURPLUS INCOME-RIGHT IN.

TRUSTEE IF A.

APPOINTMENT OF-CONSENT DECREE REGARDING-CONSTRUCTION-LAW OF PARTIES-RIGHTS UNDER.

-Regard for-Necessity.

Where a consent decree in a suit for the removal of the then trustee of a Mahomedan Religious Endowment from his office and for the appointment of a new trustee provided that the existing trustee should retire from the trusteeship and that a new trustee should be appointed in his place by the Court, preference in such appointment being given to the lineal descendants of the settlor, held that, in construing that decree, account should be taken of what the previously existing rights of the parties under the Mahomedan law were (54). (Sir Arthur Wilson). SAHAR BANOO P. AGA MAHOMED JAFFER BINDANEEM.

(1906) 34 I.A. 46=34 C. 118 (127)= 2 M. L. T. 49 - 5 C.L.J. 134 - 11 C. W. N. 297 -9 Bom. L. R. 85=4 A. L. J. 30=4 L.BR. 66= 9 Sar. 182=17 M.L.J. 52

#### FEMALE IF CAN BE A.

-There is no legal prohibition against a woman holding a Muttawalliship when the trust, by its nature involves no spiritual duties such as a woman could not properly discharge in person or by deputy. (Sir Arthur Wilson). SAHAR BANGO F. AGA MAHOMED JAFFER BINDA-NEEM. (1906) 34 I. A. 46 (53) = 34 C. 118 (126) = 2 M. L. T. 49 = 5 C.L.J. 134 = 11 C.W.N. 297 = 9 Bom. L.R. 85=4 A.L.J. 30=4 L.B.B. 66=

#### FOUNDER'S LINEAL DESCENDANTS

9 Sar. 182-17 M.L.J. 52.

-Preferential right of-Appointment subject to-Consent decree Conferring power of Female heir of founder-Right of to be appointed, if absolute.

1st respondent was trustee of a Mahomedan Shiah religious endowment founded by the will of his father, which will, however, did not prescribe any line of devolution of the trusteeship. The appellant, a daughter of the deceased. and other members of the family, brought a suit, inter aliafor the removal of the 1st respondent from his office of trustee. In that suit a compromise was arrived at, in accordance with which a decree was passed by which it was decreed that the 1st respondent should retire from the trustreship " and that a new trustee be appointed in his place by the chief court of Lower Burma, preference in such appointment being given to the lineal descendants of the

The appellant put forward her claim to be appointed in the place of the retiring trustee on the ground that as the next in seniority, after the retiring trustee, of the children of the testator, she was entitled to be appointed trustee or muttawalli of the endowment.

field, on the construction of the consent decree, that the appellant had no absolute right to the trusteeship and the Court had a discretion to exercise in the selection of a trustee, that the circumstances by which the Court below was guided in the exercise of that discretion against the appellant were matters proper for its consideration, and that there was no reason to dissent from the conclusion arrived at by the Court below.

Reiigious Endowment-Mutwali-(Contd.)

FOUNDER'S LINEAL DESCENDANTS-(Contd.)

In exercising its discretion against the appellant, the Court below took into account the nature of the duties imposed upon the trustee, the fact that the appellant, by reason of her sex, could at best discharge many of her duties only by deputy, and the circumstance that the appellant was a Babee, and as such might take a less zealous interest in carrying on the religious observances of the Shiah School (Sir Arthur Wilson.) SHAHAR BANOO v. AGA MAHOMED JAFFER BINDANEEM.

(1906) 34 I. A. 46 (53-4)=34 C. 118 (127)= 2 M. L. T. 49=5 C. L. J. 134=11 C. W. N. 297= 9 Bom. L. R. 85=4 A. L. J. 30=4 L. B. R. 66= 9 Sar. 182=17 M. L. J. 52.

Right to office of Line of devolution not prescribed

by founder.

The authorities fall far short of establishing the absolute right to the muttawalliship (trusteeship) of the lineal descendants of the founder of an endowment in a case in which that founder has not prescribed any line of devolution. (Sir Arthur Wilson.) SHAHAR BANGO v. AGA MAHOMED JAFFER BINDANEEM. (1906) 34 I. A. 46 (54)

34 C. 118 (127-8)=2 M. L. T. 49=5 C. L. J. 134= 11 C. W. N. 297=9 Bom. L. R. 85=4 A. L. J. 30= 4 L. B. R. 66=9 Sar. 182=17 M. L. J. 52.

NON-MAHOMEDAN-UNORTHODOX MAHOMEDAN.

-Right to office of.

Quaers whether one who is not a Mahomeslan, and a fortiori, one who is so but who follows a sect not orthodox according to the standard of the settlor, is not disqualified by law for the post of muttawalli. (Sir Arthur Wilson.) SHAHAR BANOO v. AGA MAHOMED JAFFER BINDANEEM. (1906) 34 I. A. 46 (53) = 34 C. 118 (126 7) = 2 M. L. T. 49 = 5 C. L. J. 134 = 11 C. W. N. 297 =

9 Bom. L. B. 85=4 A. L. J. 30=4 L. B. B. 66= 9 Sar. 182=17 M. L. J. 52.

SURPLUS INCOME-RIGHT IN.

- Sajjadanashin-Right of-Distinction.

Ordinarily speaking, the sajjadanashin has a larger right in the surplus income than a muttawalli, for so long as he does not spend it in wicked living or in objects wholly alien to his office, he, like the mahant of a Hindu math, has full power of disposition over it (323). (Mr. Amcer Ali.) VIDYA VARUTHI THIRTHA v. BALUSAMI AIYAR.

(1921) 48 I. A. 302=44 M. 831 (850-1)= (1921) M. W. N. 449=(1922) P. C. 123= 15 L. W. 78=30 M. L. T. 66=26 C. W. N. 537= (1922) Pat. 245=20 A. L. J. 497=24 Bom. L. B. 629= 65 I. C. 161=41 M. L. J. 346.

TRUSTEE IF A.

---Sct Limitation ACT of 1908—ART. 134—TRUSTEE. (1921) 48 I. A. 302 (319)=44 M. 831 (843, 847-8).

Religious Endowment—Objects of—Spiritual duties if involved in.

-Test-Will-Construction.

In his will a Mahomedan of the Shiah sect said: "I appoint my son A, my legal executor. And the superintendence of all the affairs relating to the heritage and the sools is entrusted to Aga." The testator further said:—

The furniture, such as lamps, utensils for cooking, carpets, and all the articles belonging to the Emambara, shall not be the subject of inheritance, and shall be used by the executor in performance of taziadari rites.

"The executor shall after taking possession, with the information of the nazir, of the sools, purchase therewith (in the) share market any good property or Government paper, and

MAHOMEDAN LAW-(Contd.)

Religious Endowment-Objects of - Spiritual duties if involved in-(Contd.)

shall out of the income thereof spend Rs. 1000 during the first ten days of Mohurrum every year, in accordance with the custom in vogue, in performance of the taziadari and distribution of food in connection with the Emambara. The expenses that are to be preferred to all the expenses to be met out of the income of the said property, are those of sending money to kerbela or Holy Najaf and engaging naib (proxy) on remuneration for the performance of prayer and fasting in my stead for the omissions during sixty years of my age; provided these be done through my mujtahid, And verify to these are the expenses of engaging nails for visiting khana-e-khoda (House of God), the holy shrine of the Prophet and those of Imams (who guided people in the right path), and for visiting the shrine of Raza (on whom may God send His thousand blessings). Next to these are the expenses of heirs and nearest relatives. if they stand in need, or the expenses of repairing mosques or performance of taziadari on the nights preceding Friday, and distributing food, and feeding travellers, to the possible extent."

The Courts below held that the object of the trust did not involve any duties of a spiritual nature such as taking part in or conducting religious services or the like, and that they

could be carried out by a deputy.

Their Lordships observed that the proposition was not quite so clear, and that the case was rather close to the line. (Sir Arthur Wilson.) SHAHAR BANOO v. AGA MAHOMED JAFFER BINDANEEM. (1906) 34 I. A. 46 (53)

34 C. 118 (126) = 2 M. L. T. 49 = 5 C. L. J. 134 = 11 C. W. N. 297 = 9 Bem. L. R. 85 = 4 A.L.J. 30 = 4 L. B. R. 66 = 9 Sar. 182 = 17 M. L. J. 52.

Religious Endowment—Private and public trusts— Founder's wishes.

Giving effect to—Duty of Court—Objects of benefaction—Management of endowment—Distinction. See MAHOMEDAN LAW — RELIGIOUS — ENDOWMENT— FOUNDER'S WISHES. (1916) 43 I.A. 127 (134) = 43 C. 1085 (1100-1).

Religious Endowment—Religious Endowments Act of 1863—Endowment of a public character within meaning of.

\_\_Tat.

The material parts of a tauliutnamah executed by a Mahomedan lady were as follows :- " I make a trustworthy declaration and a legal acknowledgment, and give in writing to the effect that I consider it indispensable and incumbent upon me to continue and perpetuate the ceremonies for pious uses of such description as 'fatiha' (offering prayers for the dead) 'hazrrat,' on whom be the benedic-tions, etc.; which is the fixed and settled usage of my family." The deed then described the property the lady was possessed of and continued " the same for special pious purposes. I have made waqf in perpetuity with all inherent adventitious rights and interests, . . . with all appurtenances particularly of pious uses. As long as I live, J shall remain mutwali of the afore-mentioned waqf. If I die before J, then the affairs connected with tauliut shall revert to her, Should she die before me, I alone will act as a mutwali of the waqf endowed property." The deed then provided for the appointment of succeeding mutwalis and went on," specification of the expenses is this :- All the income of the afore-mentioned endowment has been divided into 28 parts. Of these, 15 parts are to be applied to the expenses of the fatiha of the Lord of the Universe, the last of the prophets (Mahomed) and the Imams, . . and the expenses of the ten days of Mohurrum and all the holy days, the repairs of

### MAHOMEDAN LAW -(Centil.)

Religious Endowment-Religious Endowments Act of 1863-Endowment of a public character within meaning of-(Contd.)

Imambari and tombs; 7 parts thereof shall be received by all the amlahs and servants, whose names are inserted at the foot of this or other documents bearing the seal and signature of me, which they may have in their possession, some from generation to generation, and others as long as they retain the service; and 6 parts thereof will be received by us, the mutwalis, in equal shares."

The High Court held that the endowment created by the deed was not of such a public character as would sustain a

suit under Act XX of 1863.

Their Lordships saw no reason for disagreeing with that part of the judgment of the High Court (447). (Sir Montague E. Smith.) NAWAB SYED ASHGAR ALI P. DILRUS BANNOO BEGUM. (1877) 3 Suth 444.

### Religious Endowment—Sajjadanashin.

APPOINTMENT OF SUCCESSOR BY.

Custom of-Proof of.

The question was whether the Sajjadanashin, or religious head, of a Mahomedan shrine had the right to appoint his successor in his lifetime according to the custom of the worshippers of the shrine. The plaintiff contended that the custom of the shrine permitted the diwan or religious head to appoint any one within certain limits as his successor.

Held, that the right of the Diwan to appoint a successor within certain limits was established both by documentary evidence and by the history of the shrine itself (6). (Lord Halibury.) SAVAD MUHAMMAD P. FATTEH MUHAM-MAD. (1894) 22 I. A. 4 - 22 C. 824 (332) = 6 Sar. 515.

OFFICE OF-SUCCESSION TO.

-Eldest son of last holder-Right of.

Notwithstanding the practice hither to followed in the suit institution, their Lordships would hesitate to say that on the death of a Sajjadanishin his eldest son is entitled as of right to succeed him; but the eldest son, if qualified, is the natural successor of his father. (Viscount Carr). MUHAM-MAD HAMID P. MIAN MAHMUD.

(1922) 50 I. A. 92 (103) = 4 Lah. 15= 32 M.L.T. 52 = 25 Bom. L. R. 660 = 38 C.L.J. 231 = 27 C.W.N. 701 = 1 P.W.B. 1923 = A.I.R. 1922 P.C. 384 - 77 I. C. 1009 - 44 M.L.J. 149.

-Eldest son of last holder installed with consent of his brother-Right of-Right of that brother to question -Estoppel.

The question was whether on the death of a Sajjadanishin of a khankah, his eldest son was entitled to be Sajjadanashin and manager of the khankah in preference to his uncle, the brother of the last Sajjadanishin. The evidence was clear that the former, who was the appellant before their Lordships, was formally recognised and installed by the pirs with the express consent and assistance of the latter, the respondent before their Lordships.

Held that it was not therefore open to the respondent to question the appellant's position as Sajjadanishin or his right to manage the mosque and the property attached to the khankah. (Viscount Cave.) MUHAMMAD HAMID P.

MIAN MAHMUD.

(1922) 50 I.A. 92 (1034) = 4 Lah. 15= 32 M.L.T. 52 = 25 Bom. L R. 660 = 38 C.L.J. 231 = 27 C. W. N. 701=1 P.W.R 1923= A.I.R. 1922 P.C. 384 = 77 I. C. 1009 = 44 M. L. J. 149.

-Rules governing. See MAHOMEDAN LAW-RELI-GIOUS ENDOWMENT-KONKAH -NATURE AND ORIGIN OF. (1922) 50 I.A.92 (96) = 4 Lah. 15. ACKNOWLEDGMENT OF-SON.

MAHOMEDAN LAW-(Contd.)

Religious Endowment-Sajjadanashin-(Contd.)

POSITION OF -SUCCESSION TO OFFICE OF.

-Rule governing. See MAHOMEDAN LAW-RELI-GIOUS ENDOWMENT-KONKAH-NATURE AND ORIGIN (1922) 50 I.A. 92 (96)=4 Lah. 15.

PRIVATE PROPERTY OF-PROPERTY DEDICATED TO KONKOH OR.

-Distinction-Evidence. See MAHOMEDAN LAW-RELIGIOUS ENDOWMENT- KONKAH-PROPERTY DEDI-(1922) 50 I.A. 92 (104.5)=4 Lah. 15. CATED TO. PROPERTY OF KONKAH-ALIENATION IMPROPER OF.

-Successor's suit to recover-Money advanced to alienor-Refund of-Necessity-Conditions. See MAHO-MEDAN LAW-RELIGIOUS ENDOWMENT - KONKAH-(1841) 2 M.I.A. 390 (423). SAJJADANASHIN OF.

SURPLUS INCOME-RIGHT IN.

-Exclusive or to be shared with heirs of founder.

It was stated in the judgment of this Board in L. R. 48 I.A. 302 (323) that "ordinarily speaking the sajja" danishin has a larger right in the surplus income than a muttawalli, for so long as he does not spend it in wicked living or in objects wholly alien to his office. he, like the mahant of a Hindu math, has full power of disposition over it." But this does not mean that in every case the whole income from a khankah is at the disposal of the sajjadanishin; and it is plain from the authorities, as well as from the evidence in this suit. that at certain shrines the members of the founder's family other than the sajjadanishin are treated as entitled to share in the surplus offerings which remain after payment of expenses. Upon the whole, their Lordships think that the appellan, the sajjadanishin, must share the surplus offerings, after deducting all outgoings (including a reasonable remuneration to the sajjadanishin), with his uncle during their joint lives. (Viscount Caty). MUHAMMAD HAMID P. MIAN MAHMUD.

(1922) 50 I. A. 92 (105 6) = 4 L. 15 = 32 M.L.T. 52 = 25 Bom. L.R. 660 = 38 C.L.J. 231 = 27 C.W.N. 701 = 1 P.W.B. 1923=

A.I.R. 1922 P.C. 384 - 77 I. C. 1009 - 44 M. L. J. 149. - Mutwali-Right of-Distinction. See MAHOMEDAN

LAW-RELIGIOUS ENDOWMENT-MUTWALI-SURPLUS INCOME.

(1921) 48 I. A. 302 (323) = 44 M. 831 (850-1) Restitution of conjugal rights.

-See Mahomedan Law-Husband and Wife-RESTITUTION OF CONJUGAL RIGHTS.

Sajjadanashin.

-See Mahomedan Law-Religious Endow-MENT-SAJJADANASHIN; AND WAKE-SAJJADANASHIN

Self-acquisition.

——Ancestral property—Mitakshara distinction between —Inapplicability of. See MAHOMEDAN LAW—INHERI-TANCE-ANCESTRAL PROPERTY.

-Joint family property-Hindu Law presumption as to, in case of purchase by one of brothers living as one family—Inapplicability of. See MAHOMEDAN LAW—CO. HEIRS-PURCHASE BY ONE OF.

(1919) 11 L. W. 421 (423).

Settlement.

-Will or. See MAHOMEDAN LAW-WILL-SET-TLEMENT OR.

Son.

LEGITIMACY OF.

See MAHOMEDAN Law--Acknowledgment of,

Son-(Contd.)

LEGITIMACY OF-(Contd.)

-Conditions.

By the Mahomedan law a son to be legitimate must be the offspring of a man and his wife or of a man and his slave; any other offspring is the offspring of Zina, that is, illicit connection, and cannot be legitimate. (Lord Duncolin). HABIBUR RAHMAN CHOWDHURY v. ALTAF ALI CHOWDHURY. (1921) 48 I.A. 114 = 48 C. 856 (864) =

19 A.L.J. 414 = 33 C.L.J. 479 = (1921) M.W.N. 366 = 26 C. W. N. 81 = 23 Bom. L.B. 636 = 29 M.L.T. 354 = 14 L. W. 175 = (1922) P. C. 159 = 60 I. C. 837 = 40 M.L.J. 510

—Evidence of. See Mahomedan Law-Legiti-MACY-EVIDENCE OF. (1866) 11 M.I.A. 94 (118).

UNACKNOWLEDGED FATHER-SON OF.

-Status of -Repudiation by father-Effect of.

The finding of the Punchayat leaves the respodent in the position of a son of an unacknowledged father. On the status of such a son, the renunciation by the father may be operative according to the Mahomedan law; but it is not conclusive, and may be contradicted and disproved, and does not seem to be more weighty in itself than a declaration by a deceased parent in a case of pedigree (111). (Sir James W. Colvile). ASHRUFOOD DOWLAH AHMAD HOSSEIN KHAN v. HYDER HOOSEIN KHAN.

(1866) 11 M.I.A. 94=7 W.B. P.C. 1= 1 Suth. 659=2 Sar. 223=B. and J.'s No. 5 (Oudh).

Sons.

— Widow—Death of—Estate to sons limited to take effect after—Nature of—Vested remainder—Contingent estate. See COMPROMISE—CONSTRUCTION OF—VESTED REMAINDER. (1885) 12 I. A. 91 (100)= 11 C. 597 (607-8).

#### Transfer repugnant to.

Transfer limited to eldest son or other single heir of transferee if a. Srr PROPERTY—TRANSFER OF—HINDU AND MAHOMEDAN LAWS. (1879) 7 I. A. 38 (47) = 2 M. 128 (134).

#### Trust.

### LAW RELATING TO.

---- English law - Difference between.

The Mahomedan law relating to trusts differs fundamentally from the English law (312). (Mr. Ameer Ali). VIDYA VARUTHI THIRTHA D. BALUSAMI AIYAR.

(1921) 48 I.A. 302=44 M. 831 (840)= (1921) M.W.N. 449=(1922) P.C. 123= 15 L. W. 78=30 M.L.T. 66=26 C.W.N. 537=

(1922) P. 245=20 A.L.J. 497=24 Bom. L.B. 629= 65 I.C. 161=41 M.L.J. 346.

-Origin of.

The Mahomedan law relating to trusts owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings" (312). (Mr. Ameer Ali). VIDYA VARUTHI THIRTHA v. BALUSAMI AIYAR. (1921) 48 I.A. 302 =

44 M. 831 (840) = (1921) M. W. N. 449 = (1922) P.C. 123 = 15 L. W. 78 = 30 M.L.T. 66 = 26 C.W.N. 537 = (1922) P. 245 = 20 A.L.J. 497 = 24 Bom. L.B. 629 = 65 I.C. 161 = 41 M.L.J. 346.

#### PAWN-CONTINGENT LOSS.

- Deposit of security in respect of Nature of Writing-Actual delivery-Necessity.

By the Mahomedan Law, a deposit for a security in respect of a contingent loss would be in the nature of a trust, not a pawn. No writing or actual delivery is essential to

### MAHOMEDAN LAW-(Contd.)

Trust -(Contd.)

PAWN-CONTINGENT LOSS -(Contd.)

the creation of such trust by that law (321). (Lord Kings-down). VARDEN SETH SAM v. LUCKPATHY ROYJEE LALLAH. (1862) 9 M. I. A. 303 = Marsh 461 = 1 Suth. 483 = 1 Sar. 857.

#### TRUSTEE.

- Person to whom specific property is conveyed for definite and specific purpose-Person holding property generally for religious purposes-Distinction.

A Mahomedan may "convey in trust a specific property to a particular individual for a specific and definite purpose, and place himseif expressly under the English law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term. But a person holding properties generally for Mahomedan religious purposes is not to be treated as a "trustee" (319). (Mr. Ameer Ali.) VIDVA VARUTHI THIRTHA r. BALUSAMI AIVAR. (1921) 48 I. A. 302 = 44 M. 831 (847) = (1921) M.W.N. 449 = (1922) P.C. 123 - 15 L.W. 78 = 30 M.L.T. 66 = 26 C.W.N. 537 = (1922) P. 245 = 20 A.L.J. 497 = 24 Bom. L.B. 629 = 65 I.C. 161 =

### Usury.

41 M.L.J. 346.

-Rule relating to-Effect of Act 28 of 1855 on.

Quarr, whether the Mussulman rule relating to usury was or was not abrogated by Act (XXVIII of 1855) (300) (Lord Parker). HAMIRA BIBLE, ZUBAIDA BIBL.

(1916) 43 I.A. 294=38 A. 581 (585-6)=
14 A.L.J. 1055=20 M.L.T. 505=
(1916) 2 M.W.N. 551=4 L. W. 602=21 C.W.N. 1=
1 Pat. L.W. 57=18 Bom. L.R. 999=
25 C.L.J. 517=36 I.C. 87=31 M.L.J. 799.

### Vested remainder.

——Contingent estate — Sons—Estate limited to take effect in favour of, after mother's death—Nature of, Sec Compromise—Construction—Vested Remainder, (1885) 12 I. A. 91 (100) = 11 C. 597 (607-8).

-Settlement deed creating-What amounts to-Validity of.

By a deed of settlement a Mahomedan granted lands to his wife on condition that if she had a child by him the grant should be taken as a perpetual mokurraree, and, in case of no child being born, as a life mokurraree with remainder to the settlor's two sons.

Held that the deed conferred upon the sons a definite interest, like what in English law is called a vested remainder, subject to be displaced by the event of there being a son of the settlor by his wife, and that that interest in remainder was not an expectancy or a merely contingent or possible right or interest (209-10). (Lord Hobbouse). UMES CHUNDER SIRCAR v. MUSSUMMAT ZAHOOR FATIMA. (1890) 17 I. A. 201=

18 C. 164 (176)=5 Sar. 507.

-Validity of.

An interest in an estate similar to a vested remainder under the English law does not seem to be recognised by the Mahomedan law (100). (Sir Richard Couch). ABDUL WALID KHAN 2. MUSSMT. NURAN BIBI.

(1885) 12 I A. 91 = 11 C. 597 (607) = 4 Sar. 627.

### Wakf.

CASH-WAKE OF.

CREATION OF-WORD "WAKF"-USE OF.

DECLARATION THAT PARTICULAR PROPERTY IS,

DEDICATION OF PROPERTY TO.

DEED OF.

GADDINASHIN OF.

Wakf-(Contd.)

HINDU—GRANT TO MAHOMEDAN COMMUNITY BY.
INVALIDITY OF—RIGHTS BASED ON—RELINQUISHMENT OF, BY CONTRACT FOR VALUABLE CONSIDERATION.

MUTWALLI,

PERSONAL GRANT SUBJECT TO CONDITION OF MAIN-TAINING IMAMBARA OR.

PROPERTY OF.

REVOCATION OF PERFECTED.

SAJJADANASHIN.

VALIDITY OF.

WILL--CREATION BY.

#### Wakf-Cash-Wakf of.

-Validity.

Quaere whether, according to the Mussulman law, a wakf of cash is valid. (Lord Summer), MIRZA FIDA RASUL P. MIRZA YAKUB BEG. (1924) 87 LC. 702 = (1925) A.I.R. (P.C.) 101 = 6 L.R.P. C. 55 =

12 O.L.J. 98=27 O.C. 346.

### Wakf-Creation of-Word "wakf"-Use of.

-Necessity

The use of the word wakf in a grant is not necessary to constitute a wakf, or endowment to religious and charitable uses. The appropriation of land or other property to pious and charitable purposes is sufficient to constitute wakf, without the express use of that term in the grant (420).

(Mr. Jutice Bosanquet). JEWAN DOSS SAHOO v. SHAH KUBUR-OOD-DEEN. (1841) 2 M.I.A. 390 = 6 W.B. 3 = 1 Suth. 100 = 1 Sar 206.

— Dedication of property to religious uses may be inferred, although the word "wakf" is not shown to have been used.

Held there were facts proved in the case from which the dedication of some property to religious purposes might be inferred. (Viscount Care). MUHAMMAD HAMID 7. MIAN MAHMUD. (1922) 50 IA. 92 (104) =

4 Lah. 15=32 M. L. T. 52=25 Bom. L.R. 660= 38 C.L.J. 231=27 C. W. N. 701=1 P.W.R. 1923= A. I. R. 1922 P. C. 384=77 I. C. 1009= 44 M.L.J. 149.

—According to the Mahomedan law it is not necessary in order to constitute a wakf that the term "wakf" be used, "if from the general nature of the grant itself that tenure can be inferred." (194-5). (Lord Shaw). MUHAMMAD RAZA v. YADGAR HUSSAIN. (1924) 51 I.A. 192=

51 C. 446 (449)=LR. 5 P. C. 76=20 LW. 3= 28 C.W.N. 937=21 N.L.R. 1= (1924) M.W.N. 447=A.I.R. 1924 P. C. 109= 80 I.C. 645=34 M.L.T. 83=7 N.L.J. 116.

### Wakf-Declaration that particular property is.

Under the Mahomedan law, when once it is declared that a particular property is wakf, or any such expression is used as implies wakf, or the tenor of the document shows that a dedication to pious or charitable purposes is meant, the right of the wakf is extinguished and the ownership is transferred to the Almighty. The donor may name any meritorious object as the recipient of the benefit (312). (Mr. Ameer Ali.) VIDVA VARUTHI THIRTHA v. BALU-SAMI AIYAR. (1921) 48 I.A 302=

44 M. 831 (840)=(1921) M.W.N. 449 = (1922) P.C. 123=15 L. W. 78=30 M.L.T. 66=26 C.W.N. 537=(1922) P. 245=20 A.L.J. 497=24 Bom. L.R. 629=65 L.C. 161=41 M.L.J. 346.

### MAHOMEDAN LAW-(Contd.)

#### Wakf-Dedication of property to.

BONA FIDE DEDICATION TO CHARITABLE USES—GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR.

CHARITABLE USES—SUBSTANTIAL DEDICATION TO, DELIVERY OF POSSESSION.

EVIDENCE OF.

ILLUSORY GIFT OR.

POOR-GIFT TO.

SETTLOR'S FAMILY-PROVISION FOR.

VALIDITY OF.

WORD "WAKF"-USE OF.

BONA FIDE DEDICATION TO CHARITABLE USES— GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR.

-Test-Invalidity of dedication in latter cast.

Held that a deed called a wakfnama executed by a Mahomedan was not a hona fide dedication of the property, and that the use of the expressions "fisabilillah wakf" and similar terms in the outset of the deed, was only a veil to cover arrangements for the aggrandizement of the family and to make their property inalienable (39).

The leading clause of the deed contains no charitable gift except "in the manner provided by the paragraphs mentioned below." As regards the immovables, the only direction creating a trust for the objects mentioned in the opening sentence is that which is contained in the second paragraph. That trust is (after payment of "moosaref" expenses, and salaries), "to perform the stated reli-There is a great deal gious works according to custom." in the deed which is designed for the aggrandizement of the family property, and for keeping it perpetually in the hands of the family while the deed makes provisions calculated to make the family grow richer as the family property increases, there is not a word said about increasing the amount spent on charitable uses beyond the expenditure which was according to custom. The deed imposes no obligation on the grantor's male issue, or on any other person into whose hands the property may come, to apply it to charitable uses except to the extent to which he had himself been accustomed to perform them. If, indeed, it were shewn that the customary uses were of such magnitude as to exhaust the income, or to absorb the bulk of it, such a circumstance would have its weight in ascertaining the intention of the grantor. The facts, however, show that the charitable uses would not absorb more than a devost and wealthy Mahomedan gentleman might find it becoming to spend in that way (36-8). (Lord Hobbouse). SHEIK MAHOMED AHSANULLA CHOWDHRY D. AMARCHAND (1889) 17 I.A. 28=17 C. 498=5 Sar. 476 KUNDU.

——According to Mahomedan law, a gift is not good as a wakfnama, unless there is a substantial dedication of the property to charitable uses at some period of time or other (177).

The document in this case is not valid as a wakfnama. It makes no gift of the lands in question, either immediate or ultimate, for religious or charitable purposes. The document professes to create a wakf, but, in reality, the legal heirs of the settlor are the only objects of his bounty. The lands are destined to his wives and children, and to the descendants of the latter in perpetuity, in the order and according to the shares prescribed by the Mahomedan law of succession, but subject to the limitation that none of them shall have the power of alienation by sale, gift, or mortigage (177-8). (Lord Watson). ABDUL GAFUR v. NIZAMUDIN. (1892) 19 I.A. 170 = 17 B. 1(3-4) = MUDIN.

The question was whether a settlement of property effected by deed was valid as a wakfnama.

The motives stated were, regard for the family name, and preservation of the property in the family. Every specific

Wakf-Dedication of property to - (Contd.)

BONA FIDE DEDICATION TO CHARITABLE USES-GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR-(Contd.)

trust was for some member of the family. The family was to be aggrandized by accumulations of surpluses, and apparently by absorption into the settlement of after-acquired properties; and no person was to have any right of calling the managers to account. Those possessions were to be secured for ever for the enjoyment of the family, so far as the settlors could accomplish such a result, by provisions that nobody's share should be alienated, or be attached for his There was no reference to religion unless it was the invocation of the deity to perpetuate the family name and to preserve their property, and the casual mention of unspecified religious purposes, etc., at the end of the document. There was a gift to the poor and to widows and orphans, but they were to take nothing, not even surplus income, until the total extinction of the blood of the settlors, whether lineal

Held, affirming the High Court, that the poor had been put into the settlement merely to give it a colour of piety, and so to legalise arrangements meant to serve for the aggrandizement of a family, and that the settlement was not therefore valid as a wakfnama (89.) (Lord Hobbouse.) ABUL FATA MAHOMED ISHAK 2. RUSSONOV DHUR (1894) 22 I. A. 76 = CHOWDHRY.

22 C. 619-6 Sar. 572.

-A deed will be a valid deed of wakf if its effect is to give the property in substance to charitable uses. It will not be so if the effect is to give the property in substance to the testator's family (23.4.)

On the terms of the deed in question in the case held that the property was not in substance dedicated to charitable purposes, but, on the contrary, was deficated substantially to the maintenance and aggrandizement of the family estates for family purposes, and that the deed could not therefore be supported as constituting a wakf (27.)

The deed closes, as it began, by describing itself as a deed of family endowment. The donor contemplates, it is true, that his own liberality to religious and charitable purposes shall continue in future generations; but this is only, as it turns out, to an uncertain and discretionary amount, and as an incident of the family endowment. When the deed is examined and collated, and its professions tested by its effective provisions, it proves to be what it calls itself, a "family endowment "pure and simple. Indeed, the theory of the deed seems to be that the creation of a family endowment is of itself a religious and meritorius act, and that the perpetual application of the surplus income in the acquisition of new properties to be added to the family estate is a charitable purpose. It is superfluous in the present day to say that this is not the law (26.) (Lord Robertson.) MAJIBUN-NISSA v. ABDUL RAHIM. (1900) 28 I. A 15 = 23 A. 233 (245 6) = 5 C. W. N. 177 = 3 Bom. L. B. 114 = 7 Sar. 829 - 11 M. L. J. 58.

 A deed purporting to be a wakframa executed by a Mahomedan lady and her husband began with recitals in which the intending settlors put their own construction upon the deed, and stated the objects for which they executed it and the effect they intended it to have. They said it was necessary "that sufficient provision be made for the thorough management of the entire property, and the imlak belonging to the executants, and the income and profits therefrom (which, taken as a whole, forms a small estate, so that the property itself and the principal wealth may always be preserved from all manner of partition, division, transfer, and succession, and the management thereof in whole and in part should remain for ever in the hands of one person, whereby our name and memory, and the pomp and dignity of the

### MAHOMEDAN LAW-(Contd.)

Wakf-Dedication of property to-(Contd.)

BONA FIDE DEDICATION TO CHARITABLE USES-GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR-(Contd.)

estate, may continue;" and that " the attainment of the above object is impossible except by a waqf."

As regards the operative clauses of the deed, the first and most general in its terms was paragraph 4, by which the executants "make waqf. . . in favour of our respective selves, and after the death of one of us (the executants) in favour of the surviving executant alone, and thereafter in favour of our descendants, generation after generation, so long as they exist, and in favour of the servants and dependants of the riasat (estate) aforesaid and in favour of the poor, the beggars, and the needy for ever in the manner detailed below.

The numerous clauses that followed were entirely in accord with the purpose stated in the preamble and embodied in the fourth paragraph. The bulk of the property was not affected by any religious or charitable trusts. The rules laid down were almost all expressly directed to securing the husband in the full enjoyment of the whole estate as long as he lived, to keeping that estate in perpetuity entire and inalienable under efficient management by a single person, to maintaining the dignity of the family, and to making provision for its members. The religious and charitable clauses were no exception. They even ancillary to the real purpose of the deed; they dealt with matters naturally incident to maintaining the dignity of the family, and their secondary character was further apparent from the fact that, while the deed purported to create the waqf as from its date, the religious and charitable trusts were not to become obligatory till after the deaths of both the executants.

Held, that the deed created no valid waof.

The name and form of a waqf are avowedly adopted in the hope of gaining legal recognition for a transaction which without them could have no validity. (Sir Arthur Wilson.) MAULVI SAIVID MUHAMMAD MUNAWEVER ALI 2. (1905) 32 I. A. 86 = 27 A. 320 = RAZIA BIBL 2 C. L. J. 179-9 C.W.N. 625-2 A.L. J. 513= 8 Sar. 788 = 15 M. L. J. 261.

-There can be no doubt that the deeds of 1846 and 1868, which purported to create by gift a perpetual succession of interests for the aggrandizement of the family of the donors, were invalid by the Mahomedan Law and were not validated by the use of the term " wakf " or by the insertion of a remote trust for the poor; nor can the Act of 1913 (Mussalman Wakf Validating Act) be construed as validating deeds executed before its date. (Viscount Cave.) KHAJEH SOLEHMAN QUADIR v. NAWAB SIR SALIMUL-(1922) 49 I. A. 153 (165)= LAH BAHADUR. 49 C. 820 (832, 834-5)=37 C. L. J. 56-21 A. L. J. 1-

A. I. B. 1922 P. C. 107 = 31 M. L. T. 79 = 4 U. P. L. B. (P. C.) 70 = 24 Bom. L. B. 1257 = 27 C. W. N. 101 = 69 I. C. 138 = 43 M. L. J. 385.

Out of an annual expenditure of Rs. 1,558 provided for by a wakfnama, Rs. 146 were to be applied for purely charitable purposes, Rs. 1,100 for the support of the settlor and his family, and Rs. 312 for the support of dependants. As the annuities fell in, the money allotted for them was to be divided by the muttawalli proportionately among the surviving annuitants, or be given in his discretion to some or one of them, or he was to give as much as he thought proper for purely charitable purposes. Even that provision was not applied unconditionally to the amount of Rs. 500 reserved for the settlor's own maintenance. Under the deed the settlor was to be muttawalli, and the office was confere red, on his own death, conditionally on his son, and failing that, on his son's descendants and afterwards on his malagnates and in failure of that line on the Anjuman at Amrit-

Wakf-Dedication of property to-(Contd.)

BONA FIDE DEDICATION TO CHARITABLE USES—GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR—(Cont.)

sar. The deed provided that while the office was held by the settlor's descendants or agnates, they were to have the annuity of Rs. 500 reserved for his own maintenance in addition to the muttawalli's salary of Rs. 240 provided for by the deed. The deed also conferred upon the settlor's son with his wife and children and upon some of the dependants a right to reside in the family house for life. The result was, that so long as there were agnates of the settlor in whom the office of muttawalli could vest, the muttawalli was to get an amount of Rs. 500 in addition to his salary of Rs. 240 as muttawalli, and the muttawalli was also to pay the descendants of the settlor's daughter, so long as there were any, annually Ks. 120 and so much of the remaining lapsed balance as he chose. He was not under any obligation to spend any of that sum for charity, though it was in his discretion to do so.

Held, that the properties had not been substantially dedicated to charity, and that the wakf was invalid.

If the Rs. 146 devoted to charity were necessarily to be increased as the life annuities fell in, there could be no question as to the validity of wakf (379.) (Sir fohn Wallis.)

BALLA MAL r. ATA ULLAH KHAN. (1927) 54 I. A. 372=

9 Lah. 203=4 O. W. N. 705=(1927) M.W.N. 581 (2)=
46 C. L. J. 188=103 I. C. 518=29 Bom. L. R. 1289=

31 C. W. N. 1092=8 Pat. L. T. 699=26 L. W. 710=
A. I. R. 1927 P. O. 191=26 A. L. J. 22=
29 Punj. L. R. 1=53 M.L. J. 166.

--- Test-Validity of dedication in former case.

A deed of settlement executed by a Mahomedan before Act VI of 1913 came into force is a valid deed of wakf if its effect is to give the property in substance to charitable uses; it will not be so if the effect is to give the property in substance to the settlor's family. To determine whether any particular case answers this test all the circumstances existing at the date of the deed must be taken into consideration, such as the financial position of the grantor, the amount of the property, the nature and the needs of the charity, their probable or possible expansion, the priority of their claim upon the settled fund, and such like,

From the fact that the share of the income going to the family of the grantor is for the time being larger than that going to the charities it does not follow that the effect of the deed is so to give the property in substance to the family and that it is invalid as a deed of wakf.

The provision for charities in such a deed is not illusory merely because the deed does not specify the amount to be spent by the trustees on the charitable objects. In such a case the trustees are, at the least, bound, so far as the funds under their control will permit, to make such provisions for the charities as in the circumstances of the case a pious and charitable. Mahomedan would consider reasonable and proper; and if the trustees failed to perform their trust, the Advocate-General, or some other authority having control over the administration of charities could in a court of law compel them to do their duty and secure the due administration of the trust fund.

Held, that the effect of the instrument in question in the case was not to give the trust property in substance to the family of the grantors but to give it in substance to the charitable purposes named in it, and that the instrument was a valid deed of wakf under the Mahomedan Law. (Lord Atkinson). MUTU RAMANATHAN CHETTIAR 2. VAVA LEVVAI MARAKAYAR. (1916) 44 I. A. 21 =

40 M. 116=21 C. W. N 521=1 Pat. L. W. 394= 21 M. L. T. 215=25 C. L. J. 224=19 Bom. L. R. 401= (1917) M. W. N. 180=5 L. W. 293=15 A. L. J. 139= 39 I. C. 235=32 M. L. J. 101.

### MAHOMEDAN LAW-(Contd.)

Wakf-Dedication of property to-(Contd.)

BONA FIDE DEDICATION TO CHARITABLE USES—GIFT SUBSTANTIAL TO SETTLOR'S FAMILY OR—(Contd.)

Medd, that a settlement was a valid creation of a wakf; notwithstanding that it contained a substantial provision for the settler's family, and a provision that the settler's heirs should be the mutavallis of the wakf in their order, because the provision intended to benefit the settler's family was not the preponderating feature of the settlement, nor was the provision made for the perpetuation of religious ceremonies and charitable gifts by any means illusory or unsubstantial. (Lord Summer.) ABDUR RAHIM 2. NARAIN DAS AURORA. (1922) 50 I. A. 84 (88-90)=

50 C. 329 (334) = 32 M. L. T. 153 = 17 L. W. 509 = 25 Bom. L. B. 670 = 38 C. L. J. 242 = (1923) M. W. N. 441 = 28 C. W. N. 121 = A. I B. 1923 P. C. 44 = 71 I. C. 646 = 44 M. L. J. 624.

-Validity of dedication in latter case-Mussalman Wakf Validating Act of 1913-Effect of.

Under the Mussalman Wakf Validating Act of 1913 a wakf is not rendered invalid because it appears that the main object of the settlor was to make a settlement of his property on his family rather than to devote it to what are ordinarily understood as charitable purposes whereas, with regard to wakfs created before the passing of the Act, the test still is, was there a substantial dedication of the properties included in the wakf to charitable purposes? The test may sometimes be difficult of application, and in applying it the Courts, especially since the passing of the Act, will not be disposed to construe the provisions of the deed too strictly; but still the question must remain whether the properties included in the wakf have been substantially dedicated to charity, or whether they have been put into wakf by the setttlor with the real object of effecting some non-charitable purpose such as, for instance, that of making a family settlement of his property which would other wise be invalid as opposed to the Mahomedan law of succession (374). The law as laid down by the Board is, that the properties must be substantially dedicated to charity, not that the gift to charity should be substantial (380). (Sir John Wallis). BALLA MAL v. ATA ULLAR (1927) 54 I. A. 372=9 Lah 203=

4 O. W. N. 705 = (1927) M. W. N. 581 (2) = 46 C. L. J. 188 = 103 I. C. 518 = 29 Bom. L. B. 1289 = 31 C. W. N. 1092 = 8 Pat. L. T. 699 = 26 L. W. 710 = A. I. B. 1927 P. C. 191 = 26 A. L. J. 22 =

29 Punj. L. R. 1=53 M L. J. 166. CHARITABLE USES—SUBSTANTIAL DEDICATION TO.

--- Validity of dedication in case of.

Where there is a substantial dedication of property to charitable and religious purposes, the dedication, in the absence of any legal objection, is not invalid according to Mahomedan Law (498). (Viscount Care). SYED AMATUL FATEM's BIBL 2. ABDUL ALIM SAHEB.

(1920) 12 L W. 497 = (1920) M. W. N. 324 = 24 C. W. N. 494 = 59 I. C. 1 = 32 C. L. J. 447 = 28 M. L. T. 135.

### DELIVERY OF POSSESSION.

Necessity. See Mahomedan Law-Gift-Deli-VARY OF POSSESSION-WAKF. (1926) 54 I. A. 33 (36) = 6 Pat. 359.

Necessity-Divesting by settler of all interest in subject of gift-Necessity also of-Shia law.

Under the Shia law, wakfs or gifts for charitable purposes are not valid unless possession is given to be donee; further the wakif or settlor ought not to retain for any interest in the subject of the gift. This latter restric-

Wakf-Dedication of property to-(Contd.)

DELIVERY OF POSSESSION-(Contd.)

tion operates as a check on the creation of wakfs not from purely religious motives, but with a view of defeating the rights of heirs and transmitting the possession and control of the settlor's property after his death to other persons in the character of mutawallis (36-7.) (Sir John Wallis.) ABADI BEGUM P. KANIZ ZAINAB. (1926) 54 I. A 33 = 6 Pat. 359 = 45 C. L. J. 408 = 25 L. W. 710 = 25 A. L. J. 51 = (1927) M. W. N. 12 = 4 O. W. N. 153 = 38 M. L. T. (P. C.) 33 =

8 Pat. L. T. 107 = 99 I. C. 669 (2) = 31 C. W. N. 365 =

29 Bom. L. R. 763 = A: I. R. 1927 P C. 52 = 52 M. L. J. 430.

-Settlor himself mutwalli-Change of pessession in case of-Mode of

Under the Shia law a deed of wakf is not valid unless possession is given under it. The possession given must be

such as the case admits.

Where, in a case in which the settlor constituted herself the first mutawalli of a wakf, she did not for a period of 25 years after the date of the deed obtain mutation of names by getting herself entered in the public registry as holding the wakf property as mutawalli and, at the expiration of that period, when the public record of rights for the area in which the property was situated was prepared by the revenue authorities, after the fullest notice and inquiry, the settlor was again registered as regards nearly the entire property as malik or full owner, held that possession was not shown to have been given so as to satisfy the condition of the Shia law to that effect, and that the wakf was not valid (43.4) (Sir John Wallis.) ABADI BEGUM D. (1926) 54 I. A. 33 = 6 Pat. 359 = KANIZ ZAINAB. 45 C. L. J. 408 - 25 L. W. 710 - 25 A L. J. 51 =

(1927) M. W. N. 12-4 O. W. N. 153-38 M. L. T. (P. C.) 33 + 8 Pat. L. T. 107 -99 I. C. 669 (2) - 31 C. W. N. 365 -29 Bom. L. R. 763 = A. I. R. 1927 P. C. 52 = 52 M. L. J. 430.

When the settlor constitutes herself mutavalli or trustee of the wakf, it is, of course, impossible for her to hand over possession as malik or owner to herself as mutawalli or trustee of the endowment, but it is none the less incumbent on her to give such possession as the case admits. The obvious and ordinary means of showing the change in the character of her possession will be by mutation of names. that is to say, by getting herself entered in the public registry as holding as mutawalli (43.) (Sir John Wallis.) ABADI BEGUM P. KANIZ ZAINAB. (1926) 54 I. A. 33 =

6 Pat. 359 = 45 C. L. J 408 = 25 L. W. 710 = 25 A. L. J. 51 = (1927) M. W. N. 12 = 4 O. W. N. 153 = 38 M. L. T. (P C.) 33 = 8 Pat. L. T. 107 = 99 I. C. 669 (2) = 31 C. WN. 365 = 29 Bom L. B. 763 = A. I. R. 1927 P. C. 52 = 52 M. L. J. 430.

EVIDENCE OF.

-Administrative records-Treatment of property in -Method of-Value of.

Where the question was whether a document executed by a Hindu ruler in the year 1840 created a walf of three villages to 1. the royal physician, held that the method in which the property had been treated on the administrative records might throw light on the question.

This thing is not conclusive, but is a circumstance worthy of consideration (195.) (Lord Shaw.) MUHAMMAD (1924) 51 I. A. 192= RAZA D. YADGAR HUSSAIN.

51 C. 446 (449)= L. B. 5 P. C. 76=7 N. L. J. 116= 20 L. W. 3 = 28 C. W. N. 937 = 21 N. L. B. 1 = (1924) M. W. N. 447 = A. I. B. 1924 P.C. 109 = 80 I. C. 645 = 34 M. L. T. 83.

MAHOMEDAN LAW-(Contd.)

Wakf-Dedication of property to-(Contd.)

EVIDENCE OF-(Contd.)

-Grantee and his successors-Actings or statements of Value of.

Where the question was whether a document executed by a Hindu ruler in the year 1840 created a wakf of three villages to I', the royal physician. held that in all such cases the actings or statements of the grantee or his successor might be relevantly taken into account as to their interpretation of the original grant.

These things are not conclusive, but are circumstances worthy of consideration (195.) (Lord Shaw.) MUHAMMAD RAZA v. YADGAR HUSSAIN.

ZA 2. VADGAR HUSSAIN. (1924) 51 I. A. 192 = 51 C. 446 (449) = L. R. 5 P. C. 76 = 7 N. L. J. 116 = 20 L. W. 3 = 28 C. W. N. 937 = 21 N. L. R. 1 = (1924) M. W. N. 447 = A. I. R. 1924 P.C. 109 = 80 I. C. 645 - 34 M. L. T. 83.

-User, though no dedication-Effect. See PUNIAB LAND REVENUE ACT OF 1877-S. 44.

(1912) 40 I. A. 18=40 C. 297.

ILLUSORY GIFT OR.

Granter's descendants-Failure of all-Gift to charitable uses to take effect only after.

Quare whether a gift of property to charitable uses which is only to take effect after the failure of all the grantor's descendants is an illusory gift (37). (Lord Hobboure). SHAIK MAHOMED AHSANULLA CHOWDHRY . AMARCHAND KUNDU. (1889) 17 I. A. 28= 17 C. 498 (509)=5 Sar. 476.

A gift may be illusory whether from its small amount or from its uncertainty and remoteness. If a man were to settle a crore of rupees, and provide ten for the poor, that would be at once recognised as illusory. It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family; possibly not for hundreds of years; possibly not until the property had vanished away under the wasting agencies of litigation or malfeasance or misfortune; certainly not as long as there exists on the earth one of those objects whom the dosors really cared to maintain in a high position (89). (Lord Hobbouse). ABUL FATA MAHOMED ISHAK P. RUSSOMOY DHUR CHOWDHRY.

(1894) 22 I. A. 76 = 22 C. 619 (634) = 6 Sar. 572.

### POOR -GIFT TO.

Family settlement if of itself imports ultimate.

It was indeed contended that a family settlement of itself imports an ultimate gift to the poor. But no authority has been adduced for that proposition (37). (Lord Hobhouse.) SHEIK MAHONED AHSANULLA CHOWDHRY v. AMAR-(1889) 17 I. A. 28 = CHAND KUNDU. 17 C. 498 (509-10) = 5 Sar. 476.

See MAHOMEDAN LAW--Illusory gift-Test. WAKE-DEDICATION OF PROPERTY TO-ILLUSORY (1894) 22 I. A. 76 (89) = GIFT OR-TEST. 22 C. 619 (634).

-Perpetual family settlement expressly made as wakf -Validity-Ultimate gift to the poor. See MAHOMEDAN LAW-WAKE-DEDICATION OF PROPERTY TO-VALI-DITY OF -PERPETUAL FAMILY SETTLEMENT, ETC.

(1894) 22 I. A. 76 (88) = 22 C. 619 (632-3).

SETTLOR'S FAMILY-PROVISION FOR.

Permissibility of.

Their Lordships do not attempt in this case to lay down any precise definition of what will constitute a valid wakf. or to determine how far provisions for the grantor's family may be engrafted on such a settlement without destroying

### Wakf-Dedication of property to-(Contd.)

SETTLOR'S FAMILY-PROVISION FOR-(Contd.)

its character as a charitable gift. On the one hand there is good ground for holding that provisions for the family out of the grantor's property may be consistent with the gift of it as wakf. On the other hand, according to Mahomedan law, a gift is not good as a wakf unless there is a substantial dedication of property to charitable uses at some period of time or other (37). (Lord Holdonse). SHEIK MAHOMED AHSAMULLA CHOWDHRY F. AMARCHAND KUNDU.

(1889) 17 I. A. 28-17 C. 498 (509)=5 Sar. 476.

Some authorities go so far as to hold that for a valid wakf the property should be solely dedicated to pious uses. But this Board held in L. R. 17 I. A. 28 that provisions for the family out of the grantor's property may be consistent with the gift of it as wakf (88). (Lord Hobbourg). ABUL FATA MAHOMED ISHAK v. RUSSOMOV DHUR CHOWDHRY. (1894) 22 I. A. 76 = 22 C. 619 (633) = 6 Sar. 572.

#### VALIDITY OF.

Condition—Substantial gift to charity or substantial delication of properties to charity.

The law as laid down by the Board is, that the properties must be substantially dedicated to charity, not, that the gift to charity should be substantial (380). (Sie John Wallis). BALLA MAL v.ATA ULLAH KHAN.

(1927) 54 I. A. 372=
9 Lah. 203=4 O. W. N. 705=
(1927) M. W. N. 581 (2) = 46 C. L. J. 188=
103 I. C. 518=29 Bom. L. R. 1289=
31 C. W. N. 1092=8 Pat. L. T. 699=26 L. W. 710=
A. I. R. 1927 P. C. 191=26 A. L. J. 22=
29 Punj. L. R. 1=53 M. L. J. 166.

— Perpetual family settlement expressly made as wakf —Validity—Ultimate gift to the poor.

There is a great preponderance of authority against the contention that, where there is an ultimate gift for the poor, a perpetual family settlement expressly made as wakf is legal (88). (Lord Hobboure). ABDUL FATA MAHOMED ISHAK v. RUSSOMOY DHUR CHOWDHRY.

(1894) 22 I. A. 76 = 22 C. 619 (632 3) = 6 Sar. 572.

- Perpetual family settlement in name of religious trusts.

In the High Court it seems to have been contended that a gift to the donor's descendants without any mention of the poor might be supported as a wakf; and even that the Mahomedan Law intends that perpetual family settlements may be made in the name of religious trusts. In the case in L. R. 17 I. A. at p. 37 this Board held that according to Mahomedan Law, a gift was not good as a wakf unless there was a substantial dedication of the property to charitable uses at some period of time or other. That is a sufficient answer to the arguments used in the High Court (85). (Lord Hobbouse). ABUL FATA MAHOMED ISHAK P. RASAMAYA DHUR CHOWDHRY.

(1894) 22 I. A. 76 = 22 C. 619 (630) = 6 Sar. 572. WORD " WAKE "-USE OF.

CREATION OF -WORD "WAKF"

### Wakf-Deed of.

Appointment of trustees by, without property being vested in them—Registration of deed in case of Necessity

Ownership of property in case of.

A wakfnama, or deed of charitable trust, ran as

I was the lawful owner of the said property. I had power in every way to transfer the same. By virtue of the said

### MAHOMEDAN LAW-(Contd.)

### Wakf-Deed of-(Contd.)

power, I divested myself of the connection of ownership and proprietary possession thereof, and placed it into the proprietary possession of Him who is the real owner, that is God, and changed my temporary possession known as proprietary possession into that of a 'mutwalli' (superintendent). From this day, the said property no longer belongs to me. It belongs to God. I am in possession thereof as a superintendent, that is, as a trustee for those who are according to the objects of the said wakf entitled to be, in any way, benefited thereby. I shall remain to be myself the superintendent thereof during my lifetime or so long as I wish to be so. After that one who shall be appointed by me shall be the superintendent. Such person shall continue to remain the superintendent after my death, until be is duly removed. The said superintendent or I or any other person, acting as a superintendent of the 'wakf' property, shall have all such powers of managing and protecting the said property as are possessed by an owner of property or were possessed by me before the 'wakf' provided that the said persons (superintendents)) shall have no right to claim ownership therein or do anything which may be inconsistent with the objects of the 'wakf', or to sell, mortgage or transfer it in any other way'.

Held, that the wakinama did not require registration under the Registration Act.

The argument that the deed requires registration depends for its validity upon the assumption that the trustees of the wakfnama stood in the same relation to the trust that trustees to whom property had been validly assigned would stand over here (England). Such is not the case. The wakfnama itself does not purport to assign property to trustees (231). If analogies sought between people holding similar interests over here and the trustees who would take charge of the property under the deed in question, the trustees would be more closely allied to receivers and managers appointed over property in this country than to trustees in whom the property is absolutely vested. A receiver and manager by virtue of his appointment has no estate in the property he is called upon to control; he possesses powers over it but not an interest in it, and the appointment of others in his place would by itself effect no transfer of ownership. The same thing is true of the trustees under this deed. They are superintendents of the property. The further use of the term "trustee" is apt to mislead until this distinction is borne in mind. They are trustees in the general sense that every man is a trustee to whom is entrusted the duty of managing and controlling property that belongs to another (232.) (Lord Buckmaster). MUHAMMAD RUSTAM ALI v. MUSHTAQ HUSAIN.

(1920) 47 I. A. 224 = 42 A. 609 (616-8) = (1920) M. W. N. 665 = 18 A. L. J. 1089 = 12 L. W. 539 = 28 M. L. T. 220 = 57 I. C. 329 = 39 M. L. J. 263.

-----Execution of-Capacity (sound disposing state of mind)-Proof of.

The question was whether a deed of wakf executed by H, a Mahomedan of the age of about 67 years, ought to be set aside upon the ground that his mind was so dominated by two nephews, who managed his business, that the

transaction ought not to stand.

The Courts below concurrently found that H, when he executed the deed, was compos mentis, was of a sound disposing mind, and was in no way disqualified by his infimities from understanding what he was doing. H lived for some seven years after the date of the execution of the deed, and, during the rest of his iife, he not only never challenged the deed, but there was evidence that he recognised it, spoke of it as being in existence, and gave

Wakf-Deed of-(Contd.)

effect to it, he himself having been named in it as the mutwall during his lifetime. He did not denude himself of the whole of his property, but reserved a substantial portion for the maintenance of himself and his wife. He was himself childless. The deed was in no respect unconscionable, and was such as a reasonable and piously disposed Mahomedan might have chosen to enter into. The only thing that could be said against it, or that was said against it, in substance was that it conferred certain benefits upon those two nephews, because one was appointed mutawalli after H himself, and the other was appointed supervisor, and provision was made for their emoluments and expenses.

The Court below was of opinion that such provision was not at all unreasonable in amount or in character, and that as a matter of fact the deed was the disposition of H himself, made with an understanding mind, free from domination or coercion or undue influence by others. The Court below also found that he was not coerced or dominated in any way from that time to the day of his death.

Their Lordships, concurring in the findings of the Court below, affirmed its decision in favour of the validity of the gift. (Lord Sumner). MIRZA FIDA RASUL T. MIRZA YAKUB BEG. (1924) 51 C.L.J. 131 = 34 C.W.N. 813 = 31 L.W. 317 = 121 I C. 236 = A.I.R. 1930 P.C. 38 =

31 L.W. 317 = 121 I C. 236 = A.I.R. 1930 P.C. 38 = 87 I.C. 702 = (1925) A.I.R. P.C. 101 = 6 L. R. P.C. 55 = 12 O.L.J. 98 = 27 O.C. 346.

#### Wakf-Gaddinashin of.

——Removal from office of—Grounds. See MAHO-MEDAN LAW—WAKF — MUTWALI— REMOVAL FROM OFFICE OF. (1928) 54 M.L.J. 692.

Wakf-Hindu-Grant to Mahomedan community by.

-Foundation of wakf if can be.

Ouare whether a grant by a Hindu to a Mahomedan community is incompetent as the foundation of a wakf (199). (Lord Shate). MUHAMMAD RAZA P. YADGAR HUSSAIN. (1924) 51 I.A. 192=51 C. 446 (454)=

L.R. 5 P.C. 76 - 7 N.L.J. 116 - 20 L.W. 3 - 28 C.W.N. 937 - 21 N.L.R. 1 - (1924) M.W.N. 447 - A.I.R. (1924) P.C. 109 - 80 I.C. 645 - 34 M.L.T. 83.

Wakf-Invalidity of-Rights based on-Relinquishment of, by contract for valuable consideration.

In 1846 and 1868 wakfs were created by the members of a Mahomedan family for the benefit first of the grantors themselves, " and then our descendants and children, generation after generation, then our relatives, and then the poor and destitute." In 1880 proceedings were taken by a number of people interested in the allowances made by virtue of the wakfs claiming that the wakfs were bad, Those proceedings were compromised by an agreement, dated 26-8-1881, which declared that the wakfs in question were valid and binding deeds, and that, save as provided by them the parties thereto had no claim to or interest in any of the properties in the possession of the Mutwalis under the wakfs. As a consideration for that arrangement on their part, an agreement was made providing for the payment by the mutwalis to each individual of a certain fixed allowance out of the income of the wakf property, thus substituting rights under a definite bargain for discretionary rights under the wakfs,

In a suit subsequently brought by persons, who claimed through the original grantors, for possession of the wakf properties on the ground that the wakfs were void and that the properties reverted back to the grantors, through whom they claimed, held, following L.R. 49 1.A. 153, that the

### MAHOMEDAN LAW-(Contd.)

Wakf—Invalidity of—Rights based on—Relinquishment of, by Contract for valuable consideration —(Confd.)

agreements of 1861 was a bar to the enforcement of any such right.

The agreements of 1861 were contracts for valuable consideration. Those contracts were contracts that the parties through whom the plaintiffs in these proceedings claim, relinquished all rights that would arise to them if the wakfs were declared for any reason to be invalid, and in the place of such rights they obtained the benefit of an annuity fixed in a certain manner and secured by an agreement. The foundation of the judgment of this Board in 49 LA, does not in the least depend upon the consideration of whether the plaintiff who took those proceedings had rights as claiming through one of the original grantors of the wakf, or whether he was a person, as in fact he was who, though outside the class of original grantors, was none the less entitled to the benefit of the moneys which the wakf provided.

Held further that the plaintiffs were entitled to the beneat of a charge in respect of the annuity provided by the agreement of 1861, though they had not prayed for it

in their plaint.

The right to the charge is a lesser right and the plaintiffs ought not to be excluded therefrom merely because they have asked for the larger right. (Lord Buckmaster).

NAWAB KHAJAH HABIBULLAH SAHEB P. RAJA JANAKI NATH ROY. (1989) 51 C L J. 131 = 34 C. W. N. 313 =

31 L. W. 317 = 121 I. C. 236 – A.I R 1930 P.C. 38 = 58 M.L.J. 252.

### Wakf-Mutwali.

HEIR OF-SUCCESSION TO OFFICE

- Precision in soakfnama for Direct heir disqualified-Next heir if entitled.

By a wakfnama a Mahomedan governed by the Shiah Law dedicated a part of his property to various religious purposes, including a mosque and a khankah and appointed *M* to be the mutualli or executor thereof. He also appointed his owa son A as a naib or deputy mutualli. The rule provided by the deed for the succession to the office of mutualli was in these terms:—

"In the event of slackness, negligence or discovery of misappropriation on the part of the mutwalli. I or my heirs shall be at liberty to dispense with the services of the said mutwalli and in case of death or dismissal of any mutwalli, if any heir belonging to the Imamia sect and competent enough to administer the wakf property be not left to the mutwalli, the naib mutwalli shall succeed him as mutwalli, and a naib mutwalli shall be appointed from among his (naib mutwalli's) heirs. In the event of no heir of the mutawalli and the naib mutawalli being found fit to manage the noulf property, selection shall be made of a competent person from among the heirs of me, the executant."

M, the mutawalli, died, and on his death his widow succeeded to the tauliat or governance of the taulif that had been entrusted to him under the tauk/nama. She died, survived by a daughter and a grand-daughter, the appellant. The daughter was found to be non compensation: The grand-daughter thereupon claimed the office of mutawalli. The plaintiff, a son of the executant of the tauk/nama, disputed her title, alleging that as the daughter of M, the direct heir to his widow, was insane and incompetent to be the mutawalli, the tauliat had passed to the line of the dedicator, and he instituted a suit to oust the appellant from the governance of the taukf.

Held, reversing the High Court, that, on the true construction of the wakinama, so long as the deceased mutawalli left a relation competent to inherit to him and otherwise

Wakf-Mutwali-(Contd.)

HEIR OF-SUCCESSION TO OFFICE-(Contd.)

qualified to administer the wake, the office of mutawalli could not revert to the dedicator's beirs and that, as the appellant was competent to carry on the administration. she was entitled to succeed to the office, and not the plaintiff.

Under the Mahomedan Law, if a daughter, who would be entitled to inherit, is excluded by disqualification. her daughter, if qualified, would inherit. And under the wakf nama it is only in the event of no heir of the mutawalli and the nails metawalli being found fit to manage the sould property, that selection is to be made of a competent person from among the heirs to the asserf. (Mr. Amorr Mi.) BiBi AKHTARI BEGUM : DILJIAN ALI. (1922) 18 L.W. 193 =

(1923) M. W. N. 793 = 32 M. L. T. (P. C.) 81 = L. R. 4 P. C. 90 - (1923) P. C. 11 - 71 I. C. 621 = 45 M. L. J. 359 (362-3).

POSITION AND RIGHTS OF.

-So MARIOMEDAN LAW-WAKE-PROPERTY OF-(1921) 48 I. A. 302 (315)-OWNERSHIP OF. 44 M. 831 (843).

PROPERTY OF WAKE. -See UNDER WAKE-PROPERTY OF.

REMOVAL FROM OFFICE OF-GROUNDS.

Assertion of hostile title to property of wakf-Mismanagement of trust-Minappropriation of truit funds.

The law of India insists upon honest administration and management of a wakf or religious institution and upon conformity to, and not defiance of, the trusts for which such an institution is established, and a breach of those obligations is a ground for removal from office.

The setting up by a trustee of title to various portions, if not to the whole, of the trust property as his own personal estate may not of itself be a sufficient ground for removal of the trustee from office in a case in which there has been a mistaken impression as to right but no mismanagement of the trust. Such a case would be a unique case requiring

very special proof.

Where the trustee had not merely set up his own title to the trust property, but had alienated various portions thereof, asserting in the sale deeds granted by him that the property was his own, and had besides neglected every one of the duties imposed on him as trustee and misappropriated the income of the trust property, held that the High Court was justified in having removed him from his office. (Lord Shaw.) MUSSAMMAT HUSSAIN BIBI P. SAYAD NUR HUS-SAIN SHAH. (1928) 47 C L.J. 542 - 30 Bom. L. B. 849 = 26 A. L. J. 471 - 32 C. W. N. 769 =

29 Punj. L. R. 392 - 28 L. W. 30 = 109 I. C. 52 = A. I. R. 1928 P C. 106 - 54 M. L. J. 692. SETTLOR HIMSELF.

-Allowance fixed for mutawalli-Appropriation of-Permissibility.

The wakf or settlor can lawfully take the allowance fixed for the mutawalli generally when he himself holds the office (39.) (Sir John Wallis.) ABADI BEGUM v. KANIZ (1926) 54 I. A. 33 = 6 Pat. 359 = ZANIAB.

45 C. L. J. 408 = 25 L. W. 710 = 25 A. L. J. 51 = (1027) M. W. N. 12 = 4 O. W. N. 153 = 38 M. L. T. (P. C.) 33 = 8 Pat. L. T. 107 =

99 I. C. 669 (2) = 31 C.W. N. 365 = 29 Bom L. R. 763 = A. I. R. (1927) P. C. 52=52 M. L. J. 430.

Delivery of possession in case of-Necessity of, for validity of wakf-Mode of such delivery. See MAHOMEDAN LAW-WAKE-DEDICATION OF PROPERTY TO-DELI-VERY OF POSSESSION.

Life interest in bulk of income of wakt property-Reservation for himself of, while fixing modest salary for necessors - Effect of -Validity of wakf in case of.

MAHOMEDAN LAW-(Contd.)

Wakf-Mutwali-(Contd.)

SETTLOR HIMSELF-(Contd.)

Semble .- A wakf in which the wakif reserves the bulk of the income for herself as mutawalli during her own lifetime whilst fixing a modest salary for the mutawallis who succeed her is wholly void and cannot be held valid even to the extent of the unreserved income.

It is an entire departure from the principle that it is a condition of the validity of the wakf that the wakif should not reserve any interest in the endowed property for himself to hold that where the wakif reserves a portion of the income for himself the wakf only fails as to property sufficient to produce the reserved income and is good as to the

The rule that the settlor when mutawalli can take the salary fixed for mutawallis generaly is really no exception, for in that case he takes in his capacity as mutawalli and not in his capacity as settlor. (Sir John Wallis.) ABADI BEGUM : . KANIZ ZAINAB. (1926) 54 I. A. 33 (40·1)=

6 Pat. 359-45 C. L. J. 408 = 25 L. W. 710= 25 A. L. J. 51 = (1927) M. W. N. 12 = 4 O. W. N. 153 = 38 M. L. T. (P. C.) 33 = 8 Pat. L. T. 107= 99 I. C. 669 (2) = 31 C. W. N. 365 = 29 Bom. L. B. 763= A. I. R. 1927 P. C. 52 = 52 M.L. J. 430.

-Life interest in portion of income or usufruct of wakf property-Reservation of under colour of mutualit allowance-Permissibility-Portion reserved for in excess

of allowance fixed for succeeding mutwalis.

Where, under colour of fixing her salary as first mutawalli of a wakf, the settlor really reserved for her lifetime a portion of the income or usufruct of the property far in excess of what was assigned in the deed creating the wakf to future mutawallis or could reasonably have been assigned to them, held, that there was a clear violation of the condition imposed by the Shia law that the wakif should not retain any benefit for himself, and that the fact that there was enough left for the performance of the charities was immaterial (39). (Sir John Wallis.) ABADI BEGUM v. KANIZ (1926) 54 I. A. 33=6 Pat. 359= ZAINAB.

45 C. L. J. 408 = 25 L. W. 710 = 25 A. L. J. 51 = (1927) M. W. N. 12=40. W. N. 153= 38 M. L.T. (P. C.) 33 = 8 Pat. L. T.107 = 99 I. C. 669 (2) = 31 C. W. N. 365 = 29 Bom. L. R. 763 = A. I. R. 1927 P. C. 52 = 52 M. L. J. 430.

-- Ownership of wakf property in case of. See MAHO-MEDAN LAW-WAKE-PROPERTY OF-OWNERSHIP OF. (1922) 50 I. A. 84 (90-1) = 50 C. 329 (336).

Wakf-Personal grant subject to condition of main taining Imambara or.

-Test- Deed-Construction of.

In the year 1840 a Hindu ruler executed a document

which ran as follows :-The village of Mauza G in this pargana is given 25 mekasa to Y " (the royal physician) " for the imambara of Pir Hussain, with all income of land revenue, Pandhari extra income, kalah and mango groves, for ever from the commencement of the current year. It is assessed to a rental of

Rs. 401-12-0. You may therefore continue the mokasa from year to year and generation to generation Don't expect a

fresh sanad every year."

Y continued in possession of the temple until 1850, when he died. The mohasa village was then resumed. In 1852 a grant was continued in the name of his son B. The evidence showed that B's own position was not that of an exclusive claim to the mutawalliship of that property and endowment as a wakf, but an allegation of joint ownership and possession with his brother, subject to respecting the conditions of the grant.

Wakf-Personal grant subject to condition of maintaining Imambara or-(Contd.)

Held, that the grant was not a wakf, but was a personal grant to Y sub-conditions.

That condition was two-fold; (1) the expenses of the temple should be defrayed from the revenue; (2) a report should be submitted to the Government for sanction. (Lord Shaw.) MUHAMMAD RAZA v. VADGAR HUSSAIN.

(1924) 51 I. A. 192 (197-8) = 51 C. 446 (452) = L. R. 5 P. C. 76 = 7 N. L. J. 116 = 20 L. W. 3 = 28 C. W. N. 937 = 21 N.L.R. 1 = (1924) M. W. N. 447 = 34 M. L. T. 83 = 80 I. C. 645 = A. I. R. 1924 P. C. 109.

### Wakf-Property of.

ALIENATION OF, BY MUTWALL OR SAJJADANASHIN.

-Validity.

An alienation, conditional or absolute, of property constituted walf or appropriated by the Mutwali or Sajjadanashin of the religious institution is illegal (422), (Mr. Justice Botanquet.) JEWUN DOSS SAHOO :: SHAH KUBFER-OOD-DEEN. (1841) 2 M. I. A. 390 = 6 W. R. 3 – 1 Suth 100 – 1 Sar. 206.

ALIENATION, OTHERWISE UNLAWFUL, BY MUTWALL OF -KAZI'S LEAVE FOR.

- Application for leave or other like fact-Evidence of Absence of Presumption of leave in case of Pre-printy - Evidence Act, S. 114-Effect.

The provisions of S. 114 of the Evidence Act do not prevent the inference of a consent by the Kazi to an alienation of wakf property by a mutwalli in the absence of any evidence of an application to the kazi for leave, or some other proved fact of that kind. The master is one of a presumption, based on the policy of the law, but even considered as an inference from proved facts, the leave presumed is a thing which may well be regarded as likely to have happened. (Viscount Summer.) Syed Mahammad Mazaffar-Al-Musavi v. Bibl Jabeda Khatun and Others. (1930) 34 C. W. N. 462 = 1930 A. L. J. 377 = 32 Bom. L.R. 633 = 51 C.L.J. 345 = A. I. R. 1930 P. C. 103 = 58 M. L. J. 641.

--- Effect of on validity of alienation-Basis of rule

Under the Mahomedan law an alienation of wakf property by way of a permanent tenure at a fixed rent, otherwise unlawful, is, with the leave of the kazi, permissible to a

mutwali.

Even if the leave of a kazi is now a rarity and perhaps obsolescent, still, in more ancient times and in different

obsolescent, still, in more ancient times and in different social circumstances, resort to it may well have been common; otherwise, indeed, how came the rule to be recorded as existing and long established in learned and formal treatises? What is now, as is only too well known, commonly achieved only by usurpations and breaches of trust on the part of delinquent mutwallis, may in earlier and purer times have been regularly done in conformity with the prescriptions of the law. (Viccount Summer.) SYED MAHOMED MA ZAFFAR AL-MUSAVI v. BIBI JABEDA KHATUN AND OTHERS.

(1930) 34 C. W. N. 462=1930 A. L. J. 377=

930) 34 C. W. N. 462 = 1930 A. L. J. 377 = 32 Bom. L R. 633 = 51 C. L. J. 345 = A. I. R. 1930 P. C. 103 = 58 M. L. J. 641

-Period between 1772 and 1843-Grant of leave during-Presumption of-Propriety.

Quaere whether, in regard to a period beginning not later than 1772, and ending not later than 1843, it would be improper to make the presumption of an unrecorded grant of leave, by the kazi at some unknown time within those limits for an alienation, otherwise unlawful, of wakf property by a mutwalli. (Viscount Sumner.) SYED MAHOMED MA-

### MAHOMEDAN LAW-(Contd.)

Wakf-Property of-(Contd.)

ALIENATION, OTHERWISE UNLAWFUL, BY MUTWALI OF—KAZIS LEAVE FOR—(Contd.)

ZAFFAR-AL-MUSAVI T. BIBI JABEDA KHATUN AND OTHERS. (1930) 34 C. W. N. 462 - 1930 A. L. J. 377 = 32 Bom. L. R. 633 - 51 C. L. J. 345 = A. I. R. 1930 P. C. 103 - 58 M. L. J. 641.

——Permanent tenure at fixed rent—Grant by mutwali of—Lawful origin for—Presumption in hazi's lowe for— Propriety of.

In a suit by the mutwali of a wakf to recover from the defendants certain lands constituting the property of the wakf, the defendants' answer was that the lands were an ancient istimuari tenure, held for a long though indefinite time at a fixed rent and as heritable property, of the plaintiff's predecessors. In substance, the facts necessary to support that defence were proved, though the actual date and circumstances of the origin of the tenure were not. The tenure had been sold in Court auctions for arrears of rent, and had been described as an istimisari mekarrari tenure in 1859 and in 1902; rent receipts were produced for a long series of years, in which the tenure was also thus described; and it was proved that, in 1869, the mutualli of the day had sued unsuccessfully for enhancement of rent. The defendants contended that, by way of completing their title to a tenure actually enjoyed over so long a period of years, there ought to be presumed some lawful origin, and the existence of such facts, though unrecorded and forgotten, as would establish a lawful origin, and they urged that the Mahomedan law afforded such an origin in the exception to the rule that with the leave of the kazi an alienation by way of permanent tenure at fixed rent, otherwise unlawful, was permissible to a mutwalli.

Held, affirming the High Court, that the presumption of a lost and unrecorded permission of the kazi for the creation of the tenure of swiff lands, under which the defendants claimed to hold, was in itself reasonable and proper as the natural form, which a legal origin would take, and that that presumption completed the defendants' answer to the plaintiff's claim to possession.

The decision in L. R. 49 I. A. 54 applies in the present case, notwithstanding that it was a Hindu mntt with which that case was concerned. In principle the cases are in them selves analogous. In the language of the judgment there is nothing to suggest that the subject then under discussion was regarded as being in any sense peculiar or special. As a matter of public right it would be very undestrable to introduce purposeless distinctions between the law applicable in the case of one community and that applicable to another. (Vincount Summer.) SYED MAHOMMAD MA ZAFFAR ALMUSAVI v. BIBI JABEDA KHATUN AND OTHERS.

(1930) 34 C. W. N. 462 = 1930 A. L. J. 377 = 32 Bom. L. B. 633 = 51 C. L. J. 345 = A. I. B. 1930 P. C. 103 = 58 M. L. J. 641.

-Practice of granting-Obsoletc or not

Quacre whether the leave of a kazi for an alienation, otherwise unlawful, of wakf property by a mutwalli is now a rarity and obsolescent. (Viscount Sumner.) SYED MAHAMMAD MAZAFFAR-AL-MUSAVI 2. BIBI JABEDA KHATUN AND OTHERS. (1930) 34 C. W. N. 462 = 1930 A. L. J. 377 = 32 Bom. L.R. 633 = 51 C.L.J. 345 = A. I. B. 1930 P. C. 103 = 58 M. L. J. 641.

MORTGAGE INVALID BY MUTWALI OF.

- Enforceability against wash of Settlor's heirs themselves mutwalis with beneficial interests.

A deed creating a wakf contained two separate and severable dispositions—that for the upkeep of the mosque and celebration of worship there on the one hand, and that for

Wakf-Property of-(Contd.)

MORTGAGE INVALLO BY MUTAWALL OF-(Contd.)

the benefit of the settlor's family on the other. It also provided for the settlor and his heirs being mutawallis in their order. The then mutawalli of the mosque granted a mortgage of wakf property for purposes foreign to the necessary purposes of the wakf. In a suit by a succeeding mutawalli for a declaration of the invalidity of the mortgage and for recovery of possession of the property from the mortgagee, held that the mortgage was wholly invalid, and that no part of the wakf property was liable to be charged with the amount of the mortgage.

The mortgage cannot, for purposes of enforcement, be severed into two distinct charges, one declared for pious uses on one part of the property, and another and separate charge declared on another part for the uses of the mortgagor only. The property itself is not to be regarded as severable and chargeable according to the measure of the interest, which the settlor's family may have in the rents and profits of the whole. In such a case the only claim of the mortgagee, if any, is in the nature of a claim in persona, (Lord Sumner.) ABDUR RAHIM v. NARAIN DAS AURORA.

(Lord Sumner.) ABDUR RAHIM v. NARAIN DAS AURORA. (1922) 50 I. A. 84 (89, 90 1) = 50 C. 329 (336-7) = 32 M. L. T. 153 = 17 L. W. 509 = 25 Bom. L. R. 670 = 38 C. L. J. 242 = (1923) M. W. N. 441 = 28 C. W. N. 121 = A. I. R. 1923 P. C. 44 = 71 I. C. 646 = 44 M. L. J. 624.

#### OWNERSHIP OF.

Mutwali or Sajjadanashin-Position and rights of. The manager of a wakf is the muttawalli, the governor, superintendent, or curator, or " procurator ". In the Mahomedan system no property is "conveyed " to a muttawalli in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution he holds as manager with certain beneficial interests regulated by custom and usage. Under the Mahomedan law, the moment a wakf is created all rights of property pass out of the wakif, and vest in God Almighty. The curator, whether called muttawali or Sajjadanashin, or by any other name, is merely a manager. He is certainly not a "trustee" as understood in the English system (312, 315). (Mr. Ameer Ali.) VIDVA VARUTHI THIRTHA P. (1921) 48 I. A. 302= BALUSAMI AIYAR.

44 M. 831 (840·1, 843) = (1921) M. W. N. 449 = (1922) P. C. 123 = 15 L W. 78 = 30 M. L. T. 66 = 26 C. W. N. 537 = (1922) P. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 L. C. 161 = 41 M.L.J. 346.

- Settlor declaring himself to be first mutwali - Effect

The property, in respect of which a wakf is created by the settlor, is not merely charged with such several trusts as he may declare, while remaining his property and in his hands. It is in very deed "God's acre", and this is the basis of the settled rule that such property as is held in wakf is inalienable, except for the purposes of the wakf. A similar view forms the basis of the inalienability of a Hindu math, and, if the settlor declares himself, as he is entitled to do, to be the first mutawalli or the first shebait that does not affect the fundamental principle, that the whole property is considered as having passed from him for the purposes which he has declared, and not merely such portion of it as will suffice to produce the part of the income which he has expressly dedicated to pious and charitable uses. (Lard Sumner.) ABDUR RAHIM P. NARAIN DAS AURORA.

(1922) 50 I. A. 84 (90·1) = 50 C. 329 (336) = 32 M.L.T. 153 = 17 L. W. 509 = 25 Bom. L. R. 670 = 38 C. L. J. 242 = (1923) M. W. N. 441 = 28 C. W. N. 121 = A. I. R. 1923 P. C. 44 = 71 I. C. 646 = 44 M. L. J. 624.

### MAHOMEDAN LAW-(Contd.)

Wakf-Property of-(Contd.)

PERMANENT TENURE AT FIXED RENT OF-LEGAL ORIGIN OF, IN KAZI'S LEAVE.

Presumption of Permissibility. See MAHOMEDAN LAW-WAKF-PROPERTY OF ALIENATION, OTHERWISE UNLAWFUL, BY MUTWALL OF KAZI'S LEAVE FOR PRESUMPTION OF PERMANENT TENURE, ETC.

(1930) 34 C.W.N. 462

#### PRIVATE PROPERTY OF GRANTEE AND HIS HEIRS OR.

- Grant-Construction.

The question was whether villages granted by two royal firmans, the first by Mahomed Farokir on 14-3-1717, the second by Shah Alam on 13-10-1762 were properties dedicated to a wakf or the individual properties of the grantee and his heirs.

Held, on the terms of the grants, that the villages granted were wakf or appropriated (420-1). (Mr. Justice Bosanquet.) JEWUN DOSS SAHOO v. SHAH KUBEER-OOD-DEEN. (1841) 2 M. I. A. 390 = 6 W. B. (P.C.) 3 = 1 Suth. 100 = 1 Sar. 206.

### Wakf-Revocation of perfected.

-Peace of.

If a wakf is perfected by transfer of possession, the donor has no power to revoke it afterwards (29). (Sir John Wallis.) MA MI P. KALLANDER AMMAL.

(1926) 54 I. A. 23 = 5 Rang. 7 = 25 A. L. J. 69 = (1927) M. W. N. 76 = 38 M. L. T. (P. C.) 53 = 4 O. W. N. 300 = 25 L.W. 679 = 6 Bur. L. J. 59 = 29 Bom. L. B. 772 = 100 I. C. 32 = A. I. B. 1927 P. C. 22 = 52 M. L. J. 362.

### Wakf-Sajjadanashin.

——Position and rights of. See MAHOMEDAN LAW— WAKE—PROPERTY OF—OWNERSHIP OF.

(1921) 48 I. A. 302 (315) = 44 M. 831 (843).

—Property of wakf—Alienation of—Validity. Sw.
MAHOMEDAN LAW—WAKF—PROPERTY OF—ALIENATION, ETC. (1841) 2 M. I. A. 390 (422).

—Property of wakf—Ownership of. Sw. MAHOME-

DAN LAW-WAKF-PROPERTY OF-OWNERSHIP OF. (1921) 48 I. A. 302 (315)=44 M. 831 (843).

#### Wakf-Validity of.

- (See also WAKF-DEDICATION OF PROPERTY TO -VALIDITY OF.

— VALIDITY OF.

— Cash—Wakf of. See MAHOMEDAN LAW—WAKF
—CASH. (1924) 87 I. O. 702

—CASH. (1924) 87 I. O. 702.

—Delivery of possession—Necessity. See MAHOMEDAN LAW—WAKE—DEDICATION OF PROPERTY TO—DELIVERY OF POSSESSION.

——Hindu—Grant by. See MAHOMEDAN LAW— WAKF—HINDU. (1924) 51 I. A. 192 (199) = 51 C. 446 (454).

- Illusory gift to charitable uses-Effect. See MAHO-MEDAN LAW-WAKF-DEDICATION OF PROPERTY TO -ILLUSORY GIFT OR.

Law governing questions of Mahamedan law-

In I. L. R. 20 C. 116 some doubts are expressed whether cases of this kind (in which the question is as to the validity of a settlement by way of wakf) are governed by Mahomedan law; and it is suggested that the decision in L. R. 17 I. A. 28 displaced the Mahomedan law in favour of English law. Clearly the Mahomedan law ought to govern a purely Mahomedan disposition of property (87). (Lord Hobbouse.) ABUL FATA MAHOMED ISHAK v. RUSSOMOY DHUR CHOWDHRY. (1894) 22 I. A. 76=22 C. 619 (632)=6 Sat. 578.

### Wakf-Validity of-(Contd.)

Poor-Ultimate gift to-Validity. See MAHOME-DAN LAW- WAKE-DEDICATION OF PROPERTY TO-POOR.

-Settlor mutwali-Life interest in bulk of income of property gifted-Reservation of, under colour of allowance for mutwali-Effect. See MAHOMEDAN LAW-WAKE-MUTWALI-SETTLOR HIMSELF-LIFE INTEREST IN BULK OF, ETC. (1926) 54 I. A. 33 (40-1)= 6 Pat. 359.

-Settlor's family-Gift substantial to-Effect. See MAHOMEDAN LAW-WAKE-DEDICATION OF PERTY TO-Bona fide DEDICATION TO CHARITABLE USES.

——Settlor's family—Provision for—Effect of. See MAHOMEDAN LAW—WAKF — DEDICATION OF PRO-PERTY TO-SETTLOR'S FAMILY.

-Will-Creation by. See MAHOMEDAN LAW-WAKE-WILL.

-Word " wakf "-Use of-Necessity. See MAHO MEDAN LAW-WAKE-CREATION OF.

#### Wakf-Will-Creation by.

Construction of will.

Held, on the construction of a document the terms of which are set out on pp. 107-9 of the report of the case in L. R. 30 I. A. 94, that it was a will, and that its expressed intention was to convey the property with which it dealt, on the death of the testatrix, to the mutawallis, the appellants, as wakf for the purposes specified (109). (Sir Arthur Wilson.) BAKER ALI KHAN D ANJUMAN ARA BEGAM. (1903) 30 I. A. 94 = 25 A. 236 (252) = 7 C. W. N. 465 = 5 Bom. L. R. 410 = 8 Sar. 397.

Validity of-Shia law.

Under the Shia as under the Sunni law a wakf can be created by will (113). (Sir Arthur Wilson.) BAKER ALI KHAN v. ANJUMAN ARA BEGAN. (1903) 30 I. A. 94 = 25 A. 236 (255) = 7 C. W. N. 465 = 5 Bom. L. R. 410-3 Sar. 397.

-Validity of-Shia law-Validity under-Gift-

Validity of-Analogy of law of-Applicability.

Where the question was whether under the Shia law a wakf could be validly created by will, their Lordships observed that an important guide for determining the validity of the testamentary creation of a wakf was to be found in the closely analogous case of a gift (112).

It is safer to follow the analogy of a gift than to draw the logical conclusions which may seem to an accute modern dialectician to follow from the words of the old texts (112). (Sir Arthur Wilson.) BAKER ALI KHAN P. ANJUMAN ARA BEGAM. (1903) 30 I. A. 94 = 25 A. 236 (255) = ARA BEGAM. 7 C. W. N. 465=5 Bom. L. R. 410=8 Sar. 397.

### Widow.

Childless widow-Land forming site of buildings-

Share in-Right to-Shia law.

A childless widow is not entitled by Shiah law to share in land forming the site of buildings (204-5). (Lard Davey.) AGA MAHOMED JAFFER BINDANEEM D. KOOL-(1897) 24 I. A. 196= SOM BEE BEE. 25 C. 9 (19)=1 C. W. N. 449=7 M. L. J. 115=

-House occupied by, during husband's lifetime-Residence in, after his death-Occupation rent in respect of-Liability for, to executor under his will-Conditions.

When one occupies the house of another with his permission there is prima facie an implied contract to pay an

### MAHOMEDAN LAW-(Contd.)

Widow-(Contd.)

occupation rent. But this implication may be rebutted by showing the circumstances under which possession was taken, c. g., that the house was lent to the occupier or that he was a care-taker.

Where an executor under a will of a Mahomedan charged the latter's widow with an occupation rent for the period during which she continued to occupy the testator's house after his death and she objected to the charge on the ground that she had never contracted to pay a rent and that no notice had been given to her that she would be charged a rent, held, that the occupation being referable to the previous occupation by the deceased and the widow and that she having, as one of the heirs and one of the residuary legatees, an interest in the house, she must be treated as having occupied the house as care-taker and a contract on her part to pay a rent could not be implied (204). (Lord Davy.) AGA MAHOMED JAFFER BINDANEEM P. KOOL-SOM BEE BEE. (1897) 24 L. A. 196 = 25 C. 9 (18-9)=

1 C. W. N. 449=7 Sar. 199=7 M. L. J. 115. -Inheritance. See MAHOMEDAN LAW-INHERU-TANCE-WIDOW.

- Maintenance-Right to, in addition to inheritance or legacy under husband's will.

A Mahomedan widow is not entitled to maintenance out of her husband's estate in addition to what she is entitled to by inheritance or under his will (203-4). (Lord Davey.) AGA MAHOMED JAFFER BINDANEEM P. KOOLSOM BEE-(1897) 24 I.A. 196-25 C. 9 (18)-

1 C. W. N. 449 - 7 Sar. 199 - 7 M.L.J. 115.

-Will of husband-Construction and effect of-Dispute between husband's brother and widow as to-Award settling, and dividing properties between them-Estate taken by widow under. See ARBITRATION-AWARD-(1928) 3 Luck. 372=56 M.L.J. 601. MAHOMEDAN.

-Sw MAHOMEDAN LAW-HUSBAND AND WIFE AND MAHOMEDAN LAW-INHERITANCE-WIFE.

DISPOSITION BY -POWER OF-EXTENT OF. DISPOSITION IN EXCESS OF ONE-THIRD OF TESTA-TOR'S PROPERTY-CONSENT OF HEIRS TO.

DISTRIBUTION AMONG HEIRS BY-POLICY OF LAW. EXECUTION OF-POISON FROM EFFECT OF WHICH TESTATOR DIED-EXECUTION AFTER TAKING.

XECUTOR UNDER-POSITION AND RIGHTS OF. HEIR-LEGACY TO-CONSENT OF OTHER HEIRS TO.

INSTRUMENT AMOUNTING TO A.

MANAGEMENT - RIGHT OF - WILL GIVING-"AL-WAYS AND FOR EVER."

NUNCUPATIVE WILL.

PORTION OF ESTATE-LEGACY OF-EXTENT OF. PROBATE OF-GRANT OF.

PROPERTY DISPOSED OF BY WILL-EXTENT OF-INTENTION OF TESTATOR-ORAL EVIDENCE OF. SETTLEMENT OR.

WIFE-EXCLUSION FROM INHERITANCE OF. WORDS IN.

DISPOSITION BY-POWER OF-EXTENT OF.

One-third of estate.

A Mahomedan testator has not an unlimited power of disposition by will; he can only deal with one-third of his property; the remaining two-thirds pass to his heirs whatever the terms of the will may be (257). (Sir Arthur Wilson.) MIRZA KURRATULAIN BAHADUR v. PEARA (1905) 32 I.A. 244=33 C. 116 (128)= SAHEB. 1 C.L.J. 594 - 9 C.W.N. 938 = 2 A.L.J 758 =

7 Bom. L. B. 876=8 Sar. 839=15 M.L.J. 336.

Will-(Contd.)

DISPOSITION IN EXCESS OF ONE-THIRD OF TESTATOR'S PROPERTY-CONSENT OF HEIRS TO.

A Mahomedan cannot of himself, by a testamentary writing, either curtail or defeat the legal interests of his heirs; and a Mahomedan will is therefore inoperative with regard to two thirds of the testator's succession unless it is validated by the consent of the heirs having interest (178). (Lord B'atson). ABOUL GAFUR ". NIZAMUDIN.

(1892 19 I A. 170 - 17 B. 1 (45) = 6 Sar. 238.

Time for giring.

By the Mahomodan law, the power of a testator to leave his property by will is limited to a one-third share. But a testamentary disposition in excess of one-third of the property of the testator is validated by the consent of the heirs given after the death of the testator. In such a case the will will have effect in its entirety. (Lord Shew.) HAKIM MOULVI MUHAMMAD MAHBUB ALI KHAN 2. BHARAT (1918) 23 C.W.N. 321 (324-5)= INDU. 53 I. C. 54 - (1919) M.W.N. 507.

DISTRIBUTION AMONG HEIPS BY-POLICY OF LAW.

-Unequal distribution-Validity.

The policy of the Mahomedan law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specified portion, as much as a third, to a stranger (307), (Sir Robert P. Collier). RANEE KHUJOOROONISSA :: MUSSSAMUT ROUSHUN JEHAN.

(1876) 3 I.A. 291 = 2 C. 184 (196) = 26 W.R. 36=3 Sar. 629.

EXECUTION OF - POISON FROM EFFECT OF WHICH TESTATOR DIED-EXECUTION AFTER TAKING.

Plea of - Owns of proof of.

It appears reasonable to hold that the onus of proving that a will was executed by the testator after he had taken poison, from the effect of which he died, should rest on the party impugning the will (223), (Lord Morris,) SAVED MAZHAR HUSAIN P. BODHA BIBI.

(1898) 25 I.A. 219 = 21 A 91 (98) = 7 Sar. 304.

EXECUTOR UNDER-POSITION AND RIGHTS OF.

-Probate of will-Grant of, under Probate and Administration Act-Effect. See EXECUTOR-MAHOMEDAN WILL-EXECUTOR UNDER -POSITION AND RIGHTS OF. (1905) 32 I.A. 244 (256-7) = 33 C 116 (128-9).

HEIR-LEGACY TO-CONSENT OF OTHER HEIRS TO.

-Implied consent-Proof of.

The question was whether the eldest daughter of a deceased Mahomedan consented to a legacy being left by him to his son, who was another of his heirs. There was no proof of an explicit consent, but it was urged that consent ought to be implied from a certain transaction with

regard to a loan and the interest upon it.

The lady's (eldest daughter's) husband being in need of money, the lady applied to her brother for the amount required. He offered to borrow it, but said that his sister should be surety for the loan. She was prepared to do that but demurred to paying interest. They borrowed money from a third party on a joint promissory note given by them in his favour, and the lady took from her brother a letter promising her that she should not have to pay the interest. The son alleged that he agreed to relieve her from paying the interest because she said to him that he was taking great advantages under their father's will-more than the Mahomedan law allowed, and therefore the least he could do was to pay that interest. As a matter of fact, however, the son debited the lady, as part of her share, with the interest on that loan.

MAHOMEDAN LAW -- (Centd.)

Will-(Contd.)

HEIR-LEGACY TO-CONSENT OF OTHER HEIRS TO -(Contd.)

Held, that by reason of the last-mentioned circumstance it became of less importance to consider that transaction, and that, even apart from that, the transaction was far from sufficient by itself to support an implied consent. (Lord Phillimerc.) SALAVJEE 2. FATIMA BI BI. (1922) 1 R. 60 = 18 L. W. 44 = 28 C.W.N. 31=

2 Bur.L.J. 1 = 32 M.L.T. (P.C.) 96 = 25 Bom. L. R. 301 = LR. 4 P. C. 38 = 37 C.L.J. 302 = (1923) M. W. N. 522= 71 I.C. 753 = (1922) P.C. 391 = 44 M.L.J. 332 (336)

-Necessity-Agreement of single heir binding hit own share-Sufficiency of-Onus of proof of.

The Mahomedan law does not allow a testator to leave a legacy to any of his heirs unless the other heirs agree, but any single heir may so agree as to bind his own share. The burden of proving such consent would be on the party set ting up the consent. (Lord Phillimore). SALAYJEET. (1922) 1 R. 60 = 18 L. W. 44 = FATIMA BI BI.

28 C.W.N. 31 - 2 Bur. L.J. 1 - 32 M.L.T. (P.C.) 96 = 25 Bom. L. R. 301 = L. R. 4 P.C. 38 = 37 C.L.J. 302 = (1923) M.W.N. 522-71 I.C. 753-

(1922) P.C. 391 = 44 M.L.J. 332 (334).

-Necessity-Religious bequest-Bequest to son under color of.

The effect of the will of a Mahomedan was, in the first place, to declare E. his eldest son, his executor and representative, and to direct him to look after the Zemindary, and so forth. Then followed this passage: "I divide the remaining two-thirds now under my possession, uninterfered and unconcerned by any one else, into three portions. One portion to be laid out as the executor may think proper for the testator's welfare hereafter, by charity and pilgrimage, and keep up the family usage, namely, the expenses of the mosque and tazeeadaree of the sacred martyrs, and for the comfort of the travellers, the surplus amount to be appropriated by himself the executor." Then the will went on so say, from the other two-thirds "he shall keep every one by his good conduct and affection contended and satisfie I. It is also necessary for all persons having rights, heirs, an I friends connected with me to obey the said exe-cutor and consider him may representative." Then further "None of the heirs have power to sell or divide the landed property mentioned in the will."

It was contended that the will did not require confirmation, and that at all events so much of it as gave one-third to E for pious uses was not in contravention of Mahomedan law, and was therefore valid without confirmation.

Held, that the will, in its general scope, was in contravention of Mahomedan law, and, with respect to the limited contention, that it might be supported with respect to the devise of the one-third share, that that devise, considering the vague character of it, and that the beneficial interest was left to E after he had devoted what he might deem sufficient to certain indefinite pious uses, was in reality an attempt to give, under colour of a religious bequest, an interest in one-third to E, in contravention of Mahomedan law (309-10). (Sir Rebert P. Cellier.) RANEE KHUJOOR-OONISSA P. MUSSAMAT ROUSHUN JEHAN.

(1876) 3 I A. 291 = 2 C. 184 (198) = 26 W. B. 36 = 3 Sar. 629.

-Necessity-Shia School.

Quare, whether the non-assent of the heirs vitiates the will of a Mahomedan of the Shiah School in favour of an heir (550). (Sir Edward Williams.) NAWAB UMJAD ALLY KHAN 2. MUSSAMAT MOHUNDE BEGUM.

(1867) 11 M. I. A 517=10 W. B. (P 0) 25= 2 Suth. 98=2 Sar. 315=R. & Js. No. 7 (Oudh).

Will-(Contd.)

INSTRUMENT AMOUNTING TO A.

---Intention to give-Absence of Declaration that another is to be representative of executant after his death -Effect.

A deed executed by a Mahomedan was in the following words:—" As I have divorced my wife, her son, Jet Sing, by illicit intercourse, is hereby disinherited, I have therefore adopted you." Then there followed after the signature these words:—" I have adopted Rana Jeswunt Sing" (the appellant) " to succeed to my property and title; no one shall interfere in this adoption. I have also made provision for all my wives by assigning a portion of land for their maintenance; they shall not be annoyed in any way, but considered as the mothers of Jeswunt Sing, and so treated and maintained. I have no son, and the heir to the estate is my brother Rana Chuter Sing, whose son, Jeswunt Singh, I have adopted."

The question was whether the deed was a will which

passed any property to the appellant.

Held, that the deed was not a testamentary gift to take

effect after the death of the donor (257-8).

There is no intention in the deed to give in words. The executant says he has no son, and he adopts somebody who may succeed. This son may succeed. Any other person may succeed if it is in the nature of a testamentary gift-

This case seems to be, in the very terms of it, almost similar to a case cited in Mr. Macnaghten's book, where the question was as to the effect of a document executed by a party "declaring his nephew to be his representative in proprietary right." The answer declares the document to be of no validity, "and cannot be available to confer any right of succession on the nephew, because it purports to constitute him the representative in proprietary right of the framer of it; in other words it declares him in general terms to have the right to the entire property belonging to the framer of the document after the death of the latter"; which is the only construction to be given to the words used here, "I have adopted Jeswant Sing to succeed to my property." Such a declaration does not fall within any description of legal obligation, and has, therefore, no validity as to the creation of proprietary right. It appears to their Lordships, therefore, that this document has no effect or operation whatever in giving any right of property to the appellant (258 9). (Lord Langdale). JESWANT SING JEE P. JET SING JEE. (1844) 3 M. I. A. 245= JET SING JEE. 6 W. R. (P.C.) 46 = 1 Suth. 153 = 1 Sar. 274.

-Letter written to general attorney.

The question was whether a letter written by a deceased Mahomedan to his general attorney amounted to a will. The letter by clause 10 stated: "You should not have the property given to (my) grandmother and paternal uncle's wife, but you should give the whole to my three sisters, who are my paternal uncle's daughters. You should see that they all get an equal share, and in the same manner as stated by me in paragraph 3."

Held, that the paragraph conferred a right on the three sisters in the property to take effect on the death of the writer of the letter, and, accordingly, that that letter acted as a will under Mahomedan law (223). (Lord Morris.)

SAYED MAZHAR HUSAIN P. BODHA BIBI.

(1898) 25 I. A. 219 = 21 A. 91 (97-8) = 7 Sar. 304.

-Wajib-ul-art.

Held, that a document, which was called a wwish-ul-urz, was not properly entitled to that name, but was rather a document in the nature of an administration or testamentary paper, by which the deceased indicated the way in which he should like his property to be enjoyed after his death. It was rather an attempt on his part to make a disposition of

### MAHOMEDAN LAW-(Contd.)

Will-(Contd.)

INSTRUMENT AMOUNTING TO A-(Contd.)

his property contrary to the Mahomedan law. (Sir Richard Couch.) MUHAMMAD ISMAIL KHAN r. FIDAYAT-UN-NISSA. (1886) 8 A. 516 (518-9).

MANAGEMENT-RIGHT OF-WILL GIVING-" ALWAYS AND FOR EVER."

-Equal to for life.

The will of a Mahomedan provided that the whole income of four annas share of his villages and estates should be devoted to charity, and the remaining 12 annas of the villages and estates and the whole of his other property should be divided into four shares and given to named persons. It then provided that H, one of his sons, should always be the manager of the four annas share devoted to charity, and that, after him, whoever from the descendants was just, virtuous, and capable of performing the duty, should be the superintendent and manager of that four anna share. It also provided that II should continue in possession and occupancy of the full sixteen annas of all the estates, villages, lands lying at different places, and moveable and immoveable property (collections from the villages), that all the matters of management in connection with the testator's estate should necessarily and obligatorily rest always and for ever in the hands of H, and that no heir and no stranger should at any time or period have power to take possession or to make any arrangements of his own regarding the estates. The will stated that, if any one of the legatees was disposed to transfer his or her share, he or she must offer to transfer to all of his or her shares in property; and that so long as the sharers were willing to take it, he or she must by no means transfer to others. In case any share was transferred to a stranger, the will stated that the stranger would not have any power to take any pessession or occupancy of the transferred property beyond recovering the profits which would be handed over to him, that the purchaser also should have no power or right of possession or occupancy over the property sold, and that the right of possession and management of II, or whoever might be his representative should not be disturbed,

The defendant, the eldest son of *H*, who had died previously, contended, in a suit by one of the legatees for actual possession of the share bequeathed to her, that, according to the terms of the instrument, he alone was entitled and competent to retain possession in order to carry out its provisions, which were to be carried out in perpetuity and for ever, and not for a limited period. The defendant also contended that the other heirs of *H* were not entitled to the management.

Held, that there was nothing in the provisions of the will to show that the heirs of H were to take his place the succession and management (165).

Per se the words "always and for ever" in the instrument are satisfied by limiting the interest which is there given to the life of H(163). (Sir Richard Couch.) MOULVI MU-HAMMAD ABDUL MAJID v. MUSSUMAT FATIMA BIBI.

(1885) 12 I. A. 159 = 8 A. 39 = 4 Sar. 670.

#### NUNCUPATIVE WILL.

-Proof of.

The respondents, relations and dependants of a deceased Mahomedan of the Shia sect, set up a noncupative will by the deceased, whereby he gave and bequeathed among other bequests, a monthly allowance of Rs. 300 to each of the respondents. The appellant was the son of the deceased.

Held, on the evidence affirming the concurrent findings of the Courts below, that the respondents had sufficiently established the making of the said will by the deceased (216),

Will-(Contd.)

NUNCUPATIVE WILL-(Contd.)

(Mr. Pemberton Leigh). NAWAB AMIN-00D-DOWLAH r. the probate, the respondent could not have relied upon the SYED ROSHUN ALI KHAN. (1851) 5 M.I.A. 199 =

1 Suth 229 - 1 Sar. 419.

-Validity of.

By the Mahomedan law no writing is required to make a will valid, and no particular form even of verbal declaration is necessary as long as the intention of the testator is sufficiently ascertained. (See Robert P. Collier.) MAHOMED ALTAF ALI KHAN : AHMED BUKSH.

(1876) 3 Suth. 235 = 25 W. R. 121 = Bald. 1.

Validity of -Shin Mahomedan-Will by.

In this case, it was admitted, at the hearing, by the appellant's counsel, that a nuncupative will by a Mahomedan professing the Shia tenets was valid by the Mahomedan Law (211.) NAWAE AMIN-OLD-DOWLAH P. SYED RO-SHUN ALI KHAN. (1851) 5 M. I. A. 199= 1 Suth. 229 = 1 Sar. 419.

PORTION OF ESTATE-LEGACY OF-EXTENT OF.

Portion of estate as at date of testator's death or as at date of suit.

By his will a Mahomedan left one-third of the portion of the property, of which he was competent to dispose, to be dealt with for charitable purposes. The question arose whether, on the right interpretation of the will, the charity was entitled to one-third of the whole of the estate, or to a sum that would be measured by ascertaining what one-third part of the estate would be at the date when he died.

Held that the charity was entitled to one-third of the whole of the estate. (Lord Buckmaster.) MIRZA MAHO-MED 18. THE OFFICIAL ASSIGNEE.

(1923) 18 L. W. 277 = A.I.R. 1923 P.C. 146= 33 M.L.T. 370 (P.C.)=(1923) M.W.N. 716= 77 I.C. 755.

PROBATE OF-GRANT OF.

Effect of -Two-thirds of estate not disposable by testator under Mahamedan Law-Heir's claim to-Maintainability-Esteppel.

A Mahomedan lady executed a will whereby she made a certain dispositions of property, and appointed the Administrator-General of Bengal to be her executor if he should be willing to act. By the will she confirmed certain gifts of property made by her and a release deed executed by her previously in favour of the respondent, who was her manager and confidential adviser. The Administrator-General, having been put in motion by the respondent and acting under an indemnity from him, applied in the High Court for probate of the will. The grandchildren of the testatrix as heirs entered a caveat; but, nevertheless, probate was ultimately granted of the will.

Pending the probate proceedings, the said grandchildren or their representatives in interest (appellants before their Lordships) instituted the suit out of which the appeal arose against the Administrator-General and the respondent alleging that the gifts and the release deed confirmed by the will were procured by the respondent by a misuse of his position of confidence, that they were consequently ineffectual and invalid to confer any rights on the respondent, and praying that the respondent should be compelled to account for the property which had thus come into his hands, and should be declared to be a trustee for the plain-

Apart from the will, the release and other transactions between the respondent and the lady could not admittedly have been supported. And, apart from the alleged effect of

### MAHOMEDAN LAW-(Contd.)

Will-(Conta.)

PROBATE OF-GRANT OF-(Contd.)

earlier transactions contained in the will.

Held that the probate had not the effect of estopping the appellants from denying the validity of the confirmation which the will purported to contain of the transactions between the respondent and the testatrix during her lifetime, and particularly of the release alleged to have been executed by her (259).

Ss. 4, 59 and 88 of the Probate and Administration Act are incapable of being applied so as to give the probate in the present case the effect contended for. The appellants do not contest the title of the executor, though they show that, as to two-thirds of the estate, he is a mere trustee for them. They are not debtors of the estate, nor possessed of property belonging to it. They are not interested under the will, nor do they (necessarily) contest the validity of the will as a beneficial disposition to the legatees, and other persons claiming under it, of that part of the property which the testatrix was compelent to dispose of by will Their contention is that they are entitled to two-thirds of all the property of the testatrix which was not effectually disposed of by her in her lifetime. The release is now admitted to be ineffectual for that purpose, and, if so, the money and other property in the hands of the respondent was in the disposition of the testatrix at the time of her death. As she could not dispose of more than one-third part by her will, the confirmation of the release could not confirm the respondent's title in more than one-third, and the appellants are entitled to the other two-thirds. controversy is between the heirs claiming adversely to the will

9 C.W.N. 938 = 2 A.L.J. 758 = 7 Bom. L.B. 876= 8 Sar. 839 = 15 M.L.J. 336 -Probate and Administration Act of 1881-Effect

and a person who claims a beneficial interest under the will,

and the provisions of the Probate and Administration Act

create no estoppel in such a case (258-9). (Sir Arthur Wil-

son.) MIRZA KURRATULAIN BAHADUR D, PEARA SAHEB.

(1905) 32 I.A. 244 = 33 C. 116 (130-1)=1 C.L.J. 594 =

after. The effect of probate of a Mahomedan will granted after the Probate and Administration Act must be that which is given by the terms of the Act itself; neither more nor less (258). (Sir Arthur Wilson). MIRZA KURRATU-LAIN BAHADUR P. PEARA SAHEB

(1905) 32 I.A. 244=33 C. 116 (130)=1 C.L.J. 594= 9 C.W.N. 938=2 A.L.J 758=7 Bom. L.B. 876= 8 Sar. 839=15 M. L. J. 336.

-Probate and Administration Act of 1881-Effect before. See PROBATE-GRANT OF-HINDU AND MAHO-MEDAN WILLS.

(1905) 32 I.A. 244 (258) = 33 C. 116 (130).

PROPERTY DISPOSED OF BY-EXTENT OF-INTENTION OF TESTATOR-ORAL EVIDENCE OF.

Admissibility and value of-Wajibul-ars ambiguous.

The plaintiffs claimed under a will of B, Mahomedan

lady. The plaintiffs put in a certain power of attorney executed by B to one K, to make what was called a wajib-ul-arz, and that document was to this effect; that a new settlement having been made of the property B made her appearance in respect of one Mouzah I, and she directed a wajib-ul-arz to be made in respect of that mouzah. She went on, however, to say, the wajib-ul-arz was to contain an alienatory clause to the effect: " After my demise A shall be the proprietor of one moiety of my property, and N, my adopted daughter, the proprietress of the other moiety."

Will-(Contd.)

PROPERTY DISPOSED OF BY—EXTENT OF—INTEN-TION OF TESTATOR—ORAL EVIDENCE OF— (Contd.)

It was contended that although those words of demise in themselves extended to the whole of the property of B, still the scope of that document must be limited to Mouzah I, to which, in the beginning, it particularly referred. But that document did not stand alone, and there was verbal evidence to the effect that B did express an intention that the whole of her property should be devised by will to the plaintiffs. The High Court held, differing from the Court below, that the testamentary disposition took effect with regard to the entire property of B, as it appeared from the evidence generally, consisting partly of the wajib-ul-arz and partly of the verbal evidence, that she intended to devise the whole of her property to the plaintiffs.

Their Lordships affirmed the High Court. (See Robert P. Collier.) MAHOMED ATTAF ALL KHAN P. AHMED BUKSH. (1876) 3 Suth. 235 = 25 W. R. 121 - Ba'd. 1. SETTLEMENT OR.

--- Deed not valid as either.

A document executed by a Mahomedan professed to create a wakf, but, in reality, his legal heirs were the only objects of his bounty. The lands were destined to his wives and children, and to the deseendants of the latter in perpetuity, in the order and according to the shares prescribed by the Mahomedan Law of succession, but subject to the limitation that none of them should have the power of alienation by sale, gift, or mortgage No possession was given in the lifetime of the settlor, and his intention appeared to be to make the fee devolve from one generation of his descendants to another without its being alienable by them, or liable to be taken in execution for their debts.

Held that the deed was not valid either as a settlement or as a will (178). (Lerd Watshu.) ABDUL GAFUR v. NIZAMUDIN. (1892) 19 I. A. 170=17 B. 1 (4-5)= 6 Sar. 238.

...... Reservation of benefit to executant-Effect.

The disposition by the deceased was not strictly a will, because it was made in his lifetime and he reserved to himself some benefit under it (100). (Sir Richard Conch.)
MOULVI MUHAMMAD ABDUL MAJID > MUSSAMAT
FATIMA BIBI. (1885) 12 I. A. 159 = 8 A. 39 (45) =
4 Sar. 670.

WIFE-EXCLUSION FROM INHERITANCE OF.

-Will having effect of -V alidity.

A will by a Mahomedan purporting to exclude from inheritance his Mahomedan wife is clearly invalid, and she is entitled to a share in his estate notwithstanding such will (39). (Lord Watton.) SKINNER v. SKINNER.

(1897) 25 I. A. 34 = 25 C. 537 (544) = 2 C. W. N. 209 = 7 Sar. 262.

WORDS IN.

——Always and for ever—Equal to "for life". See MAHOMEDAN LAW—WILL—MANAGEMENT.

(1885) 12 I. A. 159 (163) = 8 A. 39. Women.

——Status, culture, rights and capacity for business of— Hindu Women—Comparison and contrast. See WOMEN— HINDU AND MAHOMEDAN WOMEN.

(1867) 11 M. I. A. 551 (585-6).

### MAJORITY.

-Concurrent findings as to.

Rule of non-interference by P. C adhered to. (Lord Phillimore.) KACHIREDDI NAGIREDDI P. NARAYANA-REDDI. (1926) 25 L. W. 400=38 M. L. T. (P. C.) 57= (1927) M. W. N. 190=100 I. C. 77=45 C.L.J. 308= 29 Bom. L. B. 786=31 C. W. N. 245=

29 Bom. L. B. 786 = 31 C. W. N. 245 = | ples to hold tha A. I. B. 1927 P. C. 27 = 52 M. L. J. 492. | alleged custom.

### MAJORITY ACT IX OF 1875.

- S. 3-Majority-Age of-Guardian under Act XL of 1858-Appointment of-Effect.

The appointment of a guardian for a minor under Act XL of 1858 might, under Act IX of 1875, S. 3 have the effect of prolonging the minority of the minor until he attained twenty one (170). (Sir Arthur Wilson.) GHARIB-UL-LAH F. KHALAK SINGH. (1903) 30 I. A. 165 =

25 A. 407 (416)=7 C. W. N. 681=5 Bom. L. R. 478= 8 Sar. 483.

#### MALABAR LAW.

FAMILY PROPERTY—DIVISION IN EQUAL SHARES OF —AGREEMENT AS TO—CONCURRENT FINDINGS AS TO.

KANOM.

KARNAVAN-ADOPTION BY.

KARNAVAN-ALIENATION BY.

MARUMAKATAYAM LAW-INHERITANCE,

MORTGAGE FOR TERM OF 55 YEARS. NAVARS OF SOUTH MALABAR.

STANOM.

TARWAD-DEVASWOM OR STANOM PROPERTY.

TARWAD-PARTITION OF.

TAVAZHI.

### Family property—Division in equal shares of— Agreement as to—Concurrent Findings as to.

Concurrent findings of Courts below that there had been an agreement between two parties, interested in a family-fund, that it should be divided into equal fourth parts among the four branches of the family, but that an unequal division, made under a decree, had resulted from unfair dealing, \$\frac{4c/d}{to}\$ to fall within the rule of the P. C. as to concurrent findings on questions of fact. (Lord Hobboute.)
PUTHIA KOVILAKATH KRISHNAN RAJA AVERGAL v.
PUTHIA KOVILAKATH SRIDEVI. (1889) 12 M. 512 =
5 Sar. 455.

#### Kanom

-Nature and incidents of.

A Kanom is a species of mortgage, usually made to endure for a term of twelve years, at the end of which time the parties would enforce their remedies or make a new contract (145). (Sir Arthur Hobbouse.) VENCATESWARA IYAN 5. SHEKHARI VARMA. (1881) 8 I. A. 143 = 3 M. 384 (387) = 4 Sat, 259.

#### Karnavan-Adoption by.

-Females-Adoption of-Right and duty of.

A Karnavan has the right, and is perhaps under a duty, to adopt females into the tarwad when necessary to preserve it (236). (Lord Lindley.) THIRUTHIPALLI RAMAN MENON v. VARIANGATTIL PALISSERI RAMAN MENON. (1900) 27 I. A. 231 = 24 M. 73 (79 80) = 4 C.W.N. 810 = 7 Sat. 755 = 10 M. L. J. 245.

 Males—Adoption of—Power of—Consent of anandrawans—Necessity—Custom recognising such power— Onus of proof of

The Karnavan's limited power of alienation renders it improbable that he should have the power, without consulting other members of the family, of introducing strangers into the tarwad and making them the heirs to its property. Such a power may be essential to the preservation of the tarwad, when the last possible karnavan has been reached, but the possession of such a power by any karnavan who is not the last surviving head of his tarwad is unnecessary and unjust to those other members of the family who may survive him and become karnavans in their turn. In the absence of proof, it would be contrary to sound legal principles to hold that any such power was conferred by any alleged custom.

#### MALABAR LAW-(Contd.)

### Karnavan -Adoption by-(Contd.)

Where, therefore, the question was whether the elder of two brothers who were the two surviving members of their tarwad and the elder of whom was the karnavan, was entitled to adopt four persons so as to make them members of the tarwad without the consent of the younger brother, keld that the burden of proving the validity of the adoption was upon those who asserted its validity, and that the adoption in question was invalid as it was not proved to be in accordance with the law or custom of the Nairs (236). (Lord Lindley.) THIGUTHIPALIA RAMAN MENON 2. VARIAN-GATTIL PALISSERI RAMAN MENON.

(1900) 27 I. A. 231 - 24 M. 73 (79-80) = 7 Sar. 755 -4 C. W. N. 810 - 10 M. L. J. 245.

#### Karnavan-Alienation by.

——Power of—Consent of anandravans—Necessity— Unreasonable withholding of consent by them—Effect.

Large as the powers of a karnavan of a Malabar tarwad appear to be, those powers are essentially powers of management. He cannot apparently alienate the family property without the consent of the anandravans, although an unreasonable wrong headed opposition may probably be over-ruled (236). (Lord Lindley.) THIRUTTIPALLI RAMAN MENON v. VARIANGATTIL PALISSERI RAMAN MENON.

(1900) 27 I. A. 231 = 24 M. 73 (79-80) = 4 C. W. N. 810 = 7 Sar. 755 = 10 M. L. J. 245. Marumakatayam law—Inheritance.

-Rule of.

Descent under the law by which this family is governed (102., Marumakatayam law) is always traced through the female line to a female ancestor. (Sir Lawrence Jenkins.) SULAIMAN v. BIVATHTHUMMA.

(1916) 21 M.L.T. 210 = (1917) M.W.N. 213 = 21 C.W.N. 553 = 25 C.L.J. 273 = 19 Bom. L.R. 394 = 1 P.L.W. 210 = 39 I.C. 243 = 32 M.L.J. 137 (139).

#### Mortgage for term of 55 years.

--- Practice of.

The term of 55 years in an otti or usufructuary mortgage is a very unusual one. It is alleged that it is not unknown in Malabar; but their Lordships have not been referred to any evidence to show that such a term ever was granted by way of mortgage in that country (421). (Sir Arthur Hobhouse.) THEKKINIYETATH KIRANGATT MANAKKAL NARAVANAN NAMBUDRIPAD P. IRINGALLUR THARAKATH SANKUNNI THARAVANAR. (1881) Bald. 418.

#### Nairs of South Malabar.

-Lates and usages applicable to-Peculiarity-Judicial notice-Proof in particular cases-Necessity.

The laws and usages governing the Nairs in South Malabar are very peculiar; some of them are so well established as to be judicially noticed without proof. But others of them are still in that stage in which proof of them is required before they can be judicially recognised and enforced. The Nairs are persons amongst whom polyandry is legally recognised; and descent of property through females is acknowledged law (236). (Lord Lindley). THIRUTHIPALLI RAMAN MENON 2. VARIANGATTIL PALISSERI RAMAN MENON. (1900) 27 I.A. 231 =

#### 24 M. 73 (79)=7 Sar. 755=4 C. W.N. 810= 10 M L.J. 245.

#### Stanom.

-Nature and incidents of Stanomdar Alienation of Stanom property by Power of.

In the families of the Malabar Rajas it is customary to have a number of palaces, to each of which there is attached an establishment with lands for maintaining it, called by the name of a stanom. Each stanom has a Raja as its head or stanomdar. The stanomdar represents the

### MALABAR LAW-(Centd.)

Stanom-(Contd.)

corpus of his stanom much in the same way as a Hindu widow represents the estates which have devolved upon her and he may alienate the property for the benefit or proper expenses of the stanom (144). (Sir Arthur Hobbouse.) VENKATESWARA IVAN v. SHEKHARI VARMA.

(1881) 8 I.A. 143=3 M. 384 (386)=4 Sar. 259.

——Stanomdar—Alienation of stanom property—Power of. See MALABAR LAW—STANOM—NATURE AND INCI-DENTS OF. (1881) 8 I.A. 143 (144)=3 M. 384 (386).

### Tarwad - Devaswom or Stanom property.

--- Concurrent findings as to.

Findings interfered with, because they turned upon the admissibility or value of many subordinate facts and the construction of documents and other questions of law. (Sir Arthur Hobbouse.) VENKATESWARA IYAN v. SHEKHARI VARMA. (1881) 8 I.A. 143 (150)=

3 M. 384 (392)=4 Sar. 259.

#### Tarwad-Partition of.

---- Consent of all members-Necessity.

By the law which governs a Mopla Tarwad there cannot be a partition unless all the members consent. (Sir Lawrence Jenkins.) SULAIMAN 2. BIYATHTHUMMA.

(1916) 21 M L.T. 210 = (1917) M.W. N. 213 = 21 C.W.N. 559 = 25 C.L J 273 = 19 Bom. L.B. 394 = 39 I. C. 243 = 1 P.L. W. 210 = 32 M.L.J. 137 (139).

Effect of -Complete separation if Word Tavashi

Use of -Effect.

The word Tavazhi is a word of equivocal meaning, and may fairly be used where the separation is complete. (Sir Lawrence Jenkins). SULAIMAN v. BIVATHTHUMMA.

Laterence Jenkins). SULAIMAN v. BIYATHTHUMMA. (1916) 21 M L.T. 210 = (1917) M.W.N. 213 = 21 C.W.N. 553 = 25 C.L.J. 273 = 19 Bom. L.R. 394 = 1 P.L.W. 210 = 39 IC, 243 = 32 M.L.J. 137 (142).

Effect of Division into Tavazhis only-Complete partition even between descendants of each branch-Evidence.

The plaintiffs and the 1st defendant were descendants from a common stock. The plaintiffs' case was that they were members of an undivided Mopla Tarwad governed by Marumakathayam law and that that Tarwad possessed considerable properties, including those in suit. The plaintiffs alleged that the 1st defendant was the senior and karnavan of the whole Tarwad, and that he had dealt with Tarwad property in fraud of the plaintiffs, and improperly alienated portions of it to the 2nd defendant and appellant.

The 1st defendant denied that the plaintiffs and he were members of an undivided Mopla Tarwad, or that he (1st defendant) was the senior and karnavan of the whole Tarwad, He. on the contrary, alleged that the branch of the plaintiffs and of the 1st defendant with seven others, had become divided as far back as 1837-38, and that each branch had been living separately and enjoying and dealing with the properties separately and independently of the other branches.

The three stocks to which descent was traced were three sisters who left descendants—B, K, and T. B. left four descendants, and T two; of K's descendants only three left issue. The litigation was concerned with the line of K.

The plaintiffs' contention was that the partition which was effected was only between the three branches of B, K, and T, and that the allotment made to the nine branches tracing from the several descendents was not by way of complete partition, but was merely a division for convenience of enjoyment. The case made by the defence was that there was a complete partition between the nine branches, and that thereby nine separate and independent shares were constituted.

#### MALABAR LAW-(Contd.)

#### Tarwad-Partition of-(Contd.)

Held that the Sub-Judge was, on the evidence, right in affirming the defence view of the effect of the division. (Sir Laterence Jenhins.) SULAIMAN P. BIYATHTHUMMA.

(1916) 21 M.L.T. 210 = (1917) M.W.N. 213 = 21 C,W.N. 553 = 25 C. L. J. 273 = 19 Bom. L.R. 394 = 1 P.L.W. 210 = 39 I. C. 243 = 32 M.L.J. 137.

### Tavazhi.

-Meaning of. See MALABAR LAW-TARWAD-PARTITION OF-TAVAZHI.

(1916) 32 M.L.J. 137 (142).

#### MALGUZARI

-Meaning of -Rent or recenue.

The word "malguzari" translated as rent ordinarily means revenue, and is so referred to in Wilson's Glossary. The word cannot be rendered as rent, much less as actual rent (434). (Lord Sinka). RANI CHATTRA KUMARI DEVI v. BROUCKE. (1927) 54 LA. 432=

7 P. 134 = 26 A.L.J. 19 = 32 C.W.N. 260 = 47 C.L.J. 90=8 Pat. L.T. 813=I. L. T. 40 P. 1= 106 I.C. 571 = 27 L. W. 736 = A I.B. 1927 P. C. 250 = 54 M.L.J. 293 (296).

#### MALICE.

-Legal malice-Use of-Propriety. See LIBEL-PRI-VILEGY-MALICE REBUTTING.

(1917) 44 I A 192 - 39 A. 561.

### MALICIOUS PROSECUTION.

#### Action for.

DEFAMATION OF CHARACTER-SUIT FOR. EVIDENCE IN.

FOUNDATION OF.

LIABILITY FOR. MALICE AND WANT OF REASONABLE AND PROBABLE CAUSE-FINDING AS TO-FACT OR LAW.

ONUS ON PLAINTIFF IN. PIVOT ON WHICH, TURNS.

REVIEW IN-NEW CASE IN. ROMAN-DUTCH LAW.

#### DEFAMATION OF CHARACTER-SUIT FOR.

-Treatment of, as action for malicious prosecution. The suit of the plaintiff in the Court below, although called a suit for defamation of character, may be substan-tially supported (the question is one of substance rather than of form) as an action for a malicious prosecution (329). BABOO GUNESH DUTT SINGH D. MUGNEERAM (1872) 11 B.L.R. 321 = CHOWDHRY. 2 Suth. 547=17 W.R. 283=3 Sar. 179.

EVIDENCE IN.

-Legal practitioner on whose advice prosecution was instituted-Evidence of-Admissibility-Practitioner defendant's Advocate-Effect.

In an action for damages for malicious prosecution, the defendant tendered as a witness the Advocate upon whose advice the prosecution had been instituted. The District Judge ruled that, being the defendant's Advocate, his evidence was inadmissible. The Appellate Court, however, permitted him to be examined.

Held that the Appellate Court acted most properly in doing so. (Lord Atkinson.) COREA v. PEIRIS.

(1909) 14 C.W.N. 86 (93)=5 I.C 50=(1909) A.C. 549= 12 New Law Reports (Ceylon) 147 = 79 L.J. P.C. 25 = 100 L.T. 790 = 25 T.L.B. 631.

-Magistrate's decision if.

In an action for malicious prosecution, the decision of the Magistrate that the care was not proved against the plaintiff is not evidence whatever against the defendants of bis means of information and motives. (Sir Andrew

### MALICIOUS PROSECUTION—(Contd.)

Action for-(Contd.)

EVIDENCE IN-(Contd.)

the groundlessness of the prosecution (330). RABOO GUNESH DUTT SINGH P. MUGNEERAM CHOWDHRY.

(1872) 11 B. L. B. 321 = 17 W. R. 283 = 2 Suth. 547 = 2 Sar. 179.

Plaintiff-Examination of - Failure-Damages awardable - Effect on.

Where a man sues for defamation of character, whether in the form of an action for a malicious prosecution or of libel or slander, it is expected that plaintiff who of all men is best able to give evidence of his own innocence should be put into the witness-box, and it is very rarely indeed that a plaintiff in any such suit obtains substantial damages if he does not give evidence or a good reason for not giving it (330-1). BABOO GUNESH DUTT SINGH v. MUGNEERAM (1872) 11 B. L. R. 321 = CHOWDHRY.

17 W.R. 283 = 2 Suth. 547 = 3 Sar. 179.

#### FOUNDATION OF.

-The foundation of an action for malicious prosecution is malice. (Sir Andrew Scoble.) GAYA PARSAD ARI P. BHAGAT SINGH. (1908) 35 I. A. 189 = 30 A. 525 (534) = 4 M. L. T. 204 = 8 C. L. J. 337 = TEWARI P. BHAGAT SINGH.

12 C. W. N. 1017-10 Bom. L. R. 1080= 5 A. L. J. 665 = 18 M. L. J. 394.

#### LIABILITY FOR.

Information-Prosecution instituted on.

If A receives information from others and acts upon it by making a criminal charge against B, the motive of his informants, or the truth, in fact of the story they tell, are to a great extent beside the point. The crucial questions for consideration are: Did the prosecutor believe the story upon which he acted? Was his conduct in believing it, and acting upon it, that of a reasonable man of ordinary prudence? Had he any indirect motive in making the charge? The Court ought not to confound the motives and action of the informant with the motives and action of the prosecutor, the truth, in fact, of the information conveyed to the prosecutor, and the motives of those who conveyed it, with the prosecutor's belief in what he heard and his prudence in acting on it (91). (Lord Atkinson.) COREA v. PEIRIS.

(1909) 14 C. W. N. 86-5 I. C. 50-(1909) A. C. 549-12 New Law Reports (Ceylon) 147 = 79 L.J.P.C. 25 = IOO L. T. 790 = 25 T. L. R. 631.

-Institution of prosecution bona fide but its continuance malicious-Effect.

The foundation of an action for malicious prosecution is malice, and malice may be shown at any time in the course of the inquiry. A prosecution, though in the outset not malicious, as having been undertaken at the dictation of a judge or magistrate, or, if spontaneously undertaken, from having been commenced under a bonn fide belief in the guilt of the accused, may nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired positive knowledge of the innocence of the accused perseveres malo animo in the prosecution, with the intention of procuring per nefas a conviction of the accused. (Sir Andrew Scoble.) GAYA PARSAD TEWARI v. BHAGAT (1908) 35 I. A. 189 = 30 A. 525 (534-5) = SINGH. 4 M. L. T. 204 = 8 C. L. J. 337 = 12 C. W. N. 1017 = 10 Bom. L. R. 1080 = 5 A. L. J. 665 = 18 M. L. J. 394.

-Cr. P. C .- S. 495-Prosecution under-Person

conducting-Liability of

In India a private person may be allowed to conduct a prosecution under S. 495 of Cr. P. C. of 1898. When this is permitted, it is obviously an element to be taken into consideration in judging who is the prosecutor and what are

### MALICIOUS PROSECUTION-(Contd.)

Action for-(Contd.)

LIABILITY FOR-(Contd.)

Scoble.) GAVA PARSAD TEWARI : BHAGAT SINGH. (1908) 35 I. A. 189 - 30 A. 525 (534) =

4 M. L. T. 204 = 8 C. L. J. 387 = 12 C W. N. 1017 = 10 Bom. L. R. 1080 = 5 A. L. J. 665 = 18 M. L. J. 394.

-Police-Information to-Person giving-Liability

The suit was for damages for malicious prosecution brought by the plaintiff who had been acquitted in a criminal case in which he was charged with having taken part in a riot. The defendants' names did not appear on the face of the criminal proceedings, except as witness s. It appeared, however, that they were directly responsible for any charge at all being made against the plaintiff, that they took the principal part in the conduct of the case both before the Police and in the Magistrate's Court, that they instructed the Counsel for the prosecution at the trial before the Magistrate that the plaintiff had "joined the riot," and that the charge was a false one to the knowledge of the defendants.

Held that the defendants were liable for damages. (Sir Andrew Scoble.) GAVA PARSAD TEWARI v. BHAGAT SINGH. (1908) 35 I. A. 189 = 30 A. 525 (535) = 4 M. L. T. 204 = 8 C. L. J. 337 = 12 C. W. N. 1017 =

10 Bom. L. R. 1080 - 5 A. L. J. 665 - 18 M.L. J. 394.

In India the police have special powers in regard to the investigation of criminal charges, and it depends very much on the result of their investigation whether or not further proceedings are taken against the person accused. If, therefore, a complainant does not go beyond giving what he believes to be correct information to the police, and the police without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But if the charge is false to the knowledge of the complainant; if he misleads the police by bringing suborned witnesses to support it; if he influences the police to assist him in sending an innocent man for trial before the Magistrate-it would be equally improper to allow him to escape liability because the prosecution has not, technically, been conducted by him. The question in all cases of this kind must be who was the prosecutor?—and the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion; the conduct of the complainant before and after making the charge, must also be taken into consideration. Nor is it enough to say, the prosecution was instituted and conducted by the police. That again is a question of fact. Theoretically, all prosecutions are conducted in the name and on behalf of the Crown, but in practice, this duty is often left in the hands of the person immediately aggrieved by the offence, who pro hac vice represents the Crown. (Sir Andrew Scoole.) GAYA PARSAD TEWARI ty. BHAGAT SINGH. (1908) 35 I. A. 189= 30 A. 525 (533-4)=4 M. L. T. 204=8 C. L. J. 337=

30 A. 525 (533-4)=4 M. L. T. 204=8 C. L. J. 337= 12 C. W. N. 1017=10 Bom. L. R. 1080= 5 A. L. J. 665=18 M. L. J. 394.

——In any country where, as in India, prosecution is not private, an action for malicious prosecution in the most literal sense of the word could not be raised against any private individual. But giving information to the authorities which naturally leads to prosecution is just the same thing. And if that is done and trouble is caused an action will lie. (Viscount Duncdin.) BALBHADDAR SINGH v. BADRI SAL. (1926) 24 A. L. J. 453 = 3 O W. N. 499 = 28 Bom. L. R. 921 = 43 C. L. J. 521 = (1926) M. W. N. 482 = 95 I. C. 329 = 30 C. W. N. 866 =

29 O.C. 163 = 7 Pat. L.T. 591 = A.I.R. 1926 P.C. 46 = 13 O. L. J. 749 = 1 Luck. 215 = 51 M. L. J. 42 (50).

### MALICIOUS PROSECUTION-(Contd.)

Action for-(Contd.)

MALICE AND WANT OF REASONABLE AND PROBABLE CAUSE—FINDING AS TO—FACT OR LAW.

-Concurrent findings-Privy Council's interference with.

Where, in a case in which the High Court, concurring with the Court below, dismissed a suit for damages for malicious prosecution on the ground that the plaintiff had failed to discharge the burden which lay upon him of proving that the defendant had acted maliciously, and that there was no reason or probable, cause for his action, the High Court granted a certificate that the appeal to His Majesty in Council involved a substantial question of law, hdd, by their Lordships that the only question involved was a question of fact on which there were concurrent findings and that the certificate must have been granted under a misapprehension.

It is quite true that according to English law it is for the Judge and not for the Jury to determine what is reasonable and probable cause in an action for malicious prosecution. The Jury finds the facts. The Judge draws the proper inference from the findings of the Jury. In that sense the question is a question of law. But where the case is tried without a Jury there is nothing but a question of fact and a question of fact to be determined by one and the same person. (Lard Macnaghten.) Pestonji Muncherji Mody v. The Queen Insurance Co.

(1900) 25 B. 332 (336-7)=4 C. W. N. 781= 2 Bom. L. R. 939=7 Sar. 749.

#### ONUS ON PLAINTIFF IN.

——In an action for malicious prosecution, the onus lies on the plaintiff to prove (1) that the defendants were the prosecutors of the criminal proceeding against him, (2) that they were actuated by malice, and (3) that their proceeding was without any reasonable or probable cause (329). BABOO GUNESH DUTT SINGH P. MUGNEERAM CHOWDHRY. (1872) 11 B. L.B. 321=17 W. R. 283=2 Suth. 547=

In order to succeed in an action for damages for malicious prosecution, it is not enough for the plaintiff to prove that he was acquitted of the charge made against him. He must also prove that the defendant acted maliciously, that is from some indirect motive, and that there was no reasonable or probable cause for his action. (Lord Macnaghtm.) PESTONJI MUNCHERJI MODY v. THE QUEEN INSURANCE CO. (1900) 25 B. 332 (335)=4 C. W. N. 781=

2 Bom. L. R. 939 = 7 Sar. 749.

In an action for malicious prosecution, the law throws on the plaintiff the burden of proving the presence of malice in the mind of the prosecutor, and the absence of reasonable cause for the prosecution (91). (Lord Atkinton.) COREAT.

PEIRIS. (1909) 14 C. W. N. 86=5 I C. 50= (1909) A.C. 549=12 New Law Reports (Ceylon) 147= 79 L. J. P. C. 25=100 L. T. 790=25 T. L. B. 631.

Confessional statements—Prosecution based on-Person alleged to have tutored confessors to make such statements—Suit against.

On the confessional statements of R and T, the Magistrate issued warrants for the arrest of the appellants. The Magistrate, however, subsequently discharged the appellants, as he considered there was no real evidence against them. The Sessions Judge concurred with him, and refused to commit them for trial. The appellants thereupon instituted a suit for damages for malicious prosecution against B, alleging that he had tutored R and T to say what they did in their confessions.

Held that in order to succeed in the action, the appellants must show that B invented the whole story as far as it

## MALICIOUS PROSECUTION-(Contd.)

Action for-(Contd.)

ONUS ON PLAINTIFF IN-(Contd.)

implicated the appellants, and tutored R & T to say it, and that they had failed to discharge that very heavy onus which rested on them. (Viscount Duncdin.) BALBHADDAR SINGH v. BADRI SAH. (1926) 24 A. L. J. 453= 3 O. W. N. 499=28 Bom. L. R. 921=43 C. L. J. 521= (1926) M. W. N. 482=95 I. C. 329=30 C. W. N. 866= 29 O. C. 163=7 Pat. L. T. 591=

A. I. R. 1926 P.C. 46 = 13 O. L. J. 749 = 1 Luck. 215 = 51 M. L. J. 42 (50, 52).

-Innocence of charge-Proof of-Necessity.

In an action for damages for malicious prosecution, the plaintiff has not got to prove that he was innocent of the charges upon which he was tried. It is enough for him to prove that the proceedings complained of terminated in his favour if from their nature they were capable of so terminating. (Viscount Dunedin.) BALBHADDAR SINGH 7.

BADRI SAH. (1926) 24 A. L. J. 453=3 O. W. N. 499=28 Rom. L. B. 921=43 C. L. J. 521=

(1926) M. W. N. 482=95 I. C. 329=30 C. W. N. 866= 29 O. C. 163=7 Pat. L. T. 591= A. I. B. 1926 P. C. 46=13 O. L. J. 749= 1 Luck. 215=51 M. L. J. 42 (46-7).

PIVOT ON WHICH, TURNS.

- State of mind of prosecutor at time of institution of prosecution.

The pivot upon which almost all actions for malicious prosecution turn is the state of mind of the prosecutor at the time he institutes or authorises the prosecution (91).

(Lord Atkinson.) COREAD PEIRIS. (1909) 14 C. W. N. 86 = 5 I. C. 50 = (1909) A. C. 549 = 12 New Law Reports (Ceylon) 147 = 79 L. J. P.C. 25 = 100 L. T. 790 = 25 T. L. R. 631.

REVIEW IN-NEW CASE IN.

-Permissibility.

In an action for malicious prosecution held that the Court below acted quite rightly in refusing to permit a new case to be made on the hearing on review, on the supposed analogy of Cornford v. Carlton Bank, [(1899) 1 Q. II. 392] (96). (Lord Atkinson.) COREA v. PEIRIS. (1909) 14 C. W. N. 86=(1909) A. C. 549=

(1909) 14 C. W. N. 86=(1909) A. C. 549= 12 New Law Reports (Ceylon) 147=79 L. J. P.C. 25= 100 L. T. 790=5 I. C. 50=25 T. L. B. 631.

ROMAN-DUTCH LAW.

Principles of, same as English law. The Supreme Court held that a prosecution instituted without malice, and with reasonable and probable cause, cannot, under the Roman-Dutch Law, be held to amount to an act of aggression; that an animus iniuria in the prosecutor cannot, therefore, be inferred from the mere fact that the prosecution has failed and the accused been acquitted; that the burden of proving the existence of this animus injuria (i. c., malice) rests, under the Roman-Dutch Law as under the English Law, on the plaintiff in such an action; and that the principles of the two systems of law on the subject are practically identical. The various authorities to which their Lordships have been referred fully sustain the several conclusions at which the Supreme Court has arrived on these points (89) (Lord Atkinson.) COREA v. PEIRIS. (1909) 14 C. W. N. 86=5 I. C. 50=(1909) A. C. 549= 12 New Law Reports (Ceylon) 147-79 L. J. P.C. 25-100 L. T. 790 = 25 T. L. B. 631.

#### Civil Proceedings.

EXECUTION OF DECREE—ATTACHMENT WRONGFUL IN.

INSTIGATION OF.

#### MALICIOUS PROSECUTION-(Contd.)

Civil Proceedings-(Contd.)

EXECUTION OF DECREE—ATTACHMENT WRONGFUL IN.

— Damages for—Liability for. See Contract Act,
S. 72 AND EXECUTION OF DECREE—ATTACHMENT
IN—WRONGFUL ATTACHMENT.

#### INSTIGATION OF.

Costs of proceedings—Liability of instigator for, though not formal party to proceedings. See Costs—Suit—Pekson Not a Party to. (1876) 4 I. A. 23 = 2 C. 233.

Damages caused by-Liability of instigator for.

The prosecution of legal proceedings which are instigated by malice, and are at the same time groundless, is a wrong to the person who suffers damage in consequence of them (38).

No action will lie for improperly putting the law in motion in the name of a third person, unless it is alleged and proved that it is done maliciously and without reasonable or probable cause; but if there be malice and want of reasonable or probable cause, no doubt the action will lie, provided there be also legal damages (38-9). (Sir Montague E. Smith.) RAM COOMAR COONDOO r. CHUNDER CANTO MOOKERIEE. (1876) 4 I. A. 25 = 2 C. 233 (248) = 3 Sar. 654 = 3 Suth. 361.

INSTITUTION OF.

 Legal advice basis of Evidence of Cables received from solicitor in England—Admission of one of Rejection of other on ground of late production—Propriety.

On the plaintiff's counsel, in a suit for damages for the malicious institution of civil proceedings, raising a question as to the advice upon which the defendant had acted in instituting the proceedings, the defendant tendered in evidence two cables received from a solicitor in England in reliance upon which he acted. The trial judge admitted the first cable in evidence but rejected the second, apparently on the ground that it had not been duly disclosed.

Held, agreeing with the appellate Court, that on the question of reasonable and probable cause the second cable was clearly relevant and indeed of much weight. (Sir George Lowendet.) ALBERT BONNAN v. IMPERIAL TOBACCO CO., LTD., INDIA. (1929) 31 Bom. L. R. 1388 = 33 C. W. N. 1034 = 30 L. W. 488 = 27 A. L. J. 1070 =

50 C. L. J. 351=119 I. C. 609=A.I.B. 1929 P.C. 222= 57 M. L. J. 558.

— Reasonable and probable cause for—Absence of— Error of expert legal advice on faith of which proceedings instituted if.

Proceedings instituted in reliance upon expert legal advice received from England cannot be held to be instituted without reasonable and probable cause merely because that advice in the event proves to be wrong. (Sir George Lowender.) ALBERT BONNAN v. IMPERIAL TOBACCO CO., LTD., INDIA. (1929) 31 BOM. L. B. 1388 = 33 C. W. N. 1034 = 30 L. W. 488 = 27 A. L. J. 1070 =

33 C. W. N. 1034 = 30 L. W. 488 = 27 A. L. J. 1070 = 50 C.L.J. 351 = 119 I. C. 609 = A. I. B. 1929 P. C. 222 = 57 M. L. J. 558;

Suit for damages for—Maintainability—Conditions
 Malice and want of reasonable and probable cause—Proof of—Onus on plaintiff.

Malice and want of reasonable and probable cause is of the essence of a suit for damages for the malicious institution of civil proceedings.

Queere, as to what other conditions may be necessary to enable a plaintiff to succeed in such a suit, and as to the principles to be deduced from the judgments in The Quartz Hill Consolidated Gold Mining Company v. Eyre (11 O

## MALICIOUS PROSECUTION-(Contd.)

Civil Proceedings-(Contd.)

INSTITUTION OF-(Contd.)

B. D. 674). (Sir George Loundes.) ALBERT BONNAN z. IMPERIAL TOBACCO CO., LTD., INDIA.

(1929) 31 Bom. L. R. 1388 = 33 C. W. N. 1034 = 30 L. W. 488 = 27 A. L. J. 1070 = 50 C.L.J. 351 = 119 I. C. 609 = A. I R. 1929 P. C. 222 = 57 M.L.J. 558.

## False imprisonment.

——Distinction. See FALSE IMPRISONMENT—MALI-CIOUS PROSECUTION. (1903) 30 L. A. 154 (157) = 30 C. 872 (879).

#### MALIK

——Meaning and effect of. See WORDS—MEANING OF—MALIK.

#### MALIKANA.

-Mouning of .

The Malikuma is the allowance made to the zemindar for his maintenance, and the disbursements and outgoings allowed to him against his receipts fall under the term "kurcha" (112). (Mr. Pemberton Leigh.) RAJA LEELANUND SINGH BAHADOOR v. GOVERNMENT OF BENGAL.

(1855) 6 M.I.A. 101 = 1 Suth. 248 =

—Malikana is the allowance made to proprietors dispossessed by Government. By Regulation VII of 1822 it might vary from 5 to 10 per cent, of the income realized. That regulation was repealed as regards the North-West Provinces by Act XIX of 1873, and fresh provisions for allowances to dispossessed proprietors were substituted. Malikana is a grant of a portion of the revenue in lieu of pre-existing proprietary rights (161). (Lord Hobboure.) DEO KUAR v. MAN KUAR. (1894) 21 I.A. 148=

17 A. 1 (17)=6 Sar. 489=4 M.L.J. 272.

#### MALIKAN GABIZ.

---- Meaning of .

The expression malikan gubiz is a term of art used for the purpose of settlement proceedings, and before its value as an indication of any group of rights or their quality can be justly appreciated its precise signification in the context should be known (799). (Sir Lawrence Jonkins.) DAKAS KHAN v. GHULAM KASIM KHAN. (1918) 45 C. 793 = 24 M.L.T. 271 = 28 C.L.J. 441 =

20 Bom. L.R. 1068 = 26 P.L.R. 1919 = 1 P.W.E. (Rev.) 1919 = 48 I.C. 473 = 9 L.W. 558.

MAL SARANJAM OR GRAM SARANJAM LANDS.

-----See GRAM SARANJAM, ETC.

#### MANAGER.

—Receiver — Trustee — Distinction. See Trust— Trustee—Receiver. (1920) 47 I.A. 224 (232) = 42 A. 609 (618).

#### MANDAMUS.

——Statute—Duty imposed by—Refusal of Court or officer to do—Remedy in case of. See C.P.C. OF 1908, O. 21, R. 92—REFUSAL TO CONFIRM SALE—IMPROPER ORDER OF—REMEDY IN CASE OF.

(1876) 3 I.A. 230 (238).

-Writ of -Issue of -Principles regulating.

One of the principles regulating the issue of the prerogative writ of mandamus is this, that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other, and that his claim has been

#### MANDAMUS-(Contd.)

refused. (Lord Atkinson.) BANK OF BOMBAY v. Sule. MAN SOMJI. (1908) 35 I.A. 130 (135)= 32 B. 466 (476)=4 M.L.T. 16=8 C.L.J. 103=

12 C.W.N. 825 = 10 Bom. L.R 636 = 5 A.L.J. 463 = 18 M.L.J. 355.

#### MARALDAR.

——Position and rights of, See NATTUKOTTAL CHETTI —BANKING FIRM OF. (1929) 57 M.L.J. 628. MARITIME LAW.

-----See Ship (Shipping).

#### MARRIAGE.

[Only cases which have not been included under-

- (1) BURMESE BUDDHIST LAW-MARRIAGE;
- (2) CEYLON LAW-MARRIAGE;
- (3) HINDU LAW-MARRIAGE; AND
- (4) MAHOMEDAN LAW-MARRIAGE.

have been brought under this head]. Breagh of promise of.

CHANGE OF RELIGION AFTER.

CONTRACT FOR-RESCISSION OF.

DISSOLUTION OF—HUSBAND'S SUIT FOR—WIFE'S ADULTERY—EVIDENCE OF.

EVIDENCE OF.

PRESUMPTION OF.

PRESUMPTION OF, AND OF LEGITIMACY OF OFF-SPRING-EXTENSION OF-PROPRIETY.

PROMISE OF.

QUESTION REGARDING.

STATUS OF-BASIS OF.

## Breach of promise of.

-Action for-Issue in-Form of.

The issue framed by the lower Court in an action for breach of promise of marriage was "Was there a valid contract of marriage?"

Held, that the issue ought to have been "Was there a

definite promise of marriage?,"

The expression "contract of marriage" is usually used in another sease. (Viscount Dunedin.) SKIPP v. KELLY.

(1926) 24 L W, 18 = 1926 M.W.N. 382 = 3 O.W.N. 453 = 43 C.L.J. 430 = 94 I. C. 331 = 28 Bom. L.B. 873 = 30 C.W.N. 841 = A.I.B. 1926 P.C. 27 = 50 M.L.J. 498 (500-1).

——Action for — Rescission of contract in—Onus of proof of. See MARRIAGE—CONTRACT OF—RESCISSION OE—ONUS OF PROOF OF. (1925) 22 L.W. 726 (731).

——Damages for — Measure of—Decision of Court belove as to—Privy Council's interference with.

Their Lordships, whatever their own views would have been if they had been trying the case (an action for damages for breach of promise of marriage), would never think of interfering with a measure of damages which had been fixed by the Court below unless they saw that there was something very clearly wrong with the figure it had fixed upon. (Viscount Dunetin.) SKIPP v. KELLY.

(1926) 24 L. W. 18 = 1926 M.W.N. 382 = 3 O.W.N. 453 = 43 C.L.J. 430 = 94 I.C. 331 = 28 Bom. L.R. 873 = 30 C.W.N. 841 = A.I.R. 1926 P.C. 27 = 50 M.L.J. 498 (502 3).

Change of religion after.

- Effect of, on rights incidental to marriage-Spousts resident in India.

Quarre whether, in the case of spouses resident in India. a change of religion, made honestly after marriage with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering rights incidental to the marriage, such as that of divorce (41).

(Lord Watson.) SKINNER v. SRINNER.

(1897) 25 I.A. 34 = 25 C. 537 (546) = 2 C.W.N. 209 = 7 Sar. 262.

## MARRIAGE-(Contd.)

#### Contract for-Rescission of.

In certain circumstances silence, conduct, etc.—Conditions
In certain circumstances silence, absence, conduct,
expressions in letters may be amply sufficient to lead a Court
of Law, to the conclusion that a contract of marriage has
been rescinded and dissolved by mutual agreement. That,
however, is not a legitimate conclusion in a case where circumstances are altogether extraordinary, where the parties
to the contract were entangled, and embarrassed by difficulties not of their making, and quite beyond their control
(731). (Lord Darling.) LUCIA JACOB v. DAVID ALEXANDER WILLS. (1925) 22 L.W. 726 =

A.I.R. 1925 P.C. 194=89 I.C. 824=2 O.W.N 695.

Onus of proof of, in suit for damages for breach of

contract.

Where, in a suit to recover damages for breach of a promise to marry, the plaintiff proves the contract of marriage, the defendant can get rid of the liability to perform the contract only on proof that the contract was rescinded and dissolved by mutual agreement. The onus of proving it is on the defendant (731). (Lord Darling.) LUCIA JACOB v. DAVID ALEXANDER WILLS. (1925) 22 L.W. 726 – A.I.R. 1925 P.C. 194 = 89 I. C. 824 = 2 O.W.N. 695.

## Dissolution of -Husband's suit for -Wife's adultery-Evidence of.

—Letters written by her to co-respondent but in fact delivered to husband—Admissibility against co-respondent of. See CEYLON EVIDENCE ORDINANCE, S. 9.

—Evidence of—Court of Wards—Manager—Report of, stating lady to be wife of ward and recommending maintenance to her—Value of, on issue as to her marriage with ward. Sα MAHOMEDAN LAW—MARRIAGE—EVIDENCE—COURT OF WARDS.

(1844) 3 M. I. A. 295 (320-1).

#### Presumption of.

## Presumption of and of legitimacy of offspring—Extension of—Propriety.

Validity of marriage and legitimacy of offspring admitted—Issue only as to whether marriage conducted in such a way as to confer particular status and precedence was

offspring -Extension to case of.

Their Lordships see no reason for extending the presumption which exists in favour of a marriage and against concubinage, and in favour of legitimacy and against bastardy, to a case in which the validity of the marriage and the legitimacy of the offspring are admitted and where the only point is as to whether the marriage was conducted in such a way as to confer a particular status and precedence upon the offspring of the union. (Lard Chanceller.) MOLAPO MOJELA P. THABO LEBOTHOLI MOJELA.

(1928) 28 L.W. 744 = 111 I. C. 193 = 5 O. W. N. 1142 = A. I. B. 1928 P. C. 276.

#### Promise of.

----Breach of. See Under MARRIAGE-BREACH OF PROMISE OF.

— Married woman—Promise to marry a after her divorce—Promise to marry her after divorce was obtained—Ratification of old promise or making of new one—Test—Evidence.

The defendant first promised to marry the plaintiff when, as a matter of fact, she was a married woman. It was understood between them that a divorce was going to take place, and a divorce afterwards did take place. Though the

#### MARRIAGE-(Contd.)

Promise of-(Contd.)

promise made in such circumstances was a void promise, nevertheless, the parties considered themselves as engaged persons; behaved as engaged persons, and it was certain that after the divorce proceedings had gone through and consequently the plaintiff became a free woman, the defendant brought her a ring and actually arranged the date on which they were to be married.

Held, in an action by the plaintiff for breach of promise of marriage, that the Courts below were right in inferring from the facts and circumstances of the case what really was

in law a new promise to marry.

When persons fix a day for their marriage it may be inferred from this that there is a promise of marriage, and one is not bound to take it as a ratification of a contract which in itself is void, and which, therefore, in law cannot be ratified by anything that can be supsequently done. The promise in this case was not merely a ratification of the previous void promise. (Viscount Dunedin.) SKIPP v. KELLY. (1926) 24 L. W. 18 = 1926 M. W. N. 382 = 3 O. W. N. 453 = 43 C. L. J. 430 = 94 I. C. 331 =

28 Bom. L. B. 873 = 30 C. W. N. 841 = A. I. B. 1926 P. C. 27 = 50 M. L. J. 498 (501-2).

- Married woman-Promise to marry a, after securing her contemplated divorce-Validity of.

The defendant first promised to marry the plaintiff when, as a matter of fact, she was a married woman. It was understood between them that a divorce was going to take place between the defendant and her husband, and that the marriage between her and the plaintiff was to be after the said divorce. A divorce did afterwards take place

Held, that a promise of marriage made in such circum stances was a void promise. (Viscount Dunedin.) SKIPP p. KELLY. (1926) 24 L. W. 18 --

1926 M. W. N. 382=3 O. W. N. 453= 43 C. L. J. 430=94 I. C. 331=28 Bom. L. R. 873= 30 C. W. N. 841=A. I. R. 1926 P. C. 27= 50 M. L. J. 498 (501).

#### Question regarding.

— Maintenance by wife against husband if a. See BURMA COURTS ACT, S. 4.

(1884) 11 I. A. 109 (119) = 10 C. 777 (784), Status of.

In the case of spouses resident in India, their personal status, and what is frequently termed the status of the marriage, is not solely dependent upon domicil, but involves the element of religious creed (41). (Lord Watson.)

SKINNER D. SKINNER. (1897) 25 I. A. 34=
25 C. 537 (546)=2 C. W. N. 209=7 Sar. 262.

## MARRIED WOMAN.

- Acquisition of property for her separate use-Right of, in India-Extent of.

Query as to the extent to which a married woman can in India acquire property for her separate use, free from the control of her husband (280). (Lord Atkinson). KERWICK. (1920) 47 I. A. 275 = 48 C. 260 (265) = 32 C. L. J. 490 = 13 L. W. 455 =

2 U. P. L. B. (P.C.) 153 = 28 M. L. T. 194 = 1920 M. W. N. 738 = 23 Bom L. B. 730 = 57 I. C. 834 = 39 M. L. J. 296.

#### MARTIAL LAW ORDINANCE IV OF 1919.

-Applicability and effect of.

It was argued that the Martial Law (Further Extension) Ordinance IV of 1919 was capable of bung construed as intended only to extend the operation of the Martial Law

## MARTIAL LAW ORDINANCE IV OF 1919-

(Centd.)

Ordinance I of 1919 to offences committed before April 13, but not earlier than March 30, and accordingly that this Ordinance (like Ordinance 1) applied only to persons taken in the act of committing one of the offences specified in Bengal State Offences Regulation X of 1804. The ordi nance cannot be so construed. It is introduced by a recital that an emergency has arisen which renders it necessary to provide that commissions appointed under the earlier ordinance shall have power to try persons and offences other than those specified in that ordinance; and it empowers a commission to try any person charged with any offence committed after the specified date, and to pass in respect of such offence any sentence authorized by law It would be difficult to find words indicating more clearly that the operation of the ordinance is not to be confined to the persons and offences described in the earlier ordinance (137). (Viscount Care.) BUGGA P. THE KING-EMPEROR

(1920) 47 I. A. 128 = 1 Lah. 326 = 24 C. W. N. 650 = 22 Bom. L. R. 609 = 18 A. L. J. 455 = 12 L. W. 296 = 21 Cr. L. J. 456 = 56 I. C. 440 = 39 M. L. J. 1. Validity of. See Government of India Act of

1915, S. 65 (2)-ORDINARY INDIAN COURTS.

(1920) 47 I. A. 128 (137-8) = 1 Lah. 326

#### MASTER AND SERVANT.

#### Servant

——Acts of—Damages caused by—Master's liability for. The suit was for damages for the wrongful felling and carrying away of trees growing on part of the estate held on trust by the plaintiff, an official receiver. The plaintiff alleged that the first two defendants by the hands of their officers cut the trees.

It was not proved that any cutting took place by actual order of the first two defendants. The plaintiff contended that nevertheless they must be held responsible for it in point of law, because the other defendants, the persons who actually cut the trees, held some employments under defendants 1 and 2. But there was no evidence at all that to cut trees was in the ordinary course of tae duty of any of them.

Held, that there was no ground for making defendants 1 and 2 liable for the cutting by the other defendants, (Lord Hobbouse.) CASPERSZ v. KISHORI LAL ROY CHOWDHRI. (1896) 23 C. 922 (929)=1 C. W. N. 12= 7 Sar. 31.

—Employment of persons to work under or with— Voice as to—Restrictions on—Master's right to impose,

The Government certainly, as any other master, may lawfully restrict its own servants as to those whom they shall employ under them, or co-operate with in performing the services for the due performance of which they are enrolled and taken into its service (134). (Dr. Lushington.)

ROGERS v. RAJENDEO DUTT. (1860) 8 M. I. A. 103 = 13 Moo. P. C. 209 = 3 L. T. 160 = 9 W. R. (Eng.) 149 = 2 W. R. 51 = 1 Suth. 413 = 1 Sar. 755.

——Fraud of — Master's liability for. See BANKER AND CUSTOMER -- CHEQUE—PAYMANT OF — EVIDENCE. (1891) 18 I. A. 111 (119-20).

- Hire of another's - Negligence of servant hired during period of hire-Liability of his master for.

When one person lends his servant to another for a particular employment, the servant, for anything done in that particular employment, must be dealt with as the servant of the man to whom he is lent, although he remains the general servant of the person who lent him. A servant transferred, so to speak, for the convenience of working a chattel lent or hired to another, is, in a general sense, the servant of the master who sends him but upon the practical point of responsibility, when he is doing the work of and under the orders or control of the other employer to whom he is lent,

#### MASTER AND SERVANT-(Contd.)

Servant-(Contd.)

he is, in the eye of the law, the servant of the latter and the latter is, in the eye of the law, his employer. (Lord Shaw.) BULL & CO. P. WEST AFRICAN SHIPPING AGENCY AND LIGHTERAGE CO. (1927) 4 O.W N. 737=96 L.J. P.C. 127=104 I.C. 113=A. I. R. 1927 P.C. 173.

- House appropriated to-Possession of-Master's possession if-England and India-Distinction.

Probably in this country (England) we should say that, if a servant lived in a house appropriated to a servant, we should rather draw an inference from that that the possession of the servant was the possession of the master, but the customs and usages in the East Indies may be very different in that respect. (Mr. Baron Parke.) RAJAH PEDDA VENKATAPPA NAIDU P. AROOVALA ROODRAPPA NAIDU. (1841) 2 M. I. A. 504 (513-4) = 6 W. B. 13 = 1 Suth. 112 = 1 Sar. 224.

——Misappropriation by—Liability of Master for. Sat Banker and Customer—Cheque—Payment of— Evidence. (1891) 18 I. A. 111 (119-20).

#### MAXIMS.

#### Actor sequitur forum rei.

#### Audi alteram partem.

—It is an elementary principle which is binding on all persons who exercise judicial or quasi-judicial powers, that an order should not be made against a man's interest without there being given to him an opportunity of being heard. (Sir Andrew Scolle.) LALITESWAR SINGH v. MOHUNT GANESH SINGH. (1906) 33 I. A. 134 (138) =

33 C. 1178 (1182) = 10 C. W. N. 969 = 4 C. L. J. 177 = 8 Bom. L. R. 719 = 3 A. L. J. 689 = 1 M. L. T. 308 = 16 M. L. J. 365.

## Cessat ratio cessat lex.

——See HINDU LAW—IMPARTIBLE ESTATE—SUC CESSION—CUSTOM—FAMILY CUSTOM.

(1919) 12 L. W. 730 (737, 740) Cessante ratione legis cessat ipsa lex

——The contention that the fetter on the widow's power of alienation altogether drops in the absence of collateral heirs to the husband, on their failure, cannot be put upon the principle of "cessante ratione cessat et ipsa lex", because it is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power is imposed (551). (Lord Justice Turner.) COLLECTOR OF MASULIPATAM v. CAVALY VENCATA NARRIANAPAH. (1861) 8 M. I. A. 529 = 2 W. R. 61 = 1 Suth. 476 = 1 Saz. 820.

----Scr Hindu Law-Joint family - Grand-FATHER-SELF-ACQUIRED IMMOVEABLE PROPERTY OF. (1867) 12 M. I. A. 1 (39).

#### Communis error facit jus.

Their Lordships assume for the purposes of their judgment that Sir William Jones was mistaken in attributing the words interpolated in Verse 122 to Kulluka Bhatta. But they observe that Sir William Jones' version was probably founded on the tradition of the time at which he wrote, and has been accepted in the Indian Courts without question. "Communis error facit jus" is a sound maxim (109). (Lord Davey.) JAGADISH BAHADUR v. SHEO PARTAB SINGH. (1901) 28 I. A. 100 = 23 A. 369 (381).

5 C. W. N. 602=3 Bom. L. B. 298=8 Sar. 19= 11 M. L. J. 178.

## MAXIMS-(Contd.)

## Contemporanea expositio est optima.

See HINDU LAW-RELIGIOUS ENDOWMENT -DEDICATION TO-EVIDENCE-INCOME OF PROPERTY.

(1909) 36 I. A. 148 (164) = 36 C. 1003 (1012). See also DEED-CONSTRUCTION OF-CONTEM-PORANEA EXPOSITIO. (1912) 39 I.A. 202 (211)= 36 B. 639 (656).

#### Copulatio verborum indicat acceptationem in eodem sensu.

-See POWER OF ATTORNEY-OBJECTS OF.

(1884) 11 I. A. 94 (107) = 10 C. 901 (911).

Court-Act of, ought not to injure any of its suitors. -Sa C. P. C. OF 1908-S. 144. (1) DECREE REVER-SED ON APPEAL-STATUS QUO IN CASE OF

(1922) 49 I. A. 351 (355-6) = 2 Pat. 10 (16).

AND (2) INVALID ORDER-RECALLING OF.

(1871) 14 M. I. A. 40 (47-8).

#### Delegatus non potest delegare.

The broad principle delegatus non potest delegare would prima facie apply to the transfer by a trustee of his office and its duties (81). (Sir fames W. Colvile.) RAJAH VURMAH VALIA D. RAVI VURMAH VALIA-

(1876) 4 I. A. 76=1 M. 235 (248)=3 Sar. 687= 3 Suth. 382.

-See FIDUCIARY DUTIES-DELEGATION OF-RULE (1921) 49 I. A. 46 (52-3) = 49 C. 325 (333). AGAINST.

## Equity-One who seeks, must do equity.

-See EQUITY.

(1903) 30 I. A. 114 (125-6)= 30 C. 539 (549).

#### Factum Valet.

-That unhappily expressed maxim (factum valet) clearly causes trouble in Indian Courts. If the factum, the external act, is void in law, there is no room for the application of the maxim. The truth is that the two halves of the maxim apply to two different departments of life. Many things which ought not to be done in point of morals or religion are valid in point of law. But it is nonsensical to apply the whole maxim to the same class of actions and to say that what ought not to be done in morals stands good in morals, or what ought not to be done in law stands good in law. (Lord Hobhouse.) SRI BALUSU GURULINGASWAMI P. SRI BALUSU RAMALAKSHMAMA.

(1899) 26 I. A. 113 (144) = 22 M. 398 (423) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. B. 226 = 7 Sar. 330=9 M. L. J. 67.

-See CHOTA NAGPUR ENCUMBERED ESTATES ACT OF 1876-S. 12-RELEASE OF ESTATE FROM MANAGE-MENT-ORDER FOR-VALIDITY OF-FACTUM VALET. (1889) 16 I. A. 221 (232) = 17 C. 223 (233).

## Falsa demonstratio.

-See DEED-AREA-BOUNDARY.
-See HINDU LAW-WILL-CONSTRUCTION-CON-(1919) 13 L. W. 657 (661). VEYANCE CLAUSE. -See LANDLORD AND TENANT-NOTICE TO QUIT SUFFICIENCY OF-AREA OF HOLDING

(1918) 45 I. A. 222 (229-30) = 46 C. 458 (479-80).

#### Hard cases should not make bad law.

-It is the duty of all Courts of Justice to take care for the general good of the community, that hard cases do not make bad law. (69). (Lord Campbell.) EAST INDIA CO. v. ODITCHURN PAUL (1849) 5 M. I. A. 43=

7 Moo. P. C. 85=14 Jur. 253=1 Sar. 394.

## House of a man is his castle.

Qualifications of. See HOUSE-MAN'S HOUSE IS (1843) 3 M. I. A. 164 (171). HIS CASTLE.

#### MAXIMS-(Contd.)

## Id certum est quod certum reddi potest.

Two questions arise upon the construction of the Interest Act XXXII of 1839; first, what is meant by a sum certain, and a time certain. With respect both to amount and time of payment, it was argued that the maxim "id certum est qued certum reddi potest" must be applied ; and, in a reasonable sense, this is true (278). (Sir John Coloridge.) JUGGOMOHUN GHOSE 2. MANICKCHUND.

(1859) 7 M. I. A. 263 = 4 W. R 8 = 1 Suth. 357 =

1 Sar. 681.

-See INTEREST ACT OF 1839--S. 1. (1859) 7 M. I. A. 263 (278-9).

## In pari delicto potior est conditio possidentis.

-See BENAMI-FRAUDULENT BENAMI-PROPERTY TRANSFERRED UNDER. (1908) 35 I. A. 98 (102-3)= 35 C. 551 (558).

## Interest reipublicee ut sit finis litium.

-There is a salutary maxim which ought to be observed by all courts of last resort-Interest reipublicoe ut sit finis litium. Its strict observance may occasionally ental hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this (159). (Lord Watson.) VENKATA NARASIMHA APPA ROW P. THE COURT OF WARDS

(1886) 13 I. A. 155=10 M. 73 (78)=4 Sar. 755.

Inter mercatores jus accrescendi locum non habet. -S.y JOINT TENANCY-SALE DEED.

(1928) 56 I. A. 112 (114).

Nova constitutis futuris firman imponere debit non procteritis.

SW STATUTE-OPERATION OF.

(1850) 5 M. I. A. 109 (126).

Nunc pro tune.

-See PRIVY COUNCIL-APPEAL-SPECIAL LEAVE (1877) 4 I A. 178 (183) = 3 C. 522 (528).

## Omnia praesumentur recte esse acta.

-C. P. CODE. OF 1908-O. 21, R. 6 (a)-COPY OF DECREE TO BE EXECUTED-TRANSMISSION OF-PRE SUMPTION AS TO. (1872) 14 M. I. A 529 (541)-

-See OUDH LAND REVENUE ACT OF 1876-S. 62. (1916) 43 I. A. 212(226) = 38 A. 627 (650-1).

-See REGISTRATION ACT OF 1908-Ss. 34, 35, 87-EXECUTION OF DEED. (1923) 50 I. A. 162 (172-3)= 4 Lah. 284.

#### Omnia rite acta fuisse.

The presumption is Omnia rite acta fuisse. RAM-RUDEEGOWDA P. DESSAI SAHEB. (1871) 17 W. R. 8= 2 Suth. 501.

## Omnis ratihabitio retiotrahitur et mandato priori acquiparatur.

-See HINDU LAW-REVERSIONER - WIDOW-ALIENATION BY-CONSENT TO-EX POST FACTO CON-(1907) 35 I. A. 1 (16)= 30 A. 1 (21). SENT.

#### Presumetur retro.

See Possession-Long Possession-Proof of -PRIOR POSSESSION. (1887) 14 I. A. 101 (110)= 14 C. 740 (748).

" Protectio trapit subjectionem, et subjectio hit protectionem."

-See JURISDICTION-PROTECTION OF LAW. (1835) 3 Knapp 348 (369). MAXIMS-(Contd.)

Quando aliquid conceditur sine quo res ipsa non esse potest.

-See MINERALS-GRANT OF-RIGHT TO WORK (1924) 52 I. A. 109 (115)= 4 P. 244. MINERALS, EIC.

Quid Quid plantatur solo solo cedit.

(See Lancelet Sanderson.) NARAYAN DAS KHETTRY & JATINDRA NATH ROY CHOWDHURY.

(1927) 54 I. A. 218 (223) - 54 C. 669 = (1927) M. W. N. 461 = 102 I. C. 198 (2) = 29 Bom. L. R. 1143 - 46 C. L. J. 1 - 31 C. W. N. 965 -

8 Pat. L. T. 663 - 26 L. W. 848 = A. I. R. 1927 P. C. 135 = 53 M. L. J. 158.

(Lord Carson.) VALLABHADAS NARANJI P. DEVELOP-(1929) 56 I. A. 259= MENT OFFICER, BADRAS. 53 B. 589 = 33 C. W. N. 785 = 27 A. L. J. 707 = 31 Bom. L. R. 834 - 30 L. W. 69 - 50 C. L. J. 45 -117 I. C. 13 - 1929 M. W. N. 822 = A. I. R. 1929 P. C. 163 = 57 M. L. J. 139.

Qui facit per alium facit per se.

-See BENGAL REGULATIONS-INTEREST ACT XV OF 1793-S. 11. (1868) 12 M. I. A. 157 (195-7.)

Quioquid inaedificatur sole sole credit.

-It must also be kept in view that in Indian law the maxim. "Quioquid, etc." has no application to the present The rule established in India is that of S. 108 of the Transfer of Property Act, which provides that " the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it." (Lord Watson.) LALA BENT RAM P. KUNDAN LALL.

(1899) 26 I. A. 58(63) - 21 A. 496(503) -3 C. W. N. 502 - 1 Bom. L. R. 400 - 7 Sar. 523. Qui prior est tempore potior est jure.

-See TRANSFER OF PROPERTY ACT-S. (1923) 50 I.A. 283(290) = 51 C. 86. EFFCT.

Res non Surut integrae.

-See Lease-Voidable Lease-Avoidance of-LESSOR'S RIGHT OF.

(1922) 31 M. L T. 289 P. C. (297).

Sic utere tuo ut alienum non laedas.

-So English decisions-Fletcher r. Rylands (1874) 1 I. A. 364 (385.) -RULE IN.

#### Stare decisis

-This is not a case to which their Lordships should apply the doctrine that where there is a long course of decisions they ought not to be reversed and the law be thus altered. (Sir Richard Couch.) SKI RAJA RAO VENKATA SURYA MAHIPATI RAMAKRISHNA RAO BAHADUR P. (1899) 26 I. A. 83 (96)-COURT OF WARDS. 22 M. 383 (397) = 3 C. W. N. 415 = 1 Bom. L. R. 277 =

7 Sar. 481.

-Freedom of action-Decisions depricing-Decisions declaring-Distinction.

People may be disturbed at finding themselves deprived of a power which they believed themselves to possess and want to use. But they can hardly be disturbed at being told that they possess a power which they did not suspect and need not exercise unless they choose. And so with titles (Lord Hobboure.) SRI BALUSU GURULINGASWAMI P. SRI BALUSU RAMALAKSAMAMA.

(1899) 26 I. A. 113 (152) = 22 M. 398 (430) = 21 A. 460 = 3 C. W. N. 427 = 1 Bom. L. R. 226 = 7 Sar. 330 = 9 M. L. J. 67.

-Hindu Law-Authorities Interpretation of - Applicability to. See HINDU LAW-AUTHORITIES-INTER-PRETATION OF.

MAXIMS-(Contd.)

Stare Decisis-(Contd.)

-Hindu Law-Inheritance-Right of -Question as to. See HINDU LAW-INHERITANCE-STARE DECISIS.

-Hindu Law-Joint family-Father or other manager-Debt of, or alienation by-Binding nature of, as against other members-Application of rule to. See HINDU LAW - JOINT FAMILY-ALIENATION BY-BINDING CHARAC-TER OF, AS AGAINST SONS-QUESTION AS TO.

(1923) 51 I. A. 129 (137) = 46 A. 95.

 Indian Statute - Interpretation of - Applicability to. See STATUTE-INDIAN STATUTE.

(1872) 14 M. I. A. 543 (560-1).

-Limitation Act-Interpretation of. See LIMITA-TION ACT- INTERPRETATION OF.

-Practice-Matter of, though to be determined by statute.

In a matter of practice, although to be determined by statute, their Lordships would willingly give much weight to any consentaneous practice, (Lord Robertson.) PHUL KU-MARI P. GHANSHYAM MISRA. (1907) 35 I.A. 22 (26) = 35 C. 202 (207) = 2 M. L. T. 506=

7 C. L. J. 36 = 12 C. W. N. 169 = 10 Bom. L. B 1 = 5 A. L. J. 10=14 Bur. L.R. 41=17 M. L. J. 618.

-See PRACTICE -- RULE OF - CERTAINTY IN. (1928) 55 I. A. 360 = 52 B. 597.

-Procedure-Question of.

All the High Courts of India having put a particular construction on S. 11 of C. P. C of 1861, their Lordships accepted that construction as settled law, irrespective of their opinion as to the right construction of the section.

The alleged consensus of the Indian Courts being thus established, their Lordships, whatever their opinion upon the construction of this section might have been had the question been res integra, do not think it would be right to tun counter to so long a course of decision upon what is, in fact, a question of procedure (228). (Sir James W. Calvile.) SADASIVA PILLAI P. RAMALINGA PILLAI.

(1875) 2 I. A. 219 = 15 B. L. R. 383 = 24 W. R. 193 = 3 Sar. 519 = 3 Suth. 190.

-Property -- Rule regarding.

Undoubtedly their Lordships would be unwilling to reverse any rule regarding property which had been long and consistently acted upon in the Courts of the Presidency (90-1.) (Lord Westbury.) APPOVIER P. RAMA SUBBA AIVAN. (1866) 11 M. I. A. 75=8 W. R. P. C. 1=1 Suth. 667=

-Statute-Interpretation of-Application to. (1) Sec LIMITATION ACT-INTERPRETATION OF-STARE DE-(1907) 34 I A. 186 (192) = 30 M. 426 (432.) CISIS.

(1872) 14 M. I. A. 543 (560-1). (2) STATUTE.

(3) STATUTE—INTERPRETATION - JUDICIAL INTER-(1916) 44 I. A. 65 = 44 C. 759 (768). PRETATION.

## Ut res magis Valcat quam pereat.

- (1) See LANDLORD AND TENANT-NOTICE TO QUIT -SUFFICIENCY-TESTS. (1918) 45 I. A. 222 (225)= 46 C. 458 (471).
- (2) DEED-CONSTRUCTION OF-MAXIM--UT RES (1923) 50 I. A. 265 (273) = 45 A. 596 (603) ETC.

### MEASUREMENT.

-Agreement for, after notice-Measurement incorrect but hone fide-Effect. See LANDLORD AND TENANT-(1884) 10 C. 895. CHUR LAND.

#### MEETING.

——Business to be transacted at—Notice of—Insufficiency of—Complaint of—Maintainability of—Knowledge prior on complainant's part of such business—Effect See COMPANY—MEETING OF—BUSINESS TO BE TRANSACTED AT. (1928) 55 I. A. 274 = 52 B. 571.

—Hearing at—Denial of—What amounts to. Sci COMPARY—MEETING OF—HEARING AT.

(1928) 55 I. A. 274 = 52 B. 571.

#### MEMONS.

#### Bombay Halai Memons.

--- Succession-Law governing.

It is admitted that so far as the Bombay Halai Memons are concerned they have been content for many years to have their property distributed on succession according to the tenets of the Mahomedan law. (Lord Duncdin.) KHATUBAI P. MAHOMED HAJI ABU.

(1922) 50 I. A. 108 (112-3) = 47 B. 146 (151-2) = 25 Bom. L. R. 127 = 17 L. W. 208 = 37 C. L. J. 131 = 32 M. L. T. 45 = 27 C. W. N. 774 = A. I. R. 1922 P. C. 414 = 72 I. C. 202 = 44 M. L. J. 35.

#### Classes of.

----Cutchi Memons-Halai Memons-Bombay Cutchi Memons-Bombay Halai Memons-Porbandar Halai Memons-Who are.

A Memon, as the word denotes, is a convert. The name Memon, however, has not been applied to all branches of Hindu converts, e.g., as in the case of the Khojas. There was a body which came from Sind and settled in Cutch, and these have been denominated as Cutchi Memons. Another body from the same place settled in the Halai Prant of Kathiawar, and these have been designated Halai Memons. Some of the Halai Memons pushed on to Bombay, where they have formed a community known as the Bombay Halai Memons. There was also an immigration from Bombay to Cutch, and the Cutchi Memons formed by themselves a separate community in Bombay from the Halai Memons. (Lord Duncdin.) KHATUBAI 29, MAHOMED HAJI ABU.

(1922) 50 I. A. 108 (112) = 47 B. 146 (151) = 25 Bom. L. R. 127 = 17 L. W. 208 = 37 C. L. J. 131 = 32 M. L. T. 45 = 27 C. W. N. 774 = A. I. R. 1922 P. C. 414 = 72 I. C. 202 =

44 M. L. J. 35.

#### Nassapooria Memons settled at Mombasa.

- Succession to--Law applicable.

M, the succession to whose estate was in question, was a merchant who had settled at Mombassa, and was a member of the Indian sect known as Memons. His father was a Nassaporia Memon, who, about half a century before date of suit, with his wife and children, including M, migrated to Mambassa, where they settled. At Mombassa the succession to Mahomedans was in general governed by Mahomedan law, although it would probably be open to immigrants to prove that they had brought with them and preserved a custom establishing special law of succession. It did not appear that the Memons at Mombassa had at any time established any distinctive political or social organisation for themselves. Such organisation as had been formed appeared to have been formed mainly, if not entirely, for purposes of worship. There was no sufficient reason in what had been brought before the courts in the case for regarding the Memons who had emigrated from Cutch to Mombassa as other than a number of individual Mahomedans who had settled down among a people who were of their religion. It did not appear that those Memons had ever as a body claimed to be outside the system of law which naturally followed from that religion and so prevailed among the Mahomedans at Mombasa,

#### MEMONS-(Contd.)

the Memon community.

Nassapooria Memon settled at Mombasa-(Contd.)

The appellate Court held that, if the respondent, who was the widow of the deceased and who alleged that the succession was governed by Mahomedan law, simply produced sufficient evidence to show that the custom of Hindu succession had ceared to be generally observed by the Memons in Mombasa, that was sufficient to entitle her to succeed, if the appellant, who was the son of the deceased and who reflied upon the Hindu law, failed to bring forward sufficient evidence in answer.

Held, affirming the appellate court, that the presumption which arose from the facts proved and the weight of exidence were both in favour of the conclusion reached by that court (41-2). (Viscount Haldane). ABDURAHIM HAJI ISMAIL MITHU P. HALIMABAI. (1915) 43 I.A. 35 =

20 C.W.N. 362 = (1916) 1 M.W.N. 176 = 18 Bom. L.R. 635 = 32 I.C. 413 = 30 M.L.J. 227.

#### Origin of.

Classes of —Cutch Memons—Nassapeoria Memons. Some four or five hundred years ago the Loannas, a sect of Hindus located in Sind, became converted to the Mahometan faith and took the name of Memons. A century or so later they migrated to Cutch, where they settled. There were two migrations. Those who first migrated and their descendants became known as Cutchee Memons, while those who migrated on the second occasion, and their descendants were called Nassapooria Memons. Both sets of migrants held to religious tenets and customs which are common to

Upon their conversion to Mahomedanism the Memons did not adopt the Mahomedan law as to succession, but retained their Hindu Law of succession as a customary law which remained binding upon the entire Memon community at Cutch. Over half a century ago Memons began to migrate from Cutch to East Africa (39-40). (Viscount Haldane). ABBURAHIM HAJI ISMAIL MITHUF. HALLMABAI. (1915) 43 LA. 35 = 20 C.W.N. 362

(1916) 1 M.W.N. 176 = 18 Bom. L R. 635 = 32 I.C. 413 = 30 M.L.J. 227.

#### Porbandar Halai Memons.

-Law governing-Evidence- Porbandar Courts-Decisions of-Value of.

In a case in which the question was whether a Halai Memon domiciled in Porbandar followed the Hindu or Mahomedan law with regard to the succession of females, held that the decisions of the Porbandar Courts as to the law applicable did not settle the matter, but that such judgments were good as evidence. (Lord Dunedin.) KHATUBAI v. MAHOMED HAJI ABU.

(1922) 50 I.A. 108 (114) = 47 B. 146 (153-4) = 25 Bom. L.B. 127 = 17 L.W. 208 = 37 C.L.J. 131 = 32 M.L.T. 45 = 27 C.W.N. 774 = A.I.B. 1922 P.C. 414 = 72 I.C. 202 = 44 M.L.J. 35.

Succession to-Law governing-Death of person at

Held, affirming the High Court, that the Hindu, and not the Mahomedan, law of succession applied to the property of a Halai Memon of Porbandar, who died intestate at Bombay, and that, accordingly, his daughter was excluded by his son. (Lord Dunedia). KHATUBAI v. MAHOMED HAJI ABU. (1922) 50 I.A. 108 (113-4)=

47 B. 146 (152) = 25 Bom. L.B. 127 = 17 L.W. 208 = 37 C.L.J. 131 = 32 M.L.T. 45 = 27 C.W.N. 774 = A.I.B. 1922 P.C. 414 = 72 I.C. 202 = 44 M.L.J. 35.

#### MERCANTILE CONTRACT.

#### MERCANTILE CUSTOM.

- Essentials of, See CUSTOM - MERCANTILE CUSTOM. (1859) 7 M.I.A. 263 (282).

#### MERCANTILE LAW.

#### Mofusil Courts of India.

-English Law not recognised by.

The country Courts of India do not recognise the Mercantile law of England as the lex fori (242). (Lord Justice Turner.) MURTUNJOY CHUCKERBUTTY 7. COCKRANE. (1865) 10 M.I.A. 229 = 4 W.R. P.C. 1=

1 Suth. 592 = 2 Sar. 124

-Not very conversant with questions of Mercantile Late.

The country Courts of India are not very conversant with questions of Mercantile Law (242). (Lord Justice Turner.) MURTUNJOY CHUCKERBUTTY P. COCKRANE. (1865) 10 M.I.A. 229-4 W.R. P.C. 1=1 Suth. 592=

#### MERCANTILE TRANSACTION

-Laches-Doctrine of-Applicability of. See LACHES -MERCANTILE TRANSACTIONS

(1924) 52 I.A. 126 (130) = 52 C. 408.

Oral evidence of Difficulty of Transaction of type usually recorded in writing.

There is always considerable difficulty when one of a number of mercantile transactions of a type usually recorded in writing has to be proved by word of mouth, for experience shows that in such cases the most honest and careful witnesses, recalling to memory only the result of the conversations, tend to give evidence of what they think they must have heard and said to produce such a result rather than to state from actual memory of them the very words that were used (130). (Lord Sumner.) SURAJ-MULL NAGURMULL P. THE TRITON INSURANCE CO., (1924) 52 I.A. 126 = 52 C. 408 = LTD.

23 A.L.J. 105 - 1925 M.W.N. 257 = 6 L.R. P.C. 66= 27 Bom. L.R. 770-29 C.W.N. 893-A.I.R. 1925 P.C. 83 = 86 I.C. 545 = 49 M.L.J. 136.

### MERCHANTS

-English rules applicable to-Inapplicability of, to people living under different conditions and having different habits of life.

The strict rules applicable as between merchants over here (i.e., in England) who are accustomed to prompt and expeditious methods of business cannot always be expected to apply with untempered severity to people far away, living under different conditions and having different habits of life. (Lord Buckmaster.) MAUNG PO NAING r. MA ON GAING. (1917, 26th October)

High Court File for 1917 P.C.A. 85 of 1916.

N.B.—The above observation was made in a case from Upper Burma,

-Sale-deed - Purchasers under-Description of, as merchants-Effect of, on tenancy created between them in matter of purchase-Maxim "Inter mercatores jus accrescendi locum non habet"-Applicability of. See JOINT TEN-ANCY-SALE DEED. (1928) 56 I.A. 112(114)= 56 M.L J. 643.

#### MERGER.

-Award-Judgment on-Merger of award in. See ARBITRATION-AWARD-JUDGMENT ON.

(1922) 49 I.A. 174 (180) = 45 M. 496 (503).

-Decree-Earlier and later decrees in same suit-Merger of former in latter. See MORTGAGE-SUIT TO EN-FORCE-DECREE IN-EX PARTE DECREE AGAINST ETC., (1915) 42 I.A. 171 (175-6)=37 A. 485 (494).

#### MERGER-(Contd.)

-Hindu joint family-Members of-Mokurraree lease in favour of some of-Putni lease subsequent to others-Merger-Intention of parties-Evidence. See HINDU LAW —JOINT FAMILY—MEMBERS OF—MOCURRAREE LEASE IN FAVOUR OF SOME OF. (1921) 48 I.A. 485 (493).

-Identity of person-Absence of-Applicability of destrine in case of.

A mokurruri lease was granted of lands situated within a mouza to two persons, who were members of a joint Hindu family. Ten years later, the owner of the mouza granted a putni lease of the whole mouza to K, the son of one of the lessees under the mokurruri lease and another, not a member of the joint family. Subsequently this last named person sold his share of the putni to K.

Held that the point of merger could not arise, because there was no identity of person between the mokurruridars

and the putnidars.

This applies clearly to the date when the putni lease was granted; but it also further applies to the date when, by the sale by his co-lessee, I' became the sole lessee, because A, although thereafter holding the putni en bloc, was not himself a mokurruridar under the mokurraridar (490). (Lord Shaw). DULHIN LACHHANBATI KUMARI v. BODH-(1921) 48 I.A. 485= NATH TIWARL

A.I.R. 1922 P.C. 94 = 4 U.P.L.R. (P.C.) 42= (1922) M.W.N. 58=15 L.W. 343=30 M.L.T. 216= 26 C.W.N. 565 = 24 Bom. L.R. 383 = 66 LC. 351.

-Identity of right-Avoidance of merger in case of-Device adopted in English law for. See MERGER-TITLES (1921) 48 I. A. 485 (492-3). DIFFERENT.

-Mofussil-Applicability of doctrine in, before T. P.

Quare whether, prior to the Transfer of Property Act, there was no law of merger in the mofussil (491). (Lord Share.) DULHIN LACHHANBATI KUMARI P. BODHNATH (1921) 48 I. A. 485 = A.I.B. 1922 P.C. 94 = TIWARI. 4 U. P. L. R. P.C. 42=(1922) M. W. N. 58= 15 L. W. 343=30 M. L. T. 216=26 C. W. N. 565=

24 Bom. L. R. 383 = 66 I. C. 551.

Superior and inferior rights-Acquisition of-Effect of.

Merger is not a thing which occurs ipso jure upon the acquisition of what may be called the superior with the in ferior right. There may be many reasons-conveyancing reasons, reasons arising out of the object of the acquisition of the one right being merely for a temporary purpose, family reasons and others-in the course of which the expediency of avoiding the coalescence of interest and preserving the separation of title may be apparent. In short, the question to be settled in the application of the doctrine is was such a coalescence of right meant to be accomplished as to extinguish that separation of title which the records contain? (491-2). (Lord Show.) DULHIN LACHHANBATI (1921)48 L A. 485= KUMARI D. BODHNATH TIWARI. A.I.R. 1922 P.C. 94=4 U. P. L. R. P. C. 42=

(1922) M. W. N. 58=15 L. W. 343=30 M. L. T. 216= 26 C. W. N. 565 = 24 Bom. L. R. 383 = 66 I. C. 551.

-Titles different-Holder under-Identity of right of-Avoidance of merger in case of-England-Methods adopted for the purpose in- Joint family in India-Tab ing of titles in names of different members of-Effect of.

There may under the law of England be complete fundamental identity of right between the holder under the one title, and the holder under another, but a convenient method of indicating intention on the subject is to create, for the purpose of keeping up the separation of title, a trust by which merger in the legal sense is clearly avoided. In short, although the same person is truly and comprehensively the

#### MERGER-(Contd.)

owner of all the rights which might have coalesced, the substance of separation is preserved by the form of title not having been allowed to merge into the one name (492.3).

To apply this doctrine to the Indian joint family, when a joint family interest might be said to cover rights acquired to property by several individuals belonging to the family, but when the rights which might otherwise be merged are conferred by titles taken in the names of different members of the family, and thereby the means of articulate differentiation is continued as effectively as by the artifice employed in England of the setting up of a trust ad hee, then it appears that these circumstances are elements for consideration (493). (Lord Shaw.) DULHIN LACHHANBATI KUMARI v. BODHNATH TIWARI. (1921) 48 I. A. 485

A. I. R. 1922 P. C. 94-4 U. P. L. R. (P. C.) 42-(1922) M. W. N. 58-15 L. W. 343-30 M. L. T. 216-26 C. W. N. 565-24 Bom. L. R. 383-66 I. C. 551.

## MESNE PROFITS.

ASSESSMENT OF.

CIVIL PROCEDURE CODE PROVISIONS AS TO-APPLI-CABILITY OF.

CLAIM TO-NATURE OF, PRIOR TO ASCERTAINMENT BY DECREE

CO-SHARERS.

DECREE.

DECREE FOR.

DEFENDANTS SEVERAL-SUIT AGAINST.

EVIDENCE OF.

EXECUTING COURT.

EXECUTION OF DECREE—MESNE PROFITS TO BE RE-ALISED IN—BOND FOR PAYMENT OF AMOUNT OUT OF.

EXECUTION PROCEEDINGS—ORDER FINAL IN, AS TO WHETHER PROFITS AWARDED BY DECREE OR NOT EXECUTION SALE—SETTING ASIDE OF – MESNE PROFITS ON.

FUTURE PROFITS.

GHATWALLY TENURE.

HEIR-AT-LAW-WILL OF DECEASED-INVALIDITY OF -SUIT ON FOOT OF-PROFITS OF ESTATE IN CASE OF, HINDU LAW.

INQUIRY INTO-MODE OF, DIRECTED BY DECREE.
INTEREST ON.

LEGAL REPRESENTATIVE OF DEFENDANT TRESPAS-SER.

LESSEE OF SUIT PROPERTY PENDENTE LITE-RE-COVERY OF PROFITS FROM-MODE OF.

LIABILITY FOR.

MEASURE OF.

MINOR-GUARDIAN- PROPERTY HELD ADVERSELY TO MINOR BY-MESNE PROFITS IN RESPECT OF.

PAST PROFITS

POSSSESSION AND-SUIT FOR.

PRE-EMPTION SUIT -- MESNE PROFITS OF PROPERTY SUBJECT OF.

RENT-CLAIMS FOR-JOINDER OF, IN ONE SUIT.

RIGHT TO

SUIT FOR.

SURETY FOR—ASSESSMENT OF PROFITS—PROCEED-ING FOR

WILL—INVALIDITY OF — HEIR-AT-LAW'S SUIT ON FOOT OF —PROFITS OF ESTATE IN CASE OF.

ZUR-I-PESHGI LEASE—DECREE FOR POSSESSION AND MESNE PROFITS ON—EXECUTION SALE OF RIGHT AND TITLE OF LESSEE UNDER LEASE.

Assessment of.

BASIS OF.

EVIDENCE.

LOCAL INQUIRY—ASSESSMENT BY—DECREE DIRECT-ING.

## MESNE PROFITS-(Contd.)

Assessment of-(Contd.)

PROCEEDING FOR—EXECUTION PROCEEDINGS OR PROCEEDING IN SUIT.

PROCEEDING FOR-PARTIES TO.

#### BASIS OF.

—Alluxial land—Cultivated area of—Profits of— Assessment of Earlier years—Area cultivated in—Exidence of, withheld by defendant—Area at end of period in question known—Presumption of cultivation of same area throughout period—Propriety.

A decree of the Privy Council declared that the respondent's father was entitled to possession with mesne profits of so much alluvial land as lay to the north and west of the red line in the map annexed to Her Majesty's order in Coun-

cil.

On an application by the respondent, who had succeeded his father, for fixing the amount of the mesne profits as per that decree, it became necessary to determine the quantity of land that had been under cultivation from 1272 to 1280. The High Court found that in 1280 an entire area of 1079 bighas was under cultivation, and held that, as it was in the power of the defendants (judgment-debtors) by production of jumma-wasil-laki papers and other papers usually kept in the Zemindar's scriphts to show the gradual increase in the cultivated area from 1272 to 1280, and they had not given any evidence on that point, it ought to be presumed against them that the entire 1079 bighas came under cultivation from the beginning of 1272.

Held that the presumption made by the High Court was, in the circumstances of the case, a proper one (544).

The defendants appear to have endeavoured throughout the proceedings to defeat the execution of the decree for mesne profits. Ly not producing evidence which they had power to produce (544). (Sir Richard Couch.) MAHABIR PERSHAD P. RADHA PERSHAD SINGH.

(1891) 18 C. 540 = 6 Sar. 16.

-Building creeted by defendant-Increase in income of plaintiff's land due to-Profits of land in case of-Assessment of.

The appeal arose out of a suit brought by the appellant to recover possession of certain land, and for mesne profits and damages. The land was originally the property of the appellant, but was at the date of suit in the possession of the Darbhanga Municipality, represented in the suit by their Chairman, the respondent. While the appellant was a minor and his estate was under the management of the Court of Wards, the land in question was ostensibly taken by the Government, at the expense of the Darbhanga Municipality, under the provisions of the Land Acquisition Act. It was found in the suit that the land had not been validly acquired by the Municipality under the provisions of the Land Acquisition Act, and that the appellant was therefore entitled to recover possession of the same, The question arose as to the amount the appellant was entitled to for mesne profits, and as to the proper measure of such

The District Judge took the income for the three years, 1883 to 1885, and set that off against a sum of Rs. 5,000 which it was admitted by the plaintiff he was bound to pay to the defendant for the money expended on the land. That income was, however, received by the municipality after the expenditure of a considerable sum of money on the land.

Held that that was not the measure of the damages sustained by the plaintiff by being out of possession, and that the rent which could have been obtained for the land if the plaintiff had been in possession during those years was the fair measure of the mesne profits and that that sum only must be deducted from the Rs. 5,000 (97). (Sir Richard

Assessment of-(Contd.)

Basis of-(C-atd.)

Couch.) MAHARAJA LUUHMESWAR SINGH F, CHAIR-MAN OF THE DARBHANGA MUNICIPALITY.

(1890) 17 I. A. 90 - 18 C 99 (107) - 5 Sar. 564.

 Cultivation of land by defendant himself—Land let out by him to others—Distinction between cases of—Rental value true basis in latter case.

The rental value of the land would ordinarily be the proper basis of calculating memor profits where the person charged had merely let the land out to others. In such a case the rent that be received, if there was no evidence that a higher rent could "with ordinary diligence" have been obtained, would be the measure of the profits for which he would be liable. But when the wrong-deers cultivated the land themselves, the definition of "Mesne Profits" in S. 2 (12).C.P.C. clearly makes the cultivation profits the primary consideration. (Six George Lourender.) HARRY KEMPSON GRAY v. BHAGU MIAN. (1929) 57 I. A. 105

1930 A. L. J. 128 = 34 C. W. N. 257 = 32 Bom. L. R. 525 = 7 O. W. N. 303 =

121 I. C. 540 - 31 L. W. 425 - A.I.R. 1930 P. C. 82 -58 M. L. J. 215.

- Defendant not in possession and not in receipt of profits during period in question-Liability of-Basis of-Actual and not possible receipts.

The plaintiff, having been dispossessed by the manager under the Oudh Talookdaa's Relief Act of 1870, sued for and obtained a decree for possession against the manager. Thereupon he instituted a fresh suit against the manager for the mesne profits of the said property. Pending the suit, the estate was released from management and handed over to the respondent, and he was brought on record in the place of the manager.

On a question arising as to whether, as regards mesne profits, the respondent was liable only for sums which had actually been received, or was liable also for sums which might have been received except for wilful default, held that he was liable only for the sums which had actually been received (93).

The respondent did not receive the mesne profits himself. He came into possession of the estate upon its being released by the Government. Whatever case might have been made against the manager of the estate, there is nothing to show that the respondent could be charged with anything more than was actually received by him (93). (Sir Richard Couch.) KRISHNANAND r. KUMAR PARTAB NARAIN SINGH. (1884) 11 I. A. 88=10 C. 785 (791) = 4 Sar. 551 = R. & J's No. 80 (Oudh).

- Defendant's actual or reasonably possible profits and not plaintif's possible profits.

The true basis on which mesne profits ought, under S. 2 (12) of C. P. C., to be computed is what the person in possession received or might. With ordinary diligence have received from the land and not what the person who was out of possession might have got if he had been there, (Viscount Eunedin). GURUDAS KUNDU CHOWDHURY v. KUMAR HEMENDRA KUMAR ROY.

(1929) 56 I. A. 290 = 57 C. 1 = 50 C. L. J. 369 = 34 C. W. N. 89 = A. I. R. 1929 P. C. 300 = 32 Bom. L. R. 148 = 31 L. W. 7 = 121 L. C. 525 = 58 M. L. J. 74.

The test set by the statutory definition of mesne profits is clearly not what the plaintiff has lost by his exclusion, but what the defendant has or might reasonably have made by his wrongful possession. What the plaintiff in such a case might or would have made can only be relevant as evidence of what the defendant might with reasonable diligence have

MESNE PROFITS-(Contd.)

Assessment of-(Contd.)

BASIS OF-(Centd.)

GRAY 2. BHAGU MIAN. (1929) 57 I. A. 105= 1930 A.L.J. 128-34 C.W.N. 257-32 Bom. L.R. 525= 7 O.W.N. 303-121 I.C. 540-31 L. W. 425= A.I.R. 1930 P.C. 82-58 M. L. J. 216.

Inferior crops grown on land by defendant for his
own special purposes—Assessment in case of, on foot of
more prophable crops which land is capable of yielding—
Propriety.

Land, which was capable of producing more profitable crops, was, in fact, planted by the wrong-doers with indigo, an inferior crop, for their special purpose. In ascertaining the mesne profits payable by them the courts in India calculated the profits upon the basis of the more profitable crops which the land was capable of producing.

Held, affirming the Courts below, that the basis of calculation adopted by them was correct.

In all such cases the true test would be what the prudent agriculturist would have grown. (Sir George Launder.) HARRY KEMPSON GRAY r. BHAGU MIAN.

(1929) 57 I.A. 105 = 1930 A.L.J. 128 = 34 C.W.N. 257 = 32 Bom. L.R. 525 = 7 O.W.N. 303 = 121 I.C. 540 = 31 L.W. 425 = A.I.R. 1930 P.C.82 = 58 M. L. J. 215.

Possible receipts—Assessment on batis of—Propriety—Evidence of actual receipts with held by defendant. Under the Explanation to S. 211 of the Code of 1882 Mesne profits of property include profits which the person in wrongful possession might with ordinary diligence have received therefrom.

Where, therefore, a decree for possession awarded to plaintiff mesne profits for the period of possession to be ascertained in execution, and in execution, the subordinate Judge awarded to plaintiff profits which, with ordinary diligence the judgment delstor might have collected, becase the judgment-delstor would not adduce evidence to show how much was realised by him by way of profits and no other data were available for ascertaining the same, held that the Subordinate Judge rightly apprehended the proper object of an inquiry into mesne profits, and that the High Court was wrong in holding that he was bound to ascertain the actual assets that is, the actual amount of money or value which reached the hands of the judgment-delstor (120-1).

Even if evidence of actual receipts had been produced, it might still have been necessary to inquire into the possibility of larger receipts by ordinary diligence, because the judgment debtor might have deliberately let out the lands at a rate lower than the ordinary one. The Subordinate Judge's order does not charge the judgment-debtor with wilful default. Indeed, if it did it would adopt a principle more favourable to the judgment-debtor than that of the Code; for there may be values recoverable by ordinary diligence which yet it would not be wilful default not to recover. Wilful default is charged against persons in rightful possession though accountable for their dealings with the property. The judgment-debtor in this case was wrongfully in possession. And prima facie it is fair to infer that a person in possession of land may by ordinary diligence get rent for it according to the prevailing rates for such lands, and that the true owner wrongfully disposessed has been a loser by that amount (119.20). (Lord Hobboust.) GIRISH CHUNDER LAHIKI D. SHOSHI SHIKARESWAR (1900) 27 I. A. 110 = 27 C. 951 (963-4)= ROY. 4 C. W. N. 631.

Assessment of-(Contd.)

-Possible and not actual rents.

It might be said that in ascertaining "mesne profits," within the meaning of S. 2, sub-S. 12 of C.P.C. of 1908 the successful plaintiffs would not be limited to the actual rents which the trespassing defendant had received. (Lord Phillimore). MANINDRA CHANDRA NANDI DE RAM LAL BHAGAT. (1922) 49 I. A. 220 (222)

1 P.581 (584) = 31 M L T. 131 = 27 C. W.N. 29 = 24 Bom. L. R. 1251 = 16 L.W. 905 = 20 A. L. J. 988 = 36 C. L. J. 542 - A. I. B. 1922 P. C. 304 = 68 I. C. 973 = 43 M. L. J. 589.

EVIDENCE.

Absence of—Procedure proper in case of—Dismissal of suit—Propriety—Suit for possession and mesus profits.

See MESNE PROFITS—POSSESSION AND—SUIT FOR—EVIDENCE OF PROFITS. (1891) 18 I. A. 165 (177-8) = 19 C 159 (173).

—Hustabood papers—Admissibility and value of.

Though their Lordships were of opinion that, under the circumstances of the case, the Court of first instance might have been justified in accepting and acting upon the lustabood papers filed to show the rate of waislat claimed, their Lordships were not prepared to say that that Court was bound to act upon them (37). (Sir Robert Collier), HURROPERSAUD ROY CHOWDHRY v. SHAMAPERSAUD ROY CHOWDHRY.

[1877]5 I. A. 31=

3 O. 654 (659-60)=1 C. L. R. 499-3 Suth. 495-3 Sar. 782-2 I. J. 284

-Non-production of, by party having-Presumption adverse from.

The Court below, we have no doubt, proceeded upon this principle, that everything is to be presumed against a party keeping his adversary out of possession of his property, and out of possession of the evidence, and taking means to retain that evidence in his own custody; and that the proof on the part of the plaintiff was to be pressed most strongly against the defendant, where by virtue of such possession he received the rents and profits of the estate and kept the books in which the accounts were recorded; and this notwithstanding the plaintiff gave the most scanty proof of the rents and profits; a position which we do not quite accede to, though we agree in the main decision of that Court (125). (Lord Brougham). SOORIAH ROW P. COTAGHERY BOOCHIAH. (1838) 2 M. I. A. 113=5 W. B. 127= 1 Suth. 91 = 1 Sar. 159.

...... Opposite party-Assessment by, for years immediately preceding those in question-Admissibility and value

In a case in which the question was what was the precise amount of the net profits of a village in the years 1823 and 1824, the Court of Sudder Adawlut was dissatisfied with the great mass of evidence on both sides, and was of opinion that the evidence was altogether unsatisfactory and not to be depended upon as to the actual produce. It appeared, however, that for two years immediately preceding the years, the profits of which were in question, the defendant himself or those under whom he claimed had claimed profits in respect of that very village at a certain rate and had heen awarded profits at that rate. The Court of Sudder Adawlut took that rate as the basis of its calculation and adjudged to the plaintiff something less than what would be due upon that calculation.

Held, that whatever the value of the evidence afforded by the defendants' calculation for the preceding years would have been if there had been any contradictory evidence, or if there had been any circumstances to show that the value of the years in question was less than that of the preceding years or any other circumstances, the defendant's calculation for the preceding years was evidence upon

MESNE PROFITS-(Contd.)

Assessment of-(Could.)

EVIDENCE-(Contd.)

which the Court might, in the absence of any other proof, found its judgment, and that it was a fair calculation of the profits of the years 1823 & 1824 (80-1). (Sir Thomas Erskine). SOORIAH ROW 7: RAJAH ENOOGUNTY SOORIAH. (1838) 2 M. I. A. 72 =

5 W. R. 125=1 Suth. 88=1 Sar. 155.

-Person who used to see accounts of prefits kept by another—Person who had talked over with a countant— Evidence of—Admissibility of.

The question was what was the precise amount of the net profits of a village in two years recoverable by the plaintiff from the defendant. Two witnesses were examined for the defendant who stated, what the assessment of those two years actually was. The first witness stated that he was the Curnam of the village in question. In fact, however, his younger brother, and not he, was the Curnam who made out the account. And it appeared that the witness's testimony was based upon the fact that he used to see the accounts maintained by his brother. The accounts themselves were not produced, and the parties who made the account were not examined, though the defendant had an opportunity of doing both.

Held that the restinony of the witness was not receivable as evidence of the actual amount of the assessment (81-2). The testimony of the other witness was based upon the fact of his having talked over with the person keeping the accounts. The accounts themselves could have been produced and the person who kept them examined. Held that

his testimony also was not receivable as evidence of the actual amount of the assessment (81-2).

The accounts were not to be the measure of the value, but the knowledge of the person making the assessment would be evidence, and it might be very strong evidence of what the value was (82). (Sir Thomas Ersking.) SOORIAH ROW P. RAJAH ENOOGUNTY SOORIAH.

(1838) 2 M.I.A. 72=5 W.R. 125= 1 Suth. 88=1 Sar. 155.

Tenants' receipts-Value of-Actual receipts-Amount realisable with ordinary diligence-Inquiry into Distinction.

In an inquiry into mesne profits, that is, the profits which a person in wrongful possession of property might with ordinary diligence have received therefrom, the tenants' receipts, though evidence of value and possibly of great value, are not necessary evidence. They are not, indeed, so important as they would be if the inquiry was confined to the actual receipts, because from various motives lands may be let at rates lower than the ordinary ones (120-1). (Lord Habboure.) GIRISH CHUNDER LAHIRI v. SOSHI SHIKARESWAR ROY.

(1900) 27 I.A. 110 = 27 C. 951 (963.4) = 4 C.W.N. 631.

Unsatisfactory mature of Procedure in case of Dismissal of suit in case of Propriety.

In a case in which the only question was what was the precise amount of the net profits of a village in two stated years, the trial Court was so dissatisfied with the evidence on both sides, that it took the extraordinary course of dismissing the suit altogether, making the plaintiff pay the costs. It was, however, obvious from the evidence before the court that the plaintiff was entitled to something.

Held that the court ought to have ascertained, in the best manner it could, what was the amount to which the plaintiff was entitled; that it ought to have given nominal damages, and ought not to have made the plaintiff pay the costs when he was entitled to something (79) (Sir Thomas Erskine.) SOORIAH ROW v. RAJAH ENOOGUNTY SOORIAH. (1838) 2 M. I. A. 72 = 5 W. R. 125 =

1 Suth. 88=1 Sar. 155.

Assessment of-(('.utd.)

LOCAL INQUIRY—ASSESSMENT BY—DECREE DIRECTING.

-Assessment without such inquery—Submission to— What amounts to—Effect of—Prevy Council Appeal—Objection to that mode of inquery for first time in—Maintainability.

In a case in which the decree directed the wasilat awarded to the plaintiff to be ascertained by local inquiry, an inquiry was instituted by the Judge of the District. The Judge made an order that the judgment-debtor should appear before him, and produce his jumma-wasilbaki papers which would shew the amount of his receipts and expenditure with regard to the suit property, and would be the best possible evidence, if trustworthy, which could be obtained, and worth more than the examination on the spot of any numher of ryots. Against the order of the Judge assessing the wasilat on the basis of such inquiry the judgment-debtor appealed to the High Court; but he made it no ground of appeal that the Judge ought to have gone to the spot, or have sent a Commissioner to the spot, or that he ought to have sat on some portion of his land. He made no objection of that kind, and it appeared that he attorned, as it were, to the jurisdiction, and sent in certain papers (which were deemed highly unsatisfactory), thereby taking his chance of a decision in his favour by the Judge.

In his appeal to the Privy Council, the judgment-debtor for the first time raised the contention that, inasmuch as the decree directed the calculation to be made by a local inquiry, and there had been no local inquiry the judgment

of the court below could not stand.

Held that under the circumstances it was too late for the judgment-debtor to object to the inquiry being conducted as it was (208-9). (Sir Robert P. Collier.) FAKHARUD-DIN MAHOMED AHSAN CHEWDHRY P. OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I.A. 197 =

8 C. 178 (191-2) = 10 C. L. R. 176 = 4 Sar. 270.

---- Jumma-Wasilbaki papers of indgment-debtor-Assessment on basis of Propriety.

A decree which declared the plaintiff's right to wasilat upon the suit property provided that the wasilat was to be ascertained by local inquiry. An inquiry was instituted by the Judge of the District. The Judge made an order that the judgment-debtor should appear before him, and should produce his jumma-wasilhaki papers, which would show the amount of his receipts and expenditure with regard to the suit property, and would be the best possible evidence, if trustworthy, which could be obtained, and worth more than the examination on the spot of any number of ryots.

Quaters whether the judgment-debtor could object to the inquiry so conducted on the ground that it was not a local inquiry as directed by the decree, that is an inquiry held by a Judge or an ameen sitting within the boundary of the land in question (208.9). (Sir Robert P. Cellier.) FAKHARUDDIN MAHOMED AHSAN CHOWDHRY 7. OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I. A. 197=

8 C. 178 (191)=10 C. L. B. 176=4 Sar. 270.

PROCEEDING FOR—EXECUTION PROCEEDING OR PROCEEDING IN SUIT.

---- Decree under C.P.C. of 1882.

An application for the ascertainment of mesne profits in pursuance of a decree made under the C. P. C. of 1882 is a proceeding in execution of that decree, and not a proceed ing in a suit, and hence, under Or. 22, R. 11 of C. P. C of 1908, upon the death of the parties to the suit in which that decree was made, no substitution of new parties is necessary to prevent a possible abatement of the suit. (Lord Shaw.) KEDARNATH GOENKA 2. ANANT PRASAD

MESNE PROFITS-(Contd.)

Assessment of-(Contd.)

PROCEEDING FOR—EXECUTION PROCEEDING OR PROCEEDING IN SUIT—(Contd.)

SINGH. (1925) 52 I. A. 188=4 Pat. 507= (1925) M. W. N. 813=2 O. W. N. 355=88 I. C. 482= 41 C. L. J. 339=6 P. L. T. 366=27 Bom. L. R. 848= 22 L. W. 7=26 P.L.R. 243=30 C.W.N. 361= A. I. R. 1925 P. C. 117=48 M. L. J. 482

PROCEEDING FOR-PARTIES TO.

——Lessee pendente lite of suit property if one. See MESNE PROFITS—LESSEE OF SUIT PROPERTY, ETC.

(1922) 49 I.A. 220 (223, 227)=1 Pat. 581 (586).

—Surcties for profits if necessary and proper—Assessment in their absence, though in presence of parties—Binding nature of, on surcties.

A person who obtained a decree for possession in the Sub-Court, was by that Court given possession upon her providing security to restore the mesne profits to the exten of one lakh of rupees. The appellants gave their security by executing a bond charging immoveable property to the extent of that sum.

Held that the appellants need not be parties to the assessment of the mesne profits and damages payable under the bond.

The assessment of damages is one to be made once and for all as between the parties to the suit. The surelies are bound by that assessment and have no right to question it. It is possible that in an extreme case the court to which application was made to enforce such an instrument of suretyship, if it thought that there had been no real trial of suretyship, if it thought that there had been no real trial of the amount of the mesne profits might, upon terms, admit the sureties to question the amount; but it would be an extreme case, (Lord Phillimore.) RAGHUBAR SINGH n. JAI INDRA BAHADUR SINGH.

(1919) 46 I.A. 228 = 42 A. 158 (166) = 13 L.W. 82 = 18 A.L.J. 263 = 22 Bom. L.B. 521 = 55 I.C. 550 = 22 O.C. 212 = 38 M.L.J. 392

C. P. C. provisions as to—Applicability of.

Co-sharers—Partition suit by one of. See Co-

SHARERS-PARTITION SUIT BY ONE OF.

(1924) 51 I.A. 293 (303-4)=51 C. 631

— Hindu joint family—Member of—Confirmation of right as member of joint family or partition—Suit for See HINDU LAW—JOINT FAMILY—MEMBER OF—CONFIRMATION OF RIGHT, ETC.

(1887) 14 I.A. 37 (59)=14 C. 493 (509). Claim to—Nature of, prior to ascertainment by decree.

- Debt or sum certain.

Semble there is no actual ascertained or liquidated demand until the wasilat is determined by decree (38). (Sir Robert P. Collier.) HURROPERSAUD ROY CHOWDHRY F. SHAMAPERSAUD ROY CHOWDHRY.

(1877) 5 I.A. 31 = 3 C. 654 (600) = 1 C.L.B. 499 = 3 Sutb. 495 = 3 Sar. 782 = 2 I.J. 284.

Co-sharers

DECREE FOR MESNE PROFITS AGAINST.

—Liability of different sharers under—Basis proper of
—Shares at date of decree—Shares during period of wrongful possession—Variance between — Effect. Sec CoSHARERS—CONTRIBUTION BETWEEN—MESNE PROFITS

(1904) 31 I.A. 94 (104-5) = 31 C. 597 (611).

—Payments by different sharers at different dates to discharge—Contribution between them in case of—Basis proper of. See CO-SHARERS—CONTRIBUTION BETWEEN—MESNE PROFITS. (1904) 31 I. A. 94=31 C. 597 (612)

— Payments towards, from funds held in separate accounts of sharess—Credit as between them for—Credit for amount held in separate account of sharer or for his share of

Co.Sharers -- (Contd.)

DECREE FOR MESNE PROFITS AGAINST-(Contd.)

total amount according to share in property. See CO-SHARERS-MESNE PROFITS DECREED AGAINST.

(1904) 31 I. A. 04 = 31 C. 597 (611-2). PARTITION SUIT BY ONE OF.

—Mesne profits to plaintiff in—Period for which, allowed—Joint possession—Decree prior in plaintiff's favour for, under S. 204 of C. P. C. of 1882—Symbolical possession obtained by plaintiff in execution of. See CO-SHARERS—PARTITION SUIT BY ONE OF—MESNE PROFITS, ETC.

(1924) 29 C.W.N. 270.

#### Decree.

FUTURE PROFITS NOT AWARDED BY.

INTEREST ON PROFITS AWARDED BY—DISALLOW-ANCE OF, IN EXECUTION.

INTEREST ON PROFITS NOT AWARDED BY-AWARD OF, IN EXECUTION.

LIABILITY FOR PROFITS UNDER—EXECUTION ORDER DECIDING.

PROFITS NOT AWARDED BY.

PROFITS NOT EXPRESSLY AWARDED BY, BUT CONSE-QUENTIAL UPON DECLARATION OF TITLE IN DE-CREE AND UPON POSSESSION—AWARD OF.

PROFITS WHETHER AWARDED BY, OR NOT--FINAL ORDER IN EXECUTION PROCEEDINGS AS TO.

FUTURE PROFITS NOT AWARDED BY.

INTEREST ON PROFITS AWARDED BY—DISALLOWANCE OF, IN EXECUTION.

--- Jurisdiction. See EXECUTING COURT-DECREE
-- RELIEF GRANTED BY. (1900) 27 I. A. 110 (124) 27 C. 951 (967).

INTEREST ON PROFITS NOT AWARDED BY—AWARD OF, IN EXECUTION.

\_\_\_\_ Jurisdiction-Discretion.

The plaint in a suit for possession and mesne profits did not pray for interest on such profits. The trial Court gave a decree for possession and mesne profits for 11 years, but said nothing about interest on the mesne profits decreed. In appeal, that decree was modified, as regards the period for which the plaintiff was entitled to mesne profits, by reducing it to 6 years prior to the suit, but even that decree said nothing about interest on the profits. The appellate decree was affirmed by the Privy Council, the Order in Council stating that the Judges of the court below were to take notice of the said Order in Council, and to govern themselves accordingly.

In execution of the said Order in Council, the courts in India held that the plaintiff was entitled to interest on the amount of the mesne profits at 6 per cent. per annum from the date of the original decree to that of the execution of the Order in Council. In doing so, they followed the practice obtaining in those courts of awarding interest on the mesne profits, even though the decree was silent as to the same.

Held that the courts below acted rightly, in awarding interest, and that for that purpose no distinction could be made as to interest anterior to the time when the arrears were reduced, from those of eleven years, to those of six.

The question in this case is whether a person from whom a fixed ascertained sum of money adjudged to be due, has been, without any just ground, withheld, shall be allowed interest against his debtor for the time subsequent to the adjudication. Abstract justice certainly is in favour of the claim

## MESNE PROFITS-(Contd.)

Decree-(Contd.)

INTEREST ON PROFITS NOT AWARDED BY-AWARD OF, IN EXECUTION—(Contd.)

and independently of what the Legislature has done, the tendency (if such an expression may be used) of Courts of Justice in this country, in modern times, has been rather for, than against, a demand of this description. (Vice-Chancellor Knight Bruce.) NUGENT KIRKLAND v. MODEE PESTONJEE, COLLECTOR OF KAIRA.

(1843) 3 M. I. A. 220 - 1 Sar. 270.

S. 2 (12) of the Code imports into the expression "mesne profits" the addition of "interest on those profits". A decree for mesne profits, which says nothing about interest, therefore, carries interest on such profits.

Mesne profits being in the nature of damages, the Court, no doubt, has jurisdiction to give or refuse interest on such profits as it chooses according to the justice of the case. But if the court does not intend to give interest it should say so. (Lord Hobbeuse.) GIRISH CHUNDER LAHIRI v. SHOSHI SHIKHARESWAR ROY. 27 C. 951 (967) = (1900) 27 I.A. 110(124) = 4 C.W.N. 631.

LIABILITY FOR PROFITS UNDER—EXECUTION ORDER DECIDING.

PROFITS—LIABILITY UNDER DECREE FOR.

(1900) 27 I. A. 209 (213) = 23 A. 152 (156-7).

PROFITS NOT AWARDED BY.

-Award of -Executing Court-Jurisdiction.

There was no decree for mesne profits, and the Court could not, under the guise of execution, either add words to the decree or give it a new and extended effect (74). (Lord Davy.) KALKA SINGH P. PARASRAM.

(1894) 22 I. A. 68 = 22 C. 434 (443) = R. & J.'s No. 137 = 6 Sar. 545 = 5 M. L. J. 14.

- Supplemental order awarding-Jurisdiction to pass -Decree of Sudder Court-Order of single Judge of that Court.

In a case in which the Sudder Court had merely decreed possession, keld that a single Judge of that Court had no jurisdiction to make a supplemental order for assilat (317). (Lord Kingsdown.) DOORGAPERSAUD ROY CHOWDRY V TARAPERSAUD ROY CHOWDRY. (1860) 8 M. I. A. 308 = 4 W. R. 63-1 Suth. 427=1 Sar. 774=2 Sev. 60 (a).

PROFITS NOT EXPRESSLY AWARDED BY, BUT CONSE-QUENTIAL UPON DECLARATION OF TITLE IN DECREE AND UPON POSSESSION.

-Award of -Executing Court-Duty of.

In a suit for possession of lands, and for mesne profits, the Jodicial Committee, by an Order in Council, declared that the plaintiff was entitled to two specified mouzahs, and all the other lands saed for as were not included in the Settlement Pergunnah Havelee, decreed possession, and remitted the case to the court below with directions to proceed in the suit as upon the result of such inquiry might appear just.

Meld, on a construction of the Order in Council, that the right to mesne profits in respect of the two villages named therein was consequential on the declaration in the Order in Council, and upon possession, and that, on an application by the plaintiff for execution of the part of the decree which related to the two villages named and for payment of mesne profits in respect thereof, the High Court, which executed the decree, so far as regards possession of the two villages, should also have proceeded to ascertain what the amount due to the plaintiff for mesne profits upon those two villages was (496). (Lord Cairns.) RAJAH LEELANUND SINGH 7. MAHARAJAH LUCKMISSUR SINGH BAHADOOR. (1870) 13 M. I. A. 490 = 14 W.R. P.C. 23 =

Decree-(Cont.i.)

PROFITS WHETHER AWARDED BY, OR NOT-FINAL ORDER IN EXECUTION PROCEEDINGS AS 70.

 Binding nature of, See MESNE PROFITS—EXECU-TION PROCEEDINGS—ORDER FINAL IN, ETC.

#### Decree for.

---- See MESNE PROFITS-SUIT FOR-DECREE IN.

#### Defendants several-Suit against.

Land, which was jointly owned and possessed by three families of zemindars, disappeared under the Ganges. On its re-appearance, it was taken possession of by the Government who let it to one S on a patni lease. Then the members of one of the three families recovered the entire land from the Government and continued S in possession. In a suit subsequently instituted by the members of the other two families against the members of the family who had recovered possession from the Government and S for possession of their share of the said land and mesne profits, a decree was passed decreeing the suit claim with costs and mesne profits and interest against the defendants.

Held that the decree was not a joint and several decree but was to be construed applicando singula singulis. (Viscount Dunedin.) GURUDAS KUNDU CHOWDHURY

7. KUMAR HEMENDRA KUMAR ROY.

(1929) 56 I. A. 290=57 C. 1=50 C. L. J. 369= 34 C. W. N. 89=A. I. R. 1929 P. C. 300= 32 Bom. L. R. 148=31 L.W. 7-121 I. C. 525= 58 M. L. J. 74.

- Decree against them in-Operative if and when be-

In a suit for mesne profits against several defendants, the decree for such profits becomes operative only when it ascertains the amount of such profits and determines the question whether the defendants are liable jointly or severally in respect of their wrongful possession. A decree merely finding that the defendants are accountable for such profits and declaring their liability in general terms is not such a decree (158). (Lord Watson.) MAHARAJA KADHA PARSHAD SINGH v. LAL SAHAB RAI. (1890) 17 I. A. 150 = 13 A. 53 (64-5) = 5 Sar. 600.

— Decree in, declaring their liability in general terms. — Death of one of defendants after—Order subsequent fixing extent and quality of liability of several defendants—Legal representative of deceased not made party to—Binding nature of order on.

In 1856 appellant obtained a decree (confirmed on appeal in 1870) against several persons, of whom the respondent's ancestor was one, whereby the defendants in that suit were directed to deliver possession of the suit property to the appellant and were declared liable for mesne profits. The decree did not, however, ascertain the amount of such profits, and did not determine the question whether the defendants were jointly or severally liable for the same. In 1877 the first Court issued an order fixing the amount of mesne profits payable to the appellant and made a decree for the same jointly against all the parties whose names then appeared as defendants to the suit. Respondent's ancestor had died in the interval, but the respondents were not brought on record as his representatives.

Held that the only executable decree for mesne profits was that of the year 1877, and, as the respondents' ancestor had died previously, and the respondents were not made parties to the suit in his place, they were not bound

by the same (157-8).

An operative decree, obtained after the death of a defendant, by which the extent and quality of his liability,

#### MESNE PROFITS-(Contd.)

Defendants several-Suit against-(Contd.)

already declared in general terms, are for the first time ascertained, cannot bind the representatives of the deceased, unless they were made parties to the suit in which it was pronounced (158), (Lord Watson.) MAHARAJA RADHA PAKSHAD SINGH P. LAL SAHAB RAI.

(1890) 17 I.A. 150 = 13 A. 53 (64-5)=5 Sar. 600.

- Defendants impleaded merely to bind them as to title and not alleged to have disposessed plaintiff-Liability for mesne profits of.

In a suit for possession and mesne profits the decree of the Court below was general, and awarded mesne profits against all the defendants. There was, however, no evidence that defendants Nos. 5 and 6 dispossessed the plaintiff or ever had possession of any part of the suit property. The plaintiff did not in his plaint even allege that defendants 5 and 6 dispossessed him or show any grounds for making them parties to the suit, except for the purpose of binding them as to the title. He merely stated that he had been dispossessed by defendants 1 and 2.

Held that mesne profits ought not to have been awarded against defendants 5 and 6 (169-70). OOMRAO BEGUN NAWAB NAZIM OF BENGAL.

(1875) 3 Suth. 165=24 W.E. 28. Evidence of.

#### Executing Court.

— Future profits not awarded by decree—Award of—
Jurisdiction—Trregular exercise of. See Decree—Relief
NOT AWARDED BY, ETC. (1875) 2 I.A. 219 (233).

— Interest on profits awarded by decree—Disallowance of—Jurisdiction. See EXECUTING COURT—DECREE

-RELIEF GRANTED BY.

(1900) 27 I.A. 110 (124) = 27 C. 951 (967).

——Laterest on profits not awarded by decree—Award of—Jurisdiction—Discretion. See MESNE PROFITS—DECREE—INTEREST ON PROFITS NOT AWARDED BY.

Profits not awarded by decree—Award of Jurisdiction. See MESNE PROFITS—DECREE—PROFITS NOT AWARDED BY - AWARD OF. (1894) 22 I. A. 68 (74) 22 C. 434 (443).

Profits not expressly awarded by decree but consequential upon declaration of title in decree, and upon possession—Award of—Duty as to. See MESNE PROFITS—DECREE—PROFITS NOT EXPRESSLY AWARDED BY.

ETC. (1870) 13 M. I. A. 490 (496).

——Profits whether awarded by decree or not—Final order as to—Res ,udicata. See under MESNE PROFITS —EXECUTION PROCEEDINGS—ORDER FINAL IN, ETC.

Execution of decree - Mesne profits to be realised in-Bond for payment of amount out of.

——Profits not realisable in execution or otherwise—Enforceability of bond in case of—Compromise by obligor giving up claim to such profits in case of—Effect. Sat BOND—MESNE PROFITS, ETC.

(1894) 22 I.A. 68 (74) = 22 C. 434 (443).

Execution proceedings—Order final in, as to whether profits awarded by decree or not

— Res judicata in subsequent stage of execution. SN
CIVIL PROCEDURE CODE OF 1908, S. 11—CASES UNDER
(1) EXECUTION PROCEEDINGS—ORDER ERRONEOUS
IN. (1881) 8 I. A. 123 (131-2) = 8 C. 51 (59-60)
(2) EXECUTION PROCEEDINGS—ORDER FINAL IN.

(1883) 11 I. A. 37 (41-2)=6 A. 269 (274-5)
and (3) EXECUTION PROCEEDINGS—RELIEF NOT
GRANTED BY DECREE. (1894) 22 I. A. 68 (70)=
22 Cl. 434 (440).

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### Execution sale-Setting aside of-Mesne Profits on.

Recovery by judgment-debtor of—Mode of—Execution proceeding or separate su t. See EXECUTION SALE
 SETTING ASIDE OF—MESNE PROFITS ON.

(1909) 36 I.A. 197 = 31 A. 551.

#### Future profits.

#### DECREE-PROFITS NOT AWARDED BY.

——Agreement to give, in execution, as condition of stay of execution—Award of such profits in execution in case of—Jurisdiction. See DECREE—RELIEF NOT AWARD-ED BY, ETC. (1875) 2 I.A. 219 (233).

——Agreement to give, in execution, as condition of stay of execution—Validity and enforceability of. See DE-CREE—RELIEF NOT AWARDED BY, ETC.

(1875) 2 I.A. 219 (233 4).

Recovery of Mode of Execution or reparate swit.

On the construction of S. 11 of Act XXIII of 1861, all the High Courts in India had accepted as settled law these propositions: first, that where the decree is silent touching interest or mesne profits subsequent to the institution of the suit, the Court executing the decree cannot under the clause in question assess or give execution for such interest or mesne profits; and secondly, that the plaintiff is still at liberty to assert his right to such mesne profits in a separate suit. The alleged consensus of the Indian Courts being thus established, their Lordships accepted the construction of the Indian Courts as settled law, irrespective of their opinion upon the construction of the section had the question been res integra (228). (Sir James W. Colvile.) SADASIVA PILLAI v. RAMALINGA PILLAI. (1875) 2 I.A.219 = 15 B.L. R. 383 = 24 W.R. 193 = 3 Sat. 519 = 3 Suth. 190.

——Recovery of, in execution—Right of—Bond by judgment debtor consenting to such recovery as condition of stay of execution—Effect of.

The plaint in a suit for possession claimed mesne profits only for the year prior to the institution of the suit, but did not claim mesne profits for the subsequent years. The final decree of His Majesty in Council in the said suit also awarded mesne profits only for the year before the suit, and was silent as to the profits accrued since the institution of the suit. Pending the appeals to the Sudder Court and the Privy Council the successful plaintiff presented applications to the court of first instance claiming, in addition to the mesne profits specifically decreed to him, a certain sum as being the profits of the years subsequent to the suit, and praying for immediate execution in default of security being furnished by the defendant for the subsequent profits claimed. On all those occasions, the defendant executed security bonds by which, in consideration of his being allowed to remain in possession pending the appeals, he undertook to pay subsequent mesne profits for the years which they respectively covered, and agreed to their being realised in proceedings in execution of the decree in the event of default on his part to pay the said profits ultimate-The bonds were executed in favour of the court. The plaintiff succeeded in the appeal to the Privy Council also in that suit. Thereupon, he presented an application in execution praying for the recovery in execution of the subsequent mesne profits covered by the said security bonds, together with interest thereon.

Held, that the plaintiff was entitled to recover the same in proceedings in execution, and that S. 11 of C. P. C. of 1861 was not a bar to his right to do so (233).

By the security bonds in question the defendant did come under an obligation to account in the suit in which the decree under execution was passed for the subsequent mesne profits, which was capable of being enforced by

#### MESNE PROFITS-(Contd.)

Future profits-(Cont.1.)

DECREE—PROFITS NOT AWARDED BY—(Contd.) proceedings in execution. That liability made the accounting a "question relating to the execution of the decree" within the meaning of the latter clause of S. 11, but, even if it did not, the defendant could not, upon the ordinary principles of estoppel, be heard to say that the mesne profits in question were not payable under the decree (233). (Sir fames W. Celvile.) SADASIVA PILLAI v. RAMALINGA PILLAI. (1875) 2 I. A. 219 =

15 B.L.B. 383=24 W. R. 193=3 Sar. 519= 3 Suth. 190.

Recovery of, in execution, against son added as legal representative of judgment-debtor—Right of—Bond by judgment-debtor agreeing to pay such profits in execution as condition of stay. See HINDU LAW—JOINT FAMILY—FATHER—DECREE AGAINST—EXECUTION OF—STAY OF. (1875) 2 I.A. 219 (232).

DECREE FOR-AFFIRMANCE ON APPEAL OF.

- Operative decree in case of - Date from which profits recoverable in case of.

Two brothers entered into an agreement of compromise, whereby in substance the elder brother took ten-sixteenths of the ancestral property, and the younger six-sixteenths. The younger brother disputed this compromise on various grounds; but it was affirmed by the Court on 2-9-1829, by a judgment which was in these terms: " It is ordered that the deed of compromise and release be admitted, that the case be struck off the file of this Court, and that the parties conform to these stipulations. The Court on becoming acquainted with it shall enforce the observance of the same on the refusing party." This decision was affirmed on appeal on 4.7.1832 by a judgment which was in these terms : "Ordered that the appeal be dismissed, and that the decision passed in the Provincial Court of appeal " (Court below), dated 2.9-1829, be affirmed; that should the appellant, (the younger brother) " agreeably to the deeds of compromise, not have received possession of his share, he be put in possession of the same on the execution of the decree

In a suit subsequently instituted by the younger brother for the recovery of the mesne profits of the property decreed to him, the question arose whether he was entitled to mesne profits from the date of the decision of the first court in 1829, or from 1832, the date of the decision in appeal. Held, reversing the High Court that the younger brother was entitled to mesne profits from the date of the decision of the first court.

One of the stipulations in the deed of compromise and release was that the elder brother, who was in possession of the property, should relinquish to his younger brother sixsixteenths. It therefore appears to their Lordships that the direction (in the first Court's judgment of 1829) to conform to these stipulations is a direction, though possibly an informal one, that the younger brother should be put in possession of that property. The decree in appeal must not be taken as establishing for the first time any new right of either of these parties, but as simply affirming, with an explanation, the former decree. The rights of the parties, therefore, depend upon the former decree, and it is the former decree which is effective, and which had to be executed. The elder brother, after the first decree, receiving as he did all the rents and profits of the property, received the rent of six-sixteenths of it (the younger brother's share) for the use of his younger brother, and that he is bound to account to his brother for those rents and profits (35-6). (Sir Robert P. Collier.) HURROPERSAUD ROY CHOW-DHRY D. SHAMAPERSAUD ROY CHOWDHRY.

(1877) 5 I. A. 31=3 C. 654 (658-9)=1 C. L. R. 499= 3 Suth. 495=3 Sar. 782=2 I. J. 284.

Puture profits-(Cont.)

DECREE FOR—AFFIRMANCE ON APPEAL OF—
(Contd.)

Where a decree in ejectment awarded future mesne profits to plaintiff and that decree was ultimately affirmed by the Privy Council, nothing however being said by their order as to such profits, held that the order of the Queen in Council, speaking with the language of the original decree, clearly carried all profits up to its own date and that, under S. 211 of the Code of Civil Procedure, 1882, the plaintiff was entitled to profits until the delivery of possession to him or until the expiration of three years from the date of the order of the Queen in Council (whichever event first occurred).

The decree to be executed is, not the original decree, but the Queen's order, which, by affirming the original decree, has adopted its terms and has carried on their effect down to a later date. All that the Courts below had to do, and all that this Board has now to do, is to construe the Queen's order, and to carry it into execution. (Lead Hobboure.) RAJA BHUP INDAR BAHADUR SINGH P. BIJAI BAHADUR SINGH. (1900) 27 I. A. 209 (214-5) = 23 A. 152 (157-8) = 5 C. W. N. 52 = 2 Bom. L. R. 978 = 7 Sar. 788 = 10 M. L. J. 290.

A suit for possession and mesne profits was decreed, the decree awarding mesne profits from its date to date of possession and directing the profits to be ascertained in execution. That decree was appealed against, first to the High Court, and then to His Majesty in Council, and was affirmed by both those courts. The plaintiff obtained possession only after the decree of His Majesty in Council.

The question arose whether the decree-holders were entitled to mesne profits from the date of the first Court's decree or only from the date of the decree of His Majesty in Courcil.

Held that they were entitled to mesne profits from the date of the first Court's decree to the date of their obtaining possession.

This case is governed by the judgment in L. K. 23 A. 152 (P. C.) (Viscount Finlay.) BAIJNATH GOENKA BAHA-DUR P. NANDA KUMAR SINGH. (1925) 22 L. W. 85 = 28 C. W. N. 55 = A. I. R. 1925 P. C. 113 =

> 84 I. C. 267. OF POSSESSION -

DECREE FOR-DATE OF DELIVERY OF POSSESSION-PROFITS UP TO.

-Right to.

The judgment on appeal, in a suit for possession of property and mesne profits, was as follows:—" The plaintiff is declared entitled to possession of the land mentioned in the kabinnama, with wasilat from the commencement of Srabun 1267; the wasilat to be ascertained by local inquiry". The question was whether, on the right construction of that decree, the plaintiff was entitled to wasilat up to the date of delivery of possession, or only up to the date of the commencement of the suit. The plaint in the suit was susceptible of either interpretation, viz., either that it claimed wasilat up to the date of delivery of possession, or that it claimed the same only up to the date of the suit. Under S. 196 of C.P. C. of 1859, then in force, the Court had power to award wasilat up to the date of delivery of possession.

Held that the more reasonable construction of the decree —which undoubtedly might have been clearer—was that the Court, with a view to carrying out the object of the Legislature, namely, the prevention of unnecessary litigation and multiplication of suits, intended in that suit to give, with possession, that wasilat which was by law claimable up to the time of possession (207).

Wasilat by law is demandable up to the time of possession; and the question is whether the Court intended to

MESNE PROFITS-(Contd.)

Future profits-(Contd.)

DECREE FOR—DATE OF DELIVERY OF POSSESSION
—PROFITS UP TO—(Contd.)

give to the plaintiff that amount of wasilat to which he was undoubtedly entitled by law in this action, or whether the court intended to cut his claim for wasilat into two, and to give him in this suit so much only as accrued up to the time of the commencement of the suit, and to leave him to bring a separate suit for the rest. According to that interpretation, the court could not have intended to give him wasilat up to the time of the decision in appeal, which was three or four years after the commencement of the suit. A decree for possession with wasilat means wasilat up to the time of possession being delivered (206-7). (Sir Robert P. Collier.) FAKHARUDDIN MAHOMED AHSAN CHOWDHRY 2: OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I. A. 197=8 C. 178 (189-90) = 10 C. L. R. 176=4 Sar. 270.

Where, in a suit for possession of land and messe profits, a decree is passed decreeing the suit claim with costs and mesne profits, the plaintiff is entitled to mesne profits up to the time of his re-admission to the land. He is so entitled even in a case in which he in his plaint valued the profits claimed only up to the date of the institution of the suit. (Viscount Dunctin.) GURUDAS KUNDU CHOWDHURY P. KUMAR HEMENDRA KUMAR ROY.

(1929) 56 I. A. 290 = 57 C. 1 = 32 Bom. L. R. 148 = 31 L. W. 7 = 121 I. C. 525 = 50 C.L.J. 369 = 34 C. W. N. 89 = A.I.R. 1929 P.C. 300 = 58 M.L.J. 174.

PERIOD FOR WHICH, RECOVERABLE.

-C. P. C. of 1859.

In a suit for land or other property paying rent, it is, under S. 196 of C. P. C. of 1859, in the power of the court, if it thinks fit, to make a decree which should give the plaintiff wasilat up to the date of obtaining possession (206). (Sir Robert P. Cellicr.) FAKHARUDDIN MAHOMED AHSAN CHOWDHRY: OFFICIAL TRUSTEE OF BENGAL (1881) 8 I. A. 197 = 8 C. 178 (189) = 10 C. L. R. 176 = 4 Sat. 270.

--- C. P. C. of 1882.

The Subordinate Judge gives the plaintiff mesne profits up to the date of possession. But that is more than three years from the date of the decree, and to the extent of the excess is unauthorised by S. 211 of the Code of 1882 (O. 20. R. 12 of the new Code). (Lord Hobbouse.) GIRISH CHUNDER LAHIRI F. SHOSHI SHIKHAKESWAR ROY.

(1900) 27 I. A. 110 (126) = 27 C. 951 (969) = 4 C. W. N. 631.

—— Plaint—Body of — Claim in general manner in-Schedule to plaint—Claim in, for shorter period—Effect.

In a suit brought by a Mahomedan lady against her husband for the purpose of obtaining possession, together with mesne profits, of certain lands, she described her suit as brought "to obtain possession of the Zemindaries and putal talooks mentioned in the schedule given below, and the mesne profits thereof "—claiming mesne profits in a very general manner. Subsequently valuing the suit, and for that purpose describing her claim in the schedule, she spoke of her claim for mesne profits for the period of dispossession, that is to say, some eighteen months before the institution of the suit, as amounting to Rs. 48,400.

On a question arising as to whether the plaintiff was entitled to wasilat or mesne profits up to the time of the delivery of possession, or, as contended by the defendant, only up to the time of the commencement of the suit, held that the plaint was open to the construction that the plaintiff intended to claim wasilat up to the time of delivery of possession, although for the purpose of valuation only so much was valued as was then due (202, 206). (Sir Raberi

Future profits-(Contd.)

PERIOD FOR WHICH, RECOVERABLE-(Contd.)

P. Collier). FAKHARUDDIN MAHOMED AHSAN CHOW-DHRY :, OFFICIAL TRUSTEE OF BENGAL.

(1881) 8 I. A. 197 = 8 C. 178 (185. 189) = 10 C.L.R. 176 = 4 Sar. 270.

#### Ghatwally tenure.

——Resumption invalid by Government of — Mesne profits payable by it in case of —Apportionment of between Zemindar and Ghatwal. See GHATWALLY TENURE--RESUMPTION OF. (1873) Sup. I.A. 181 (190-1).

——Resumption invalid by Government of —Mesne profits payable by it on—Right to, of Zemindar and of Ghatwal. See GHATWALLY TENURE —RESUMPTION OF.

(1863) 9 M. I. A. 479 (490-1).

#### Heir at law—Will of deceased—Invalidity of— Suit on foot of—Profits of estate in case of.

#### Hindu Law.

#### JOINT FAMILY-FATHER.

——Future profits not awarded by decree — Agreement to give, in execution, as condition of stay of execution— Binding nature of, on son added as legal representative. See HINDU I.AW—JOINT FAMILY—FATHER — DECREE AGAINST—EXECUTION OF—STAY OF.

(1875) 2 I. A. 219 (232).

(1918) 45 I. A. 284 (288) = 41 A. 63 (67-8).

——Sale by—Son's suit to set aside, and to recover property sold—Purchaser's liability for mesne profits in—Sale for necessity—Portion of purchase-money unaccounted for. Set HINDU LAW—JOINT FAMILY — FATHER — SALE BY—SON'S SUIT TO SET ASIDE, AND TO RECOVER PROPERTY SOLD. (1874) 1 I. A. 321 (332).

JOINT FAMILY-MEMBER OF.

—Confirmation of right as member of joint family or partition—Suit for—Mesne profits in—Plaintiff's right to. Sce HINDU LAW—JOINT FAMILY—MEMBER OF --CON-FIRMATION OF RIGHT. ETC.

(1887) 14 I. A. 37 (59)=14 C. 493 (509).

JOINT FAMILY-PARTITION.

——Suit for—Mesne profits in — Plaintiffs' right to.

See HINDU LAW—JOINT FAMILY—PARTITION—SUIT
FOR—MESNE PROFITS IN.

WIDOW-SALE INVALID BY.

——Reversioner's suit to recover property subject of—
Mesne profits in—Reversioner's right to—Condition—Portion of purchase-money applied for binding purposes. See
HINDU LAW—WIDOW—SALE BY — REVERSIONER—
POSSESSION OF PROPERTY SOLD—SUIT FOR.

(1908) 35 I. A. 48 (59) =

35 C. 420 (430) and (1921) 42 M. L. J. 243 (244-5).

Inquiry into-Mode of, directed by decree.

——Departure from. See MESNE PROFITS—ASSESS-MENT OF—LOCAL INQUIRY.

(1881) 8 I. A. 197 (208-9)= 8 C. 178 (191-2).

#### Interest on.

AWARD OF-JURISDICTION-DISCRETION.

-Interference in appeal with.

There is no rule obliging the Court to allow interest upon mesne profits. It is a matter in the discretion of the

MESNE PROFITS-(Centd.)

Interest on-(Contd.)

AWARD OF — JURISDICTION — DISCRETION (Contd.)

Court, upon the consideration of the facts of the case. It is a matter for the Court to determine, under the circumstances, whether it is reasonable to allow interest (93).

Where both the Courts below considered that it was not reasonable that interest should be allowed, held that no facts had been proved which would enable their Lordships to say that that was a wrong decision (93). (Sir Richard Couch.) KISHNANAND T. KUNWAR PARTAB NARAIN SINGH. (1884) 11 I. A. 88=10 C. 785 (791-2)=4 Sar. 551=R. & J.'s No. 80 (Oudb).

AWARD OF, IN EXECUTION.

— Jurisdiction—Discretion. Sci MESNE PROFITS— DECREE—INTEREST ON PROFITS NOT AWARDED BY.

### DATE FROM WHICH, AWARDED.

- Date of suit-Earlier date-Discretion of Court.

Interest on mesne profits may be awarded as of course from date of suit in a decree. It may also be given from a date prior to the suit.

Having regard to the circumstances of the case, and, among them, the very great delay, which had not been thoroughly explained, in the prosecution of the appeal to the Privy Council, their Lordships thought that it was enough that the plaintiff should have a decree for interest upon the mesne profits to be calculated from the commencement of the suit (38-9). (Sir Robert Collier.) HURRO-PERSAUD ROY CHOWDHRY 2: SHAMAPERSAUD ROY CHOWDHRY. (1877) 5 I. A. 31 = 3 C. 654 (660-1) = 1 C. L. B. 499 = 3 Suth. 495 = 3 Sar. 782 = 2 I. J. 284.

#### DECREE-INTEREST AWARDED BY.

——Compound interest or simple interest calculated per mensem but payable per annum—Interest at a stated rate per mensem to be calculated at end of each year — Decree for.

Where an order awarding mesne profits directed the payment of interest on such profits at the rate of 1 per cent, per mensem to be calculated at the end of each year, held, that the interest awarded was not compound interest so as to admit of interest being charged upon the rests, but interest calculated per mensem but payable per annum (260-1).

In this country interest is paid half-yearly or yearly, but in India it is customary to pay the interest at the end of each month at the rate of 1 per cent. per month, and the words of the order might mean to exclude what is otherwise generally meant, the payment of interest monthly: the Court decrees the payment yearly (260-1). (Lord Brougham.) RAJUNDER NARAIN RAO T. BIJOY GOVIND SING. (1839) 2 M. I. A. 253=1 Sar. 253.

——Interest year by year—Decree for " mesne profits".

The question was as to the meaning of the term " mesne profits " in a decree for possession of lands and for the mesne profits.

Held that the amount which might have been received from the lands, deducting the collection charges, was the profits of the land, and that the loss of interest year by year upon those profits was merely damages sustained by the plaintiff in consequence of his having been prevented from receiving the profits as they became due (5). (Sir Barnes Peacock.) HURRO DOORGA CHOWDHRANI v. MAHARANI SURUT SOONDARI DEBI. (1881) P. I. A. 1 =

8 C. 332 (335) = 4 Sar. 304.

DISALLOWANCE OF, IN EXECUTION,

Jurisdiction—Decree awarding interest. See Exe-CUTING COURT—DECREE—RELIEF GRANTED BY.

(1900) 27 I. A. 110 (124) = 27 C. 951 (967).

Interest on-(Cand.)

EXECUTION - ASCERTAINMENT OF MESNE PROFITS IN.

In a suit to recover possession of certain lands together with a sum being the estimated amount of mesne profits from 1st Assin 1273 to 20th Srabun 1276, the 1st Court made a decree for the plaintiff to recover possession of the lands, and also the mesne profits, not from a time previous to the date of the suit, as claimed, but from the date of the suit to the date of recovery of possession, to be ascertained by inquiry at the time of the execution of the decree, with interest from the date of the ascertainment at 6 per cent, per annum. On appeal the High Court amended the decree of the Lower Court by giving the mesne profits from the 1st Assin 1273, to the 20th Srabun 1276, in addition to those which had been awarded by the Lower Court. The High Court also stated that the mesne profits were to be recovered with interest from the date of ascertainment. So that, according to both decrees, the mesne profits were to carry interest only from the date of ascertainment.

In executing the decree, the 1st Court ascertained what was the rent which might have been obtained from the estate, treated that as the mesne profits of the estate, and added no interest year by year upon the amount. On appeal the High Court held that the court below was wrong in not having allowed interest upon the rental year by year, upon the ground that the decree holder was entitled, not merely to the rental less the collection charges, but also to interest thereon year by year as compensation for the loss be had sustained by not having the use of his money during the period he was kept out of possession.

Held, reversing the High Court and restoring the first court, that the original decree did not award interest year by year upon the profits, that the High Court by awarding them added to the decree which was in the course of execution, and that they had no jurisdiction to do so (5).

The amount which might have been received from the land, deducting the collection charges, was the profits of the land. The loss of interest year by year upon those profits was merely damages sustained by the plaintiff in ronsequence of her having been prevented from receiving the profits as they became due. But the original decree did not award those damages (5). (Sir Barnet Peaceck.) HURRO DOORGA CHOWDHRANI P. MAHARANI SURAT SOONDARI DEBIA. (1881) 9 I. A. 1=8 C. 332 (335) =

## L. R. of defendant trespasser.

-Liability of, for profits of estate while in deceased's hands.

Plaintiffs, the daughter's sons of A, claiming as next reversioners to C, A's son, who died without any issue, sued for the recovery from B, A's brother, of the properties which belonged to A, and after his death to C, and which had since come into the possession of B. The plaint prayed also for an account of the rents and profits of the suit property whilst in B's hands. B died pending suit, and his sons were brought on the record in his place as his legal heirs and representatives. Held that, if the plaintiffs were entitled to an account from the defendants as legal representatives of B for the rents and issues of C's estate whilst in his hands (121), (Mr, Ameer Ali.) PURNA SASHI BHAITACHARJI v, KALIDHAN RAI CHOWDHURI. (1911) 38 I. A. 112 =

38 C. 603 (620·1) = 15 C. W. N. 693 = 8 A. L. J. 681 = 13 Bom. L. R. 451 = 14 C. L. J. 1 = (1911) 2 M. W. N. 403 = 10 M. L. T. 361 = 11 I.C. 412 =

21 M. L. J. 1119.

MESNE PROFITS - (Contd.)

Lessee of suit property pendente lite—Recovery of profits from—Mode of.

-Execution proceeding or separate swit.

In pursuance of a decree for possession of immovable property and for an inquiry into the mesne profits, past and future, to which the plaintiffs were entitled, an Ameen was appointed to make the necessary inquiry, and he made his report. Thereafter, the plaintiffs put in a petition praying for the addition as a defendant to the suit of a tenant to whom during the pendency of the suit the original defendant had let the suit property, so as to compel the tenant to account for profits which he had received from the same.

Held, reversing the High Court, that there was no power under O. 22, R. 10 or S. 47 of C. P. C. of 1908 to add the

tenant as a party-defendant to the suit.

O. 22, R. 10, C. P. C. is inapplicable to the case. The order contemplates cases of devolution of interest from some original party to the suit, whether plaintiff or defendant, upon some one else. The more ordinary cases are death, marriage, insolvency, and then came the general provisions of R. 10 for all other cases. But they are all cases of devolution. Further, the liability, if any, of the tenant to pay damages for removal of the profits is not a liability which has devolved to him from the original defendant. They were both liable, if liable at all, as trespassers, and a case, if any, against the tenant must rest upon his action and the direct relation established thereby between him and the plaintiffs (225-6).

S. 47 of C. P. C. of 1908 does not apply. If the tenants did commit trespasses, these were distinct ones, and not committed by them as representatives of the original defendant. To hold otherwise, would be to confuse the rights

(227)

Semide in a suit properly framed the lesses from the original defendant, who had, though ignorant of the plain'iffs' litle, carried away what were the plaintiffs' profits, could be rendered liable for damages in respect of what they had so taken away (223). (Lord Phillimore.) MANINDRA CHANDRA NANDI P. RAM LAL BHAGAT.

(1922) 49 I.A. 220 = 1 P. 581 (586-7) = 31 M.L.T. 131 = 27 C.W.N. 29 = 24 Bom. L.R. 1251 = 16 L.W. 805 = 20 A.L.J. 988 = 36 C.L.J. 542 = A.I.R. 1922 P.C. 304 = 68 I.C. 973 = 43 M.L.J. 589.

Liability for.

Defendants several—Possession and mesne profits against—Suit for—Defendants impleaded in, merely to bind them as to title and not alleged to have dispossessed plaintiff—Liability for mesne profits of. See MESNE PROFITS—DEFENDANTS SEVERAL. (1875) 24 W.B. 28.

Legal representative of trespasser defendant—Liability of, for period of possession by deceased. See MESNE PROFITS—LEGAL REPRESENTATIVE OF DEFENDANT TRESPASSER. (1911) 38 I A. 112 (121)= 38 C. 603 (620-1).

Zemindar—Rent sale by, of property which had ceased to belong to tenure-holder—Real owner's suit for recovery of property and for mesne profits—Liability for profits in—Proceedings taken by Zemindar with knowledge

of real owner's rights.

A sale of certain taluks held on 26.4-1885 in execution of a decree in a summary suit brought by the Zemindar against the heirs of S, the tenure-holder, was set aside in a suit brought by the appellant, a mortgagee from S, who had fore-closed and who had become absolute owner of the said talooks before the Zemindar instituted the said summary suit against the heirs of S. It was also held in the appellant's suit that he was entitled to possession, and to be registered as the holder of the talooks from 18-12-1854. The question arose as to the liability to the appellant for mesne profits of the said talooks.

Liability for-(Contd.)

Held that the purchaser at the sale in execution of the decree for arrears of rent was liable for the said mesne profits from the date of his purchase, erg., 26-4-1855; and that in taking the account of such profits, all rent and arrears of rent due and payable to the Zemindar and his heirs should be deducted and allowed (344-5).

It appeared that the Zemindar proceeded to obtain the sale of the tenure, notwithstanding he had notice of the appellant's title, and of the decree of 18-12-1854 giving him possession, and that such sale had been the means of keeping the appellant out of possession, and the cause of the suit and that the Zemindar had persistently disputed the

title of the appellant,

Held, therefore, that the decree for mesne profits should be against the heirs of the Zemindar as well as against the purchaser, but that execution should not be had against such heirs in respect of them until after failure to obtain satisfaction from the purchaser (345). (Sir Montague Smith.) FORBES :. BABOO LUCHMEEPUT SINGH.

(1872) 14 M.I.A. 330 = 10 B.L.R. 139 P.C. = 17 W.R. 197 - 2 Suth. 554 - 3 Sar. 27.

#### Measure of.

-See MESNE PROFITS-ASSESSMENT OF-RASIS

Minor-Guardian-Property held adversely to minor by-Mesne Profits in respect of.

\_\_\_\_\_Liability for—Period of. See HINDU LAW— MINOR—GUARDIAN—MESNE PROFITS, ETC.

(1905) 32 I. A. 181 (184) = 33 C. 23 (28-9).

#### Past profits.

Minor-Guardian-Property of minor held adversely by-Mesne profits in respect of-Period for which guardian liable for Possession obtained by him by false representation. See HINDU LAW-MINOR-GUARDIAN-PROPERTY OF MINOR HELD ADVERSELY BY.

(1905) 32 I. A. 181 (184) = 33 C. 23 (28-9). -Period for which, recoverable, when decree silent as

to same. Where the decree does not limit the period for which arrears of mesne profits are recoverable, the plaintiff is entitled only to such arrears as are recoverable under the law (30). (Lord Hobbouse.) MAULVI MUHAMMAD ABBUL MAJID v. MUHAMMAD ABDUL AZIZ.

(1896) 24 I. A. 22-19 A. 155 (162)-7 Sar. 111.

## Possession and-Suit for

Defendants several-Suit against-Defendance impleaded merely to bind them as to title and not alleged to have dispossessed plaintiff-Liability for mesne profits of. See MESNE PROFITS-DEFENDANTS SEVERAL-SUIT (1875) 24 W. B. 28, AGAINST-DEFENDANTS, ETC.

-Evidence of profits-Absence of-Dismissal of suit

-Inquiry as to amount-Procedure proper.

Where the Court below refused a decree for mesne profits of the lands in respect of which it granted a decree, on the ground that there was no evidence before it to shew what mesne profits were due, held, that it was competent for the Court to direct an inquiry under \$.212 of the Code of 1882. Their Lordships accordingly made a decree for mesne profits, with an inquiry as to the amount (177-8). (Lord Hobboure.) MAHARAJAH JAGATJIT SINGH P. RAJAH (1891) 18 I. A. 185= SARABJIT SINGH.

19 C. 159 (173) = 6 Sar. 90 = B. & J.'s No. 125. Title-Decision of question of, first-Reservation of decision of question of profits-Power of Court.

In a suit for possession and mesne profits, the trial Judge

## MESNE PROFITS-(Contd.)

Possession and-Suit for-(Contd.)

that then the question of profits should be taken up. Accordingly he delivered judgment on the question of title, decreeing most of the items in favour of the plaintiff. The judgment added :- " The last two issues " (those relating to mesne profits and costs) " cannot now be decided, and must be left to my successor to decide." The formal decree was, however, confined to the question of title and possession,

On a contention raised by the defendant that that mode of preceeding was wholly beyond the power of the Court, and therefore could not be the ground of any further proceeding in the suit, held, that there was nothing in the Code of Civil Procedure which forbade the parties and the

Court so to arrange the disposal of a law suit.

The Judge had before him a case consisting of two parts: a question of title, and an incidental question of account depending largely on the title. It was for the obvious advantage of the parties that the first part should be decided and the second reserved for decision (32). (Lord Hobkense.) MAULVI MUHAMMAD ABDUL MAJID 2. MUHAMMAD ABDUL AZIZ. (1896) 24 I. A. 22= 19 A. 155 (160-1. 164) = 7 Sar. 111.

Pre emption suit-Mesne Profits of property subject of

-First Court's decree for pre-emption reversed by High Court but restored by Privy Council-Period between date on which pre-emptor took possession under first Court's decree and that on which he got back possession under Prity Council decree-Mesne profits during-Right to, of pre-emptor and of original purchaser.

A pre-emption decree passed by the Sub-Judge was reversed by the High Court but restored by the Privy Council, the pre-emptor being declared liable to pay a higher price than that decreed by the Sub-Judge. The preemptor paid the price fixed by the Sub-Judge and took possession of the property in execution. On the reversal of the decree by the High Court, the original purchaser regained possession. Again, after the Privy Council decision. the pre-emptor paid the additional price decreed and again obtained possession. On a question arising as to the right to the mesne profits for the period between the date on which the pre-emptors took possession under the Sub-Judge's decree and that on which they took possession under the decree of the Privy Council, held, that the pre-emptors were not, and the original purchaser was, entitled to the same. (Lord Buckmaster, L. C.) DEONANDAN PRASAD SINGH v. RAMDHARI CHOWDHRI. (1916) 44 I. A. 80 =

44 C. 675=(1917) M. W. N. 470=19 Bom. L. R. 437=6 L. W. 65=15 A. L. J. 375=1 Pat. L. W. 527=22 M. L. T. 196=25 C. L. J. 573=21 C. W. N. 786=

39 I. C. 346 = 32 M. L. J. 459. -Right to, of party obtaining decree-Commencement of-Date of.

A person claiming an order of pre-emption cannot be regarded in the same light as an ordinary purchaser of an estate. His right is, when an estate has been sold, to acquire the property from the purchaser at the price paid. If the necessary formalities are observed, and the purchaser assents to the claim, possession is given by mutual consent and no difficulty arises; but if the claim be disputed and suit must be brought, the rights of the parties are regulated by S. 214 of the Code of Civil Procedure, 1882, which in this respect embodies the principle of the Mahomedan Law. Where, therefore, a suit is brought, it is on payment of the purchase-money on the specified date that the plaintiff ob tains possession of the property, and until that time th-original purchaser retains possession and is entitled to the rents and prefits. It is only when the terms of the decree decided that the question of title should be taken first, and | are fulfilled and enforced that the persons having the right

Pre emption suit-Mesne Profits of property subject of-(Contd.)

of pre-emption become owners of the property; such ownership does not vest from the date of sale, notwithstanding success in the suit and the actual substitution of the owner of the pre-empted property dates with possession under the decree, (Lord Buckmaster, L. C.) DEONANDAN PRASAD SINGH & RAMDHARI CHOWDHRI.

(1916) 44 I. A. 80-44 C. 675-(1917) M. W. N. 470-19 Bom. L. R. 437-6 L. W. 65=15 A. L. J. 375= 1 Pat. L. W. 527 22 M. L. T. 196 25 C. L. J. 573 = 21 C. W. N. 786-39 I. C. 346-32 M. L. J. 459.

Rent-Claims for-Joinder of, in one suit

-Propriety. See LANDLORD AND TENANT-RENT-(1866) 10 M. I. A. 438 (451). MESNE PROFITS.

#### Right to.

 Evidence unsatisfactory or absent—Effect. See MESNE PROFITS (1) ASSESSMENT OF-EVIDENCE-UNSATISFAC-TORY NATURE OF (1838) 2 M. I. A. 72 (79) AND (2) POSSESSION AND-SUIT FOR-EVIDENCE OF PROFITS. (1891) 18 I. A. 165 (177-8) = 19 C. 159 (173).

-Laches-Effect of.

The plaint in the present suit was filed on 8-7-1833, By that plaint, the respondent demands Rs, 49,999 as mesne profits, from 19-1-1819 to 11-4-1826, interest included. It is certainly somewhat singular that such a demand as this. if well founded, should have been so long delayed; no less than 7 years having elapsed from the period when the claim ended, before the commencement of a suit to recover what is alleged to have been due yearly, at least, if not half-yearly, for seven successive years from 1819. This is surely a circumstance which requires a very satisfactory explanation; for necessarily, after the lapse of so many years, there must be great difficulty in ascertaining the truth of such a demand, not to mention the presumption against it, from non-claim for so long a time (435). It affords no weak presumption against a claim so long delayed, that the respondent, with full knowledge of all the facts, and the nature of the defence, should so long neglect his own interest, with ample means of protecting it (437). (Dr. Lushington.) MUDHOO SOODUN SUNDIAL P. SUROOP CHUNDER (1849) 4 M. L. A. 431 = SIRKAR CHOWDRY 7 W.R.P. C. 73 = 1 Suth, 215 = 1 Sar. 378.

-See MORTGAGE-USUFRUCTUARY MORTGAGE-REDEMPTION OF-SUIT FOR-MESNE PROFITS PRIOR (1874) 2 L. A. 48 (56·7).

In a suit for a declaration that the defendant, the person with whom a summary settlement of an Outh Estate was made and to whom a sanad was granted by the British Government, was a trustee for plaintiff in regard to that estate, for an account being taken, and the defendant being directed to make good the wasilat and to pay what should be found due on the account, their Lordships held that plaintiff was not entitled to an account for a period before the commencement of the suit, because he delayed in bringing the suit until 10 years after he had become of age. (Sir Robert P. Collier.) THAKUR SHERE BAHADUR SINGH 2. THAKURAIN DARIAO KUAR.

(1877) 3 C. 645 (653) = 3 Suth. 472 = 3 Sar. 769=R. & J.'s No. 47 (Oudh).

The Judicial Commissioner says that the plaintiff ought not to have any mesne profits, because of his extraordinary supineness for years.

Quacre whether supineness could be properly treated as equal to a har by lapse of time (177-8). (Lord Hobbouse.) MAHARAJAH JAGATJIT SINGH 2. RAJA SARABJIT (1891) 18 I.A. 165=19 C. 159 (173)= SINGH. 6 Sar. 80 = R. & J.'s No. 125.

MESNE PROFITS—(Contd.)

Right to-(Contd.)

 Poverty of defendant—Effect. See MESNE PROFITS -SUIT FOR-DECKEE IN-RIGHT TO-POVERTY OF DEFENDANT. (1927) 54 I.A. 289 (299-300) = 54 C. 995.

Suit for.

#### DECREE IN.

-Amount claimed-Decree for amount larger than-Grant of-Propriety.

In a suit for mesne profits, the plaintiff is entitled only to the amount laid in the original plaint, though the endence makes out a larger sum as being due to him (126). (Lord Brougham.) SOORIAH ROW v. COTAGHERY BOO-(1838) 2 M.I.A. 113=5 W.B. 127= CHIAH. 1 Suth. 91 = 1 Sar. 159.

-Defendants several-Decree against. See MESNE PROFITS-DEFENDANTS SEVERAL.

Future profits-Decree for. See MESNE PROFITS -FUTURE PROFITS-DECREE FOR.

-Interest on profits awarded by. See DECREE-MESNE PROFITS-INTEREST ON-DECREE.

-Liability under-Execution order deciding-Nature of. See Decree-Mesne Profits-Liability under (1900) 27 I.A. 209 (218)= DECREE FOR. 23 A. 152 (156-7).

-Past profits-Claim to-Descriptions of, in body of and schedule to plaint-Conflict between-Decree to be possed in favour of plaintiff in case of-Basis of. Sa MESNE PROFITS-PAST PROFITS-PERIOD FOR WHICH, RECOVERABLE-PLAINT. (1881) 8 I. A. 197 (202, 206) = 8 C. 178 (185, 189).

-Payment and receipt of amount of-What amounts to-Set-off of that decree against a decree held by jodg ment-debtor against decree-holder-Consent order of-II See C. P. C. OF 1908, S. 64-MONEY amounts to. (1881) 8 I.A. 65 (74-5)= ATTACHED. 7 C. 107 (117-8).

 Right to—Evidence unsatisfactory—Dismissal of suit on ground of Propriety. See MESNE PROFITS—ASSESSMENT OF EVIDENCE—UNSATISFACTORY NATURE OF. (1838) 2 M.I.A. 72 (79).

-Right to-Possession and mesne profits-Suit for-Evidence of profits-Absence of-Procedure in case of-See MESNE PROFITS Dismissal of suit-Propriety. POSSESSION AND-SUIT FOR-EVIDENCE OF PROFITS-(1891) 18 I.A. 165 (177.8)= ARSENCE OF. 19 C. 159 (173).

-Right to-Poverty of defendant-Effect.

The respondent was held to be entitled to recover posses sion from the appellant of an impartible estate to which the appellant would have been entitled as the next heir but for a will by the last holder bequeathing the same to the res pondent. The respondent was also held to be entitled to recover from the appellant the mesne profits and costs. But on the sole ground that the appellant had no means to pay the same, the High Court directed that the respondent should realise the same from the estate and that the appellant should not be personally liable.

Their Lordships varied the decree of the High Court by making the appellant personally liable for those amounts

(299-300)

The respondent may not be able to recover the money owing to the poverty of the appellant, but this is no reason why an order for payment should not be made (300). (Lord Warrington of Clyffe.) PROTAB CHANDRA DEO v. JAGA-(1927) 54 LA. 289= DISH CHANDRA DEO. 54 C. 995 = 25 A.L.J. 628 = 102 I.C. 599 =

Suit for-(Contd.)

DECREE IN-(Contd.)

20 Bom. L.R. 1136 = (1927) M.W.N. 513 = 31 C.W.N. 943 = 4 O.W.N. 650 (2) = 39 M.L.T. 1 = 46 C.L.J. 136 = 8 Pat. L.T. 623 = A. I. B. 1927 P.C. 159 = 53 M.L.J. 30.

DEFENDANTS SEVERAL.

#### LIMITATION.

-See LIMITATION ACT OF 1908-Art, 109,

PROFITS SUBSEQUENT TO DATE OF.

Surety for—Assessment of Profits—Proceeding for.
——Surety if necessary party to—Assessment made in his absence if binding on him. See Mesne Profits—Assessment of—Proceedings for—Parties to—Sureties for Profits, etc. (1919) 46 I.A. 228 = 42 A 158 (166).

## Will-Invalidity of Heir at law's suit on foot of Profits of estate in case of.

Decree for—Form of, See DECEASED—HEIR-AT-LAW—WILL OF DECEASED—INVALIDITY ETC.

(1885) 12 I.A. 103 (111) = 11 C. 684 (693-4).

Zur-i-peshgi lease—Decree for possession and mesne profits on—Execution sale of right and title of lessee under lease.

Purchaser at—Mesne profits the under decree— Right to—Decree not attached or sold. See EXECUTION SALE — PURCHASER AT—RIGHT OF— ZUR-I-PESHGI LEASE. (1880) 6 C. 213.

#### MEWASSIES.

——Grassias—Tenures of—Kashatis—Tenures of—Distinction. See GRASSIAS. (1915) 42 I.A. 229 (248) = 39 B. 625 (660-1).

#### MINERALS.

CLAY USED FOR MAKING BRICKS IF.

CROWN-RIGHT OF-LAND ACQUISITION ACT.

DIGWAR-RIGHT OF-EVIDENCE OF.

DIGWARI TENURE.

GRANT OF-RIGHT TO WORK MINERALS IF AND WHEN INCLUDED IN.

GRANTEE'S RIGHT TO-EVIDENCE.

INAM GRANT.

KHORPOSH GRANT.

LEASE.

**OUARRYING OF SLATE-GRANT OF RIGHT OF.** 

SHROTRIEM GRANT.

TENURE-HOLDER-RIGHT OF-EVIDENCE OF.

TITLE TO-WARRANTY OF.

ZEMINDAR.

## Clay used for making bricks if.

Quaere whether clay used for the making of bricks would come within the meaning of the word "minerals". (Sir Lancelot Sanderson.) RAJAH BEJOV SINGH DUDHORIA v. SURENDRA NARAYAN SINGH. (1928) 55 I. A. 320 = 48 C. L. J. 268 = 111 I. C. 345 = (1928) M. W. N. 841 = 33 C. W. N. 7 = 26 A. L. J. 1233 = 28 I. W. 855 = A. I. B. 1928 P. C. 234 = 55 M. L. J. 456 (463).

#### Crown-Bight of-Land Acquisition Act.

Proceedings taken by it under, under misapprehension of its rights—Effect, See CROWN—MINERALS.

(1920) 48 I. A. 56 (67) = 44 M. 421 (431).

MINERALS-(Contd.)

## Digwar-Right of-Evidence of.

—— Ghatwal of different place with different rights— Right of—Evidence of—Admissibility. See DIGWAR-MINERALS—RIGHT TO—EVIDENCE OF.

(1912) 39 I. A. 133 (141)= 39 C. 696.

#### Digwari tenure.

Zemindary—Lands in, held on such tenure—Minerals underlying—Right to. See ZEMINDAR—DIGWARI TENURE.

## Grant of—Right to work minerals if and when included in.

- Maxim Quando aliquid conceditur sine quo res ipsa

non esse potest-Applicability to grants of.

It is further argued that a right to the minerals does not infer a right to work. It is a general principle of all grants quando aliquid conceditur sine quo res ipia non esse potest. This is always true as between grantor and grantee, but it does not necessarily apply as against third parties. If the grantor has granted the surface to A and the minerals will not it may well be that the mere grant of the minerals will not include a right to bring down or otherwise injure the surface in the process of winning the minerals. Where, however, the grantee of the minerals is also the grantee of the surface, that grant of the minerals, in a question with the grantor, includes the right to work (115.) (Lord Dunedin.) SATVA NIRANJAN CHAKRAYARTI 1: RAM LAL KAVIRAJ.

(1924) 52 I. A. 109 = 4 P. 244 = 6 P. L. T. 42 = 21 L. W. 289 = 29 C. W. N. 725 = 27 Bom. L. R. 753 = 23 A. L. J. 712 = A. I. R. 1925 P. C. 42 = 86 I. C. 289 = 48 M. L. J. 328,

#### Grantee's right to-Evidence.

-Purchaser from grantee-Leases by-Reservation express of minerals in-Admissibility in evidence of fact of,

On an issue as to whether under ground rights in an estate passed under a grant thereof. Acid that the fact that minerals were in terms reserved in leases to tenants granted by purchasers from the grantee could not be evidence that the underground rights passed under the grant. (Lord Tomlin.)

RAJAH OF PITTAPUR v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1929) 56 I. A. 223 = 52 M. 538 = 33 C. W. N. 725 = 27 A. L. J. 702 =

31 Bom. L. B. 866 = 6 O W. N. 503 = 30 L. W. 9 = (1929) M. W. N. 442 = 50 C. L. J. 30 = 117 I. C. 481 = A. I. R. 1929 P. C. 152 = 57 M. L. J. 64.

#### Inam grant.

----Grantee under-Minerals-Right to. See INAM GRANT-MINERALS-QUARRIES IN ESTATE.

#### Khorposh grant.

——Grantee under—Rights to minerals of—Presumption
—Terms of grant not known. See KHORPOSH GRANT.
(1905) 32 I. A. 185 (191) = 33 C. 203 (217).

#### Lease.

#### JUNGLE BART LEASE.

-- Lessee under-Right to minerals of.

A junglebari lease granted by a landlord to a cultivator who cleared a tract from jungle and brought it to cultivation and held it at a certain rent, entitles the holder to the exclusive use and possession of the surface and the right to the minerals remains still in the lessor. (Sir Arthur Wilson.)

TITURAM MUKERJI P. COHEN.

(1905) 32 I. A. 185 (189) = 33 C. 203 (215) = 2 C.L.J. 408 = 9 C. W. N. 1073 = 7 Bom. L. B. 920 = 3 A. L. J. 59 = 8 Sar. 908 = 15 M. L. J. 379. MINERALS-(Cont.)

Lease-(Contd.)

MINERALS-WORKING OF-LESSEE'S RIGHT OF, WHEN RIGHT EXPRESSLY GRANTED.

Transfer of Property Act—S. 108 (0)—Effect of.
S. 108 (0) of the Transfer of Property Act obviously deals with the ordinary lights of a lessee in an ordinary lease, but it would be nothing less than an absurdity to hold that its terms cut down the right to work a mineral field expressly conveyed. Even if the words "with leave to work" were added, the words of the section, if taken literally and as of universal application, would prevail, because an Act of the Legislature must prevail against private paction (115), (Lord Danedin.) SATVA NIRANJAN CHAKRAVARTI E. RAM LAL KAVIRAJ. (1924) 52 1. A. 109=4 P. 244=

6 P. L. T. 42 = 21 L. W. 289 = 29 C. W N. 725 = 27 Bom. L. R. 753 = 23 A. L. J. 712 = A. I. R. 1925 P. C. 42 = 86 I. C. 289 = 48 M. L. J. 328.

ZEMINDAR—MOKURRURY LEASE BY—LESSEE UNDER-RIGHT TO MINERALS OF.

— Grant express or implied of right to minerals— Necessity.

The fact that the right granted by a mobarrari pettah to the lessee is of a permanent, heritable, and transsferable character does not advance the question of whether the lease itself embraced within its scope the mineral rights. On the contrary, unless there be by the terms of the lease an express or plainly implied grant of those rights they remain reserved to the zemindar and part of the zemindari. The suggestion that the lessee in a mobarrari pottah has right to the minerals by reason of the nature of such a grant stands negatived upon authority. (Locd Shaw.) GIRIDHARI SINGH r. MAGHLAL PANDEY. (1917) 44 I. A. 246-45 C. 87=

7 L. W. 90 = 3 Pat. L. W. 169 = 26 C. L. J. 584 = 22 C. W. N. 201 - 22 M. L. T. 358 = 15 A. L. J. 857 = 42 I. C. 651 = 33 M. L. J. 687.

-Mai huk hukuk-Use of word-Trees-Appropriation by lessee of price of Provision for-Effect.

The proprietor of a Zemindari executed a permanent, heritable, and transferable, mokurrari politable at a fixed rent of a small portion of a village within its amout "with all rights (mai huk hukuk)—appertaining to my Zemindari." The pottah also provided for the lessee taking the prices of the trees of the village granted by cutting and selling them.

Held that the lesser under the lease was not untitled to the mineral rights in the village granted.

The words " mai huk kukuk ", assuming that they mean " with all rights ". only give expressly what might otherwise quite will be implied, namely, that that corpus being once ascertained, there will be carried with it all rights appurtenant thereto, including not only possession of the subject itself, but it may be of rights of passage, water or the like, which enure to the subject of the Pottah and may even he derivable from outside properties. It must be borne in mind also that the essential characteristic of a lease is that the subject is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of the user disappear. In order to cause the latter specially to arise, minerals must be expressly denominated, so as thus to permit the idea of partial consumption of the subject leased. The words in question do not, therefore, increase the actual corpus of the subject affected by the Pottah.

Had the mokurrari pottah been a document which by its nature gave as in property the entirety of the land both on and below the surface, the provision in the lease by which power is given to the lessee to cut trees, and, if he cared, to sell them, and the Zemindar renounced any right in them and their proceeds, would be entire surplusage. The reference in the Pottah to the trees, therefore, far from supportMINERALS-(Contd.)

Lease-(Contd.)

ZEMINDAR — MOKURRURI LEASE BY — LESSEE UNDER—RIGHT TO MINERALS OF—(Contd.)

ing the claim of the lessee to the minerals, negatives the idea that the moburrari pottob can be so comprehensively viewed. (Lord Shaw.) GIRIDHARI SINGH v. MAGHLAL PANDEY. (1917) 44 L. A. 246 = 45 C. 87 = 7 L. W. 90 = 3 Pat. L. W. 169 = 26 C. L. J. 584 = 22 C. W. N. 201 = 22 M. L. T. 358 = 15 A. L. J. 857 = 42 L. C. 651 = 33 M. L. J. 687.

ZEMINDAR—PUTNI LEASE BY—LESSEE UNDER—RIGHT TO MINERALS OF.

The decision in 16 C. L. J. 7 has not been over-ruled by

the decisions of the Board (116),

The decision of the Judicial Committee in L. R. 44 I. A. 246 does not decide the question (116). (Lord Dunedin.) SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ. (1994) 50 I. A. 109 - 4 P. 244 - 6 P. L. T. 42 -

(1924) 52 I. A. 109 - 4 P. 244 - 6 P. L. T. 42 -21 L. W. 289 - 29 C. W. N. 725 - 27 Bom. L. B. 753 -23 A. L. J. 712 - A. I. B. 1925 P. C. 42 -86 I.C. 289 - 48 M. L. J. 328.

- Mocurrary and other tenures-Decisions in regard to-Applicability of.

Quare, whether decisions to the effect that, in the case of leases of Mokuarari and other tenures, in order to pass minerals to the lessee, express words must be used apply to putni tenure (114). (Lord Dunedin.) SATYA NIRANJAN CHAKRAVARTI r. RAM LAL KAVIRAJ.

(1924) 52 I.A. 109 = 4 P. 244 = 6 P.L.T. 42 = 21 L. W. 289 = 29 C. W. N. 725 = 27 Bom. L. R. 753 = 23 A. L. J. 712 = A. I. R. 1925 P. C. 42 = 86 I. C. 289 = 48 M. L. J. 328.

A deed of putni settlement ran as follows:—"We let out to you in Mofussali Putni Settlement the Mauza S, comprised in our Zemindari share, excluding the Chakran Jagir. Debottar, Brahmottar and other extra lands, etc.,; and the Katai Jungles included in Tikisha (?) at an annual rental of—, and a premium of...... You will hold possession of all the lands appertaining thereto from a very long time such as Mal, Khamar, Hasil, Patit, Bill, Jhil, Khal, Kandar, Pahrand Parbat, Jalkar, Falkar, the fruit-bearing and non-fruit-bearing trees and the jungles and all rights and interests appertaining to all such things lying within the four boundaries and above and below (the surfaces). You will not be oasted from the Zemindari".

Held, affirming the High Court, that the putni lease gave the lessees the right to the minerals in express terms. The Sab-Judge thought that such words as "adha", "ur-

The Sab-Judge thought that such words as "adba", "urdha", "Hadud Mahdud" were mere words of style commonly used by writers of deeds without a proper understanding of their meaning, and, therefore, refused to give any effect to them. This seems a mistaken view. The High Court, on the other hand, thought that, looking to the anxious expression of the generality of the grant as evidenced by the long category of things conveyed, the words "adha" and "urdha" made it plain that there was every intention to convey all below the surface as well as all on it or above it. With this view their Lordships agree. (Lord Dunadis.)

SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ. (1924) 52 I. A. 109 = 4 P. 244 = 6 P. L. T. 49 =

21 L. W. 289=29 C. W. N. 725=27 Bom. L. R. 753= 23 A. L. J. 712=A. I. R. 1925 P. C. 42= 86 I. C. 289=48 M. L. J. 328.

## MINERALS-(Contd.)

Lease-(Contd.)

ZEMINDARI-MAL VILLAGES IN-LEASE OF.

The question was as to the right to the minerals bying under a certain village, situate within the ancestral zemindari of the first appellant.

About 60 years before the date of suit, in the time of the first appellant's predecessor, a transaction took place whereby the latter appropriated to a certain. Hindu idol, of whom certain persons known as the Goswamis or Gossains, were the Shebaits, an interest of some sort in the village, at an annual rental of Rs. 22 oed. There was no document or evidence defining the terms of the arrangement with the idol. The defendants, against whom the plaintiffs first took proceedings to restrain interference with their minerals, claimed to be lessees of the village from the Goswamis. The village in question was a mal village of the appellants' estate, i. c., it was a part of the first appellant's zemindari. There was no evidence whatever that the Zemindar rajah had ever granted mineral rights in the suit village to the Goswamis, or any other person. No prescriptive rights had been proved by the defendants to any underground rights in the village.

The Subordinate Judge, who decreed the suit, inferred from the smallness of the jumma fixed that only the surface rights and nothing more were intended to be let out to the Goswamis. His judgment was reversed by the High Court which built up the theory that the Goswamis were tenure-holders having permanent heritable and transferable rights from the fact that, in one of two decrees in favour of the rajah for the payment of an annual rent of Rs. 22 add by the Goswamis, the latter were described as "cultivators", and in the other they were described as "britti-holders".

Held, reversing the High Court, that the title of the zemindar rajah to the suit village as part of his Zemindari before the arrival of the Goswamis on the scene having been established, he must be presumed to be the owner of the underground rights thereto appertaining in the absence of evidence that he had ever parted with them, and that no such evidence had been produced. (Lord Collins.) HARI NARAYAN SINGH 2: SRIRAM CHAKRAVARTI.

(1910) 37 I. A. 136 - 37 C. 723 - 8 M. L. T. 51 -11 C. L. J. 663 - 12 Bom. L. R. 495 -7 A. L. J. 633 - 6 I. C. 785 - 20 M. L. J. 569.

## Quarrying of slate-Grant of right of.

-Blue clay states in land granted -Grantee's right

In 1866 the Rajah of Chumba, an independent Rajah, ceded a portion of his territory to the British Government. Prior to that cession of territory the Raja had secured to one M by an instrument in English the sole right to quarry slate within a portion of the territory subsequently ceded for a term of ten years. On the British Government making use of blue clay slates found in the portion included in the grant to M, the latter claimed to have the exclusive right to such blue clay slates and claimed compensation from the British Government as regards the slates appropriated and used by them.

Held, that, under his grant, M had only the right to quarry roofing and slab state and had no right to the blue clay slate.

Held further, that M's claim to compensation was barred by laches. GUFFIN v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1873) 1 P. B. 1874 (P. C.).

#### MINERALS-(Contd.)

## Shrotriem grants.

—Minerals—Grantee's right to, See Shrotriem Grant—Minerals. (1920) 48 I. A. 56 (65-6) = 44 M. 421 (429-30).

## Tenure holder -- Right of -- Evidence of.

---Tenure-holder different with different rights-Right of-Evidence of-Admissibility. See DIGWAR-MINE-RALS-RIGHT TO-EVIDENCE OF.

(1912) 39 I. A. 130 (141) = 39 C. 696.

#### Title to-Warranty of.

— What amounts to—Mining lease—Contract to grant, See LEASE - MINING LEASE.

(1926) A. I. R. 1926 P. C. 37.

#### Zemindar.

-Brahmettar rent free grant, before permanent settlement, of samindari village by Grantee under-Minerals-Right t.

In 1791 a Zemindar granted a Zemindari village as rentfree brahmottar land, the grantee "to enjoy it comfortably by culti-vating and getting the same cultivated by others."

Held, that the subjacent minerals did not pass under the

Held inether, that absence of evidence as to what was done at the permanent settlement in respect of the mouza granted did not lead to a presumption that the Zemindar had not then vested in him the mineral rights in the mouza. (Sir John Edge.) RAGHUNATH ROY MARWARI 2. RAJA OF JERRIA. (1919) 46 I. A. 158=

47 C. 95 = 17 A. L. J. 597 = 23 C. W. N. 914 = 21 Born L. R. 895 = 26 M. L. T. 76 = 30 C. L. J. 160 = 10 C. W. N. 347 = 50 I. C. 849 = 36 M. L. J. 660.

 Digwari tenure—Lands in Zemindary held on— Minerals underlying—Right to. See ZEMINDAR—DIG-WARI TENURE.

Grant at fixed annual rent by—Grantee under—
 Mineralt—Right to—Presumption—Onus of proof.

When a grant is made by a Zemindar of a tenure at a fixed rent, although the tenure may be permanent, heritalibe and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect.

Meld, accordingly in the case of an estate originally held under a grant from a Zemindar subject to a fixed annual rent and an obligation to provide a military force, that there was no presumption that the under-ground rights passed by the original grant. (Lord Tomlin.) RAJAH OF PITTAPUR P. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1929) 56 I. A. 223 = 52 M. 538 =

33 C. W. N. 725 = 27 A. L. J. 702 = 31 Bom. L. B. 866 = 6 O. W. N. 503 = 30 L. W. 9 = (1929) M. W. N. 442 = 50 C. L. J. 30 = 117 I. C. 481 = A. I. B. 1929 P. C. 152 = 57 M. L. J. 64.

—Mal villages in Zemindari—Lease of—Leasee under—Right to minerals of. See MINERALS—LEASE—ZEMINDARI—MAL VILLAGES IN. (1910) 37 I. A. 136—37 C. 723.

—Mocurrary lease by — Lessee under — Right to minerals of. See MINERALS — LEASE—ZEMINDAR— MOCURRARY LEASE BY.

Permanent settlement—Right to minerals prior to.

The Permanent Settlement of 1793, by which mineral rights were confirmed to the zemindars, would seem to show that until then the Zamindars had no mineral rights and could not grant such rights to others. (Lord Buckmaster, L. C.) SASHRI BHUSHAN MISRA 2. JYOTI PRASHAD SINGH DEO. (1916) 44 I. A. 46=44 C. 585 (591)=6 L. W. 2=19 Bom. L. B. 416=21 C. W. N. 377=

MINERALS-(Cont.)

Zemindar-(Could.)

21 M. L. T. 303 = 15 A. L. J. 209 = (1917) M. W. N. 226 = 25 C. L. J. 265 = 1 Pat. L. W. 361 = 40 I C. 139 = 32 M. L. J. 245.

 Putni lease by—Lessee under—Right to minerals of. See MINERALS-LEASE-ZAMINDAR-PUTNI LEASE BY.

-Talahi Brahmettar grant, before permanent settlement, of Zamindari villags-Grantee under-Minerals-Right to.

Prior to 1790, the then Raja of Pachete made a mokurari grant of a village. The grant was a Talabi Brahmottar grant. The original grant itself was not produced, nor was there any copy in existence, nor any record of its literal contents. The only evidence that could be relied upon by the grantee in support of his right to the minerals arose from the characteristics of the tenure and the statement as to the object and purpose for which the grant was made as stated in Wilson's Glossary.

Held, affirming the High Court, that the grantee was not entitled to the mineral rights in the soil granted (Lord Buckmaster, L. C.) SASHRI BHUSHAN MISRA 7. JVOTI PRASHAD SINGH DEO, (1916) 44 I A. 46=

44 C. 585 = 6 L. W. 2 = 19 Bom. L. R. 416 = 21 C. W. N. 377 = 21 M. L. T. 303 = 15 A. L. J. 209 = (1917) M. W. N. 226 = 25 C. L. J. 265 = 1 Pat. L. W. 361 - 40 I. C. 139 - 32 M. L. J. 245.

-Tenure at fixed rent but permanent, heritable, and transferable-Grant of-Grantet under-Minerals-Right

When a grant is made by a Zemindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect. (Lord Buckmaster, L. C.) SASHRI BHUSHAN MISRA 2. JYOTI PRASAD SINGH DEO. (1916) 44 I. A. 46 =

44 C. 585 (594) = 6 L.W. 2=19 Bom L. R. 416= 21 C. W. N. 377 = 21 M. L. T. 303 = 15 A. L. J. 209 = (1917) M. W. N. 226 = 25 C. L. J. 265 = 1 Pat. L. W. 361 = 40 I. C. 139 = 32 M. L. J. 245.

-Tenure in lands within semindari-Grant of-Grantee under-Minerals-Right to.

Where a Zemindar grants a tenure in lands within his Zemindari, and it does not clearly appear by the terms of the grant that a right to the minerals is included, the minerals do not pass to the grantee. (Sir John Edge.) RAGHUNATH ROY MARWARI P. RAJA OF JHERIA.

(1919) 46 I. A. 158 = 47 C. 95 = 17 A. L. J. 597 = 23 C W. N. 914 = 21 Bom L R. 895= 26 M. L. T. 76=30 C. L. J. 160=10 L. W. 347= 50 I. C. 849 = 36 M. L. J. 660.

-Thanadari lands contiguous-Right to minerals in-See ZEMINDAR-THANADARI LANDS CONTIGUOUS.

(1926) 53 I. A. 100 (119) = 53 C 533.

## MINING CLAIM.

-Record of each-Necessity.

Mining claims are geographically entitles, they are separately numbered or named, and the record of each should be in such a position as to be separately traceable (231). (Lord Shate.) ENGINEER MINING CO. P. JAMES ALLEN FRASER. (1922) 33 M. L. T. 228 (P. C.).

## MINOR.

-See (1) CONTRACT-MINOR; (2) HINDU LAW-MINOR; (3) MAHOMEDAN LAW-MINOR (4) GUARDIAN AND WARDS ACT, AND (5) MINORS' ACTS.

#### MINORITY.

-Onus of proof of. See DEED-EXECUTANT OF-MINORITY OF,

#### MINORS ACT XL OF 1858.

-Majority-Age of- Effect on, of minor being brought under operation of Act.

When a minor is brought under the operation of Act XL of 1858, the age of majority is altered from eighteen to twenty-one (202). (Sir Richard Couch.) MUNGNIRAM MARWARI #. MOHUNT GURSAHAI NUND,

(1889) 16 I. A. 195 = 17 C. 347 (359) = 5 Sar. 463.

-Majority-Age of-Guardian- Appointment of-Effect. See MAJORITY ACT OF 1875, S. 3.

(1903) 30 I. A. 165 (170) = 25 A. 407 (416).

-S. 3-Guardian under- Appointment of-Order for certificate obtained-Formal certificate in pursuance of. not obtained-Effect.

Held that, according to the true construction of S. 3 of Act XL of 1858, a person who had obtained an order for a certificate thereunder was a properly constituted guardian. though he did not obtain a formal certificate in pursuance of such order (200).

The words of S. 3 of the Act are "until he shall have obtained such certificate". The section provides that the person who claims a right to have charge of the property may apply to the civil court for a certificate. The court is to exercise a discretion, or at least is to inquire whether the person making the application is entitled to have the certificate. Their Lordships are of opinion that when the court makes that inquiry, and comes to a decision that the application should be allowed, that is doing all that is substantially necessary in the matter; and when the order is made that the applicant shall have his certificate, the applicant really then obtains his certificate. All is done at that time which is necessary to show that he is the person who should have the certificate. He then, by getting that order, substantially obtains the certificate, although the officer of the court, whose duty it would be to draw up the certificate. and prepare it for the signature of the Judge, or the seal of the court to be attached to it, may not do that for some time afterwards, on account of the course of business, or the party not applying to him for it. When a man obtains an order for a certificate he does in substance comply with the terms of this Act, in the same way as when a person has the judgment of the court that he shall have a decree in his suit it may be said that he then obtains his decree. The decree, when it is drawn up afterwards, relates back to that time; and so would the certificate in this case relate back; and the terms of the Act that he shall have obtained such certificate are complied with (200). (Sir Richard Couch) MUNGNIRAM MARWARI : MOHUNT GURSAHAI NUND. (1889) 16 I. A. 195=17 C. 347 (356-7)=5 Sar. 463.

## MINORS ACT IX OF 1861.

-Object of-Court's power and duty in regard to minors.

The Indian Act (1X of 1861) certainly does not expressly refer to any statutory power of the father to appoint goal dians for his children, and appears to have had one object in contemplation, the protection of the infant ward, and to have given the Judge (subject, of course, to appeal) the power, and to have imposed on him the duty, of doing what, in his judgment, is best for the infant and no other power or duty (323). (Lord Justice James.) SKINNER F. (1871) 14 M. L. A. 309 = 17 W. B. (P.C.) 77= 10 B. L. R. 125 (P. C.) = 8 Moo. P. C. (N.S.) 261 2 Suth. 521 = 3 Sar. 34

## MISTAKE.

-Meaning of.

A mistake means that parties intending to do one thing have by unintentional error done something else (119). (Lord Moulton.) HARENDRA LAL ROY CHOWDHURI I (1914) 41 L. A. 110= HARI DASI DEBI.

#### MISTAKE-(Contd.)

41 C. 972 (988) = 18 C.W.N.817 = 16 Bom. L.B. 400 = 12 A. L. J. 774 = 19 C. L. J. 484 = (1914) M.W.N 462 = 23 I.C. 637 = 16 M.L.T. 6=1 L.W. 1050 = 27 M.L.J. 80.

#### MOPUSSIL COURTS IN INDIA.

English law-Inapplicability of.

The English law, as such, is not the law of the Mofussil Courts in India. They have, properly Speaking, no obligatory law of the forum, as the Supreme Courts had (240). (Lord Kingsdown.) ABRAHAM v. ABRAHAM.

(1863) 9 M.I.A. 195=1 W. R. 1 (P. C )=1 Suth. 501= 2 Sar. 10.

#### MOHAL.

Description of, in Punjab—Person entitled to. See JAB—MOHAL IN. (1925) 22 L. W. 299 (301-2). PUNJAB-MOHAL IN. See also OUDH LAWS ACT OF 1876.

#### MOKHASA.

-Meaning of.

Mokassa has a meaning nearly equivalent to that of saranjam. It is defined as "villages or lands, or a share in the rule over them, and revenue arising from them, granted on condition of military service or in inam" (57).

(Lord Hannen.) SHEKH SULTAN SANI v. SHEKH
AJMODIN. (1892) 20 I. A. 50-17 B. 431 (443-4) 6 Sar. 52.

-Mokhasa is a well-known tenure in the Northern Circars; and the term itself implies that it is a tenure subject to service. In Wilson's "Glessary," mukhasa or mokhasa is said to be irregularly derived from an Arabic word signifying "to have as one's own," and is defined as "a village or land assigned to an individual, either rent-free, or at a low quit-rent, on condition of service." (Ser Andrew Scolle.) SRI RAJA VENKATA NARASIMHA APPA RAO BAHADUR D. SRI RAJA SOBHANADRI APPA RAO BAHA-DUR. (1905) 33 I. A. 46-29 M. 52 (55)-3 C. L. J. 1-10 C. W. N. 161 = 3 A. L. J. 55 = 8 Bom. L. R. 1 =

1 M. L.T. 3=8 Sar. 897=16 M. L. J. 1.

-See HINDU LAW-GIFT - ESTATE CONVEYED UNDER-WORD "MOKHASA"

(1899) 25 I.A. 66 (68) - 22 M. 431 (433-4).

#### MOMBASA.

-Mahomedans in - Succession - Law applicable-Mahomedan Law-Custom-Presumption-Onus of proof.

At Mombasa the succession to Mahomedans is in general governed by Mahomedan law, although it would probably be open to immigrants to prove that they have brought with them and preserved a custom establishing special law of succession (40). (Viscount Haldane). ABDURAHIM HAIJ ISMAIL MITHU v. HALIMABAL (1915) 43 I. A. 35=

20 C. W. N. 362 = (1916) 1 M. W. N. 176 = 18 Bom. L. R. 635 = 32 I. C. 413 = 30 M. L. J. 227.

See also UNDER MEMONS.

#### MORTGAGE.

AGREEMENT TO GIVE.

AMOUNT DUE UNDER.

ANOMALOUS MORTGAGE.

ASSIGNMENT OF.

BENAMI TRANSACTION OR NOT.

CHATTELS AND CHOSES IN ACTION-MORTGAGE OF.

CO-HEIRS-MORTGAGE BY DECEASED.

COMPANY'S SHARES-MORTGAGE OF.

CONDITIONAL SALE-MORTGAGE BY.

CONSIDERATION FOR.

CONTRACT TO GRANT.

CO-OWNERS.

CO-SHARERS.

DEBTOR.

DECEASED

#### MORTGAGE-(Contd.)

DECREE - INTEREST NOT AWARDED BY - MORT-GAGE FOR.

DEED OF.

DEPOSIT OF TITLE DEEDS.

DISCHARGE OF.

EQUITABLE MORTGAGE (OR DEPOSIT OF TITLE DEEDS-MORTGAGE BY.

ESSENCE OF EVERY.

EXECUTION OF DEED OF, IN ONE CAPACITY

EXTINGUISHMENT-KEEPING ALIVE.

FORECLOSURE OF.

FRAUDULENT TRANSACTION.

FURTHER ADVANCE BY MORTGAGEE-TRANSACTION EFFECTED BY.

HYPOTHECATION OR.

INDEPENDENT MORTGAGES BY ONE DEED IN FAVOUR OF SEVERAL PERSONS.

INTEREST ON AMOUNT OF.

INVALID MORTGAGE - PRIOR BINDING MORTGAGE PAID OFF WITH MONEY RAISED UNDER.

JOINT TENANTS-TENANTS IN COMMON - MORT-GAGE TO TWO PERSONS AS.

LEASE OR

LEASE OF MORTGAGED PROPERTY FORMING PART OF SAME TRANSACTION AS.

LEGAL AND EQUITABLE MORTGAGES.

MALABAR.

MINOR:

MORTGAGE DEBT.

MORTGAGED PROPERTY.

MORTGAGEE.

MORTGAGOR.

MORTGAGOR AND MORTGAGEE.

MORTGAGE FOR TERM-SUIT TO ENFORCE- LIMI-TATION.

ORAL MORTGAGE.

OUDH LANDS.

PARTNER.

PERIOD FIXED FOR PAYMENT OF.

PERSON NOT PARTY TO.

PERSONAL LIABILITY UNDER.

PLAINT IN SUIT ON MONEY BOND - MORTGAGE BOND NOT REFERRED TO IN, BUT TENDERED IN EVIDENCE.

POWER OF SALE OUTSIDE COURT.

PRIOR AND SUBSEQUENT MORTGAGES.

PRIORITY OF.

PROOF OF.

PROPERTY PASSING UNDER.

REDEMPTION.

RENEWAL OF.

SALE OR.

SALE ABSOLUTE IN CERTAIN EVENTS.

SALE WITH CONTRACT FOR RE-PURCHASE OR.

SHIELD.

SIMPLE MORTGAGE.

STAMP ON-SUFFICIENCY OF.

SUB-MORTGAGE.

SUPROGATION.

SUIT TO ENFORCE (OR SUIT FOR SALE ON).

UNAUTHORIZED PERSON -MORTGAGE BY-SUIT TO ENFORCE.

USUFRUCTUARY MORTGAGE.

VALIDITY OF.

WATAN LANDS.

## MORTGAGE-AGREEMENT TO GIVE.

-See MORTGAGE-CONTRACT TO GRANT.

## MORTGAGE-AMOUNT DUE UNDER.

-See MORTGAGE-MORTGAGE DEBT-AMOUNT OF

#### MORTGAGE - ANOMALOUS MORTGAGE.

-Deed amounting to an. Say MORTGAGE-DEED OF -- NATURE OF MORIGACE CREATED BY -- ANOMALOUS MORTGAGE.

-Pessession-Mortgage's right to take, and to take rents in satisfaction of interest - Provision for, in event of non-redemption after lapse of time-Validity of.

An anomalous mortgage enabling a mortgagee after a lapse of time and in the absence of redemption to enter and take the rents in satisfaction of the interest would be perfeetly valid if it did not also hinder an existing right to redeem (65). (Sir Laterence Jenkins.) MUHAMMAD SHER KHAN :. SETH SWAMI DAYAL

(1921) 49 I. A. 60 = 44 A. 185 (189) = 30 M. L. T. 220 = 9 O. L. J. 81 = 25 O. C. 8 = 35 C. L. J. 468 = 20 A. L. J. 476 = 24 Bom. L. R. 695 = (1922) M. W. N. 378 - A. I. B. 1922 P. C. 17 4 U. P. L. R. 50 = 66 I. C. 853 = 42 M. L. J. 584.

Redemption of Accounts on-Possession taken by mortgagee in lieu of interest under prevision in deed to that effect-Accounting for period of-Mortgage's liabslity for.

A mortgage deed, which was executed in 1908, stated that the mortgage was to be for five years. Clause 2 of the deed provided that after five years the mortgagor was to pay at a time and in a lump sum the entire principal, interest and compound-interest and redeem the mortgaged property, clause 3 provided that if interest for four six months was not paid in full, or if at the stipulated period, i.e., after five years, the mortgagor did not redeem on payment of the entire amount due, then in both cases the mortgagee would have the option to take possession of the mortgaged property in lieu of the principal for a period of 12 years commencing from the date of entering into possession. Clause 5 was in these terms: "The mortgagee will remain in possession for 12 years from the date on which he takes possession of the mortgaged property and the mortgagor will not have the right of redemption during the period of 12 years." Clause 6 stipulated for the appropriation of produce and profits in lieu of interest, and that during the period of possession neither the mortgagee was to have any claim to interest nor the mortgagor to profits, and that there was to be no accounting as to shortage or susplusage of profits at the time of redemption.

Interest fell into arrear, and at the stipulated time the mortgage-money was not paid, whereupon the mortgagee took possession in 1915. In a suit brought for redemption in the same year, held that, in taking the accounts, the period during which the mortgagee might have been in possession should be excluded, and that during that period, neither the mortgagee would be accountable for profits nor

the mortgagor for interest (66).

Though the provisions of the mortgage entitling the mortgagee to possession cannot operate to defeat S. 60 of the Transfer of Property Act, effect should be given to them so far as they provide that the mortgagee is to appropriate in lieu of interest all the produce mal and sewai and profits of the mortgaged villages after payment of the Government revenue (66). (Sir Lawrence Jenkins.) MUHAMMAD SHER KHAN P. SETH SWAMI DAYAL

(1921) 49 I. A. 60 = 44 A. 185 (190) = 30 M.L.T. 220 = 9 O.L.J. 81 = 25 O.C. 8 = 35 C.L.J. 468 = 20 A.L.J. 476 = 24 Bom. L.R. 695 = (1922) M.W.N. 378 = A.I.B. 1922 P.C. 17 = 4 U.P.L.R. 50 = 66 I.C. 853 = 42 M.L.J. 584.

-Redemption of Right of Provision in deed baring-Validity-Transfer of Property Act, S. 60-Effect.

A mortgage deed, which was executed in 1908, stated that the mortgage was to be for five years. Clause 2 of the deed provided that after five years the mortgagor was to pay

## MORTGAGE-ANOMALONS MORTGAGE-Contd

at a time and in a lump sum the entire principal, interest and compound interest and redeem the mortgaged property. Clause 3 provided that if interest for four six months was not paid in full, or if at the stipulated period, i.e., after five years, the mortgagor did not redeem on payment of the entire amount due, then in both cases the mortgagee would have the option to take possession of the mortgaged property in lieu of the principal for a period of 12 years commencing from the date of entering into possession. Clause 5 was in these terms; "The mortgagee will remain in possession for 12 years from the date on which he takes possession of the mortgaged property and the mortgager will not have the right of redemption during the period of 12 years."

The mortgage-money was not paid at the end of the five years, and the mortgagee thereupon took possession in 1915. In the same year the mortgagor sued for redemption, and the question was whether his right to redeem was suspended by the provision in the mortgage which purported to entitle the mortgagee to remain in possession for 12 years from the

date on which he took possession.

Held that the rights and liabilities of the parties depended upon the terms of the instrument as controlled by the Transfer of Property Act, that the principal money became payable at the end of the five years fixed by the deed, that that was the event on which the mortgagor had a right, under S. 60 of that Act, to redeem on payment of the mortgage money, and that, even if the mortgage was an anomalous mortgage, its provisions hindering that right offended against the statutory right of redemption conferred by S. 60 and were invalid and ineffectual for the purpose (65). (Sir Lawrence Jenkins.) MUHAMMAD SHER KHAN v. SETH SWAMI DAVAL. (1921) 49 I.A. 60 = 44 A. 185 (1889) =

30 M.L.T. 220 = 9 O.L.J. 81 = 25 O.C. 8= 35 C.L.J. 468 = 20 A.L.J. 476 = 24 Bom. L.B. 695 = (1922) M.W.N. 378 = A.I.R. 1922 P.C. 17= 4 U.P.L.R. 50 = 66 I.C. 853 = 42 M.L.J. 584.

-Sale and possession on foot of-Mortgagee's right to. See MORTGAGE-DEED OF-NATURE OF MORT-GAGE CREATED BY-ANOMALOUS MORTGAGE. (1919) 56 I.C. 717

#### MORTGAGE—ASSIGNMENT OF.

-Assignee under-Suit on mortgage against assignor and mortgagor by-Failure to get decree for full amount against mortgagor-Right to apply for recovery of balance from assignor. See MORTGAGE-SUIT TO ENFORCE-ASSIGNEE-MORTGAGE. (1919) 46 LA. 145 (150-1) # 41 A. 571 (577).

Deed invalid as mortgage if operates as an.

The 1st defendant executed two mortgages of 1910 and 1911 in favour of V and B, his brokers, who had arranged to finance him by getting the Bank of Bengal to honour his drafts on their guarantee. V and B transferred those more gages to the Bank of Bengal by a registered instrument, dated -2-1914, to which the first defendant was a party. That instrument recited that it had been agreed that the mortgagees (V and B) "Should transfer the full benefit of the securities covered by the deeds of 1910 and 1911 to the Bank to the intent that the Bank shall henceforth hold the same as security for repayment to the Bank on demand of the said sum of Rs. 74,017-1-4 and interest thereon" in consideration of the Bank releasing the mortgagees (V and B) from all claims in respect of these transactions. That recital was followed by a conveyance of the mortgaged premises to the Bank subject to redemption on payment by the mort gagor (1st defendant) "of the said sum of Rs. 74,017-14. now payable under the principal indenture and supplemental indenture (the mortgages of 1910 and 1911) and all interest

## MORTGAGE-ASSIGNMENT OF-(Coald.)

at the rate aforesaid." That document was not attested by two witnesses, as required in the case of mortgages by the Transfer of Property Act.

Held that the fact that the latter arrangement between the Bank and the first defendant failed to take effect for want of due execution of the document as a mortgage, afforded no reason for refusing to give effect to it as a validly executed transfer of the earlier mortgages by the mortgagees to the Bank in consideration of their release from the liability they had incurred to the Bank. (Sir John Wallis.) WILLIAM ARRATOON LUCAS P BANK OF (1926) 24 L.W. 910 = 31 C.W.N. 179 =

## 38 M.L.T. P.C. 1 = (1926) M.W.N. 826 = 3 O.W.N. 910 = A.I.R. 1926 P.C. 129 - 98 I.C. 925. MORTGAGE-BENAMI TRANSACTION OR NOT.

In a suit to enforce a mortgage, the question was whether the mortgage was a benami transaction, or a perfectly genuine. The first court held that it was a benami transaction. The High Court, on the other hand, held that it was a genuine mortgage.

Their Lordships affirmed the High Court. (Sir Arthur Wilson.) DALIP SINGH P. CHAUDHRAIN NAWAR KUNWAR. (1908) 35 I.A. 104 = 30 A. 258 =

4 M.L.T. 141=12 C.W.N. 609=10 Bom. L.R. 600-14 Bur. L.B. 151.

Held, on the evidence in the case, that the mortgage in question was not a sham or a fictitious transaction under which no money passed (186-7). (Lord Phillimore). BHA-RAT INDU v. HAMID ALI KHAN.

(1920) 47 I.A. 177 = 42 A. 487 (495-6) = 18 A.L.J. 717 = (1920) M. W.N. 413 = 28 M.L.T. 98 = 22 Bom. L.R. 1362 = 25 C.W.N. 73 = 58 I.C. 386 = 39 M. L. J. 41.

-Mortgagee named in deed benamidar for third person-Effect.

Whoever may be the person named in a mostgage deed as the mortgagee, if it is shown that the money advanced was that of a third person, the transaction will be considered as Benamee, or in trust for the person who advanced the money, in the absence of proof or allegation that, though the money came from a third party, the transaction was by way of gift, or provision for the nominal mortgagee (351-2). (Sir James Colvile.) BHOWAN DOSS v. SHEIK MAHO-MED HOSSEIN. (1870) 13 M.I.A. 346= 13 W.R. P.C. 38 = 2 Sar. 560.

### MORTGAGE - CHATTELS AND CHOSES IN ACTION-MOBTGAGE OF.

-Redemption of, after default-Right of.

It has been contended that the English rule of law that a mortgage is redeemable after default has no application to mortgages of chattels or choses in action by Hindus and Mahomedans. Quarre, whether this is a correct statement of the law in Burma. (Sir Lawrence fenkins). BAIJ-NATH SINGH P. MAHOMED HAJI ABBA.

(1924) 3 R. 106 = A. I. B. 1925 P. C. 75 = 27 Bom. L. B. 787 = 3 Pat. L. B. 227 = 86 I. C. 332 = 48 M, L. J. 339 (347).

#### MORTGAGE - CO-HEIRS - MORTGAGE BY DE-CEASED.

Redemption of-Suit by one of heirs for-Dismissal of-Fresh redemption suit by another heir (minor at date of prior suit) - Maintainability. See CO-HEIRS-MORT-(1905) 32 I. A 229 (241-2)= GAGE BY DECEASED. 28 A. 1 (16-7).

-Redemption of - Suit by one heirs for-Scope of-Suit if on behalf of other heirs also-Redemption sought of See CO-HEIRS-MORTGAGED BY DECEAentire property (1905) 32 I. A. 229 (242) = 28 A. 1 (17).

## MORTGAGE - COMPANY'S SHARES - MORT GAGE OF.

Redemption of-Decree for-Accession to shares during period of pledge-Recovery of fresh shares by pledger -Mode of-Execution-Separate suit. See COMPANY-SHARES OF-PLEDGE OF.

(1924) 52 I. A. 137 (142-3) = 49 B. 233

#### MORTGAGE - CONDITIONAL SALE - MORT-GAGE BY.

ANCIENT LAW OF INDIA AS TO. BONA FIDE CONVEYANCE OR NOT. CHARACTERS OLD AND NEW OF A. DECISIONS ON. DEED AMOUNTING TO A. FORECLOSURE OF.

FORM USUAL OF. FRAUDULENT TRANSACTION. HINDU AND MAHOMEDAN LAWS.

LAW APPLICABLE TO. MORTGAGE FOR TERM.

MORTGAGEE UNDER.

NATURE AND INCIDENTS OF.

ORDINARY MORTGAGE OR. ORIGIN OF.

PAYMENT ON DATE FIXED - FAILURE.

PERSONAL LIABILITY IN.

PLEA OF MORTGAGE NOT BEING A-PRIVY COUNCIL APPEAL.

REDEMPTION OF.

SALE WITH CONTRACT FOR RE-PURCHASE OR,

TERMS OF - MODIFICATION OF

## Ancient law of India as to.

-According to the ancient law of India, a mortgage by conditional sale was enforceable according to the letter or (to use the language of English lawyers) time was of the essence of the contract (66.7). (Lord Davy).) BALKISHAN DAS P. LEGGE. (1899) 27 I. A. 58 = 22 A. 149 (160.1) =

4 C. W. N. 153 - 2 Bom. L. R. 523 - 7 Sar. 601.

## Bona fide conveyance or not.

Exidence.

Held, on the evidence in, and the circumstances of the case, that the conditional sale in question was not intended between the parties to be really operative as a bona fide instrument, and that it was not a hour fide conveyance as against bona fide purchasers (29-30). (Sir Montague E. Smith.) NORENDER NARAIN SINGH P. DWARKA LAL MUNDUR. (1877) 5 I. A. 18 = 3 C. 397 (411) = 1 C. L. R. 369 = 3 Suth. 480 = 3 Sar. 771.

## Characters old and new of a.

-Distinction.

These instruments of conditional sale have now an operation quite different from that which they originally had. They are mortgages now, redeemable. like ordinary mortgages, at any time by the mortgagor, or those claiming under him in privity with his title as mortgagor, and subject to foreclosure. In its old character, an instrument of conditional sale was one of sale, conditional at first, and absolute at a certain period afterwards by lapse of time, unless, on the prior performance of a certain condition, the title to the land was on that condition terminating in favour of the conditional purchaser, the same as that of an ordinary owner (353 4). (Lord Kingsdozon.) PRANNATH ROY CHOWDRY P. ROOKEA REGUM. (1859) 7 M. I. A. 323= 4 W. B. 37=1 Suth. 367=1 Sar. 692.

### Decisions on

-Pattabhiramier's case -Effect of.

What was really decided in Pattabhiramier's case? It was that the contract of mortgage by conditional sale is a form of security known under various names throughout India;

### MORTGAGE - CONDITIONAL SALE-MORT GAGE BY-(Contd.)

Decisions on-(Contd.)

that according to the ancient law of India it was enforceable according to its letter; and that whether it was embodied in one instrument or in two separate instruments, and whether or not the transaction appeared on the face of the instrument to be in its inception a mortgage; and further, that this law must be taken to prevail in every part of India in which it had not been modified either by actual legislation or by established practice. The subject-matter of the decision. therefore, is the contract of mortgage by conditional sale, The essential characteristic of a mortgage by conditional sale was, that on the breach of the coudition the contract executed itself, and the transaction was closed and became one of absolute sale without any further act of the parties or accountability between them. That it still has this effect in the Presidency of Madras was what was decided in Pattabhiramier's case (247-8). (Sir James W. Colvile.) THUMBUSWAMY MUDELLY r. MAHOMED HOOSAIN ROWTHEN. (1875) 2 I. A. 241=1 M. 1 (15-6)= 3 Sar. 531 = 3 Suth. 198.

--- Course of -- Comment of Prity Council on.

Up to 1858 the decisions of the late Sudder Court of Madras were, with one exception, perfectly consistent with the decision of the Board in Pattabhiramier's case. In 1858 the current of decision suddenly turned. In that year the Judges of the late Sudder Court took upon themselves, in contravention of the law of India, as declared and enforced hy the decisions of their predecessors, to apply to this class of security (mortgage by conditional sale) for the first time the principles which the English Courts of equity had for centuries applied to mortgages in England. They did not, however, adopt those principles in their integrity, since they treated the stipulation in favour of the mortgagee as a mere penalty, and made no provision for his getting the benefit of it by the machinery of a foreclosure suit. They apparently contemplated no remedy against the mortgaged property but that of sale (250-1).

That case was followed by the late Sudder Court in three cases decided in 1809, and in three more, of which one was the very case of Pattabhiramier, decided in 1860. And so the course of decision in the Courts of Madras stood when special leave to appeal was granted in Pattabhiramier's case by the Board in April, 1861 (251-2).

The appeal in Pattabhiramier's case slept for nine years, and in the interval the Sudder Court, and afterwards the High Court which succeeded it, continued the course of decision which the former had begun in 1858 (252).

A similar alteration by judicial decisions of the antecedent law was effected at Bombay, though at a later period. The Bombay Court also came to the conclusion as appeared from a decision of that Court of the year 1871, that the modern cause of decision was to prevail against that of the Judicial Committee in Pattabhiramier's case (253).

It appears to their Lordships that this action of the Courts of the Minor Presidencies is open to grave objection; not only because in so altering the existing law they usurped the furctions of the Legislature, but also because the change, as effected, involved very mischievous consequences. Under the law as laid down by them, persons who fifty years before had acquired, as the law then stood, an indefeasible title in lands, which they had ever since held and enjoyed in optima fide, became liable to be dispossessed, and compelled to account for mesne profits at the suit of the representatives of the mortgagor against whom the 60 years' rule of limitation has not yet run (253-4).

Again, the distinction between sales with a condition for repurchase, and mortgages by conditional sale, is made to depend upon the intention of the parties to the original transaction, proveable, if need be, by oral evidence. This

## SALE-MORT- MORTGAGE - CONDITIONAL SALE-MORT-GAGE BY-(Contd.)

Decisions on-(Contd.)

seems to open a wide field of litigation, and to leave much to the discretion of the Judge in each particular case; and the enquiry is embarrassed by the circumstance that the parties whose intention is to be ascertained cannot, in the case of an ancient transaction, have contracted with reference to a state of law which the Courts of Madras have decided no longer exists (254).

In Hengal, where the possible mischiefs that might result from leaving mortgages by conditional sale to take effect according to their tenor early became apparent, the Legilature proceeded on sound principles to apply a remedy. By Reg. I of 1798, it gave the mortgagor the means of avoiding any dispute as to tender, and of keeping alive his right of

redemption by a payment into Court (254).

By Reg. 17 of 1806, it made provision for redemption and judicial foreclosure by the procedure still in use. But this Regulation had not a retrospective operation upon titles which had become absolute before it came into force. The contrast between this mode of proceeding and that followed by the Courts in Madras and Bombay is obvious (2545). (Sir James IV. Colvile.) THUMBUSWAMY MUDELLY P. MAHONED HOOSAIN ROWTHAN. (1875) 2 I. A. 241=

1 M. 1=3 Sar. 531=3 Suth. 188.

#### Deed amounting to a.

Where a deed of mortgage contained a stipulation against a sale or mortgage to any body else by the mortgagor, and fixed, for payment of the money, a time certain, on the day after which, if the property were not redeemed, the sale of the lands was to become absolute, held that the deed was in the ordinary form of a Bye-bil-wuffa or Kut-kabala (350). (Lord Kingsdoton). PRANNATH ROY CHOWDRY P. ROOKEA BEGUM. (1859) 7 M.I.A. 323=
4 W.B. 37=1 Suth. 367=1 Sar. 692.

The contract embodied in Exhibit I (a deed of conditional sale) was, that the mortgagee should hold possession of the land for five years, paying the Government revenue; that the mortgagor should repay the principal and redeem the land on the 10th of June, 1813; and that, in default, the mortgagee and his posterity should enjoy the land as if the transaction were an absolute sale, with the right of alienating the same by gift, sale, etc. The transaction then was one of mortgage by Bye-hil-wuffa or Kut-Kabala usufructuary; the usufruct of the property to be taken in lieu of interest (567-8). (Lord Chelmiford). PATTABIRAMIER 2, VENKATAROW NAZAKEN.

(1870) 13 M.I.A. 560 = 15 W.R. P.C. 35= 7 B.L.R. 136 = 2 Suth. 410 = 2 Sar. 623.

-In 1866, A executed a deed of mortgage (called a mortgage deed by conditional sale) in favour of T for Rs. 2,000, repayable in 5 years, hypothecating the suit villages as security, and providing that, in the event of the death of R, within the fixed period without paying the loan, the hypothecated properties should, thereafter, be considered as a complete sale to T, in lieu of the debt. In 1871, R, concuted a second deed in favour of T, which recited the former mortgage, that the time for payment had nearly expired and R could not pay off his debt, and that, at his request, T had extended anew the period for payment to thirty years from the next year upon the terms and conditions, inter alia, that, in the event of the death of R within the fixed period, the hypothecated properties should there after be considered as a complete sale to T, and that when T became entitled to and possessed of the property, he should make provision for the maintenance of certain make members of R's family.

#### MORTGAGE - CONDITIONAL SALE-MORT | MORTGAGE - CONDITIONAL SALE- MORT-GAGE BY-(Contd.)

Deed amounting to a-(Contd.)

Held that the mortgage of 1871 was in substance, what it described itself as being, a mortgage by way of condition-

It was suggested that the document might be read as containing two separate and distinct transactions-First, a mortgage by mere hypothecation, which was not a conditional sale, and secondly, a conditional sale which was not a mortgage. This would be to apply an artifcial and illegitimate method of construction to a document which can be naturally, and without difficulty, construed and applied as a whole. (Sir Arthur Wilson.) SHEIKH HUB ALI P. (1906) 33 I.A. 107 (116-7)= WAZIR-UN-NISSA.

28 A. 496 (507) = 3 C.L.J. 601 = 10 C.W.N. 778 = 3 A.L.J. 712=1 M.L.T. 297.

-Simple mortgage or-Test. See MORTGAGE-DEED OF-NATURE OF MORTGAGE CREATED BY-SIMPLE MORTGAGE. (1873) 13 B.L.B. 205.

-Usufructuary mortgage or-Test.

The appellant gave security for the payment of certain duties due by the respondent to the Government. To secure the amount for which the appellant thus gave security, and another sum advanced by the appellant on behalf of the respondent the latter executed a pattah and an Arzee which, on the face of them, purported to authorize the collector at once to make a transfer of the property to the appellant. As, however, it was meant only as a security to a certain extent. the respondent executed a kararnamah by which it was stipulated that if he should not pay the instalments fully, or that any part of them should be in arrear, the property should be continued under the appellant, consistently with that writing, and that the appellant should only return to the respondent the amount which might have been paid by him. The patta and Arzee were deposited with a third person, who was not to give them up to the appellant for the purpose of enabling him to obtain a transfer of the property, until default should be made according to the agreement. On the same day, the appellant executed a counter-kararnamah, by which the plan of a conditional sale, entitling the appellant to retain the property on default being made was reduced to a mortgage with a covenant that whenever the appellant should take possession of the property, for the purpose of paying himself the amount for which he became security, he should restore the property to the reepondent as soon as he recouped himself that amount out of the rents and profits. Default having been made by the respondent, the appellant was called upon to, and did pay, a part of the money, which the respondent undertook to pay to the Government. On such payment, the patta and Arzee were submitted to the Collector, and a transfer of the property to the appellant was made in pursuance thereof.

In a suit by the respondent against the appellant for recovery of possession of the property, and for recovery of the rents and profits in excess of the amounts advanced by the appellant, held that the real agreement between the parties was that appellant should restore the property to the respondent after reimbursing himself for what he had advanced out of the rents and profits of the property. (Mr. Justice Bosanquet). SRI RAJAH KAKULAPOODY JAGANNADHA RAJ BAHADOOR p. SRI RAJAH VUTSAVOY,

(1837) 2 M.I.A. 1=5 W.B. 117=1 Suth. 79= 1 Sar. 143.

A deed of 1815, purporting on the face of it to be a deed of usufructuary mortgage of certain lands, stated that the mortgaged property was placed in the possession of the mortgagees and that they should employ men and carry on the cultivation of the said property. The deed provided that, out of the income realized, the mortgagees should pay

## GAGE BY-(Contd.)

Deed amounting to a-(Contd.)

the amount of Jamabandis fixed on the property and the salary of their nominee on the property, and appropriate the surplus, if any, to the amount due under the bond. The deed further provided for payment of the mortgage amount in certain stated instantents and that the mortgagors would pay on a date fixed the balance that might be found due by them on taking accounts and redeem the mortgage. The deed also stipulated that if the mortgagors did not so pay on the day specified, and a balance still remained due, the mortgagees were to take and enjoy so much of the mortgaged property as would, at a rate fixed by the deed, cover the balance due to them, as if under the terms of a deed of absolute sale. If the balance found due exceeded the value of the mortgaged property as determined by the rate fixed by the deed, the mortgagees were to take the whole of the mortgaged property at the rate fixed as under an absolute sale, and were to be at liberty to proceed against the mortgagors and their other property for the balance.

Held that the security was not a mortgage by conditional sale (249). (Sir James W. Colvile). THUMBUSWAMY

PILLAL 7. MAHOMED HOOSAIN ROWTHEN.

(1875) 2 I.A. 241 = 1 M. 1 (16-7) = 3 Sar. 531 = 3 Suth. 198,

## Foreclosure of.

DECREE FOR

-Mortgagee who had obtained-Possession suit by-Limitation-Defendant purchaser of property prior to foreclosure proceedings and not impleaded therein-Provision in mortgage for entry on default. See LIMITATION ACT OF 1908-ART. 144- MORTGAGE BY CONDITIONAL (1871) 14 M I.A. 144 (149).

-Mortgagee who had obtained-Possession suit by-Limitation-Defendant purchaser of property prior to foreclosure proceedings and not impleaded therein. See LIMI-TATION ACT OF 1908-ARTS, 135 AND 147.

(1889) 16 I.A. 85 (94-5)=16 C. 693.

-Mortgagee who had obtained-Possession suit by, against purchaser of property prior to foreclosure proceedings and not impleaded therein-Right of, barred before 1882-Revival of, by creation of foreclosure suits by T. P. Act. See LIMITATION ACT OF 1908-ARTS, 135 & 147. (1889) 16 I.A. 85 (95-6) = 16 C. 693 (701).

-Purchaser under-Possession suit by-Limitation-Defendant home fide execution purchaser under money decree against mortgagee. See LIMITATION ACT OF 1908-ART. 144-MORTGAGE BY CONDITIONAL SALE.

(1871) 14 M.I.A. 101 (111).

LAW OF, UNDER BENGAL REGULATIONS.

-Practice of Bengal Courts-Regulation I of 1798-Regulation XVII of 1806-Effect.

Up to the year 1806, the rights of the holder of a Bye-bil-Wuffa were enforceable according to the strict terms of the contract. It was necessary for the mortgagor, if he intended to save his estate from forfeiture, to tender the amount due, or to pay it into Court, pursuant to the provisions of Regulation I of 1798, within the stipulated period for the repayment of the loan. Regulation XVII of 1806, first introduced a modification of the strict rights given by the contract analogous to, though by no means identical with, that which courts of Equity have long imposed on mortgagees in this country (348). The general effect of these Regulations is, that if anything be due on the mortgage and the mortgagor makes an insufficient deposit, and a fortiori if he makes no deposit at all, the right of redemption is gone at the expiration of the year of grace. The title of the mortgagee, however, is not even

#### MORTGAGE - CONDITIONAL SALE - MORT-GAGE BY - (Cont.)

Foreclosure of-(Confd.)

LAW OF, UNDER BENGAL REGULATIONS-(Contd.) then complete. A mortgagee, after having done all that Regulation XVII of 1806 requires to be done in order to foreclose the mortgage and make the conditional sale absolute, must bring a regular suit to recover possession if he is out of possession, or to obtain a declaration of his absolute title if he is in possession. In that suit the mortgagor may contest on any sufficient grounds the validity of the conditional sale, or the regularity of the proceedings taken under the Regulation in order to make it absolute. He may also allege and prove, if he can, that nothing is due, or that the deposit (if any) which he has made is sufficient to cover what is due; but the issue in so far as the right of redemption is concerned, will be whether anything at the end of the year of grace remained due to the mortgagee, and if so, whether the necessary deposit had been then made. If that be found against the mortgagor the right of redemption is gone (350-1). (Sir James Colvile.) FORBES v. AMEEROO-NISA BEGUM. (1865) 10 M. I. A. 340 - 5 W. R. 47 -

#### PROCEEDINGS FOR,

1 Suth. 621 - 2 Sar. 153.

---Limitation. See BENGAL REGLS,--ZILLAH COURTS REGL, III OF 1793-S. 14.

-Necessity-Central Provinces.

The Judicial Commissioner in his judgment clearly assumes that the law of foreclosure, as it obtains in the Regulation Provinces, is so far adopted that it is the course of the Courts in the Central Provinces to allow a time for foreclosure, and that some proceedings must be taken in order to obtain an absolute foreclosure; and it lay upon those who came to impeach his decision to show that his ruling was inaccurate. Inasmuch as it is notorious that in the Non-Regulation Provinces a certain discretion is given to the Courts to apply the principles which prevail in the Regulation Provinces in the administration of justice according to the rules of equity and good conscience, their Lordships must, until the contrary is shown, presume that the law has been correctly declared by the Judicial Cammissioner. (1873) 13 B. L. B. 205= GOKULDOSS v. KRIPARAM. 3 Sar. 279.

—Necessity—Possession taken by mortgagee without such proceedings—Mortgagor's right to eject him in case of, Src MORTGAGE—CONDITION SALE—MORTGAGE BY— MORTGAGE UNDER—POSSESSION TAKEN BY, ETC.

(1906) 33 I. A. 107 (117-8) = 28 A. 496 (508)

Necessity-Non-Regulation Provinces.

It was argued that, inasmuch as the Bengal Regulations have not been introduced generally into the Central Provinces, a conditional sale must be taken to become absolute on the failure of the mortgager to pay the mortgage debt on the day fixed, and that the mortgagee is under no obligation to take any proceedings by way of foreclosure. In support of that proposition the decision of this Board in Pattabhiramier's case was relied upon. But that case by no means laid down broadly that out of the Regulation Provinces of Bengal—those provinces to which the Bengal Regulation law strictly and in all its fulness applies—the rule 'aid down was to be adopted. GOKULDOSS v. KRIPARAM.

(1873) 13 B. L. R. 205 = 3 Sar. 279.

- Regularity of - Condition - Possession - Mortgagee's title to, when complete.

The question remaining to be considered is, whether the foreclosure proceedings were regular. The mortgagee, under a mortgage by conditional sale, unless he be put

## MORTGAGE- CONDITIONAL SALE- MORT-

GAGE-BY-(Contd.)

Foreclosure of-(Contd.)

PROCEEDINGS FOR-(Contd.)

into possestion of his pledge by the act of the mortgagor, must, according to the law prevalent in the
Courts of the E. I. C., under the Regulations, seek
the assistance of a Court to give him possession of his
pledge. When his object is also to foreclose the
mortgage, he must effect that object in the mode prescribed
by Regul. III of 1793—S. 14; Regul. II of 1805—S 3; and
Regul. XVII of 1806—Ss. 7 & 8. If this mode be not
followed the foreclosure will not be regular; and the mortgagee's title to possession will not be complete (357-8).
(Lord Kingsdown.) PRANNATH ROY CHOWDRY 8.
ROOKEA REGUM. (1859) 7 M. I. A. 323=4 W. R. 37=
1 Suth. 367= 1 Sat. 692.

#### REGL. XVII OF 1806-FORECLOSURE UNDER.

— Declaration of absolute title upon—Grant of in mortgagee's suit for possession—Propriety—Suit by him for possession, but possession found to be with him—Dismissal of suit in such case.

Plaintiff purchased certain property from defendant's late husband under a deed of conditional sale and an ikrar. On the day before the date of the bill of sale, defendant's husband granted a lease of the mortgaged premises for three years ostensibly to the son of the plaintiff, and took the corresponding kabooleat from him. The grant of this lease was a benami transaction, and the lease, though taken in the name of his son, was really a lease to the plaintiff, who under colour of it obtained possession of the mortgaged premises. Having obtained an order in proceedings taken to foreclose the mortgage under Reg. XVII of 1806, the plaintiff instituted a suit in order to complete his title under the foreclosure. Treating, however, the lease to his son as a subsisting lease to that person, and himself as out of possession, the plaintiff asked to have possession decreed to him, together with mesne profits. The defendant insisted, before the Privy Council, that inasmuch as it had been conclusively found that the plaintiff was in possession of the mortgaged premises, and the plaint was, nevertheless, for possession and mesne profits, the form of the suit was of itself a sufficient ground for its dismissal.

Held, overruling the objection, that the real object of the suit was to perfect plaintiff's title as absolute owner of the property, and that there was no season why he should not have that relief, if he was otherwise entitled to it, because, under an erroneous view of the effect of the lease, he had asked for it by his plaint in a somewhat different form, and with something to which he was not entitled (355).

(Sir James Colvile.) FORBES v. AMEEROONISM (Sir James Colvile.) To M. I. A. 340 = 5 W.B. 47 = 1 Suth. 621 = 2 Sar. 158.

Declaration of absolute title upon-Mortgage's suit for-Accounts-Production of-Necessity-Admission by mortgagor of balance due-Effect.

The order of remand can be supported only on the principle that, in all cases, it is imperative upon a mortgage who has been in possession to produce his accounts. For this position their Lordships can find no grounds in the Regulations. The words of S. 3 of Regulation I of 1798, from which (if at all) an inflexible obligation to produce the accounts must be inferred, impose two conditions, the possession of the mortgagee, and the necessity of an account. And a comparison of this with the preceding section, and with Regulation XVII of 1806, shows that that necessity arises, and need only arise, first, when the mortgagor had deposited the principal, leaving the question of interest to be settled on an adjustment of the account; secondly, when he

MORTGAGE - CONDITIONAL SALE - MORT | MORTGAGE - CONDITIONAL SALE - MORT GAGE BY-(Contd.)

Foreclosure of -(Contd.)

REGL. XVII OF 1806-FORECLOSURE UNDER--(Contd.)

has deposited all that he admits or alleges to be due; thirdly, when he pleads, and undertakes to prove, that the whole of the principal and interest has been liquidated by the usufruct of the property (357-8). Upon principle the obligation to produce the accounts should depend on the circumstances of the case and the nature of the issues raised (359).

In a suit brought by a mortgagee in possession, who had done all that was required under Regulation XVII of 1806 in order to foreclose the mortgage and make the conditional sale absolute, for a declaration of his absolute title to the property, the question was whether the Sudder Court was right in requiring the plaintiff-appellant to produce his accounts, and in remanding the cause for re-trial on the production of those accounts. The issue upon which the determination of the cause depended, and upon which even by the order of remand it was made to depend, was whether the loan had been liquidated with interest, from the usufruct of the property. Not only was there no allegation on the pleadings, or issue raised in the cause, to the effect that the loan had been thus liquidated, but there was an express admission on the face of the defendant's answer that even on his mode of stating the account, the principal sum of Rs. 30,000 had, when the foreclosure proceedings were commenced, and when he ought to have made the requisite deposit, been reduced by no more than Rs. 927. It was, therefore, clear, upon the face of the proceedings, that the question to be tried could be answered only in one way, and that in favour of the appellant.

Held, that, upon the true construction of the Regulations applicable to the case, there was no necessity for calling for the production of the accounts, and that, consequently, the order for the remand was wrong (357). (Sir James W. Colvile.) FORBES v. AMEEROONISSA BEGUM.

(1865) 10 M. I. A. 340 = 5 W. B. P. C. 47 = 1 Suth. 621 = 2 Sar. 153.

Declaration of absolute title upon-Mortgagee's mit for, or for possession-Defences open to mortgagor in-Redemption right of mort gagor-Issue as to.

In a suit brought by a mortgagee, who has done all that is required to be done under Reg. XVII of 1806 in order to foreclosure the mortgage and make the conditional sale absolute, for recovery of possession of the property or for a declaration of his absolute title to the same, the mortgagor may contest on any sufficient grounds the validity of the conditional sale, or the regularity of the proceedings taken under the Regulation in order to make it absolute. He may also allege and prove, if he can, that nothing is due, or that the deposit (if any) which he has made is sufficient to cover what is due; but the issue in so far as the right of redemption is concerned, will be whether anything at the end of the year of grace remained due to the mortgagee, and if so, whether the necessary deposit had been then made. If that be found against the mortgagor the right of redemption is gone (351). (Sir James W. Colvile.) AMEEROONISSA BEGUM. (1865) 10 M. I. A. 340 =

5 W. B. P. C. 47 = 1 Suth. 621 = 2 Sar. 153. - Ejectment suit by mortgages on foot of title based on -Defendant execution purchaser under attachment pending which mortgage was made-Invalidity of that attachment -Plea by mortgagee of-Onus of proof of.

Appellant was a mortgagee under a mortgage executed pending an attachment of the mortgaged property in execution of a decree in which the sale at which the respondent purchased the property was held. Alleging that he had completed his mortgage title by foreclosure under Reg. XVII of

GAGE BY-(Contd.)

Foreclosure of-(Contd.)

REGL. XVII OF 1806-FORECLOSURE UNDER--(Contd.)

1806, S. 8, appellant sued to recover possession of the property from the respondent. To get over the plea that his mortgage was invalid under S. 240 of C. P. C. of 1859, because it had been executed pending the attachment, the appellant alleged that S. 240 was inapplicable because the formalities prescribed by S. 239 of that Code had not been complied with.

Quatere whether, in view of the fact that the respondent was in possession and that the appellant was seeking to oust him from it, the onus of proving that the said formalities had not been complied with was not on the appellant (160). (Sir James W. Colvile.) RAM KRISHNA DAS SURROWJI p. SURFUNNISSA BEGUM. (1880) 7 I. A. 157=

6 C. 129 (134) = 4 Sar. 151 = 3 Suth. 755. -Proceedings for-Prior purchaser of mortgaged property not made party to-Mortgagee's suit for possession against -Limitation. See LIMITATION ACT OF 1908-ARTS, 135, 147. (1889) 16 I. A. 85 (94-5) - 16 C. 693.

#### Form usual of.

-The form that the contract of mortgage by conditional sale usually takes is for the mortgagor to execute a deed of sale in respect of the mortgaged property in favour of the mortgagee who on his side executes an agreement covenanting that, on the liquidation of the debt, according to the terms of the contract, the sale would be cancelled and he would reconvey the property to the mortgagor. On the breach of the condition relating to repayment the contract executes itself, and the transaction becomes one of absolute sale. (Mr. Ameer Ali.) BAKHTAWAR BEGAM v. HUSAINI KHANAM. (1914) 41 I. A. 84 = 36 A. 195 (197-8) =

18 C. W. N. 586 - 19 C. L. J. 477 = (1914) M. W N, 411 - 15 M. L. T. 389 = 16 Bom. L. B. 344 = 12 A. L. J. 473 = 23 I. C. 335 = 1 L. W. 813 = 26 M. L. J. 474.

## Fraudulent transaction.

Onus of proof as to-Foreclosure-Mortgagee who had perfected his title by-Possession suit by, against execution-purchaser-Onus in.

The respondent sued to recover possession of the property included in his mortgage deed, having perfected his title under that deed by the usual proceedings in foreclosure, One of the defendants in the suit was the appellant, who was in possession of part of the mortgaged property as purchaser at an execution sale. He defended his possession by pleading that the mortgage was from the first a collusive transaction, an arrangement between the mortgagors and the mortgagee designed to protect the property of the mortgagors from the claims of their creditors.

Held, reversing the High Court and restoring the first Court, that, as against the appellant, the mortgage was not a hong fide one, but one of those transactions into which a friendly party might have been induced to enter in order to protect the young men, the mortgagors, from their creditors,

Quatere, as to the onus of proof in such cases, Woo-MESH CHUNDER ROY 2. GOOROODASS ROY.

(1871) 17 W. B. 9 = 2 Suth. 603 = 4 Sar. 779 = 7 M. J. 77.

-Plea of -Maintainability - Mortgagee out of possession-Suit to enforce mort gage by.

The suit was to enforce a deed of conditional sale by a person out of possession. The defence was that the deed sued upon was executed nominally to the plaintiff to defeat the rights of the defendant's husband's heirs who threatened her with litigation, and to save the property from them,

MORTGAGE - CONDITIONAL SALE - MORT-GAGE BY-(Contd.)

Fraudulent transaction-(Contd.)

Held that there was nothing whatever to prevent the defendant from showing the real truth of the transaction, viz., that it was executed to defraud the husband's heirs. (Lord Justice James.) RAM SURUN SINGH v. MUSSAMAT PRAN PEARV. (1870) 13 M. I. A. 551 =

15 W. R. P. C. 14 2 Suth. 386 = 2 Sar. 620.

Hindu and Mahomedan Laws.

Recognition of Mortgage by conditional sale by. That this form of security (mortgage by Bye-bil-wuffa or Kut-kabala usufructuary) has long been common in India is notorious. The fact is stated in the preamble to the Bengal Regulation I of 1798. That such contracts were recognised and enforced according to their letter by the ancient Hindu Law appears from several passages in Colebrooke's Digest. That they were equally recognised and enforced between Mahomedans is shown by Mr. Baillie in his introduction to his work on the Mahomedan Law of sale. If the ancient law of the county has been modified by any later rule, having the force of law, that rule must be founded either on positive legislation, or on established practice (568). (Lord Chelmsford.) PATTABHIRAMIER P. VENKATAROW NAIC-(1870) 13 M. I. A. 560 = 15 W. R. P. C. 35 = KEN. 7 B. L. R. 136 = 2 Suth. 410 = 2 Sar. 623.

Law applicable to.

— Pattabhiramier's case—Decision in —Later decisions in Madras and Rombay—Mortgages before and after 1858 — Distinction.

In Pattabhiramier's case, the Judicial Committee decided that the contract of mortgage by conditional sale was a form of security known under various names throughout India; that according to the ancient law of India it was enforceable according to its letter, and that whether it was embodied in one instrument or in two separate instruments, and whether or not the transaction appeared on the face of the instrument to be in its inception a mortgage; and further, that that law must be taken to prevail in every part of India in which it had not been modified either by actual legislation or by established practice.

The earlier decisions of the Sudder Court of Madras were with one exception, perfectly consistent with the decision of the Board in Pattabhiramier's case. The later decisions of the Sudder Court of Madras, and of the High Court which succeeded it, had modified the ancient law. They applied to that class of socurity for the first time the principles which the English Courts of equity had for centuries

applied to mortgages in England.

There was a similar change in the law effected by the

decisions in Bombay,

The above being the state of the authorities, their Lord ships observed: "It may obviously become a question with this Committee in future cases whether they will follow the decision in Pattabhirantier's case which appears to them based upon sound principles, or the new course of decision that has sprung up at Madras and Bombay, which appears to them to have been, in its origin, radically unsound".

"On a stale claim to redeem a mortgage, and dispossess a mortgagee who had, before 1858, acquired an absolute title, there would be strong reasons for adopting the former course. In the case of a security executed since 1858 there would be strong reasons for recognising and giving effect to the Madras authorities, with reference to which the parties might be supposed to have contracted. Their Lordships abstain from expressing any opinion upon this question until the necessity for determining it shall arise" (255). (Sir James W. Colvile.) THUMBUSWAMY MUDELLLY 2. MAHOMED HOOSAIN ROWTHEN. (1875) 2 I. A. 241=

1 M. 1(23)=3 Sar, 531=3 Suth. 198.

MORTGAGE - CONDITIONAL SALE - MORT-GAGE BY-(Contd.)

Mortgage for term.

MORTGAGE—MONEY—SUIT FOR, BEFORE EXPIRY OF TERM—MORTGAGEE'S RIGHT OF.

 Mortgagor denying receipt of money and admitting non-delizery of property.

A conditional bill of sale and mortgage deed stated that the mortgagor had mortgaged and conditionally sold the villages described therein for the sum specified, and that he had received the said sum and made over the said villages to the purchaser. The deed fixed a period of twenty years for the redemption of the villages, and provided that, if, after the expiration of the said period, the mortgagor at once paid to the mortgagee the entire mortgage amount, the latter should receive the same and deliver back the deed and possession of the mortgaged villages, while, if he did not so pay, the mortgagee might foreclose the mortgage.

The mortgagor received the entire mortgage money, but refused to put the mortgage in possession of the mortgage villages. In ronsequence, the mortgage instituted the sait out of which the appeal arose within the period of twenty years fixed by the deed for recovery of the principal and interest due under the deed. The mortgagor, by his answer, took a preliminary objection to the suit for recovery of the principal and interest; he did not deny the execution of the mortgage and bill of conditional sale, but submitted that it was contrary to the conditions in the deed to bring a sait before the expiration of twenty years, the time therein limited; he also denied the receipt of the mortgage amount.

The Courts below found that the mortgagor had received the entire mortgage money, and gave a decree to the plaintiff as prayed for.

Held, that the Courts below had rightly decreed the

The question is this, whether, upon the pleadings in this case and the evidence before the Court below, the transaction was complete, or whether it was one that was need completed? Now, both parties agree that possession was never delivered; that is admitted upon the pleadings. It does not appear. however, that they otherwise agree; of the contrary, they dispute both the law and evidence, but they agree upon the principal point on the pleadings The defendant also denies the receipt of the purchase money It is not, however, necessary to search for precedents. The case depends upon the general principle of law. The party says, I never delivered possession, and never received the money. He disaffirms the transaction. (Mr. Penkelm Leigh). RAJA OODIT PURKASH SING P. HENRY MAR-(1849) 4 M. I. A. 444=1 Sar. 384 TINDELL.

#### REDEMPTION OF.

Expiry of term—Redemption before—Mortgage's failure as to—Mortgage's rights on—Law in India frist to legislation or to course of decisions—Madras Prendard,

A deed of conditional sale, dated 13th of June 1808, and executed in respect of land in the Madras Presidency, provided that the mortgagee should hold possession of the land for five years, paying the Government revenue, that the mortgager should re-pay the principal and redeem the land on the 10th of June. 1813 and that, in default, the nortgagee and his posterity should enjoy the land as if the transaction was an absolute sale, with the right of alienating the same by gift, sale, etc. In a suit brought in 1853 by the mortgagor's representatives for redemotion of the mortgage hecame absolute according to the terms of the contract, by the mere failer of the mortgagor to redeem at or before the time specified in the deed.

## GAGE BY-(Contd.)

Mortgage for term-(Contd.)

REDEMPTION OF-(Contd.)

The Judgment of the Court below assumes that an obligation lay on the mortgagee to do some act by way of enforcing what is not very correctly termed the penalty; and that there could be no adverse possession against the mortgagor until there had been a tender and refusal of the mortgage money. But this assumption implies that in some way or other the rights and obligations of the parties as defined by the contract had been qualified by a known rule of law. But no such qualifications have been introduced, as in Bengal (by Regulation XVII of 1806), by any act of legislation into the Statute law applicable to Madras. The English doctrine of "the equity of redemption" was unknown to the ancient law of India; and if it could have been introduced by the decisions of the Courts of the East India Company, their Lordships can find no such course of decisions. In fact, the weight of authority seems to be the other way. It must not, then, be supposed that in allowing this appeal, their Lordships design to disturb any rule of property established by judicial decisions so as to form part of the Law of the Foram, wherever such may prevail, or to affect any title founded thereon (571.2). (Led Chelmsford). PATTABHIRAMIER 2. VENCATAROW (1870) 13 M. I. A. 560 -NAICKEN. 15 W. R. P. C. 35 = 7 B L. R. 136 = 2 Suth. 410 =

2 Sar. 623. -Expiry of term-Redemption before-Right of-

Construction of mortgage deed. Where a mortgage by way of conditional sale provided that "the sale would be cancelled on the payment of the amount of consideration in nine years," held that the said provision was certainly ambiguous, and that on the construction of the contract of mortgage alone it might be said that the right to redeem accrued only at the expiration of the period fixed. (Mr. Ameer Mi.) BAKHTAWAR BEGUM P. HUSAINI KHANAM. (1914) 41 I. A. 84 =

36 A. 195 (199) = 18 C. W. N. 586 = 19 C. L. J. 477 = (1914) M. W. N. 411=15 M. L. T. 389= 16 Bom. L. R. 344 = 12 A. L. J. 470 = 23 I. C. 335 = 1 L. W. 813 = 26 M. L. J. 474.

-Expiry of term-Relemption before and after-Regulation XVII of 1806-Inapplicability to Madras of.

In Bengal, in cases to which Regulation XVII of 1806 does not apply, the interest of a mortgagec under a deed of conditional sale becomes absolute according to the terms of the contract, by the mere failure of the mortgagor to redeem within the stipulated period (569-70). That Regulation allowed a mortgagor, who had executed such a security, to redeem at any time before the mortgagee had finally foreclosed the mortgage by taking the proceedings which the Regulation made essential to foreclosure (569). That Regulation had of itself no force in the Presidency of Madras. And their Lordships cannot find either in the Madras Regulations or in the Acts of the Indian Legislature subsequent to the Charter Act of 1834, any Act, by which similar provisions have been enacted for Madras (562). (Lord Chelmsford). PATTABHIRAMIER P. VEN-CATAROW NAICKEN. (1870) 13 M. I. A. 560 = 15 W. B. P. C. 35 = 7 B. L. R. 136 = 2 Suth 410=

See LIMITATION ACT OF -Suit for-Limitation. (1914) 41 I. A. 84= 1908-ART 148. TOE 3

2 Sar. 625.

MORTGAGE -- CONDITIONAL SALE -- MORT MORTGAGE -- CONDITIONAL SALE -- MORT GAGE BY-(Contd.)

Mortgagee under.

-- Mort gage-money-Suit for-Dicree in-Possession in execution of-Right to.

By a bond, dated 10th February, 1857, G mortgaged a certain village to the appellants and their father as security for a loan. The bond provided that, "If I fail to pay the money as stipulated, I and my heirs shall without objection cause the settlement of the said village to be made with you". The mortgagees brought a suit for the recovery of the mortgage debt, and obtained a decree for the satisfaction of the amount decreed either by the defendant himself or out of the mortgaged property. The decree, however, was not executed in that way. After two years' delay, the mortgages applied for execution of their decree, but in a different way. After stating that the money had not been paid according to the decree, they said the enforcement of the condition of the bond was then just, and therefore they prayed that the full possession of the village might be given to them in perpetuity, and the defendant be released from liability under the decree.

Hdd, that the proceedings above-mentioned differed entirely from those which would have been had by parties entitled under a deed of conditional sale to an absolute interest.

If the law did not impose upon the mortgagees the necessity of taking proceedings for foreclosure, they would have brought their suit for the possession of the estate. If the law required them to take proceedings for foreclosure, they would have taken such proceedings, and after foreclosure would have sued for possession; or possibly, having regard to the nature of the property and the terms of the instrumeat, they might have sued to compel a specific performance of the undertaking of the mortgagor to cause a settlement of the village to be made with them. But they certainly would not have sued for the mortgage debt, or taken a decree in the form above-mentioned, 2v2., for the satisfaction of the amount decreed either by the defendant himself or out of the mortgaged property. GOKULDOSS P. KRIPA-(1873) 13 B. L. R. 205 = 3 Sar. 279.

-Possession taken by, without proper forcelosure proceedings-Ejectment suit against him by mortgagor in case of-Right of.

Under the Bengal Regulation XVII of 1806, the mortgagee or his representative had the right to take legal proceedings with a view to foreclosure; and that foreclosure he could have obtained, if, after the proper steps had been taken, the representatives of the mortgagor had failed to redeem within the time limited for that purpose by the terms of the Regulation. But there was no right to take possession of the property without the proceedings prescribed by law. If he does so take possession, he is a mere trespasser, and the mortgagor or his heirs will be entitled to sue him in ejectment as such. (Sir Arthur Wilson.) SHEIKH HUB ALI T. WAZIR-UN NISSA. (1906) 33 I. A. 107 (117-8) = 28 A. 496 (508) = 3 C. L. J. 601 = 10 C. W. N. 778 =

3 A. L. J. 712=1 M. L. T. 297.

#### Nature and incidents of.

-History of law with regard to.

Mr. MacPherson, in his work upon mortgages thus accurately defines this form of security (mortgage by conditional sale). He says: "The mortgage by conditional sale, 'Kut kubula,' or 'Bye-bil-wufa,' is that in which the borrower not making himself personally liable for the repayment of the loan, covenants that, on default of payment of principal and interest on a certain date, the land pledged shall pass to the mortgagee." Such a mortgage might or might not be usufructuary. If usufructuary, it usually contained a stipulation that the usufruct should be in lieu of interest. The 36 A. 195 (199-200).

MORTGAGE- CONDITIONAL GAGE BY-(Contd.)

Nature and inclidents of-(Contd.)

effect of such a stipulation was modified by legislation in consequence of the laws against usury, but has, by Act XXVIII of 1855, I cen restored in its integrity as to all contracts made subsequent to the passing of that Act. The essential characteristic of a mortgage by conditional sale was, that on the breach of the condition the contract executed itself, and the transaction was closed and became one of absolute sale without any further act of the parties or accountability between them (248). (Six James W. Colvile.) THUMBUSWAMY MUPELLY P. MAHOMED HOOSAIN (1875) 2 I. A. 241=1 M. 1 (15-6)= ROWTHEN. 3 Sar. 531 = 3 Suth. 198.

#### Ordinary mortgage or.

-Evidence.

In this case the question was whether the mostgage in question was an ordinary mortgage or one in the nature of by-bil-seuffa or deed of conditional sale containing a stipulation that, in default of payment within one year, the interest of the mortgagee should become absolute.

The Courts below concurrently found on the evidence that the mostgage was only an ordinary mortgage, and their Lordships accepted the finding. AGHA HUSSUN KHAN BAHADOOR v. MUSSUMAT JANEE BEGUM.

(1872) 8 M. J. 149.

#### Origin of.

Personal liability in-Provision for-Necessity.

Mortgages by conditional sale under various names are a common form of mortgage in India. This form of mortgage is said to have been introduced to enable Mahomedans contrary to the precepts of their religion to lend money at interest and obtain security for principal and interest. If so, one would expect to find that the transaction would, as far as possible, be made to assume the appearance of a sale. It is not necessary in a mortgage by conditional sale "kutkubala" or "bye-bil-wuffa" that the mortgagor should make himself personally liable for the repayment of the loan (66). Lord Datey.) BALKISHAN DAS : LEGGE.

(1899) 27 I. A. 58=22 A. 149 (159)= 4 C. W. N. 153 = 2 Bom. L. R. 523 = 7 Sar. 601.

#### Payment on date fixed-Failure.

-Rights of parties on.

An ordinary deed of conditional sale imports in terms a sale of the interest of the party which is to become absolute and conclusive upon his failure to pay the stipulated sum at a certain date. Such a contract would, independently of any rule of law to the contrary, execute itself, and the remedy of the party upon it would, if he were out of possession, be a suit for possession. GOKULDOSS r. KRIPA-(1873) 13 B. L. R. 205 = 3 Sar. 279.

## Personal liability in.

-Provision for-Necessity. See MORTGAGE-CON-DITIONAL SALE-MORTGAGE BY-ORIGIN OF.

(1899) 27 I. A. 58 (66) = 22 A. 149 (159).

Plea of mortgage not being a-Privy Council appeal.

-Maintainability for first time in.

It would take a great deal of examination before it could be determined whether or not a mortgage is a mort-

gage by conditional sale.

Where, therefore, in the pleadings, in the courts below, and in appellant's case before the Privy Council as originally printed, the case was proceeded with on the footing that a mortgage was a mortgage by conditional sale, held that the appellant could not in the arguments of the appeal be allowed to raise the contention that the mortgage was not

SALE- MOBT- MORTGAGE- CONDITIONAL SALE- MORT-GAGE BY-(Contd.)

> Plea of mortgage not being a-Privy Council appeal-(Contd.)

one by conditional sale (Lord Phillimore.) RAM KISAN SINGH P. MAHOMED ABOUL SATTAR

(1928) 30 Bom.L.R. 852 = 109 I. C. 574 = 21 L.W. 248 = 32 C. W. N. 1149 = 24 N. L. R. 186 = 48 C. L. J. 570 = A. I. R. 1928 P. C. 165 (2) = 55 M. L. J. 292 (295).

#### Redemption of.

-Interest-Rents and profits received by mortgagee in excess of legal-Account of-Mort gagee's liability as to.

Ss. 8 and 9 of Madras Regulation XXXIV of 1802 extended to Madras, the provisions of Ss. 10 and 11 of Bengal Regulation XV of 1793. Both these Regulations were passed with the object of fixing the legal rate of interest, and of preventing the taking of interest in excess of it; and both have since been wholly or in great part repealed with other usury laws by Act XXVIII of 1855. The clauses in question affected only that part of the contract now under consideration (mortgage by Bye bil-wuffa or Kutkabala usufructuary) which related to the usufruct of the property. As to that they may have made it necessary. contrary to the intention of the parties, to take upon a redemption an account of the rents and profits as between Mortgagor and Mortgagee in possession, compelling the latter to set what he might have received in excess of legal interest against the principal; but they neither extended the time of redemption nor imposed upon the Mortgagee, when the Mortgagor had failed to redeem within the stipulated period, the obligation of taking any judicial or other proceedings in order to make his title absolute (568-9). (Lord Chelmsford.) PATTABHIRAMIER v. VENCATAROW (1870) 13 M.I.A. 560 = 15 W.R. P.C. 35= NAICKEN. 7 B.L.R. 136 = 2 Suth. 410 = 2 Sar. 623.

-Right of-Indications in deed itself of intention that it should be a mortgage-Necessity.

The appellants argue that the language, whether of the Transfer of Property Act, S. 58 (/), or of the Regulations (Bengal Regulation I of 1798 and Regulation XVII of 1806), shews that in order to attract their provisions there must be underlying ostensible arrangements for sale a real. substantial intention to secure money advanced. The repondents, on the other hand, contend that a conditional sale becomes subject to an equity of redemption by force of the Regulations before mentioned, independently of any indications in the document that it is intended to be a mortgage This is a question on which their Lordships are not called on to express an opinion in this case, for the documents in question contain important indications of the intention of the parties (67). (Lord Davy.) BALKISHAN DAS F. (1899) 27 I.A. 58=22 A. 149(1601)= LEGGE. 4 C.W.N. 153 = 2 Bom. L.B. 523 = 7 Bar. 601.

-Right of -Regulation XVII of 1806-Effe.t. In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon the Regulation and not upon the terms of the condition (115). (Sir Richard Couch.) SAYYID MANSUR ALI KHAN 2, BABU SARJU PARSHAD (1886) 13 I.A. 113 = 9 A. 20 (23) = 4 Sar. 749.

-The effect of Regulation XVII of 1806 was to in troduce into those parts of India to which the Regulation applies the English doctrine of an equity of redemption as applicable to the class of deeds referred to in it (667). (Lord Davey.) BALKISHAN DAS v. LEGGE

(1899) 27 I.A. 58 = 22 A. 149 (160-1) = 4 0. W.N. 163= 2 Bom. L. B. 523=7 Bar. 601.

#### MORTGAGE— CONDITIONAL SALE— MORT-GAGE BY—(Contd.)

## Sale with contract for re-purchase or.

SALE WITH CONTRACT FOR RE-PURCHASE.

#### Terms of-Modification of.

Lease for term of mortgaged property by mortgagor benami to mortgagee's son—Possession taken by mortgagee under—Effect of.

Plaintiff purchased certain property from defendant's late husband under a deed of conditional sale and an ikrar. On the day before the date of the Bill of sale, defendant's husband granted a lease, of the mortgaged premises for three years ostensibly to the son of the plaintiff, and rook the corresponding kabooliat from him. The grant of the lease was a benami transaction, and the lease, though taken in the name of his son, was really a lease to the plaintiff, who under colour of it obtained possession of the mortgaged premises. Having obtained an order in proceedings taken to foreclose the mortgage under Regulation XVII of 1806, the plaintiff instituted a suit to perfect his title as absolute owner of the property. In that suit the defendant contended that the Bye-bill-wuffa, the ikrar, the lease, and the kahooliyat must be taken together as one transaction; that the effect of the two latter so qualified that of the two former, that the mortgage must be taken to have been in its inception, one for the term of 3 years, and that until the expiration of the term the plaintiff was not at liberty to take any step towards forceclosure.

Held that the defendant could not list repudiate the obligations of the lease and claim the benefit of it (355-6).

That transaction has been held, and properly held, not to effect that for which it was probably designed, viz., to save the plaintiff, from the liabilities, whilst it gave him the advantages of a mortgagee in possession. Still less can it be taken to do what it was never meant to do, viz., modify the terms of the conditional sale (356). (Sir fames Colvile.) FORBES P. AMEEROONISSA BEGUM.

(1865) 10 M.I.A. 340 = 5 W.R. 47 = 1 Suth. 621 = 2 Sar. 153.

## MORTGAGE-CONSIDERATION FOR.

#### Admission in bond of receipt of.

——Denial of correctness of—Mortgagor's right of. See EVIDENCE ACT—S. 92—CONSIDERATION ADMITTED IN DEED, ETC. (1870) 13 M.I.A. 551 (559).

——Presumption from—Plea of no consideration by mortgagor—Onus of proof of. See ADMISSION—CONSI-DERATION—DEED—CONSIDERATION FOR.

(1875) 3 I.A. 1 (45)=

1 C. 163 and (1899) 4 C.W.N. 82 (83). AND ADMISSION—CONSIDERATION—MORTGAGE BOND. (1875) 3 I.A. 1 (5) = 1 C. 163 and

(1927) 54 M.L.J. 208 (212).

Where, in a suit to enforce a mortgage deed which acknowledged the due receipt of consideration, the defendant denied that any consideration was given for the bond,

acknowledged the due receipt of consideration, the defendant denied that any consideration was given for the bond, held that, on the plaintiff duly proving the mortgage, the burden was undoubtedly upon the defendant of proving absence of consideration (199). (Sir Robert P. Collier.) MADHO PERSHAD v. GAJADHAR.

(1884) 11 I.A. 186 = 11 C. 111 (115) = 4 Sar. 574 = B. & Js. No. 85.

Presumption from—Plea of no consideration by mortgagor—Onne of Proof of—Shifting of—'ncome-tax returns of mortgagee—Interest not debited against him in —Effect.

The onus is on a mortgagor who seeks to get rid of his liability under a registered mortgage to shew clearly that, contrary to his own admission before the registrar, he re-

## SALE- MORT- MORTGAGE-CONSIDERATION FOR-(Contd.)

Admission in bond of receipt of-(Contd.)

ceived no consideration for it and that the deed was fictitious.

The fact that the mortgagee had not debited himself in his return to the Government for income tax in respect of the interest on the suit bond has no weight in changing that onus. (Lord Morris.) NAWAB MIRZA ALI KADAR BAHADUR P. INDAR PARSHAD.

(1896) 23 I.A. 92=23 C. 950=7 Sar. 63.

## Failure of mortgagee to prove—Decree for sale or accounts in case of.

-Mortgagee's right to.

On the dissolution of firm P, of which the respondent and I' were partners, its assets and liabilities were, by agreement, taken over by the respondent. One of the liabilities he so took over was a debt due to firm O by firm P. For the amount thus due by the respondent to firm O, he exeruted a mortgage and a pro-note to V, and a letter of even date which recited the execution of the mortgage and of the pro note and directed V to pay the amount secured by the mostgage and by the pro-note to firm O. The mortgage deed stated to be for consideration received, and, on the face of it, did not disclose the real nature of the transaction. But that deed, taken with the pro-note and the letter of the same date, showed that no consideration passed for the mortgage, and that the re-pondent executed it in favour of V. because the latter represented that he was being pressed by firm O for the payment of the debt which the respondent had by the dissolution agreement undertaken to pay but neglected to do so. In a suit brought by the assignee of V to enforce the mortgage, it was found that V had not at the date of suit paid anything to firm O.

Held that the plaintiff had failed to establish any case whatever, either for a decree or for an account (179).

Ss. 86 to 90 of the Transfer of Property Act now embodied in effect in Or. 34 of C. P. C. of 1908 protect a defendant-mortgagor against a decree for sale, unless the amount due on his mortgage, if not admitted, has either at the bearing been proved by the plaintiff or has been ascertained after the hearing by an account then directed on, of course, a case for the taking of such an account having by evidence first been made (Lord Blancthurgh.) VEERAPPA CHEATY S. ARUNACHELLAM CHEATY

CHETTY F. ARUNACHELLAM CHETTY.
(1924) 20 L. W. 368 = 26 Bom. L.B. 661 =
(1924) 2 M.W.N. 559 = A.I.B. 1924 P. C. 192 =
35 M.L.T. 161 = 29 C.W.N. 438 = 86 I.C. 259 =
47 M.L.J. 168 (171.).

#### Onus of Proof of-Suit to enforce mortgage.

In a suit brought to enforce a mortgage, Quaere whether, in the face of the fact that the plaintiffs held a regularly executed mortgage bond, the onus of proving consideration for the mortgage lay on them. (Mr. Ameer Ali.) ADAPPA D. GANDAPPA.

(1925) 88 I.C. 158 = A.I.B. 1925 (P.C.) 114 (115).

Admission in bond of receipt of consideration— Effect. See MORTGAGE—CONSIDERATION FOR—AD-MISSION IN BOND OF RECEIPT OF—PRESUMPTION FROM.

- Decean Agriculturists Act-Defendants coming under purview of.

In a suit brought by the plaintiffs to enforce a mortgage made in their favour by the defendants, it appeared that the defendants came under the purview of the Deccan Agriculturists Act. Quaere whether, by reason of that fact, the onus was on the plaintiffs to establish clearly that they paid any consideration for the mortgage. (Mr. Ameer Ali.) ADAP-PA r. GANDAPPA. (1925) 88 I. C. 158=

A. J. B. 1925 (P. C.) 114 (115)

# MORTGAGE—CONSIDERATION FOR—(Contd.) Presumption as to.

——Admission in bond of receipt of consideration— Effect, See MORTGAGE—CONSIDERATION FOR—ADMIS SION IN BOND OF RECEIPT OF—PRESUMPTION FROM.

-- Interest -- Non-demand of, fer 12 years -- Effect.

When, in a suit to enforce a mortgage, the question was whether any consideration was given for the suit bond. *held* that the absence of any demand of interest from the time of the mortgage money being due to the date of the suit, nearly twelve years, was certainly of some weight (191), (Six Robert F. Collier.) MADHO PERSHAD v. GAJADHAR.

(1884) 11 I. A. 186 - 11 C. 111(116) - 4 Sar. 574 = R & J's No. 85.

#### Proof of.

--- Quantum.

In a suit brought by the plaintiffs to enforce a mortgage made in their favour by the defendants, the question was whether there was consideration for the mortgage.

The Sub-Judge dismissed the suit on the ground that the plaintiffs had failed to prove consideration for the mortgage. His decree was reversed on appeal by the High Court, and the claim was decreed.

On appeal their Lordships held, on a consideration of the evidence, that the judgment of the High Court was right and ought to be affirmed. (Mr. Ameer Ali.) ADAPPA 7. GANDAPPA. (1925) 88 I. C. 158=

A. I. R. 1925 (P. C.) 114. Substantive case of mortgagee as to, in suit to enforce mortgage.

-Failure to make out-Appeal-Shifting of ground in-Permissibility.

A mortgagee sucd to enforce his mortgage, alleging that the consideration therefor had been received in cash by the mortgagor. The mortgagor denied consideration for the

mortgage.

Held that the plaintiff, who had made a substantive case as to the consideration for his mortgage and failed to make out the same, could not in appeal be allowed to shift his ground and urge that the mortgagor accepted the civil liability of his brother for his alleged defalcations. (Lard Sinha.) SETH MAGANMAL v. DARBARILAL CHOWDHRY. (1927) 5 O.W.N. 226 = 30 Bom.L.R. 296 = 107 I.C. 113 = 47 C. L. J. 222 = 27 L. W. 523 = I. L. T. 40 C. 124 =

24 N. L. R. 40 = A. I. R. 1928 P. C. 39 = 54 M. L. J. 208 (218).

## MORTGAGE-CONTRACT TO GRANT.

#### Mortgage or.

-Test-Construction of deed.

The question was whether a document was a mortgage, or was merely an agreement to mortgage for Rs. 341 if that amount should not be paid at a subsequent date. It recited that the Rs. 341 were due. The executant then said: "I will pay up the amount mentioned above by the month of Bhadoon 1266, F. S." And then he said: "Peradventure, if I should fail to liquidate or make good the sum above noted at the period herein stipulated upon, then the villages of A and S with the exception of Mouzah O, which is held under a mortgage transaction of prior date by Rajah F, I will mortgage the said property in fieu of the amount aforesaid."

Held that the deed was not a mortgage at all, but was merely an agreement to mortgage for Rs. 341 if that amount should not be paid in the month of Bahdoon 1266 Fusly. RAJAH FURZUND ALI KHAN r. ABDUL RAZAK. (1872) 8 M. J. 181.

#### Specific Performance of.

-Indebtedness of defendant-True amount of-Agreement to give mortgage for-Specific performance of-Suit

## MORTGAGE-CONTRACT TO GRANT-(Contd.)

Specific Performance of-(Contd.)

by mortgagee for—Maintainability—Relief to be granted in—Indebtedness not ascertained before suit and capable of being ascertained only on taking accounts.

In a suit for the specific performance of an agreement by the defendant to give a mortgage to the plaintiff for the amount in which the defendant might on taking accounts be found to be indebted to the plaintiff, held that the property being identified and the terms of the loan being fixed, equity would enforce the agreement, unless there were circumstances which the Court would consider sufficient to justify the unqualified refusal on the defendant's part to carry out its terms.

Held further that, the agreement being one to give a mortgage for the true amount of the indebtedness, whatever it might be, the fact that the action was begun before the account was settled did not deprive the plaintiff of all right to relief

Midd also that the true relief to which the plaintiff was entitled was (a) an account of the amount due, and (b) the execution of a proper mortgage to secure that sum. (Lord Buckmaster.) JEWAN LAL DAGA P. NILMANI CHAUDHURI. (1927) 55 I. A. 107 = 26 A.L.J. 124 = (1928) M.W.N. 154 = 30 Bom.L.B. 305 = 107 I.C. 337 = 47 C.L.J. 309 = 39 C.W.N. 565 = 27 I.W. 240 = 100 I.C. 337 = 47 C.L.J. 309 = 39 C.W.N. 565 = 27 I.W. 240 = 300 I.C. 337 = 47 C.L.J. 309 = 39 C.W.N. 565 = 27 I.W. 240 = 300 I.C. 337 = 300

47 C.L.J. 302 = 32 C.W.N. 565 = 27 L.W. 740 = 7 Pat. 305 = A.I.B. 1928 P.C. 80 = 54 M.L.J. 325.

Lease—Agreement to give mortgage and to take— Specific performance of—Two parts easily separable.

In a suit brought by the appellant for specific performance of an agreement whereby the respondent agreed to accept a loan of Rs. 40,000 from him, and to grant him a lease of the respondent's zemindary for 19 years, it was contended that specific performance was not the proper remedy, because the contract was a contract for mortgage.

Held, over-ruling the objection, that the contract being one not only for movingage but also for a lease, and the two parts being easily separable, the plaintiff was entitled to

specific performance (232).

So far as the plaintiff is concerned, he is bound, if he asks for the lease, to grant the loan. And he is willing to do that, but he is also willing to take the lease without insisting on the loan. It is true that it would be an idle thing to compel the defendant to receive a loan which, there being no contract to the contrary, he might re pay at once; or on reasonable notice. But if he wishes to be released from that part of the contract, it will not be carried into effect by the Court (232). (Lord Hobboute.) GREGSON 2. RAJAH SRI SRI ADITYA DEB. (1889) 16 I. A. 221= 17 C. 223 (232 3)=5 Sar. 416.

## Usufructuary mortgage for term.

——Contract to grant. See MORTGAGE—USUFRUC-TUARY MORTGAGE—MORTGAGF FOR TERM—CONTRACT TO GRANT.

MORTGAGE-CO-OWNERS.

MORTGAGE-CO-SHARERS.

-See CO-SHARERS-MORTGAGE BY ONE OF.

MORTGAGE-DEBTOR.

——Debts—Arrangement for payment of—Mortgage to creditors pursuant to—Enforceability of—Breach of arrangement by some of assenting creditors—Effect. See DEBTOR AND CREDITOR—DEBTOR—MORTGAGE BY, ETC.

(1986) 14 I. A. 21 = 9 A. 330.

MORTGAGE-DECEASED.

Property of—Heir-at-law's suit for recovery of—
Mortgage thereof by deceased—Defence plea of—Onus of
Proof of. See DECEASED—HEIR-AT-LAW—PROPERTY OF
DECEASED—SUIT FOR RECOVERY OF.

(1856) 6 M. I. A. 393 (414).

### MORTGAGE-DECREE-INTEREST NOT AWAR | MORTGAGE-DEED OF-(Contd.) DED BY-MORTGAGE FOR.

-Validity of-Interest allowed by executing Court and not allowed by it-Distinction between cases of.

A decree for money was silent as to the payment of future interest. In execution of the decree, the decree-holder applied for an attachment of the village of the defendants (the sons of the judgment-debtor) for an amount which, however, included future interest on the amount decreed, and an order for sale was issued. To avert the sale, the defendants and their father executed an instalment mortgage bond by way of conditional sale which was to become absolute on default in payment of instalments. The bond included future interest on the amount decreed. The mortgage was sanctioned by the Court, and the execution struck off the file as completely disposed of.

In a suit to enforce the mortgage bond, it was found that there was no fraudulent misrepresentation or concealment of facts on the part of the plaintiff as regards his right to the future interest not allowed by the decree. Both the parties and the executing Court, however, laboured under a mistake of law as to the plaintiff's right to recover such interest in execution. And the mortgage appeared to have been executed by way of compromise after an examination of the accounts at which the father was present; and the plaintiff did not gain any unconscionable advantage by the transaction.

Held, that the suit bond was valid and enforceable for the amount for which the village had been ordered to be sold in execution (85): but that it was not valid and not enforceable for the amount in excess of that for which the village bad been ordered to be sold, because, though there was no wilful misrepresentation in that respect by the plaintiff, there was no authority under S. 249 of C. P. C. of 1859 for increasing that amount (85). (Sir Barnes Pra-cock). SETH GOKULDASS GOPALDASS : MUSLI AND ZALIM. (1878) 5 I.A. 78 = 3 C. 602 (609 10) = 2 C. L. R. 156 = 3 Suth. 515 = 3 Sar. 802.

#### MORTGAGE-DEED OF.

ADMISSION IN.

CONSIDERATION FOR.

DEED AMOUNTING TO A.

DEED MERELY CREATING RIGHT TO OBTAIN REGU-LAR DEED OF MORTGAGE OR.

EXECUTION OF, IN ONE CAPACITY.

HYPOTHECATION DEED OR.

INSTALMENT PAYMENTS-PROVISION IN DEED FOR,

INTEREST OF MORTGAGOR PASSING UNDER,

INTEREST ON MORTGAGE AMOUNT.

MORTGAGEES UNDER-JOINT TENANTS OR TENANTS IN COMMON

NATURE OF MORTGAGE CREATED BY.

PERSONAL LIABILITY UNDER.

PREPARATION OF.

PROPERTY PASSING UNDER.

RECITALS IN.

RECTIFICATION OF.

REGISTRATION OF.

SALE DEED OR. SALE DEED WITH CONTRACT FOR RE-PURCHASE OR. SCHEDULE OF DEBTS IN-ITEMS INCLUDED IN.

SEVERAL INDEPENDENT MORTGAGES TO DIFFERENT PERSONS BY ONE.

VALIDITY OF.

#### Admission in.

-Consideration for mortgage-Admission as to. See UNDER MORTGAGE-CONSIDERATION FOR.

-Debutter land excluded from mortgaged property-Area of-Admission as to. See MORTGAGE-MORTGAGED PROPERTY-DEBUTTER LAND EXCLUDED FROM.

(1890) 17 I. A. 145=18 C. 224,

Consideration for.

-See MORTGAGE-CONSIDERATION FOR.

### Deed amounting to a.

 A bond was in these terms;—" I therefore covenant in writing that I shall pay the above-mentioned amount in full, with interest at one rupee per cent, per mensent, on demand, without raising any objection or pretext; that until the payment of the amount of this bond, the share in mouzah K. pergunnah B (which is already hypothecated in satisfaction of the former loan), shall remain pledged and hypothecated in satisfaction of this loan also; and that I shall not alienate it elsewhere by means of mortgage

Held, that the bond was what was usually called a mortgage bond (101). (Sir Rarno Potovk.) RAO KARAN SINGH .. RAJA BAKER ALI KHAN.

(1882) 9 I. A. 99-5 A. 1 (5) -4 Sar. 382.

### Deed merely creating right to obtain regular deed of mortgage or.

-Tot-Construction of deed

By an agreement dated 14th February, 1920, made between the Pioneer Mills. Ltd. (hereinafter called the Company) and the plaintiffs, the plaintiffs were appointed Ranians to the Mills and agreed to finance them to the extent of Rs. 15,00,000 receiving interest on the daily balances at 8 per cent, per annum and commission of 2 annas in the maund on certain purchases and manufactured goods,

The agreement further provided :-

That all stock-in-trade . . . Shall be under hypothecation to the Banians and in their charge and control . . . and all deliveries shall be made upon delivery orders from the Company and up in payment to the Banians of the price of the quantity to be delivered upon the delivery orders."

Clause 7 provided—" That the Company shall as soon as possible after the execution of these presents execute in favour of the Hanians a regular deed of mortgage of the land refinery factory plants machineries implements structeres and buildings at Unoo for the sum of Rs. five lacs to meet any deficit that may be due to the Banians for the advances made by them after availing of the stock under hypothecation to them as aforesaid."

Hdd, that the terms of the said agreement of 14th February, 1920, which related to the immovable property of the Company, did not constitute a mortgage or charge upon such property within the meaning of Ss. 58 and 100 of the T. P.Act, in respect of the sums advanced thereunder.

So far as the immocable property was concerned, the said agreement merely created a right in the plaintiffs to obtain another document, 2v2., a regular deed of mortgage of the said immovable property which was to be executed by the Company. (Ser Lancelot Sanderson.) SIR HUKUM-CHAND KADIWAL 2. RADHA KISHEN.

(1929) 31 L. W. 330 = 7 O W. N. 289 = 32 Bem. L. R. 533 = 34 C. W. N. 506 = 123 I. C. 157 = A. I. B. 1930 P.C. 76 = 58 M. L. J. 453.

Execution of, in one capacity,

-Interest of mortgagor in another capacity if passes-See MORTGAGE-DEED OF-INTEREST OF MORTGAGOR PASSING UNDER

### Hypothecation deed or.

-Test-Personal corenant-Deed not containing. The respondent, an Oudh talookdar whose estate was then under management under the Oudh Talookdars' Relief Act of 1870, executed a bord, which commenced by stating that the respondent had borrowed the sum of Rs. 4,100, at a certain rate of interest. Then it went on: "I have by this instrument hypothecated the whole of my property in taluka Chandipur Birhar. As the aforesaid taluka of Chandipur Birhar is under management under the Incom-

### MORTGAGE-DEED OF-(Contd.)

Hypothecation deed or-(Contil.)

bered Estates Act, and I have already filed in the office of the Superintendent a schedule of my debts, specifying the names of my creditors, I do hereby promise and give it in writing, that I shall without any plea repay the principal with interest within the term of two years. The mode of payment will be, that after paying up the Scheduled debts, I shall first of all pay up the debt covered by this bond, including interest. I shall thereafter appropriate the profits of the estate and attend to the liquidation of other delets. I shall not take the profits of the estate without paying up the present debt with interest; if I do take the profits it will be for the payment of this debt. I shall, until this debt is repaid abstain from contracting other debts from the bank or anywhere else . . . When my estate is released from management under the Incumbered Estates Act. I will immediately first of all pay the debt due to the said banker, and will pay the other creditors afterwards. In both cases, that is, while the estate is under management and after it is released, the repayment of this debt will be the subject of my first consideration. In the event of any breach of contract taking place on my part. the said banker is at liberty to institute a suit within the time fixed in this bond and recover the money. I will not transfer or mortgage to any one the hypothecated property till the principal and interest of this debt is paid up; if I do so it will be illegal . . . These few lines have therefore been written as an unconditional bond hypothecating my property, so that it may serve as a document and be of use when required".

Held, on a construction of the document, that it was a mortgage of the estate and nothing else, that it contained no personal covenant by the respondent to pay out of his personal e-tate, but that it was a mere contract to pay out

of the hypothemeted estate (85 6).

The deed was a mere hypothecation of the taluka which was then under management (87.) (Sir Barnes Poscock.) NAROTAM DAS & SHEO PARGASH SINGH.

(1884) 11 I. A. 83 = 10 C. 740 (742-3) = 4 Sar. 522 = R & J's No. 78 (Oudh).

### Instalment payments-Provision in deed for.

-Default in payment of any one instalment-Pessession of entire property - Sale of portion thereof to realise amount of that instalment-Mortgagee's right to.

A mortgage deed of 10-3-1874, after stating that there was to be a mortgage for Rs. 50.000, with a promise to pay it up in 5 years, from 1875 to 1879, proceeded ;- " Therefore I do hereby mortgage without possession to the Shahzada, in lieu of Rs. 50,000 the following villages, together with all vested and contingent rights, . . . and I covenant as follows :- 1. I will pay Rs. 10,000 per annum at both crops to the Shahzada Saheb, and out of that amount his servants will first deduct the interest, whatever it may come to by calculation, and then credit the balance towards the principal; and in case of any disorder which may cause default in payment of the instalment the servants of the Shah-Zada Saheb Bahadur taking complete possession, of the mortgaged estate, will hold themselves liable for the payment of the Government revenue, including land revenue and cesses of all sorts, and having first deducted from the savings the cost of making collections at the rate of 10 per cent. on the gross rental on account of the pay of servants, will credit the balance towards the instalment money; at the end of each year, in the months of May, June, November and December, having made up accounts, they will note the date of realization. Till the time the accounts are made up there will be no claim or objection on my part to set off the interest against the amount collected; on the other hand the amount collected will be considered benami transaction and thereupon a question arose upon

### MORTGAGE-DEED OF-(Contd.)

Instalment payments-Provision in deed for-(Contd.)

as amount in deposit." At the end of it the instrument provided: " Should, on the expiry of the term of this instrument, any money remain due, then, till the payment thereof, possession will continue according to the terms herein set out. If I do not accept this, then as soon as the breach of promise occurs they will at the end of the year realise the whole amount of instalment by sale of the villages and of other moveable and immovable property belonging to me. Should in any way any objection be raised by me, or by my husband, as between us or in Court, and it will be void."

Held that the reasonable construction of the deed was that there was an absolute power to the mortgagee to take possession on default in payment of the instalment, but if the mortgagor objected to the mortgagee applying the rents in reduction of the principal and interest, the mortgagee might sell the mortgaged property and the other property which was brought the security, in order to satisfy the debt (6).

A construction which will give effect to all the parts of the instrument is that the words, "If I do not accept this" may be referred to the part which immediately proceeds that passage, namely, that which provides for the setting off the interest against the amount collected by the mortgagee when in possession. The other construction would not only not give the proper effect to the first part of the instrument, but it would also involve what could scarcely have been contemplated by the parties, wz., that the only security, the only remedy which the mortgagee would have if the mortgagor thought fit to insist upon it, would be that upon default in payment of an instalment he would be obliged to sell a portion of the property so as to realize the amount of that instalment. That can scarcely have been in the contemplation of the parties (6). (Sir Richard Couch). DEPUTY COMMISSIONER OF RAE BARELIT, RAMPAL (1884) 12 I A. 1-11 C. 237-4 Sar 585= SINGH. R. and J's. No. 87.

### Interest of mortgagor passing under,.

Executor-Mortgage of all right and title in property by-Interest in property as executor if passes under. Su EXECUTOR-CONVEYANCE BY-RIGHT AND TITLE IN (1914) 41 I.A. 189 = 42 C. 56 (64). PROPERTY.

Heir-al-law claiming property under mokurrari by deceased-Mortgage of property by-Heir-at-law's interest in property or only modurrari interest claimed by him if passes under-Test.

A Mahomedan of the Sunnee sect died leaving behind him three widows and a son. The son claimed the whole property under a mokurrari alleged to have been granted to him by his father. The son executed a mortgage bond in

favour of S, which ran as follows:-

Whereas in all Rs. 2.413.4.0. are justly due to S from me the declarant; and at present having taken Rs.2,386-12.0 in cash. . . , hence cancelling the former bonds, I execute this bond for Rs. 4,800, and declare and give in writing, that I shall repay the said amount, principal, with interest at two per cent per mensem. in full on 30th of Magh, 1274. As 2 guarantee for the payment of the amount in question, I mortgage 8 annas of the entire 16 annas of mehal T, which I have as my property, and mokurrari in my possession and holding up t the date of the execution of this deed .... For the further satisfaction of the banker" (S), "I have kept 2 mokurrari pottah of the mehal mortgaged in this bond by the banker," meaning that he had deposited with the banker the mokurrari under which he claimed to hold the whole estate from his father.

The mokurrari was subsequently held to be a mere

### MORTGAGE-DEED OF-(Contd.)

Interest of mortgagor passing under-(Contd.)

the construction of the mortgage bond, whether it was merely a mortgage of the mokurrari which the mortgagor mortgage of his estate so far as he could charge it.

Held that the mortgage operated to transfer the mortgagor's interest in the estate, and not merely the mokurrari which he alleged had been granted to him by his father (219-20). (Sir Barnes Proceek). SYUP BAZAYET HOS-SEIN v. DOOLI CHUND.

(1878) 5 I.A. 211 - 4 C. 402 (406) - 3 Sar. 853.

-See MORTGAGE-SUIT TO ENFORCE-DECREE IN - EXECUTION OF-SALE IN - INTEREST PASSING UNDER. (1919) 11 L W. 241 (244-5).

Interest on mortgage amount.

-See under MORTGAGE-INTEREST ON AMOUNT OF.

Mortgagees under-Joint tenants-Tenants in common.

-Test. See JOINT TENANTS-TENANTS IN COMMON -MORTGAGE TO TWO PERSONS AS,

(1919) 46 I. A. 272 (277-8) = 47 C. 175 (179).

Nature of mortgage created by. ANOMALOUS MORTGAGE.

Simple and usufruetuary mortgage-Combination of. Exhibit A in the care purported to be a deed of "mortgage with possession" of immoveable properties described in Schedules A. B. C and D for a sum of 11 lakhs of rupees, with interest at 10 onnas per cent. per month, to be recovered from the rents and profits. The mortgagor was to have liberty to pay off the mortgage money at the end of four years, with option to defer payment for a further period of two years. If the money was not paid on a date fixed, the entire amount then due was to carry interest at 1 per cent. per mensem—10 annas from the rents and pro-fits and the remaining 6 annas to be payable by the mortgagor personally being also charged on the properties.

Held that the mortgage created by the deed was an anomalous mortgage or at least a combination of a simple

mortgage and an usufructuary mortgage (77).

The mortgage no doubt is usufructuary, but it is something more, inasmuch as it contains covenants on the part of the mortgagor to pay both principal and interest (77). (Lord Sinka). PANAGANTE RAMARAVANIMGAR F. MAHA-RAJA OF VENKATAGIRI.

(1926) 54 I. A. 68-50 M. 180=100 I.C. 86= 25 L.W. 621 = 8 Pat. L. T 307 = 29 Bom. L. R. 805 = 45 C.L.J. 395 = 31 C.W.N. 170 = A.I.R. 1927 P. C. 32 - 52 M.L.J. 338.

-Simple and usufructuary mortgage-Combination of-Test.

On 8-4-1923, a mortgage was executed to secure an advance of Rs. 30,000 currying interest at the rate of 5 annas

and 1 pie per cent. per month.

By clause 2 of the mortgage it was stated that an 8 annas share in certain villages had been hypothecated in lieu of the principal mortgage money and interest and in order to pay the annual interest on the mortgage money possession over the hypothecated property had been delivered to the mortgagee, who after paying the revenue, should appropriate the surplus profits to the extent of the annual interest. By clause 3 of the mortgage money was promised to be repaid within 35 years and at the stipulated time when in Khali fast in the month of Jeth or at any other time the mortgagors should pay money to the mortgagee the mort-gaged property should become redeemed.

The fourth clause of the mortgage contained a further provision that the mortgagors should remain entitled to eject tenants, to enhance rent, to cultivate land and to issue

### MORTGAGE-DEED OF-(Contd.)

Nature of mortgage created by-(Contd.)

ANOMALOUS MORTGAGE-(Contd.)

leases and after enhancement and payment of interest if alleged to have held from his father, or whether it was a there be left any surplus or if the mortgagors pay any year or each year any amount of money then that money should be deemed to have been paid towards the principal and interest on the money paid should be deducted and that the mortgagee like the mortgagors, should possess all the remaining powers during the period of his possession.

By clause 5 it was provided that if the mortgagors fail to pay the mortgage-money and fail to redeem the mortgage at the appointed time then the mortgagee should have power to realise the money due to him by sale of the mortgaged property and that if the mortgaged property should be found to be insufficient to satisfy the full demand then the mortgagee should be entitled to recover the balance from the other properties of the mortgagors, and by clause (7) it was provided that if on the claim of any person any part or whole of the mortgaged property were to go out of the mortgager's pessession or if there were to arise any disturbance in the mortgagee's possession then the liability therefor should rest with the mortgagors.

Held, reversing the Court below, that upon its true construction the mortgage was a combination of a simple mortgage and an usufructuary mortgage, and not an anomalous mortgage to which the provisions of S, 98 of the T, P. Acl

applied.

The only clause in the mortgage which presents any difficulty is clause 4, but that clause appears at most only to enable the mortgagors to act as manager without in any way detracting from the effect of clause 2, which entitled the mortgagee to possession. (Lord Tomlin.) LAL NAR-SINGH PARTAE BAHADUR SINGH 2. MAHOMED VAKUB KHAN. (1929) 56 I. A. 299 - 4 Luck 363 -

31 Bom. L. R. 825 - 49 C. L. J. 588 116 I. C. 414 - 30 L. W. 87 - (1929) M. W. N. 635 - 27 A. L. J. 581 - 33 C. W. N. 693 - A. I. R. 1929 P. C. 139 -58 M. L. J. 401

-Simple and utniructuary mortgage-Combination of -Usufructuary mortgage merely-Test - Anomalous mert gage - Sale and possession - Mort gagee's right of.

Property, one half of which was, as a matter of fact, subject to two mortgages, one for Rs. 3,000 and another for a sum of Rs. 900, in favour of A' was purchased by A in the belief caused by his vendors that it was subject only to the mortgage for Rs. 3,000. In that belief A mortgaged the property to the predecessor in title of the plaintiff. That mortgage took the following form:-The arrangement made was that the mortgagee should receive, in addition to the sum advanced a further sum equal to half the principal, which would take the place of interest, making Rs. 7,500 in all, and that this should be repayable by six yearly instalments of Rs. 1 250, and that the mortgagee should enter into possession of the unincumbered half of the property; that, as to the other half, on the expiry of the term of K's mostgage the mostgagee might pay off the Rs. 3,000, add that sum to his security, and take possession of the other half of the property. In that event there were to be certain provisions as to the expenses of management and as to the allowance of a sum by way of maintenance to the mortgagor, which in the events that happened became immaterial. Finally there was a proviso that the mortgagor might at any time redeem the mortgage on payment of the principal sum due with interest at I per cent per mensem.

On the execution of the mortgage the mortgagee entered into possession of the unincumbered half of the property and continued in uninterrupted possession thereof. He did not pay off K, but, after many years, the representatives of the mortgagor, A obtained a decree for redemption against

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### MORTGAGE-DEED OF-(Cental.)

Nature of mortgage created by-(Coutd.)

ANOMALOUS MORTGAGE-(Contd.)

A's representatives, and in order to raise money for paying them off, made a fresh mortgage to T.

In a suit brought by the plaintiff against T and the representatives of the mortgager, A, for the recovery of the amount due to him by a sale of the whole of the mortgaged property and, in the alternative, for possession of the half-share mortgaged to K, held that the mortgage was neither a combination of a simple and an usufructuary mortgage nor a mere usufructuary mortgage but was an anomalous mortgage within the meaning of S, 98 of the T, P,  $\Delta G$ , and that under it the plaintiff had no right to a judicial

Held, however, that the plaintiff's alternative claim for possession of the half of the property mortgaged to K was not liable to be dismissed as he had paid T the amount due to him under his mortgage in pursuance of the decree to that effect of the Court of first instance and that he (plaintiff) was entitled to a decree for possession of that half till the liquidation of his debt. (Lord Phillimore.) MADHO RAO v. GULAM MORTUDDIN. (1919) 56 I. C. 717 = 15 N. L. R. 134.

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#### CONDITIONAL SALE.

—Mortgage by. See MORTGAGE—CONDITIONAL SALE—MORTGAGE BY.

#### SIMPLE MORTGAGE.

See MORTGAGE—SIMPLE MORTGAGE.

USUFRUCTUARY MORTGAGE.

#### Personal liability under.

#### Preparation of.

(1924) 51 I. A. 157 (162) = 46 A. 269

——Responsibility for—Mortgagor's or mortgagee's. 38 I. C. 123 (126).

### Property passing under.

——Description of mortgaged property—Operative part and recital of deed—Descriptions in—Conflict between— Effect. Sci. MORTGAGE—MORTGAGED PROPERTY— DESCRIPTION OF—OPERATIVE PART OF DEED.

(1898) 26 C. 395.

——Execution of deed in one capacity—Interest of mortgagor in another if passes. See MORTGAGE—DEED OF— INTEREST OF MORTGAGOR PASSING UNDER.

### Recitals in.

- (Sec also DEED-RECITALS IN).

——Consideration—Recital as to receipt of. See MORT-GAGE—CONSIDERATION FOR.

- Evidentiary value against mort gagor of.

A mortgagor is bound by the recitals in the mortgage deed as to his object in and his necessity for borrowing (256). (Lord Atkinson). NILADRI SAHU 2. MAHANT CHATURBHUJ DAS. (1926) 53 I.A. 253=

25 A.L.J. 8 = 28 Bom. L R. 1418 = 44 C.L.J. 494 = 31 C.W.N. 221 = (1926) M.W.N. 857 =

38 M.L.T. P.C. 24 = A.I.R. 1926 P.C. 112 = 98 I.C. 576 = 51 M.L J. 822.

—Mortgaged property—Debutter land excluded from— Area of—Recital as to. See MORTGAGE—MORTGAGED PROPERTY—DEBUTTER LAND EXCLUDED FROM.

### MORTGAGE-DEED OF-(Contd.)

#### Rectification of.

DESCRIPTION OF PROPERTY-MISTAKE AS TO.

Evidence—Later deeds by mortgagor to third parties with same description—Rectification of, at their instance— Evidence of—Admiss. bility.

Where the courts below recorded a finding that the description in a mortgage-deed of one of the items of property. mortgaged was inserted by mistake and based their finding on the fact that the mortgagor had by a mortgage deed of later date than the suit deed and executed in favour of other persons purported to mortgage the same property by the same description and had been compelled by those mortgagees to consent to rectification, held that such a fact was wholly irrelevant and should not have been allowed to be proved at the trial, and that the later mortgage deed was not evidence between the parties nor relevant to the issue HARENDRA LAL ROY (119-20). (Lord Moulton). (1914) 41 I.A. 110= CHOWDHRI P. HARI DASI DEBI. 41 C. 972 (988) = 18 C.W.N. 817 = 16 Bom. L.B. 400 = 12 A.L.J. 774 = 19 C.L.J. 484 = (1914) M.W.N. 462= 23 I.C. 637 = 16 M.L.T. 6 = 1 L.W. 1050 = 27 M.L.J. 80.

-Finding as to-Evidence justifying.

A mistake means that parties intending to do one thing have by unintentional error done something else.

When the question was whether the description in a mortgage dued of one of the items of property mortgaged was inserted by mistake, and there was no evidence whatever that the error was unintentional or indeed that there was any error at all. held that a finding that the description was due to mistake was unjustifiable and that a rectification of the deed was not permissible (119). (Lord Moulton.) HARENDRA LAI. ROY CHOWDHRI v. HARI DASI DEBI. (1914) 41 LA. 110 = 41 C. 972 (988) = 18 C.W.N. 817 =

16 Bom. L. R. 400 = 12 A.L.J. 774 = 19 C.L.J. 484 = (1914) M.W.N. 462 = 23 I.C. 637 = 16 M.L.T. 6 = 1 L.W. 1050 = 27 M. L. J. 80.

DESCRIPTION OF PROPERTY—RECTIFICATION AS TO— DIRECTION FOR, IN SUIT FOR SALE ON MORTGAGE.

Effect of, on person with earlier title and not impleaded in suit—Iswalidity of registration of mortgage— Right of that person to show—Effect on.

The validity of the registration of a mortgage deed, and the jurisdiction of the High Court of Calcutta on its original side to entertain a suit upon that mortgage, depended upon whether one of the items of property included in the deed was situate at Calcutta, all the other items being admittedly outside Calcutta and outside the local limits of the ordinary original jurisdiction of that court. The parties to the suit upon the mortgage set up that there was a mistake in the description of the item in question. The Judge, who tried the suit, accepted that contention, directed an amendment of the description of that item, held that that item was included in the mortgage, and that he had jurisdiction to entertain the suit, and passed a decree for

Held that the direction of the Judge that the description of the item in question should be amended could not affect persons, whose title was of earlier date, or render valid the registration if they could show that no property situate within Calcutta was intended to be included in the mortgage (116). (Lord Moulton). HARENDRA LAL ROY CHOWDERI v. HARI DASI DEBI. (1914) 41 LA. 110=

41 C. 972 (984) = 18 C.W.N. 817 = 23 I.C. 637 = 16 Bom. L B. 400 = 19 C.L.J. 484 =

(1914) M.W.N. 462=12 A.L.J. 774=16 M.L.T. 6= 1 L.W. 1050=27 M.L.J. 80.

### MORTGAGE-DEED OF-(Contd.)

Rectification of-(Contd.)

DESCRIPTION OF PROPERTY-RECTIFICATION AS TO-DIRECTION FOR, IN SUIT FOR SALE ON MORTGAGE-(Contd.)

-Jurisdiction as to-Binding character of, on parties to suit and strangers-Court having no jurisdiction other-

The validity of the registration of a mortgage deed, and the jurisdiction of the High Court of Calcusta on its original side to entertain a suit upon that mortgage, depended upon whether one of the items of property included in the deed was situate at Calcutta, all the other items being admittedly outside Calcutta and outside the local limits of the ordinary original jurisdiction of that court. The parties to the suit upon the mortgage set up that there was a mistake in the description of the item in question. The Judge who tried the suit, accepted that contention, directed an amountment of the description of that item, held that that item was included in the mortgage, and that he had jurisdiction to entertain the suit, and passed a decree for sale.

Semble the direction to amend the description of the item in question did not come within the scope of the suit, which was in no respect a suit for rectification, and was not effective even between the parties to the mortgage suit. (116). (Lord Moulton.) HARENDRA LAL KOV CHOW-(1914) 41 I.A. 110-DHRI P. HARI DASI DEBI.

41 C. 972 (984) - 18 C.W.N. 817 - 23 I.C. 637 -16 Bom. L.R. 400 - 19 C.L.J. 484 = (1914) M.W.N. 462=12 A.L J. 774-16 M.L.T. 6= 1 L.W. 1050 - 27 M.L.J. 80.

-Suit for-Maintainability- Conditions.

In a suit for reforming or altering a deed of mortgage held that, in the absence of any evidence to show that there was any fraud or deceit on the part of the defendants, or that there was any mutual mistake of the parties as to the amount which was stated as the sum for which the security was to be given, the courts below were right in dismissing the suit. (Sir Barnes Peacock.) MUSSAMAT AMANAT (1886) 14 I.A. 18-BIBI P. LUCHMAN PERSHAD. 14 C 308 4 Sar 768

#### Registration of.

-(For other cases. see UNDER REGISTRATION ACT OF 1908).

INVALIDITY OF-PLEA OF-MORTGAGEE EXECUTION PURCHASERS' SUIT FOR POSSESSION-DEFENDANT PERSON WITH EARLIER TITLE NOT IMPLEADED IN MORTGAGEES' SUIT-PLEA BY.

-Amendment of description of property in such suit so as to include property within jurisdiction-Permissibility -Effect. See MORTGAGE-DEED OF-RECTIFICATION OF -DESCRIPTION OF PROPERTY-RECTIFICATION, ETC.

(1914) 41 I. A. 110 (116) = 41 C. 972 (984). Onus of Proof of.

In a suit for sale on a mortgage instituted in the High Court of Calcutta on its original side, the jurisdiction of that Court to entertain the suit, and the validity of the registration of the mortgage deed, depended upon whether one of the items of property included in the deed was situate in Calcutta. The parties to the suit set up that there was a mistake in the description of the item in ques-tion, and that the description ought to be amended. The Judge, who tried the suit, accepted their contention, allowed the amendment, held accordingly that property situate in Calcutta was included in the mortgage and that he had jurisdiction to entertain the suit, und passed a decree for sale.

In a suit brought by the mortgagee-decree-holder, to establish his title to the said item as property subject to his mortgage, against a person with earlier title and not made a

### MORTGAGE-DEED OF-(Contd.)

Registration of-(Contd.)

INVALIDITY OF -PLEA OF-MORTGAGEE EXECU-TION PURCHASERS' SUIT FOR POSSESSION-DE-FENDANT PERSON WITH EARLIER TITLE NOT IMPLEADED IN MORTGAGEE'S SUIT-PLEA BY-(Contd.)

party to the mortgage sait, held that, on proof by the latter that the property in the town of Calcutta purporting to be mortgaged did not exist, and that the property contained in the metes and bounds mentioned in the deed was property of strangers in which the mortgagor bad not and never had any interest, the onus was on the mortgagee of showing that the entry of the property in question was not a fictitious entry (118-9). (Lord Maulton.) HARENDRA LAL ROY CHOWDHURI P. HARI DASI DERI. (1914) 41 I.A. 110=

41 C. 972 (987) = 18 C. W. N. 817 = 23 I.C. 637 = 16 Bom. L. R. 400 = 19 C. L. J. 484 = (1914) M. W. N. 462 - 12 A. L. J. 774 = 16 M. L. T. 6 - 1 L. W. 1050 - 27 M. L. J. 80.

-Notice of most gage-Presumption from registration of

It is to be presumed that a person will, before advancing money on a mortgage of immoveable property, take the ordinary precautions of inspecting the register of the district in which the mortgaged property is situated to find out whether there are any prior incumbrances on the property (82). (Sir John Edgy). MAROMED IBRAHIM HOSSEIN KHAN P. AMBIKA PERSHAD SINGH.

(1911) 39 I. A. 68 = 39 C. 527 (556) = 9 A. L. J. 332 = 14 Born. L. B. 250 = 16 C. W. N. 505 = 15 C. L. J. 411-14 I. C. 496-22 M. L. J. 468.

Sale deed or.

Nature real of transaction. See DEED-CON-STRUCTION OF-MORTGAGE OR SALE.

(1894) 21 I. A. 96 - 21 C. 882 - 6 Sar. P. C. J. 453.

Sale deed with contract for re purchase or. See DEED-CONSTRUCTION-MORTGAGE-SALE WITH, ETC.

## Schedule of debts in-Items included in.

Correctness of - Presumption.

Undoubtedly, if there is a scheduled list of debts in a deed it would be in general necessary to show that that was urong (438). (Lord Duncdin). JAGANNATHA RAO v. SURYANARAYANARAJ. (1924) 21 L. W. 436=

A. I. R. 1925 P.C. 31 - 87 I. C. 252.

-Real nature of - Exidence.

The question was whether an item of debt included in the Schedule of list of debts given in a mortgage deed was really true under the deed.

Held, on the evidence affirming the High Court, that the item in question was not due (438). (Lord Dunedin.) Jagannatha Rao p. Suryanarayanaraj.

(1924) 21 L. W. 436 = A. I. R. 1925 P. C. 31 = 87 I. C. 252

## Several independent mortgages to different

Persons by one.

-Validity of -Mortgagees' remedies in case of.

It would, of course; be possible—though inconvenient—to execute in one document a mortgage of one-half of an entire property in favour of each of two mortgagees. By this means two independent mortgages would be combined in one deed, and in such a case independent relief might be granted to each mortgagee. (Lord Buckmaster). SUNITABALA DEBI 2. DHARA SUNDARI DEBI CHOW-DHURANI. (1919) 46 I. A. 272 (277) =

47 C. 175 (179) = 22 Bom. L. R. 1=17 A. L. J. 997= (1919) M. W. N. 821=11 L. W. 297= 24 C. W. N. 297 = 52 I C. 131 = 37 M. L. J. 483.

### MORTGAGE -DEED OF-(Contd)

Validity of.

-Sa MORIGAGE-VALIDITY OF-MORTGAGE-DEPOSIT OF TITLE-DEEDS.

Ser MORTGAGE - EQUITABLE -Mortgage by, MORTGAGE.

#### MORTGAGE-DISCHARGE OF.

-See MORTGACE-MORTGAGE DEBT-DISCHARGE

MORTGAGE - EQUITABLE MORTGAGE (OR DEPOSIT OF TITLE-DEEDS-MORTGAGE BY).

EFFECT IN ENGLISH LAW OF.

FURTHER ADVANCES UNDER-PRIORITY IN RESPECT OF, AS AGAINST INTERVENING REGISTERED MORT-GACEE.

LIEN CREATED BY-SUIT TO ENFORCE. MEMORANDUM ACCOMPANYING DEPOSIT. MORTGAGE WITHIN MEANING OF T. P. A. IF A. MORTGAGED PROPERTY—CHARGE OF LEGACY ON.

NATURE AND EFFECT OF.

NOTICE TO SUBSEQUENT MORTGAGEE OF.

PARTNERSHIP TRANSACTION MERELY (BEING AD-VANCE BY ONE PARTNER TO ANOTHER TO BE PAID OFF OUT OF PROFITS) OR.

PROOF OF -DECISION OF INDIAN COURTS AS TO. PURCHASER FOR VALUE BONA FIDE AND WITHOUT NOTICE OF.

SUIT TO ENFORCE.

VALIDITY AGAINST SUBSEQUENT TRANSFEREES (NOT BEING BONA FIDE PURCHASERS FOR VALUE) OF.

### Effect in English law of.

-Lien created by, legal or equitable.

According to the English law, the deposit of title deeds as a security would create a lien on lands; though, as between parties who can convey by deed only, or conveyance in writing, such lien would necessarily be equitable (321-2). (Lord Kingsdoson.) VARDEN SETH SAM v. LUCKPATHY (1862) 9 M. I. A. 303= ROYJEE LALLAH.

Marsh. 461 = 1 Suth. 483 = 1 Sar. 857.

### Purther advances under—Priority in respect of, as against intervening registered mortgagee.

-Maximum fixed-Maximum not fixed-Distinction between cases of.

Where a mortgage by deposit of title deeds is made to secure present as well as future advances, but no maximum is fixed, the equitable mortgagee will not have priority in respect of further advances made by him after a subsequent mortgage made by the mortgagor under a registered mortgage, even though the registered mortgagee omits to inquire about the title deeds. S. 78 of the Transfer of Property Act is inapplicable to such a case, as the registered mortgagee cannot be said to have induced the further advances. But where the equitable mortgage specifies a maximum, the mortgagee thereunder will have the benefit of S. 79 of the Transfer of Property Act, and, in the absence of inquiry by the intermediate registered mortgagee about the title-deeds and the terms upon which they were deposited, he will be deemed to have had notice of the terms of the prior equitable mortgage. (Lord Dunedin.) IMPERIAL BANK OF INDIA 2. U RAI GYAW THU & CO.

(1923) 50 I. A. 283 (293-5)=51 C. 86=1 R. 637= 21 A. L. J. 784 - 25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 = 33 M. L T. 395 = 2 Bur L J. 254 = (1923) M. W. N. 609 = A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186 = 76 I. C. 910 = 45 M. L. J. 505.

Lien created by-Suit to enforce.

-Maintainability-Contract to sell property in future contained in contract of pledge-Specific performance of-Omission to sue also for-Effect.

MORTGAGE - EQUITABLE MORTGAGE (OR DEPOSIT OF TITLE-DEEDS-MORTGAGE BY)-(Contd.)

Lien created by-Suit to enforce-(Contd.)

In a suit to enforce a lien on land created by an equitable mortgage by deposit of title deeds, objection was taken to the suit on the ground that the plaintiff had not sued for a specific performance of the contract to sell the land, which was also part of the contract to pledge. But while the lien was immediately created by the contract, and was expressed to be immediate, the sale was contemplated as future.

Held that the circumstance that the plaintiff had not sued for a specific performance of the contract to sell the land to him did not in the least affect his claim for a lien (322). (Lord Kingsdown.) VARDEN SETH SAM v. LUCKPATHY ROYJEE LALLAH. (1862) 9 M. I. A. 303 = Marsh 461 = 1 Suth. 483=1 Sar. 857

-Mortgagor and subsequent transferee from him-Suit against-Contract to sell property contained in contract of pledge-Specific performance of-Omission to sue for-Objection to suit based on-Maintainability.

Plaintiff sued to enforce a lien on land, created by an equitable mortgage by deposit of title deeds. Subsequent to the mortgage, the mortgagor transferred the land to the third defendant, who transferred it to the 4th. The suit was brought against all. The contract of pledge contained also, a further stipulation of purchase. The defendants objected to the frame of the suit, on the ground that the plaintiff ought also to have sued for a specific performance of the contract to sell the land to him.

Held that the mortgagor's own acts, in dealing with the land as he did, would effectually bar him, and the transferees from him, from insisting on that objection (322). (Lord Kingsdown.) VARDEN SETH SAM D. LUCKPATHY ROVJEE LALLAH. (1862) 9 M I. A. 303 = Marsh. 461 =

1 Suth. 483 = 1 Sar. 857.

### Memorandum accompanying deposit.

Alteration of with a view to extend scope of security -Enforceability of mortgage-Effect on.

M obtained an advance from the respondent on a certain date. On that date there was a memorandum put upon the back of a promissory note then granted to this effect: 'As security-grant of a house in 14th Street, Rangoon." After that memorandum was signed an alteration was made in it, by which there was an interpolation of certain words, which words would have, in appearance at least extended the scope of the security.

Queere whether, in view of that alteration, any rights in law could be founded upon that document (125). (Lord Share.) PRANJIVANDAS MEHTA P. CHAN MA PHEE-

(1916) 43 I. A. 122=43 C. 895=20 C. W. N. 925= 24 C. L. J. 314=20 M. L. T. 242=4 L. W. 69= (1916) 1 M. W. N. 443=18 Bom L. B. 664= 14 A. L. J. 638=9 Bur. L. T. 125=35 I. C. 190= 31 M. L. J. 155.

-Bargain between parties if-Non-registration of-Claim if can be established in case of.

A firm owed money to one M. S., and, as security for the same, deposited with him by way of equitable mortgage title deeds relating to properties of the defendant, which deeds had been deposited with the said firm by the defendant. The memorandum signed and delivered to M.S. on the occasion of the deposit was as follows:-

"We hand you herewith title deeds relating to...., also his promissory note for Rs. 63,000 due us, this please hold as security against advances made to us; we also hand you second mortgage executed in our favour by C.R.S. Moodaliar on 1st class lot No. 6 in Block F 1. On this we had advanced Rs. 32,000. Please also hold this as further secuMORTGAGE - EQUITABLE MORTGAGE (OR | MORTGAGE - EQUITABLE MORTGAGE (OR DEPOSIT OF TITLE-DEEDS-MORTGAGE BY) -(Contd.)

Memorandum accompanying deposit -(Contd.)

rity against advances made to us. We promise not to deal with same till your amount due is fully paid and satisfied."

Held, on the terms of the document and on the evidence in the case, that the memorandum in question was the burgain between the parties, and that without its production in evidence the plaintiff could establish no claim, and as it was unregistered it ought to have been rejected. (Lord Carson.) SUBRAMONIAN P. LUTCHMAN.

(1922) 50 I. A. 77 (82-4) = 50 C. 338 (341, 345-6) = 1 R. 66 = 32 M. L. T. 184 = 2 Bur. L. J. 25 = 38 C. L. J. 41=18 L. W 446-(1923) M. W. N 762-28 C. W. N. 1 = 25 Bom. L. R. 582 = 71 I. C. 650 = A. I. R. 1923 P. C. 50=44 M. L. J. 602.

Necessity-Practice in Calcutta

Quare whether it can be the practice in Calcutta to take a mortgage by deposit of title-deeds without a memorandum in writing. (Sir Richard Couch.) MILLER P. BALU MA-(1896) 23 I. A. 106 - 19 A. 76 (88 9) -DHO DAS. 7 Sar. 73

-Registration of -Necessity-Condition.

If the memorandum accompanying the deposit of title deeds was of such a nature that it could be treated as the contract for the mortgage and what the parties considered to be the only depository and appropriate evidence of their agreement, it would be the instrument by which the equitable mortgage was created, and would come within S. 17 of the Registration Act. (Land Carson.) SUBRAMONIAN P. LUTCHMAN.

MAN. (1922) 50 I. A. 77 (82 4) = 50 C. 338 (344 5) = 1 R. 66 = 32 M. L. T. 184 = 2 Bur. L. J. 25 = 38 C. L. J. 41 = 18 L. W. 446 = (1923) M. W. N. 762 = 28 C. W. N. 1 = 25 Bom. L R. 582 = A. I. R. 1923 P. C. 50 = 71 I. C. 650 - 44 M. L. J. 602.

Scope of security in case of .

Where titles of property are handed over with nothing said except that they are to be security, the law supposes that the scope of the security is the scope of the title. however, titles are handed over accompanied by a bargain, that bargain must rule. Lastly, when the bargain is a written bargain, it, and it alone, must determine what is the scope and the extent of the security. In the words of Lord Cairns. " Although it be a well-established rule of equity that a deposit of a document of title, without more, without writing, or without word of mouth will create in equity a charge upon the property referred to, I apprehend that that general rule will not apply where you have a deposit accompanied by an actual written charge. In that case you must refer to the terms of the written document and any implication that might be raised, supposing there were no document, is put out of the case and reduced to silence by the document by which alone you must be governed."

A memorandum put upon the back of a promissory note then granted was to the effect : " As security grant of a house in 14th Street, Rangoon." Held that the memorandum definitely limited and described the scope of the security (125). Held further that, there was nothing in the case which confirmed the view that, under the term ' house," which was a singular term applicable to a singular title, there was included the subject of three other plots of land under leases (126-7). (Lord Shaw.) PRANJIVANDAS (1916) 43 I. A. 122= MEHTA v. CHAN MA PHEE. 43 C. 895 (901-2) = 20 C. W. N. 925 = 24 C. L. J. 314=

20 M. L. T. 242 = (1916) 1 M. W. N. 443 = 4 L. W. 69 = 18 Bom. L. B. 664 = 14 A. L. J. 638 = 9 Bur. L. T. 125=35 I. C. 190=31 M. L. J. 155. DEPOSIT OF TITLE-DEEDS-MORTGAGE BY) -(Contd.)

Memorandum accompanying deposit-(Contd.)

-Stamp affixed on -Insufficiency of - Dismissal of mit to enforce mortgage on ground of-Prapriety-Procolure proper in case of.

A debtor deposited with his creditors the title deeds of certain properties to secure the debt due by him, and also executed a mortgage bond. The mortgage bond was executed on a stamp of 8 annas only, while , under Reg. VII of 1800, it sught to have been executed on a stamp of Rs. 8. In a suit brought to enforce the mortgage, the Provincial Court dismissed the suit on the ground that the bond had been executed on an insufficient stamp, and was consequently inadmissible.

Held that the dismissal of the suit was very improper

The Judge ought either to have given the plaintiff an opportunity of applying to the Revenue. Officers to affix the proper stamp, or to have taken evidence of the debt due. which with the deposit of the title deeds might have established the plaintiff's demand (277-8), (Mr. Pemberton Leigh.) DOUGLAS :: COLLECTOR OF BENARES.

(1852) 5 M. I. A. 271 - 1 Suth. 231 = 1 Sar. 434.

### Mortgage within meaning of T. P. Act if a.

The contention that an equitable mortgage effected by deposit of title deeds is not a mortgage in the sense of the T. P. Act, and that consequently the priority sections have no application is untenable in view of the wor s of S, 58(a)of the Act. Unless the deposit of title deeds effects the transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced or to be advanced, it is absolutely nothing at all. Further the concluding words of S, 59 of the Act actually use the word 'mortgage" to denote the security effected by delivery of documents of title. (Lord Dunedin.) IMPERIAL BANK OF INDIA 2. U RAI GYAW THU & CO.

(1923) 50 I. A. 283 (293) = 51 C. 86 = 1 R. 637 = 21 A. L. J. 784 = 25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 - 33 M. L. T. 395 = 2 Bur. L. J. 254 - (1923) M. W. N. 609 -A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186=76 I. C. 910=45 M. L. J. 505.

### Mortgaged property-Charge of legacy on.

-Constructive notice of -What amounts to.

The sons of a deceased Hindu by his first wife were, under his will, executors and residuary legatoes of all his property, subject to a legacy to the deceased's second wife and her sons charged upon the said property. To secure a debt advanced by the appellant Bank to the said executors and residuary legatees for the purposes of a business started and carried on by them after the testator's death for their own benefit, the said executors and residuary legatees deposited with the appellant Blank by way of equitable mortgage the title-deeds of properties charged with the said legacy. In one of the documents of title deposited with the Bank, the title of the mortgagors was indicated, and if the Bank's legal advisers had made any investigation of title, they would have obtained cognizance of the will, and of the charge upon the property mortgaged to them.

Held that, the Bank had constructive notice of the charge in respect of the legacy. (Sir Andrew Scoble.) BANK OF BOMBAY D. SULEMAN SOMIL. (1908) 35 I. A. 139=

33 B. 1 (20-21) = 4 M. L. T. 201 = 8 C. L. J. 345 = 12 C. W. N. 993 = 10 Bom. L. B. 1065= 5 A. L. J. 661=1 I. C. 369=18 M. L. J. 435. DEPOSIT OF TITLE - DEEDS-MORTGAGE BY)

- (Conta.)

### Nature and effect of.

In the Transfer of Property Act mortgage by way of deposit of title deeds is spoken of as a known method. That that known method had consisted in applying the doctrine of English law that such deposit effected a mortgage good against the mortgagor, although no actual conveyance of the property had been made, may be taken as certain. (Lord Dunglin.) IMPERIAL BANK OF INDIA P. U RAI GYAW (1923) 50 I. A. 283 (290) = 51 C. 86= THU & CO.

1 R. 637-21 A. L. J. 784-25 Bom. L. R. 1279= 9 O & A. L R. 937 = 33 M. L. T. 395 -2 Bur. L. J. 254 = (1923) M. W. N. 609 = A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186 - 76 I. C. 910 - 45 M. L. J. 505.

Notice to subsequent mortgagee of. Omission on his part to ask for title deeds if.

For a mortgagee taking a mortgage in a place where he knew that mortgages by deposit of title deeds were legal and usual and not to ascertain whether the title deeds were already pledged would be such abstention from an inquiry which he ought to have made or such negligence as to infer notice in terms of S. 3 of the Transfer of Property Act. (Lord Dunglin.) IMPERIAL BANK OF INDIA v. U RAI (1923) 50 I. A. 283 (294)= GYAW THU & CO.

51 C. 86 = 1 R. 637 = 21 A. L. J. 784 = 25 Bom L.R. 1279 = 9 O & A. L. R. 937 = 33 M. L. T. 395 = 2 Bur. L. J. 254 = (1923) M. W. N. 609 = A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 - 39 C. L. J. 186 = 76 I. C. 910 - 45 M.L. J. 505.

Partnership transaction merely (being advance by one partner to another to be paid off out of profits) or.

Test.

The question was whether an equitable charge was created in favour of the appellant from by deposit of certain title deeds to secure a sum of Rs. 25,000 with interest.

The appellant was a money-lender and banker and he also carried on business, under another firm name, as a merchant. His merchant firm entered into partnership with one C, the predecessor in interest of the respondents. It was a business for the making and sale of oil. There was an existing mortgage on one of its mills for Rs. 25,000; the mortgagee was pressing for the money and C, the other active partner in the oil firm besides the appellant, went to the appellant and asked him to raise the Rs. 25,000, necessary to discharge the mortgage. Under one of the Articles of partnership between the appellant and C and the other persons in the firm, it was provided that the mortgages to which the mills were subject should be paid off out of the share of profits of C. The appellant sent his clerk to the office of the original mortgage's lawyer, where the clerk paid off the mortgage and brought back the deeds and handed them over to the appellant. It was not suggested that on that occasion, when C was present, there was any verbal agreement come to about the mortgage. The evidence of the clerk, who said that the agreement had been come to the day before, was disbelieved by the appellate Court which held, under all the circumstances of the case, that no charge was constituted, and that the transaction in question was a mere partnership transaction, an advance from one partner to another to be paid off, like other advances already existing, out of profits.

Their Lordships affirmed the judgment below. (Viscount Haldane.) HENG MOH v. LIM SAW YEAN.

(1923) 1 R. 545=18 L. W. 92=(1923) M. W. N. 614= 75 I. C. 287 = 29 C. W. N. 12 = 45 M. L. J. 776. security in respect of the non-delivery of the title-deeds of 33 M. L. T. 430 (P. C.) = A. I. B. 1923 P. C. 87 =

MORTGAGE - EQUITABLE MORTGAGE (OR | MORTGAGE - EQUITABLE MORTGAGE (OR DEPOSIT OF TITLE-DEEDS-MORTGAGE BY) -(Centd.)

Proof of-Decision of Indian Courts as to.

-Privy Council's interference with.

Where, in a case in which the question was whether an equitable mortgage constituted by the deposit of title-deeds had been sufficiently made out, the Chief Court of Lower Burma held against the mortgage, relying upon, inter alia (1) the improbability of a mortgage for a large sum being constituted by the deposit of one deed, and one deed aloneand (2) the improbability of the transaction not being enter, ed in the account books of the lender, their Lordships observed that the weight of such inferences could be most satisfactorily appreciated by the Judges of the Court below who were, from their position and training, well-acquainted with the habits and ways of the persons concerned, and the value of the thing in discussion. "That is an advantage which is enjoyed by the learned Judges of the Court on spot to a greater extent than it is by this Board." (Lord Dunedin.) M. A. R. R. M. R. M. FIRM P. P. K. P. S. KADERASAN CHETTY. (1917, 21st June) High Court File for 1917 (P. C. A. 82 of 16).

Purchaser for value bona fide and without notice of.

-Priority at against.

In a suit brought to establish a lien on land, created by an equitable mortgage by deposit of title deeds, quare, whether a purchaser for value, hans fide, and without notice of the suit charge, whether legal or equitable, would have in the company's Courts an equity superior to that of the plaintiff (322-5). (Lord Kingsdown.) VARDEN SETH SAMP. LUCKPATHY ROYJEE LALLAH.

(1862) 9 M. I. A. 303 = Marsh. 461 = 1 Suth. 483=1 Sar. 857.

#### Suit to enforce.

-General relief-Prayer for-What amounts to-Relief that can be granted under.

To secure an advance due by him S deposited with the creditor title-deeds of certain property, and also executed a mortgage bond. In a suit brought to enforce the mortgage, the mortgagee set forth his bond, alleging that the debt remained unpaid, and sought justice.

Held, that the plaint prayed for what, in a Court of Equity in England, would be called general relief, or such relief as the circumstances established at the hearing might in the opinion of the Court, entitle the plaintiff to call for

That relief would be, if the case were established, a personal demand against S, if alive, or against his assets, if he were dead, and sale or mortgage of the specific property pledged to satisfy the demand (276). (Mr. Pemberten Leigh.) DOUGLAS v. COLLECTOR OF BENARES.

(1852) 5 M. I. A. 271=1 Suth. 231=1 Sar. 434

Memorandum accompanying deposit—Stamp affixed on-Insufficiency of-Dismissal of suit on ground of-Propriety-Procedure proper in case of. See MORTGAGE -EQUITABLE MORTGAGE-MEMORANDUM ACCOMPANY ING DEPOSIT-STAMP AFFIXED ON. (1852) 5 M. I. A. 271 (277-8)

Validity against subsequent transferees (not being bona fide purchasers for value) of.

-Law governing.

1st defendant, the son of the 2nd, sold property A to the plaintiff, promising to hand over the title-deeds thereof to plaintiff within a few days. The 1st defendant failed to do as promised, and deposited the title-deeds of another property B with plaintiff charging it in plaintiff's favour as MORTGAGE - EQUITABLE MORTGAGE (OR MORTGAGE - EXTINGUISHMENT - KEEPING DEPOSIT OF TITLE DEEDS-MORTGAGE BY.) -(Contd.)

Validity against subsequent transferees (not being bons fide purchasers for value) of-(Contd.)

property A. After the creation of this charge, property B was transferred by the 1st defendant to the third, and by the latter to the 4th defendant. Plaintiff was an Armenian Christian; the 1st and 2nd defendants were Mahomedans; the 3rd defendant was a Hindu; and the 4th was a Christian and a British subject. The contract took place with parties living within the local limits of the Supreme Court of Madras, though it related to land beyond them. The evidence showed that the plaintiff looked, not simply to the personal credit of the 1st defendant, but hargained for a security on the land. The parties did not contract with reference to any particular law. No local law, nor any lex loci rei sitor existed, forbidding the creation of a lien by the contract and deposit of deeds which existed in the case; and by the general law of the place where the contract was made, that is the English law, the deposit of titledeeds as a security would create a fien on lands. The transferees adduced no evidence to show that they were bond fide purchasers for value.

In a suit brought by the plaintiff to enforce the lien against all the defendants, held that the transaction created a lien and bound the property B. (Lord Kingsdocon.)

VARDEN SETH SAM P. LUCKPATHY ROYJEE LALLAH. (1862) 9 M. I. A. 303 = Marsh. 461 = 1 Suth. 483 = 1 Sar. 857.

### MORTGAGE—ESSENCE OF EVERY.

-Hypothecation of property-Intention as te-

The original and intentional hypothecation of the mortgaged property to secure the repayment of the mortgage. debt is the very essence of every mortgage usufructuary or other (151). (Lord Atkinson.) MAINA BIBI v. CHAUDHRI VAKIL AHMAD. (1924) 52 I. A. 145 - 47 A. 250 - 6 L. R. P. C. 25 - 2 O. W. N. 180 - 27 Bom. L. R. 796 -23 A. L. J. 115 - A. I. R. 1925 P. C. 63 -86 I. C. 579 - 48 M. L. J. 667.

### MORTGAGE-EXECUTION OF DEED OF, IN ONE CAPACITY.

-Right of mortgagor in another capacity if passes under. See MORTGAGE - DEED OF -INTEREST OF MORT-GAGOR PASSING UNDER.

### MORTGAGE - EXTINGUISHMENT - KEEPING ALIVE.

ATTACHMENT - MORTGAGE PENDING - EARLIER MORTGAGE PAID OFF BY.

HINDU LAW-RELIGIOUS ENDOWMENT-MUTT PRO-PERTY.

HINDU LAW-WINOW-MORTGAGE BY HUSBAND-MORTGAGE BY WIDOW AND REVERSIONER FOR AMOUNT DUE UNDER-INVALIDITY OF.

INTENTION AS TO-PRESUMPTION.

MORTGAGE BY FULL OWNER-RENEWAL OF, BY PER-SON WITH LIMITED INTEREST UNDER HIS WILL.

MORTGAGED PROPERTY-MORTGAGEE'S PURCHASE OF, IN EXECUTION OF DECREE ON HIS MORTGAGE -REVENUE SALE SUBSEQUENT IN RESPECT OF RE-VENUE FALLING INTO ARREAR SUBSEQUENT TO MORTGAGEE'S PURCHASE.

MORTGAGES, PRIOR AND SUBSEQUENT.

PURCHASE OF ONE OF MORTGAGED ITEMS COUPLED WITH ASSIGNMENT OF RIGHTS OF MORTGAGEE.

REDEMPTION DECREE-PAYMENT INTO COURT BY MORTGAGOR OF AMOUNT OF.

ALIVE -(Contd.)

### Attachment-Mortgage pending-Earlier mortgage paid off by.

Keeping alive of, as against execution purchaser pursuant to attachment-Intention as to.

On 5th October, 1891, property, which was subject to two mortgages, was attached in execution of a money decree obtained against the mortgagor by a third party. At the time of attachment the mortgagor was negotiating with M for a loan to enable him to pay off the said two mortgages and for other purposes. In accordance with that arrangement the mortgagor executed a mortgage bond in favour of M on 7th October, 1891, which bond, after reciting the two old mortgages, and the loan of Rs. 40,000 to pay them off, charged the property with that amount and interest at 12 p r cent. The bond contained a clause to the effect: "I promise that after repaying the money due on the aforesaid two mortgages I shall cause a reconveyance of those properties to be executed and registered, and shall make over to you the mortgage deeds which I shall get back." On 8th October, 1891, that arrangement was carried out; the 40,000 rupees were advanced; the two old mortgages were paid off; the property comprised in them was reconveyed to the mortgagor; he got the deeds and handed them to .W. In July, 1892, part of the mortgaged property was sold in pursuance of the said attachment, and was purchased by the appellant.

On a claim by the appellant to be entitled to the property purchased by him free of all incumbrances, held that Mwas entitled to a lien for the amount actually applied

in paying off the two old mortgages,

Nothing can be clearer than that the intention of the parties to this transaction was to give Ma charge for Rx. 40,000 on the property in question in priority to all other charges, if any. A was intended to have the first and only charge, and it is idle to contend that there was any intention to extinguish the old mortgages for the benefit of the execution creditor or any purchaser at the Sheriff's sale. (Lord Lindley.) DINOBUNDHU SHAW CHOWDHRY v. JOGMAYA DASI. (1908) 29 I. A. 9 = 29 C. 154 (163-4) = 6 C.W. N. 209 = 4 Bom. L. R. 238 = 8 Sar. 217 = 12 M. L. J. 73.

### Hindu Law-Religious Endowment-Mutt property.

-Mortgage binding of, by agent of mohunt and benami holder of-Mortgage subsequent not binding by a gent after he coased to be such to pay off - Mort gagee under -Earlier mort gage if kept aling for benefit of -Intention.

B, the then Mobunt of an asthal, executed a benami registered deed of sale in 1860 in favour of M in respect of three mouzahs appertaining to the asthal, and caused the name of M to be substituted in the Collector's register for that of the Mohunt of the asthal. In 1869, M, while merely the apparent owner of the mouzahs, and whilst the relationship of principal and agent existed between the Mohunt and himself, executed a mortgage bond in favour of L, mortgaging the said three mouzahs and another mouzah. L's mortgage was admittedly binding upon the asthal. In 1872, M, not being then the agent of the asthal and not having any authority to mortgage asthal property, executed a mortgage in favour of the appellant mortgaging the three mouzahs conveyed to him by the sale-deed of 1860. That mortgage of 1872 was executed for the purpose, inter alia, of paying the balance of the debt due on L's mortgage.

In a suit brought by the appellant to enforce his mortgage, he contended that he was in any event entitled to fall back upon L's mortgage of 1869.

Held that L's mortgage was extinguished and had not been kept alive for the appellant's benefit, and that he was not, therefore, entitled to fall back upon it (68-9). ALIVE - (Contd.)

Hindu Law -Religious Endowment-Mutt property-(Contd.)

The mortgage bond of 1872 was executed by .W. claiming to be the Mohant of the asthal in his own right and the proprietor of the estates. There is nothing in the bond or in the evidence, or even in the surrounding circumstances to show that . If intended to keep L's mortgage alive, or that he or the appellant intended that the latter should hold that mortgage as an additional security for the loan.

The mortgage to L carried interest at a higher rate than the mortgage of the appellant.

There was no intermediate mortgage between L's mortgage and that to the appellant, and AV had no interest in keeping alive L's mortgage. On the contrary, it was his interest that it should be paid off and extinguished.

Though the amount due to L was paid by the appellant's gomastha, it was paid not by the appellant, but through him as the agent of .W. the payer, and with money lent to .M. upon the mortgage. On such payment the appellant was entitled to a receipt from L. According to the terms of L's mortgage, the payment had to be indorsed upon the bond, and was so indorsed. The fact, therefore, that, after such endorsement, the appellant got back possession of the bond and retained possession of it was not inconsistent with the case that L's mortgage was extinguished, because he must have kept it as a voucher for the payment made by him on behalf of M. (Sir Barnes Peacock.) MOHESH LAL P. (1883) 10 I. A. 62= MOHUNT BAWAN DAS. 9 C. 961 (975-8)=13 C. L. R. 221-4 Sar 424.

Hindu Law-Widow-Mortgage by husband-Mortgage by widow and reversioner for amount due under-Invalidity of.

-Mortgagee's right to fall back upon mortgage by deceased as against reversioner's heirs.

A Hindu mortgaged his five-sixths share of a village and died leaving a widow and a separated nephew who was entitled to the reversion if he survived her. The nephew mortgaged the remaining one-sixth to which he was entitled in his own right, to the same mortgagee. Thereafter the widow and the nephew jointly executed two mortgages of the whole village for the amounts due under the earlier mortgages. In a suit brought upon the later deeds, a decree was passed by the trial court for the full amount but that decree was set aside as against the widow by the High Court in an appeal preferred by her, and the decree of the High Court was affirmed in an appeal to the Privy Council to which the representatives of the nephew, he and the widow having died in the meantime, were parties as reversionary heirs of the last male owner. The decree obtained against the nephew was executed only against his one-fifth share and not against the five-sixths share of the last owner and the amount realised was not sufficient to meet even his own indebtedness. In a suit brought on the original mortgage of the five-sixths share against the representatives of the nephew in whom the property vested on the death of the widow, held that, in the circumstances of the case, the later mortgage did not extinguish the rights of the plaintiff under the mortgage sued upon and that the latter was a subsisting mortgage and plaintiff was entitled to a decree on foot thereof.

Though the mortgagee's intention at the time of the later deed was to accept a new security in lieu of the old one, yet, as this was frustrated by the fact that the later deeds were held not binding on the widow, it was contrary to equity and good conscience that the nephew's heirs should set up the later deeds as a release of the mortgage executed by the last owner.

MORTGAGE - EXTINGUISHMENT - KEEPING, MORTGAGE - FXTINGUISHMENT - KEEPING ALIVE-(Contd.)

> Hindu Law - Widow - Mortgage by husband -Mortgage by Widow and reversioner for amount due under -Invalidity of .- (Contd.)

Held further that S. 41 of the Contract Act had no application to the case, because, if the suit mortgage was looked upon as a contract to pay money, it had not been performed, because the amount realised by the mortgagee did not cover even the nephew's debt, while if the suit mortgage was looked upon as a contract to give security, it had not been performed because the nephew's attempt to create a security on the five-sixths share admittedly failed. (Lord Parker.) HAR CHANDI LAL v. SHEORAJ SINGH.

(1916) 44 I. A. 60 = 39 A. 178 = 19 Bom. L. R. 444 = 15 A. L. J. 223=5 L. W. 502=(1917) M. W. N. 290= 1 Pat. L. W. 330 = 25 C. L. J. 316 = 21 M. L. T. 292 = 21 C. W. N. 765 = 39 I. C. 343 = 32 M. L. J. 241.

### Intention as to-Presumption.

-(See also under this head MORTGAGES, PRIOR AND SUBSEQUENT.)

Adams v. Angell-Rule in.

In Adams r. Angell, it was held that the question whether a mortgage paid off was kept alive or extinguished depended upon the intention of the parties. The Master of the Rolls, in delivering his judgment, stated that, " in a Court of Equity it has always been held that the mere fact of a charge having been paid off does not decide the question whether it is extinguished. If it is paid off by a tenant for life without any expression of his intention, it is well established that he retains the benefit of it against the inheritance; for although he has not declared his intention of keeping it alive, it is presumed that his intention was to do so, because it is manifestly for his benefit. On the other hand, when the owner of an estate in fee or in tail pays off a charge, the presumption is the other way, but in either case the person paying off the charge can by expressly declaring his intention either keep it alive or destroy it. If there is no reason for keeping it alive, then, especially in the case of an owner in fee, equity will in the absence of any declaration of intention destroy it; but if there be any reason for keeping it alive, such as the existence of another incumbrance, equity will not destroy it " (70-1). (Sir Barnes Peacock.) MOHESH LAL v. MAHANT BAWAN DAS. (1883) 10 I. A. 62 = 9 C. 961 (976-7)=

13 C. L. R. 221 = 4 Sar. 424.

-Circumstances justifying presumption of keeping

When the owner of an estate pays charges on the estate, which he is not personally liable to pay, the question whe ther these charges are to be considered as extinguished or as kept alive for his benefit is simply a question of intention. The intention may be found in the circumstances attending the transaction or may be presumed from a consideration of the fact whether it is or is not for his benefit that the charge should be kept on foot. (Lord Lindley.) DINOBUNDHU SHAW CHOWDHRY D. JOGMAYA DASI.

(1901) 29 I. A. 9 = 29 C. 154 (163) = 6 C. W. N. 209 = 4 Bom. L. R. 238 = 8 Sar. 217 = 12 M. L. J. 73.

-Intention to extinguish - Presumption of keeping alive in case of-Propriety.

None of the cases shew that a mortgage when paid off and intended by the parties to be extinguished is presumed to have been intended to be kept alive (72). (Sir Barnet Peacock.) MOHESH LAL v. MAHANT BAWAN DAS.

(1883) 10 I. A. 62=9 C. 961 (978)= 13 C. L. R. 221 = 4 Sar. 424

# MORTGAGE - EXTINGUISHMENT - KEEPING | MORTGAGE - EXTINGUISHMENT - KEEPING

Mortgage by full owner-Renewal of, by person with limited interest under his will.

No extinguishment of mortgage by.

Where a person entitled to a limited interest under a will renews a mortgage executed by the testator, the right of the mortgagee as against the estate cannot in justice or equity be prejudiced by the renewal. To hold that it is would be to cause a substantial defeat of the right of the mortgagee and to imply, what certainly never was the intention of any of the parties to the transaction, that by the renewal of a mortgage by a person with a limited interest in the estate the intention was to operate a discharge of debts- effectually secured upon the radical right. (Lord Shaw.) SKINNER v. NAUNIHAL SINGH.

(1913) 40 I. A. 105 (115)=35 A. 211 (225)= (1913) M. W. N. 500 = 13 M. L. T. 488 -11 A. L. J. 494 = 17 C. L. J. 555 = 17 C. W. N. 853 -15 Bom. L. R. 502-19 I. C. 267-25 M. L. J. 111.

Mortgaged property-Mortgagee's purchase of. in execution of decree on his mortgage-Revenue sale subsequent in respect of revenue falling into arrear subsequent mortgagee's purchase.

-Rights of mortgagee purchaser and of revenue sale purchaser-Former if can use mortgage as a "shield" against latter. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859, S. 54. (1912) 39 I. A. 228-40 C. 89.

#### Mortgages. prior and subsequent.

-First and third mortgages of lands-Second mortgage of lands and crops-Seizure and sale of crops by record mortgagee-Payment by purchaser of equity of redemption to avert - Priority in respect of sums so paid as against third mortgagee-Intention-Presumption.

The owners of certain lands effected 1st and 2nd mostgages on those lands, and a third mortgage on the lands and the crops thereon. In execution of a morey decree obtained against the mortgagors by third parties, P purchased the equity of redemption in the properties, and with the sum of Rs 1,000 paid by him the judgment-debt was satisfied.

The 2nd mortgagee then sued upon his mortgage, making the mortgagors, the third mortgagee, and P, defendants. In execution of the decree obtained by him, the 2nd mortgagee obtained orders for sale of the crops. P or the respondents, his representatives in interest, paid the 2nd mortgagee sums of money and saved the crops from seizure. The 3rd mortgager (appellant) sued on his mortgage, making the mort-gagors, P and the respondents parties. In execution of the decree in his suit the lands were sold out and out freed and discharged from the mortgages. After the payment of the amount due to the 1st mortgagee and the expenses of the sale, there remained a surplus in court of Rs. 1,327 odd. The respondents claimed to be subrogated to the second mortgagee, and in his right to receive the said surplus. Their claim was rested on the ground that at the time of the decree in favour of the 3rd mortgagee there was still due to the 2nd mortgagee Rs. 1,990, that the decree in favour of the 3rd mortgagee gave liberty to the respondents to pay the said sum to the 2nd mortgagee and provided that, by doing so, they (respondents) would be relegated to the rights of that mortgagee, and that they did accordingly make the said payment.

Held, affirming the High Court, that, both by virtue of the express direction in the decree in favour of the 3rd mortgagee and under the general law, the respondents were entitled to stand in the shoes of the 2nd mortgagee not only In respect of the Rs. 1,990 paid by them at the time of the final satisfaction, but also in respect of the several payments

## ALIVE-(Centd.)

Mortgages, prior and subsequent-(Contd.)

that they or P had made from time to time to save the crops from being seized.

It was contended that sums paid to the 2nd mortgagee to save the crops from seizure must be deemed to be sums paid in reduction of the 2nd mostgage, and not purchases protanto of that mortgage. This contention cannot be accepted, It is to the benefit of the respondents, as owners of the equity of redemption, that the proceedings should be deemed to be a purchase and not a redemption, and no reason appears why it should not be assumed that he intended to act in the way most beneficial to himself. (Lord Philli-MALLIKEDDI AVVAREDDI & ADUSUMILLI more.) GOPALAKRISHNAYYA. (1923) 51 I. A. 140 (144) -

47 M. 190 – 22 A. L. J. 45 = 19 L. W. 215 = A. I. B. 1924 P. C. 36 = 26 Bom. L. R. 204 = 34 M. L. T. 1=10 O. & A. L. R. 269 = (1924) M. W. N. 290 = 39 C. L. J. 204 = 28 C. W. N. 1025 = 2 Pat. L. R. 9 = 79 I. C. 592 = 46 M. L. J. 164

-Prior mort gage-Payment of, by execution purchaser of right, title, and interest of mortgagor subject to that and a subsequent martgage-Prior mortgage if kept alive for benefit of purchaser as against subsequent mortgager.

The respondent was mortgagee under two mortgages executed in his favour by one P. The first mortgage was in respect of one house, the second in respect of other eight houses. The respondent was put in possession of six of the houses. The other three were in the possession of a Bank to whom they had been mortgaged before the dates of the respondent's mortgages. With regard to those three houses, the 2nd of the respondent's mortgages provided that as soon as they were redeemed, that is, as soon as the Bank's possession of them ceased, they would be put in possession of the

The appellant who obtained a money decree against P. attached the nine houses included in the respondent's mortgages and purchased at the sale in execution of his decree the right, title, and interest of P in the said houses. Subsequently he (appellant) paid off the mortgage debt due to the Bank, and took possession of the nine houses.

In a suit brought by the respondent to recover possession of the 9 houses, alleging that he was entitled to possession of the same under the mortgages to him, held that the mortgage to the Bank was not extinguished by the appellant's payment, and that he was entitled to stand in the place of the Bank, and to retain possession of the three houses until the amount paid by him to the Bank was repaid

The delt to the Bank was not paid out of the purchasemoney. The appellant purchased the interest of the mortgagor only, and did not in any way bind himself to pay off that debt. When he paid the Bank some six months afterwards, it was not because he was under an obligation to do so. This case is therefore distinguishable from Toulmin v. Steere (132). (Sir Richard Conch.) GOKULDOSS GOPAL DOSS P. RAMBUX SEOCHAND. (1884) 11 I. A. 126 -10 C. 1035 (1044, 1046) - 5 Sar. 543.

-Prior mortgage-Payment by moner of property of Mortgage paid off if kept alive for his benefit as against later mortgage-Presumption-Covenant by him to pay later mortgage debt-Effect.

It is now settled law that where in India there are several mortgages on a property, the owner of the property subject to the mortgages may, if he pays off an earlier charge, treat himself as buying it and stand in the same position as his vendor or to put it in another way, he may keep the incum-

## ALIVE - (Centil.)

Mortgages, prior and subsequent-(Contd.)

brance alive for his benefit and thus come in before a later mortgagee. This rule would not apply if the owner of the property had covenanted to pay the later mortgage deld. It is further to be presumed, and indeed, the statute so enacts (Transfer of Property Act, S. 101), that if there is no indication to the contrary the owner has intended to have kept alive the previous charge if it would be for Lisbenefit. (Lord Phillimore.) MALLIREDDI AVVAREDDI \*\* ADSUMILLI GOPALAKRISHNAYYA.

(1923) 51 I. A. 140 (143) = 47 M. 190 - 22 A. L. J. 45= 19 L. W. 215 - A. I. R. 1924 P. C. 36-26 Bom. L. R. 204 = 34 M. L. T. 1= 10 O. & A. L. R. 269-(1924) M. W. N. 290 = 39 C. L. J. 204-28 C. W. N. 1025=2 Pat. L. R. 9= 79 I. C. 592 - 46 M. L. J. 164.

-Prior mortgage-Payment of, by purchaser of equity of redemption with notice of subsequent incumbrancers -Keeping alice of prior mortgage as against subsequent incumbrancers-Destrine of Toulmin v. Steere as to-

Inapplicability to India of.

The doctrine of Teulmin v. Steere (that the purchaser of an equity of redemption cannot set up a mortgage which he has got in against subsequent incumbrances of which he had notice) is not applicable to Indian transactions, except as the law of justice, equity, and good conscience. And if it rested upon any broad intelligible principle of justice it might properly be so applied. But it rests on no such principle. If it did it could not be excluded or defeated by declarations of intention or formal devices of conveyances, whereas it is so defeated every day. When an estate is burdened by a succession of mortgages, and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course to have it assigned to a trustee for his benefit as against intermediate mortgagees to whom he is not personally liable (133).

In India the art of conveyancing has been and is of a very simple character. Their Lordships cannot find that a formal transfer of a mortgage is ever made, or an intention to keep it alive ever formally expressed. To apply to such a practice the doctrine of Toulmin v. Steere seems to them likely, not to promote justice and equity, but to lead to confusion, to multiplication of documents, to useless technicalities, to expense, and to litigation (133). They are not prepared to extend its doctrine to India (132). (Sir Richard Couch.) GOKULDOSS GOPALDOSS r. RAMBUX SEVCHAND.

(1884) 11 I. A. 126=10 C. 1035 (1045-6)=5 Sar. 543.

-Prior mortgage-Renewal of, and decree obtained on foot of renewed mortgage-Effect of, as against intervening mortgagee. See MORTGAGE-PRIORITY OF-RELINQUISHMENT OF. (1901) 28 I. A. 203 (209-10) = 23 A. 313 (323).

Prior mortgage paid off by later mortgagee if kept alive for his benefit as against intermediate mortgages-

Presumption.

When an estate is burdened by a succession of mortgages and the owner of an ulterior interest pays off an earlier mortgage, and the question arises as to whether that earlier mortgage is kept alive for his benefit as against intermediate mortgagees, the obvious question to ask in the interests of justice, equity, and good conscience, is, what was the intention of the party paying off the charge? He had a right to extinguish it and a right to keep it alive. What was his intention? If there is no express evidence of it, what intention should be ascribed to him? The ordinary rule is that a man having a right to act in either of two ways, shall be

### MORTGAGE - EXTINGUISHMENT - KEEPING MORTGAGE - EXTINGUISHMENT - KEEPING ALIVE-(Contd.)

Mortgages, prior and subsequent-(Contd.)

upon the inheritance, he is assumed, in the absence of evidence to the contrary, to have intended to keep the charge alive. It cannot signify whether the division of interests in the property is by way of life estate and remainder, or by way of successive charges. In each case it may be for the advantage of the owner of a partial interest to keep on foot a charge upon the corpus which he has paid (1334). (Sir Richard Couch.) GOKULDOSS GOPALDOSS & RAMBUX SEVCHAND.

(1884) 11 I. A. 126=10 C. 1035 (1045-6)=5 Sar. 543.

Whether a mortgage paid off is extinguished or kept alive depends upon the intention of the parties. The ordinary rule is that a man having a right to act in either of two ways shall be assumed to have acted according to his interests. In India the art of conveyancing has been and is of a very simple character. A formal transfer of a mortgage is never made, and an intention to keep it alive is never formally expressed. The obvious question to ask, in the interests of justice, equity and good conscience, is, what was the intention of the party paying off the charge?

Property which had been mortgaged with possession ander a Zurpeshgi deed of 1874 for the sum of Rs. 12,000 was again mortgaged in 1888. February, to a different person under a deed of simple mortgage also for the sum of Rs. 12,000. The said sum of Rs. 12,000 was borrowed by the mortgagor and was lent by the simple mortgagee for the express purpose of paying off the Zurpeshgi debt of Rs. 12,000. The money lent by the simple mortgagee was in accordance with the agreement between her and the mortgagor applied in discharging the Zurpeshgi debt of Rs. 12,000. Thereupon, the then holders of the Zurpeshgi deed, quitted possession and gave up the Zurpeshgi deed, which was delivered to the simple mortgagee. It also appeared that three of the properties comprised in the Zurpeshgi deed had been at dates intermediate between the Zurpeshg, and the deed of simple mortgage of February, 1888, further charged by simple mortgages and that decrees for sale had been obtained in suits brought thereon. In a suit for sale brought by the mortgagee under the simple mortgage of February 1888, held that the Zurpeshgi of 1874 was kept alive for the benefit of the mortgagee of February. 1888, who thereby obtained priority over the intermediate further charges (81-2). (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN P. AMBIKA PERSAD SINGH. (1911) 39 I. A. 68=

39 C. 527 (554-5) = (1912) 1 M. W. N. 367= 11 M L. T. 265 = 9 A. L. J. 332 = 14 Bom. L. R. 280 = 16 C. W. N. 505 = 15 C. L. J. 411 = 14 I. C. 496 = 22 M. L. J. 468.

### Purchase of one of mortgaged items coupled with assignment of rights of mortgagee.

-No extinguishment of mortgage by reason of. The defendant-appellant executed a kut-kobala of 4 mouzahs, including mouzah A to one G. She subsequently executed another kut-kobala in favour of the same person, whereby the said four mouzahs, together with three others, were hypothecated to secure the repayment of another sum advanced to her. On 29-6-1873, a notice of foreclosure was served under the first mortgage. On 23-3-1874, the 1st respondent purchased on sale for arrears of revenue the interest of the appellant in mouzah A. On 3-6-1874, G assigned all his interest under the two kut-k obalas to the 2nd respondent upon trust to prevent the merger of his rights under them, and to keep them alive for the benefit familiar instance of a tenant for life paying off a charge prosecute the pending foreclosure proceedings, and the

### MORTGAGE - EXTINGUISHMENT - KEEPING | MORTGAGE - FORECLOSURE OF-(Contd.) ALIVE-(Contd )

Purchase of one of mortgaged items coupled with assignment of rights of mortgagee-(Contd.)

name of the 1st respondent was substituted for that of G in

the foreclosure proceedings.

On 24-4-1875 being more than 12 months after the notice of foreclosure had been given by G, respondents filed a suit, which related only to the first mortgage, and which prayed for an order giving to the 1st respondent a proprietary right based upon foreclosure in the three mouzahs other than A, and with respect to A for a declaratory decree confirming his possession of it, on a right derived from foreclosure of mortgage.

The Sub-Judge dismissed the suit on the ground that by the plaintiff's purchase of mouzah A. coupled with the assignment which he took of the rights of the mortgagee,

the whole mortgage debt became extinguished.

Held that that ground of decision was manifestly swrong. and was properly reversed by the High Court (221). (Str. Robert P. Collier.) SRIMATI KAMINI SOONDARI CHOW-DHRANI P. KALI PROSUNNO GHOSE

(1885) 12 I A. 215 = 12 C. 225 (234-5) = 4 Sar. 652. Redemption decree-Payment into Court by

mortgagor of amount of.

-Extinguishment of mortgage lien by.

Ourre, whether payment into Court by the mortgagor of the amount decreed as a condition of redemption in a suit for redemption brought by him would extinguish the mortgage lien (243). (Lord Davey.) CHANDHRI AHMAD BAKHSH P. SETH RAGHUBAR DAYAL.

(1905) 32 I. A. 229 = 28 A. 1 (18) = 2 C. L. J. 413 = 7 Bom. L R. 912 = 2 A. L. J. 813 = 10 C. W. N. 115 = 9 O. C. 7=8 Sar. 882=15 M. L. J. 407.

### MORTGAGE-FORECLOSURE OF.

-(See also BENGAL REGULATIONS-LAND MORT-GAGE REDEMPTION AND FORECLOSURE REGULATION XVII OF 1806 AND MORTGAGE-CONDITIONAL SALE-MORTGAGE BY-FORECLOSURE OF )

#### Decree for.

-Absolute decree-Bar of redemption right by-Application by mort gagee for the purpose-Necessity - English Chancery practice - Bombay High Court-Practice in. before Transfer of Property Act.

Under the chancery practice in foreclosure suits in England, though the decree is absolute in form and directs the property to be foreclosed on failure to pay on or before the day fixed in the decree, a further application is necessary in order to bar finally the mortgagor's right to redeem.

Quere, whether the same was the practice as to decrees in foreclosure suits filed in the High Court of Judicature at Bombay in its ordinary original civil jurisdiction before the matter was settled by the Transfer of Property Act and the Civil Procedure Code of 1908. (Sir John Wallis.) KESHAV RAO VASANTARAO v. NANABHAI.

(1928) 33 C.W.N. 402 = 6 O.W.N. 299 = 29 L.W. 472 = 49 C.L.J 315 = 114 I.C. 574 = 31 Bom. L.R. 696 = A.I R. 1929 P.C. 61.

English form-Decree in-What amounts to a. A decree for foreclosure of the year 1875 ordered :-"That upon the said defendant paying to the plaintiff the said principal, interest and costs within six calendar months after the date of this decree the plaintiff do recover the premises comprised in the said mortgage deeds free and clear from all incumbrances done by him, or any person claiming from or under him and deliver up all deeds and writings in his custody or power relating thereto to the said defendant but on defendant failing to pay to the plaintiff what shall be due for principal, interest and costs as afore-

Decree for-(Centd.)

said by the time aforesaid the defendant doth from thenceforth stand absolutely debarred and foreclosed of and from Equity of Redemption of in and to the said mortgaged premises,"

Held that the decree was a foreclosure decree in the English form. (Sir John Wallis.) KESHAVRAO VASANTRAO P. NANABHAL (1928) 33 C.W.N. 402=

6 O.W.N. 299=29 LW. 472=49 C.L.J. 315= 114 I. C. 574=31 Bom L.R. 696= A.I.R. 1929 P.C. 61.

-Execution of -Necessity - Acquiescence by mort gagor in mortgagee holding the mortgaged property as his own-Evidence of-Effect of.

On 15-7-1875 a foreclosure decree in the English form was passed. Not being in a position to find the necessary funds the mortgagor gave up possession of one of the mortgaged properties to the mortgagee in December, 1875, hefore the expiry of the six months allowed for payment in the mortgage decree, and the mortgagee and those claiming through him remained in unchallenged possession for 45 years and expended large sums in improving and rebuilding. The mortgagor had executed the mortgage in his capacity of executor, and in 1884 his action was challenged by the beneficiaries in O. S. 428 of 1884. In his written statement in that suit he himself stated that almost all the immoveable properties (which included the mortgaged item referred to above) "had been incumbered by the testator and could not be and were not redeemed, but on the contrary they were sold or taken possession of by the mortgagees in liquidation of their respective claims under decrees.

Held that the Court below was right in concluding that the mortgagor acquiesced in the position that the mortgagee was entitled to hold the item as his own and that it was no longer necessary for the latter to execute the foreclosure decree. (Sir John Wallis.) KFSHAVRAO VASANTRAO D. NANABHAL (1928) 33 C.W.N. 402=

6 O.W.N. 299-29 L.W. 472-49 C.L.J. 315= 114 I.C. 574 = 31 Bom. L R. 696 --A.I.R. 1929 P.C. 61.

-Execution of -Surrender of mortgaged property by mortgager to mortgaget in-Fridence of-Effect of-Redemption mit subsequent-Maintainability.

On 15-7-1875 a foreclosure decree in the English form was passed. On 23-7-1877, the mortgagee obtained an order on a summons which was unopposed that the decree of 15-7-1875, should be executed by putting the mortgagee in possession of one of the items mortgaged. ever, the mortgagee applied for a warrant ordering the Sheriff to put him in possession, the learned Judge who had made the order refused to sign it, and directed the mortgagee to file a suit if he wished to get possession of the item. He accordingly did file one. The mortgagor by his written statement in that suit pleaded that he had not appeared to show cause against the order to give up possession but delivered up possession to the plaintiff (the mortgagee) who therenpon took possession thereof and has since been and still is in possession thereof, and of the rents and profits issaing thereout."

Held that, in view of that written statement of the mortgagor and the fact that no further attempt was made to redeem the property for over 40 years, the Courts below were fully justified in arriving at the conclusion that the item was surrendered to the mortgagee in execution of the mortgage decree. (Sir John Wallis.) KESHAVRAO VASANT-RAO P. NANABHAL. (1928) 33 C.W.N. 402=

6 O.W.N. 299 = 29 L W. 472 = 49 C.L.J. 315= 114 I.C. 574 = 31 Bom. L. R. 696 = A, I. B. 1929 P.C. 61.

### MORTGAGE-FORECLOSURE OF-(Contd.)

Decree for-(Conta.)

-Redemption by mortgagor after-Right of-Exertise of within reisonable time-Necessity-English prac-

According to the English practice, a mortgagor seeking to redeem after a foreclosure decree if bound to do so within a reasonable time, and is not entitled to wait for more than 45 years. (Sir John Wallis.) KESHAVRAO VASANT-(1928) 33 C.W.N. 402= RAO P. NANABHAL

6 O.W.N. 299 = 29 L.W. 472 = 49 C.L.J. 315 = 114 I.C. 574 = 31 Bom. L.R. 696 = A.I.R. 1929 P.C. 61.

-Subsequent mort gagees and mort gagor-Suit against -Decree in-Form of-Transfer of Property Act, S. 86 -Form of order given in-Inapplicability of.

The form of order given in S. 86 of the Transfer of Property Act contemplates a suit between one mortgagee and the mortgagor only, and should be treated as a common form not to be literally followed in every suit for foreclosure, but to be adopted to the particular circumstances of each case. It does not provide for the exercise by puisne incumbrancers of their successive rights of redemption or for working out the rights of the parties in the event of any prior incumbrancer in front of the mortgagor redeeming the mortgaged property so as to make a complete decree. An appropriate decree for that purpose is well-known in the Chancery Division of the High Court in England, and a form of it will be found in Seton on Decrees. It deserves consideration whether a form of order suitable for use in the Indian Courts might not be adopted in which those rights would be recognised and provision made for the event of their being exercised (130-1). (Lord Davey.) NARAIN KHANNA P. BABU BANSIDHAR.

(1905) 32 I.A. 123 = 27 A. 325 (330) = 2 C.L.J. 173 = 9 C.W.N. 577 = 7 Bom. L.R. 427-2 A.L.J. 336 = 8 Sar. 779 = 15 M.L.J. 191.

-Subsequent mortgagees and mortgagor—Suit against -Redemption by mortgagor only-Decree providing for-

What amounts to-Propriety of.

To a suit for foreclosure of a first mortgage, the mortgagor and the subsequent mortgagees of the same property were made parties-defendants. The decree in the suit ordered that, on the defendant paying to the plaintiff or into Court a specified sum of money on a specified date, the plaintiff should deliver up to the defendant all documents in his possession relating to the mortgaged property, and should transfer the property to the defendant free from incumbrances created by the plaintiff, but that, if such payment were not so made, the defendant should be absolutely debarred of all rights to redeem the mortgaged property.

Held that the decree was not adapted to the case (130). The "defendant" in the decree means the mortgagor only. The decree does not provide for the exercise by the puisne incumbrancers of their successive rights of redemption or for working out rights of the parties in the event of any prior incumbrancer in front of the mortgagor redeeming the mortguged property so as to make a complete decree (130-1). (Lord Davy.) GOPI NARAIN KHANNA P. BABU (1905) 32 I.A. 123= BANSIDHAR.

27 A. 325 (330) = 2 C.L.J. 173 = 9 C.W.N. 577= 7 Bom. L. R. 427 = 2 A.L.J. 336 = 8 Sar. 779 = 15 M.L.J. 191.

-Supreme Court-Decree of, between Hindus-Effect

The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus is equivalent to a decree similar suits on the like instruments (559). (Sir Edward | being taken into account, nor could the plaintiffs foreclose establishing proprietary rights in the Mofussil Courts on

### MORTGAGE-FORECLOSURE OF-(Contd.)

Decree for-(Contd.)

V. Williams.) NAWAB SIDHEE NUZRU ALLY KHAN r. RAJAH OJOODHYARAM KHAN.

(1866) 10 M.I.A. 540=5 W.R. (P.C.) 83= 1 Suth. 635 = 2 Sar. 198.

-Time for payment fixed by-Extension of-Jurisdiction-Condition precedent to. See C. P. C. OF 1908, (1928) 55 I.A. 207 = O. 34, R. 3 (2), PROVISO. 55 C. 821.

### Genuineness and effective nature of-Evidence of

- Judgment not inter partes-Value of.

A decision, not inter partes, that a foreclosure of a mortgage was genuine and effective is strong evidence that the foreclosure was genuine and effective (76). (Lord Hobhouse.) RAO BALWANT SINGH P. RANI KISHORE

(1898) 25 I. A. 54 = 20 A. 267 (293) = 2 C. W. N. 273 = 7 Sar. 279.

### Right of.

-First mortgage of some items-Second mortgage in farour of same person of those and other items-Foreclosure under first mortgage only-Right of.

The defendant-appellant executed a kut-kobala of 4 mouzahs, including mouzah A, to one G, and subsequently executed another kut-kobala in favour of the same person, whereby the said four mouzahs, together with three others, were hypothecated to secure the repayment of another sum.

On 29-6-1873 a notice of foreclosure was served under the first mortgage.

On 23-3-1874 the 1st respondent purchased on sale for arrears of revenue the interest of the appellant in mouzah A.

On 3-6 1874, G assigned all his interest under the two kut-kobalas to the 2nd respondent upon trust to prevent the merger of his rights under them, and to keep them alive for the benefit of the 1st respondent, and empowered him to continue and prosecute the pending foreclosure proceedings, and the name of the 1st respondent was substituted for that of G in the foreclosure proceedings.

On 24 4-1875, being more than 12 months after the notice of foreclosure had been given by G, the respondents filed a suit in the Court of Sub-Iudge of the 24 Pergunnahs. That suit related only to the 1st mortgage, and prayed for an order giving to the 1st respondent a proprietary right based upon foreclosure in the three mouzahs other than A, and with respect to A for a declaratory decree confirming his possession of it, on a right derived from foreclosure of mort-

While that suit was pending, on 7.2.1876, the respondents brought another suit in the Court of the Sub-Judge of Nuddea, in which the three additional mouzahs mortgaged by the second kut-kobala were situated, against the defendant, to recover the principal and interest due under that kobala. The claim in the second suit was against the defen-

The object of the plaintiffs in bringing the separate suits in different jurisdictions was to foreclose the 4 mouzahs. including A, under the first mortgage only, wherehy the 1st respondent would obtain the mouzahs in respect of a compara ively small debt, and freed from any liability to contribate to the payment of the second mortgage, and he would obtain an absolute estate in mouzah A.

The plaintiff relied upon the second mortgage for procuring the whole sum thereby secured by a personal remedy against defendant, i.e., against the mortgaged property and any other right, she might have.

Held, that the plaintiffs had no right to claim A, or the

three other mouzahs, by foreclosure (222).

The defendant could not have redeemed the three other mouzahs without their liability under the second mortgage

## MORTGAGE—FORECLOSURE OF—(Contd.)

Right of-(Contd.)

them under the first mortgage only, thus depriving the second mortgagees of their contribution (222). (Sir Robert P. Collier.) SRIMATI KAMINI SOONDARI CHOUDHRANI P. KALI PROSUNNO GHOSE. (1885) 12 I. A. 215=

12 C. 225 (235) = 4 Sar. 652.

### Suit for-Persons not parties to.

-Effect on

No suit for foreclosure ever proceeded actively, or ever was made to work actively, against a party who was not before the Court (109). (Lord Justice James.) ANUNDO MOYEE DOSSEE v. DHONENDRO CHUNDER MOOKERJEE.

(1871) 14 M. I. A. 101 = 16 W. R. (P. C.) 19 = 8 B. L. R. 122 = 2 Suth 457 = 2 Sar. 698.

To proceedings for foreclosure of a mortgage a person who had purchased the mortgaged property from the mortgagor prior to such proceedings was not made a party.

Held, that neither such purchaser nor the property in question was in any wise affected by those proceedings (148). (Lord Justice James.) BROJONATH KOONDOO CHOUDRY P. KHELUT CHUNDER GHOSE.

(1871) 14 M. I. A. 144=16 W. B. (P. C.) 33=

(1871) 14 M. I. A. 144=16 W. B. (P. C.) 33= 8 B. L. R. 104=2 Suth. 480=2 Sar. 711. MORTGAGE—FRAUDULENT TRANSACTION

Conditional sale-Mortgage by

Fraudulent or not. See MORTGEGF-CONDITIONAL SALE-MORTGAGE BY-FRAUDULENT TRANSACTION.

### Debt justly due under-Decree for.

——Suit to enforce deed—Decree in—Discretion of Court. See DEBTOR AND CREDITOR—DEBTOR—LOAN BOND FRAUDULENT BY. (1874) 1 I. A. 241 (267).

---- Suit to set aside decd-Decree in.

In a suit to set aside a deed of trust executed by an insolvent charging real estate to secure debts alieged to be due from him on the ground that the deed was void as being one executed with intent to defraud and delay the creditors of the insolvent, it was found that the major portion of the amount secured by the deed was not a hour fide debt due by the insolvent and that the deed professing to secure that amount was executed with intent to defraud and delay his creditors. It was argued that the further sum secured by the deed was a boun fide debt due by the insolvent, and that the deed should, therefore, at all events, stand as a security for that amount.

Held, that the deed utterly fell to the ground, and could not be maintained as a security for any sum whatever.

If the deed was executed with a view to defraud and delay creditors, and if the facts which have been referred to above with regard to the major portion of the amount secured by the deed are sufficient to show the deed was executed with that intent, it appears to their Lordships to be utterly impossible for any part of the deed, or any person claiming under those who are parties to that deed, to maintain the deed for any purpose whatever. The deed is one which, in that view of the case, is not executed to secure the further sum, but it is a deed executed to defeat and to delay creditors; the deed, therefore, utterly falls to the ground, and cannot be maintained as a security for any sum whatever (343.4). (Lord Cairns.) TARENY CHURN BONNERJEE 2. MAITLAND. (1867) 11 M.I.A. 317 = 2 Suth. 98 = 2 Sar. 299

#### Evidence of.

In a case in which the question was whether the mortgage deed in favour of the appellant having been made collusively and without consideration was fraudulent and void as against the auction purchasers of the mortgagor, the Principal Sudder Ameen, one of the Judges of the Division

### MORTGAGE — FRAUDULENT TRANSACTION — (Contd.)

Evidence of-(Contd.)

Bench, and the three Judges who composed the Full Bench of the High Court concurred in deciding in favour of the hours fides and validity of the deed.

Held that, though there might be in the transaction circumstances of suspicion arising out of the position in life, and presumable means of the appellant, there was no evidence on which their Lordships would feel justified in overruling so many concurring judgments (116). (Sir Montague E. Smith.) BYJNATH LALL v. RAMOODEEN CHOWDR I.

(1874) 1 I. A. 106 - 21 W. R. 233 - 3 Sar. 333 - 2 Suth. 942

Setting aside of mortgage deed as being a-Money properly advanced under deed-Interest on-Right to-Rate of.

Contract rate low in view of corrupt advantages stipulated for—Rate in case of. See HINDU LAW—MINOR—GUARDIAN—CHARGE, ETC.

(1866) 10 M. I. A. 454 (475).

### Suit for debt-Mortgage by debtor pending, in consolidation of debts.

-Frandulent if and when.

A certain suspicion attaches to a transaction in which deltas are suddenly amassed, consolidated into one, and a mortgage granted in the nick of time so as to accomplish the complete defeat of an action for debt then pending against the mortgagers. The suspicion becomes the greater when the mortgager is a relation of the mortgager. But, on the other hand, if the debts for which the mortgage is granted cannot be displaced as bona fide debts, and if the mortgage in its authenticity and its execution cannot be impagned, then the consolidation at the particular period would be a price of family policy not contrary to law, although open to full scrutiny in judicial proceedings. (Lord Shato.) MUTHIAH CHETTI r. PALANIAPPA CHETTI.

(1928) 55 I. A. 256 = 51 M. 349 - 26 A. L. J. 616 = 32 C. W N. 821 - 48 C. L. J. 11 = 5 O. W. N. 579 = 28 L. W. 1 = 109 I. C. 626 = 30 Bom. L. B. 1353 = A. I. R. 1928 P. C. 139 - 55 M. L. J. 122 Usufructuary mortgage.

Fraudulent transaction or not. See MORTGAGE— USUFRUCTUARY MORTGAGE—FRAUDULENT TRANSAC-TION OR NOT.

### MORTGAGE—FURTHER ADVANCE BY MORT-GAGEE—TRANSACTION EFFECTED BY.

Sale or further mortgage.

The suit, which was instituted in 1908, was for redemption of a mortgage dated 1875. In 1879 there was a further advance made by the defendant on the security of the mortgaged property, and evidenced by a parabaik document. The plaintiff contended that this latter document created only a further charge upon the mortgaged property. The defendant's case, on the other hand, was that it was a sale of the mortgaged property (oil well).

Held, reversing the Court below and affirming the trial Judge, that the second transaction was a sale, and that, assuming that the rights of the parties fell to be settled by the first transaction, the suit for redemption would be barred, because the plaintiff's right to redeem would have accrued more than 30 years before suit, and nothing was proved to take the case out of the Statute of Limitations. (Lard Moulton.) NGA LU GALE 2. NGA PO THAN.

(1914) 1 L. W. 695 = 24 I. C. 310.

#### MORTGAGE-HYPOTHECATION OR.

—Test. See MORTGAGE—DEED OF—HYPOTHECA-TION DEED OR. (1884) 11 I.A. 83 (87) = 10 C. 740 (742-3).

#### MORTGAGE-INDEPENDENT MORTGAGES BY ONE DEED IN FAVOUR OF SEVERAL PER-SONS.

-Possibility of-Remedies separate of mortgagees in case of. Sa MORTGAGE-DEED OF-SEVERAL INDE-(1919) 46 I. A. 272 (277) = PENDENT, ETC. 47 C. 175 (179).

### MORTGAGE-INTEREST ON AMOUNT OF.

ARREARS OF.

CHARGE ON ESTATE IN RESPECT OF.

COMPOUND INTEREST.

DECREE IN SUIT TO ENFORCE MORTGAGE-INTEREST ALLOWED BY.

DEFAULT IN PAYMENT OF-PRINCIPAL ALSO TO BE-COME DUE IN EVENT OF.

DISPOSSESSION WRONGFUL OF MORTGAGEE-INTE-REST FOR PERIOD OF.

INSTALMENT OF-DEFAULT IN PAYMENT OF.

INTEREST UPON-MEANING OF.

PENAL RATE OF,

PERIOD FOR WHICH, MORTGAGEE ENTITLED. PERSONAL COVENANT TO PAY YEAR BY YEAR. POST DIEM INTEREST-COVENANT TO PAY. RATE OF.

#### Arrears of.

### INTEREST ON-RIGHT TO.

-Agreement for payment of principal and arrears by mort gagor's sons-Right under.

An account was taken of the amount due for principal and interest under a mortgage bond, and an agreement was executed by the mortgagor's sons undertaking to pay Rs. 4,628, then due for arrears of interest under the mortgage, on a certain date, and the principal due under the mortgage in a number of years in certain stated instalments. The agreement provided that interest at a reduced rate was to be paid on the balance of principal remaining unpaid.

Held, on a construction of the agreement, that the mortgage was not entitled to interest on the sum of Rs. 4,628, the arrears of interest due on the mostgage at the

date of the agreement (307).

The sum of Rs. 4,628 is carefully distinguished in the agreement from the principal. The parties intended that the sum of Rs. 4.628, which was made up of interest should retain that character. If the creditor thought fit to exact that sum on the specified date he might do so; but if he did not, he could not lie by and charge interest upon it (307). (Sir William H. Maule.) BAMUNDOSS MOOKER-JEE P. OMEISH CHUNDER RAEE.

(1856) 6 M. I. A. 289 = 1 Sar. 542,

-Ordinary and usufructuary mort gage-Combination of-Portion of interest not covered by profits-Arrear of. undertaken to be paid by mortgagor-Interest on-Right to-Construction of mortgage deed.

A mortgage deed, which was a compound of an ordinary mortgage and a usufructuary mortgage, was for a term of three years, and provided for interest at the rate of 1 rupee annas per cent, per mensem. Clause 4 of the deed provided: In the event of non-payment of interest yearly, the mortgagee will have power either to realise the principal with interest through a Court or get a new deed charging the property executed in lieu of interest. If, as a mark of favour, the mortgagor (mortgage=?) lets the interest remain unrealised, then in such case the interest shall be added to the principal from the date of its becoming due and interest at the said rate will run on it, as if its original formed part of the principal and within the term or after it till the date of realisation, this rate of interest and compound interest shall continue." Cl. 6 provided: "After taking possession the mortgagee will be entitled to receive the net profits

MORTGAGE - INTEREST AN AMOUNT OF-(Conta.)

Arrears of-(Contd.)

INTEREST ON-RICHT TO-(Contd.)

after paying the Government revenue and village expenses. etc., in lieu of interest, and during the time of her possession the interest and profits shall be deemed equal." Cl. 11 (so far as material) provided: "If during the period of possession of the mortgagee, after depositing the Government revenue and defraying the village expenses, etc., the profits do not cover the amount of interest, we the mortgagors will make good the deficiency from our pockets in accordance with the accounts prepared by the agents of the mortgagee. If we cannot make good the deficiency we will pay it with interest at the rate mentioned above at the time of redemption."

In a suit for redemption of the mortgage, held that, on the true construction of the mortgage deed, although the prima facie meaning of cl. 6, namely, that the mortgagee accepted the profits in lieu of interest was no doubt qualified by cl. 11, the latter clause was not to be rejected as being inconsistent with the former one, and that the mortgagors were liable to pay compound interest on the deficiency which they undertook to pay by cl. 11. (Lord Davyy.) JAWAHIR SINGH P. SOMESHWAR DAT.

(1905) 33 I. A. 42 = 28 A. 225 = 10 C. W. N. 266 = 1 M. L. T. 66=3 C. L. J. 354=10 O. C. 92=

9 Sar. 52.

-Rules as to.

No doubt the ordinary rule is that interest accruing annually on a mortgage debt does not itself carry interest (450). (Sir Robert Collier.) RADHABENODE MISSER P. (1872) 14 M. I. A. 443= KRIPA MOVEE DERFA. 17 W. R. 262 = 10 B. L. R. 386 = 2 Suth. 546.

SALE OF MORTGAGED LANDS FOR.

-Right of.

Apart from special stipulation there is no right to demand a sale of mortgaged lands for payment of interest in arrear. (Lord Dunedin.) SETRUCHERLA RAMA-BHADRA RAJU P. MAHARAJA OF JEYPORE.

(1919) 46 I. A. 151 (155-6) = 42 M. 813 (819) = 17 A. L. J. 694 = 21 Bom. L. R. 914 = 23 C. W. N. 1033 - 30 C. L. J. 209 = (1919) M. W. N. 502 = 10 L. W. 362= 26 M. L. T. 127 = 51 I. C. 185 = 37 M. L. J. 11, 4

SUIT FOR.

-Relief prayed for in-Sale of mortgaged properly or personal relief-Decree giving latter relief though former prayed for - Nature of claim not altered by reason

In a suit brought by a mortgagee, the plaint stated that the plaintiff sued only for the interest in arrear, and that a suit for the recovery of the principal and the future interest would be brought later on, and it asked for a decree for the interest in arrear with costs in favour of the plaintiff against the defendants, "recoverable from the mortgaged property and the other property and the persons of the defendants."

Held, that the plaint claimed the recovery of the interest in arrear by sale of the mortgaged property, and not merely a personal relief in respect of the said interest, and that the fact that the decree passed in the suit was not a decree for sale but in the nature of a personal judgment did not alter the effect of the claim. (Lord Buckmaster.) KISHAN (1922) 50 I. A. 115 (120)= NARAIN v. PALA MAL.

4 Lah. 32=25 Bom. L. R. 220=32 M. L. T. 41= 27 C. W. N. 802 = 38 C. L. J. 126 = 18 L. W. 341 = 9 O. & A. L. B. 488 = A. I. B. 1922 P. C. 412 =

72 I. C. 187 = 44 M. L. J. 123.

# MORTGAGE - INTEREST ON AMOUNT OF - MORTGAGE - INTEREST ON AMOUNT OF -

Arrears of-(Contd.)

SUIT FOR-(Contd.)

-Subsequent suit for principal-Maintainability-C. P. C., O. 2, R. 2-Effect.

A simple mortgage deed executed on 14-9-1910 created security for the re-payment to the mortgagees of Rs. 14.000 principal and interest at the rate of 8 annas per cent. per month. It then provided by clause 2 that the interest should be paid on the bond as each month went by, and that if the interest was not paid for six months, the creditor should be competent to realize only the unpaid amount of interest due to him, or the amount of principal and interest both by bringing a suit in Court without waiting for the expiration of the time fixed, and that the mortgagors should take no objection to such proceedings. The time fixed was that mentioned in cl. 7, which provided that if the amount secured by the bond, with interest, should not be paid after the expiration of three years, the creditor should be entitled to realise by bringing a suit for the whole of the amount of the principal and interest, together with other incidental expenses, and again the clause concluded by provision that the mortgagors should have no objection, and, if they took objection to such proceedings, it should be regarded as false. The deed contained no express covenant for the payment of the principal and the interest.

Three years elapsed after the deed had been executed, and no interest was paid. On 16-4-1914, the mortgagee instituted a suit in respect only of the interest that was then due on the bond, namely, the sum of Rs. 3,010, and paid Court-fees only in respect of that sum. The decree made in that suit, however, declared that the amount due to the for principal, interest and costs was mortgagee Rs. 3,270-12-0, and provided that if the defendant paid into Court the amount so declared to be due, which was really only the amount of the interest and costs, on or before 11-2-1915, the mortgagees should deliver up the documents relating to the property, and if required, re-transfer it to the defendant free from the mortgage and from all incumbrances created by the mortgagees or any persons claiming under them. Part 2 of the decree proceeded upon the same footing, and provided that if the money was not paid in there should be a sale, and out of the money realised the claim of Rs. 3.270 should be satisfied, and after that the balance of the money in Court should be paid out to the mortgagor.

The money payable under the decree was paid into court. but the mortgagor never asked for re-transfer of the property, and the property therefore apparently remaining still subject to the mortgage, the representatives of the mort-gagee instituted, on 23-1-1915, the suit out of which the appeal arose, for the amount due under the mortgage for principal and interest less the amount which had been provided by the decree in the prior suit and they sought realisation of the security and consequential relief.

Held that the suit was barred under O. 2, R. 2 of C. P. C. of 1908.

What was the cause of action that the plaintiffs possessed when the first suit was instituted? It was the cause of action due either to the fact that the interest had been unpaid for more than six months, or that the three years had elapsed, and the principal was also unpaid, and in either case they could have sued for realization to provide for the whole amount secured by the deed. The plaintiffs now purported to proceed under cl. 2 of the deed, but even in that case the non-payment of the interest was the sole cause upon which they were entitled to ask either for the limited relief that was sought or the larger relief which they abstained from

## (Contd.)

Arrears of-(Contd.)

SUIT FOR-(Contd.)

seeking. It is only important to notice that the only relief that could be sought in both cases was realization of the mortgage security, for the mortgage was a simple mortgage containing no express covenant for the payment of the principal and the interest. O. 2, R. 2(1) of C. P. C. therefore covers the present dispute (13-4). (Lord Buckmaster.)
MUHAMMAD HAFIZ : MUHAMMAD ZAKARIYA.

(1921) 49 I. A. 9-44 A. 121 = 20 A. L. J. 17= 35 C. L. J. 126 = (1922) M. W. N. 89 = 26 C. W. N. 297=15 L. W. 377-24 Bom L. R. 341= 30 M. L. T. 224 = 1 P. W. R. 1922 = 3 Pat. L. T. 279 = A. I. R. 1922 P. C. 231 = 65 I. C. 79 = 42 M. L. J. 248.

It does not appear to their Lordships that if a mortgage provides, as mortgages always do in this country, for an independent obligation to pay the principal and the interest, that in a suit brought to obtain a personal judgment in respect of the interest alone the rule would have prevented a subsequent claim for payment of the principal. In such a case the cause of action would have been distinct. The master is, however, different if the non-payment of the interest causes the principal money to become due, as in that case the cause of action—the non-payment of the interest gives rise to two forms of relief which the Cocle provides shall not be split. (Lord Buckmailer.) KISHAN NARAIN PALA MAL. (1922) 50 I. A. 115 (119-20) =

4 Lah. 32 = 25 Bom. L. R. 220 = 32 M. L. T. 41 = 27 C. W. N. 802 - 38 C. L. J. 126 - 18 L. W. 341 -9 O & A. L. R. 488 - A. I. R. 1922 P. C. 412 -72 I. C. 187 - 44 M. L. J. 123.

A mortgage bond of 19-1-1904 provided for payment of the money within two years and for redemption by the mortgagors within that period if they thought fit. It also contained an express promise on the part of the mortgagors to pay interest for the first year, and provided that in default it should be competent to the mortgagee to cancel the fixed term and to realise. Clause 5 of the deed provided : If we pay the interest on the expiry of the first year, we shall pay the interest on the mortgage money after every three months after the expiry of the first year. If by chance we are unable to pay the interest after every three months, we shall pay it after six months. If we do not pay the remaining interest after six months, the mortgagee will be at liberty to cancel the term of two years and to realise with costs all the principal mortgage money with interest by means of a suit from the mortgaged property and our other movealde and immoveable property and on our person. If the mortgagee of his own accord wishes to maintain the term of mortgage, he will have a right to realise only the remaining interest by means of a suit from the said property and our

The interest was paid up to 4-7-1905, but no further payment was made in respect of interest. On 17-11-1908, the mortgagee sued the mortgagors for the recovery of the interest in arrear and prayed for its recovery by sale of the mortgaged property, stating in his plaint that he would sue subsequently for the principal and for the future interest. A decree was passed in that suit which, however, was in the nature of a personal judgment, and was not a decree for sale. The mortgagee got the equity of redemption sold in execution of that decree and realised his decree amount.

In a suit subsequently instituted by the mortgagee on 19-11-1914 asking the full mortgagee's relief in respect of the mortgaged property, held, that O. 2, R. 2 of C. P. C. of 1908 barred the suit.

If the plaint in the earlier suit claimed only a personal relief in respect of the unpaid interest, the subsequent suit -(Contd.)

Arrears of-(Contd.)

SUIT FOR-(Contd.)

would not have been barred. (Lord Buckmaster.) KISHAN (1922) 50 I. A. 115 (119-20)= NARAIN P. PALA MAL. 4 Lah. 32 = 25 Bom L. R. 220 = 32 M. L. T. 41 = 27 C. W. N. 802 = 38 C. L. J. 126 = 18 L. W. 341 = 9 O. & A. L. R. 488 - A. I. R. 1922 P. C. 412 = 72 I. C. 187 = 44 M. L. J. 123.

### Charge on estate in respect of.

-Rule as to-Deed displacing.

The general rule is that a mortgagee in the absence of any contract to the contrary is entitled to treat the interest due under the mortgage as a charge on the estate. It is most important that the general rule should not be shaken in any

There were five mortgages on a property. The earlier two were usufructuary mortgages; the others were not usufructuary. The third mortgage stated: " I will redeem the mortgage land on payment of the previous and the present mortgage-money to the mortgagees". It contained a recital that interest was to be paid upon the sum borrowed. The fourth deed contained the following expression: "I shall without objection pay the additional mortgage-money with interest in the following instalments.

Held, that there was nothing in the deeds in question which displaced the general rule. (Lord Dunedin.) GANGA (1924) 51 I. A. 377 = RAM r. NATHA SINGH.

5 Lah. 425 = 22 A. L. J. 688 = 26 Bom. L. R. 750 = 20 L. W. 101 = 10 O. & A. L. R. 771 = (1924) M. W. N. 599 = 2 Pat. L. R. 257 = A. I. R. 1924 P. C. 183 = 35 M. L T. 141 = 11 O. L. J. 534 = 6 L. L. J. 551 = 29 C. W. N. 508 = 6 Pat. L. T. 97 = 80 I. C. 820 = 47 M. L. J. 64.

#### Compound interest.

" Interest upon interest" if denotes.

The phrase " he shall pay interest on interest " occurring in a mortgage-deed is ambiguous, and does not necessarily

connote a liability to pay compound interest.

Held, on reading the document as a whole, that those words fairly enough referred to interest to be borne by a sum in arrear, if that sum was payable as interest and that to hold otherwise would lead to results, which clashed with the plain and clear objects and meaning of the natural and unambiguous provisions of the document. (Lord Atkinson.) MUTHU CHETTIAR P. MEENAKSHISUNDARAM AIYAR.

(1927) 27 L. W. 395 = I. L. T. 40 Mad. 47 = (1928) M. W. N. 91 = 5 O. W. N. 166 = 47 C. L. J. 183 = 107 I. C 1 = 30 Bom. L. R. 261 = 32 C. W. N. 569 = 26 A. L. J. 488 = A. I. R. 1928 P. C. 35 = 54 M. L. J. 82.

-Possession of mortgaged property or-Option of, on non-payment of interest at date fixed-Precision for-Possession taken by mort gagee-Right to compound interest in case of.

Where a clause in a mortgage deed ran as follows :- "In case of default in payment by one (mortgagor) of instalments of interest at the time herein appointed, the mortgagee shall have immediately on such default power either to recover the whole of his principal, interest and further interest on the said interest according to the rate herein fixed....or the said mortgagee shall in default of payment of the instalment or instalments of interest aforesaid take possession of the mortgaged property", held, on a construction of the clause, that the mortgagor was not liable for compound interest, the mortgagee in the case having entered

MORTGAGE - INTEREST ON AMOUNT OF - | MORTGAGE - INTEREST ON AMOUNT OF --(Contd.)

Compound interest-(Contd.)

into possession. (Lord Collins.) MUHAMMAD NASFEM v. (1907) 10 Bom. L. R. 126= MUHAMMAD ABBAS. 12 C. W. N. 345=7 C. L. J. 215=11 O. C. 126= 3 M. L. T. 182=18 M. L. J. 133.

Decree in suit to enforce mortgage-Interest allowed

-See MORTGAGE-SUIT TO ENFORCE-DECREE IN -INTEREST ALLOWED BY.

Default in payment of-Principal also to become due in event of.

-Stipulation for-Penalty if a. See CONTRACT ACT, S. 74-MORTGAGE-INTEREST DUE UP TO, ETC (1900) 27 I.A. 98 = 27 C. 938.

Dispossession wrongful of mortgagee-Interest for period of.

-Award of, in suit by him to recover possession-Propriety. See MORTGAGE-MORTGAGED PROPERTY-POSSESSION OF-MORTGAGEE OBTAINING POSSESSION, (1876) 4 I. A. 15 (21-2)=1 A. 325 (332).

### Instalment of-Default in payment of.

-Amount recoverable by mortgaget on-Interest in arrear only or principal also.

Held, upon the construction of a clause in a mortgage bond, which ran as follows: " If according to the terms of this deed, the interest of each year be not paid on the respective due date these terms (terms fixing dates for payment of principal and interest) will not prevent you (the mortgagee) from recovering the said amount then and there if you should so desire, without waiting for the due date, that the words " the said amount" referred to the principal and interest. (Lord Dunedin.) SETRUCHERLA RAMA-BHADRA RAJU P. MAHARAJA OF JEYPORE

(1919) 46 I.A. 151 (155-6) = 42 M. 813 (819)= 17 A.L.J. 694 = 21 Bom. L.R. 914 = 23 C. W. N. 1035 = 30 C.L.J. 209 = (1919) M.W.N. 502 = 10 L.W. 362 = 26 M.L.T. 127 = 51 I C. 185 = 37 M.L.J. 11.

-Sale of mortgaged property and realization of principal and interest due up to end of term of mortgage—Provision for—Penalty if a. See CONTRACT ACT. S. 74— (1874) 23 W. R. 91. MORTGAGE FOR TERM.

### Interest upon-Meaning of.

-Compound interest if denoted by. See MORTGAGE-INTEREST ON-COMPOUND INTEREST-INTEREST UPON (1927) 54 M. L. J. 82 INTEREST.

Penal rate of.

-What amounts to. See CONTRACT ACT, S. 74. Provision as to—Relief against—Paisne mortgage's right to. See CONTRACT ACT, S. 74—MORTGAGE— INTEREST-PENAL RATE OF. (1890) 17 I.A. 201 (214)= 18 C. 164 (180-1).

Period for which, mortgagee entitled.

-Date fixed for payment-Date of actual payment. The effect of a mortgage bond executed by the guardian of an infant was that security was given on a certain mouzah belonging to the infant for the sum of Rs. 8,000, to be repayable in about a year's time with interest at the rate of 18 per cent. per annum. On a question being raised how far the bond, on the face of it, provided for the payment of interest-whether up to the date fixed for the payment of the principal, or up to the date of actual repayment, keld that it provided for payment of interest up to the date of actual repayment (49). (Sir Arthur Hobbouse.) GANGA-PERSHAD SAHU P. MAHARANI BIBI.

(1884) 12 I.A. 47=11 C. 379 (381-2)=4 Sar. 621.

## MORTGAGE - INTEREST ON AMOUNT OF - | MORTGAGE - INTEREST ON AMOUNT OF -

Period for which, mortgagee entitled-(Contd.)

-Mortgage by father-Agreement by son to pay arrears of interest due under, on a date fixed and principal due under, in stated annual instalments-Prevition in, for payment of interest on instalments of principal in arrear-Period for which interest payable in case of.

The amount due for principal and interest under a mortgage bond executed by the deceased father of the respondents with a provision for interest at 12 per cent, per annum was calculated up to a certain date, and for the amount so ascertained to be due, the respondents executed an agreement in favour of the mortgagee, agreeing to pay the amount due for arrears of interest under the said mortgage bond on a specified date, and the amount due for principal thereunder in a number of years, in stated annual instalments. The agreement provided that interest at 9 per cent, per annum should be paid on whatever amount of principal remained in balance each year.

Held, on a construction of the agreement, that interest was to be calculated on the principal amount of the mortgage bond from the time up to which the interest was calculated at the time of the agreement (306).

There is no reason why the sum which was lent at interest, and which continued at interest, with no difference except the modification of taking away one fourth of the interest, and reducing the Re. I per measem to 12 annas per cent, per mensem, should be exempt from paying interest at one rate or another during the whole time that it remains unpaid, and that time will be taken from the time up to which the interest is calculated. From that time the principal sum or so much as remained from time to time unpaid is to carry interest at the rate agreed upon in this instrument, namely, at the reduced rate of 9 per cent. per annum (306). (Sir William H. Maule.) BAMUNDOSS MOOKER-JEA v. OMEISH CHUNDER RAEE.

(1856) 6 M.I.A. 289 = 1 Sar. 542.

-Purchase of mortgaged property by mortgages in discharge of mortgage debt-Interest up to date of his obtaining possession-Right to.

D, who had mortgaged some land to .W to secure the repayment of Rs. 50,000 and interest but was unable to repay the amount as per the original arrangement, wroce a letter to M on 4th April 1906 requesting to be allowed 3 months time for payment of all interest due on the Rs. 50,000, and, in the event of his failing to do so on or before 6th July, 1905, agreeing to the whole land being sold to M for a lakh and to himself being paid the balance left after deducting from out of the 1 lakh the Rs. 50,000 already received by him (D) and all interest due thereon. D did not pay the interest on 6th July 1906 and refused to convey the land whereupon M sued for and obtained a decree for specific performance but did not get possession till 24th March 1911.

Held that, on the true construction of the contract between the parties, M, the mortgagee, was entitled to interest on the mortgage amount till he obtained possession.

If M had not taken possession, and no default could be attributed to him, he would have been entitled to interest on his mortgage amount till a transfer of the equity of redemption was executed in his favour. (Lord Buckmaster, L. C.) MAUNG SHWE P. MAUNG INN.

(1916) 44 I.A. 15=44 C. 542=10 Bur. L.T. 69= 21 M.L.T. 18 = 15 A.L.J. 82 = 25 C.L.J. 108 = (1917) M.W.N. 117 = 19 Bom. L.E. 179 = 21 C.W.N. 500 = 5 L.W. 532 = 38 I.C. 938 =

# -(Contd.)

Personal covenant to pay, year by year.

What amounts to.

Held, reversing the High Court, that, on the true construction of the suit mortgage deed, the terms of which are set out in the report, it contained a personal covenant to pay interest on the mortgage-money from year to year, (Lord Macnaghten.) MADAPPA HEGDE 7. RAMKRISHNA NARAYAN BHATTA.

(1911) 35 B. 327 = (1911) 2 M.W.N. 1 = 13 Bom. L.R. 698 = 14 C.L.J. 245 = 15 C.W.N. 962 = 12 I.C. 42.

## Post-diem interest-Covenant to pay.

A mortgage bond, executed on 20-3-1873, was as

"I, B, .. do declare: -That I owe Rs. 5,000, half of which is Rs. 2,500, to C .. and that, admitting the said debt, I promise that I shall pay the said money, with interest at the rate of Rs. 1-4 per cent. per mensem in two years; that interest shall be paid six-monthly; that in case of default in payment of interest on the expiry of any six months, it will be treated as principal, and being included in the principal, shall bear interest at the said rate; that the compound interest shall also be added six-monthly to the principal."

Their Lordships were not prepared to dissent from the construction placed by the High Court on the bond in respect of there being no covenant by B to pay interest after the fixed period of two years from the date of the bond. although, they observed, it was difficult to suppose that that was the intention of the parties to the bond (201). (Lord Morris.) Lala Chhajmal Das v. Brijbhukan Lal.

(1895) 22 I.A. 199 = 17 A. 511 (516-7) = 6 Sar. 620.

By a mortgage deed, dated 17th February 1880, G. P. mortgaged certain property to C. L. The mortgage-deed was in the following terms :- "I covenant and record that I shall pay off without any objection the said amount in full, principal and interest, at the rate of Rs. 1-6-0 per cent. per mensem, within a year without raising any objection whatever. If I fail to pay off the amount within the fixed term the said bankers shall be competent to realise the amount by any means possible from my person, and the properties mortgaged, and from any other properties belonging to me, and I and my beirs neither have, nor shall we have any objections whatever to it. Until the payment in full of this amount, principal and interest, I shall not transfer, either directly or indirectly, the mortgaged property to any one else, and, if I do, such a transfer shall be deemed to be false and inadmissible. The amounts paid by me should be first credited to the payment of interest, and the balance should be credited to that of the principal and I shall have them entered on the back of the document." No payment of any kind was made under this document and the representatives of C. L. brought a suit on June 19, 1888, for the usual mortgage decree. The courts below disallowed the claim of the plaintiff for interest beyond the one year mentioned in the deed. Held, reversing the decision of the courts below, that, upon a proper construction of the deed, there was a covenant to pay interest at the stipulated rate beyond the one year fixed for the repayment of the principal, and that, consequently, the plaintiff was entitled to interest at the stipulated rate up to the date of the decree of the

The plain meaning of the contract is this: The mortgagee cannot, except in certain events, enforce payment for a year. The mortgagor may pay at any time, and is bound 32 M. L. J. 6. to pay in a year's time, "The said amount" (i.e., Rs. 19.157

-(Contd.)

Post-diem interest-Covenant to pay-(Contd.)

the only amount yet mentioned) "principal and interest." i.c., whatever interest may be due at the time of payment, whether for a year or a less time. If he fails, the mortgagee may proceed to realise "the amount," the obvious meaning of which is, principal and interest to the time of realisation. Then comes the covenant not to transfer until payment "of this amount," (i.e., the amount to be realised principal and interest") and then the proviso that payments shall be applied first in reduction of interest, and entered on the back of the document. The strictest construction of the words is in accordance with the usual intentions of the parties to a simple mortgage. (Sir Richard Couch.) MATHURA DAS 2. RAJA NARINDAR BAHADUR PAL

(1896) 23 I.A. 138 : 19 A. 39 = 1 C.W.N. 52 = 7 Sar. 88=6 M. L. J. 214

Where a deed of conditional mortgage for a term of two years stipulated in general terms for interest on the principal sum advanced, without any limitation as to the period of its currency and provided (a) for redemption within or at the time stipulated, (b) for foreclosure of the mortgaged property in default of payment of the principal money at that time, (c) for payment of the interest every year, and (d) that, on default of payment of interest at the end of the year, the creditors should be at liberty to treat it as principal, and to recover it with interest, held, on a construction of the deed as a whole, that it was not the intention of the parties that the capital sum should cease to bear interest upon the arrival of the time stipulated for its payment (14) (Lord Watton.) BINDESRI NAIK P. GANGASARAN SAHU. (1897) 25 LA. 9=20 A. 171 (180)= 2 C.W.N. 129 = 7 Sar. 273.

-Covenant to pay-Absence of-Award of, as damages -Rate of.

Even in a case in which a mortgage bond did not contain a covenant by the mortgagor to pay interest after the period fixed for payment, held, that the mortgagee would be entitled, on default being made in the payment, to recover interest technically as damages, and the rate would prima facic be the same as that provided by the bond during the period fixed for payment, although there was no rule of law making that rate necessarily the measure of the damages (201). (Lord Morris.) LALA CHHAJMAL DAS P. BRIJBHUKAN LAL. (1895) 22 I.A. 199 = 17 A. 511 (517) = 6 Sar. 620.

### Rate of.

-Two per cent.-Provision for-Meaning of-2 per cent, per mensem or for whole period.

When a mortgage deed provided that the mortgagors would on redemption pay interest on the whole sum advanced "at the rate of 2 per cent.," held that the expression " 2 per cent," in connection with interest undoubtedly meant prima facie 2 per cent. per mensem and not 2 per cent. for the whole period. (Lord Macnaghten.) LEKHA SINGH v. CHAMPAT SINGH. (1906) 28 A 724.

-Twenty-one per cent. per annum-When allowed.

In a suit for the specific performance of an agreement to give a mortgage at 21 per cent, per annum, held that, though agreement as to interest was certainly high, yet as there was no trace whatever of the defendant protesting against it, no issue was specifically directed to the point, and there was no evidence to show that in the circumstances it was so unconscionable that effect ought not to be given to the agreement, there was no reason for disallowing it. (Lord Buckmaster.) JEWAN LAL DAGA 2. NILMANI CHAU-(1927) 55 I. A. 107=7 Pat. 305= DHURL. 26 A. L. J. 124 = (1928) M. W. N. 154 =

MORTGAGE - INTEREST ON AMOUNT OF - MORTGAGE - INTEREST ON AMOUNT OF -(Contd.)

Rate of-(Contd.)

30 Bom. L. R. 305 = 107 I. C. 337 = 47 C. L. J. 302 = 32 C. W. N. 565 = 27 L. W. 740 = A. I. R. 1928 P. C. 80 = 54 M. L. J. 325.

-Usurious rate-Fair rate to be allowed in case of. See TUNJAB CODE, S. 19, CL. (4)-INTEREST ON MORT-(1875) 3 Suth. 85 (86). GAGE.

MORTGAGE -INVALID MORTGAGE -PRIOR BINDING MORTGAGE PAID OFF WITH MONEY RAISED UNDER.

-Subrogation to rights of-Creditor's rights of. See HINDU LAW-MINOR-GUARDIAN OF-MORTGAGE BY (1856) 6 M. I. A. 393 (425). -INVALIDITY OF.

MORTGAGE-JOINT TENANTS-TENANTS IN COMMON-MORTGAGE TO TWO PERSONS

-Suits by one mortgagee to enforce his share of mortgage-Forms of-Distinction. See JOINT TENANTS-TENANTS IN COMMON-MORTGAGES TO TWO PERSONS (1919) 46 I. A. 272 (277-8) = 47 C. 175 (179-80).

MORTGAGE-LEASE OR.

-Test. See LEASE-MORTGAGE OR-DISTINCTION. MORTGAGE-LEASE OF MORTGAGED PRO-PERTY FORMING PART OF SAME TRANSAC TION AS.

### Mortgagee-Lease to.

-Rent due under-Set-off of, against mortgage-del -Omission to claim, in suit to enforce mortgage-Suil subsequent claiming set-off-Maintainability-C. P. C. S. 11.

A portion of the property comprised in a mortgage was also leased by the mortgagors to the mortgagees. In 1878 the mortgagees sued upon their mortgage, but, though at that time the mortgagees owed a considerable sum to the mostgagors as and for rent due under the said lease, the mostgagors did not, in defence to the suit, plead that they were entitled to have a general account taken and to have the mortgagee's claim limited to the difference between the amount due to them under their mortgage and the amount due by them for rent under the lease. On the other hand, the mortgagors alleged a specific agreement which they failed to prove that the rents should be set off against the mortgage debt; and they also stated their intention to see separately for the rent due. Accordingly a decree was passed in favour of the mortgagees, without any deduction on account of rents. The mortgagees executed the decree in their favour and purchased the mortgaged property after having obtained leave to bid at the sale held in execution. Meanwhile the mortgagors also obtained a decree for the rent due to them under their said lease.

In a suit subsequently brought by the mortgagors to have the judicial sale set aside, and to have the mortgage debt extinguished by having set-off against it the rents which had already accrued, or might thereafter accrue, and for posses sion of the lands on the expiry of the lease, held that, the alleged equity was a matter which ought to have been made a ground of attack in the suit of 1878 within the meaning of S. 13 of C. P. C. of 1877, and that the mortgagors were therefore barred from insisting on it exceptione rei judicator.

The proper occasion for enforcing the equity now pleaded would have been in defence to the mortgage suit of 1877. That was certainly the suit in which any account to which the mortgagors were entitled, as in a question with the mortgagees, ought to have been taken. But the appellants not only abstained from putting forward any claim to a general accounting; they declared in their pleadings their

### MORTGAGE-LEASE OF MORTGAGED PRO MORTGAGE-LEASE OF MORTGAGED PRO PERTY FORMING PART OF SAME TRANSAC TION AS-(Contd.)

Mortgagee-Lease to-(Contd.)

intention of bringing a separate action for recovery of the rents, a proceeding which would have been wholly unnecessary if the plea which they urge in this appeal had been put forward and given effect to (113-4). (Lord Watson.) MAHABIR PERSHAD SINGH P. MACNAGHTEN. (1889) 16 I. A. 107=16 C. 682 (691)=5 Sar. 345.

Test-Suit to enforce mort gage-Set-off of rent due under lease against mortgage debt -Mortgagor's right of.

The appellants were owners of certain shares of 20 mouzahs in two talooks. Those shares were sold in 1867 for arrears of Government revenue to one B. That sale was, however, set aside in an action brought by the appellants. The respondents held 6 of those mouzahs in lease before the sale to B. In consideration of the pecuniary and other assistance which they gave to the appellants in their suit against B, the appellants, during the dependence of B's appeal to the Privy Council against the decision of the High Court in favour of the appellants, executed a mortgage to the respondents mortgaging their interest in the said twenty mouzahs. Again, after the appellants obtained possession under the decree of the High Court and pending B's appeal to the Privy Council the parties entered into an agreement by which, in consideration of assistance already given and to be given by the respondents, the appellants undertook, in the event of B's appeal to the Privy Council being unsuccessful, to renew the lease of the 6 mouzahs, to let to the respondents the remaining 14 mouzahs under a tioca pottah for 15 years, and to grant them a mokurrari lease of 134 bighas. This agreement was nearly two years after the date of the mortgage aforesaid. A few months afterwards, viz., in February, 1874, shortly after the dismissal of B's appeal, the appellants executed a sunnud, authorizing the respondents to collect the rents of their mouzalis for the year ending in September, 1874, the respondents accounting to them for their receipts, under deduction of costs and charges. In July, 1874, appellants, in terms of their previous agreement, renewed the lease of the 6 mouzahs for fifteen years from September, 1874, and granted the respondents a ticca pottah, for the same period of the remaining 14 mouzahs, at a stated yearly rent, subject to future adjudgment. They also gave, as stipulated, a mokurrari lease of the 13t bighas.

Semble in a suit by the respondents to enforce the mortgage in their favour the appellants would have an equity to have a general account taken of the transactions between them, and to have the amount of rent payable to them under the leases set off against the amount payable by them under the mortgage (113).

The mortgage bond, the agreement, followed by the granting of the leases therein stipulated, and the sunnud, were all parts of one complex transaction, the objects of which were to enable the appellants to recover their property from B, and to secure to the respondents repayment of moneys which they had advanced as well as remuneration for services rendered (113). (Land Watson.) MAHABIR PERSHAD SINGH v. MACNAGHTEN.

(1889) 16 I. A. 107 = 16 C. 682 (691) = 5 Sar. 345.

### Mortgagor-Lease to.

-Rent due under, charged on mortgaged property-

Payment on redemption of-Necessity.

S. 62 of the Transfer of Property Act applies only to usufructuary mortgages pure and simple, and is not in any way inconsistent with the provisions of S. 61, which enacts by implication that a mortgagor seeking to redeem shall not be entitled to do so without paying any money that may be

### PERTY FORMING PART OF SAME TRANSAC-TION AS-(Contd.)

Mortgagor-Lease to-(Contd.)

due under a simple mortgage or charge, if the latter relates to the same property.

A mortgage, which was no doubt usufructuary, provided for payment of interest at a specified rate, and contained covenants on the part of the mortgagor to pay both principal and interest. By a muchilika or counter-part lease of the same date as the mortgage, the mortgagor took a lease from the mortgagee of a portion of the mortgaged property. The two documents were parts of one transaction, the lease being in the nature of machinery for the purpose of realising the interest due on the mortgage.

In a suit for redemption of the mortgage and possession brought by an assignee of the mortgagor's interest against an assignee of the mortgage, held that, the defendant was entitled to add the arrears of rent due under the lease deed to his claim in the suit, with interest thereon, from the due

date of the mortgage.

To drive the mortgagee to a separate suit to enforce the charge he has in respect of the arrears of rent due under the lease deed would lead to a circuity of action and would be centrary to the provisions of O. 34, R. 1 of C. P. C. which requires all persons having an interest in the mortgage security to be joined as parties to any suit relating to the mortgage. Further, if the defendant did not set up his charge for the arrears of rent in this suit serious questions might well arise as to whether he would be entitled subsequently to bring a suit to enforce that charge (77-8). (Lord Sinha.) PANAGANTI RAMARAYANINGAR V. MAHARAJA OF VENKATAGIRI. (1926) 54 I. A. 68= 50 M. 180 - 109 I. C. 86 - 25 L. W. 621 = 8 Pat. L. T. 307 - 29 Bom. L. R. 805 - 45 C. L. J. 395 -31 C. W. N. 170 = A. I. R. 1927 P. C. 32= 52 M. L. J. 338.

### MORTGAGE-LEGAL AND EQUITABLE MORT-GAGES.

-Distinction-T. P. Act-English law-Difference. There is under the Transfer of Property Act no distinction between legal and equitable mortgages as in English law, where the legal mortgage will always prevail against the equitable unless the holder of the legal has done or omitted to do something which prevents him in equity from asserting his paramount rights. (Lord Dunedin.) IMPERIAL BANK OF INDIA P. U RAI GYAW THU & CO.

(1923) 50 I. A. 283 (289-90) = 51 C. 86 = 1 R. 637 = 21 A. L. J. 784 - 25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 = 33 M. L. T. 395 = 2 Bur. L. J. 254 = (1923) M. W. N. 609 = A. I. B. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186=76 I. C. 910=45 M. L. J. 505.

### MORTGAGE-MALABAR.

-Mortgage in-Term of 55 years-Practice of. See MALABAR LAW-MORTGAGE IN. (1881) Bald. 418.

### MORTGAGE-MINOR.

-Guardian of -- Mortgage by. See HINDU LAW-MINOR-GUARDIAN OF-MORTGAGE BY.

-Mortgage by. See HINDU LAW-MINOR-MORT. GAGE BY.

-Mortgage for term-Property of minor subject to-Unauthorized sale of-Effect-Minor's right to ignore sale and to sue for its redemption. See LIMITATION ACT OF 1908, ART. 144-MINOR. (1911) 39 I. A. 49 (56)= 34 A. 213 (223).

### MORTGAGE-MORTGAGE DEBT.

AMOUNT OF.

APPORTIONMENT OF.

DEPOSIT OF.

DISCHARGE OF.

MORTGAGEF'S RETENTION OF, UNDER AGREEMENT TO ACCOUNT FOR SAME TO MORTGAGOR.

MORTGAGEE'S RIGHT TO RECOVER.

OFFER TO PAY-BONA FIDE NATURE OF.

PERSONAL LIABILITY FOR.

PRIOR MORTGAGE-MONEY PAID BY MORTGAGEE TO DISCHARGE

TENDER OF-WAIVER OF.

### AMOUNT OF.

-Advance of amount less than-Apportionment of deficiency-Principle-Several properties mortgaged under one mortgage deed-Prevision for separate redemption of, on payment of specified portions of mortgage amount-Effect -Greenment revenue paid by mortgagee not apportionable on same principle.

A mortgage deed, by which several properties were mortgaged, provided that each property could be separately redeemed in the month of June of any year on payment of the amount entered against it in the deed provided always that the interest on the whole mortgage money had been paid or tendered at the time of such redemption. The mortgage deed also provided that Government revenue should be deducted in the first instance from the entire income of the mortgaged properties, that is, that Government revenue should be deducted before any credit for interest was given at all. The consideration stated in the mortgage deed was Rs. 35,000, but only a sum of Rs. 30,984 was actually advanced. In a suit for redemption of two of the mortgaged items brought by the purchasers thereof from the mortgagor, the High Court held that as only Rs. 30,984 was advanced instead of Rs. 35,000, the equitable method of dealing with the case would be to distribute the reduction of principal over each item of property specified at the foot of the mortgage.

Held, that the High Court was right in the view which it took.

As regards the Government revenue paid by the mortgagees with interest thereon, the High Court held, that the whole of the said sum should not be added for the purpose of testing the amount payable by the purchasers, but that it should be equitably distributed as against the purchasers in the same way as the principal amount was to be distri-

Held, that the view of the High Court was not correct.

The mortgagees by paying the Government revenue are entitled to add the same for the purpose of ascertaining their total dues under their mortgage. (Sir Binol Mitter.) SHIB CHANDRA 7. LACHM! NARAIN.

(1929) 56 I. A. 339 - 33 C. W. N. 1091 = 119 I. C. 612 - 50 C. L. J. 502 - (1929) M. W. N. 653 -30 L. W. 476 = A. I. R. 1929 P. C. 243.

-Amount agreed to be advanced before a specified date but actually advanced later if and when part of.

The appeal arose out of a suit brought by the appellants against the respondents, and against one B. The appellants sought to recover a sum of Rs. 79,655 as principal and interest which they alleged to be due to them in respect of a mortgage executed by B on 20-5-1873, the appellants alleging that, at that date B adjusted his account and executed a mortgage for securing Rs. 3,49,504-4. The mortgage stated that there had been an adjustment of accounts between B and the appellants, and it was given to secure the money which was then due on the account, together with a sum of Rs. 90,000, to be advanced by the appellants to B, from May, 1873, to October of the said year. The res-

### MORTGAGE-MORTGAGE DEBT-(Contd.)

Amount of-(Contd.)

pondents, were purchasers of part of the mortgaged property under a conveyance dated January, 1875, another part of it having been previously sold. They objected that the whole of the sum of Rs. 90,000 was not advanced before the 1st of October, 1873, but a portion only was advanced, leaving a sum of about Rs. 30,000, which they said was subsequently advanced, and was therefore not covered by the mortgage. The way in which the respondents sought to avail themselves of that objection was that they said that if they were right in that contention, and the mortgage only covered what was actually advanced before the 1st of October, 1873, the accounts shewed that the whole of the mortgage was satisfied, and consequently that the appellants were not entitled to recover upon it as they claimed.

Heid, that the contention was untenable (17).

The soundness of the contention depends upon the construction of the mortgage seed. Their Lordships think that the mortgage was intended to cover the whole advance of Rs. 90,000; and whether it was advanced before the 1st of October, 1873, or not. if the parties, that is B. and the mortgagees, thought fit between themselves to allow a portion of that Rs. 90,000, not to be immediately advanced, but to remain in the hands of the appellants in a deposit account in such a way that he could draw upon them and obtain the money at any time, then it was really covered by the mortgage, and it is not an answer to the claim of the mortgagees in respect of the Rs. 90,000, that the whole of it was not advanced before 1st October, 1873 (17). (Sir Richard Couch.) HARI RAM v. SHEODIAL RAM. (1888) 16 I. A. 12=11 A. 136 (1423)= 5 Sar. 281.

-Assignment of mortgage-Amount due under mortgage at date of - Recital in assignment deed as to-Mortgagor's right to question correctness of-Mortgagor party to assignment-Deed of assignment executed with his consent.

Where, with the consent of the mortgagor and by a transaction to which he was a party the mortgagees transferred the mortgages in their favour to a third party, and the deed of transfer specified a certain amount as then due under the mortgages, held, that the mortgagor could not be allowed to question the amount of his liability to the mortgages under the mortgages at the date of the transfer as recited in the instrument of transfer (912). (Sir John Wallis.) WILLIAM ARRATOON LUCAS r. BANK OF BENGAL

(1926) 24 L. W. 910 = 31 C. W. N. 179 = 38 M. L. T. (P. C.) 1-(1926) M. W. N. 826= 3 O. W. N. 910 = A. I. R. 1926 P. C. 129 = 98 I. C. 925.

-Commission-Money allowed to be retained by mortgagee as-Bribes to mortgagee's men-Money paid by mortgager by way of-Mortgager's right to object to the moneys being treated as part of mortgage debt.

A lender cannot be charged with money paid by the borrower in the nature of douceurs or bribes to persons who were supposed to have great influence with the lender and had therefore to be propitiated; especially so, when the lender had no hand whatever in the transaction; nor can the borrower, years after the transaction be allowed to charge the lender with moneys he agreed to the latter deducting from the loan as commission, when he has consiously and knowingly admitted receipt of the full consideration in the bond. (Lord Davy.) SUNDER KOER F. SHAM KRISHEN. (1906) 34 I. A. 9 (16.7)=

34 C. 150 (156) = 2 M. L. T. 75 = 5 C. L. J. 106 = 11 C. W. N. 249 = 9 Bom. L. B. 304 = 4 A.L. J. 109 =

17 M. L. J. 43.

Amount of-(Contd.)

-Finding as to, in redemption suit dismissed-Effect of, in subsequent suit for redemption. See MORTGAGE-REDEMPTION OF-SUIT FOR - DECREE DISMISSING-FINDING IN, AS TO AMOUNT DUE UNDER MORTGAGE.

(1870) 13 M. I. A. 404 (412).

#### APPORTIONMENT OF.

Basis proper of-Value of items - Revenue assessed upon them.

Plaintiffs, purchasers of the equity of redemption in a portion of the mortgaged properties, brought a suit for redemption of the portion purchased by them on payment of their proportionate part of the mortgage debt. To the suit the mortgagee, who had also purchased the equity of redemption in another portion of the mortgaged premises, and the purchasers of other portions thereof, were made defendants. The mortgagee contended that the apportionment of the mortgage debt should be made according to the amount and ascertained values of the several mouzahs mortgaged, and not according to the revenue assessed on and payable in respect of such mouzahs to Government. With reference to this contention, their Lordships made the following observations:

Their Lordships do not deny that there is some force in this objection. The proportion of the debt chargeable on each village ought to vary according to the actual value of the village; and the amount of Government revenue assessed on a village may not always be a correct criterion

of its actual value (408).

On the other hand, there might be a difficulty in applying the principle contended for by the mortgagee to cases in which the amount payable by a mortgagor seeking to redeem, is not ascertained, as in this country, by inquiry and account, but must be calculated and tendered or brought into Court by him before the commencement of the suit. Their Lordships, however, do not feel called upon to affirm the correctness of the principle adopted in the Courts below, or to give any opinion which may have the effect of sanctioning its adoption in other cases, because they are clearly of opinion, that the objection is not one which this appellant is now entitled to take (408-9). (Sir James Colvile.) NAWAB AZIMUT ALI KHAN : JOWAHIR (1870) 13 M.I.A. 404 = 14 W.B. P.C. 17 = 2 Suth. 346=2 Sar. 573.

-Deficiency in amount advanced-Properties several mortgaged-Redemption separate of, on payment of specified portions of mortgage amount-Provision in deed for-Apportionment of deficiency in case of-Principle. See MORTGAGE-MORTGAGE DEBT-ADVANCE OF AMOUNT (1929) 56 I.A. 339.

-Doctrine of -Application true of.

The true application of the doctrine of apportionment is this, that the Court may direct accounts, to which the purchasers of fragments of the equity of redemption must be parties, with a view of settling between them all what is the proportion to be charged upon each fragment. It is quite a new thing to hold that the purchaser of a single fragment of the equity of redemption may come without bringing the other purchasers before the Court, and have an account as between himself and the mortgagee alone, so that the mortgagee may be paid off piecenteal. Such a law would result in great injustice to the mortgagee. It would put him to a separate suit against each purchaser of a fragment of the equity of redemption though purchasing without his consent, and he would have separate suits against each of them. and suits in which no one of the parties would be bound by anything which took place in a suit against another. Difsaits, and the utmost confusion and embarrassment would Agent ad hoo-Withdrawal by.

## MORTGAGE-MORTGAGE DEBT-(Contd.)

Amount of-(Contd.)

APPORTIONMENT OF-(Contd.)

be created (180-1). (Lord Hobbouse.) NILAKANT BANERJI . SURESH CHUNDER MULLICK. (1885) 12 I.A. 171 = 12 C. 414 (422-3) = 4 Sar. 685.

-Mode of -Objection by mortgagee to-Pray Council appeal-Maintainability for first time in.

Their Lordships are clearly of opinion that this objection (to the mode in which the mortgage-debt has been apportioned in a suit for redemption by the purchaser of a portion of the equity of redemption) is not one which the appellant (mortgagee) is now entitled to take. They cannot find any trace of its having been taken in the Courts below. The written statement of the appellant (mostgagee) does not raise the question. On the contrary, it seems to adopt the same principle of apportionment as that adopted by the plaintiff. By yielding to the objection now for the first time taken, and re-opening the whole account, their Lordships would do great injustice to the respondents, and make a very dangerous precedent (409). (Sir James Calvile.) NAWAB AZIMUT ALIKHAN r. JOWAHIR SINGH.

(1870) 13 M.I.A. 404 = 14 W.R. P.C. 17 = 2 Suth. 346 = 2 Sar. 573.

-Tree mortgages - Mortgagee under-Purchase of equity of redemption in mortgaged property by-Contribufrom to both mortgages-Liability of mortgages for-Foreclosure of property under first mortgage to get rid of-Right of mortgagee.

Four mouzahs, including mouzah A, were first mortgaged by their owner in favour of G under a kut-kobala. Subsequently those and three other mouzahs were hypothecated to G. A notice of foreclosure was served under the first moregage. Later, the 1st respondent purchased the interest of the mortgagor in mouzah A at a revenue sale. Thereafter G assigned his interest under the two mortgages to the 2nd respondent upon trust to prevent the merger of his rights under them, and to keep them alive for the benefit of the 1st respondent, and empowered him to continue and prosecute the pending foreclosure proceedings, and the name of the 1st respondent was substituted for that of G in the foreclosure proceedings. More than 12 months after the notice of foreclosure had been given by G, the respondents sued upon the first mortgage only, praying for an order giving to the 1st respondent a proprietary right based upon foreclosere in the three mouzahs other than A. and with respect to A for a declaratory decree confirming his possesssion of it, on a right derived from foreclosure of mortgage.

During the pendency of that suit, the respondents brought another suit in another Court, within whose jurisdiction the three additional mouzahs mortgaged by the second mortgage were situated, against the defendant to recover the principal and interest under that kut-kobala. The claim in that suit was against the defendant personally.

Held that the plaintiffs had no right to claim mouzah d by foreclosure (222).

With respect to mouzah A, the 1st respondent, having purchased the equity of redemption, was bound to contribute to the payment of both the mortgages in the proportion of the value of mouzah A to the other properties, and he could not free himself from this obligation by foreclosing mouzah A under the first mortgage only (222). (Sir Robert P. Collier.) SRIMATI KAMINI SOONDARI CHOW-DHRANI P. KALI PROSUNNO GHOSE.

(1885) 12 I.A. 215 = 12 C. 225 (235) = 4 Sar. 652.

### Deposit of.

Full discharge-Deposit in-Effect of -Withdrawal ferent proportions of value might be struck in the different in partial discharge only-Plea of Onus of proof of-

Deposit of-(Contd.)

S. 83 of the Transfer of Property Act provides that money lodged" in full discharge" of a liability can only be drawn out by a creditor in full discharge of that liability. Where the money deposited is drawn out by an agent of the mortgagees appointed ad her, it is for them to show that he acted under such conditions that the statutory result does not follow from his act. If they fail to do this, then there is nothing to defeat or modify the operation of the statute and the consequences must be those which it prescribes. (Lord Atkinson.) RAM CHANDRA MARWARI P. RANI KESHOBATI KUMARI. (1909) 36 I. A. 85=

36 C. 840 (853.4) -6 M.L.T. 1 = 10 C.L.J. 1= 13 C.W.N. 1102-11 Bom. L.R. 765= 6 A.L.J. 617-2 I.C. 935-19 M.L.J. 419.

 Full discharge—Deposit in—Withdrasool by agent of mortgagec-Failure to comply with provisions as to partial discharge-Effect.

In a case in which money deposited by a mortgagor "in full discharge" of a liability is drawn out by an agent of the mortgagees authorised to do so, the mortgagees must be held bound by the act of their agent with all its results. If he has omitted to perform any of the conditions necessary to entitle him, on their behalf, and for their use and benefit, to draw that money out of Court, they cannot rely upon his default in this respect, to escape from the consequences which would, of necessity, have followed the withdrawal, if everything prescribed by the statute had been rightly done. The money drawn out will be held to have been drawn out in full discharge of the mortgagor's liability. (Lord Atkinson.) KAM CHANDRA MARWARI F. KANI KESHOBATI KUMARI.

(1909) 36 I.A. 85 = 36 C. 840 (855) = 6 M.L.T. 1 = 10 C.L.J. 1 = 13 C. W. N. 1102 = 11 Bom. L.R. 765 = 6 A.L.J. 617 = 2 I.C. 935 = 19 M.L.J. 419.

-Transfer of Property Act-Deposit under-Withdrawal by Receiver of Court appointed at instance of mortgagee-Statutory provisions-Compliance with-Necessity.

On a deposit by a mortgagor under the Transfer of Property Act, a Receiver appointed by Court at the instance of the mortgagee, clothed only with the right and authority of the mortgagee in reference to the money deposited, or the withdrawal of it from Court, is bound to comply with the requirements of the Statute under which the money was paid into Court, quite as much as the mortgagee himself, (Lord Atkinson.) RAM CHANDRA MARWARI P. RANI KESHOBATI KUMARI.

(1909) 36 I.A. 85 = 36 C. 840 (852) = 6 M.L.T. 1= 10 C.L.J. 1=13 C.W.N. 1102=11 Bom. L.R. 765= 6 A.L.J. 617 = 2 I C. 935 = 19 M L.J. 419.

-Transfer of Property Act, S. 83-Deposit under-Mortgagee's rights on.

On a deposit by a mortgagor under S. 83 of the Transfer of Property Act, in a case in which he is entitled under the Act to make the deposit, the rights of the mortgagee, or those representing him, are as follows. He is entitled, on presenting a petition (verified in the manner prescribed) stating the amount due on the mortgage and his willingness to accept the money deposited in full discharge of this amount, and, in addition, on depositing in the Court in which the money was lodged the mortgage deed, if then in his possession or power, to apply for and receive the money. And, under S. 84 of the Act, interest on the principal moneys ceases to run from the date of the tender, or as soon as the mortgagor has done all that has to be done by him to enable the mortgagee to take the money deposited out of Court, as the case may be. (Lord Atkinson.) RAM CHAN-DRA MARWARI D. RANI KESHOBATI KUMARI.

(1909) 36 I. A. 85 (91)=36 C. 840 (851)=

MORTGAGE-MORTGAGE DEBT-(Contd.)

Deposit of-(Contd.)

6 M. L. T. 1=10 C. L. J. 1=13 C. W. N. 1102= 11 Bom. L. R. 765=6 A. L. J. 617=2 I. C. 935= 19 M. L. J. 419.

-Transfer of Property Act, St. 83, 84-Deposit under-Withdrawal of, on terms other than those imposed

by Statute-Jurisdiction of Court to permit.

The Court has no jurisdiction, save with the consent of the mostgagor or his representatives, to permit the money deposited by the mortgagor pursuant to Ss. 83 and 84 of the Transfer of Property Act to be drawn on any terms other than those imposed by the statute (93). (Lord Atkinson.) RAM CHANDRA MARWARI P. RANI KESHOBATI KUMARI. (1909) 36 I. A. 85 = 36 C. 840 (852-3) = 6 M. L. T. 1= 10 C. L. J. 1=13 C. W. N. 1102=11 Bom. L. B. 765= 6 A. L. J. 617 = 2 I. C. 935 = 19 M. L. J. 419.

#### Discharge of.

Full owner-Mortgage by-Renewal of, by person with limited interest under his will-No discharge of mortgage debt by. See Mortgage-Extinguishment-KEEPING ALIVE-MORTGAGE BY FULL OWNER.

(1913) 40 I. A. 105 (115) = 35 A. 211 (225).

-. Mort pages of two items-Purchase by, of one of items in execution of third party's decree subject to his own mort gage-Value of that item, beyond purchase-money paid by him, exceeding mortgage amount-Discharge of mortgage delt in case of.

The appellant was a mortgagee of mouzahs K, N, and others, the mortgage of mouzah A' being a second mortgage, and that of mouzah N a first mortgage. In execution of a decree obtained by a subsequent mortgagee of mourah N, the said mouzah was sold subject to the appellant's mortgage, and was purchased by the appellant himself. The value of the said mouzah, beyond the purchase-money paid by the appellant, exceeded the amount due upon the appellant's mortgage.

Held, that it must be taken that the mortgage debt of the appellant was satisfied by the purchase of mouzah N and the value of that estate, and that the appellant, having thus obtained the full amount of his debt could no longer avail

himself of any other part of his security (96). The mortgage was only a security for the debt, and when it was satisfied, there was an end of any right to resort to

the further securities held by the appellant (96). (Sir Montagne E. Smith.) DOOLI CHAND v. RAM KISHEN (1881) 8 I. A. 93=7 C. 648 (651)= SINGH. 4 Sar. 245=Bald. 357=3 Suth. 734.

-Payment to third party-Discharge by-Plea of-Onus of proof of-Shifting of. See MORTGAGE-USU-FRUCTUARY MORTGAGE-DISCHARGE OF. 8 M. J. 311.

-Plea of, in suit for sale-Onus of proof of-Shifting of-Mortgaget put in possession of all mortgagor's property-Mortgagor completely under influence of mort-

gagec.

In a suit for sale based upon a mortgage, it appeared that B, the mortgagor, was a very young man leading a most immoral life, that he mortgaged the ancestral property of his family to N, under whom the plaintiffs claimed, and gave N possession practically of all his property, which included other villages not mortgaged to N. A considerable part of the property of which N. had obtained possession including some of the mortgaged villages, was sold by N. and some of the mortgaged villages were purchased by him N did not nor did the plaintiffs render accounts of what had been received by him from or in respect of any of the property, not even of that which had been mortgaged to M family, on whose behalf he acted. B was completely under

Discharge of-(Contd.)

the influence of N, an unscrupulous man, who exercised that influence regardless of the interest of B and his infant son, The plaintitts were unable to prove that anything was due under the mortgage in suit.

Held, that the case was an exceptional one in which it was for the plaintiffs to prove that the mortgage had not been satisfied and what, if anything, was due under the mortgage before they could get a decree for sale.

This is not an ordinary case of a suit for sale bosed on a mortgage in which it would be for the defendant, the mortgagor, to prove that nothing remained due under the mortgage if that was his defence, (Sir John Edge.) B. L. RAI D. BHAIYALAL. (1920) 24 C. W. N. 769 (775) -28 M. L. T. 345 = (1920) M. W. N. 685=

16 N. L. R. 94 - 58 I. C. 13.

Presumption of. See EVIDENCE ACT, S. 114, ILL. (i).

### Mortgagee's retention of, under agreement to account for same to mortgagor.

-Mortgagor's suit claiming amount unaccounted for in case of-Onus of proof in.

The plaintiffs-respondents borrowed from the defendantsappellants Rs. 29,000 upon a Zurpeshgee lease, the effect of which was that it was a lease for 15 years at a rent calculat ed to cover the interest on the Rs. 29,000 at 9 p. c. and also the Government revenue payable on the property leased, the lessees and mortgagees undertaking to keep down the Government revenue, and to pay themselves such interest, and being at liberty to make what further profits they could out of the Zurpeshgee lease. At the end of the fifteen years the principal sum was to be paid down in a lump sum and the property redeemed. That was the mortgage transaction. It was, however, admitted that it was further arranged between the parties that that sum of Rs. 29,000 should not be paid by the mortgagees into the hands of the mortgagers, but should be transferred to their account in the books of the former, to be applied, as occasion should require, in satisfaction of their judgment and other debts. The result of that arrangement was to make the mortgagees accounting parties to the mortgagors for Rs. 29,000.

It was, however, alleged by the plaintiffs, though the transaction was denied by the defendants, that the Rs. 29,000 proving insufficient to pay all the debts that were to be paid, one of the plaintiffs borrowed from his father-in-law a further sum of Rs. 3157-8, and paid it into the bank of the defendants, the latter giving a deposit note in the name of the father in-law, but treating the money as the money of the plaintiffs. The effect of that transaction, if it did take place, was of course to increase the sum for which the bankers were accountable by the amount of the further deposit.

In a suit brought by the plaintiffs claiming upwards of Rs. 10,000 as unaccounted for by the defendants, held that it lay upon the plaintiffs to prove the payment of the additional sum of Rs. 3157-8; and that it lay upon the defendants to disprove that payment, if the other side succeeded in establishing a prima facie case against them; and in any case to account for so much of the Rs. 29,000 as the plaintiffs did not admit to have been been paid (133). BABOO GUNGA PERSAD v. BABOO INDERJIT SINGH.

### (1875) 3 Suth. 132 = 23 W. R. 390 = 3 Sar. 486. Mortgagee's right to recover.

Discharge of delt by enjoyment of usufruct-Provision in mortgage deal for-Mortgagee allowing mort gagor to enjoy usufruct - Effect.

By a mortgage deed it was stipulated that the village of M. and a house in Surat should be mortgaged for the summentioned, Rs. 18,000 and upwards. The deed further provided: "The profit (or interest) of this money is settled

### MORTGAGE - MORTGAGE DEBT-(Contd.)

Mortgagee's right to recover-(Contd.)

for twelve annas, on these conditions, that the holders of the mortgage are to receive in redemption the whole of the produce of the said village, about Rs. 3000 or 3200, and after allowing for interest, the remainder will go for the purpose of liquidating the principal, and they shall continue so to receive and appropriate the annual produce until the whole of their demand be liquidated. The risk of collecting the income, and of any deficiency in the revenues, is upon our heads." That is, the mortgagors, "And we do further declare, that the holders of the said mortgage shall station a Mehta (or clerk) of their own in the said village for the purpose of making the collections; and we the mortgagors, so long as this property remains in mortgage we do agree to give him a monthly salary of Rupces five, and his daily food, so long as we can afford to do so."

Actual possession was taken by virtue of the mortgage. A Mehta was appointed, who was paid by the mortgagors, and who might have received the rents and profits of the village. He probably did receive the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them for four or five years afterwards.

Held that, on the true construction of the deed of mortgage, there was no binding contract between the mortgagors and mortgagee, binding the latter to apply the rents and profits to the payment of the debt, and that the mortgagee did not therefore forfeit his right to payment in consequence of having allowed the mortgagors themselves to take possession of the rents and profits during some of the years during which his Mehta was in possession.

The deed merely empowered the mortgagee to satisfy himself, just as an English mortgagee might, by taking possession of the rents and profits of the estate. If an English mortgagee chooses to forego the benefit of receiving the rents and profits, and permits the mortgagor to take them, it would have no effect as between him and the mortgagor; he would have a full right to recover his debt by reason of the deed (500). (Mr. Baron Parke.) JUGJEEWUN DAS KEEKA SHAH P. RAMDAS BRIJBOOKUN DAS.

(1841) 2 M. I. A. 487 = 6 W. R. 10 = 1 Suth. 109 = 1 Sar. 222.

### Offer to pay-Bous fide nature of.

-Exidence against-Nortgagee's non-possession or absence of control of money with which to pay at the time if.

It is very difficult indeed to say whether or no a man will be able to have control of money at a future date. Quacre, therefore, whether an offer to pay the amount due under a mortgage can be held to be not a hous fide ofter on the ground that the person offering had not at that time either the money or the control of the money that would have enabled him to meet the tender of the large amount due under the mortgage deed (46). (Lord Buckmaster.) CHALIKANI VENKATARAYANIM 5. ZEMINDAR OF TUNI.

(1922) 50 I. A. 41= 46 M. 108 (114) = 32 M. L. T. 70 = 17 L. W. 383 = 25 Bom. L R. 541 = 38 C. L. J. 34 = 28 C. W. N. 25 = A. I. B. 1923 P. C. 26 = 71 I. C. 1035 = 44 M. L. J. 631.

### Personal liability for.

-See MORTGAGE-PERSONAL LIABILITY UNDER.

### Prior mortgage-Money paid by mortgagee to discharge.

-Independent advance or part of mortgage debt.

The suit was to redeem Mouzah O by payment of Rs. 1200 the amount of the mortgage debt. The defendant-appellant contended that the mortgagor was not entitled to redeem upon payment of Rs. 1,200 inasmuch as he, the defendant, had been oldiged, after he had advanced the

Prior mortgage - Money paid by mortgagee to discharge- (Contd.)

Rs. 1.200 upon a mortgage, to pay a further sum of Rs. 1.141 in discharge of a prior mortgage and he claimed also a sum of Rs. 6.515 as the interest due upon that sum. The question for decision was whether that payment of Rs. 1.141 was an independent payment made by the appellant in addition to the Rs. 1 200 advanced upon the mortgage or whether it had been, as contended for the plaintiff, pail out of the mortgage money.

The three lower Courts found the issue upon that point against the appellant, and their Lordships affirmed the judgments below. RAJAH FURZUND ALIKHAN r. ABDUL (1872) 8 M. J. 181.

RAZAK.

#### Tender of-Waiver of.

-What amounts to-Statement by mortgager under an erroneous view of his rights that tender was unnecessary-

The practice of the Courts is not to require a party to make a formal tender where from the facts stated or from the evidence it appears that the tender would have been a mere form, and that the party to whom it was made would

have refused to accept the money.

To a letter written by the purchaser from the mortgagor of the mortgaged property asking to be informed of the amount due to the mortgagee under his mortgage so that the purchaser might send respectable men with money and pay off the mortgage debt, the mortgagee sent a reply to the effect that there was no need for the purchaser to pay anything because the rights which the mortgagee had conferred upon him under the mortgage had vested in him the whole of the mortgaged property and the mortgage was consequently at an end. Held that the letter could not be construed as equivalent to any such clear release to the mortgagor of his obligation to tender the money as was required in order to justify him in not having presented it for receipt (46.8).

The view put forward by the mortgagee in his reply was an erroneous view based upon invalid provisions in the deed of mortgage, but it by no means followed from that, that if in fact the tender had been made of the whole of the principal money and interest which was due up to that date, the mortgagee would not have accepted it. The fact is that this letter contains a reason why the tender is unnecessary, but the reason was wrong because the right to buy according to the terms which the mortgage deed contained was a right which was not enforceable in law. But it is on that hypothesis that they say there is no need for payment to be made. If this were not accepted as correct, there is nothing to relieve the purchaser from making the tender (47-8), (Lord Buckmaster.) CHALIKANI VENKATAKAYANIM P. ZEMINDAR OF TUNI. (1922) 50 I. A. 41=

46 M. 108 (114 6) = 32 M. L. T. 70 = 17 L. W. 383 = 25 Bom. L. B. 541 = 38 C. L. J. 34 - 28 C. W. N. 25 = A. I. B. 1923 P. C. 26 = 71 I.C. 1035 = 44 M.L.J. 631.

### MORTGAGE-MORTGAGED PROPERTY.

ACCRETION TO.

DEBUTTER LAND EXCLUDED FROM-AREA OF-ADMISSION IN MORTGAGE DEED AS TO.

DESCRIPTION OF.

DIMINUTION OF-DAMAGES OR COMPENSATION FOR. LEASE OF, FORMING PART OF SAME TRANSACTION AS MORTGAGE.

MANAGER FOR.

MORTGAGEE'S PURCHASE OF.

POSSESSION OF.

PURCHASER OF-PRIVATE PURCHASER-EXECUTION PURCHASER.

### MORTGAGE-MORTGAGED PROPERTY-(Contd.)

REVENUE DUE ON.

REVENUE REGISTERS-TRANSFER OF PROPERTY IN MORTGAGEE'S NAME IN.

REVENUE SALE OF.

REVENUE SETTLEMENT WITH MORTGAGEE OF.

SUBSTITUTION OF OTHER PROPERTY FOR. TITLE TO.

#### Accretion to.

Acquisitions by mortgagor or mortgaget if.

Under the English law it is recognised as a general rule that most acquisitions by a mortgagor enure for the benefit of the mortgagee increasing thereby the value of his security, and on the other hand, many acquisitions by the mortgagee are in like manner treated as accretions to the mortgaged property, or, as sub-titutions for it, and, therefore, subject to re-dempsion (159). (Sir James W. Colvile.) RAJAH KISHENDATT RAM 2. RAJAH MUMTAZ ALI (1879) 6 I. A. 145 = 5 C. 198 (210 1)= KHAN.

5 C. L. R. 213-4 Sar. 17-3 Suth. 637-R. & J.'s No. 58.

### Debutter land excluded from-Area of-Admission in mortgage deed as to.

-Evidence to rebut-Thakbust map made in survey prior to mortgage if sufficient.

A mortgage deed executed in respect of a revenue-paying mouzsh exempted debutter land within the limits of the mouzah, the deed specifying the number of bigas making the area of the debutter. In a suit for possession of the property comprised in the mortgage by the purchaser thereof in execution of a decree obtained on foot of the mortgage, the mortgagors contended that they were not bound by or limited to the area of the debutter mentioned in the mortgage deed, but that they were entitled to any area in excess of that amount which they could shew that they had previously held as debutter. The High Court decided in favour of the mortgagors relying upon a thakbust map made in a Survey in 1869 (i.e., before the date of the mortgage deed). The learned Judges were of opinion that the thakbust map should be taken as the basis of the decision of the question of the identity of the debutter land, unless it was displaced by any better evidence, and they held that it lay upon the plaintiff to rebut the evidence of the map.

The statements in that map of lands being debutter appeared on the face of it to have been made, as was pointed out. by agents on behalf of the proprietor of the mouzah and the principal tenants, in the presence of the agents of the holders of estates in the neighbouring mouzahs. The amin who made the map had to lay down boundaries, but had no authority to decide what lands were debutter.

Held that the thakbast map was of no weight against

the admission in the mortgage deed (148.9). The value of the map must depend upon the inquiry which was made by the amin, and the statements of what lands were debutter may have been and probably were given by the defendant's agents, no one being present to question the accuracy of them. S. 83 of the Evidence Act has not the effect which the High Court gives to it, of making those statements evidence (148). (Sir Richard Couch.) MATI BIBI JARAO KUMARI P. RANI LALONMONI.

(1890) 17 I.A. 145 = 18 C. 224 (230)= 5 Sar. 628.

-Weight to be attached to.

A mortgage deed executed by the defendants in favour of the predecessor in title of the plaintiff in respect of a revenue-paying mouzah exempted debutter land within the limits of the mouzah, the deed specifying the number of bigas making the area of the debutter. In a suit brought by the plaintiff, the representative in interest of the purchaser of the mort-

### MORTGAGE-MORTGAGED PROPERTY-(Contd.) | MORTGAGE-MORTGAGED PROPERTY-(Contd.) Debutter land excluded from—Area of—Admission in mortgage deed as to-(Contd.)

gaged property in execution of a decree obtained on foot of the mortgage, for possession of the said property, held that the statement in the deed of the extent of the debutter land comprised in the mouzah was a deliberate admission by the mortgagors, the defendants, which imposed upon them the

burden of proving that it was untrue, or that they were not bound by it (147).

Such an admission as that is entitled to great weight, and should be met by satisfactory evidence (149). (Sir Richard Couch.) SRIMATI BIBI JARAO KUMARI P. KANI LALONMONI. (1890) 17 LA. 145 = 18 C. 224 (230 1) =

### Description of.

-Mistake as to-Evidence-Later deeds by mortgagor to third parties with same description-Rectification of, at their instance-Evidence of-Admissibility. See MORT-GAGE-DEED OF-RECTIFICATION OF-DESCRIPTION OF PROPERTY. (1914) 41 I.A. 110 (119-20) = 41 C. 972 (988).

Mistake as to-Finding as to-Evidence justifying. See MORTGAGE-DEED OF-RECTIFICATION OF-DES-CRIPTION OF PROPERTY. (1914) 41 I.A. 110 (119)= 41 C. 972 (988).

-Mistake as to-Rectification of mortgage deed as to-Direction for in a suit for sale on foct of mortgage-Jurisdiction as to-Binding character of, on parties to suit and strangers-Court having no jurisdiction otherwise. Sec MORTGAGE--DEED OF-RECTIFICATION OF-DESCRIP-TION OF PROPERTY. (1914) 41 I. A. 116 (116) = 41 C. 972 (984).

Operation part of deed-Recital-Descriptions in-Conflict between-Which prevails.

The question was whether the village of B was included in a mortgage in favour of the appellant.

After conveying by specific description the property originally offered in security, the mortgage deed threw in as an additional subject of conveyance "all other (if any) the mauzas, mahals, villages, lands, and shares of and interest in mauzas, mahals, villages, and lands comprised in the said sanad". It was admitted that the village of B was comprised in that Sanad.

Held, reversing the Court below, that the village of B was included in the mortgage.

The village of B passed by words, which include every thing that the sanad comprised. There is no contradictory recital. After noticing the original application for the loan the narrative winds up by saying that the Bank (the appellant) have agreed to make the advance on having repayment of the sum advanced and interest thereon secured "in manner hereinaster appearing." That recital points to the operative part of the deed as complete in itself, without anything in the preamble to control or confuse the natural and ordinary meaning of the language used. There is surely nothing so very strange in finding that a mortgage deed as finally settled contains something more than the original security proposed. (Lord Macnaghten.) LAND MORT-GAGE BANK OF INDIA v. ABDUL KASIM KHAN.

(1898) 26 C. 395=7 Sar. 449.

-See DEED - CONSTRUCTION OF -- OPERATIVE PART -RECITAL (1880) 7 I.A. 83 (99-100) = 2 M. 239 (256-8). Diminution of-Damages or Compensation for.

Mortgagee's right to-Mortgage taken with knowledge of circumstances of property and position of mortgagor's family.

Part of the property expressed to be mortgaged was withdrawn from the security in consequence of a successful

Diminution of -- Damages or Compensation for --(Contd.)

claim to it by the martgagor's sister. The mortgagee claimed damages or compensation for the diminution of his security. The Sub-Judge rejected that claim, being of opinion that the mortgagee when he took his security was aware of the circumstances of the property and the position of the mortgagor's family.

Held that the Sub-Judge was right (37). (Lord Mac-naghten.) ABDULIAH KHAN v. BASHARAT HUSAIN.

(1912) 40 I. A. 31 = 35 A. 48 (57) = 13 M. L. T. 182 = (1913) M. W. N. 131 = 17 C.W.N. 233 = 17 C.L.J. 312 = 15 Bom. L.R. 432 = 17 I.C. 737 = 25 M L.J. 91.

Lease of, forming part of same transaction as mortgage.

-See MORTGAGE-LEASE OF MORTGAGED PRO-PERTY, ETC.

### Manager for.

-Nomination of -Mortgagee's right of.

A mortgagee under an English mortgage has a perfect right before lending his money to insist upon the mortgagor appointing managers in whom the mortgagee had confidence (271). (See John Edgs.) MATI LAI. DAS v. EASTERN MORTGAGE AND AGENCY CO., LTD.

(1920) 47 I. A. 265= 25 C. W. N. 265 - (1920) M. W. N. 631 = 2 U. P. L. B. (P C.) 186 = 28 M.L.T. 351 = 61 I. C. 486.

Nomination by mortgages of -Effect of - Mortgages if thereby becomes liable as mortgagee in posternon.

A mortgage, which was to be construed as an English mortgage, provided as follows :-

The mortgagor doth hereby covenant with the mortgages that so long as any money shall remain due under the mortgage and until the mortgagees shall enter into and take possession of the mortgaged premises (1) such mortgaged premises shall be managed entirely (and without any interference whatever by the mortgagors) by W and G, or in the event of the death, resignation or dismissal of either of them by the survivor of them, or failing such survivor, by another duly qualified manager to be nominated by the mortgagees. Any manager afterwards so appointed by the mortgagoes shall, if so required by the mortgagors, give proper security for the due performance of his duties and the proper management of the estate. (2) The managers or manager shall have the fullest possible powers for the proper management and improvement of the mortgaged premises and for the realisation of the rents and profits thereof and they or he shall not be liable to dismissal except for causes proved to the satisfaction of the mortgagees. The mortgagors shall not in any event enter into any engagements or execute any documents for the alienation of any part of the mortgaged properties without the written concurrence of the mortgagees, it being the intention of the parties and being of the essence of the negotiations for the grant of the said loan that the mortgagors shall in no way interfere in the management of the said mortgaged premises. The managers or manager shall out of the rents and profits of the mortgaged premises as the same shall be received, in the first place, pay all the charges payable in respect of the mortgaged premises; in the second place, pay to the mortgagees interest up to the date fixed for payment, and thereafter the annual sums required for the service of the said loan, and, in the third place, pay all costs and charges for management and realisation of rents, etc., and shall hold any surplus of the said issues and profits in trust for the

It was a condition upon which the mortgagees agreed to advance the loan that the mortgagor should appoint W and

10 M.L.J. 368.

Manager for-(Contd.)

G as the managers. The mortgagor entered into a separate agreement with II' & L of even date with the mortgagee.

In a suit for sale on the mortgage, held (1) that the mortgage was neither unconscionable nor unenforceable in equity, and (2) that the mortgagees were not in possession through IV & G as mortgagees and were therefore not hable to account as mortgagees in possession (271).

There is no doubt that the mortgage is in some respects peculiar in its drafting and that it conferred very wide powers on W & G as managers, but the mortgagor executed the mortgage and there is nothing to suggest that he was misled and did not thoroughly understand the contract which he made, or granted the mortgage under undue

influence or from pressure (271).

IV & G were in possession as the agents and managers of the mortgagor and not of the mortgagee. The company (mortgagees) never was in possession, nor was it liable for any default or any waste or mismanagement or any negligence of W & G as managers. The company had a perfect right before lending its money to insist upon the mortgagor appointing managers in whom the company had confidence (271). (Sir John Edge.) MATI LAL DAS P. EASTERN MORTGAGE AND AGENCY CO., LTD.

(1920) 47 I. A. 265 = 25 C. W.N. 265 = 28 M.L.T. 351 = 2 U. P. L. R. (P.C.) 166 = (1920) M.W.N. 631 = 61 I. C. 486.

-Nomination by mortgagee but appointment by mortgagor of-Default and negligence of manager-Mortgagee's liability for.

The mortgagor and the mortgagees under an English mortgage agreed that certain nominees of the mortgagees should be appointed managers and be liable to furnish accounts to the mortgagees. A deed of management of even date was executed by the mortgagor in favour of the nominees by which the latter were appointed managers. The mortgagees were, however, not parties to that deed of management.

On a question arising as to whether the managers were agents of the mortgagor or of the mortgagees, held, that they were agents of the mortgagor only, and that the mortgagees were not liable for any default or any waste or mismanagement or any negligence of the managers (271). (Sir John Edge.) MATI LAL DAS v. EASTERN MORTGAGE Co., LTD. (1920) 47 I. A. 265= 25 C. W. N. 265=(1920) M. W. N. 631= AND AGENCY CO., LTD.

2 U. P. L. R. (P. C.) 166 - 28 M.L.T. 351 - 61 I. C. 486.

#### Mortgagee's purchase of.

C.P.C., O. 34, R. 14-PURCHASE IN CONTRAVENTION

-Effect. See C.P.C. OF 1908, O. 34, R. 14. (1904) 32 I.A. 23 (37) = 32 C. 296 (316).

DECREE OBTAINED BY THIRD PARTY-EXECUTION

-Purchase at-Mortgagor's suit to set ande-Parties -Decree-holder if a necessary party.

Property subject to a mortgage was sold in execution of a decree obtained by a third party and purchased by the

mortgagee himself.

Held, that in a suit brought by the mortgagor to set aside the execution sale the decree-hokler would be a proper and even a necessary party (227-8). (Lord Hobboure.) MAL-KARIUN v. NARAHARI. (1900) 27 I. A. 216=

25 B. 337 (351·2) = 5 C.W.N. 10 = 2 Bom. L.R. 927 = 7 Sar. 739 = 10 M.L.J. 368.

Purchase at-Mortgagor's suit to set aside, and to redeem-Misjoinder-Suit if bad for.

MORTGAGE-MORTGAGED PROPERTY-(Contd.) | MORTGAGE-MORTGAGED PROPERTY-(Contd.) Mortgagee's purchase of-(Contd.)

DECREE OBTAINED BY THIRD PARTY-EXECUTION OF-(Contd.)

Scanble: When property subject to a mortgage is sold in execution of a decree obtained against the mortgagor by another creditor and is purchased by the mortgagee himself, the mortgagor, who claims to have the sale set aside on the ground of irregularity, can unite a suit to set aside the sale with one to redeem, and such a suit will not be had for misjoinder (226-7). (Lord Hobbouse.) MALKARJUN v. (1900) 27 I.A. 216 = 25 B. 337 (348-9)= NARAHARI. 5 C.W.N. 10=2 Bom. L.R. 927=7 Sar. 739=

-Purchase at - Nullity of -Suit by mortgagor on feet of-Amendment of plaint in, by seeking to set aside decree and to add decree holder as party-Privy Council appeal-

Permissibility of amendment in.

Property subject to a mortgage was sold in execution of a decree obtained by a third party and purchased by the mortgagee himself. The heirs of the mortgagor thereupon sued the mortgagee-purchaser for redemption of his mortgage and for accounts, ignoring the sale altogether. The mortgagee-purchaser relied upon his execution purchase and pleaded that the legality of the sale could not be impeached in the suit as framed, and that the claim for redemption could not be maintained unless a suit was brought to set aside the sale. He further suggested that he had an answer to the contention that the sale was illegal, if it should be set up by the mortgagor's heirs. Nevertheless the plaintiffs took their stand upon their original case that the sale was a nullity, and did not, either in the trial court, or in the lower appellate court, or even in the High Court in second appeal apply for leave to remodel their suit by making it a suit to set aside the sale or to add the decreeholder as a party.

Held, that under the circumstances, leave could not be given by the Privy Council to the plaintiffs to amend their plaint by adding a prayer to set the sale aside (227.8). (Lord Hobbouse.) MALKARJUN c. NARAHARI.

(1900) 27 I.A. 216 = 25 B. 337 (351-2) = 5 C.W.N. 10 = 2 Bom. LR. 927 = 7 Sar. 739 = 10 M.L.J. 368.

-Purchase of one of two mortgaged items at, subject to mortgage—Value of that item, beyond purchase money, exceeding amount of mortgage—Effect of—Discharge of entire mortgage debt by reason of. See MORTGAGE—MORTGAGE DEBT—DISCHARGE OF—MORTGAGE OF (1881) 8 I.A. 93 (96)=7 C. 648 (651) TWO ITEMS.

#### DECREE ON MORTGAGE.

-Purchase in execution of-Revenue sale subsequent in respect of arrear falling due subsequent to purchase by mortgagee-Purchaser at-Rights of, and of mortgagee parchaser—Latter's right to use mortgage as a "shield" against former. See BENGAL ACTS—LAND REVENUE (1912) 39 I.A. 228= SALES ACT OF 1859, S. 54. 40 C. 89.

#### Possession of.

-Mortgagee obtaining possession under decree div possessed by mortgagor-Suit for possession against mortgagor by-Decree in-Form of-Interest on mortgast amount for period of dispossession in-Award of-Propricty.

The plaintiffs were the representatives of a second mortgagee of certain property, and they sued the mortgagors for

recovery of possession of the said property.

The second mortgagee had obtained possession of the mortgaged property under a decree in a suit instituted by him against the mortgagors; but they were dispossessed by a prior mortgagee in virtue of a decree obtained by him.

Possession of-(Contd)

The mortgagors, however, discharged the prior mortgage and entered into possession of the mortgaged property, and the plaintiffs' attempt to get back possession from them proved unavailing. They, therefore, instituted the suit for possession.

The first Court decreed the suit, giving the plaintiffs a decree not only for the recovery of the possession of the mortgaged property, but also to recover interest on the mortgage amount for the period of their dispossession

Held modifying the decree of the first court, that the plaintiffs were only entitled to a decree for the possession of

the property (21-2).

In that case the plaintiffs having got possession of the land, the question will remain open until the defendants seek to redeem the land. Then the question will arise, how much is due to the plaintiffs as the second mortgagees, and for what amount they are entitled to hold possession of the land under their mortgage (22) (Six Barnes Postock,) NARAIN SINGH : SHIMBHOO SINGH.

(1876) 4 I.A. 15 = 1 A. 325 (332) = 3 Sar. 673 = 3 Suth. 357.

Mortgagor's right to recover, from mortgagor-Decree for sale-Mortgagee's purchase in secution . !-Order final giving him postession made after deerer in appeal extending time for payment and within time allow-

ed for payment-Right in case of.

The mortgagees appealed to the High Court against a decree of the Sub-Judge which awarded them less than the amount claimed by them. Pending the appeal the mostgaged property was sold in execution of the Sull-Judge's decree and was purchased by the mortgagees themselves In the appeal the High Court passed a decree dated 24-1-1905 for the whole of the amount claimed by the mortgagees, allowing the mortgagors six months' time for redemption, and directing that, in the event of their not redeeming within the time allowed, the property should be sold. In the interval the mortgagees had applied for possession consequent upon their purchase, but that application had been rejected by the Sub-Judge. The mortgagees appealed from that order, and in that appeal an order was made by the High Court on 18-4-1904 deciding that the mortgagees were entitled to possession. That order was allowed to become final.

On an application made by the mortgagors on 19-5-1904 claiming restoration to possession by setting aside the sale in execution of the Sub-Judge's decree under which the mortgagees had purchased the property, held that the order of 18-4-1904 could not be treated as null and void and was binding on the parties, and that under it the mortgagees were entitled to retain possession of the property (Lord Macnaghten.) RAM GOLAM SAHU P. RARSATI SINGH. (1908) 36 LA. 27 = 36 C. 336 = 5 M.L.T. 129 =

9 C.L.J. 158 = 13 C.W.N. 321 = 11 Bom. L.B. 214 = 6 A.L.J. 30 = 1 I.C. 124 = 19 M.L.J. 178.

-Mortgagor's right to recover, from mortgagee-Mortgagee not an usufructuary mortgagee.

Mortgagees, who are not usufructuary mortgagees, cannot resist a suit for possession of the mortgaged property brought by the purchasers of the equity of redemption therein by setting up their mortgages as shields. (Lord Carton.) BIJAI SARAN SAHI D. RUDRA BAGHESWARI. (1929) 30 L. W. 604 = (1929) M. W. N. 827 =

A. I. B. 1929 P.C. 288.

Second mortgagee's suit against mortgagor for-Maintainability-I imitation -Possession obtained by second mort gagee under decree against mort gagor-Dispossession by first mort gagee - Discharge of first mortgage by mort-

## MORTGAGE -MORTGAGED PROPERTY-(Contd.) | MORTGAGE-MORTGAGED PROPERTY-(Contd.)

Possession of-(Contd.)

gager and possession obtained by him - Suit by second mortgagee in case of.

The plaintiffs were the representatives of a second mortgagee of certain property, and in 1872 they instituted the suit out of which the appeal arose to recover the said property from the representatives of the mortgagor. The question was whether such a suit was maintainable at all and whether it was within time.

The second mortgagee had in August 1846 obtained a decree putting him in possession of the mortgaged property. In October, 1847, however, a prior mortgagee obtained a decree for possession and ousled the second mortgagee. In September, 1870, the mortgagors paid off the prior mortgagee and obtained possession of the property. The plaintiffs, as heirs of the second mortgagee, thereupon claimed a right to possession by virtue of the decree of 1846, but it was held that they were not entitled to execution under that decree, and they, therefore, instituted the suit for possession.

The High Court held that no cause of action accrued to the plaintiffs by reason of the satisfaction of the debt of the prior mortgagee, and the recovery of possession of the property by the mortgagors or their heirs. The High Court was of opinion that the remedy of the second mortgagee or his heirs upon dispossession was to sue within the proper period for the recovery of the money lent by the second mortgagee to the mortgagors. The High Court, therefore, held that the suit for possession was not maintainable and that it was harred by fimitation.

Held, reversing the High Court, that the plaintiffs were entitled to see for possession and that the suit was not

baryed by fimitation (19).

When the first mortgagee was paid off in 1870 the title of the plaintiffs, which had all along been a good title as against the mortgagors, was a valid title as against every one. Then when their title became a valid and a good title, the mortgagors had no right to enter upon the possession of their land. But the mortgagors did enter into possession of it, and keep the po-session from the plaintiffs; and it appears to their Lordships, that having the right and title to the land when the first mortgage was paid off, the entry of the mortgagors upon that land to which the plaintiffs had obtained a right under the second mortgage gave them a cause of action against the mortgagors, the defendants. The plaintiffs having a good title when the first mortgagees were paid off in 1870, their cause of action accrued when the plaintiffs (defendants?) after that period entered into possession of the estate to which they had no title. The suit is therefore within time (19), (Sir Barnes Peaceck.) NA-RAIN SINGH : SHIMBHOO SINGH. (1876) 4 I. A. 15 = 1 A. 325 (328-30) = 3 Sar. 673 = 3 Suth. 357.

### Purchaser of-Private purchaser-Execution purchaser.

-Position and rights of -Distinction.

Their Lordships think that the title of a judgment creditor, or a purchaser under a judgment decree, cannot be put on the same footing as the title of a mortgagor, or of a person claiming under a voluntary alienation from the mostgagor. They are of opinion that the possession of a purchaser, under such circumstances, is really not the possession of a person holding in priority (privity?) of the mortgagor, or holding so as to be an acknowledgment of the continuance of the title of the mortgagee. The possession, which the purchaser supposed he acquired, was a possession as owner. He thought he was acquiring the absolute title to the property, and that he was in possession as absolute owner. Their Lordships are assuming that no notice was proved of the existence of the mortgage title given to, or

MORTGAGE - MORTGAGED PROPERTY - (Contd.)
Purchaser of - Private purchaser - Execution pur-

chaser of Private purchaser Execution put chaser—(Contd.)

acquired by, the purchaser; and there being no such notice, they are of opinion, that the possession of the purchaser was the possession of a person claiming to be owner (111). (Lord Justice James.) ANUNDO MOYEE DOSSEE v. DHONENDRO CHUNDER MOOKERJEE.

(1871) 14 M. I A. 101 = 16 W. R. P. C. 19 = 8 B. L. R. 122 = 2 Suth 457 = 2 Sar. 698.

#### Revenue due on.

MORTGAGEE PAYING, ON DEFAULT OF HINDU WIDOW TO PAY-REMEDY OF.

Suit to recover amount by sale of estates—Impleading of reversioners in, so as to give them opportunity to pay—Necessity. See HINDU LAW—WIDOW—REVENUE DUE UPON ESTATE. (1867) 11 M. I. A. 241 (267 8).

SALE UNDER ACT I OF 1845—PAYMENT OF REVENUE BY MORTGAGEE TO AVERT.

-Charge on property saved-Mortgagee's right to.

The revenue due to the Government for a Talook which had been mortgaged to one N was not paid by the widow of the mortgager who then held the talook as his heirese. The talook would in consequence have been put up for sale by the Government Collector, and would have been sold according to Act 1 of 1845, discharged from the mortgage and from all other incumbrances. To save the mortgage and the Talook the mortgagee's widow, who had in that character become entitled to all the rights of her husband as mortgagee of the Talook, deposited the amount in arrear with the Collector.

Held that, considering that the payment of the revenue by the mortgagee would prevent the Talook from being sold, it would be difficult to come to any other conclusion than that the person who had such an interest in the Talook as entitled him to pay the revenue due to the Government, and did actually pay it, was thereby entitled to a charge on the Talook as against all persons interested therein for the amount of the money so paid (258). (Lord Romilly.) NU-GENDER CHUNDER GHOSE C. SREEMUTTY KAMINEE DOSSEE. (1867) 11 M. I. A. 241=8 W. R. P. C. 17=2 Suth. 77=2 Sat. 275.

Recovery of amount paid—Mortgagee's sunt for, under S.9 of that Act—Decree in—Scope of—Relief obtainable in—Defendant in possession of property having only limited interest therein.

If a mortgagee who pays the arrears of revenue due for the mortgaged property to prevent it from being sold under Act I of 1845 seeks repayment only under S. 9 of that Act, as against the person in possession of the property, who has but a limited interest therein, and confines his soit to that object, their Lordships concur with the opinion of the High Court that the decree so obtained against the person in possession can only be made effectual against the property of that person, including such interest as she had in the property (266). (Lord Romilly.) NUGENDER CHUNDER GHOSE v. SREEMUTTY KAMINEE DOSSEE.

(1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.

-Remedies of mortgagee in case of-Joinder of, in one suit.

A mortgagee, who pays off the arrear of revenue due in respect of the mortgaged property to save the property from being sold under Act I of 1845, has two courses open to him: he may institute a suit to enforce the mortgage and to tack to the mortgage the amount of the revenue paid by him to save the estate, and to have the estate sold to pay that amount; or he may proceed under S. 9 of Act I of 1845.

### MORTGAGE - MORTGAGED PROPERTY-(Contd.) | MORTGAGE-MORTGAGED PROPERTY-(Contd.)

Revenue due on-(Contd.)

SALE UNDER ACT I OF 1845—PAYMENT OF REVENUE BY MORTGAGEE TO AVERT—(Contd.)

He may probably unite both these objects in one plaint (259). (Lord Remilly.) NUGENDER CHUNDER GHOSE v. SREEMUTTY KAMINEE DOSSEE.

(1867) 11 M. I. A. 241 = 8 W. B. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.

### Revenue registers—Transfer of property in mortgagee's name in.

-Practice in Burma of.

It is indeed a common custom in Burma when land is mortgaged, even when only for a short term of years, to transfer it into the name of the mortgagee in the Revenue Registers (116). (Lord Macnaghtee.) KADER MOIDEEN P. NEPEAN. (1894) 21 I. A. 96=21 C. 882 (902) = 6 Sar. 453.

#### Revenue sale of.

——Invalid sale—Proceeds of, in hands of Government —Application of, towards mortgage debt—Mortgage's right of—Purchasers at revenue sale—Rights of mortgage against.

I had an equitable mortgage of certain villages which stood in the name of the son of the mortgagor. Pending a suit to enforce the mortgage, the mortgagor died and his son was brought on record as his legal representative. The son did not set up any title in himself to the mortgaged property, and in the suit a decree was passed establishing the mortgage against the mortgaged property on the footing that it was the property of the mortgagor.

In the interval between the date on which the son was brought on record as the legal representative of the mortgagor, and the date of the decree in the mortgage suit, the Collector brought the mortgaged property to sale for arrears due by the son treating the property as the unencumbered estate of the son. The Collector had ample notice of fr mortgage claim against the property, but nevertheless, he suppressed all mention of the mortgage. At the sale held by the Collector the property was purchased by third parties.

After the decree in his suit, / filed the suit out of which the appeal arose against the Collector and the auction-perchasers, claiming to be entitled to have the sale proceeds of the property in the hands of the Government applied in satisfaction of his mortgage debt.

Held, reversing the Court below, that J was entitled to have the amount recovered by the Collector from the sale of the property in question with interest thereon, according to the rate payable in such cases, to be applied, as far as they would extend, in payment of his demand (297).

Quaere, whether J had any claim against the auctionpurchasers (295-6). (Mr. Pemberton Leigh.) DOUGLAS I. COLLECTOR OF BENARES. (1852) 5 M. I. A. 271= 1 Suth. 231=1 Sar. 434.

Purchaser real of equity of redemption—Fraud of—Sale brought about by—Subsequent mortgagee's right to attack—Omission to do so in prior mortgagee's suit to recover his amount from surplus revenue sale proceeds—Effect. See MORTGAGE—PRIOR AND SUBSEQUENT MORTGAGES—SUBSEQUENT MORTGAGEE—REVENUE SALE OF MORTGAGED PROPERTY. (1917) 34 M. L. J. 361 (366).

### Revenue Settlement with mortgagee of.

——Effect of, on title of mortgagor. See MORTGAGE—
MORTGAGED PROPERTY—TITLE TO —MORTGAGOR—
TITLE OF—EFFECT ON, ETC.

(1919) 46 I. A. 151 (155-6)=42 M. 813 (819).

### MORTGAGE-MORTGAGED PROPERTY-(Contd.) MORTGAGE-MORTGAGED PROPERTY-(Contd.) Sale of.

-Evidence against-Mortgagor's subsequent dealings with property as owner if.

In a suit for redemption of a mortgage brought by persons who claimed to have purchased the properties comprised in that mortgage and subject to the same, the defendantsmortgagees denied that the properties had been effectively sold to the plaintiffs and adduced evidence of subsequent dealings with the properties by the mortgagor on the footing that they continued to belong to him. Quaere whether any of the evidence given on behalf of the defendants to the effect of the subsequent dealings by the mortgagor with the property was admissible (374). (Lord Phillimore.) EHTISHAN ALL P. JAMNA PRASAD. (1921) 48 I A. 365-

15 L. W. 104 = 30 M. L. T. 132 = 9 O. L. J. 71 = 14 O C. 272 24 Bom. L R. 675 = A.I.R. 1922 P.C. 56-27 C. W. N. 8 20 A L. J. 961 - 64 I. C. 299.

Interest in arrear-Sale for-Right of. Say MORT-GAGE-INTEREST ON AMOUNT OF-ARREADS OF -SALE OF MORTGAGED LANDS FOR.

(1919) 46 I. A. 151 (155 6) - 42 M. 813 (819).

-Mortgage turning out to be invalid-Renefit of-Party entitled to. See EXECUTION SALE-MORTGAGE-PROPERTY SUBJECT TO. (1909) 36 I. A. 203 (208 9) = 31 A. 583 (589-90)

### Substitution of other property for.

-Co-sharers-Mortgage by one of-Partition subsequent between him and other shavers-Other property allotted to mortgagor at-Substitution of, for mortgaged property-Provision in mortgage deed for-Validity. See CO-SHARERS - MORTGAGE BY ONE OF-PARTITION BETWEEN SHARERS SUBSEQUENT TO.

(1914) 27 M. L. J. 13 (16).

Co sharers-Mortgage by one of, of share in estate joint and undivided but enjoyed in severalty-Partition between sharers subsequent to, and allotment of different property to mortgagor-Effect of, on mortgagee's rights-Partition through Court—Partition by private arrangement
—Fraud in—Execution purchaser of mortgagor's share in substituted property-Mortgagec's rights against. See Co-SHARERS-MORTGAGE BY ONE OF, OF SHARE IN ESTATE (1875) 1 I. A. 106 (121).

-Money-Conversion of mortgaged property into-Mortgagee's rights in case of. See LIMITATION ACT OF (1913) 41 L. A. 45-41 C. 654. 1908, ART. 132.

-Revenue sale invalid pending suit on mortgage-Proceeds of, in hands of Government-Application of, towards mortgage debt -Mortgagee's right of -Purchasers at revenue sale-Mortgagee's rights against. See MORTGAGE -MORTGAGED PROPERTY - REVENUE SALE OF-(1852) 5 M. I. A. 271 (297). INVALID SALE.

#### Title to.

MORTGAGOR-TITLE OF.

-Effect on, of resenue settlement of property with mortgagec-Effect of.

The appeal arose out of a suit brought by the respondent to redeem a certain village, in which the appellants contended that, though they were originally mortgagees, they had acquired an absolute interest. G was the original mortgagor. and the respondent was the purchaser from him of the suit village subject to the mortgage in favour of the appellants.

The appellants contended that a settlement of the suit village made by the Revenue Officers with the appellants had so taken the proprietorship of the village out of G and vested it in themselves, as to make the sale by the former to the respondent utterly invalid,

Title to-(Contd.)

MORTGAGOR-TITLE OF-(Contd.)

Held, affirming the Court- below, that the settlement proceeding could afford no bar to the suit inasmuch as the Settlement Officer had no power te determine questions of title. GOKULDOSS r. KRIPARAM.

(1873) 13 B. L. R. 205 - 3 Sar. 279.

-. Mortgagee's eight to dispute-Estoppel.

In a suit between mortgagor and mortgagee, in which the only question is whether the mortgagors have power to redeem, the mortgagee is not at liberty to set up by way of defence the title of third persons to a part of the mortgaged property. Having taken the mortgage from persons claiming, on the face of the instrument, to have the whole interest in the estate, he cannot be allowed afterwards to dispute the title of his mortgagors and to allege not only that he is irredeemable, but that, even if redeemable, he holds part of the estate which he has so taken by another and independent title, AGHA HUSSUN KHAN BAHADOOR r. MUSSAMUT JANEE BEGUM. (1872) 8 M. J. 149. -Mortgagor's right to dispute-Estoppel.

In a suit to enforce a mortgage it does not lie in the mouth of the morigagor to say that he has no title to any part of the mortgaged property, and that there ought therefore to be only a personal decree in the suit and not a decree as in a mortgage suit involving the mortgaged property.

He has professed to have an interest in this property, and whatever interest he may have had has been bound by the mortgage, and as far as he is concerned, must be enforced against him. (Lard Phillimere.) BHOLANATH SEN v. BALARAM DAS. (1922) 18 L. W. 48 - 27 C. W. N. 607 -(1923) M. W. N. 525 = 70 I. C. 932 = 31 M. L. T. 306 = A. I. R. 1922 P. C. 382-47 M. L. J. 258.

MORTGAGOR'S SON-TITLE CLAIMED BY-EVIDENCE AGAINST.

-Direction by him to tenants to pay rent to mortgages

Property standing in the name of G was mortgaged by his father S. claiming to be entitled to the same in his own right on the ground that it was purchased by him with his own funds in the name of his son G. On a question arising as to whether the property really belonged to the son, G, or to his father, S, held that, there could be no stronger evidence in favour of the mortgagee's claim under the mortgage, or more conclusive proof that G could set up no title to himself in opposition to it than an amal-dastak from G to the tenants of the estate directing them to pay their rents to the mortgagee (278). (Mr. Pemberton Leigh.) DOUGLAS v. COLLECTOR OF BENARES. (1852) 5 M. I. A. 271 = 1 Suth. 231 = 1 Sar. 434

-Written statement filed by mortgagor claiming title in himself if.

Where the question was whether property which stood in the name of G belonged to him or to his father, S, who had purported to mortgage the same, S, in the written statement filed by him in answer to a sait brought to enforce the mortgage did not suggest that the property belonged to his son, G.

Held that, the answer of S would be no evidence against G, unless it had in fact been put in by G himself under his father's seal (2767). (Mr. Pemberton Leigh) DOUGLAS THE COLLECTOR OF BENARES.

(1852) 5 M. I. A. 271 = 1 Suth. 231 = 1 Sar 434. MORTGAGE-MORTGAGEE.

-[Reference must also be made to the headings (1) MORTGAGE DEBT, (2) MORTGAGED PROPERTY, (3) MORTGAGOR, and (4) MORTGAGOR AND MORTGAGEE, cases under which heads have not, to avoid repetition, been noted under this head.]

### MORTGAGE-MORTGAGEE-(Centd.)

-Active confidence-Position of-Evidence, Sc. EVI-DENCE ACT, S. 111. (1903) 31 I. A. 46 (51)= 26 A 130 135).

-Election by mertgagor subsequent to mertgage affecting his rights in mortgaged property-Effect of, on mortgage's rights.

A mortgagec's rights under a mortgage cannot be affected. or his security invalidated, by any right of election affecting the mortgagor's rights, in the mortgaged property which the mortgagor might choose to exercise subsequent to the execution of the mortgage (230). (Lord Attinson.) SADIK HUSAIN KHAN T. HASHIM ALI KHAN.

(1916) 43 I. A. 212-38 A. 627 (656) (1916) 2 M. W. N. 577-21 M.L.T. 40-6 L. W. 378-21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom L. R. 1037 - 19 O. C. 192 = 1 Pat. L. W. 157 -36 I. C. 104-31 M. L. J. 607.

-Estopped protecting title of - Benefit of - Execution purchaser under mortgage decree if entitled to

Appellants were the representatives of a purchaser of the suit property at a sale held in execution of a decree obtained on a mortgage thereof by a Mahomedan widow. The widow was only a benamidar for her husband, and was not therefore competent to deal with the property. It appeared. however, that, by certain acts and declarations of his, her son had estopped himself from questioning the validity of the mortgage to the extent of his share in the mortgaged property as against the mortgagee himself. It was contended for the son that the estoppel against the mortgagee would not avail the execution purchaser of the suit property, because the latter was at the time of his execution purchase fully aware of the circumstance that the wislow was only a benamidar and had no title to convey.

Hdd, that, as the mortgage was effectual as a valid title to the mortgagee, under which, in default of payment of the money lent, he was entitled to sell the property, it followed that any purchaser from him under a sale regularly carrie! out would acquire a valid title to the property, even though he were fully aware that the widow was only a benamidar and had no title to convey (214-5).

In any question with the son or his representatives, the mortgagee had obtained a valid mortgage, and as he had himself a valid title so he could give a good title to a purchaser under a mortgage sale, whatever might be the state of knowledge of the person purchasing (220). (Lord Shand.) SARAT CHUNDER DEY P. GOPAL CHUNDER LALA.

(1892) 19 I. A. 203 = 20 C. 296 (315) = 6 Sar. 224. -Further advance to mortgagor by - Transaction effected by-Sale or further mortgage. See MORTGAGE-FURTHER ADVANCE. (1914) 1 L. W. 695.

 Indemnity to mortgager against charge created by— Contract of - Liability under.

D, a mortgagee, created an equitable mortgage of the property comprised in his three mortgage deeds by depositing those dee is with a firm. D thereafter such upon his mostgages without impleading the firm. That suit was settled by payment made by the mortgagors to D. On payment, D executed a deed in favour of the mortgagors covenanting to "Keep the mortgagors, their heirs, . . . . , their and each of their estate and effects harmless and indemnified against all losses, damages, actions, claims, suits, demands and accounts in respect of the said these several deeds of mortgage, or any money owing or due thereunder or otherwise howsoever or for any act done by him, the said mortgagee, with respect to the said deeds." The firm then sued to re over the sum due under their equitable mortgage and obtained a decree against the mortgagors. The mortgagors discharged the claim upon the equitable mortgage by payment to the firm, and then sued the representatives of D for

### MORTGAGE-MORTGAGEE-(Contd.)

the recovery under the deed of indemnity aforesaid the amount paid by them to discharge the equitable mortgage.

Held, that the mortgagors were entitled to recover with

interest the sum so paid by them.

Under the words of the indemnity it was perfectly open to the mortgagors to say that, though the decree on the equitable mortgage could not, owing to its becoming barred, he enforced against the representatives of D. D had by his own act in depositing the deeds as a security with the firm. blistered, encumbered and lessened in value their equity of redemption in the property mortgaged by these deeds, and that they were under the words of this indemnity entitled to recover from his representatives what it had cost them, the plaintiffs-appellants, to remedy the damage he had done to their property by paying off the encumbrance upon it which he had by his own acts created (346.7). (Lord Atkinson.) SACHINDRA NATH ROY : MAHARAJ BAHADUR SINGH.

(1921) 48 I. A. 335 = 49 C 203 (216.7) = L. B. 3 P. C. 174 = A.I.R. 1922 P. C. 187 = 30 M. L. T. 96= 24 Bom. L. R. 659 = (1922) M. W. N. 338= 26 C. W. N. 859 = 4 U. P. L. R. (P.C.) 57 =

-Prior mortgage-Power of sale in-Sale pursuant to -Purchase at - Effect. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES - SUBSEQUENT MORTGAGEE -PRIOR MORTGAGE-POWER OF SALE IN.

(1879) 6 I A. 145 (160) = 5 C. 198 (211).

-Purchases by - Benefit of - Mortgagor's right to. See MORTGAGE - MORTGAGED PROPERTY - MORT-GAGEE'S PURCHASE OF.

-Real mort gage or not - Plea in Courts below ef-Perry Council appeal-Plea in, that, though mortgage money advanced by another, transaction was by way of gift or procession for mertgagee-Perminibility.

In a case in which the contention in the Courts below was that the mortgagee named in a mortgage deed was the real mortgagee because he himself advanced the mortgage money, their Lordships declined to allow the plea put forward before them that, though the money was advanced by another, the transaction was by way of gift or provision for the mortgagee named in the deed. They did so on the ground that to allow such a case would be to allow the setting up of a title inconsistent with that asserted in the Courts below. (Sir James W. Celvile.) BHAWAN DAS TO SHEIKH MAHOMED HOSSAIN. (1870) 13 M. I. A. 346 (351-2)= 13 W. R. P. C. 38 = 2 Sar. 560.

### MORTGAGE-MORTGAGOR.

-[Reference must also be made to the heading (1) MORIGAGE DERT. (2) MORTGAGED PROPERTY, (3) MORTGAGEE, and (4) MORTGAGOR and MORTGAGEE, cases under which heads have not, to avoid repetition, been noted under this head.]

-Assignment of mortgage-Mortgage debt at date of - Resital in assignment deed as to-Right to question Assignment deed executed with mortgagor's consent. See MORTGAGE -- MORTGAGE DEBT -- AMOUNT OF -- ASSIGN-(1926) 24 L. W. 910 (912). MENT OF MORTGAGE.

### CO-MORTGAGOR-SURETY FOR OTHERS.

-Evidence of.

In a case in which the question was whether the plaintiff, one of the executants of a mortgage-deed, was merely a surety for his co-mortgagors, the defendants, the Subordinate Judge held that the plaintiff was merely a surety on the ground that the mortgage-money was shown to have been handed to the defendants in the presence of the Registrar, and was not shown to have been returned by them to the plaintiff. Held, that the circumstance was quite insufficient to prove that the plaintiff was a mere surety in the matter

### MORTGAGE-MORTGAGOR -(Contd.)

CO-MORTGAGOR-SURETY FOR OTHERS--(Cont.) of the mortgage. (Sir Arthur Wilson). MALIK AHMAD

WALL KHAN v. SHAMSH-UL- JAHAN KHAN. (1906) 33 I. A. 81 = 28 A. 482 (487) =

10 C. W. N. 626=3 A L. J. 360=3 C. L. J. 481= 1 M. L. T. 143=8 Bom. L. R. 397=8 Sar. 918= 16 M. L. J. 269.

-Suit against them on foot of his being a-Relief in. on basis of his being a mere co-mortgagor and entitled to contribution-Grant of.

Plaintiff, one of the executants of a deed of simple mortgage, sued the defendants, the other executants thereof, for the recovery of the whole amount, principal and interest, payable under the deed on the ground that he was merely a surety in the matter of the mortgage, that he had paid to the mortgagee the whole of the amount due thereunder, and that, as a representative of the mortgagee, he was entitled to all his rights. The plaint prayed that the suit amount might be made a charge upon the mortgaged proporties. The High Court found that plaintiff was not a mere surety and beld that, as he came into court with a false case, he was not entitled even to a decree for defendants' share of the amount paid by him to the mortgagee. On appeal to the Privy Council, held that, as plaintiff was undoubtedly entitled to recover defendants' share of what he paid, and, as the pleadings were wide enough to cover such a claim, a decree ought to have been passed in his favour for such share and the amount decreed ought to have been charged on defendants' interest in the mortgaged property. (Sir Arthur Wilson.) MALIK AHMAD WALL KHAN D. MUS-(1906) 33 I. A. 81= SAMAT SHAMSH-UL-JAHAN.

28 A. 482 (487) = 10 C. W. N. 626 - 3 A. L. J. 860 - 3 C. L. J. 481 = 1 M. L. T. 143 - 8 Bom. L. R. 397 = 8 Sar. 918-16 M. L. J. 269.

Consideration for mortgage—Receipt of—Admission in mortgage deed as to—Effect. See MORTGAGE—CON-SIDERATION FOR.

### MORTGAGE-MORTGAGOR AND MORTGAGEE

-See also 1. MORTGAGE DEBT. 2. MORTGAGED PROPERTY. 3. MORTGAGEE AND 4. MORTGAGOR.

#### ACCOUNTS.

-Debt assigned by mortgagor to mortgages at time of mortgage but negligently left uncollected by mortgagee-His liability to mortgagor for.

At the time of a second mortgage, the mortgagoes executed another deed to the mortgagee by which they assigned to him a debt due to them from a third person. In a suit by the mortgagee to enforce his mortgage, the courts below debited him with the amount of the assigned debt. Plaintiff contended that he ought to be debited with the amount, only if and when the same was actually received by him. Held by their Lordships that it lay upon the plaintiff to use reasonable diligence to recover the assigned debt from the debtor and that no serious attempt having been made by him to recover any portion of it, he was rightly debited with the same in taking the accounts (182-3). (Sir Arthur

Wilson.) SHYAM KUMARI v. RAMESWAR SING. (1904) 31 I. A. 176 = 32 C. 27 (35) = 8 C. W. N. 786 = 6 Bom. L. R. 754 = 8 Sar. 688.

Settlement of - Binding character of, on purchaser of mortgaged property subsequent to such settlement.

In a suit brought to recover the balance of principal and interest due under a mortgage against the mortgagor and the purchaser of a portion of the mortgaged property subsequent to the date of the mortgage, it appeared that, prior to the date of the said sale of the portion of the mortgaged property, the mortgagor had settled an account with the mortgagees, and the whole of the matters between them had

### MORTGAGE-MORTGAGOR AND MORTGAGEE -(Contd.)

ACCOUNTS-(Contd.)

been gone into, and a balance had then been agreed upon as due from him to the mortgagees, including all the different items which would be the subject of the mortgage.

Held that the purchaser of the portion of the mortgaged property was bound by the account which the mortgagor had so settled, and that what he (the mortgagor), when he settled that account, agreed to be due in respect of the mortgage, and the way in which the different payments were appropriated, could not be disputed by the purchaser (17-8). (Sir Richard Couch.) HARI RAM : SHEODIAL (1888) 16 I. A. 12=11 A. 136 (143)=

under. See UNDER MORTGAGE-USUFRUCTUARY MORT-

-Adverse Possession. So LIMITATION — ADVERSE POSSESSION-MORTGAGOR AND MORTGAGEE.

-Compromise between-Equity of redemption-Extinguishment of, and transfer of portion of property absobutely to mortgagee-Compromise effecting-Decree on foot of-Actings of parties on foot of-Effect of-No registered conveyance between them. See PART-PERFORMANCE-MORTGAGOR AND MORTGAGEE. (1914) 42 I. A. 1= 42 C. 801.

Contract between-Law governing.

The law by which a contract between mortgagor and mortgagee is governed is the law in force at the time when the mortgage was made (53). (Sir James W. Colvile.) BADRI PARSHAD P. BABU MURLIDHUR. (1879) 7 I. A. 51= 2 A. 593 (597) = 6 C.L.R. 257 = 4 Sar. 100 = 3 Suth. 708.

### ESTOPPEL BETWEEN.

-Redemption right of mortgagor-Plea against, of usufructuary mortgagee purchaser of mortgaged property at revenue sale brought about by his own fraud-Maintainability. See MORTGAGE-USUFRUCTUARY MORTGAGE-MORTGAGEE UNDER-PURCHASES BY-REVENUE SALE, (1866) 10 M. I. A. 540 (557-8)

-Title of mortgager to mortgaged property-Right of mortgagos or mortgagee to question-Estoppel as to. Sec MORTGAGE - MORTGAGED PROPERTY - TITLE TO-MORTGAGOR-TITLE OF.

-Validity of mortgage-Right to dispute-Estoppel by acquiescence as to-Void and voidable mortgages-Distinction. See WATAN-WATAN LANDS.

(1900) 27 I. A. 86=24 B. 556

# MORTGAGE—MORTGAGE FOR TERM—SUIT TO ENFORCE—LIMITATION.

-What amounts to such a suit. See LIMITATION ACT OF 1968-ART, 1321.

(1875) 3 I.A. 1 (5 6) = 1 C. 163 (166-7).

-Cause of action-Date fixed for payment-Liberty to mortgagee to sue earlier in certain event-Happening of event—Cause of action in case of. See LIMITATION ACT OF 1908 - ART. 132. (1875) 3 LA. 1 (6) = 1 C. 163 (167-8).

-Date fixed for payment-Expiry of-Cause of action on-Abandonment of case of-Amendment of plaint by relying on default of first instalment payment and on dates of payment for interest subsequently if amounts to-Effect of-Right to rely upon date of expiry of stipulated period subsequently. See Limitation ACT of 1908-ART. 132.

(1926) 53 I. A. 187 (195-6)=48 A. 457.

-Starting point-Annual payments-Default in payment of-Enforcement of mortgage within stipulated period in event of -- Provision for -- Effect. See LIMITATION ACT OF 1908-ART. 132, (1926) 53 I.A. 187 (193-4)=48 A. 457.

### MORTGAGE-ORAL MORTGAGE.

— Validity of, before T. P. Act. See MORTGAGE— USUFRUCTUARY MORTGAGE—WRITING.

(1916) 43 I. A. 264 (268) = 38 A. 494 (501)

### MORTGAGE-OUDH LANDS.

Mortgage of R domption of Right of till fore-

The rule which declared that redemption should not be taken away until proceedings for foreclosure had been adopted, was not a matter of the lex loci of the Punjauh, it was a matter of general equity which had been enacted in the Provinces of Bengal by the Regulation of 1798, and the Regulation of 1800. They were consolidated in effect and introduced into the Punjauls. They were not the lex loci of the Punjaub. Those rules which were applicable to the lex loci of the Punjauls were not necessary to be introduced into Oudh, but this not being one of the particulars of the lex loci of the Punjauls, it would appear that, as a general rule and principle of equity, to be acted upon in cases between mortgagor and mortgagee, it was one of those rules which were expressly intended (by the letter of the Government of India to the Chief Commissioner of Oudh after the annexation declaring that the Punjaub rules were to be considered in force in Oadh) to be passed and to take effect in Oudh. There can be no doubt that it was the intention of the Governor-General that the principle of the Punjaub rules, so far as they related to redemption and foreclosure of mortgages, should be introduced into Oudh.

In a suit to redeem certain lands in Oudh mortgaged shortly after the Province had been annexed by the British Government, held that the effect of the letter of the Government of India to the Chief Commissioner of Oudh after the annexation was to introduce into Oudh the principle of the Punjub rules relating to redemption and foreclosure of mortgages, res., that a mortgager who mortgaged should not be debarred from his right to re-leem unless a foreclosure had taken place. SHEO SINGH r. MUSSAMUT MIRIAM BEGUM. (1872) 8 M. J. 69.

MORTGAGE -PARTNER — Mortgage by a. Se PARTNE SHIP — PARTNER — MORTGAGE BY A.

MORTGAGE-PERIOD FIXED FOR PAYMENT OF.

SW MORTGAGE—REDEMPTION OF PERIOD FIXED

### MORTGAGE-PERSON NOT PARTY TO

Agreement to be bound by mortgage by-What amounts to.

The question was whether one D agreed to be bound by a mortgage deed executed by his mother, who was a cosharer with him.

Held that D's knowledge of the mortgage, and his saying that the money due upon it was repayable, did not amount to an agreement by him to be bound by it (231). (Sir Richard Couch.) RAM GOPAL v. SHAMSKHATON.

(1892) 19 I. A. 228 = 20 C. 93 (98) = 6 Sar. 247.

—Hindu joint family—Father—Mortgage by—Son's liability under—Admission of—Bondby son—Recital in, that father's bond "Stands good as before"—Effect. See HINDU LAW—JOINT FAMILY—FATHER — MORTGAGE BY—NECESSITY FOR—ONUS OF PROOF OF—SON'S, ETC.

(1922) 50 I.A. 14 (23.4) = 2 Pat. 285.

——Liability under mortgage of—Admission of—What amounts to—Bond by B—Recital in, that money due under mortgage by A is "duly repayable"—Effect. See ADMISSION—MORTGAGE. (1892) 19 I. A. 228 (230) = 20 C. 93 (96.7).

## MORTGAGE -PERSONAL LIABILITY UNDER. Deed creating.

Test-No personal liability in first instance-T. P.

## MORTGAGE—PERSONAL LIABILITY UNDER —(Contd.)

### Deed creating-(Contd.)

Act, S. 68 (b) or (c)—Personal liability subsequently arising by reason of.

In considering the question whether a mortgagor is personally liable it must be borne in mind (1) that a loan prima facie involves such a personal liability, (2) that such a liability is not displaced by the mere fact that security is given for the re-payment of the loan with interest; but (3) that the nature and terms of such security may negative any personal liability on the part of the borrower. It must also be borne in mind that even if the mortgagor be in the first instance under no personal liability, such liability may arise under S. 68 (6) or (e) of the Transfer of Property Act. (Lord Parker.) RAM NARAYAN SINGH r. ADHINDRA NATH MUKERIL. (1916) 44 I.A. 87 = 44 C. 388 (400) = 21 M.L.T. 12 = 25 C.L.J. 121 = 15 A.L.J. 107 = (1917) M.W.N. 94 = 21 C.W.N. 383 = 19 Bom L.B. 194 =

Deed not containing.

38 I.C. 932 = 32 M.L.J. 39.

DEED OR. (1884) 11 I.A. 83 (87)=10 C. 740 (7423).

Pledge of immovable property.

-Deed creating both.

A mortgage not under seal recited the mortgage of certain property for Rs. 1.300 to the plaintiff, that the interest should be at the rate of 1 per cent. per mensem, and the principal and interest to be repaid at a specified date. The instrument then said:—"I have received the mortgage money in full. I therefore covenant that if I fail to pay the principal with interest on the promised date the mortgages will be at liberty to recover through the court their whole money in a lump sum from me or the mortgaged property."

Held that by the instrument the mortgagor gave the mortgagee a pledge of certain fixed immoveable property, and also gave as a further security his personal bond or covenant (13). (Lord Fitz Gerald.) RAMDIN v. KAKA PERSHAD. (1884) 12 I.A. 12 = 7 A. 502 (504.5) = 4 Sar. 612.

### Purchaser of mortgaged property undertaking to pay mortgage debt.

Liability of. See MORTGAGE—SUIT TO ENFORCE—PERSONAL LIABILITY IN.

(1911) 39 I.A. 7=34 A. 63 and (1922) 26 C.W.N. 771. Suit to enforce.

\_\_Limitation.

A, a Hinda widow, who had inherited the estate of be deceased husband, incurred debts to the appellant, and on 1-3-1872, she executed a bond to him for a stated sum, to meet the amount of her liability, and thereby hypothecated certain mouzahs appertaining to her husband's estate. On 31-8-1872, an agreement was entered into between the widow and R, the presumptive reversionary heir of her husband, whereby she surrendered her interest in her husband's estate to R, upon condition that he was to pay her an allowance of Rs 24,000 for her maintenance, and was to pay off her liabilities. On 31-3-1876, the appellant instituted a suit on the bond against the widow and R. In that suit the High Court, on appeal, by their decree dated 2-7-1878, held the widow personally liable for the amount covered by the bond with interest thereon, and held the mortgage not to be binding upon the estate. An appeal to the Privy Council against the decree of the High Court was dismissed in 1880. In 1884 the appellant sought to execute, against R and the properties in his possession, the personal decree obtained against the widow, who was dead. The executing court held that the decree could not be executed against R, except in respect of personal property of the

# MORTGAGE-PERSONAL LIABILITY UNDER MORTGAGE-PLAINT IN SUIT ON MONEY

Suit to enforce-(Contd.)

widow which had come to him on her death. That decision was on appeal affirmed by the High Court by their judg ment of 14-1-1886.

On 13-1-1887, the appellant instituted the suit out of which the appeal arose against R, praying to have him declared liable, under the agreement of 31-8-1872, to satisfy the decree obtained against the wislow on the bond. The charge purporting to have been created upon the estate by the bond was found to be not binding upon the estate.

Held that the period of 6 years, and not the period of 12 years, applied to the case, and the suit was consequently barred (237).

Prima facie the suit would be barred, for the bond was by its terms made payable in the month of September, 1875. whereas the right to sue the defendant for a personal debt would be limited to 6 years, and the present suit was not commenced until the month of January, 1877, an interval of over 11 years (236-7). (Lord Morris.) KAMESWAR PERSHAD D. RAJKUMARI RUTTAN KOEK.

(1892) 19 I.A. 234 = 20 C. 79 (84) = 6 Sar. 241. Maintainability-Res judicata- Prior tuit to enforce liability of property in defendant's hands-Personal liability of defendant capable of being, but not enforced in.

A, a Hindu widow, who had inherited the estate of her deceased husband, incurred debts to the appellant, and on 1-3-1872, she executed a bond to him for a stated sum, to meet the amount of her liability, and thereby hypothecated certain mouzahs appertaining to her husband's estate. On 31-8-1872, an agreement was entered into between the widow and R, the presumptive reversionary heir of her husband, whereby she surrendered her interest in her husband's estate to R, upon condition that he was to pay her an allowance of Rs. 24,000 for her maintenance, and was to pay off her liabilities. On 31-3-1876, the appellant instituted a suit on the bond against the widow and R. R being joined as a defendant upon the ground that the widow had, under the agreement of 1872, given over to him the whole of her properties, including what was mortgaged by the Lond. No relief was, however, claimed against R personally, though it was perfectly competent for the appellant to have alleged in that suit the personal liability of R in consequence of the agreement which he had entered into with the widow. In that suit the mortgage was held to be not binding upon the estate, and only a personal decree was given against the

In a suit instituted by the appellant against R after the death of the widow, praying to have him declared fiable, under his agreement with the widow, to satisfy the decree obtained against the widow on the bond, held that the suit offended against the principle of res-indicate laid down in the C.P.C, of 1882, and was consequently barred (237).

The present ground of attack was a good ground of attack in the sait of 1876, because the money had not been paid in September, 1875, the date named in the bend. It was only an alternative way of seeking to impose a liability upon R. and it appears to their Lordships that the matter ' to have been made a ground of attack in the former suit, and therefore that it should be "deemed to have been a matter directly and substantially in issue" in the former suit, and is res judicata (238). (Lord Morris.) KAMESWAR PERSHAD P. RAJKUMARI RUTTUN KOER.

(1892) 19 I.A. 234 = 20 C. 79 (85 6) = 6 Sar. 241.

Usufructuary mortgage. Personal liability under. See MORTGAGE-USU-FRUCTUARY MORTGAGE-PERSONAL LIABILITY UNDER. MORTGAGE - PLAINT IN SUIT ON MONEY BOND-MORTGAGE BOND NOT REFERRED TO IN, BUT TENDERED IN EVIDENCE.

BOND-MORTGAGE BOND NOT REFERRED TO IN, BUT TENDERED IN EVIDENCE (Contd.)

-Relief on feet of-Grant of-Propriety.

The appellant sued for the recovery of the amount due under a bond executed by the 1st respondent in his favour. By his plaint the appellant prayed for a decree against the 1st respondent and her property. The bond saed upon was a simple money bond, but the plaintiff had also tendered in evidence another bond by which the 1st respondent purported to securer a further advance, and to pledge her estate to the plaintiff. But his suit was in no way based upon this

Held that it was not open to the appellant on the plaint framed as above stated to ask for any decree other than a personal decree for the payment of the amount due on the bond, and that he was not entitle to rely on his second bond

Though this Committee is always disposed to give a liberal construction to pleadings in the Indian Courts, so as to allow every question fairly arising on the case made by the pleadings to be raised and discussed in the suit, yet this liberality of construction must have some limit. A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings, and the only thing that can be rightly insisted on by the plaintiff here is a decree for payment against the 1st respondent (473.4). (Sir James W. Celvile.) MUHAMMAD ZAHOOR ALL KHAN P. MUSSAMAT THAKOORANFE RUTTA KOER.

(1867) 11 M. I. A. 468 - 9 W. R. P. C. 9 = 2 Suth. 107-2 Sar. 320.

### MORTGAGE-POWER OF SALE OUTSIDE COURT.

Clause in mortgage deed for-Validity of, in absence of statutory provision-Limited company issuing debentures and securing debentures by mortgage in favour of trustics with power of sale-Validity of power in caseof.

Assuming that, the alisence of a statutory provision, it is not possible in India to put a clause into a mortgage deed allowing of sale except through the medium of the court, that contention can have no application to the case of a limited company issuing debentures and securing debentures by a mortgage in favour of trustees with the power of sale. (Lord Dunctin.) KANHAYA LAL r. NATIONAL BANK OF INDIA LTD. (1923) 50 I.A. 162 (171)=

4 Lah. 284 = 33 M.L.T. 349 = 25 Bom. L.R. 1248 = A. L. R. 1923 P.C. 114 = 28 C.W.N. 689 = 40 C.L.J. 1=75 I.C. 7=45 M.L.J. 497.

-Mortgagee with-Position, powers and duties of. A mortgagee with a power of sale is, strictly speaking' not a trustee of the power of sale. It is a power given to him for his own benefit, to enable him the better to realise his mortgage debt. If he exercises it bona hide for that purpose, without corruption or collusion with the purchaser, the Court will not interfere, even though the sale be very disadvantageous, unless indeed the price is so low as in itself to be evidence of fraud (264.) (Lord De Villiers) HADDINGTON ISLAND QUARRY CO. D. ALDEN WESLEY.

(1911) 13 I. C. 261 = 10 M. L. T. 554. SALE PURSUANT TO.

- Conditions in-Depreciatory character of-Notice to purchaser of - Solicitor employed to prepare conveyance-Notice to-Contract of sale concluded before his employ-

The question was whether the purchaser at a sale of mortgaged property held by the mortgagee under a power of sale in an ordinary form had notice or knowledge of the depreciatory character of a condition in the conditions of sale. The Court of appeal held that the purchaser must be deemed to have had such notice or knowledge, by reason of

## COURT-(Contd.)

SALE PURSUANT TO-(Contd.)

the fact that, some days after the contract of sale was completed, the purchaser instructed the mortgagee's solicitor to act for him in the preparation of the deed of conveyance, and that that solicitor knew enough of the real title to shew that the condition in question was unjustifiable

Held, that the Court of appeal erred in so holding (184-5). When the contract of sale was signed the transaction was completed so far as it vested in contract, and the rights and liabilities of the parties arising out of that contract were ascertained and were enforceable. Down to that point

the attorney was not acting for the purchaser.

The only thing in which he did so act was the subsequent preparation of the conveyance. His knowledge was not acquired in the matter for which he was agent, and it cannot be used to upset the contract of sale which had become completed before his agency commenced (184). (Six Arthur Wilson.) CHABILDAS LALLOORHAL F. DAVAL MOWJE. (1907) 34 I. A. 179-31 B. 566 (581) 2 M. L. T. 394 = 6 C. L. J. 674 = 11 C. W. N. 1109 - 9 Bom. L. R. 1063 -4 A. L. J. 750 9 Sar. 225 17 M. L. J. 465.

-Effect of.

The effect of a sale of mortgaged property under a power of sale reserved by the deed of mortgage is to destroy the equity of redemption in the land and to constitute the mortgagee exercising the power a trustee of the surplus proceeds, after satisfying his own charge, first for the subsequent incumbrancers, and ultimately for the mortgagor. The estate, if purchased by a stranger, passes into his hands free from all the incumbrances. There seems to be no reason why the second mortgagee, who might certainly have lought the equity of redemption from the mortgagor, should not equally with a stranger, purchase the estate when sold under a power of sale created by the mortgagor (160). (Sir James W. Colvile.) RAJAH KISHENDATT RAM :. (1879) 6 I. A. 145= RAJAH MUMTAZ ALI KHAN. 5 C. 198 (211-2)=5 C. L. R. 213=4 Sar. 17= 3 Suth. 637 - R. & J.'s No. 58.

-Mort gagor's suit to set aside-Onus on mort gagor in -Inadequacy of price Allegation in plaint merely of-Purchaser's failure to adduce evidence of value of property-Effect.

The plaintiffs were mortgagees or representatives of mortgagors of a certain quarry, and defendants were assignees of the mortgage and purchasers of the quarry, the sale to the latter having been effected by virtue of a power of sale conferred upon the mortgagees by the indenture of mortgage. The suit was for a cancellation of the conveyance to the purchasers, and for a declaration that plaintiffs were entitled to redeem the mortgage. There was no allegation in the statement of claim charging the purchasers with fraud or collusion or bad faith or knowledge of existence of facts which would invalidate the sale. The only ground upon which those claims were based was that the mortgagees (vendors) did not use any exertions to obtain the best price for the land. Though the statement of claim alleged in effect that the sale was very disadvantageous, it gave no hint to the defendants that they would be called upon at the trial to meet the case that the price was so low as in itself to be evidence of fraud.

The trial Court was perfectly satisfied as to the validity of the transaction. The appellate Court, however, held that the sale was fraudulent on the ground of the inadequacy of the price.

Their Lordships reversed the appellate Court and affirmed the sale (263.4).

Under the circumstances their Lordships cannot attach much importance to the circumstance that the defendants | gagee himself purchaser under decree on prior morigage.

### MORTGAGE - POWER OF SALE OUTSIDE | MORTGAGE - POWER OF SALE OUTSIDE COURT-(Contd.)

SALE PURSUANT TO-(Contd.)

produced no evidence as to the value of the property (264). (Lord De Villiers.) HADDINGTON ISLAND QUARRY CO. (1911) 13 I. C. 261= 2. ALDEN WESLEY. 10 M. L. T. 554.

-Subsequent mortgagee's purchase at-Effect of. Sa MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES-SUBSEQUENT MORTGAGEE-PRIOR MORTGAGE-POWER (1879) 6 I. A. 145 (160)= OF SALE UNDER. 5 0. 198 (211).

-Validity-Inadequacy of price-Effect.

Where a power of sale is conferred by a mortgage deed, and the mortgagees ostensibly act within their powers in selling the property, the purchasers are entitled to the full benefit of their purchase, unless it is alleged and proved that they acted in collusion with the vendors, or that the price was so low as in itself to be evidence of fraud or collusion. An allegation that the mortgagees (vendors) did not use any exertions to obtain the best price for the land, and that they sold it to the purchasers at a very inadequate price, is quite consistent with perfect good faith on the part of the purchasers (263). (Lord De Villiers.) HADDINGTON ISLAND QUARRY CO, P. ALDEN WESLEY.

(1911) 13 I.C. 261 = 10 M. L. T. 554.

-Validity-Mortgagee misleading bidders into thinking that sale had been stopped-Purchaser having notice of

The question was whether a sale of mortgaged property held by the mortgagee under a power of sale in an ordinary form contained in the mortgage deed was such as to give a good title to the appellant, the purchaser, as against

the mortgagor.

After the bidding reached a certain sum, which was bid by the appeilant, the sale was in fact stopped, and the parties concerned retired to an adjoining place, where they spent about half an hour endeavouring to agree to written terms of settlement. The endeavour failed, and then the auctioneer, by the instructions of the mortgagee's solicitor, purported to resume the sale. The appellant's previous bid was called out several times, and, no competitor appearing. the property was knocked down to him at that price. The evidence showed that, in stopping the sale, the mortgages or their agents so conducted themselves as naturally to lead bidders to suppose that the sale was over at least for that occasion, and to go away from the place of auction. The hidders did go away when the sale was stopped. The evidence also showed that the appellant had notice of all these

Held, that the sale was invalid and did not convey a good title to the appellant as against the mortgagor. (Sir Arthur Wilson.) CHABILDAS LALLOOBHAI v. DAYAL MOWJI.

(1907) 34 I. A. 179 (185-6) = 31 B. 566 (582) = 2 M. L. T. 394 = 6 C. L. J. 674 = 11 C. W. N. 1109 = 9 Bom. L. R. 1062=4 A. L. J. 750=9 Sar. 225= 17 M. L. J. 465.

### MORTGAGE-PRIOR AND SUBSEQUENT MORT-GAGES.

DECREES ON FOOT OF-SALES IN EXECUTION OF-PURCHASERS AT-RIGHTS OF.

MORTGAGEES UNDER.

PRIOR MORTGAGE.

SUBSEQUENT MORTGAGEE.

Decrees on foot of -Sales in execution of-Purchasers at-Rights of.

Both mortgages in favour of same person-Purchater under decree on subsequent mortgage a stranger-Mort MORTGAGE-PRIOR AND SUBSEQUENT MORT- | MORTGAGE-PRIOR AND SUBSEQUENT MORT-GAGES-(Contd.)

Decrees on foot of-Sales in execution of-Pur chasers at-Rights of-(Contd.)

A family, consisting of the father, the wife, and the son were the three defendents. There were two bonds made creating a charge upon the suit estate. The first in point of date was in the name of the wife. The next in p int o date was a bond in the name of the husband. Those bonds were brought to judgment and execution. The first suit, institut-ed against the original grantor of the bonds, was that which was brought in the name of the wife upon the 7th of July, 1875. The second suit instituted was that which was brought in the name of the husband; and that was instituted on the 24th of July, 1875. The two came to judgment on the same day, the 6th of September, 1875; and two judgments were given. The execution which was first carried out to a sale, upon the 1st of May, 1876, was upon the bond which had been given in the name of the husband. Upon that execution a sale took place, and at that sale the plaintiff-appellant became the purchaser. On the 23rd of October, 1876, the sale under the execution on the bond in the name of the wife took place; and on that sale the son became the purchaser. The question was between the plaintiff, the purchaser under the first execution though under the second bond, and the son, the purchaser under the second sale, though under the first bond. The plaintiff in substance brought his action to set aside the sale to the son, and to have himself declared the purchaser, he expressly stating in his plaint that he claimed it as purchaser, and to be entitled to redeem. The original grantor of the bonds was no party to the suit, and was not in any way brought before the Court. The plaintiff's contention was that in fact, though there were the three names used, and though it was said that the money was lent by the wife on the first bond, and that the son was the purchaser under the sale, yet in reality the father was the party all through; that it was the father who had lent the money in the name of his wife; and that it was the father who had purchased in the name of the son.

The High Court, concurring with the Court below, found in favour of the plaintiff that the husband or father was merely using the names of the others and that he was

the real party all through.

Held that, it being established that the purchase under the second sale was by the husband or father, himself, who had himself caused the first sale to take place and then purchased under the second sale, that second sale could not stand against the purchaser under the first sale and must be set aside (25). (Lord Blackburn.) CHOORAMUN SINGH P. SHAIK MAHOMED ALL. (1882) 9 I. A. 21=

11 C.L. R. 1 = Bald. 426 = 4 Sar. 329. -Subsequent mortgage-Sale in execution of decree on

foot of, and purchase by stranger-Sale under deerce on prior mortgage later and purchase by mortgagee himself-Suit by former to set aside later sale and to redeem-De

cree in-Form of-Mortgagor not party.

The plaintiff-appellant was the purchaser of the suit property in execution of the decree on a second mortgage thereon. The 1st defendant was the purchaser of the same property in execution of the decree on a first mortgage thereon. He was the mortgagee under both the mortgages. The plaintiff's purchase was, however, prior in point of date. The 1st defendant's execution purchase was bename in the name of his son.

The suit out of which the appeal arose was brought by the plaintiff in substance to set aside the sale to the son, and to have himself declared the purchaser; he expressly stating in his plaint that he claimed it as purchaser, and to be entitled to redeem. The mortgagor was no party to the suit, and was not in any way brought before the Court.

GAGES-(Contd.)

Decrees on foot of-Sales in execution of-Purchasers at-Rights of-(Contd.)

The High Court found, concurring with the Court below, that the purchase under the second sale was by the 1st defendant, who had himself caused the first sale to take place and then purchased under the second sale, and held that the second sale could not stand against the purchaser under the first sale, that it must be set aside, and that the plaintiff was entitled to redeem. The decree actually drawn up by the High Court added: "And it is declared that the plaintiff, as the second mortgagee in respect of the said property is entitled to redeem the first mortgage of the said defendant" (1st defendant). The decree said further: "And it is further declared that the said plaintiff has not acquired the equity of redemption regarding the said property belonging to the said R" (the original mortgagor).

Held that it was quite unnecessary and irrelevant to say whether it was as a second mortgagee or whether it was as a purchaser that the plaintiff was entitled to redeem, and that the words "as the second mortgagee in respect of the said property" in the decree of the High Court must therefore be struck out (25-6).

It may be that the original grantor of the bond might be induced to make out some case or other that there was rest judicata in his favour on these words (25-6).

Held further that the declaration in the decree of the High Court " that the said plaintiff has not acquired the equity of redemption regarding the said property belonging to the said A" ought also to be struck out (26).

Now that is a question which, if raisable at all, as to which their Lordships express no opinion, can be raised only by R, and has nothing to do with this suit (26).

Their Lordships confirmed the decree of the High Court in other respects (26). (Lord Blackburn). CHOORAMUN SINGH P. SHAIK MAHOMED ALL (1882) 9 I.A. 21 -11 C.L.B. 1 = Bald. 426 = 4 Sar. 329.

-Subscanced mort gage granted pending suit on prior one-Suit on, without impleading prior mortgagee-Sale in escention of decree in-Purchaser at-Redemption of prior mortgage by, in anit for passession by purchaser under decree on foot of that mortgage-Right of.

The respondent was the purchaser of the suit property at a sale held in execution of a decree obtained on foot of a prior mortgage and he sued for possession of the same. He was the son and the representative of the prior mortgagee decree-holder. The appellant was the purchaser of the same property at a sale held in execution of a decree obtained on foot of a subsequent mortgage. He was the son of the mortgagor. The subsequent mortgage was granted by the mortgagor pending the suit on the prior mortgage. The prior mortgagee was not made a party to the suit on the subsequent mortgage. The appellant's purchase was prior to that of the respondent. But at the date of his purchase the appellant knew all about the prior mortgage and the decree made on the basis thereof, and he knew that the sale proceedings in execution of that decree were actually in

Held that the respondent was entitled to the property and that the appellant's purchase could not prevail against that of the respondent, both because the doctrine of lis pendens applied to the case, and because of appellant's know-ledge aforesaid (106). (Lord Macnaghten). FAIYAZ HUSAIN KBAN P. PRAG NARAIN. (1907) 34 I.A. 102=

29 A. 339 (346) = 2 M.L.T. 191 = 5 C. L. J. 563 = 11 C. W.N. 561 = 4 A. L. J. 344 = 9 Bom. L.R. 656= 10 O.C. 314=9 Sar. 220=17 M.L.J. 283, GAGES- (Contd.)

### Mortgagees under.

-Aroun's bearen-Descharge of prior mortgage by enjoyment of usufruit-Province for-Prior mortgagee allowing mortgager to enjoy usufract-Effect-Notice of subsequent in umbeau :- Periods before and after-Distinction.

A mortgage dee I by which the revenues of a village were mortgaged provide i that the mortgagess were to receive in redemption the winde of the praduce of the said village, that, after all sxing for interest, the remainder must go for the purpose of liquidicing the principal, and that they should continue so to receive and appropriate the annual produce until the whole of their demand should be satisfied. The deed further provided that the risk of collecting the income, and of any deficiency in the revenue, was to be upon the heads of the mortgagors, that the mortgagees should station a Mehta (or clerk) of their own in the said village for the purpose of making the collections, and that the mortgagors, so long as the property remained in mortgage, should give the Alchta a monthly salary.

Actual possession was taken by the mortgagees by virtue of the mortgage, A Mikta was appointed, who was paid by the mortgagors. He received the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them, for 4 or 5 years afterwards.

On a question arising between a person who stood in the position of a subsequent incumbrancer and the mortgagees as to the effect of their having so allowed the mortgagor to receive the rents and profits, held that, in taking the accounts, the mortgagees were to be charged in account only with what they actually received during the term prior to their having notice of the subsequent incumbrance, but that for the term after they had notice of the subsequent incumbrance, they were to be postponed to the subsequent incumbrancer with respect to the profits of the estate allowed by them to be received by the mortgagor (501). (Mr. Baron Parke.) JUGGEEWUNDAS KUKA SHAH P. RAMDAS BRIJBOOKUN DAS. (1841) 2 M.I.A. 487= 6 W.R. 10 = 1 Suth. 109 = 1 Sar. 222.

-Agreement between, that both should stand in same position and divide in equal halves rate proceeds of mortgaged property-Construction of-Rights of mortgagees under.

Where an agreement entered into between the first mort gages and the second mortgagees of immoveable property provided that "both parties should, as regards rights, stand in the same position without claiming prior or subsequent rights, and divide and appropriate in equal halves, whatever amount may be realised, on the date of realisation." held that the clause was open to two interpretations :-(1) the whole effect of the agreement was to provide merely that the realised money was to be divided in equal shares; or (2) two separate and distinct results were effected by the clause; first, that the rights to the property should stand on a footing of equality; and secondly that the proceeds should be equally divided. (Lord Buckmatter.) VYRAVAN CHETTI P. SUBRAMANIAN CHETTI.

(1920) 47 I. A. 188 = 43 M. 660 = 18 A. L. J. 726 = (1920) M. W. N. 368 = 24 C. W. N. 1053 = 22 Bom. L. B. 1357 = 12 L W. 143 = 56 I. C. 642 = 39 M. L. J. 37.

Agreement between, to divide proceeds of sale of mortgaged property-Registration of-Necessity.

Where the whole effect of an agreement between a first mortgagee and a second mortgagee of immoveable property is to provide merely that the money realised by the sale of the mortgaged property is to be divided in equal halves between them, the agreement does not require to be register-

MORTGAGE -PRIOR AND SUBSEQUENT MORT- | MORTGAGE-PRIOR AND SUBSEQUENT MORT-GAGES-(Contd.)

Mortgagees under-(Contd.)

ed. (Lord Buckmaster.) VYRAVAN CHETTI v. SUBRA-MANIAN CHETTI. (1920) 47 I. A. 188 = 43 M. 660= 18 A.L.J. 726 = (1920) M.W.N. 368 = 24 C.W.N. 1058 = 22 Bom. L. R. 1357 = 12 L W. 143 = 56 I. C. 642= 39 M.L.J. 37.

-Agreement between, regulating rights to mortgaged property-Agreement regulating rights to proceeds of sale thereof - Registration - Necessity - Distinction.

Where an agreement between the first and second mortgagees of immoveable property effected, on its right construction, two separate and distinct results: (1) that the rights to the mortgaged property should stand on a footing of equality; and (2) that the proceeds realised by the sale of the property should be equally divided between them, held that the agreement need not be registered for the purpose of being given in evidence in a suit relating merely to the question of the realised money, but that it required to be registered for the purpose of being given in evidence in a suit relating to the regulation of the rights against the estate itself (Lord Buckmaster.) VYRAVAN CHETTI v. (1920) 47 I. A. 188= SUBRAMANIAN CHETTI.

43 M. 663 = 18 A.L J. 726 = (1920) M.W.N. 368 = 24 C.W.N. 1053 = 22 Bom. L.B. 1357 = 12 L.W. 143 = 56 I. C. 642 = 39 M.L.J. 37.

-Priority as between. See under MORTGAGE-PRIORITY.

### Prior mortgage.

DISCHARGE OF, BY A SUBSEQUENT MORTGAGEE-RIGHTS ACQUIRED BY HIM BY VIRTUE OF.

MORTGAGEE UNDER-SURPLUS SALE PROCEEDS OF MORGAGED PROPERTY WITHDRAWN BY SUBSE-QUENT MORTGAGEE.

OMISSION TO SET UP, IN SUIT ON SUBSEQUENT MORTGAGE-EFFECT.

PRIORITY UNDER.

REDEMPTION OF-SUBSEQUENT MORTGAGEE'S SUIT FOR.

SALE FREE FROM.

SUIT ON-DECREE IN-SALE IN EXECUTION OF. SUIT ON-FORECLOSURE DECREE IN-SUBSEQUENT MORTGAGEE (PARTY TO SUIT) DISCHARGING.

SUIT ON-SUBSEQUENT MORTGAGEE NOT IMPLEAD-ED IN.

Prior mortgage-Discharge of, by a subsequent mortgagee—Rights acquired by him by virtue of.

-Suit against his co-mort gagee to enforce - Maintainability-Failure to have rights worked out in suit on subsequent mortgage-Effect.

The respondent and K, first mortgagees of a village, obtained a decree for foreclosure upon their mortgage against the son of the mortgagor (then deceased) and G, who, with the respondent, held a second mortgage over the same village. Before the expiration of the time allowed for redemption by that decree, G paid into Court the amount thereof, and the same was taken out by the first mortgagees in discharge of their mortgage.

The respondent and G had also obtained a decree, which was of the same date as the decree on the first mortgage, for foreclosure of their second mortgage. The prior mortgagee was not a party to, and the prior mortgage was not

in question in, that suit.

In a suit brought by G against, inter alia, the respondent to work out the rights as first mortgagee which G had acquired by virtue of his having satisfied the decree on the first mortgage, held that the suit was not barred, inasmoch as, the respondent and G being co-plaintiffs in the suit on MORTGAGE-PRIOR AND SUBSEQUENT MORT- MORTGAGE-PRIOR AND SUBSEQUENT MORT-

Prior mortgage-Discharge of, by a subsequent mortgagee-Right acquired by him by virtue of -(Contd.)

the second mortgage, their rights inter se could not have been worked out therein, especially as the first mortgage was not in question therein (133.4). (Lord Dancy.) GOPI NARAIN KHANNA v. BABU BANSIDHAR.

(1905) 32 I. A. 123 = 27 A. 325 (333) = 2 C. L. J. 173=9 C. W. N. 577=7 Bom. L. R. 427= 2 A. L. J. 336 = 8 Sar. 779 = 15 M. L. J. 191.

Prior mortgage-Mortgagee under-Surplus sale proceeds of mortgaged property withdrawn by subsequent mortgagee.

-Suit to recover prior mortgage amount from-Limitation-Starting point. See LIMITATION ACT OF 1908. ART. 132 - THIRD MORTGAGEE.

(1913) 41 I. A. 45-41 C. 654.

Prior mortgage-Omission to set up in suit on subsequent mortgage-Effect.

-To a suit to enforce a sub-equent mortgage, a person who held two prior morigages on the same property, was made a defendant. H; set up his claim under one of his prior mortgages and omitted to set up his claim under the other. A decree for sale was passed in the suit, the right of the plaintiff therein bring expressly made subject to the rights of the defendant under the prior mortgage set up by him. There was no such reservation, however, as regards the right of the defendant under the other prior mortgage which he had omitted to set up.

Held that a suit subsequently brought by the prior mortgagee to enforce, as against the plaintiff in the prior suit, his rights under the prior mortgage which he had omitted to set up in the prior suit was barred under Expl. II, to S. 13 of C. P. C. of 1882. (Sir Ford North.) SRI GOPAL v. PRITHI SINGH. (1902) 29 I A. 118 (123 4) = 24 A. 429 (436-7) - 6 C.W.N. 809 - 4 Bom. L. B. 827 -8 Sar. 293.

-No impugament of prior mortgage in that suit-Effect.

A, who held a usufructuary mortgage of 1891, and a simple mortgage of 1894, over the same property, sued upon the mortgag: of 1894. In the suit he impleaded B, who held a mortgage of 1892, over the same property. Whether A asked for any relief against B did not appear. It did not also appear that A sought in that suit to displace B's prior title and postpone it to his own. B remained ex parte, and a decree was passed in that suit for the sale of the mortgaged property, in default of payment within the period fixed, subject to A's usufructuary mortgage of 1891. In execution of that decreee the mortgaged property was sold and was purchased by A himself.

In a suit subsequently instituted to enforce B's mortgage of 1892, held that it was not barred under S. 11, Expl. IV of C. P. C. of 1908, by reason of B's omission to make his mortgage deed a ground of defence in the former suit.

B's position in the prior suit was that he was a prior morgagee with a paramount claim, unless his mortgage was impugned, and there is nothing to show that it was so impugned, (15-6). (Sir Lawrence Jenkins.) RADHA KISHEN D. KHURSHED HOSSEIN.

(1919) 47 I. A. 11=47 C. 662 (668-9)= (1920) M.W.N. 308 = 11 L.W. 518 = 22 Bom L.B. 557 = 55 I. C. 959 = 38 M.L.J. 424.

> Prior mortgage-Priority under. See MORTGAGE-PRIORITY.

GAGES-(Contd.)

Prior mortgage-Redemption of-Subsequent mortgagee s suit for.

-Mortgag: of prior mortgages subsequent to plaint mortgage-Redemption right under Prior mortgage's omission to set up-Effect.

In a suit for redemption of a prior mortgage brought by a subsequent mortgagee, the prior mortgagee allowed a decree to be passed in favour of the plaintiff for redemption of the prior mortgage and omitted to set up a mortgage subsequent to the plaintiff's held by him, the detendant, and to plead that he, by virtue of his later mortgage, was, in his turn, entitled to redeem the plaintiff,

Held that the defendant might and ought to have so pleaded and that the effect of his omission to do so was to bar a subsequent suit by him for that purpose (125-6). (Sir Ford North.) SRI GOPAL P. PIRTHI SINGH.

(1902) 29 L. A. 118 = 24 A. 429 (438) = 6 C. W.N. 889 = 4 Bom. L. R. 827 = 8 Sar. 293.

Prior mortgage -Sale free from.

Consent of prior mortgagee to-Necessity. See TRANSFER OF PROPERTY ACT, S. 96-PRIOR MORT-(1919) 47 I. A. 11 (15) - 47 C. 662 (668-9),

Prior mortgage-Suit on-Decree in-Sale in execution of.

-Payment to avert, by purchaser in execution of decree on subsequent mortgage-Effect of, on subsequent mortgages.

In a suit brought to enforce a mortgage, a decree for sale was passed, and the order for sale of the mortgaged property was made absolute. On the day of the auction, a purchaser of the mortgaged property at a sale held in execution of a decree obtained on foot of a subsequent mortgage deposited the amount doe to the decree-holder, and the sale did not take place and the order for sale dropped.

Held that the effect of such payment was not to foreclose all subsequent mortgages on the property, and to make the person who made the payment absolute owner of the property. (Lord Macnaghten.) KEDAR LAI. MARWARI P. DEWAN BISHEN PERSHAD. (1903) 31 I. A. 57=

31 C. 332 (338 9) = 8 C. W. N. 609 = 8 Sar. 599. Purchaser at Possession of property purchased by Recovery from mortgagor of Right of Mortgagor himself purchaser of property from purchaser thereof at sale in execution of decree on subsequent mortgage made expressly subject to prior mortgage.

The 2nd respondent was first mortgagee of one-third share of mouzah R, one-third share of mouzah J, and one-third share of seven other mouzahs belonging to the 1st respon-

The 3rd respondent and another were subsequent mortgages of another one-third share of mouzah R, and of the same one-third share of mouzah J. as had been mortgaged to the 2nd respondent.

The appellant became the purchaser of the share of mouzah R and of the share of mouzah J, etc., at a sale held on 15th January. 1881, in execution of the decree obtained by the 2nd respondent on foot of his mortgage. The sale was subsequently confirmed, and the appellant obtained formal possession of the properties purchased by him.

Meanwhile a decree had also been obtained on foot of the subsequent mortgage against the 1st respondent. One G became the purchaser at the sale held in November, 1880, in execution of that decree of one-third "the right and interest of the debtor " out of the entire mouzah, J, etc., and of one-third "the right and interest of the debtor" in mouzah R. The 1st respondent purchased those properties from G, benami in the name of one R. The notification of sale stated that the property to be sold had been mortgaged to the 2nd respondent.

GAGES - (Contd.)

Prior mortgage-Suit on-Decree in-Sale in execution of-(Contd.)

Being unable to obtain actual possession of the property purchased by him, the appellant instituted the suit out of which the appeal arose, claiming (1) a decree for possession of the share of mouzah f, etc., or, if that was not granted, a decree for the purchase-money paid by him therefor with interest, to be recovered from the said property; and (2) a similar decree in respect of the share of mouzah R. The Courts below decreed possession of the share of mouzah R, but passed only a mortgage decree in respect of mouzih J.

Held, varying the High Court, that the appellant was entitled to a decree for possession of the share of mouzih / purchased by him with mesne profits and costs (136).

Upon the facts of the case, it would be contrary to equity to allow the 1st respondent to set up against the title of the appellant any right to possession as acquired by his purchase from G. The appellant undoubtedly acquired by his purchase a right to possession against the mortgagor, and the mortgagor ought not to be allowed to defeat that by having purchased the interest which was sold in execution of the decree upon the second mortgage (136). (Sir Richard Couch.) SYED LUTE ALI KHAN E. FUTTEH BAHADOOR. (1889) 16 I. A. 129 = 17 C. 23 = 5 Sar. 364.

Prior mortgage-Suit on-Foreclosure decree in-Subsequent mortgagee (party to suit) discharging.

-Rights of-Execution of decree on prior mortgage-Fresh suit to enforce rights acquired under S. 74 of Transfer of Property Act-Maintainability-C. P. C. of 1882-S. 244-Effect.

The respondent and A', the first mortgagees of a village, sued upon their mortgage, adding as defendants to the suit, the son of the mortgagor (then deceased), G who, with the respondent, held a second mortgage over the same village, and N, a third mortgage of the village. The decree in that suit ordered that on the defendant paying to the plaintiff or into Court on a specified date the amount due under the decree the plaintiff should deliver up to the defendant all documents in his possession relating to the mortgaged property, and should transfer the property to the defendant free from incumbrances created by the plaintiff, but that, if such payment were not so made, the defendant should be absolutely debarred of all right to redeem.

The son of the mortgagor did not pay the amount within the date fixed, but G did, and the amount paid by him was taken out by the first mortgagees in discharge of their mortgage. Thereupon, G applied for the passing of a decree for foreclosure of the first mortgage in his favour. That application was dismissed on the ground that his remedy was to bring a suit for foreclosure. G thereupon instituted the suit out of which the appeal arose against the respondent, A', the widow of the then deceased son of the mortgagor, and the representatives of N (then deceased) for the reliefs he was entitled to by virtue of his having discharged the decree on the first mortgage.

Held, reversing the High Court, that the suit was not barred under S. 244 of C. P. C. of 1882 (133).

On payment by G, into Court of the amount of the decree on the first mortgage, and acceptance of the same by the first mortgagees, that decree was spent and became discharged and satisfied. There was, therefore, nothing left to be done in the execution department. By the payment, G, no doubt, acquired, under S. 74 of the Transfer of Property Act, all the rights and powers of the first mortgagees as such. But that would not have the effect of reviving or giving vitality to a decree which by the terms of it had become discharged. Even otherwise, the respective rights of G, as owner of the first mortgage and half owner of the

MORTGAGE-PRIOR AND SUBSEQUENT MORT- | MORTGAGE-PRIOR AND SUBSEQUENT MORT-GAGES-(Contd.)

> Prior mortgage-Suit on-Foreclosure decree in-Subsequent mortgage (party to suit) discharging -(Contd.)

second mortgage, and of the respondent as owner of the other moiety of the second mortgage, could not have been worked out without additions to the decree on the first mortgage which the Court in executing the decree had no power to make (133). (Lord Datvy.) GOPI NARAIN KHANNA v. (1905) 32 I. A. 123 = 27 A. 325 = BABU BANSIDHAR. (332-3) = 2 C. L. J. 173 = 9 C. W. N. 577=

7 B. L. R. 427 = 2 A. L. J. 336 = 8 Sar. 779= 15 M. L. J. 191.

Prior mortgage-Suit on-Subsequent mortgagee not impleaded in.

ORDER ABSOLUTE IN SUIT.

-Effect on subsequent mort gagee of.

Under S. 85 of the Transfer of Property Act, a prior mortgagee suing to enforce his mortgage is bound to make the subsequent mortgagee a party to his suit, and if he does not do so, the sub-equent mortgagee is not bound by the order for sale made in the suit, which can only be operative subject to his title (133). (Viscount Haldane.) HET RAM (1918) 45 I. A. 130 = 40 A. 407 = D. SHADI LAL. 24 M. L. T. 92=20 Bom L. B. 798=

22 C. W. N. 1033 = 28 C. L. J. 188= (1918) M. W. N. 518=16 A. L. J. 607= 5 Pat. L. W. 88-45 I. C. 798-35 M. L. J. 1.

-Execution of decree allowed to become barred-Effect -Subsequent mortgagee's suit to enforce his mortgage-Prior mortgagee's right in, to have property sold subject to his mort gage.

A prior mortgagee obtained a decree for sale under S- 89 of the Transfer of Property Act in a suit brought against the mortgagor only without impleading the subsequent mortgagee. He allowed the execution of that decree to become barred by limitation. Long after it became barred, the subsequent mortgagee sued to enforce his mortgage, making the prior mortgagee a party-defendant.

Held, that in that suit the prior mortgagee was not entitled to insist on the mortgaged property being sold subject to his mortgage.

By the decree absolute in the prior suit of the prior mortgagee, there was substituted for his right under his security the right to a sale conferred by the decree. The subsequent mortgagee, not having been made a party, was not affected that decree. Further the decree in the prior suit became inoperative under the Limitation Act as the result of nothing having been done under it. It follows that the title of the subsequent mortgagee has remained in existence as the only encumbrance prior to the title of the prior mortgagee as owner of the equity of redemption (133-4). (Viscount Haldane.) HET RAM v. SHADI LAL

(1918) 45 I.A. 130 = 40 A. 407 = 24 M.L.T. 92 = 20 Bom. L.R. 798 = 22 C.W.N. 1033 = 28 C.L.J. 188= (1918) M.W.N. 518 = 16 A.L.J. 607 = 5 P.L.W. 88 = 45 I. C. 798=35 M.L.J. 1.

PURCHASE BY PRIOR MORTGAGEE HIMSELF IN EXECUTION OF DECREF IN SUIT.

-Effect of-Right to set up mortgage as a shield in suit by subsequent mortgagee-Law under T. P. Act and under C. P. C. of 1908.

The law prior to the Transfer of Property Act was that an owner of a property who was in the rights of a first mortgagee and of the original mortgagor as acquired at sale under the first mortgage was entitled at the suit of a subsequent mortgagee who was not bound by the sale of MORTGAGE-PRIOR AND SUBSEQUENT MORT | MORTGAGE-PRIOR AND SUBSEQUENT MORT-

Prior mortgage-Suit on-Subsequent mortgagee not impleaded in-(Contd.)

PURCHASE BY PRIOR MORTGAGEE HIMSELF IN EXECUTION OF DECREE IN SUIT-(Contd.)

the decree on which it proceeded, to set up the first mortgage as a shield.

The decision in Het Ram's case (L. R. 45 LA. 130) that a mortgage put in suit was gone for ever as soon as the decree of sale was obtained was based on the express words of S. 89 of the Transfer of Property Act, which ends after providing for the decree "and thereafter the defendants" right to redeem and the security shall both be extinguished." These words are omitted in the rule in O. 34 of C.P.C. of 1908 corresponding to S. 89 of the Transfer of Property Act. They do not occur in either the foreclosure section of the Act of 1882 or the corresponding rule of O. 34 of C. P. C., which are limited to providing for the extinction of the debt. The words in S. 89 of the Transfer of Property Act being gone, the law under the C.P.C. of 1908 remains as it was before the Transfer of Property Act. (Lerd Dunedin.) SUKHI v. GHULAM SAFDAR.

(1921) 48 I. A. 465 (472-3) = 43 A. 469 (475) --14 L. W. 162 = (1921) M.W.N. 445 = 26 C. W. N. 279 = L. R. 3 P.C. 1=30 M.L.T. 175=24 Bom. L.R. 590= A.I.R. 1922 P.C. 11 = 65 I. C. 151 = 42 M.L.J. 15.

-Effect of, on subsequent mort gagee's rights. Where a prior mortgagee obtains a decree on foot of his mortgage without impleading the pursue mortgagee, and purchases the mortgaged property at the sale held in execution thereof, he does not thereby become absolute owner of the property. He continues to be mortgagee still, and the paisne mortgagee's right to redeem his mortgage remains unaffected (2-3). (Lord Hobbouse.) GUNGA PERSHAD SAHU P. LAND MORTGAGE BANK OF INDIA.

(1893) 21 I. A. 1-21 C. 366 (373) = 6 Sar. 383.

REDEMPTION OF PRIOR MORTGAGE BY-SUIT FOR.

Interest payable by subsequent mortgages in-Rate of-Rate fixed by prior mortgage or reduced rate allowed

by decree on prior mortgage.

A puisne mortgagee, who had not been made a party to the suit on the prior mortgage in which the mortgaged property was sold and purchased by the prior mortgagee himself, instituted a suit for redemption against the latter. The plaintiff contended that he was entitled to redeem on payment of the principal and interest at the rate (which was a reduced one) provided in that decree, and not at the rate agreed upon in the mortgage-deed. Held, over-ruling plaintiff's contention, that he was entitled to redeem the prior mortgage only upon payment to the defendant of the principal and interest moneys secured thereby, seeking interest at the rate provided by the said mortgage up to the day on which possession of the mortgaged property was awarded to the defendant in execution and no later (214).

The decree (in the suit on the prior mortgage) can only operate between the parties to the suit, and those who claim under them. But the plaintiff in this case comes to take away from the defendant the benefit of the decree. It would be unjust if he could use the decree to cut down her interest, while he deprives her of the whole advantage of it. His case is, that as to him the defendant is still but a mortgagee, and if so she should be allowed such benefit as her mortgage gives her. If the defendant had not got a decree, and the plaintiff had come to redeem her mortgage, he must have paid whatever interest her contract entitled her to, and the court would have had no jurisdiction to cut it down (213.4). (Lord Hobboute.) UMES CHUNDER SIRCAR P. MUSSUMMAT ZAHOOR FATIMA.

(1890) 17 I. A. 201 = 18 C. 164 (179-81) = 5 Sar. 507.

GAGES-(Contd.)

Prior mortgage-Suit on-Subsequent mortgagee not impleaded in-(Contd.)

REDEMPTION OF PRIOR MORTGAGE BY-SUIT FOR -(Contd.)

The plaintiff, the assignee of a mortgage, dated 5-9-1886, sued to enforce that mortgage. The defendant was the purchaser of the mortgaged property in execution of a decree obtained on foot of a prior mortgage of the year 1884. There was an yet earlier mortgage on the same pro-perty of the year 1882. In a suit brought to enforce that mortgage (of the year 1882), to which suit the defendant and the plaintiffs' predecessor in interest were parties, the court held that the rate of interest provided by the bond (2 per cent, per month, with annual rests and compound interest) was exorbitant and allowed only simple interest at 12 per cent, per annum. The amount due under the said bond with interest at the reduced rate was paid by the defendant to avert a sale in execution of the decree in that suit; and the defendant thereby succeeded to the rights of the decreeholder in that suit.

The High Court held that as a condition of redemption the plaintiff was bound to pay to the defendant the amount of principal and interest secured by the bond of 1882 according to the terms of that document up to date " while the defendant had " to account for rents and profits in the ordinary way up to date."

Held, reversing the judgment of the High Court, that the defendant was not entitled to a higher rate of interest under the bond of 1882 than that allowed by the decree in the suit brought on foot thereof. (Lord Macnaghten.) KEDAR LAL MARWARI T. DEWAN BISHAN PERSHAD.

(1903) 31 L A. 57=31 C. 332=8 C. W. N. 609= 8 Sar. 509.

-Prior mortgage execution-purchaser, but not mortgagee from him, impleaded in-Payment to prior mortgages purchaser and foreclosure decree absolute obtained against him-Effect of, on mortgagee from him-Failure of prior mortgage purchaser to redeem him-

The swit property and other properties were mortgaged under two simple mortgages, dated 1874 and 1875 to plain-tiff's husband. In 1883, the suit property alone was mortgaged by way of conditional sale in favour of the respondents. In 1880, plaintiff's husband obtained a decree for sale, without impleading the respondents, and purchased the property himself in execution. Plaintiff's husband died in 1895, having bequeathed the property to the plaintiff. She made a gift of, inter alia, the suit property to J and N, who covenanted to pay her Rs. 1,200 a year, and hypothecated the properties gifted to them by way of mortgage

In 1910 the respondents sued upon their mortgage of 1883, impleading J and N only, and not the plaintiff. J and N put forward the mortgages of 1874 and 1875 as a shield. Accordingly the respondents paid into court the sum of Rs. 2,954, the sum due under the said mortgages. J and N withdrew the amount but failed to redeem the respondents and thereupon a decree absolute for foreclosure was made in favour of the respondents in 1913.

In 1914 the plaintiff sued upon her mortgage of 1902 making f and N and the respondents parties.

Held that the plaintiff was entitled to be placed in the position in which she would have been if she had been made a defendant in the respondents' suit of 1910; that the respondents must pay her Rs. 2,954 (which they had paid to /& N) with interest thereon at 6 per cent., and in default, she was entitled to a decree for sale of so much of the estate as would realise that sum; but that, if the said sum was paid

GAGES-(Contd.)

Prior mortgage-Suit on-Subsequent mortgagee not impleaded in-(Contd.)

REDEMPTION OF PRIOR MORTGAGE BY-SUIT FOR -(Contd.)

to her by the respondents or was realised by her by sale of part of the estate, she was to have a decree for sale of the remainder of the estate only on her paying the respondents the amount due under their mortgage of 1883, and that the respondents' right to recover the sum of Rs. 2,954 improperly carried away by J & N could not be worked out in that suit (474). (Lord Dunedin.) SUKHI v. GHULAM (1921) 48 I.A. 465 = 43 A. 469 (476-7) =

14 L.W. 162=(1921) M.W.N. 445 = 26 C.W.N. 279= L.R. 3 P.C. 1 = 30 M.L.T. 175 = 24 Bom. L.R. 590 = A.I.R. 1922 P.C. 11 = 65 I.C. 151 - 42 M.L.J. 15.

-Prior mortgage execution purchaser also acquiring equity of redemption in property included in subsequent mortgage-Redemption of that mortgage by him-Oppor-

tunity for-Necessity to give.

In this case, a prior mortgagee, who had acquired the equity of redemption of the mortgagors, charged to the extent of a subsequent mortgage, was allowed to redeem the subsequent mortgagee in a suit in which the laster sued to redeem prior incumbrances so as to make his own charges the first on the property. The decree as worked out gave the prior mortgagee the option of redeeming the subsequent mortgage (214.5). (Lord Hobbouse.) UMES CHUNDER SIRCAR v. M. SSUMAT ZAHOOR FATIMA.

(1890) 17 I.A. 201 = 18 C. 164 (181) = 5 Sar. 507.

Purchaser in execution of prior mort gagee's decree a stranger-Amount to be paid to him as condition of re-

demption.

Where property subject to two mortgages is sold in execution of a decree obtained by the earlier mortgagee without impleading the later mortgagee, held, in a suit by the latter to enforce his mortgage, that the decree to which the later mortgagee was entitled was one entitling him to redeem the earlier mortgage on payment to the execution purchaser under the decree on the earlier mortgage of the amount of the principal and interest in respect of which the property was sold to the purchaser under the said decree (84). (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN v. AMBIKA PERSHAD SINGH. (1911) 39 I.A. 68=

39 C. 527 (558)=(1912) 1 M.W.N. 367= 11 M.L.T. 265 = 9 A.L.J. 332 = 14 Bom. L.B. 280 = 16 C.W.N. 505 = 15 C.L.J. 411 = 14 I.C. 496 = 22 M.L.J. 468.

-Purchaser in execution of prior mortgagee's decree prior mortgagee himself-Terms of redemption in case of.

In a suit brought by a subsequent mortgagee for redemption of a prior mortgage, it appeared that the prior mortgagee had himself purchased the mortgaged property in execution of a decree obtained on foot of his mortgage. The question arose on what terms the redemption by the subsequent mortgagee was to be made.

The following rules were laid down :-

(1) Possession by the mortgagee was to be taken as equivalent to interest; so that from the date on which he took possession, he was to be deprived of his interest, and he had not to give an account of his receipts.

(2) The prior mortgagee was entitled to a lien on the property mortgaged to him for the amount of the mortgage debt for which the property was sold, without regard to the

amount paid by him on the purchase.

(3) The prior mortgagee was entitled to interest at the rate allowed by the mortgage deed up to the date of the sion of the mortgaged property. The subsequent mortgagee by way of deposit of title-deeds to B in October, 1895. In

MORTGAGE-PRIOR AND SUBSEQUENT MORT- | MORTGAGE-PRIOR AND SUBSEQUENT MORT-GAGES-(Contd.)

> Prior mortgage-Suit on-Subsequent mortgagee not impleaded in-(Contd.)

REDEMPTION OF PRIOR MORTGAGE BY-SUIT FOR -(Contd.)

was not entitled to avail himself of the reduced rate of interest fixed by the decree in the prior mortgagee's suit. (Lord Hobbonse.) UMES CHUNDER SIRCAR v. MUSSU-MAT ZAHOOR FATIMA. (1890) 17 I.A. 201 (2134)= 18 C. 164 (179-81) = 5 Sar. 507.

The suit was by the son of a prior mortgagee, who had obtained a decree on foot of his mortgage, without impleading the paisne mortgagee, and purchased the property at the sale held in execution thereof. The defendant was the puisne mortgagee who was not so impleaded. The question was as to the terms on which the puisne mortgagee was to be allowed to redeem the prior mortgage.

The High Court thought that the decree in the mortgagee's suit allowed only simple interest at the rate provided by the prior mortgage, and not compound interest at that

rate as provided by it

Held that the High Court erred in so construing the decree, that the decree allowed compound interest as provided by the bond, and that the plaintiff was entitled to such interest (5-6). (Lord Hobhouse.) GUNGA PERSHAD SAHU P. LAND MORTGAGE BANK OF INDIA.

(1893) 21 I.A. 1 = 21 C. 366 (373-4) = 6 Sar. 383.

Property subject to two mortgages was purchased by the prior mortgagee in execution of the decree in a suit brought by him to enforce his mortgage. To this suit the subsequent mortgagee was not made a party.

In a suit brought by the subsequent mortgagee to enforce his mortgage, held that the condition on which he was entitled to a sale decree was the payment to the prior mortgagee-purchaser of the amount due under his decree, and not the amount which would have been due under his

mortgage (74).

The High Court in the appeal rightly held that the prior mortgagee purchaser had no greater rights than any stranger would have had who had purchased property under the mortgage decree and paid cash for it (74). (Sir John Edge.) MATRU MAL r. DURGA KUMAR.

(1919) 47 I A. 71=42 A. 364=11 L.W. 529= 22 Bom. L.R. 553 = 32 C.L.J. 121= 55 I.C. 969 = 38 M.L.J. 419.

RIGHT OF.

-Effect on. It was pointed out that the property on which the plaintiffs claimed to have a charge had been sold under a decree obtained by a prior mortgagee against the mortgagor; and it was insisted that such a sale had the effect of displacing puisne mortgagees and leaving them with nothing but a claim against the surplus proceeds, if any. That, however, in ther Lordships' opinion, is not the necessary consequence of a sale under a decree obtained by a prior mortgage against the mortgagor in a suit to which the puisne incumbrancers are not parties (170). (Lord Macnaghten.) RAJAR GOBIND LAL ROY to RAMJANAM MISSER.

(1893) 20 I.A. 165 = 21 C. 70 (79) = 6 Sar. 356.

A puisne mortgagee, who is not made a party to a suit by a prior mortgagee to enforce his security, is not bound by the decree for sale made therein. (Lord Macnaghten.) KEDAR LAL MARWARI D. DEWAN BISHEN PERSHAD. (1903) 31 I.A. 57 = 31 C. 332 (336)

8 C.W.N. 609=8 Sar. 599.

A, an assignee of a mortgage, sub-mortgaged his interest

# MORTGAGE-PRIOR AND SUBSEQUENT MORT- MORTGAGE-PRIOR AND SUBSEQUENT MORT-

Prior mortgage - Suit on - Subsequent mortgagee not impleaded in - (Contd.)

RIGHT OF-(Contd.)

March, 1895, A purporting to be owner in fee executed a mortgage to C. In July 1902 C brought a foreclosure suit which was decreed by consent in the same month. B was not a party to the suit. But before C's foreclosure suit B had obtained a decree for sale and purchased Az interest. B now sued A, C and Az original mortgagors to enforce his mortgage. Held, that B not having been made a party to C's suit his rights were unaffected and that the suit should be decided on enquiring as to the priority between Band C. (Lord Macnaghten.) MAUNG THA HNYIN P. MAUNG MYA SU. (1909) 37 I.A. 19 (25, 26)=

37 C. 239 (248) = 11 C.L J. 166 = 14 C.W.N. 214 = 12 Bom. L.R. 234 = 5 I.C. 151 = 20 M.L.J. 153.

### Subsequent mortgagee.

POSSESSION OF MORTGAGED PROPERTY - SUIT AGAINST MORTGAGOR FOR.

PRIOR MORTGAGE.

REDEMPTION BY-PARTIAL REDEMPTION.

REVENUE SALE OF MORTGAGED PROPERTY BROUGHT ABOUT BY FRAUD OF REAL PURCHASER OF EQUITY OF REDEMPTION-AVOIDANCE OF.

SUIT TO ENFORCE HIS MORTGAGE BY.

### POSSESSION OF MORTGAGED PROPERTY-SUIT AGAINST MORTGAGOR FOR.

-Maintainability-Limitation- Possession obtained by subsequent mortgagee under decree against mortgagor-Dispossession by prior mortgagee-Discharge of prior mortgage by mortgagor and possession obtained by him-Suit by subsequent mortgagee in case of. See MORTGAGE - MORT-GAGED PROPERTY-POSSESSION OF- SECOND MORT-GAGER'S SUIT, ETC. (1876) 4 I. A. 15 (19)= 1 A. 325 (328-30).

PRIOR MORTGAGE.

Payment of .. Right of .. Mortgagor's right to object to. A puisne incumbrancer can always pay off a prior incumbrance, while the mortgagor, who has created both, has neither interest nor right to object (719). (Lord Phillimore.) MADHO RAO P. GHULAM MOHIUDDIN.

(1919) 56 I. C. 717 = 15 N. L. R. 134.

-Power of tale in-Sale pursuant to-Subsequent mortgagee's purchase at- + ffeet of.

In Show v. Bunny (33 Beav. 494) it was held that a second mortgagee was entitled, equally with a stranger, to purchase for his own benefit the mortgaged estate when sold under a power of sale contained in the first mortgage. The effect of a sale under a power of sale is to destroy the equity of redemption in the land, and to constitute the mortgagee exercising the power a trustee of the surplus proceeds, after satisfying his own charge, first for the subsequent incumbrancers, and ultimately for the mortgagor. The estate, if purchased by a stranger, passes into his hands free from all the incumbrances. There seems to be no reason why the second mortgagee, who might certainly have bought the equity of redemption from the mortgagor, should not, equally with a stranger, purchase the estate when sold not, equally with a stranger, purpose of the mortgagor (160). (Sir James W. Colvile.) RAJAH KISHENDATT RAM v. RAJAH MUMTAZ ALI KHAN. (1879) 6 L. A. 145

5 C. 198 (211) = 5 C. L. B. 213 = 4 Sar. 17 = 3 Suth. 637 = R. & J.'s No. 58.

Suit on-Subsequent mortgagee not impleaded in. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES -PRIOR MORTGAGE-SUIT ON-SUBSEQUENT MORT-GAGEE NOT IMPLEADED IN.

# GAGES-(Contd.)

Subsequent mortgagee-(Contd.)

REDEMPTION BY-PARTIAL REDEMPTION.

Permissibility.

f. a second mortgagee of a four annas share of a property redeemed a first mortgage upon a twelve annas share inclusive of his four annas. A subsequent second mortgagee of the eight annas share redeemed the first mortgage upon the whole twelve annas.

Held that I was entitled to redeem the four annas upon which he had a second mortgage. (Lord Macnaghten.) JAWAHIR SINGH P. BALDEO BAKSH SINGH.

(1907) 2 M. L. T. 476.

REVENUE SALE OF MORTGAGED PROPERTY BROUGHT ABOUT BY FRAUD OF REAL PURCHASER OF EQUITY OF REDEMPTION-AVOIDANCE OF.

-Right of-Omission to attack sale in prior mort gage's suit to recover his amount from surplus revenue sale proceeds-Effect.

Property, which was subject to several mortgages, was purchased by the appellant benami in the names of two others. With the object of getting rid of the mortgages, the appellant wilfully allowed the Government revenue to fall into arrears and the property was sold in consequence by the Government nominally as the property of the benamidars, the registered proprietors and was purchased by the appellant himself. After the sale the prior mortgagee instituted a suit upon his mortgage seeking to obtain payment out of the surplus sale proceeds. The respondent was made a party to this suit as a subsequent encumbrancer on the property, but he did not attack the revenue sale. Subsequently the respondent instituted a suit upon his mortgage and claimed relief as against the property itself, ignoring the sale on the ground that it had been brought about by the fraud of the real owner. It was contended that the respondent was, by his conduct in the suit by the prior mortgagee, estopped from attacking the revenue sale, and claiming relief as against the property itself,

Held that no such estoppel arose as against the subsequent mortgagee.

The respondent was only made a party to the prior mortgagee's suit as an encumbrancer upon the property. He had no power of controlling the form in which the suit was brought, nor was there any step which he took in the suit irrevocably asserting his intention to rely upon the sale and not impeach the whole proceedings. (Lord Buckmaster.) TARINI CHARAN SARKAR 2. BISHUN CHAND.

(1917) 23 M.L.T. 147 = 7 L.W. 315 = 27 C.L.J. 303 = 22 C. W. N. 505 = (1918) M. W. N. 295 = 4 P. L. W. 249 = 16 A. L. J. 271 = 20 Bom. L. B. 553 = 44 I. C. 304 = 34 M. L. J. 361 (366).

SUIT TO ENFORCE HIS MORTGAGE BY.

-Bar of, by omission to enforce right in suit on prior mortgage-Plea of, in Privy Council appeal for first time -Maintainability.

The objection that a puisne mortgagee, who sued to enforce his mortgage, ought to have enforced his right, if any, in a prior suit brought by a prior mortgagee, to which suit the puisse mortgagee was made a party, and that it was not therefore competent for him to bring a fresh suit, not having been insisted upon in either of the courts below, was not allowed to be raised for the first time before the Privy Council. (Lord Macnaghten.) KEDAR LAL MARWARI v. DIWAN BISHEN PERSHAD. (1903) 31 I. A. 57=

31 C. 332 (338) = 8 C. W. N. 609 = 8 Bar. 599. -Decree in-Form of-Prior and subsequent mortgagees not impleaded.

Where to a suit for sale upon a second mortgage, a person who is entitled to the rights of a first and a third

### MORTGAGE-PRIOR AND SUBSEQUENT MORT- MORTGAGE-PRIORITY OF. GAGES-(Contd.)

Subsequent mortgagee-(Contd.)

SUIT TO ENFORCE HIS MORTGAGE BY-(Confd.)

mortgagec on the same property is made a party and he sets up his rights under both mortgages, the decree for sale in the suit must allow the plaintiff to redeem the first mortgage and the third mortgagee in his turn to redeem the plaintiff's mortgage (83). (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN P. AMBIKA PERSHAD SINGH.

(1911) 39 I. A. 68=39 C. 527 (557)= (1912) 1 M. W. N. 367=11 M. L. T. 265= 9 A. L. J. 332 = 14 Bom. L. R. 280 = 16 C. W.N. 505 = 15 C. L. J. 411=14 I. C. 496=22 M. J. J. 468.

Decree in-Prior and subsequent mortgagees not impleaded-Effect on rights of. See MORTGAGE-SUIT TO ENFORCE- PARTIES TO- PRIOR AND SUBSEQUENT (1911) 39 I. A. 68 (82, 83, 84) = MORTGAGEES, ETC. 39 C. 527 (557-8).

-Decree in-Sale in execution of-Property passing under-Property itself or equity of redemption therein only Practice—Prior and subsequent mortgagees not impleaded in suit. See MORIGAGE-SUIT TO ENFORCE-PARTIES TO-PRIOR AND SUBSEQUENT MORTGAGEES, ETC.

(1911) 39 I. A. 68 (82-3) = 39 C. 527 (556-7).

-Prior mortgagee impleaded in- Redemption of prior mortgage-No prayer in plaint for - Decree directing sale of mortgaged property and adjustment of purchasemoney-Propriety of-Objection in appeal to-Maintain-

In a suit for sale by a paisne mortgagee, to which the prior mortgagee was made a party, the courts below decreed a sale of the mortgaged property free from all incumbrances, the net proceeds of the sale to be divided amongst the mortgagees according to their respective priority. On appeal to the Privy Council by the pusse mortgagee, it was contended for him that the decree was wrong in directing a sale of the whole property, and leaving the rights of the parties to be worked out against the purchase-money, and he claimed to treat the suit as a redemption suit.

Their Lordships overruled the objection and affirmed the decrees below, observing:-The plaint asks for a sale, and plaintiff has not till the hearing of this appeal suggested that the court should deal with the property in any other way. The decree is right in ordering a sale, and the respective rights of the plaintiff and Z (the prior mortgagee) "in the purchase-money must be adjusted on the footing that the plaintiff has the right to redeem Z's 2 annas" (212-3), (Lord Hobbouse.) UMES CHUNDER SIRCAR v. MUSSUM-MAT ZAHOOR FATIMA. (1890) 17 I. A. 201 =

18 C. 164 (179-80) = 5 Sar. 507.

-Redemption of that mortgage-Right of of purchaser in execution of decree on one prior mertgage and

assignee of another prior mortgage.

Where a suit to enforce a mortgage is brought against a person, who had purchased the mortgaged property in execution of a decree obtained in a suit to enforce a prior mortgage, to which suit, however, the plaintiff was not made a party, and who stood in the shoes of another prior mortgagee of the same property by reason of his having paid off that prior mortgagee, the defendant can either elect to redeem the plaint mortgage, or ask the plaintiff to redeem him. (Lord Macnaghten.) KEDAR LAL MAR-WARI v. DEWAN BISHEN PERSHAD.

(1903) 31 I. A. 57 = 31 C. 332 (337) =

-Attachment in execution-Mortgage of property pending-Purchaser of property so attached-Claim to priority over persons claiming under mortgage.

Plaintiff claimed the suit property under a purchase in execution of a decree for sale made in a suit for foreclosure of a mortgage. The defendants were purchasers in execution of a decree obtained against the mortgagor. It appeared that at the time when the deed of mortgage, the subject of the foreclosure suit, was executed, the suit pro perty was actually attached under a decree of the court, and under a sale in pursuance of that original decree, and of that execution, the title of the defendants accrued.

Held that the title of the defendants was paramount and superior to the title under the mortgage (110), (Lord Justice James.) ANUNDO MOYFE DOSSEE 7. DHANENDRA (1871) 14 M. I. A. 101= CHUNDER MOOKERJEE.

16 W. R. P. C. 19=8 B. L. R. 122=2 Suth. 457= 2 Sar. 698.

-English mortgage-Mortgagee under, allowing mortgager to enjoy usufruct of mortgaged property with notice of subsequent mortgage-Effect.

If an English mortgagee, having the power to satisfy himself by taking possession of the rents and profits of the mortgaged estate, chooses to forego the benefit of receiving the rents and profits, and permits the mortgagor to take them, it would have no effect as between him and the mortgagor; he would have a full right to recover his debt by reason of the mortgage. The only effect would be when some subsequent incumbrancer came in, and he had notice of that claim. In that case the rule and law of England would be, that if after notice he permits the mortgagor to receive the rents and profits, he exposes himself to the claim of the second incumbrancer (500-1), (Mr. Baron Parkt.) JUGGEEWAN DAS KEEKA SHAH v. RAM DAS BRIJBOO-(1841) 2 M. I. A. 487=6 W. R. 10 P. C.= KUN DAS. 1 Suth. 109=1 Sar. 222

-Equitable mortgage to secure present and future advances-Further advances under-Priority in respect of, as against intervening registered mortgagee-Maximum fixed in mortgage-Maximum not fixed-Cases of-Distinction See MORTGAGE-EQUITABLE MORTGAGE - FURTHER (1923) 50 I. A. 283 (293-5) = ADVANCES UNDER. 51 C. 86=1 B. 637

-Inducement by mortgagee to a person to advance money as first charge on mortgaged property-Effect.

Where it was found that the appellant (a prior mortgagee) was an assenting party to a subsequent mortgage or charge created in favour of the respondents, and actually received a large portion of the money thus raised, and that the mortgage or charge in favour of the respondents contained an express covenant that the property mortgaged was free from encumbrances, held that the appellant, having the concurred in inducing the respondents to advance their money, as a first charge, could not subsequently turn round and claim priority over that charge in favour of their OWB prior mortgage. (Sir Arthur Wilson.) RAMAN CHETTY (1911) 15 C. W. N. 813 a D. STEEL BROTHERS & CO. 13 Bom. L. R. 542 = 14 C. L. J. 79

(1911) 2 M. W. N. 413=4 Bur. L. T. 225= 10 M. L. T. 239=6 L. B. R. 21=11 I. C. 503= 21 M. L. J. 936.

Property not belonging to mortgagor-Mortgage of -Acquisition of title by him subsequently-Effect-Second mortgage of same property subsequently-Priority in cost

Property & was included in a registered mortgage deed and was again included in a later registered mortgage deed without any reference being made to the preceding dealing 8 C. W. N. 609 = 8 Sar. 599. with the property. At the date of the execution of the prior

# MORTGAGE-PRIORITY OF-(Contd.)

mortgage, although the mortgagor had purchased the estate under an execution decree, the sale had not been confirmed and he had obtained no certificate of sale. This he subsequently acquired before the execution of the later mortgage.

On a question of priority between the mortgagees the Court below dealt with the case as if the only question was whether the former registered deed gave notice.

Held that it was not a complete and adequate answer to

the prior mortgagee's case.

It is true that no estate, title, or interest in the property was originally conveyed by the first deed; but directly the certificate of sale was obtained, according to the English Law, this passed the estate to the first grantee, and, his conveyance being duly registered, the second grant could only operate subject to the first. This principle of law is sometimes referred to as feeding the grant by estoppel (254). (Lord Buckmaster.) TILAKDHARI LAL P. KHEDAN (1920) 47 I. A. 239-48 C. 1 (20)=

25 C. W. N. 49 = 32 C. L. J. 479 = 13 L. W. 161 = (1920) M. W. N. 591 = 28 M. L. T. 224 = 18 A. L. J. 1074 - 2 P. L. T. 101 - 22 Bom. L.R. 1319-

57 I. C. 465 = 39 M. L. J. 243.

-Registered mortgage-Title deeds of mortgaged property-Mortgagee leaving, with mortgager-Effect.

The circumstance that a prior mortgage leaves the titledeeds with the mortgagor would, if unexplained, justify the postponement of his security to the security of another. created by deposit of the deeds. (Lord Macnaghton.) MAUNG THA HNVIN v. MAUNG MYA SU.

(1909) 37 I. A. 19 (25, 27) = 37 C. 239 (247-8) = 11 C. L. J. 166-14 C. W. N. 214-12 Bom LR 234-5 I. C. 151 - 20 M. L. J. 153.

Renewal of mortgage, and decree on foot of renewed mortgage-Effect of, as against interzening mortgagees.

A mortgage bond executed by A in favour of B revited that a certain amount was due from A to B for principal and interest under an earlier mortgage bond by A in favour of B and charged the properties mortgaged under the earlier bond and others as security for the amount doe under the earlier bond and for other debts. Between the dates of the two mortgages A had executed a mortgage to C in respect of the same properties as those covered by B's earlier mortgage. B obtained a decree on his later mortgage and executed the same. The plaint in that suit relied upon the later mortgage only and the later mortgage alone was mentioned in the decree and in the execution pro eedings. Similarly C obtained a decree upon his mortgage and executed the same. On a question arising between B and C in proceedings in execution of their respective decrees as to whether B had by taking the later bond and by obtaining a decree upon it lost the right of priority over C's bond which he (B) had under his earlier bond, held, on the construction of the later bond in favour of B, that it did not supersede the earlier hand so as to impair the effect of that bond as a subsisting hypothecation. Held further that by suing upon the later bond. and not upon the earlier one  $\hat{B}$  did not abandon his right of priority under the earlier bond.

B did not need to sue upon the earlier bond in order to obtain a sale for the whole of his debt that being comprised in the later bond. In suing upon the later bond, B did nothing to imply or to lead others to believe that he abandoned what apart from abandonment was a subsisting hypothecation. (Lord Robertson.) SHANKAR SARUP :. MEJO MAL. (1901) 28 I. A. 203 (209-10)=

23 A. 313 (323)=5 C. W. N. 649=3 Bom. L. B. 713= 8 Sar. 72

# MORTGAGE-PRIORITY OF-(Contd.)

A man who has represented to an intending purchaser that he has not a security, and induced him under that belief to buy, cannot as against that purchaser subsequently attempt to put his security in force (156). A mortgagee is, however, under no duty voluntarily, and without being asked to disclose his security (156). (Sir Montague E. Smith.)
MUNNOO LALL r. LALLA CHOONEE LALL.

(1873) 1 I. A. 144 = 21 W. R. 21 = 3 Sar. 302 =

Suit to enforce-Limitation-Limitation Act of 2 Suth 917. 1908, Art. 132. See Limitation Act of 1908, ART. 132. (1911) 39 I. A. 68 (84) = 39 C. 527 (558).

-Usufructuary mortgagee--Possession of mortgaged property-Surrender of, to person entitled to estate subject to his mortgage, on payment by him of instalment then due -Effect of, on right to priority in respect of further instalments. See MORTGAGE-L'SUFRUCTUARY MORTGAGE -MORTGAGED PROPERTY - POSSESSION OF - SUR-RENDER BY MORTGAGEE OF, ETC.

(1903) 30 I. A. 239 (244-5)=31 C. 57 (71). -Watter of, in regard to one of properties, in favour of subsequent mortgages in suit by him -Effect of, on priority in regard to other properties against stranger purchaser thereof in execution of decree under S. 90, T.P. Act in indisequent mort gaget's suit.

In a case in which there were a first mortgage of properties A and B to X, a second mortgage of property A, alone to I', a third mortgage of properties A and B, and other properties to X, the sum secured thereby including the principal and interest due under the first mortgage, and a fourth mortgage of property A to V. V sued upon both his mortgages, making X, a party to the suit, admitting that X, was a prior mortgagee of property A, and expressing his readiness to pay X, the amount which might be legally payable to him. X expressed his willingness to have the hypothecated property sold, in the event of his being paid the prior amount due to him.

The decree directed the sale of property A in default of payment on the date fixed and provided that the sale proceeds should be applied first in payment to Y, of the amount due under the second mortgage, that the balance, if any, should be applied in payment of the sum due to X, on that late with interest; and that any surplus left was to be applied in payment of the sum due to F, under the fourth mortgage.

Default was made in payment on the date fixed, a decree absolute for sale of property A was made, and that property was sold. The proceeds of the sale were applied first in payment to Y of the sum then due under the second mortgage, and the balance was paid to X. The balance was insuffiient for the purpose, and the result was that X was not guid the whole of the amount due to him under the first mortgage, and Y was not paid the whole of the amount due to him une'er the fourth. V. therefore, obtained a decree under S. 90 of the Transfer of Property Act, and in execution of that decree property II was sold and was purchased by the appellants.

In a suit by X to enforce the third mortgage the appellants contended that property B was relieved of all liablity in respect of the debt due under the first mortgage by reason of the failure of X, to insist upon his priority under that mortgage in V's suit.

Held, overruling the contention, that the fact that the prior mortgagees did not insist on having the amount due under the mortgage of 8-8-1887, satisfied in priority to the claim of the second mortgagees did not disentitle the plaintiffs to recover the full amount of their claim in the present Subsequent purchaser—Priority against—Represent John Edge.) PADARATH v. RAM NAIN UPADHIA. tation of no mortgage to him prior to his purchase—Effect. (1915) 42 I. A. 163 = 37 A. 474 (484) = 18 M. L. T. 85 = suit, and did not entitle the appellants to relief. (169). (Sir

MORTGAGE-PRIORITY OF-(Contd.)

2 L. W. 639 = (1915) M. W. N. 709 = 19 C. W. N. 991 = 22 C. L. J. 165 = 17 Bom. L. B. 617 = 13 A. L. J. 809 = 30 I. C. 366 = 29 M. L. J. 159.

### MORTGAGE-PROOF OF.

Compromise petition filed in Court reciting mortgage

—Certified copy of—Admissibility—Records of proceedings
destroyed in Mutiny. See EVIDENCE — DOCUMENT —
SECONDARY EVIDENCE OF CONTENTS OF — ADMISSIBILITY OF—COMPROMISE PETITION FILED. ETC.

(1916) 43 I. A. 264 (266) = 38 A. 494 (499 500).

Finding as to—When one of law. See C. P. C. OF 1908, S. 100—MORTGAGE—PROOF OF.

(1864) 10 M. I. A. 151 (163-4).

### MORTGAGE-PROPERTY PASSING UNDER

### MORTGAGE-REDEMPTION.

EQUITY OF-CLOG ON.

GOVERNMENT REVENUE PAID BY MORTGAGEE— APPORTIONMENT OF.

LEASE OF MORTGAGED PROPERTY TO MORTGAGOR FORMING PART OF SAME TRANSACTION AS MORT-GAGE.

MORTGAGE AMOUNT ADVANCED—DEFICIENCY IN— APPORTIONMENT OF.

PARTIAL REDEMPTION.

PERIOD FIXED FOR.

PROPERTY HELD IN SHARES.

PROPERTIES MORTGAGED SEVERAL—REDEMPTION BY PURCHASERS OF SOME OF

PURCHASER OF EQUITY OF REDEMPTION—REDEMP-TION BY—INTEREST PAYABLE ON.

RIGHT OF.

SUIT FOR.

TERMS OF.

UNDIVIDED SHARE.

### Equity of-Clog on.

-Agreement imposing-Validity of.

There is nothing in law to prevent the parties to a mortgage from coming to any arrangement afterwards qualifying the right to redeem.

In a suit for redemption of a mortgage of 1846, it appeared that, in 1870, the mortgagors had, in consideration of certain additional benefit reserved to them under a compromise, agreed to subject their right of redemption to certain conditions.

Held, that the arrangement arrived at in 1870 was a bar to the action in the absence of an allegation that it was brought upon a breach of the covenant contained in the deed of compromise. (Mr. Ameer Ali.) SHANKAR DIN v. GOKAL PRASAD. (1912) 34 A. 620 =

14 Bom. L. R. 1098 = 15 O.C. 285 = 12 M. L. T. 419 = (1912) M. W. N. 1061 = 10 A. L. J. 344 = 17 C. W. N. 1 = 17 C. L. J. 9 ~ 16 L. C. 78 = 23 M. L. J. 621.

-Assign of mortgagor-Invalidity against.

Held, that the provisions of a mortgage-deed constituting a clog or fetter upon the equity of the redemption were void and could have no more binding force against the assign of the mortgagor than they had against the mortgagor himself.

They are not provisions of general validity avoided against the mortgagor personally by reason of pressure or undue influence brought to bear on him. They are provisions which, when forming part of the actual mortgage

### MORTGAGE-REDEMPTION-(Contd.)

Equity of-Clog on-(Contd.)

contract, have under the general law no validity at all. If it were otherwise an illogical result would follow. The mortgagor, if he redeemed would escape from the burden, but if he sold to another he would necessarily bear the burden, as the validity of the provisions as against the assign would be reflected in the price which he received. (Lord Tomlin). KHAN BAHADUR MEHRBAN KHAN v. MAKHNA. (1930) 34 C.W.N. 529 = 1930 A.L.J. 544= 123 I.C. 554=31 L.W. 732=A. I. R. 1930 P.C. 142= 58 M. L. J. 714.

Contract excluding right of redemption - Validity

S. 60 of the Transfer of Property Act is unqualified in its terms, and contains no saving provision as other sections do in favour of contracts to the contrary (65). (Sir Lawrence Jenkins.) MOHAMMAD SHER KHAN v. SETH SWAMI DAYAL. (1921) 49 I. A. 60 = 44 A. 185 (189) =

30 M, L. T. 220 = 9 O. L. J. 81 = 25 O. C. 8 = 35 C. L. J. 468 = 20 A. L. J. 476 = 24 Bom. L. B. 695 = (1922) M, W. N. 878 = A. I. R. 1922 P. C. 17 = 4 U. P. L. B. 50 = 66 I. C. 853 = 42 M. L. J. 584.

- English law as to-Applicability in India of.

What is known in the law of England as "the equity of redemption." depends on the dortrine established by Courts of Equity, that the time stipulated in the mortgage deed is not of the essence of the contract. Such a doctrine was unknown to the ancient law of India, and it was not introduced into that country by any course of decisions of the courts of the East India Company (571-2). (Lord Chelmsford.) PATTABIRAMIER v. VENCATAROW NAYAKEN.

(1870) 13 M. I. A. 560 = 15 W. B. P. C. 35 = 7 B. L. R. 136 = 2 Suth. 410 = 2 Sar, 623.

Interest additional—Promise to pay—Unregistered instrument containing—Effect of.

The mortgagor under a registered mortgage deed, executed an unregistered nikka (note) promising to pay interest, in addition to that contracted for in the mortgage deed. 
Held that the unregistered nikka could not fetter the equity of redemption in the property mortgaged under the mortgage deed. (Lord Macnaghten.) TIKA RAM v. DEPUTY COMMISSIONER OF BARA BANKI.

(1899) 26 I. A. 97 (99 100) = 26 C. 707 (711) = 3 C. W. N. 573 = 1 Bom, L. B. 692 = 7 Sar. 520.

----Interest in mortgaged property on redemption-Pro-

The terms of S.60 of the Transfer of Property Act are an indication that the rules of English Law relating to a mort-gagor's right to redeem are applicable to Indian society and circumstances.

A mortgage bond, under which the mortgages were entitled to possession for nineteen years, provided that if, at the end of that period, the mortgagor paid off the mortgagemoney, the property was to belong as to a limited interest therein only, to the mortgagor, and as to the major interest therein to the mortgagees; and that, if the mortgagor failed to pay off the mortgage-money at the end of the nineteen years, the property was to belong to the mortgagees absorbed.

Held that, according to the rules of English Law applicable to the case the provisions of the mortgage-deed conferring on the mortgagees on redemption an interest in the property, constituted a clog or fetter upon the equity of the redemption. (Lord Tomlin.) KHAN BAHADUR MEHRAN (1930) 34 C. W. N. 599

KHAN \*\* MAKHNA. (1930) 34 C. W. N. 799

1930 A.L.J. 544 = 123 I. C. 554 = 31 L. W. 732 = A. I. B. 1930 P. C. 142 = 58 M. L. J. 714

Equity of-Clog on-(Contd.)

-Redemption money-Source of-Stipulation restricting-Validity of.

Quarre whether a stipulation in a mortgage deed that the mortgagor should redeem the mortgage property with money paid out of his own pocket without selling or mortgaging the mortgaged property to other persons would not be illegal, as amounting to an encroachment on a mortgagor's right to redeem the mortgaged property from whatever source he might procure the funds to do so (289.) (Lord Atkinson.) JHANDA SINGH v. WAHID-UD-DIN.

(1916) 43 I. A. 284 = 38 A. 570 (576) = 14 A. L. J. 1189 = 20 M. L. T. 529 = (1916) 2 M. W. N. 570 = 21 C. W. N. 66 = 25 C. L. J. 524 = 5 L. W. 189 = 10 Bom. L. R. 1 = 38 I. C. 38 = 31 M. L. J. 750.

### Government revenue paid by mortgagee-Apportionment of.

Purchasers different of different mortgaged properties

Apportionment among—Propriety. See MORTGAGE—
MORTGAGE DEBT—AMOUNT OF—ADVANCE OF AMOUNT
LESS THAN. (1929) 56 I. A. 339.

Lease of mortgaged property to mortgagor forming part of same transaction as mortgage.

Rent due under. charged on mortgaged property— Payment of, on redemption—Necessity. See MORTGAGE— LEASE OF MORTGAGED PROPERTY, ETC.

(1926) 54 I. A. 68 (77-8) = 50 M. 180.

Mortgage amount advanced—Deficiency in—Apportionment of.

Principle—Several properties mortgaged—Separate redemption of, on payment of specified portions of mortgage amount—Provision for—Apportionment in case of. See MORTGAGE—MORTGAGE DEBT—AMOUNT OF —ADVANCE OF AMOUNT LESS THAN. (1929) 56 I. A. 339.

Partial redemption.

DIVISION OF MORTGAGED PROPERTY AMONG MORT-GAGOR'S HEIRS—ARRANGEMENT BETWEEN THEM AND MORTGAGEE TREATING MORTGAGE AS DISTINCT MORT-GAGES IN THE PROPORTIONS RESULTING FROM THE DIVISION.

-Partial redemption in case of.

The three heirs of a deceased mortgagor divided by a compromise the mortgaged property in certain proportions. Subsequently they and the mortgage entered into an arrangement by which the original mortgage was treated as three distinct mortgages, in the proportions in which the estate of the mortgagor had been divided under the compromise between the heirs.

Held, that the result was that any one of the heirs of the mortgagor became solely entitled to the equity of redemption in his share of the mortgaged property, upon the payment of a similar proportion of the original mortgage debt (51-2), (Sir James W. Colvile.) JUGGERNATH SAHOO D. SYUD SHAH MAHOMED HOSSEIN. (1874) 2 I. A. 48=14 B. L. B. 386=23 W. B. 99=3 Sar. 419-3 Suth. 61.

MORTGAGE OF TWO ITEMS—MORTGAGEE'S PURCHASE OF ONE IN EXECUTION OF DECREE ON PRIOR MORTGAGE.

Right of Terms of other item by purchaser thereof-

N and another were mortgagees of property K under a simple mortgage of 1868. N was a mortgagee of properties in in scalculation of a number a mortgage of 1870. The appellants were successors in interest of the purchaser of the equity of redemption in property A in 1873. In 1878, N and his comortgagee purchased property K in execution of a decree obtained by them on foot of their mortgage of 1868.

# MORTGAGE-REDEMPTION-(Contd.)

Partial redemption-(Contd.)

MORTGAGE OF TWO ITEMS—MORTGAGEE'S PUR-CHASE OF ONE IN EXECUTION OF DECREE ON PRIOR MORTGAGE—(Contd.)

In a suit by the appellants for redemption of item A on payment of a proportionate share of the amount of the mortgage of 1870, held that item A was liable for the entirety of the mortgage debt, and not merely for its proportionate share thereof.

As item K was sold and purchased by N in execution and part satisfaction of a discree obtained on the prior mostgage of 1868, the courts in India properly over-ruled the appellant's contention that by N's purchase of item K the debt due under the mortgage of 1870 was fro tanto satisfied (188). (Mr. Ameer Ali.) BOHRA THAKUR DAS p. COLLECTOR OF ALIGARH. (1910) 87 I. A. 182=

32 A. 612 (617.8) = 12 C. L. J. 272 = 14 C W. N. 1034 = 8 M. L. T. 276 = 7 A. L. J. 1132 = 12 Bom. L. R. 1005 = 7 I. C. 732 = 20 M. L. J. 890.

### PROPERTY HELD IN SHARES.

—Mortgage of—Redemption of, by one of mortgagors
—Terms of. See MORTGAGE—REDEMPTION OF—PROPERTY HELD IN SHARES. (1877) 5 I. A. 18 (27) =
3 C. 397 (408).

PURCHASERS DIFFERENT OF DIFFERENT PORTIONS OF MORTGAGED PROPERTY—REDEMPTION BY ONE OF.

Entire mortgage—Redemption of—Suit for, making other purchasers parties—Maintainability—Prior suit by him for redemption of his own share—Dismised of, for omission to include ether sharers—Effect.

The purchaser of the equity of redemption in one of the items mortgaged with possession sued the mortgagee for redemption of the item purchased by him on payment of the proportionate part of the mortgage debt. Other items of the mortgaged property had been previously purchased by third parties and the mortgagee had himself purchased the residue of the estate. The mortgagee resisted the suit for reclemption, and the court dismissed it, principally, if not wholly, on the ground, that the purchasers of the other item should have been made parties to the suit, and that the plaintiff should at least have offered to redeem those items by paying their proportionate part of the mortgage debt attributable to them. The said plaintiff thereupon instituted the soit out of which the appeal arose, framing it in the manner indicated by the decree dismissing his prior suit, The purchasers of the items other than those purchased by the mortgagee or the plaintiff, were made parties; and the plaintiff, having paid into court a sum which he alleged to be sufficient to cover the proportion of the mortgage debt attributable to those items, as well as to his own item, claimed absolutely to redeem the latter, and to recover possession of that and the other items, with mesne profits, from the date of the institution of the suit. The Courts below decreed the suit.

On appeal, the mortgagee complained that the plaintiff had been allowed to redeem as against him the items other than his own, i.e., to put himself in his shoes as mortgagee in respect of those items.

Held, that the objection did not come with a good grace from the appellant, who defeated the plaintiff's former suit on the ground that he had not offered to redeem the items in question, and who in the subsequent suit itself included in his calculation of the amount which, as he alleged, ought to have been brought into court the shares of the mortgage debt which he said were chargeable on those items (415), (Sir James W. Colvile.) NAWAB AZIMUT ALI KHAN v., [1870] 13 M. I. A. 404 =

14 W. B. (P.C.) 17=2 Suth. 346=2 Sar. 573.

Partial redemption-(Contd.)

PURCHASERS DIFFERENT OF DIFFERENT PORTIONS OF MORTGAGED PROPERTY—REDEMPTION BY ONE OF—(Contd.)

—Share purchased by him—Redemption of—Suit for, on payment of his share of mortgage money—Maintainability—Purchase of other items by mortgage himself.

The original appellant was, in April 1846, the mortgages of an estate comprising 16 different mouzals. That estate had been originally mortgaged with possession by its then owner to one B, who transferred his interest as mortgages to the appellant. In April, 1846, the estate was sold, subject to the mortgage, under process of execution, in satisfaction of decrees against the original mortgagor or his representatives. It was sold in different parcels. One mouzal II was purchased by the plaintiffs-respondents. Two other mouzahs and a portion of the third were purchased each by a different person; and the residue of the estate was purchased by the appellant. The result of the sale was, consequently, that whilst he retained the rights of mortgages over the whole property, he became the owner of the equity of redemption in a portion thereof.

In 1862 the plaintiffs, as the owners of the equity of redemption in mouzah H, brought a suit against the appellant for the redemption of their mouzah on payment of a sum, which they alleged to be the rateable share of the mortgage debt payable by them. That suit was eventually dismissed principally, if not wholly, on the ground that the purchasers of the other three parcels of land should have been made parties, and that the plaintiffs should at least have offered to redeem those parcels, by paying their proportionate part of the mortgage debt attributable to them.

The plaintiffs thereafter instituted the sait out of which the appeal arose, framing the suit in the manner indicated by the decree dismissing their previous suit. The purchasers of the parcels other than those purchased by the appellant or the plaintiffs were made parties on the record; and the plaintiffs, having paid into Court a sum which they alleged to be sufficient to cover the portion of the mortgage delat attributable to those parcels, as well as to their own village, claimed absolutely to redeem the latter, and to recover possession of that and the three other parcels, with mesne profits, from the date of the institution of the suit. The suit was decreed in the Courts below.

On appeal to their Lordships the appellant did not contest the proposition of the plaintiffs that, as purchasers of the equity of redemption in a portion of the mortgaged promises, they were entitled to redeem that portion on payment of the proportionate part of the mortgage debt attributable to it (407-8). (Sir James W. Colvile.) NAWAR AZIMUT ALI KHAN : JOWAHIR SINGH.

(1870) 13 M. I. A. 404 = 14 W. R. (P. C.) 17 = 2 Suth. 346 = 2 Sar. 573.

——Share purchased by him—Redemption of—Suit for, on payment of his share of mortgage-money—Maintainability—Redemption of other shares excluding that purchased by mortgage—Offer of—Necessity.

Different portions of the equity of redemption in the properties subject to a mortgage with possession were purchased by different persons in execution of a decree obtained against the mortgagor. The plaintiff purchased one item; three other items were purchased by three other persons; and the mortgagee purchased the residue of the mortgaged property. The plaintiff sued the mortgagee for redemption of the item purchased by him on powment of its proportionate part of the mortgage debt. His suit was eventually dismissed, principally, if not wholly, on the ground, that the purchasers of the three other items should have been made parties, and that the plaintiff should at least have offered

### MORTGAGE-REDEMPTION-(Contd.)

Partial redemption-(Contd.)

PURCHASERS DIFFERENT OF DIFFERENT POR-TIONS OF MORTGAGED PROPERTY—REDEMPTION BY ONE OF—(Contd.)

to redeem those items, by paying their proportionate part of the mortgage debt attributable to them.

Querre, whether in the peculiar circumstances of the case the view was correct that the plaintiff was bound to offer to redeem those three items (415.6). (Sir James W. Calvile.) NAWAB AZIMUT ALI KHAN v. JOWAHIR SINGH. (1870) 13 M. I. A. 404 = 14 W. R. (P. C.) 17 = 2 Suth. 346 = 2 Sar. 573.

- Shares purchased by third parties (other than mortgages)-Redemption of, against will of mortgaget-Right

Different items of property subject to a mortgage with possession were purchased by different persons in execution of a decree obtained against the mortgagor. The plaintiff purchased one item; three other items were purchased by three different persons; and the mortgagee purchased the residue. The plaintiff instituted a suit for redemption, making the purchasers of the items other than those purchased by the mortgagee or the plaintiff, parties to the suit. He paid into court a sum which he alleged to be sufficient to cover the proportion of the mortgage debt attributable to those items, as well as his own item, claimed absolutely to redeem the latter, and to recover possession of that and the other items, with mesne profits, from the date of the institution of the suit. The Courts below decreed his suit.

Held, that the plaintiff was not entitled to redeem the items other than his own, or to acquire the interest of the mortgagee in them against his will (415-6).

The mortgagee, if desirons of retaining possession of those items as mortgagee, was entitled to do so against the plaintiff, whose right in that case is limited to the redemption and recovery of his item, upon payment of so much of the sum deposited in Court as represents the portion of the mortgage debt chargeable on that item (416) (Sir James W. Cofrele.) NAWAB AZIMUT ALI KHAN v. JOWAHIR SINGH. (1870) 13 M. I. A. 404 = 14 W. R. (P. C.) 17 = 2 Suth. 346 = 2 Sar. 573.

PURCHASER OF PORTION OF MORTGAGED PROPERTY— REDEMPTION BY.

-Leve in India and England as to.

By English law, transferees of part of the mortgage security would on the one hand be entitled to redeem the entire mortgage on the properties generally, and correla-tively could not compel the mortgagee to allow them to redeem their part by itself. This would be so as the reselt of principle unless something had happened which extinguished the mortgage in whole or in part, such as an exercise of a power of sale originally conferred on the mortgagee by his security, or such conduct on the part of the transferees as would estop them from asserting what normally would have been their right (211-2). The Judge in the original Court thought that the decisions of the Courts in India had established that one of several mortgagors cannot redeem more than his share unless the owners of the other shares consent or do not object. Subject to proper safeguarding of the rights to redeem, which those owners may possess, this is not so in India any more than in England. The concluding part of S, 60 of the Transfer of Property Act does no more than declare applicable what is just the law as established in England. (Viscount Haldane.) MIRZA YADALLI BEG P. TUKARAM.

(1920) 47 J. A. 207 = 48 C. 22 = 25 C. W. N. 211=

Partial redemption-(Contd.)

PURCHASER OF PORTION OF MORTGAGED PRO-PERTY-REDEMPTION BY-(Contd.)

(1920) M. W. N. 369 = 28 M. L. T. 95= 12 L. W. 503 = 16 N. L. B. 154 = 22 Bom. L. R. 1315 = 57 I. C. 535 = 39 M. L. J. 147.

-Right of-Conditions.

The purchaser of one of the properties comprised in a mortgage is entitled to, and can only, redeem that property on payment of the charge upon the whole (374). (Lord Phillimore.) EHTISHAM ALI P. JAMNA PRASAD.

(1921) 48 I. A. 365=15 L. W. 104= 30 M. L. T. 132 = 9 O. L. J. 71 = 24 O. C. 272 = 24 Bom. L. R. 675 = 27 C. W. N. 8 = 20 A. L. J. 961 = 64 I. C. 299 = 1922 A.I.R. P.C. 56.

RIGHT OF.

Conditions.

Under a mortgage of September 1879 and a subsequent agreement, S became the mortgagee in possession, for a term of 12 years, of a four-annas share of A and an eightannas share of B in two villages. In December, 1888, K mortgaged his four-annas share for 30 years to the plaintiff, who redeemed the mortgage of 1879 and took possession of both shares. In 1897, B mortgaged his eight-annas share to the defendant, who then sued the plaintiff for redemption of that share on the payment of the amount due on it under the mortgage of 1879. The plaintiff insisted on the defendant redeeming the whole share of 12 annas, and the defendant's suit was dismissed. In 1899, the defendant brought another suit for redemption of both shares, obtained a decree and took possession. In 1901, plaintiff sued for redemption of the four annas share of A' only, on payment of the amount due on it under the mortgage of 1879 but offered to redeem the share of B also. The defendant did not accept the offer.

Held, that the plaintiff was entitled to redeem A's fourannas share. (Lord Macnaghten), THAKUR JOWAHIR SINGH P. THAKUR BALDEO BAKSH SINGH.

(1907) 12 C. W. N. 515-6 C. L. J. 672-3 M. L. T. 352 = 10 O. C. 193.

UNDIVIDED SHARE.

-Mortgagor of-Redemption of entirety by-Right and duty of. See MORTGAGE-REDEMPTION OF-UNDIVIDED SHARE. (1905) 32 I. A. 229 (242) = 28 A. 1 (17)

Period fixed for.

BENEFIT OF-MORTGAGOR OR MORTGAGEE ENTITLED TO.

The provision in a mortgage deed fixing a period for payment is as much for the benefit of the mortgagee as of the mortgagor (193). (Lord Blanesburgh.) PANCHAM :. (1926) 53 I. A. 187 = 48 A. 457 = ANSAR HUSSAIN. 24 A. L J. 736 = (1926) M. W. N. 520 = 24 L. W. 241 = 31 C. W. N. 324 = 99 I. C. 650 = A. I. B. 1926 P. C. 85.

-Annual payment-Default to make-Enforcement of mortgage before expiry of period fixed on-Provision for -Effect.

Where a mortgage for a term provided for an annual payment of a stated sum on account of principal and interest and stipulated that, in default by the mortgagor to make the annual payment, the mortgagee might sue for the recovery of the entire amount due under the mortgage without waiting for the expiry of the stipulated period, held, that the last provision was exclusively for the benefit of the mortgagee (193). (Lord Blanesburgh.) PANCHAM 2. ANSAR HUSSAIN. (1926) 53 I A. 187 = 48 A. 457 = 24 A. L. J. 736 = (1926) M. W. N. 520 = 24 L.W. 241 = 31 C. W. N. 324 = 99 I. C. 650 = A. I. B. 1926 P. C. 85.

# MORTGAGE-REDEMPTION-(Contd.)

Period fixed for-(Contd.)

ENFORCEMENT OF MORTGAGE BEFORE EXPIRY OF.

-Mortgagee's right of.

A covenant in a mortgage deed to pay within a year ties up the hands of the mortgagee for that year, and protects the mortgagor. The mortgagee cannot, except in certain events, enforce payment for a year, (Sir Richard Couch.) MATHURA DAS P. RAJA NARINDAR BAHADUR PAL

(1896) 23 I A. 138=19 A. 39 (49)= 1 C. W. N. 52=7 Sar. 88=6 M. L. J. 214.

EXPIRY OF-ONUS OF PROOF OF-SHIFTING OF.

Oudh Limitation of Suits Act XIII of 1866, St. 6 and 3-Oudh Estates Act of 1869. S. 6 (b)-Presumption of law as to onus under.

In a suit for redemption of a mortgage of the year 1840 the question was whether or not the term for redemption had expired in 1853. The mortgage deed itself had been

lost and was not forthcoming.

The Court below held that, under Ss. 2 and 3 of the Oudh Limitation of Suits Act XIII of 1866, and S. 6(8) of the Oudh Estates Act I of 1869, applicable to the case, there was a presumption of law in favour of the plaintiff, and that the burden of proof lay, not upon the plaintiff to prove that the term did not expire before 13-2-1856, but upon the defendant to prove that it did.

Held, that there was no such presumption of law, that it was for the plaintiff to prove his case by some prima facie evidence at least, but that, when the quantum of evidence required from either party was considered, regard must be had to the fact that the defendant would naturally have the mortgage, and that it would be prima facir, at all events, more in his power to give accurate evidence of its contents than in that of the plaintiff (88).

Held further, that the plaintiff did give prima facie evidence calling for an answer from the defendant, but that the evidence of the defendant contained no answer to the case of the plaintiff (91). (Sir Robert P Collier.) RAJAH KISHEN DUIT RAM PANDAY 2. NARENDAR BAHADUR SINGH. (1876) 3 I A 85=

3 Sar. 570 = R. & J's. 40 (Oudh).

PLEA BY MORTGAGEE OF-EVIDENCE AGAINST.

-Document between parties of subsequent date speaking of mortgage as substitting.

In a suit brought to redeem a mortgage dated in 1851, the defendants maintained that the mortgage was subject to a condition that it should be redeemable only within one year. The Courts below found that the term stated on the part of the defendants was not a term of the mortgage. A document had been put in dated 18-5-1869, which was a bond given by the plaintiffs to the defendants, in which at that date the mortgage was spoken of as then existing and as redeemable.

Held, that that document at all events would be sufficient to support the finding of the Courts below upon that question of fact (16). SETH SEETARAM #. ARJOON SINGH.

(1874) 3 Suth. 15=9 M. J. 150= R. & J.'s No. 29 (Oudh).

-Proof of -Onus of -Redemption suit.

In most cases, when the quantum of evidence required from either party is to be considered, regard must be had to the opportunities which each party may naturally be supposed to have of giving evidence (88).

In a suit for redemption of a mortgage in which the question was as to when the term fixed for redemption expired, held, therefore, that, though the onus of proof was on the plaintiff, yet, in considering the quantum of evidence required of the plaintiff, regard must be had to the fact that the

Period fixed for-(Contd.)

PLEA BY MORTGAGEE OF-EVIDENCE AGAINST-(Contd.)

mortgage deed would naturally be with the defendant and that it would be more in his power to give accurate evidence of its contents than in that of the plaintiff (88-9). (Sir Robert P. Collier.) RAJAH KISHEN DUTT RAM PANDAY \*. NARENDAR BAHADOOR SINGH. (1875) 3 I. A. 85= 3 Sar. 570 - R. & J's No. 40 (Oudh).

### REDEMPTION BEFORE AND AFTER EXPIRY OF.

-Mortgager's right of.

In cases of mortgages for a term, ordinarily and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property. Such a provision is usually to the advantage of the mortgagor, (Mr. Ameer Ali.) BAKHTAWAR (1914) 41 I. A. 84 = BEGUM P. HUSAINI KHANAM.

36 A. 195 (199) = 18 C. W. N. 586 = 19 C. L. J. 477 = 1914 M. W. N. 411 = 15 M. L. T, 389 = 16 Bom. L.R. 344 = 12 A.L.J. 470 = 23 I.C. 335 = 1 L. W. 813 = 26 M.L.J. 474

### Property held in Shares.

-Redemption of, by one of sharers-Right of-Terms

Where a mortgage is for one entire sam, and the mortgaged property, although held in certain shares, is mortgaged as a whole, the mortgage is redeemable only upon payment of the entire sum. Each and every one of the mortgagors is interested in the payment of that money and the redemption of the estate, and each and every one of them has a right by payment of the money to redeem the estate, seeking his contribution from the others (27). (Sir Montagre E. Smith) NORENDER NARAIN SINGH D. DWARKA (1877) 5 I. A. 18 - 3 C. 397 (408) -LAL MUNDAR. 1 C. L. R. 369 = 3 Suth. 480 = 3 Sar. 771

### Properties mortgaged several-Redemption by purchasers of some of.

-Deficiency in mortgage money advanced-Apportionment of-Principle-Redemption separate of properties on payment of specified portions of mortgage debt-Provision in mortgage deed for-Effect. See MORTGAGE-MORT-GAGE DEBT-ADVANCE OF AMOUNT LESS THAN.

(1929) 56 I. A. 339.

### Purchaser of equity of redemption-Redemption by -Interest payable on.

Decree in mortgage's suit to recover interest from mortgagor-Appeal by mortgagee against-Enhanced amount allowed in-Purchaser's liability for-Purchase by him pending said appeal-Transfer of Property Act-S. 52 -Effect.

A suit by the mortgagees under a mortgage bond to recover arrears of interest due under the mortgage was decreed by the Sub-Judge, who, however, did not allow any interest during the pendency of the suit. On appeal by the mortgagees the High Court varied the Sub-Judge's decree by allowing interest during the pendency of the suit, with the result that the amount payable to the mortgagees for interest was increased. Pending the appeal by the mortgagees the mortgagors sold and conveyed their equity of redemption in some of the mortgaged items.

In a suit for redemption brought by the said purchasers of the equity of redemption, held, that the purchasers were

### MORTGAGE-REDEMPTION-(Contd.)

Purchaser of equity of redemption-Redemption by-Interest payable on-(Contd.)

bound by the decision of the High Court whereby that Court increased the amount awarded by the Sub-Judge.

The purchasers can have no higher rights than their vendors, and the sale having been made during the active prosecution of the litigation between the mortgagees and the mortgagors, the purchasers must be bound by the result of the litigation; See S. 52, Transfer of Property Act; and L.R. 34 I.A. 102. (Sir Binod Mitter.) SHIB CHANDRA D. (1929) 56 I. A. 339 (344)= LACHMI NARAIN.

33 C.W.N. 1091 = 119 I.C. 612 = 50 C. L.J. 502 = 1929 M. W. N. 653 = 30 L. W. 476= A. I. B. 1929 P C. 243

### Right of.

ACREEMENT BETWEEN CO-MORTGAGORS VESTING, IN ONE OF THEM FOR LIMITED PERIOD TO BE EXERCISED FOR HIS SOLE BENEFIT.

-Registration of -Necessity.

The question was whether an agreement executed among partners fell within S. 17, cl. (b) of the Registration Act of 1877, and, being unregistered, was inadmissible in evidence, or whether it fell within S. 17, Sub-S. (A) of that Act, and was excepted from registration.

The agreement recited that immoveable property of the partnership was mortgaged to a third party, and declared by one of its clauses that the right of redemption of the mortgage vested in the three partners should during a future period of limited duration be the right of the appellant, one of the partners, and be exercisable by him for his sole benefit.

Held, that the agreement fell within S. 17 (b) of the Registration Act, and ought to have been registered.

By the clause in question there is a complete assurance of a right of redemption for and during a future period of limited duration. The clause declares that what, but for this stipulation, would have been the right of the three partners shall, during that period, be the right of one of the three, exercisable by him for his sole benefit. That right is a right in immoveable property. (Lord Macnaghten.) MAUNG PO HTI 2. MAHOMED GASSIN.

(1903) 30 I. A. 230 = 30 C. 1016 = 7 C. W. N. 861 5 Bom. L. B. 975 = 8 Sar. 551 = 13 M. L. J 329.

### EXTINGUISHMENT OF.

Compromise between mortgagor and mortgagee effecting, and transferring portion of property absolutely to mortgagee-Decree on foot of-Actings of parties on foot of-No registered conveyance between parties-Part--Performance-Doctrine of-Applicability of. See PART-PERFORMANCE-MORTGAGOR.

(1914) 42 I.A. 1=42 C. 801.

IMMOVEABLE PROPERTY IF AND WHEN.

-See REGISTRATION ACT OF 1908-S. 17, CLS. (6) (1903) 30 I. A. 230 = 30 C. 1016 & (h) -PARTNERS.

OCCUPANT OF MORTGAGED PROPERTY CLAIMING TO HAVE PURCHASED SAME FROM MORTGAGEE

-Right of-Mortgagee's right to dispute-Notice of foreclosure in proceedings under Regulation 17 of 1806-Service on occupant of-Effect. See BENGAL REGULATIONS -LAND MORTGAGE REDEMPTION AND FORECLOSURE REGL. XVII OF 1806-S. 7.

(1859) 7 M. I. A. 323 (359).

RELEASE OF.

Plea of, in suit for redemption-Onus of Proof of. Where, in a suit for redemption of a mortgage, the detendant admits the mortgage sought to be redeemed, but sets up

Right of-(Contd.) RELEASE OF-(Contd.)

a release by the mortgagor subsequent to the mortgage of the equity of redemption in favour of the mortgagee, the defendant or his predecessor in interest, the onus lies upon the defendant who desires to set up a title putting an end to the mortgage to establish his case by evidence which is clear and satisfactory (13). (Lord Cairns.) RADANATH DOSS v. (1871) 14 M. I. A. 1=15 W. B. P. C. 24= GISBORNE. 6 B.L.B. 530 = 2 Suth. 397 = 2 Sar. 636

RESTRICTIONS ON.

-Validity of, See MORTGAGE - REDEMPTION-EQUITY OF-CLOG ON.

SUIT TO ENFORCE MORTGAGE.

Decree in-Sale in execution of-Redemption right before and after.

At any time before actual sale of the mortgaged property in execution of a decree obtained on foot of a mort gage the mortgagor himself and anybody to whom he may have transferred the property, whether before or after the suit, can come in and redeem the property by paying the debt (211-2). (Lord Hobboure). UMESH CHUNDER SIR-CAR D. MUSSUMMAT ZAHOOR FATIMA.

(1890) 17 I. A. 201 = 18 C. 164 (178) = 5 Sar. 507. -Decree in-Sale in execution of, and purchase by

mortgagee himself-Effect.

While the decree for sale in a suit to enforce a mortgage stands and sale has taken place under it, the right to redeem is extinguished unless the sale be set aside. After the sale has taken place the owner holds as purchaser, and is entitled to raise all the defences that belong to him as such, and unless the claim to set aside the sale is made in a properly constituted action and properly raised in suitable pleadings in that action, the Court cannot interfere with the possession which has been given him by the purchase (98). (Lord Moulton). GANPAT LAL v. BINDBASINI PRASAD NARAYAN SINGH. (1920) 47 I.A. 91 =

47 C. 924 (930-1) = 24 C.W.N. 954 = (1920) M. W. N. 382 = 28 M.L.T. 330 = 18 A.L.J. 555 = 12 L.W. 59 - 56 I.C. 274 -39 M.L.J. 108.

Omission to set up by persons having redemption right and setting up of paramount title by them in-Dismissal from suit of such persons-Mortgagee execution purchaser's suit for possession-Setting up of such right by them in-Bar of, by res judicata. See MORTGAGE-SUIT TO ENFORCE-REDEMPTION RIGHT IN.

(1885) 12 I.A. 171 (178, 181-2) = 12 C. 414 (420-1). Person interested in equity of redemption not impleaded in-Redemption right of, before foreclosure or sale

though after decree.

If a person interested in mortgaged property, who should have been joined as party to a mortgage suit, but has not been so joined, comes in before foreclosure or sale, he has all the rights of redemption that his interest in the mortgaged property gives him and may exercise them notwith-standing the decree (96). (Lord Moulton). GANPAT LAL v. BINDBASINI PRASHAD NARAYAN SINGH.

(1920) 47 I.A. 91=47 C. 924 (929)= 24 C.W.N. 954 = (1920) M.W.N. 382 = 28 M.L.T. 330 = 18 A.L.J. 555 = 12 L.W. 59 = 56 I. C. 274=39 M.L.J. 108.

-Transferee of mortgaged property pending-Redemption right of, before and after sale in execution of decree in suit—Transferee not impleaded in suit. See TRANSFER OF PROPERTY ACT—S. 52—MORTGAGE—SUIT FOR SALE ON FOOT OF-TRANSFERZE OF MORTGAGED PROPERTY. (1890) 17 I. A. 201 (211-2)= ETC.

### MORTGAGE-REDEMPTION-(Contd.)

Suit for.

ACCOUNTS IN.

AMOUNT DUE UNDER MORTGAGE-FINDING AS TO -BINDING NATURE OF.

CO-HEIRS-MORTGAGE BY DECEASED-REDEMPTION

COSTS OF.

DECREE IN.

EXTINGUISHMENT OF MORTGAGE BY SUBSEQUENT

INTEREST IN.

MAINTAINABILITY - MORTGAGEE'S PRIOR SUIT TO ENFORCE MORTGAGE.

MAINTAINABILITY-MORTGAGOR'S PRIOR SUIT FOR POSSESSION AS PROPRIETOR.

MAINTAINABILITY-REDEMPTION DECREE PRIOR. PARTIES TO.

PERIOD FIXED FOR REDEMPTION-PLEA BY MORT-GAGOR OF.

PROOF OF MORTGAGE IN.

SEVERAL MORTGAGES ON SAME PROPERTY IN FAVOUR OF SAME PERSON.

SUB-MORTGAGE-REDEMPTION OF - MORTGAGOR'S SUIT ROR.

#### ACCOUNTS IN.

-See MORTGAGE-MORTGAGOR AND MORTCAGEE -ACCOUNTS.

AMOUNT DUE UNDER MORTGAGE-FINDING AS TO-BINDING NATURE OF.

-Suit itself dismissed for failure to deposit entire mort gage amount.

Where a suit brought for the redemption of a usufructuary mortgage by a purchaser of a portion of the equity of redemption was dismissed on the sole ground that the plaintiff had not deposited the full and entire amount ot the mortgage money, held that the finding in such suit of any particular amount as still due under the mortgage would not be conclusive against the mortgagee in a subsequent suit brought for redemption of the same mortgage, and that it was not conclusive against the mortgagor either (412).

According to the course and practice of the Court in India, the only point to be determined in such a suit is whether the mortgage debt has been fully satisfied after taking into account the sum deposited or tendered (412). (Sir James W. Celvile) NAWAB AZIMUT ALI KHAN v. JAWAHIR SINGH. (1870) 13 M.I.A. 404= 14 W.B. P.C. 17 = 2 Suth. 346 = 1 Sar. 573.

CO-HEIRS-MORTGAGE BY DECEASED-RE-DEMPTION OF.

-Suit by one of heirs for. See MORTGAGE-CO-HEIRS.

### COSTS OF.

Disallocoance to mortgagee of -Grounds.

False case of absolute ownership of mortgaged property set up by him-Disallowance on ground of, though redemption ordered on payment of higher amount than plaintiff had offered. RAJAH FARZAND ALI KHAN v. BHUP R. & J's No. 19 (Oudh).

Disallowance to mortgagor of - Grounds.

Though the appellant (the plaintiff in a suit for redemption in which the mortgagee pleaded that he had not a present right to redeem) has succeeded in these appeals, by his procedure and dilatoriness, he must be held responsible for this protracted litigation, and the consequent wasted 18 C. 164 (178-9). expense; and to mark their disapproval of his conduct their

Suit for - (Contd.)

COSTS OF - (Contd.)

Lordships will not interfere with the orders as to costs made by the lower Courts, nor will they allow him any costs of these appeals. (Sir Lawrence Jenkins). MOHAMMAD SHER KHAN 7. SETH SWAMI DAYAL.

(1921) 49 I.A. 60 (65) = 44 A 185 (189) = 30 M L.T. 220 = 9 O L.J. 81 = 25 O.C. 8 = 35 C.L.J. 468 = 20 A.L.J. 476 = 24 Bom. L.R. 695 = (1922) M.W.N. 378 = A.I.R. 1922 P.C. 17 = 4 U.P.L.R. 50 = 66 I.C. 853 = 42 M.L.J. 584.

--- Mortgage's liability for-Conditions.

Their Lordships are of opinion that the appellant (mortgagee) was properly condemned in the costs of the suit (for redemption), and ought not, any variation in the decree notwithstanding, to be relieved from them. His defence in the former suit for redemption, which is inconsistent with his present contention, defeated that suit, rendeted the present suit necessary, and invited the claim on the part of the plaintiffs (purchasers of the equity of redemption in a portion of the mortgaged properties) which he now resists. In this suit he ought at the earliest stage to have submitted to the redemption of H (the village purchased by plaintiffs) alone on payment of that portion of the sum deposited which represented the debt due in respect of that village. Instead of doing so, he raised issues touching the sufficiency of the deposit, which have been determined against him. It is the course of practice in India that the costs of this kind of suit follow the result of the finding on such an issue, and are not, as in an English redemption suit, added to the mortgage debt. Their Lord ships are of opinion that this rule has, in the present case. been most properly applied to a mortgagee who has so long, and by so many expedients, inequitably and vexatiously resisted the right of redemption. (Sir James Colvile). NAWAB AZIMUT ALI KHAN v. JOWAHIR SINGH.

(1870) 13 M.I.A. 404 (416-7)=14 W.B. P.C. 17= 2 Suth. 346=2 Sar. 573

In a suit for reslemption in which the first Court made its decree on 29.7-1902 fixing the amount at which the plaintiffs might have redemption with interest added at a certain rate from that date to the date when payment might be made into Court within six months from the said date, it was found that the action of the defendants was oppressive and obstructive, and that they had by their conduct unduly and intentionally prolonged the litigation up to 1912 to the advantage of the defendants and to the serious detriment of the plaintiffs. In directing an account to be taken of the rents and profits which the defendants had received since 29-7-1902, their Lordships, therefore, ordered that the expenses of taking such account and all procedure incident thereto and to the striking of the balance upon payment of which redemption might be made, were to be borne by the defendants.

Their Loriships further ordered that, in the taking of such account, allowance might be made for money, if any, necessarily spent by the defendants after 29-7-1902 in the proper management and preservation of the mortgaged property but no interest should be allowed on the money so spent, but that simple interest was to be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure, that interest to be at such rate as the High Court might fix. (Sir John Edge.) Ganga Bahu Debi v. APURBA KRISHNA ROY. (1912) 17 C. W. N. 25 (36) = 18 I. C. 535.

-Rule-Exception.

In general, the dismissal of a suit should carry with it its consequence of liability for the cots, and this case is one

### MORTGAGE-REDEMPTION-(Contd.)

Suit for-(Contd.)

COSTS OF-(Contd.)

brought against mortgagees. But the present suit affords several substantial grounds for a departure from that rule. The suit was brought, not simply for possession, on an allegation of satisfaction, from the usufruct, but to establish the true relation between the mortgagors and mortgagees, the true nature of the case, the disguised usury, and the disputed unity in one mortgage title of three several instruments. So far it was successful, and it, therefore, cannot be ascribed to a litigious, vexatious spirit; it has established points most important to the future true adjustment of the mortgage accounts, and cannot be said to have been unproductive of future benefit to all concerned (199).

The appeal of the Judge of the zillah Court simply dismisses the plaintiff's suit, which, in some important parts of it, had succeeded. That judgment, therefore, cannot be restored without alteration. Errors have been committed in this suit, in a nearly equal degree, by both litigants. Their Lordships think that the decree of the Sudder Court should be reversed, except so far as it reverses the decision of the Court below, and that each party should pay their own costs of the appeal to the Sudder Court, hereby partly reversed; and that any costs of such last appeal as may have been decreed and paid, and which are inconsistent with such Order of Her Majesty, should be refunded, or otherwise dealt with as justice may require (200-1). (Lord Chelmiford.) Shah MUKHUN Lat Lv. Baboo Sree KISHEN SINGH. (1868) 12 M. I. A. 157 = 11 W. B. P. O. 19=

2 B. L. R. P. C. 44 = 2 Suth. 190 = 2 Sar. 403,

DECREE IN.

--- Amount deposited into Court pursuant to-Forfeiture to Government of by lapse of time-Rights of parties on.

A usufructuary mortgage contained a provision for payment on redemption of a sum in respect of interest. In a suit for redemption of the mortgage, the mode of calculating interest was a matter in controversy, and in regard to that matter the Judicial Committee, in an appeal in the redemption proceedings, differed from the Courts below. Pending the appeal to His Majesty in Council, the mortgagors had deposited in Court to the mortgagee's credit in the case a certain sum of money which was forfeited to Government by lapse of time. On a question arising in proceedings in execution of the decree for redemption as to whether the mortgagee was bound to give credit to the mortgagors for that amount, held that, the mortgagee ought to have taken the amount out of Court without prejudice to their pending appeal to the Privy Council either by arrangement or with the sanction of the Court in India or the sanction of the Judicial Committee, which would have been given as a matter of course, and that he was bound to give credit for it to the mortgagors notwithstanding that it had been forfeited to Government. (Lord Macnaghten.) CHAMPAT (1912) 16 C. W. N. 793= SINGH r. JANGU SINGH.

12 M. L. T. 482 = 10 A. L. J. 379 = (1912) M. W. N. 1150 = 14 Bom. L. B. 1223 = 17 C. L. J. 1 = 16 I. C. 830 = 23 M. L. J. 738.

--- Annual rents and profits in-Meaning of Gross of net annual profits.

Where the decree in a redemption suit directed that "in case the interest due on the said mortgage exceeds the annual rents and profits, let annual rests be made on the 16th day of March of each year, and let what shall become due on account of rents and profits be applied in the manner declared in the decree of the Court of first instance, subject to the modification made in regard to compound interest and that the amounts spent on improvement and not

Suit for-(Contd.)

DECREE IN -(Contd.)

carrying interest rank last," held that, the "annual rents and profits" in the decree meant the net annual rents and profits and not the gross annual rents and profits (541).

The High Court held, as their Lordships consider correctly, that "the annual rents and profits" must mean annual rents and profits which were directly available for the payment of interest, and that there were no rents and profits so directly available until the revenue, cesses, costs of preservation, management, and collection had been paid (541). (Sir John Edge.) GANGA BAHU DEBI v. APURBA KRISHNA ROY. (1912) 18 I.C. 535 = 17 C.W.N. 25 (34-5). -Mortgage created by-Rodemption on foot of-Suit on fost of-Redemption of original mortgage itself-Case of-Privy Council appeal-Permissibility in-Finding that decree was only executable decree and that its execution toas barred.

In a suit for redemption brought on the footing that a decree of the year 1825 made in a suit instituted by the mortgagee on foot of a mortgage of the year 1806, was in the nature of a fresh mortgage, and regulated the rights of the parties from that time, their Lordships held, concurring with the Courts below, that the only right of the mortgagors was to execute the decree of 1825, and that a fresh suit for redemption was barred under S. 11 of Act XXIII of 1861 (corresponding to S. 47 of C. P. C. of 1908). It was then contended for the mortgagors that they could fall back upon the right to redeem the mortgage of 1806. In the plaint they did not seek to redeem the mortgage of 1806, or allege, that there had been an acknowledgment of that mortgage, with the result that there had been no inquiry by the Courts below into the question whether there had been such an acknowledgment. The plaintiffs treated the decree of 1825 as the mortgage which they sought to redeem.

Held that, to allow the plaintiffs to fall back upon the mortgage of 1806 would be to permit them to make a different case from that which they had made in the plaint and in the lower Courts, and on which the case had been tried and decided, and that they could not therefore be allowed to do so (69-70). (Sir Richard Couch.) HARI RAVJI CHIPLUNKAR P. SHAPURJI HORMUSJI.

(1886) 13 I. A. 66 = 10 B. 461 (467 8) = 4 Sar. 719.

-Payment into Court of amount of-Extinguishment of mortgage by. See MORTGAGE-EXTINGUISHMENT-KEEPING ALIVE-REDEMPTION DECREE.

(1905) 32 I. A. 229 (243) = 28 A. 1 (18).

EXTINGUISHMENT OF MORTGAGE BY SUBSEQUENT SALE.

Mortgagee's plea of-Onus of Proof of.

Where, in a suit for redemption, the mortgagee admits the mortgage sued upon but pleads that it was extinguished by subsequent sale, the onus is on the mortgagee to show that the mortgage was so extinguished. (Sir Binal Mitter.) WALI MOHAMMAD v. MOHAMMAD BAKHSH.

1930 A.L.J. 292 = 31 L.W. 321 = 31 Punj. L.B. 145 = 32 Bom. L.R. 380 = 57 I.A. 86 = 122 I.C. 316 = A.I.B. 1930 P.C. 91.

INTEREST IN.

-First Court's decree-Interest after-Disallesonne

to mortgagee of-Grounds.

Their Lordships are satisfied that the action of the defendants in this sait for redemption has been obstructive and oppressive, and has unduly and intentionally prolonged the litigation to the advantage of the defendants and to the serious detriment of the plaintiffs. The defendants ought not, therefore, to be allowed any further interest after the date fixed for redemption by the first Court. (Sir John Edge.)

# MORTGAGE-REDEMPTION-(Contd.)

Suit for-(Contd.)

INTEREST IN-(Contd.)

GANGA BAHU DEBI P. APURBA KRISHNA ROY. (1912) 17 C. W. N. 25 (36) = 18 I. C. 535 (542).

In a suit for redemption, held that the defendant was not entitled to interest during the pendency of the appeals from the judgments and decrees of the Sub-Judge, the District Judge and the Judicial Commissioners, because the case was hung up by his persistence in asserting an unwarrantable claim to interest from the inception of the mortgage. (Mr. Ameer Ale.) MOHAMMED ALLE, RAM-ZAN ALL. (1921) 14 L. W. 710 (715)=

24 C. W. N. 997 = 23 O. C.150 = 58 I. C. 891. MAINTAINABILITY-MORTGAGER'S PRIOR SUIT TO

ENFORCE MORTGAGE.

-Decree in-Possession given to mortgagee in execution of-Effect.

By a bond dated 10-2-1857 G mortgaged a certain village to the appellants and their father as security for a loan. In a suit on the band the mortgagees obtained a decree dated 3-11-1860 as follows: - " As the defendant acknowledges the plaintiff's claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property". In proceedings in the Civil Court taken under that decree, the mortgagees asked for possession of the village, and obtained, on 17-7-1862, an order in pursuance of which they were put in possession. G took various steps to recover possession of the mortgaged property, or a declaration of his proprietary interest therein, but without success. An application for a grant of the proprietary right in the village, and an appeal from an order cancelling his patta were rejected by the revenue authorities on 8-12-1864, and 27-7-1865 respectively. On 12.8-1867 G sold the village to the respondent, who instituted the suit out of which the appeal arose to redeem the mortgage and obtain possession of the property. The appellants raised a plea in the nature of a plea of ret judicata, being in effect that, in the course of the miscellaneous proceedings had in execution of the decree of 3-11-1860, there had been such an adjudication upon the rights of the parties, that under S. 2 of C. P. C. of 1859 the suit by the respondent was not cognisable by the court.

Held that the present cause of action, tviz., the right to redeem, was not heard and determined in the course of the proceedings in question; and, consequently, that whatever might be the effect of the latter, they did not constitute a bar to the hearing of the present suit within the meaning of S. 2 of C. P. C. of 1859. GOKULDOSS v. KRIPARAM. (1873) 13 B. L. R. 205 = 3 Sar. 279.

Decree in, allowing redemption-Execution of, allowed to become barred-Effect.

In 1823 a suit was instituted to enforce a mortgage of 1806 against the heirs of the two mortgagors. That suit resulted in a decree of 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagors might at any time make a tender of the amount due, with the interest up to that time, and require that the land should be restored to them. In 1837 an application was made for the execution of that decree, and it resulted in the son and heir of one of the mortgagors paying his share of the money due upon the mortgage, whereupon, so far as regards the one-half of the land mortgaged in 1806 that belonged to that mortgagor the mortgage became redeemed.

In a suit instituted in September, 1877, by the representative in interest of the original mortgagors for redemption of the half of the mortgaged property belonging to the other mortgagor, treating the decree of 1825 as in the nature

Sui for-(Confd.)

MAINTAINABILITY—MORTGAGEE'S PRIOR SUIT TO ENFORCE MORTGAGE - (Contd.)

of a fresh mortgage, and as regulating the rights of the parties from that time, held that the only right which the mortgagors had was to execute the decree of 1825, and not a right to sue as for the redemption of a mortgage, and that the suit as framed was barred under S. 11 of Act XXIII of 1861 (60). (Sir Richard Couch.) HARI RAVJI CHIPLENKAR P. SHAPURJI HORMUSJI.

(1886) 13 I A. 66 = 10 B. 461 (467) – 4 Sar. 719.

Ontere whether a mortgagor, who had allowed execution of the decree allowing redemption in a suit brought by the mortgage to become barred, could fall back upon the original mortgage, and sue for redemption on foot thereof (70). (Sir Richard Conch.) HARI RAVII CHIPLUNKAR v. SHAPURJI HORMUSJI. (1886) 13 I. A. 66 = 10 B. 461 (467-8) – 4 Sar. 719.

Decree in not in accordance with Transfer of Property Act—Sale in execution of, and purchase by mortgages himself.

A decree for sale passed in a suit instituted against a Hindu and his two minor sons on a mortgage bond executed by the father was not in accordance with the provisions of the Transfer of Property Act. In execution of the decree the mortgaged property was attached and sold, and was purchased by the mortgagee himself. The sale was confirmed, and a certificate issued.

Held that a fresh suit for redemption of the mortgage by one of the sons of the mortgagor was not maintainable, on the ground that the decree in the prior suit did not comply with the provisions of the Transfer of Property Act, and did not bar the right of the defendants therein to redeem (59-60).

Whether or not the provisions of the Transfer of Property Act were complied with, the property and all right, title, and interest of those defendants in it were in fact sold to the mortgagee in execution of a decree of a court which had jurisdiction to entertain the suit in which the decree was made, and that decree was not appealed (59-60). (Sir John Age.) Ganapathy Mudalian r. Krishnama-Charlar. (1917) 45 I A. 54 = 41 M. 403 (410-1) = 22 C. W. N. 553 = 20 Bom. L. R. 580 =

23 M. L. T. 198 = 27 C. L. J. 367 = (1918) M. W. N. 310 = 16 A. L. J. 353 = 4 P. L. W. 310 = 8 L. W. 427 = 44 I. C. 855 = 34 M. L. J. 463.

MAINTAINABILITY—MORTGAGOR'S PRIOR SUIT FOR POSSESSION AS PROPRIETOR.

Dismissal of - Effect.

Plaintiff sued to recover certain land from the defendant (talukdar), claiming to be entitled to the same as underproprietor. That suit was dismissed on the merits. Plaintiff again sued to recover the same property as proprietor, on payment to the defendant of the arrears of revenue paid by him to Government, the plaintiff treating the same as having been paid on his account. That suit was also dismissed on the ground that a conditional sale by the plaintiff to the defendant in February 1853 had become absolute about the end of 1853. On a third suit brought by the plaintiff for the recovery of the same property on the basis of a mortgage made to the defendant in June, 1854, alleging that the mortgage debt had been satisfied, and offering to pay the balance, if any, due, held that the suit was not barred under S. 13 of C. P. C. of 1877 or under S. 2 of C. P. C. of 1859 (111-2).

The question in issue in the second suit was whether the plaintiff was entitled to recover the property which had been transferred by the Government to the defendant on

### MORTGAGE-REDEMPTION-(Contd.)

Suit for-(Contd.)

MAINTAINABILITY—MORTGAGOR'S PRIOR SUIT FOR POSSESSION AS PROPRIETOR—(Contd.)

repaying to him the arrears of revenue which he had paid to Government. The matter in issue in this suit (third suit) is the plaintiff's right to redemption under a mortgage. The plaintiff's present claim does not arise out of the cause of action which was the foundation of the former suit (111-2).

(Lord Macnoghton.) AMANAT BIBL v. IMDAD HUSAIN.

(1888) 15 I. A. 106 = 15 C. 800 (807-8) = 5 Sar. 214.

### MAINTÁINABIUTY—REDEMPTION DECREE PRIOR.

- Execution of, rendered impossible by vis major.

A mortgagor obtained a decree for redemption of a usufructuary mortgage and, pending an appeal by the mortgagee as to interest, paid into Court the sum directed to be paid under the decree. Before the appeal could be disposed of and the decree executed, however, the Indian Motiny broke out, the records of the court were destroyed, and the Government Treasury was plundered. The mortgagee being in possession did not on the restoration of order proceed with his appeal but obtained a settlement of the mortgaged properties in his name and a sanad was issued to him. The Government declined all responsibility for the amount paid by the mortgagor into the Government Treasury and refused either to return the deposit or to be accountable for it to the mortgagee; and the mortgagee decline 1 to deliver possession of the mortgaged property unless and until he was paid his mortgage amount. Accordingly one of the heirs of the mortgagor instituted a fresh suit for redemption of the mortgage.

Held, reversing the court below, that the suit was sutainable and was not barred under S. 244 of C. P. C. of 1882 (242).

There was nothing which the court could execute. They could not order the mortgagor to pay over again in a proceeding for execution of the existing decree, and they could not order the mortgagee to retransfer the estate without receiving the amount due to him. A new decree, which could only be regalarly made in a fresh suit, was in the circumstances therefore required in order to give effect to the rights of the parties and do justice between them (242-3). (Lard Davy.) CHAUDHRI AHMAD BAKSH v. SETH RAGHUBAR DAYAL. (1905) 32 I. A. 229 = 28 A. 1 (17 8) = 2 C. L. J. 413 =

7 Bom. L. B. 912 = 2 A L. J. 813 = 10 C. W. N. 115 = 9 O. C. 7 = 8 Sar. 882 = 15 M. L. J. 407.

#### PARTIES TO.

Purchaser of equity of redemption—Suit by Mortgager if and when a necessary party to.

In a suit for redemption of a mortgage by the purchaser of property subject thereto, the mortgagee contended that the plaintiff was under a duty to make the heirs of the mortgagor parties, the mortgagor having died previously. Held, that he was under no such duty (373).

The plaintiff sought to redeem; he had to make out his title to redeem, and he gave prima facie evidence. It was for the defendant to rebut it, and call in answer evidence, if there was any, in rebuttal. Moreover, the defendant had dispensed the plaintiff from any necessity, if there ever had been any, to make the mortgagor's heirs parties, because the defendant himself pleaded that all their rights had been transferred to him (373.4). (Lord Phillimore.) EHTISHAM ALI v. JAMNA PRASAD. (1921) 48 I. A. \$55

15 L.W. 104 = 30 M L.T. 132 = 9 O.L.J. 71 = 24 O. C. 272 = 24 Bom. L.R. 675 = (1922) P.C. 56 = 27 C.W.N. 8 = 20 A.L.J. 961 = 64 LO. 299.

Suit for-(Contd.)

PERIOD FIXED FOR REDEMPTION-PLEA BY MORTGAGGR OF.

Onus of proof of. See MORTGAGE-REDEMPTION -PERIOD FIXED FOR-PROOF OF

(1875) 3. I. A. 85 (88-9).

### PROOF OF MORTGAGE IN.

Onus on mortgagor-Long possession with defendants' family.

A plaintiff who alleges that his ancestor, forty-four years ago, made a mortgage to the ancestor of the present possesssor of a property, and by virtue thereof seeks to dispossess the present possessor, must prove his case clearly and indefeasibly. He must succeed by the strength of his own title, and not by reason of the weakness of his opponent's. It would be contrary to all principles of law and justice, that upon such an allegation, a plaintiff should be able to require the present possessor to prove his title, and if he failed in doing so to dispossess him of the land in question. (Sir John Romilly.) SEVVAJI VIJAVA RAGHUNADHA F. CHINNA NAYANA CHETTI. (1864) 10 M.I.A. 151 (160) =

-Opposing case of absolute title of mortgagee-False nature of, if amounts to such proof. See EVIDENCE-DEFENDANT-OPPOSING CASE OF, ETC.

(1864) 10 M. I. A. 151 (161).

Quantum-Long possession with alleged mortgager. Plaintiff sued for redemption and a certain village alleging it had been mortgaged by his ancestor to the ancestors of defendant. The latter contended that he and his ancestors held the property under an inam from the Government and that he had been holding under that title without paying any revenue to the Government for about forty years. There was no satisfactory evidence of the mortgage set up by plaintiff; under the circumstances, the Judicial Committee refused to disturb the concurren findings of the lower Courts, which were against the plaintiffappellant on the question of mortgage. RAMRUDEEGOWDA D. DESSAI SAHEB. (1871) 17 W. R. 8 = 2 Suth. 501.

SEVERAL MORTGAGES ON SAME PROPERTY IN FAVOUR OF SAME PERSON.

Different redemption suits in respect of -Maintainability-C. P. C., O. 2, R. 2-Effect.

Quarre: Can a mortgagee who has several mortgages on the same property treat them, with respect to the provisions of section 43 of the Civil Procedure Code of 1882, as separate causes of action, or must be bring one suit on all his mortgages? (Sir Ford North.) SRI GOPAL D. PIRTHI SINGH. (1902) 29 I. A. 118 (126) = 24 A. 423 (438-9)

6 C. W. N. 809 = 4 Bom. L.R. 827 = 8 Sar. 293.

SUB-MORTGAGE-REDEMPTION OF-MORTGAGOR'S SUIT FOR.

Onus of proof in-Defendant's claim of independent title. See MORTGAGE-SUB-MORTGAGE-REDEMPTION (1875) 3 Suth. 195 (197). OF.

### Terms of

-Mortgagee execution purchaser - Redemption of , by owner of equity of redemption not impleaded in mort gagee's suit.

Plaintiff was a mortgagee of, amongst others, the suit property who had purchased the same in execution of a decree obtained by him on his mortgage. Defendant was a purchaser of the same suit property at a sale held subsequent to the suit on the plaintiff's mortgage in execution of a simple money decree obtained by the defendant against the mortgagor, The defendant was made a party to the suit on

# MORTGAGE-REDEMPTION-(Contd.)

Terms of-(Contd.)

the plaintiffs' mortgage on the ground that he was interested in the equity of redemption; but he set up a paramount title and did not offer to redeem, and was consequently dismissed from the suit. As defendant, however, managed to remain in possession of the suit property, plaintiff brought a fresh suit against him for recovery of possession of the same.

In that suit the High Court, being of opinion that the defendant ought to be allowed to redeem plaintiff's mortgage, decreed redemption on payment by the defendant of the amount for which plaintiff purchased the suit property in execution of his decree together with interest thereon at 6 per cent, from the date of his purchase. The decree further directed that in default of such redemption within six months the plaintiff was to be entitled to khar posses-

Held, that, even if the defendant had a right of redemption, the decree as framed by the High Court was founded on entirely wrong grounds and ought to be reversed

The High Court do not direct any account at all; not even the ordinary account on which a redemption decree must be founded. They go as once to say of their own discretion what shall be the price paid for this mortgaged property. According to the decree of the High Court, a sale having taken place with the knowledge of the defendant under the decree which gave him his costs and dismissed him as one having no interest subordinate to the mortgage, and the plaintiff having paid Rs. 1,600 for the equity of redemption at that sale, he is to have the whole property taken away from him by the defendant on receipt of what he has paid for the equity of redemption alone, and not to have a single farthing for that proportion of his mortgage debt which the court themselves say ought to be charged upon the property. Nor is he to have anything for the defendant's costs which he paid, or for his own costs of that suit which failed by the defendant setting up a fictitious title. The hardship of such a decree upon the plaintiff is apparent in stating the facts. Their Lordships think that it is founded upon entirely wrong grounds. It is not consistent with itself, because it does not give to the mort-gagee what the Court says he is entitled to have, but besides the inconsistency it is founded upon wrong grounds (181-2). (Lord Hobbonie.) NILAKANT BANERJI v. SURESH CHUNDER MULLICK. (1885) 12 I.A. 171 = 12 C. 414 (423)-4 Sar. 685.

-Purchaser of partion of mortgaged property not party to foreclosure decree-Redemption by.

The respondents were the purchasers of one of 16 fields mortgaged to the appellant. The appellant brought a suit against the original mortgagor alone to enforce his mortgage, and obtained a decree by consent. Under that decree (which was afterwards made absolute) in default of payment within a definite time, nine of the mortgaged fields, including that conveyed to the respondents, were to be foreclosed and to be handed over in possession to the The appellant went into possession accordappellant. ingly.

In a suit brought by the respondents to redeem the 9 fields which were in the possession of the appellant, held, (1) that the respondents not having been made parties to

the appellant's suit were not affected by it;

(2) that the respondents were entitled to redeem the mortgage on the footing of paying the balance left of the mortgage debt after debiting the mortgagee with a fair occupation rent during the period of his possession, and crediting him with simple interest on the debt due to him under the mortgage deed. (Viscount Haldane.) MIRZA

Terms of-(Conta.)

(1920) 47 I.A. 207 = VADALLI BEG P. TUKARAM. 48 C. 22 = 25 C.W.N. 211 = (1920) M.W.N. 369 = 28 M. L. T. 95-12 L.W. 503-16 N.L.R. 154= 22 Bom. L. R. 1315 - 57 I. C. 535 - 39 M.L.J. 147.

### Undivided share.

-Mortgager of -Redemption of entirety by-Right and duty as to.

A mortgagor of an undivided share may redeem the entirety, at any rate, if the mortgagee does not object and may be compelled to do so if required by the mortgagee. (Lord Davy.) CHAUDHRI AHMAD BAKHSH P. SETH RAGHUBAR DAVAL. (1905) 32 I. A. 229 (242)=

28 A. 1 (17) = 2 C. L. J. 413 = 7 Bom. L. R. 912 = 2 A. L. J. 813-10 C. W. N. 115-9 O. C. 7-8 Sar. 882 - 15 M. L. J. 407.

### MORTGAGE-RENEWAL OF

-Decree on foot of renewed mortgage-Priority of mortgagee as against intervening incumbrances-Effect on. See MORIGAGE-PRIORITY-RENEWAL OF MORIGAGE.

(1901) 28 I. A. 203 (209-10) = 23 A. 313 (323). -Full owner-Mortgage by-Limited interest under his will-Renewal by person having -Effect. See MORT-GAGE-EXTINGUISHMENT - KEEPING ALIVE- FULL (1913) 40 I. A. 105 (115) = 35 A. 211 (225). OWNER.

### MORTGAGE-SALE OR.

-Nature real of transaction. See DEED-CONSTRUC-TION OF-MORIGAGE OR SALE.

(1894) 21 I. A. 96-21 C. 882.

### MORTGAGE -SALE ABSOLUTE IN CERTAIN EVENTS

-Provision for mortgage becoming-Penalty if a-Mortgagec seeking to avail himself of provision-Ones on. See CONTRACT ACT, S. 74-MORTGAGE-SALE ABSO-9 M. J. 341.

### MORTGAGE-SALE WITH CONTRACT FOR RE-PURCHASE.

 Or. See DEED—CONSTRUCTION—MORTGAGE— SALE WITH, ETC.

### MORTGAGE-SHIELD

 Use of mortgage as a—Doctrine of—Applicability— Condition-Intervening incumbrances-Existence of. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859, 5. 54. (1912) 39 I. A. 228 = 40 C. 89.

### MORTGAGE-SIMPLE MORTGAGE.

DEED AMOUNTING TO A. MORTGAGE BY CONDITIONAL SALE OR. MORTGAGEE UNDER. REDEMPTION OF-MORIGAGOR'S RIGHT OF. T. P. ACT, S. 95. USUFRUCTUARY MORTGAGE OR. USUFRUCTUARY MORTGAGE AND -COMBINATION OF.

#### Deed amounting to a.

-Mortgage's rights under.

A mortgage was effected by a deed which provided that the debt should be paid in four instalments and that on failure of the mortgagor to pay "you should recover the same by means of the mortgaged property, the crops of our cultivation, and our other property, and from our person." Held that the mortgage was a simple mortgage within the meaning of S. 58 of the Transfer of Property Act.

In such a mortgage there is no transfer of ownership, and the mortgagee must enforce his charge by judicial sale

## MORTGAGE-SIMPLE MORTGAGE-(Contd.)

Deed amounting to a-(Contd.)

(34). (Lord Hobbouse.) SRI RAJAH PAPAMMA RAO BAHADUR P. SRI VIRA PRATAPA KORKONDA.

(1896) 23 I. A. 32-19 M. 249 (252)=7 Sar. 10= 6 M. L. J. 53.

### Mortgage by Conditional sale or.

By a bond dated 10th February, 1857 a village was mortgaged by one G to the appellants and their father as security for a loan; the bond providing that, "If I fail to pay the money as stipulated, I and my heirs shall without objection cause the settlement of the said village to be made with you. The nature of the property was somewhat peculiar. On the face of the mortgage, the mortgagor. G, was described as ma'gwaar of the village, and it appeared that, previous to and at the date of the instrument, the interest of a malgacar was not exactly that of proprietor. Five days, however, after the execution of the mortgage, the law having been modified, G was declared, by the Revenue Authorities, to have the proprietary interest, capable of being disposed of either by mortgage or sale.

It was contended that, on the true construction of the instrument of mortgage, it was a bai-bil-wafa, or deed of conditional sale.

Held, over-ruling the contention, that the effect of the document was to create a simple mortgage hypothecating the right of the party in the village, and that the deed was not meant to operate by way of conditional sale.

The word "sale" is never used throughout the instrument-The security is described in terms as a mortgage of the village, and the only passage from which any inference that it was in the nature of a deed of conditional sale can be drawn is the final sentence quoted above, "that if I fail to pay etc." Now, upon that it is to be observed that when the deed was executed the consent of the Revenue Officers would have been required in order to carry out such a sipulation; that the proprietary right of the mortgagor had not then been declared in the terms in which it was after wards declared; and that, supposing it had been so declar ed, the instrument would not, like an ordinary deed of conditional sale, have imported in terms a sale of the interest of the party which was to become absolute and conclusive upon his failure to pay the stipulated sum at a certain date. Such a contract would, independently of any rule of law to the contrary, execute itself, and the remedy of the party upon it would, if he were out of possession, be a suit for possession. GOKULDOSS p. KRIPARAM. (1873) 13 B. L. R. 205 = 3 Sar. 279.

### Mortgagee under.

AGREEMENT BY MORTGAGOR APPOINTING HIM MANAGER AND RECEIVER OF ALL HIS PROPERTY.

-Effect-Mortgagee if trustee for mortgagor.

Shortly after the execution of a simple mortgage, the mortgagor executed an agreement by which he appointed N (the manager of the joint Hindu family) in whose favour the mortgage had been executed, manager and receiver of all his property moveable and immoveable for 10 years and pet N in possession under that agreement. N was to keep accounts and explain them to the mortgagor in July of each year and was to receive certain remuneration for his work

Held, on a construction of the agreement differing from the court below, that N was not constituted a trustee within the meaning of the Trusts Act. (Sir John Edge.) B. L. RAI v. BHAIYALAL. (1920) 24 C.W.N. 769 (774-5) 28 M. L. T. 345 = (1920) M. W. N. 685=

16 N. L. B. 94=58 I C. 13.

## MORTGAGE-SIMPLE MORTGAGE-(Centd.) Mortgage under - (Contd.)

REMEDY OF, ON NON-PAYMENT.

-Decree for mortgage money-Possession obtained by mortgagee in execution of-Effect of, on mortgagor's right of redemption.

By a bond dated 10th February, 1857, G mortgaged a certain village to the appellants and their father as security for a loan. The bond provided that, " if a fail to pay the money as stipulated, I and my heirs shall without objection cause the settlement of the said village to be made with

The mortgagees brought a suit for the recovery of the mortgage debt, and obtained a decree for the satisfaction of the amount decreed either by the defendant himself or out of the mortgaged property. The decree, however, was not executed in that way. After two years' delay, the mortgagees applied for execution of their decree, but in a different way. After stating that the money had not been paid according to the decree, they said the enforcement of the condition of the bond was then just, and therefore they prayed that the full possession of the village might be given to them in perpetuity, and the defendant be released from liability under the decree. And the mortgagees were put in possession accordingly.

It was contended that the substantial effect of the proceedings, taken in execution of the decree, was to destroy any right of redemption which might previously have

Held, that the decree did not warrant such a permanent transfer of the village to the mortgagees as would extinguish the right of redemption of the mortgagors; and that the Courts, in executing the decree, did not, and could not, effectually make such a transfer.

If the security was in the nature of a simple mortgage, the proper course for the mortgagees to pursue was to raise the amount for which they had obtained a decree by the sale of the village, paying the surplus proceeds, if any, to the mortgagor. They could not make such a decree the foundation of a transfer which should destroy the right of re-lemp-tion, supposing the right of redemption existed. GOKUL-(1873) 13 B. L. R. 205 -DOSS v. KRIPARAM.

3 Sar. 279

-Possession-Decree for - Validity of - Possession held by mortgagee under-Redemption suit by mortgager Maintainability-Accounts.

A simple mortgage bond of the year 1870, after stipulating for the payment of the mortgage-debt by instalments, provided that in case of default, "you should recover the same by means of the mortgaged property and from our person according to your wish." The mortgagee brought a suit on the bond for payment of the debt and for realisation of it from the property. The court gave him a decree in the following terms:—' In accordance with the custom prevailing in the courts in this Presidency three months' time will be allowed to the defendants within which to pay up the whole sum now decreed, principal, interest and costs, failing which the plaintiff shall be put in possession of the immoveable and moveable property specified in the bond sued upon and in the plaint and schedule as provided in the terms of the bond." The mortgagee executed this decree and got into possession in 1880. In a suit by the mortgagor to redeem the property as on a subsisting mortgage and for accounts to be taken since 1880, held, affirming the decree of the High Court, that under the former decree the relationship of mortgagor and mortgagee was not put an end to and that the mortgagee must submit to be redeemed.

That decree was not according to law. In default of payment, a simple mortgage gives to the mortgagee a right

# MORTGAGE-SIMPLE MORTGAGE-(Contd.)

Mortgage under-(Could.)

REMEDY OF, ON NON-PAYMENT-(Contd.)

not to possession but to sale, which he must work out in execution proceedings.

The decree was not a foreclosure decree. (Lord Hobk.we). Sri Rajah Papamma Rao Bahadur 2. Sri VIRA PRATAPA KORKONDA. (1896) 23 I. A. 32= 19 M. 249 = 7 Sar. 10 6 M. L. J. 53.

-Sale-Suit for-Right of-Proteston for mortgage taking principles of and enjoying mortgaged property as under a uniferestivary mortgage in default of payment of interest-Effect.

A deed of mortgage, styled a simple mortgage, provided :- "If the whole or portion of the interest remains nnpaid by the due date, His Highness (the mortgagee) shall take possession of the mortgaged properties immediately thereafter and enjoy the said properties as under a usufructeary mortgage." The mortgagor failed to pay the principal and interest, and, in a suit by the mortgagee to enforce his mongage, the mortgagor contended that the plaintiff was not emitted to a decree for sale because of the provision in the mortgage-deed set out above. Held, that the mortgages setained the position of a simple mortgages, and, as the mortgagor had not fulfilled his obligations was entitled to a degree for sale. (Lord Macnaghten.) BHUPATI DEVA c. GAJAPATIRAJ. (1911) 15 C. W. N. 441 =

9 M. L. T. 445 8 A. L. J. 594 = 13 C. L. J. 584 = 13 Bom.L. R. 447 = (1911) 1 M. W. N. 429 = 10 I. C. 272 21 M. L. J. 1147.

RIGHTS OF.

-Sv MORTGAGE-SIMPLE MORTGAGE - DEED AMOUNTING TO A-MORTGAGEE'S FIGHTS UNDER.

(1896) 23 I. A. 32 (34) = 19 M. 249 (252).

# Redemption of -Mortgagor's right of.

-(1) Possession obtained by mortgagee in execution of decree for money obtained by him-Effect of.

(2) Possession-Decree for, obtained by mortgagee and possession held by him under it-Effect of. See under MORTGAGE-SIMPLE MORTGAGE-MORTGAGEE UNDER -REMEDY OF, ON NON-PAYMENT.

### T. P. Act, S. 95.

-If applicable to such mortgage. See TRANSFER OF PROPERTY ACT, S. 95-APPLICABILITY OF, TO SIM-(1906) 33 I. A. 81 - 28 A. 482 (487). PLE MORTGAGE.

### Usufructuary mortgage or.

-TEST, See MORTGAGE-LEASE OF MORTGAGED PROPERTY, ETC. (1912) 40 I. A. 31 - 35 A. 48 (56).

# Usufructuary mortgage and—Combination of.

-Anomalous mortgage or. See MORTGAGE-DEED OF-NATURE OF MORTGAGE CREATED BY-ANOMAL-OUS MORTGAGE. (1926) 54 I. A. 68 (77) = 50 M. 180. -See MORTGAGE-DEED OF-NATURE OF MORT-GAGE CREATED BY-ANOMALOUS MORTGAGE. (1929) 56 I. A. 299 = 4 Luck. 363.

——Anomalous mortgage—Usufructuary mortgage mere-ly—Test. See MORTGAGE — DEED OF — NATURE OF MORTGAGE CREATED BY-ANOMALOUS MORTGAGE,

(1919) 56 I. C. 717.

-Failure of mortgager to give postession to mortgagee -Decree for money and for sale - Mortgagee's right to-T. P. Act, Ss. 67, 68.

In the case of a mortgage which was a combination of a simple and an usufructuary mortgage, held, that, the mortgagors having failed to discharge the obligation of making over possession to the mortgagee and having thereby deprived him of part of his security, under S. 68 of the

### MORTGAGE-SIMPLE MORTGAGE-(Contd.) Usufructuary Mortgage and-Combination of-(Contd.)

Transfer of Property Act, the money became payable and the mortgagee was entitled to a money decree for the same and under S. 67, of Transfer Property Act, a decree for sale could be made. (Lord Tomlin.) LAL NARSINGH PARTAB BAHADUR SINGH 7, MOHAMED YAKUB KHAN. (1929) 56 I.A. 299 = 4 Luck. 363 = 31 Bom. L. R. 825 =

49 C. L. J. 588 = 116 I. C. 414 - 30 L. W. 87 = (1929) M. W. N. 635-27 A. L. J. 581=

### 33 C.W.N. 693 = A.I.R. 1929 P.C. 139 = 58 M.L.J. 401. MORTGAGE-STAMP ON-SUFFICIENCY OF.

-Presumption - Mortgage created by compromise petition accepted by Court in 1857-Stamp on - Certified copy of petition bearing insufficient stamp-No inference from, that original bore same stamp. See STAMP -SUF-FICIENCY OF-PRESUMPTION.

(1916) 43 I. A. 264 (268) = 38 A. 494 (501-2). MORTGAGE-SUB-MORTGAGE.

-Redemption of - Mortgagor's unit for - Onus of proof in-Absolute ownership-Plea by sub-mortgager of.

The suit was brought by the respondents to redeem talooka R, which they alleged had been mortgaged to one O for Rs. 3,067, and after his death had got into the possession of A, in consequence of a sub-mortgage from the widow of O. The defendant-appellant was the son of A, and his case appeared to be that A was in possession from a period prior to the settlement in 1858; that in that year he was admitted as talookdar to the talook, and he claimed to hold it free of any claim on the part of the original mortgagors.

The original mortgage was beyond dispute, and there was evidence that A held under a sub-mortgage. The defendant did not rely upon mere possession and say that he got in as a trespasser, and was entitled to hold the talook by virtue of possession and protected by the statute of Limitations; but he set up an affirmative title that the chuckladar leased it to him, and he entirely failed to prove that title. He asserted, but did not prove it.

Held, that, under the circumstances, it could not be said that the Courts below, who found the facts, were wrong in coming to the conclusion that the defendant did hold the talook, by some title derived from the original mortgagee (197). KAJAH AMEER HUSSAN KHAN P. MUKHDOON (1875) 3 Suth. 155 = R. & J's No. 38.

### MORTGAGE-SUBROGATION.

-Claim to, on ground of payment of mortgage amount -Proof necessary in case of.

The appellant shaped his case as equitable mortgagee from certain persons, alleging that he had paid off, at their request, the mortgage due on their property, and therefore claimed to stand in the position of the original mortgagee, as if a regular transfer of the mortgage had been made to him. There was sufficient proof of his being the hand that had paid off the money under the original mortgage. But there was no proof that it was his own money, or that he was to stand in the situation of the original mortgagee. There was also no proof of any equitable assignment having been made to him.

Held, that the appellant was not entitled to be subrogated to the rights of the original mortgagee. (Lord Brougham.) PANDOORUNG BULLAL PUNDIT P. BALKRISHEN HUR-(1838) 2 M.I.A. 60= BA-JEE MAHAJUN.

5 W.R. 124 = 1 Suth. 88 = 1 Sar. 155. -Mortgage invalid-Prior mortgage valid paid off with amount raised under-Subrogation to rights under-Rights of creditor to. See HINDU LAW-MINOR-GUARDIAN-MORTGAGE BY-INVALIDITY OF.

(1866) 6 M.I.A. 393 (425).

MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR SALE ON).

ACCOUNTS IN-TAKING OF.

ASSIGNEE-MORTGAGEE-SUIT BY, AGAINST ASSIGNOR AND MORTGAGOR.

COMPROMISE OF.

CONSIDERATION FOR MORTGAGE - FAILURE TO

DEATH OF MORTGAGOR PENDING, AND DEVOLUTION OF HIS INTEREST ON HIS SON, AN UNDISCHARGED

DECREE IN.

INSOLVENCY OF MORTGAGOR PENDING.

JOINT TENANTS-TENANTS IN-COMMON-MORTGAGE TO TWO PERSONS AS.

JURISDICTION TO ENTERTAIN.

LEASE OF MORTGAGED PROPERTY TO MORTGAGEE BEING PART OF SAME TRANSACTION AS MORT-GAGE.

MAINTAINABILITY-Res judicata.

PARTIES TO.

PERSONAL DECREE IN.

PRIOR AND SUBSEQUENT MORTGAGES.

PRIOR AND SUBSEQUENT MORTGAGEES IMPLEADED IN-OMISSION OF, TO PUT FORWARD THEIR RIGHTS.

RECTIFICATION OF MORTGAGE DEED WITH REGARD TO DESCRIPTION OF PROPERTY.

REDEMPTION RIGHT IN-OMISSION TO SET UP, AND SETTING UP OF PARAMOUNT TITLE.

REFERENCE TO ARBITRATION IN.

RIGHT OF-SECURITY FOR PERFORMANCE OF CER-TAIN ACT-MORTGAGE GIVEN AS.

TITLE OF MORTGAGE.

UNAUTHORISED PERSON-MORTGAGE BY.

#### Account in-Taking of.

Necessity-Omission to take when immaterial.

In a suit for sale, it is no doubt usual to have the accounts taken; but, if the result of taking them would be to give the same sum as that passed in the decree, there is no serious point in the court not directing the account to be taken. (Lord Phillimore.) PATHUMSA AMMAL v. RAJA-(1926) 31 C.W.N. 804= COPALA MUDALIAR.

39 M.L.T. 453=25 L.W. 346=(1927) M.W.N. 147= 100 I.C. 91=45 C. L. J. 300=29 Bom. L.B. 777= A.I.B. 1927 P.C. 17=52 M.L.J. 407

Assignce mortgagee—Suit by, against assigner and mortgagor.

- Failure to get decree for full amount against mortgagor-Decree for balance against assignor-Right to apply for.

The assignce of a mortgage executed by the manager of a joint Hindu family instituted a suit thereupon against the other members of the family and his assignor. One of the terms of the deed of assignment was that if the amount which the plaintiff recovered from the other members of the family fell below a certain figure he was to get the balance from his assignor. The High Coart held that the rate of interest provided by the bond was exorbitant and passed a decree for an amount less than the stipulated figure against the other members of the family. On appeal to the Priv Council by the mortgagee their Lordships observed that it would have been quite open to the mortgagee to apply to the High Court for relief against his assignor for the balance. (Lord Phillimore) NAZIR BEGAM T. RAO (1919) 46 I.A. 145 (150-1) RAGHUNATH SINGH.

41 A. 571 (577) = 23 C.W.N. 700 = 26 M.L.T. 40= 17 A.L.J. 591 = 21 Bom. L.R. 484 = 30 C.L.J. 86= 1 L.W. 188 = (1919) M. W. N. 498 = 50 I.O. 434

36 M. L. J. 521.

# MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR

### Compromise of.

-Some of parties only-Compromise by-Decree in terms of against all-Validity of Appeal against-Persons not parties to compromise-Right of.

Where, in a suit for sale, some of the parties alone enter into a compromise, the court ought, before passing a decree in terms of the compromise even as against persons not parties thereto, to see that every item of the account and every point found against those persons was proved by evidence and not founded on the compromise. It could not, in reliance upon the compromise, give any judgment against those persons, and they have a right to appeal against the decree in respect of such matters as are not warranted by the evidence. (Lord Phillimore.) PATHUM-SA AMMAL v. RAJAGOPALA MUDALIAR.

(1926) 31 C.W.N 804 = 39 M.L.T. 453= 25 L.W. 346=(1927) M.W.N. 147=100 I.C. 91= 45 C.L.J. 300 - 29 Bom. L. R. 777 A. I. R. 1927 P. C. 17. - 52 M.L.J. 407. Consideration for mortgage—Failure to prove.

Agreement independent between mortgagor and mortgagee-Amount advanced by mortgagee under-Decree for-Grant of- Propriety. See MORTGAGE-SUIT TO EN-FORCE-DECREE IN-AGREEMENT INDEPENDENT BET-WEEN MORTGAGOR AND MORTGAGEE.

(1912) 24 M.L.J. 355.

-Decree for sale or accounts in case of-Propriety. See MORTGAGE-CONSIDERATION FOR-FAILURE OF MORTGAGEE TO PROVE. (1924) 47 M.L.J. 168 (171).

Death of mortgagor pending and devolution of his interest on his son, an undischarged insolvent.

Mortgagee's remedy in case of. Sie C.P.C. OF 1908-O. 22, R. 10-MORTGAGE SUIT.

(1927) 54 I.A. 190 (192-3) = 54 C. 595.

### Decree in-

ACCOUNTS-DIRECTION TO TAKE.

AGREEMENT INDEPENDENT BETWEEN MORTGAGOR AND MORTGAGEE-AMOUNT ADVANCED BY MORT-GAGEE UNDER-DECREE FOR.

APPEAL AGAINST.

COMPROMISE OF SUIT BY SOME OF PARTIES ONLY-DECREE IN TERMS OF, AGAINST ALL.

CONSIDERATION FOR MORTGAGE.

EARLIER DECREE SUPERSEDED BY LATER ONE TO SAME EFFECT.

EXECUTION OF.

Ex-parte DECREE AGAINST ALL DEFENDANTS.

FORM OF-TRANSFER OF PROPERTY ACT-NON-CON-FORMITY WITH PROVISIONS OF.

INSOLVENCY OF MORTGAGOR PENDING SUIT.

INTEREST ALLOWED BY.

JOINT DECREE-HOLDERS. JURISDICTION TO PASS.

NATURE OF.

ORDER ABSOLUTE.

PERSONAL DECREE

PRELIMINARY AND FINAL DECREES.

PROPERTY SITUATE IN PLACE TO WHICH C. P. C. IN-APPLICABLE-SALE OF-DECREE FOR.

REDEMPTION ALLOWED BY- EXECUTION OF, ALLOW-ED TO BECOME BARRED.

REDEMPTION TIME ALLOWED BY.

RIGHTS UNDER-SURRENDER OF-ELECTION TO TREAT DECREE AS MONEY DECREE.

SUPREME COURT OF CALCUTTA-DECREE OF.

TRANSFEREE OF MORTGAGED PROPERTY PRIOR TO SUIT BUT NOT IMPLEADED THEREIN. VALIDITY OF.

SALE ON)-(Centd.)

## Decree in-Accounts-Direction to take.

-Alsence in decree of-When immaterial. See MORTGAGE-SUIT TO ENFORCE-ACCOUNTS IN.

(1926) 52 M. L. J. 407.

Decree in-Agreement independent between mortgagor and mortgagee-Amount advanced by mortgagee under-Decree for.

Grant of Propriety-Mortgage bond sued on not itself supported by consideration.

The plaintiff and the defendant, A, agreed that, in consideration of the plaintiff defraying one-third of the expenses of the litigation between R and A', the defendant, R, should grant a lease to the plaintiff's brother of an eight annas share in a certain mouza, and should, when that litigation was concluded, execute a sale deed of that share to the plaintiff. Under that agreement the plaintiff paid certain sums. Subsequently to that agreement and before the termination of that litigation, the defendant gave to the plaintiff two hypothecation bonds to be used should the defendant, R, refuse to execute the sale-deed.

In a suit brought by the plaintiff to enforce the two bends, it was found that no consideration passed for the same, and that the defendant. R. had always been ready to carry out the agreement on his part. Held, that the bonds in respect of which there was no consideration ought not to be made securities for the amounts advanced by the plaintiff for the litigation between R and K. (Sir John Edge.) LALLU SAHI P. MAHANT RAJBANS BHARTI.

(1912) 12 M. L. T. 191=(1913) M. W. N. 155= 17 C. L. J. 284 = 15 Bom. L. R. 452 = 17 I. C. 842 = 24 M. L. J. 355.

Decree in-Appeal against.

-Compromise of suit by some of parties only-Decree in terms of, against all-Appeal against-Persons not parties to compromise-Right of. See MORTGAGE-SUIT TO ENFORCE-COMPROMISE OF-SOME OF PARTIES ONLY. (1926) 52 M. L. J. 407.

-Right of -Suit - Person not party to - Right of. See DECREE-APPEAL FROM-RIGHT OF-SUIT.

(1927) 54 I. A. 190 (195) = 54 C. 535. -Valuation of-Decree allowing suit-Appeal by person claiming by title paramount. See C. P. C. OF 1908, S. 110, PARA. I—SUBJECT MATTER OF APPEAL—VALUE OF-MORTGAGE DECREE. (1916) 43 I.A. 187 (190)-

38 A. 488 (493). Decree in-Compromise of suit by some of parties only-Decree in terms of, against all.

-Validity. See MORTGAGE-SUIT TO ENFORCE-COMPROMISE OF -SOME OF PARTIES ONLY.

(1926) 52 M. L. J. 407.

# Decree in-Consideration for mortgage.

Failure to prove-Decree to be passed in case of. See MORTGAGE-SUIT TO ENFORCE-CONSIDERATION FOR MORTGAGE.

Decree in-Earlier decree supreseded by later one to same effect.

-Sale in execution of earlier decree after date of later one-Validity-Prejudice-Absence of. See EXECUTION SALE-MORTGAGE DECREE ON FOOT OF-EARLIER DECREE, ETC. (1917) 45 L A. 54 (59)= 41 M. 403 (409-10).

Decree in-Execution of.

APPLICATION FOR, ON FOOT OF PARTICULAR DECREE-DISMISSAL OF.

-Fresh application on foot of another decree-Not barred. See C. P. C. OF 1908, S. J1-CASES UNDER-EXECUTION PROCEEDINGS-MORTGAGE.

(1911) 38 I. A. 37 (44) = 33 A. 264 (271-2).

SALE ON)-(Contd.)

Decree in-Execution of-(Co.td.)

ATTACHMENT IN.

-Later instalments-Decree for-Attachment in excention of-Necessity - Deeree for ourlier instalments-Attachment in execution of, subsisting.

In pursuance of a decree for a debt then due under a mortgage, the mortgagee-decreeholder attached four villages of the mortgagor. For fresh instalments and fresh arrears of interest accrued due under the same mortgage. the mortgagee subsequently obtained another decree, and applied for a sale of the same four villages without any previous attachment. It appeared that the four villages were still under attachment in execution of the first decree. The Court made an order for sale without a fresh attachment. On objection taken to the validity of the order for sale on the ground that there was no attachment prior to the said order. held that there was no substance in the objection (26).

The four villages were under attachment at the suit of the same creditor, and to enforce a portion of the same debt, which had accrued at an earlier period under the same instruments of mortgage. A second order for attach ment would be an empty formality, and there is no rule which requires it (26). (Lord Hobbouse.) DOSIBAL P. ISHWARDAS JAGJIVANDAS.

(1891) 18 I. A. 22=15 B. 222 6 Sar. 10.

-Necessity for, See EXECUTION OF DECREE ATTACHMENT IN-MORTGAGE DECREE.

(1891) 18 I. A. 22 (26) = 15 B. 222.

Practice of. See MORTGAGE-SUIT TO ENFORCE -DECREE IN-ORDER ABSOLUTE-NECESSITY FOR

(1922) 27 C. W. N. 275 (279).

OBJECTION TO- SEPARATE SUIT RAISING.

-Maintainability-foinder of atter strangers to get over bar under S. 47, C. P. C.

On an application made for the execution of a decree for sale, appellant, the representative of the defendant, who had died previously, presented to the Court executing the decree a petition of objections under S. 244 of the C. P. C. of 1882. Some of his objections were allowed, others of his were disallowed on the ground, amongst others, that he had failed to support them by sufficient evidence. In a suit subsequently filed by the appellant raising the same objections to the execution of the decree for sale which had been put forward in his petition of objections and which had been disallowed, hel f that the suit was barred by S. 244 of the C. P. C. of 1882.

Two persons, who were not parties to the previous suit or execution proceedings were impleaded in the subsequent suit without any foundation being laid by reliable legal evidence for impleading them. Held further that the joinder of those persons was merely an attempt to avoid

the bar to the separate suit provided by S. 244.

The questions raised in this (subsequent) suit could have been and were raised under S. 244 of C. P. C. of 1882, and, whether then raised or not in appellant's petition of objections, they are questions which relate to matters which by S. 244 it was enacted "shall be determined by orders of the Court executing a decree and not by separate suit." (Sir John Edge.) AMEER CHAND P. BAKSHI HARIHAR (1915) 2 L. W. 257 = 32 I. C. 354 = 30 M. L. J. 238.

Possession given to mortgagee in.

-Redemption right of mortgagor-Effect on. Sec MORTGAGE - REDEMPTION-SUIT FOR-MAINTAIN-ABILITY-MORTGAGEE'S PRIOR SUIT TO ENFORCE MORTGAGE-DECREE IN. (1873) 13 B. L. R. 205.

MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Centd.)

Decree in-Execution of-(Contd.)

- Augmentation of share of mortgagor before-Benefit of-Purchaser's right to.

To a suit to enforce a mortgage, B, one of the mortgagors and K, the representative in interest of another mortgagor, were parties. Pending the suit the points in issue therein were referred to the arbitration of a named person. B was a party to the agreement for reference, but K was not. The arbitrator made an award, a decree was passed in accordance with the award, and in execution thereof B's interest in the mortgaged property was sold. It appeared that Bhad previously acquired K's interest in the mortgaged property. On a question arising whether the execution sale of H's interest passed not only his original share in the mortgaged property but also the share purchased by him from K, he'd that B's share included whatever he took by conveyance from K (36). (Lord Datry.) KHIARAJMAL v. (1904) 32 I.A. 23 = 32 C. 296 (315·6)= DAIM.

C.W.N. 201 - 2 A.L.J. 71 - 7 Bom. L. R. 1 = 1 C.L.J. 584 = 8 Sar. 734.

-Earlier decree super-eded by later one to same effect -Sale in execution of, after date of later decree-Validity -Prejudice - Absence of See EXECUTION SALE-MORTGAGE-DECREE ON FOOT OF-EARLIER DECREE. (1917) 45 I A. 54 (59) = 41 M. 403 (409-10). — Exonerated defendants—Interests of, if pass under sale—Their names not actually removed from record. See EXECUTION SALE-MORTGAGE - DECREE ON FOOT OF (1904) 32 I. A. 23 (36)= -SALE IN EXECUTION. 32 C. 296 (315).

-Interest passing under-Mortgage in one capacity-Interest of merigagor in another capacity if faun-Representatives of mortgager parties to mortgage mit-Right

of, to question execution purchaser's title.

One Kasim purchased a 15 annas 6 gundas share in a certain property in the name of his wife, Aso. Kasim died in 1881, leaving, among other heirs, the said Aso who was entitled to a 1 anna 18 gundas 5 cowries share in his properties, and Karamat, who was entitled to a 5 annas 14 gundas 15 cowries share therein. In 1882 Aso executed a mokurari grant (or grant at a fixed rent) of a 4 annas share of the property in favour of Jaggu, and in 1883, she executed a similar grant of an 8 annas 6 gundas share in favour of Karamat aforesaid. In 1884, Jaggu and Karamat mortgaged their mokurari interests under the above grants in a 12 annas share of the property to the plaintiff. Plaintiff institute la suit on bis mortgage and obtained a judgment holding that he was mortgagee of a mokurari interest in a 12 annas share of the property. In execution of the decree in the said suit a 5 annas 15 gundas mokuran share of the property was sold and was purchased by the plaintiff himself for a sum which more than covered the amount of his mortgage debt. In a suit by him to record possession of the share sold to him, it was contended by persons claiming under the said Karamat that Aso, to whom the property was conveyed on the purchase by Kasim was only a benamidar of Kasim, that the grants of 1882 and 1883 did not therefore vest in Jaggu and Karamat more than a mokurari interest in a 1 anna 18 gundas 5 courses share, being the share to which Aso succeeded on the death of her husband, and that plaintiff could, by his mortgage and execution purchase, acquire no higher right. Held, over ruling the contention, that it by no means concluded the case.

Karamat, who was one of the mortgagors to the plaintiff, was entitled by succession to a proprietary interest in a 5 annas 14 gundas 15 cowries share. The mortgage doubtless recited the grants of 1882 and 1883, and was MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Contd )

Decree in-Execution of-(Contd.)

SALE IN -(Contd.)

made upon the footing that a mokurari interest in a 12 annas share had been duly created by these grants; and it purported to convey a 12 angas mokurari share. In these circumstances it is not now open to any person claiming under Karamat to dispute that the mortgage effectively conveyed to the plaintiff a mokurari interest in at least the 5 annas 14 gundas 15 cowries share to which Karamat was entitled by succession. Further all the persons claiming title under Karamat were parties to the mortgage suit, and are bound by the decree for sale, and it is therefore not competent to them to dispute the title of a purchaser under that decree. (Viscount Cary.) BASAR KHAN & MOULVI SYED LEAKAT HOSSEIN. (1919) 11 L. W. 241 (244 5) = 23 C. W. N. 811 50 I. C 678

Legal representatives of deceased mortgag refer fendant-Omission to implead one of, in suit-E tate of deceased if bound by sale in case of. See EXECUTION SALE-MORTGAGE-DECREE ON FOOT OF-SALE IN EXECUTION OF-LEGAL REPRESENTATIVES, FTC

(1904) 32 I.A. 23 (34) = 32 C. 296 (313).

-Mortgagee's purchase at-Effect of, on mortgagor's right of redemption-Transfer of Property Act-Detree not in accordance with. See MORTGAGE-REDEMPTION-SETT FOR-MAINTAINABILITY-MORTGAGEL'S PRIOR SUIT TO ENFORCE MORTGAGE-DECREE IN, NOT IN, LTC.

(1917) 45 I.A. 54 (59-60) = 41 M. 403 (410-1).

-Mortgagee's purchase at-Leave to hid-Purchase with and without-Effect-Distinction, See C.P.C. OF 1908, O. 21, R. 72-MORTGAGEE DEGREE HOLDER,

(1889) 16 I.A. 107 (114) - 16 C. 682 (692).

Mortgagee's purchase at-Redemption after-Right of. See MORTGAGE-REDEMPTION-RIGHT OF-SUIT TO ENFORCE MORTGAGE - DECREE IN-SALE IN EXE-(1920) 47 I.A. 91 (98)= CUTION OF, AND ETC. 47 C. 924 (930-1).

-Mortgagee's purchase at-Validity of-Mortgagor

not represented on record-Effect.

Where by reason of private purchases of the equity of redemption in the mortgaged properties made pending a suit to enforce the mortgage, the mortgagee was alone represented on each side of the record in pro-cedings taken to exe cute the decree obtained in the suit, held, that a purchase of the properties by the mortgages at a sale held in execution conferred no title on the merigagee. (Lord Days.) CHUTTERPUT SINGH v. MAHARAJ BAHADOGK. (1904) 32 I. A. 1 (14) = 32 C. 198(216) =

9 C.W.N. 225 = 2 A.L.J. 150 = 8 Sar. 713 = 7 C.L.J. 395 - 10 Bom. L R. 262 - 3 M.L T. 344 -18 M.L.J. 125.

-Mortgagor dead before suit-Suit against minor heir of his who was not his legal representative represented by a person not his legal guardian. Validity of decree and sale in case of. Se: EXECUTION SALE-MORTGAGE-DECREE ON FOOT OF-SALE IN EXECUTION OF-MORIGAGOR (1904) 32 I.A. 23 (36) DEAD BEFORE SUIT.

32 C. 296 (314-5). -Order for, subject to mortgagee's rights under prior decree on foot of another mortgage of same property-Validity of-Objection to-Privy Council appeal-Maintainability for first time in. See PRIVY COUNCIL-APPEAL -NEW POINT-PERMISSIBILITY-MORTGAGE.

(1891) 18 I.A. 22 (26) - 15 B. 222. -Property not included in mortgage-Sale of-Remedy of mortgagor in case of-Suit fresh questioning purchaser's title-Maintainability-C. P. C., S. 47.

SALE ON) -(Contd.)

Decree in-Execution of-(Contd.)

SALE IN-(Contd.)

Even if property not included in a mortgage is sold in execution of a decree thereon, yet if the certificate of sale issued to the execution purchaser clearly includes that property and he is put in possession thereof, it is not open to the court in a subsequent sait by the mortgagor's representative to hold that the property did not pass under the execution sale because it was not included in the mortgage. The mortgagor or his representative if he feels aggrieved by the inclusion of the property in the sale in execution, ought to take appropriate steps in proceedings in execution of the mortgage decree; but, if he omits to do so, the purchaser ought not, except in clear cases, to be harassed in his possession by disputes arising years after his purchase. (Lerd Buckmaster.) RAMABHADRA NAIDOO v. KADIRI-VASAVI NAICKER. (1921) 48 I.A. 155 = 44 M. 483 =

(1921) M. W.N. 374 - 14 L.W. 125 - 30 M.L.T. 34 = 24 Bom. L R 692 = A.I.R. 1922 P.C. 252 = 63 I.C. 708. -Property passing under-Certificate of sale-Property learly included in-Restriction of, by reference to mortgage-Permissibility. See EXECUTION SALE-CER-THECATE OF SALE-MORIGIGE DECREE.

(1921) 48 I. A. 155-44 M. 483 (488). -Redemption before-Persons not impleaded in suit -Right of. See MORTGAGE-REDEMPTION-RIGHT OF -SUIT TO ENFORCE MORTGAGE-PERSONS NOT, ETC.

(1920) 47 I. A. 91 (96) - 47 C. 924 (929).

Redemption before and after—Right of. See MORT-GACE—REDEMPTION—RIGHT OF—SUIT TO ENFORCE MORTGAGE-DECREE IN-SALE IN EXECUTION OF. (1890) 17 I. A. 201 (211-2) = 18 C. 164 (178).

Decree in-Ex parte decree against all defendants. -Selling aside of, as against some-Restrial and second decree against all-Effect-First decree if merged in second.

A suit upon a mortgage executed by the manager of a joint Hindu family was instituted against the mortgagor and his two sons, and was decreed ex parte against them, That do ree was ub equently made absolute against them. On an application by one of the sons, the cx parte decree was set aside as against him, and the soit was retried. At the re-trial the other son was not allowed to appear; but the decree passed on the re-trial was nevertheless a comprehensive decree against all the members of the family, including the son who was not allowed to appear at the re-trial. An application made for an order making the subsequent elecree absolute was opposed by the son who was not allowed to appear at the re-trial, but his objections were disallowed, the High Court holding that there was a merger by the second decree of the first and that the latter was impliedly set aside by the former.

Their Lordships observed that they did not affirm the application in the High Court of the doctrine of merger, either in a general sense or in the sense of a vox signata (175-6). (Lord Shore.) RAJWANT PRASAD PANDE P. RAM RATAN GIR. (1915) 42 I. A. 171 = 37 A. 485 (494) = 20 C. W. N. 35 - 23 C.L.J. 55 - (1915) M. W. N. 736 -

2 L. W. 671 = 18 M. L. T. 173 = 17 Bom. L.R. 754 = 13 A. L. J. 937 = 30 I. C. 849 = 29 M. L. J. 165,

Decree in-Form of-Transfer of Property Act-Non-conformity with provisions of.

What amounts to.

In a suit for sale on a mortgage, the decree made was in the following terms:-It is ordered that plaintiff do recover Rs. 10,891, together with further interest at 6 per cent, per annum from date of plaint to date of payment and costs, to be recovered from the first defendant personally, and by sale

MORTGAEG-SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Contd.)

Decree in-Form of-Transfer of Property Act-Non-conformity with provisions of-(Contd.)

of the mortgaged property." Held, that the decree did not comply with the provisions of the Transfer of Property Act, 1882 (56-7), (Sir John Edge.) GANAPATHY MUDALIAR D. KRISHNAMACHARIAR. (1917) 45 I. A. 54=

41 M. 403 (407.8) = 22 C. W. N. 553 = 20 Bom. L. R. 580 = 23 M. L. T. 198 - 27 C. L. J. 367 = (1918) M. W. N. 310 - 16 A. L. J. 353=

4 Pat. L. W. 310 = 8 L. W 427 = 44 I. C. 855 =

34 M. L. J. 463. -Objection to decree on ground of -Time for taking-Redemption mit fresh-Maintainability of objection in.

Where, in execution of a decree for sale passed by a Court of competent jurisdiction, the mortgaged property was sold and was purchased by the mortgagee himself, hold, that the defendants in that suit could not institute a fresh suit for redemption of the same mortgage, on the ground that the decree in the prior suit was not in accordance with the provisions of the Transfer of Property Act, and did not therefore bar their right to redeem.

As the auction purchaser was the mortgagee bimself and therefore a party to the suit, the questions raised in the subsequent suit could have been raised before the sale (to the mortgagee) was confirmed, and, if so raised, would have been determined by the Court executing the decree in the prior suit (60). (Sir John Edge.) GANAPATHY MUDALIAR :. KRISHNAMACHARIAR. (1917) 45 I. A. 54=

41 M. 403 (411) - 22 C. W. N. 553 = 20 Bom L.R. 580 -23 M. L. T. 198 - 27 C. L. J. 367 = (1918) M. W. N. 310=16 A. L. J. 353=

4 P. L. W. 310=8 L. W. 427=44 I. C. 855= 34 M. L. J. 463.

-Sale in execution of such decree-Mortgagee's purchase at-Effect of, on redemption right of mortgagor. See MORTGAGE-REDEMPTION-SUIT FOR-MAINTAINABI-LITY-MORTGAGEE'S PRIOR SUIT TO ENFORCE MORT-GAGE-DECREE IN, NOT IN ETC.

(1917) 45 I. A. 54 (59-60) = 41 M. 403 (410-1)

### Decree in-Insolvency of mortgagor pending suit.

-Foreclosure decree obtained against insoivent without impleading receiver-Suit subsequent by receiver to set aside -Maintainability. See MORTGAGOR-SUIT TO ENFORCE -INSOLVENCY OF MORTGAGOR, ETC.

(1927) 54 I. A. 190 (194-5)=54 C. 595 Decree in-Interest allowed by.

COMPOUND INTEREST ALLOWED BY BOYD-SIMPLE INTEREST OR.

CONTRACT RATE-INTEREST AT.

DATE FIXED FOR PAYMENT.

-Test.

DECREE-DATE OF -RATE OF INTEREST UP TO, AND AFTER.

FUTURE INTEREST-DATE DOWN TO WHICH, ALLO-WED.

PRELIMINARY DECREE-INTEREST NOT ALLOWED BY.

COMPOUND INTEREST ALLOWED BY BOND-SIMPLE

INTEREST OR.

By a mortgage bond the mortgagors confracted to pay interest at 12 per cent, and that if they did not pay it they would, " after the expiration of 24th Assin, pay interest on the entire amount of interest not paid (treating it as principal) at I per cent, per mensem, regularly every year all along till the repayment in full of the amount covered by this bond without any objection whatever.

On foot of that bond, a decree was, on 19-3-1877, made by consent, and upon the petition of the mortgagors, admitSALE ON)-(Contd.)

Decree in-Interest allowed by-(Contd.)

COMPOUND INTEREST ALLOWED BY BOND-SIMPLE INTEREST OR-(Contd.)

ting the claim of the plaintiff. The petition ran thus :- " It is prayed that the claim may be decreed with costs and interest for the period of pendency of suit, as well as interest from the date of de ree to the day of realization on the entire amount of decree. principal and interest at 1 per cent, per mensem, as per conditions set forth in the bond, the basis of the claim and costs, against the property mortgaged in the bond." The order made thereon was in the following terms :- " That the case be decreed in accordance with the petition of admission of claim."

Held, that there was nothing in the language of the decree of 19-3-1877 which indicated an intention of altering the contract made by the bond, and that the High Court erred in thinking that it gave only simple interest at 12 per cent, from its date on the amount claimed in the plaint of that suit (4).

The terms in the body of the decree of 19-3-1877 are such as to introduce all the conditions of the mortgage. The claim is to be decreed with costs and interest for the period of the pendency of the suit, as well as interest from the date of the decree to the day of realization on the entire amount of the decree, principal and interest at I per cent, per mensem " as per conditions set forth in the bond." Now the condition of treating interest as principal, so as to carry interest if it were not paid by a date mentioned in the bond, is just as much one of the conditions of the bond as any other condition therein (4). (Lord Hobbonse.) GUNGA PERSHAD SAHU P. LAND MORTGAGE BANK OF INDIA.

(1893) 21 I. A. 1 = 21 C. 366 (373.4) = 6 Sar. 383.

CONTRACT RATE-INTEREST AT. -Date of decree-Right to such rate up to. See MORT-GAGE-SUIT TO ENFORCE- DECREE IN- INTEREST ALLOWED BY-DECREE-DATE OF.

(1921) 48 C. 839 (843).

-Date to which mortgagee is entitled to.

In a suit for sale on a mortgage, the matter remains in contract till the period fixed for redemption by the preliminary decree has expired, and the mortgagee is entitled, down to the date so fixed for redemption, to interest at the rate and with the rests specified in the contract of mortgage (34). (Lord Phillimore.) JAGANNATH PROSAD SINGH CHOW-(1926) 54 I.A. 1= DHURY P. SURAJMAL JAILAL.

54 C. 161 = 25 L. W. 685 = 29 Bom. L. B. 752 = 25 A.L.J. 23 = 4 O.W.N. 46 = 99 I.C. 686 = 31 C.W.N. 390 = 8 Pat. L.T. 173 = 38 M.L.T. 73 (P.C.)= A.I.B. 1927 P.C. 1=52 M. L. J. 373.

-Date of realisation-Right to such rate up to-Simple mortgage executed before Transfer of Property Ad and after-Distinction between cases of.

Quare whether the fact that a simple mortgage, the suit to enforce which is brought after the Transfer of Property Act, was executed before the Act would prevent the application of Ss. 86 and 88 of the Act to the case and whether the Court decreeing such a suit is not bound to award the contract rate of interest up to the date of realization (182).

The discretion given by S. 209 of C.P.C. of 1882 is a judicial discretion to be exercised on proper iudicial grounds. The Legislature has stated what should be the rule in suits of this kind, and the Courts cannot have a bet-(Lord Hobbouse.) ter guide to their discretion (182). RAMESWAR KOER P. SVED NAWAB MEHDI HOSSEIN (1898) 25 I. A. 179=26 C. 39 (45)= KHAN. 2 C.W.N. 633=7 Sar. 413.

-Ss. 86 and 88 of the Transfer of Property Act indicate clearly enough that the ordinary decree in a suit to enforce a simple mortgage should direct accounts allowing the rate of interest provided by the mortgage up to the date MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR

Decree in-Interest allowed by-(Contd.)

CONTRACT RATE-INTEREST AT-(Contd.) of realization (181-2). (Lord Hobhouse). RAMESWAR KOER P. SYED NAWAB MEHDI HOSSEIN KHAN,

(1898) 25 I.A. 179 = 26 C. 39 (45) = 2 C.W.N. 633=7 Sar. 413.

Date to which mortgagee is entitled to-S. 34 if controls 0. 34, C.P.C.

The question as to the date down to which the mortgagee in a suit for sale on the mortgage, is entitled to interest at the contract rate must be determined by O. 34 of C.P.C. of 1908. This may, for this particular case of mortgages, differ from the general provision of S. 34 of the Code; but, if so, the particular avoids the general (23) (Lord Phil. limore). JAGANNATH PROSAD SINGH CHOWDHURY :-SURAJMAL JAILAL.

(1926) 54 I.A. 1 = 54 C. 161 = 25 L. W. 685 = 25 A.L.J. 23=4 O.W.N. 46=90 I C. 686= 31 C.W.N. 390 = 8 P.L.T. 173 -38 M L.T. 73 = 29 Bom. L.R. 752 = A.I.R. 1927 P.C. 1=52 M.L.J. 373.

· Date of suit-Right to such rate up to.

In a suit to enforce a mortgage the High Court altered the decree of the Sub-Judge by giving to the plaintiff inte-rest on the mortgage amount at 5 per cent. per annum from the date fixed by the mortgage deed for payment to the date of its decree. In the mortgage deed it was covenanted that even if a suit was instituted, interest should be poid on the whole or part of the principal amount at the rate of Rs. 1.8 as. per cent. per mensem (18 per cent. per annum).

Held that the decree of the High Court should be varied by giving interest at the rate provided for by the bond instead of 5 per cent. up to the date of the institution of the suit (126). (Sir Richard Couch). BALGOBINE DAS P. NARAIN LAL.

(1893) 20 I.A. 116=15 A. 339 (352)=6 Sar. 313. First Court's decree-Award of such rate only up to.

In a suit to enforce a mortgage their Lordships decreed compound interest on the principal at 2 per cent per mensem (i.e. the contract rate) from the date of the execution of the bond until the date of the decree of the Court of First Instance, and allowed thereafter simple interest at 6 per cent. per annum up to the date of realization. (Lord Show). RAGHUNATH PRASAD v. SARJU PRASAD.

(1923) 51 I. A. 101 (108-9) = 3 Pat. 279 = A.I.R. 1924 P.C. 60 = 22 A. L. J. 105 = 19 L.W. 470 = 34 M L T. 57 = 26 Bom. L.R. 595 = 28 C.W.N. 834 = 11 O. L. J. 122 = (1924) M.W.N. 638 = 5 Pat. L.T. 72 = 2 Pat L R. 87 = 82 I C. 817 = 10 O. and A.L.B. 1395-46 M.L.J. 610.

-Six months for which mortgagee is entitled to -Six months from date of original or appellate decree-Affirmance of decree on appeal-Variance thereof-Distinction.

Where the decree in a suit for sale on a mortgage is varied in appeal in favour of the mortgagee, the date when the contract of interest expires is 6 months from the date of the appellate decree and not 6 months from the date of the original decree.

Semble the date might be 6 months from the date of the original decree if the decree and judgment of the Court of first instance was one which was affirmed on appeal (4). (Lord Phillimore). JAGANNATH PROSAD SING CHOW-

DHURY D. SURAJMAL JAILAL.

(1926) 54 I.A. 1 = 54 C. 161 = 25 L. W. 685 = 25 A.L.J. 23=4 O.W.N. 46=99 I.C. 686= 31 C.W.N. 390 = 8 P. L. T. 173 = 38 M.L.T. 73 P.C. = 29 Bom. L. B. 752 = A.I.B. 1927 P.C. 1 = 52 M.L.J. 373. SALE ON)-(Contd.)

Decree in-Interest allowed by-(Conid.)

DATE FIXED FOR PAYMENT.

-Interest after-Award of-Power of Court. In a soit for sale upon a mortgage it is quite competent for the Court to give interest beyond the day fixed for paymeet into Court of the amount declared necessary to effect

redemption and avoid sale.

If S. 88 of the Transfer of Property Act could be looked at as an isolated enactment quite detached from other legal considerations it would be hard to construe it otherwise than as limiting the mortgagee's right to interest up to the date fixed for payment only. But, considering the universality of the long-established practice allowing interest after that date and upto date of payment, its continuance for years after the Transfer Act was passed, the manifest justice of it, the lack of any apparent reason for upsetting it, the conformity with it of S. 97 which is in pari materia with S, 88, the presumption that S, 88 was framed with reference not to the running of interest but to the determination of time for redemption or sale alternatively, and the form of suit sanctioned by the C.P.C., their Lordships have no besitation in dissenting from that view (45). (Lord Habburg) Maharajah of Bhapatpur : Pan Kanno (1900) 28 I. A. 35-23 A. 181 (193)= 5 C.W.N. 137 - 3 Eom. L.R. 51 =7 Sar. 792.

-In this case the High Court held that in a decree for sale uader S. 88 of the Transfer of Property. Act the Court had no power to allow interest for a period beyond the date fixed for payment, which must be within six months from the date of the decree.

Their Lordships reversed the High Court and held that interest might be awarded up to the date of the realisation of the money. (Lord Macnaghten). BALWANT SINGH P. AMOLAK RAM. (1905) 28 A. 223 = 1 M.L.T. 65 = 3 C.L.J. 85 - 16 M L.J. 160.

-Interest after-Award of Power of Court-Rate at solved interest to be allowed.

According to the true construction of S. 88 of the Transfer of Property Act the Court has power to allow interest at the Court rate after the date fixed for payment,

Source of that power.

The words of S. 209 of C.P.C. of 1882 are large enough to include the case of a sum of money payable to the plaintiff out of a fund, and it may be that the Legislature considered that the power of the Court to allow interest after the fixed day was sufficiently provided or preserved by that section, the two Acts being co-temporary. Or it may be said that the provisions of the Transfer of Property Act are not exhaustive and were not intended to overrule the established practice of allowing such interest. The directions for payment to the parties contained in S. 88 of the Transfer of Property Act cannot be read literally, because S. 94 contemplates a final adjustment and provides for payment of subsequent costs, and there is nothing in the Act which precludes the subsequent interest also being tal en into account. (Lord Darcy.) SUNDAR KOER P. SHAM (1906) 34 I. A. 9 (21-2) = 34 C. 150 (161) = KRISHEN.

2 M. L. T. 75=5 C.L.J. 106=11 C.W.N. 249= 9 Bom. L.B. 304=4 A. L. J. 109=17 M.L.J. 43

-Interest up to, and after-Roles of-Distinction-Transfer of Property Act-Scheme of

The scheme and intention of the Transfer of Property Act in regard to mortgage decrees for sale is that a general account should be taken once for all, and an aggregate amount he stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR SALE ON-

Docree in-Interest allowed by-(Cont.)

DATE FIXED FOR PAYMENT-(Could.)

matter should pass from the domain of contract to that of judgment, and the rights of the mortgager should thenceforth depend not upon the contents of his borel, but on the directions in the decree.

In a suit to enforce a mortgage, held that the High Court was right in elecreeing interest at the contract rate up to the date fixed for payment, and interest at the Court rate of 6 per cent, per amount on the aggregate amount from the date fixed for payment until realization. (Last theory.) SUNDER KOER P. SHAM KRISHEN

> (1906) 34 I.A. 9 (21-2) - 34 C. 150 (161) = 2 M L.T. 75=5 C.L.J. 106= 11 C.W.N. 249= 9 Bom. LR. 304 = 4 A.L.J. 109 = 17 M.L.J. 43

DECRFF-DATE OF-RATE OF INTEREST UP TO AND AFTER.

-Distinction.

In a suit to enforce a mortgage the interest must be at contract rate up to the date of the decrey. After that the rate is in the discretion of the Court. (Lend Dacodin.) NEMICHAND P. RADHA KISHEN.

(1921) 48 C. 839 (843) = 14 L. W. 391 -(1921) M. W. N. 411-26 C. W. N. 153 -30 M. L. T. 39 = 63 I. C. 904 = A.I.R. 1922 P. C. 26.

FUTURE INTEREST-DATE DOWN TO WHICH, ALLOWED,

-Date fixed for payment or Date of realization -Construction of decrees

Where a decree passed under S. 88 of the Transfer of Property Act awards future interest from the date of the suit, and does not say whether the future interest is to be paid up to date fixed for payment of the decretal amount, or up to realization, the mortgagee decree-hobler is entitled to future interest up to date of realization, and not merely up to date fixed for payment of the decretal amount. (Lord Robertson.) GOKULDAS 2. SETH GHASIRAM.

(1907) 35 I. A. 28 = 35 C. 221 = 7 C. L. J. 233 = 12 C. W. N. 369 = 3 M. L. T. 339 = 10 Bom. LR. 144 - 4 N. L. R. 1.

-General part of decres-Part threef enumerating sums to be paid-Conflict between-Which prevails.

In a suit for sale on a mortgage, the plaint prayed for a decree directing the payment of the principal and interest up to date of suit together with future interest from date of suit up to date of payment. The decree passed in the suit allowed the plaintiff's entire claim. In the part enumerating the sums to be paid by the mortgegor in order to avoid a sale, the decree, however, provided for the payment of interest up to the date fixed for payment but not after.

Held that, the enumeration of the sams to be paid had not the effect of cutting down the general terms of the prior portion of the decree which gave interest up to the date of payment. (Lord Hobbons,.) MAHARAJAH OF BHARATPUR r. RAM KANNO DEL (1900) 28 I. A. 35 (41 3) =

23 A. 181 (189 91)= 5 C. W. N. 137= 3 Bom. L. R. 51 = 7 Sar. 792.

-Post-diem interest not allowed by bond-Interest allowed in case of-Kate of.

The suit was on a mortgage bond which provided for compound interest at 15 per cent, per annum with halfyearly rests and fixed a period of two years for payment but did not provide for interest thereafter.

The decree passed by their Lordships in such a suit directed (1) the payment to the mortgagee of compound interest as provided by the bond up to the period of two

SALE ON)-(Contd.)

Decree in-Interest allowed by -(Contd.)

FUTURE INTEREST-DATE DOWN TO WHICH. ALLOWED-(Contd.)

years fixed for payment; and (2) declared that on the amount so ascertained the plaintiff was entitled to simple interest at 15 per cent, per annum up to the date of the plaint, and to simple interest at the rate of 6 per cent. per annum from the date of the plaint to the date of payment (201.2). (Lord Morris.) LALA CHHAJMAL DAS v. BRIJ BRUKAN LAL. (1895) 22 I. A. 199= 17 A. 511 (517-8) = 6 Sar. 620

PRELIMINARY DECREE-INTEREST NOT ALLOWED BY.

-Final decree allowing-Jurisdiction to pass.

In a suit to enforce a mortgage, the Sub-Judge, who tried the suit, by his decree decreed interest from the institution of the suit only on the amount of the personal decree and ardered that an account should be taken of the mortgage debt due under the mortgage bond. The account was taken by his successor in office, who had not tried the suit, but, in making the final order as to the account, he did not confine himself to making an order for the amount which on taking the account he found to be due as the mortgage debt, but proceeded to award interest from the date of the suit on the amount of the mortglige debt.

Held that, it was not within the scope of his powers to

do so (433).

The successor was not a Judge sitting in review or in appeal. He had to take the preliminary decree made by his predecessor, as it had been drawn up. He had no power to alter it. His duty was to take the account which it directed to be taken. He had power, if necessary, to order who should be liable, and to what extent, for the costs of taking the account (433). (Sir John Edge.) SOURENDRA MOHAN SINHA r. HARI PRASAD SINHA.

(1925) 52 I. A. 418=5 Pat. 135=42 C. L. J. 592= 24 A. L. J. 33 = (1926) M. W. N. 49= 7 Pat. L. T. 97 = A. I. R. 1925 P. C. 280 = 91 I. C. 1033 = 50 M. L. J. 1.

### Decree in-Joint decree-holders.

-Difference in rights of-Provision in decree for-

Propriety.

Where the proceedings in the Courts below resulted in allowing future interest to one of two joint decree-holders in a suit for sale on a mortgage and in disallowing the same to the other, held that, such a result ought not to be allowed to stand, and that the order of the High Court which allowed future interest to the one ought to apply to the other also-(Lord Collins) LALA BRIJ NARAIN 2. TEJBAL BIKRAN BAHADUR. (1910) 37 I. A. 70 = 32 A. 295 =

8 M. L. T. 57=11 C. L J. 560=14 C W. N. 667= 12 Bom. L. R. 444 = 7 A. L. J. 507 = 6 I. C. 669 = 20 M. L. J. 587.

### Decree in-Jurisdiction to pass.

-See MORTGAGE-SUIT TO ENFORCE-DECREE IN -VALIDITY OF.

#### Decree in-Nature of.

Effect of.

A decree for sale on a mortgage is merely a decree, in su bstance, that the parties to the suit should concur in conve ying and selling the property to a purchaser (109). (Lord Justice James.) ANUNDO MOYEE DOSSEE v. DHONENDRO (1871) 14 M. I. A. 101= CHUNDER MOOKERJEE.

16 W. R. P. C. 19=8 B. L. R. 122= 2 Suth. 457=2 Sar. 698.

# MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR

Decree in-Nature of-(Contd.)

Mortgage fresh or decree merely.

On a mortgage of the year 1806 a suit was brought in 1823 (November) by the mortgagers against the heirs of the mortgagors, and a decree was made in that suit ou 8.9-1825. The decree set out the mortgage of 1806, and the accounts which had been taken, the suit being brought to enforce the mortgage, and ordered the defendants to pay in all Rs. 2,396-4-9 to the plaintiffs-treating the mortgage by the two mortgagors as a joint mortgage, and the whole sum as being due by both mortgagors-by the date fixed, and they were to redeem their Maharki field which they had mortgaged to the plaintiffs. Then the decree said :- "Until the defendants clear off the money the plaintiffs should use and enjoy the field according to (the terms of) the agreement. On the day on which the defendants will pay the money, the plaintiffs should compute the interest on Rs. 2,396.4.0, at the rate of 1 per cent. (per mensem) from the date (that will be) fixed; should deduct therefrom the amount of produce from the fixed date onwards; should receive the remaining amorast, together with the interest, and should restore the field to the defendants". Although the decree spoke about a date which would be fixed, no date was fixed by it, and the operation of the decree appeared to have been that an account having been taken of what was due on the mortgage, the mortgagors might at any time make a tender of the amount due, with the interest up to that time, and require that the hand should be restored to them.

On a question arising as to the real nature of the aforesaid decree, whether it was to be regarded as a decree which had to be executed by the mortgagoes if they wanted to exercise their right of redemption, or whether it was in the nature of a fresh mortgage, and it regulated the rights of the parties from that time, with the result that they could institute a suit for redemption on foot thereof, held that the decree must be regarded as a decree, and not as a mortgage (68-9). (Ser Richard Couch.) HARI RAYJI CHIPLUNKAR P. SHAPURJI HORAIUSJI.

(1886) 13 I. A. 66 - 10 B. 461 (467) - 4 Sar. 719.

### Decree in-Order absolute

Application for-Bar of before C. P. C. of 1908-No revival of, by that Code. See LEMITATION ACT OF 1877, ART, 179-MORTGAGE-DECREE FOR SALE.

(1914) 36 A. 350 (353).

-Application for-Limitation. See LIMITATION ACT OF 1908, ARTS. 181, 182.

-Effect of Transfer of Froperty Act. S. 89-Lane under.

Under S. 89 of the Transfer of Property Act, when an order for sale under S. 88 of the Act is made in favour of the first mortgagee, the mortgagor, or the second mortgagee, if he has been made a defendant, will have the right to redeem if he pays on the date fixed by the decree the amount due. If such payment is not made, a decree absolute may be made for sale and for payment of the amount realised into Court. The section then provides that " the defendant's right to redeem and the security shall both be extinguished". The construction which their Lordships put on the language so used is that on the making of the order absolute the security as well as the defendant's right to redeem are both extinguished, and that for the right of the mortgagee under his security there is substituted the right to a sale conferred by the decree (133). (Viscount Haldane.) HET RAM v. SHADI LAL.

(1918) 45 I. A. 130 = 40 A. 407 = 24 M. L. T. 92= 20 Bom. L. R. 798 = 22 C. W. N. 1033 = SALE ON)-(Contd.)

Decree in-Order absolute-(Contd.)

28 C. L. J. 188 at (1918) M. W. N. 518 = 16 A. L. J. 607 - 5 P. L. W. 88 - 45 I C. 798 = 35 M.L. J. 1.

An order made under S. 89 of the Transfer of Property Act for the sale of mortgaged property has the effect of sub-tituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage, and the latter rights are extinguished (75). (Sir John Edg.) MATRU MALE DURGA KUNWAR. (1919) 47 I. A. 71=

42 A. 364 (367-8) = 11 L. W. 529 = 22 Bom L. R. 553 - 32 C. L. J. 121 - 55 I. C. 969 = 38 M. L. J. 419.

-Effect of -T. P. Act. S. 89-Law under-Alteration of by C. P. C. of 1908.

The law prior to the T. P. Act was that the owner of property who was in the rights of a first mortgagee and of the original mortgagor as acquired at a sale under the first mortgage was entitled at the suit of a subsequent mortgagee, who was not bound by the sale or by the decree on which it proceeded, to set up the first mortgage as a shield.

The decision in Het Ram's Case (L. R. 45 1, A. 130) that a mostgage put in suit was gone for ever as soon as the decree of sale was obtained was based on the express words of S. 89 of the T. P. Act which ends, after providing for the decree, "and thereafter the defendant's right to redeem and the security shall both be extingui-hed." These words are omitted in the Rule in O. 34 of C.P.C. of 1908, corresponding to S. 89 of T. P. Act. They do not occur in either the foreclosure section of the Act of 1882 or the corresponding rule of O. 34 of C. P. C., which are limited to providing for the extinction of the delt. The words in S. 89 of the T. P. Act being gone, the law under the C. P. C. of 1908 remains as it was before the T. P. Act. (Lerd Dunedin.) SUKHI & GHULAN SAFDAR,

(1921) 48 I. A. 465 (472-3) = 43 A. 469 (475) = 14 L.W. 162 - (1921) M. W. N. 445 - 26 C. W. N. 279 = L. R. 3 P. C. 1 = 30 M. L. T. 175 = 24 Bom. L. R. 590 = A.I.R. 1922 P. C. 11 = 65 I. C. 151 =

42 M. L. J. 15. -Necessity for-Overlooking of, even as late as 1886-Attachment in execution of derret for sale-Practice of.

Their Lordships are aware that even in 1886 the necessity for an order absolute under S. 89 of the Transfer of Property Act was sometimes overlooked in suits for sale, and sales proceeded in suits for sale under an ordinary order for execution such as would be made for the execution of a money decree (279). (Sir John Edge.) SARJU PRASAD MISSIR 4. MAKZUDAN CHOWDHURY.

(1922) 27 C. W. N. 275 = 31 M. L. T. 219 -A. I. B. 1922 P. C. 341 = (1922) M. W. N. 793 = 73 I.C. 882-21 A. L. J. 195.

### Decree in-Personal Decree.

-See MORTGAGE-SUIT TO ENFORCE-PERSONAL DECREE IN.

# Decree in-Preliminary and final decrees.

-Effect of, on receiver in insolvency not impleaded-Death of mortgagor pending suit-His son, an undischarged insolvent, brought on as L. R.-Preliminary and final decrees obtained against him without impleading Receiver. See PROVINCIAL INSOLVENCY ACT OF 1907. S. 16 (5). (1927) 54 I. A. 190 (193-4).

Preliminary decree-Interest not awarded by-Final decree awarding-Jurisdiction to pass. See MORTGAGE-SUIT TO ENFORCE-DECREE IN-INTEREST ALLOWED BY-PRELIMINARY DECREE.

(1925) 52 I. A. 418 (433)=5 Pat. 135.

SALE ON)-(('.mtd.)

Decree in - Property situate in place to which C. P. C. inapplicable-Sale of-Decree for.

-Validity of, See C. P. C. OF 1908, S. 17-(1919) 46 I A 151 (1567)= MORTGAGE. 42 M. 813 (820).

—Validity of—Objection to—Appeal—Maintainability for first time in. Sec C. P. C. OF 1908, S. 21.

(1919) 46 I. A. 151 (156-7) = 42 M. 813 (820).

Decree in-Redemption allowed by-Execution of. allowed to become barred.

-Mortgagor's fresh suit for redemption in case of-Maintainability. See MORTGAGE-REDEMPTION-SUIT FOR-MAINTAINABILITY-MORTGAGEE'S PRIOR SUIT TO ENFORCE MORTGAGE-DECREE IN, ALLOWING, ETC. (1886) 13 I.A. 66 - 10 B. 461.

### Decree in-Redemption time allowed by.

-Six months' rule if inflexible.

It is not an absolute rule of law that, in a suit for sale, the mortgagor should always be given a period of 6 months for redemption and that a shorter period cannot be allowed. (Lord Phillimore.) PATHUMSA AMMAL z. RAJAGOPALA (1926) 31 C. W. N. 804 = MUDALIAR. 39 M. L. T. 453 = 25 L.W. 346 = (1927) M. W. N. 147= 100 I. C. 91 = 45 C. L. J. 300 = 29 Bom. L. R. 777 =

A. I. R. 1927 P. C 17 = 52 M. L. J. 407. Decree in-Rights under-Surrender of-Election to

treat decree as money decree. Order absolute-Omission to obtain-Application for attachment and sale in execution - Filing of - Effect of.

L. who held two mortgages on the suit property owned by one S, sucd to recover the money due to him under the said mortgages, and obtained in that suit a decree under S. 88 of the Transfer of Property Act, for sale of the properties mortgaged if the decretal money should not be paid to him by S, within four months from the date of the decree.

The suit property had already been attached by K in execution of a money decree obtained by him against S. On the eighth day of his obtaining the decree, L, therefore, presented a petition for the execution of his decree. In that petition L alleged that, if proceedings for execution of his decree were to be taken after expiry of the four months' time allowed by the Court, the decretal money due to him could not be realised in any way, and he, therefore, prayed that the case might be registered, that proceedings for attachment of the properties of the judgment-debtor might be taken, that sale proclamation might be issued and date for sale of the properties might be fixed by the Court after the time allowed, and that the decretal money due to him might be realised.

On L's petition the Court made an order of attachment of the property in dispute, and the same was accordingly attached. The suit property was sold in execution and purchased by the appellants, who held a money decree against L and who, in execution of that money decree, purchased the mortgage decree held by L against S, and brought the suit property to sale in execution of the mort-

gage decree.

The High Court held that L had, in ignorance of his rights, ejected to surrender his rights under his mortgage and had proceeded to execute his decree as a money decree.

On appeal, the Privy Council held, that L could not, as held by the High Court, be deemed to have elected to surrender his rights under the mortgage. (Sir John Edge.) SARJU PRASAD MISSIR D. MAKSUDAR CHOWDHRY

(1922) 27 C. W. N. 275 (279)= 31 M.L.T. 219 = A.I.R. 1922 P. C. 341 = (1922) M. W. N. 793=73 I. C. 882=21 A. L. J. 195.

MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Contd.)

Decree in-Supreme Court of Calcutta-Decree of.

-Mofussil property and persons resident in mofusil and not impleaded in suit-Effect on.

A decree for sale made in the Supreme Court at Calcutta had no effect whatever in rem, as it had no effect whatever over the property in the mofussil. A decree for sale could have no operation whatever upon the title of persons in the mofussil who were no parties to the suit (109-10). (Lord Justice James.) ANUNDO MOYEE DOSSEE v. DHONEN-DRO CHUNDER MOOKERJEE. (1871) 14 M. I A. 101= 16 W. R. P. C. 19 = 8 B. L. R. 122 = 2 Suth. 457 = 2 Sar. 698.

Decree in-Transferee of mortgaged property prior to suit but not impleaded therein.

-Effect of decree on.

Persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor, to which they are never made parties (212). (Lord Yoshoust.) UMES CHUNDER SIRCAR v. MUSSUMMAT ZAHOOR (1890) 17 I. A. 201 = 18 C. 164 (179)= FATIMA. 5 Sar. 507.

### Decree in-Validity of.

- Jurisdiction of Court-Property not situate within -Decree for sale of-Validity of-Right to challenge, of persons with earlier title and not impleaded in suit-Finding in suit that Court had jurisdiction-Decree band

The validity of the registration of a mortgage deed, and the jurisdiction of the High Court of Calcutta on its original side to entertain a suit upon that mortgage, depended upon whether one of the items of property included in the deed was situate at Calcutta, all the other properties being admittedly outside Calcutta and outside the local limits of the ordinary original jurisdiction of that Court. The parties to the suit upon the mortgage set up that there was a mistake in the description of the item in question. The Judge, who tried the suit, accepted that contention, held accordingly that property situate in Calcutta was included in the mortgage and that he had jurisdiction to entertain the

Held, that such a decision, if erroneous, could not extend the jurisdiction of a Court of limited territorial jurisdiction as the High Court on its original side, and that therefore the validity of its decree was open to challenge by persons whose title was of earlier date and who were not parties to the mortgage suit, if they could show that none of the items mortgaged was in fact situate within Calcutta (116). (Lord Moulton.) HARENDRA LAL ROY CHOWDHURI S. HARI (1914) 41 I. A. 110 = 41 C. 972 (9834)= DASI DEBI.

18 C. W. N. 817 = 23 I. C. 637 = 16 Bom. L. B. 400 = 19 C. L. J. 484=(1914) M. W N. 462= 12 A. L. J. 774=16 M. L. T. 6=1 L. W. 1050= 27 M. L. J. 80.

Mortgagor dead before suit-Suit brought against minor heir not his L. R. represented by a person who was not his legal guardian-Effect. See EXECUTION SALE-MORTCAGE-DECREE ON FOOT OF-SALE IN EXECU-TION OF-MORTGAGOR DEAD BEFORE SUIT.

(1904) 32 I. A. 23 (36) = 32 C. 296 (3145). Place to which C. P. C. inapplicable—Property situate in—Decree for sale of. See C. P. C. of 1908.

(1919) 46 I.A. 151 (156-7)= S. 17-MORTGAGE 42 M. 813 (820).

# MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR

# Insolvency of mortgagor or his heir pending.

Foreclosure deerce obtained against insolvent without impleading receiver-Suit subsequent by receiver to set aside -Maintainability-Application by receiver to be made party to former suit rejected-Effect.

Pending a suit to enforce a mortgage, the mortgagor died, and his son and heir, an undischarged insolvent, was brought on record as his legal representative, and a preliminary decree was passed against him. When he learnt that, the Receiver, in whom the estate of the son was vested, filed petitions alleging that he was the proper person entitled to represent the estate of the insolvent, and praying that the court should set aside the preliminary decree, make him a party in the suit as receiver, and try the suit in his presence. Taking an erroneous view of the receiver's rights, the Sub-Judge refused to make him a party, heard him on his petitions, repelled his objections to a final decree, and passed a final decree by which the son, the undischarged insolvent. was debarred from all right to redeem the mortgaged property. The receiver appealed to the High Court against the order of the Sub-Judge, but that appeal was dismissed.

In a suit subsequently brought by the Receiver for setting aside that foreclosure decree and for redemption of the property, held that the foreclosure decree did not constitute res judicata against the receiver under S. 11 of C.P.C.

The foreclosure decree on the face of it bears that it was pronounced in a suit to which the Receiver was not a party, and therefore does not come within the rule as to res indicata in S. 11, which only applies to matters which were in issue in a former suit between the same parties. The refusal to make the Receiver a party to the suit cannot be treated as having the same effect as an order to the opposite effect (194-5). (Lord Salveren.) KALA CHAND BANERJEE D. JAGANNATH MARWARI. (1927) 54 I. A. 190 a

54 C. 595 - 29 Bom. L R. 882 - 101 I. C. 442 -31 C. W. N. 741 = 25 A. L. J. 621 = 45 C. L. J. 544 = 39 M. L. T. 5 = 26 L. W. 263 =

A. I. R. 1927 P. C. 108 - 52 M. L. J. 734.

### Joint tenants-Tenants-in-common-Mortgage to two persons as.

Suits by one morigagee to enforce his share of mortgage-Forms of-Distinction- Error in form of suit-Amendment of plaint to rectify—Permissibility—Duty of Court. See JOINT TENANTS—TENANTS-IN COMMON—MORTGAGE TO TWO PERSONS AS.

(1919) 46 I. A. 272 (277-8) = 47 C. 175 (179-80). Jurisdiction to entertain.

-Jurisdiction of Court-Property not utuate within -Errongous finding in mit that it is - Decree hased on-Validity of .- Challenge of -Person not party to suit-

The jurisdiction of the High Court of Calcutta to entertain a suit upon a mortgage on its Original Side depended upon whether one of the items of property included in the deed was situate within Calcutta, all the other items being admittedly outside Calcutta and outside the local limits of the ordinary original jurisdiction of that court. The parties to the suit set up that there was a mistake in the description of the item in question, and that the description should be amended. The Judge, who tried the suit, accepted that contention, held accordingly that property situate in Calcutta was included in the mortgage and that he had jurisdiction to entertain the suit, and passed a decree for sale.

Held, that no such decision, if erroneous, could extend the jurisdiction of the Court which was one of limited territorial jurisdiction, and that the validity of that decree was, on proof of such error, open to challenge by persons with

SALE ON)-(Contd.)

Jurisdiction to entertain-(Contd.)

(Lord Mondiese.) HARENDZA LAL ROY CHOWDHURI 2. HARI DASI DEBI. (1914) 41 LA. 110=41 C. 972 (983 4) =18 C. W. N. 817 = 23 I. C. 637 = 16 Bom. L. R. 400 = 19 C. L. J. 484 = (1914) M. W. N. 462 =

12 A. L. J. 774=16 M. L. T. 6=1 L. W. 1050= 27 M. L. J. 80.

Place to which C. P. C. inapplicable—Mortgaged property situate within. Sec. C. P. C. OF 1908, S. 17— (1919) 46 I. A. 151 (156-7)=

42 M. 813 (820). -Territory within which most gaged property situated Cercion to Native State of.

With respect to the competency of the Courts of the Bumbay Presidency to proceed with the suit between these parties, if Gangli (the place within which the property the subject-matter of the suit was situated) had, by any valid cession, ceased to be liritish territory, their Lordships agree with the High Court that the foundation of the jurisdiction of those Courts over the subject-matter of this suit and the parties thereto was territorial, and that it could no longer be exercised (whatever might be the stage or condition of the litigation at the time), after such a valid cession had been made (153). (Lord Schouene.) DAMODHAR GORDHAN v. DEORAM KANJI. (1876) 3 I. A. 102=1 A. C. 322= 1 B. 367 (461) = 25 W. R. 261 = 3 Sar. 543.

## Lease of mortgaged property to mortgagee being part of same transaction as mortgage.

Rent due under—Set-off of, against mortgage debt
-Mortgagor's right of. See MORTGAGE—MORTGAGED PROPERTY-LEASE TO MORTGAGEE OF, BEING PART OF SAME TRANSACTION AS MORTGAGE-TEST.

(1889) 16 I. A. 107 (113) = 16 C. 682 (691).

-Rent due under-Set-off of, against mortgage debt-Omission to claim—Suit subsequent claiming—Maintain-ability—C. P. C., S. 11. See MORTGAGE — MORT-GAGED PROPERTY—LEASE TO MORTGAGEE OF, BEING PART OF SAME TRANSACTION AS MORTGAGE-RENT (1889) 16 I. A. 107 (113-4)= 16 C. 682 (691).

# Maintainability-Res judicata.

-Penession-Mortgagor's prior mit for-Mortgage set up as desence in-Decree for possession to mortgagor netwithstanding-Effect.

One C, who owned certain immoveable property, sold it to his wife. On her death, it was taken possession of by C's nephew. The property had been attached during the lifetime of C's wife at the instance of a creditor of hers, and for payment of the decree debt C's nephew executed a mortgage dated 21-1-1895 of the said property in favour of the plaintiff. Subsequently the Raja of Basti, claiming to be the real heir of C, sued for possession of the property, making the plaintiff (the mortgagee), C's nephew, and others defendants to the suit. The plaintiff set up the mortgage in his favour and contended that the Raja of Basti had no right whatever to question its validity. The suit was ultimately decreed in favour of the Raja of Basti, and he recovered possession of the property from the defendants

In a suit subsequently instituted by the plaintiff (the mortgagee) against, inter alia, the Raja of Basti or his representative, the plaintiff contended that the property in the defendant's possession was subject to a charge in his favour and that the defendant, the Raja, was estopped from setting up his right to the property mortgaged to him.

Held, that the decision in the prior suit operated as res earlier title and not parties to the mortgage suit (116). | judicate in favour of the Raja, and that the subsequent suit SALE ON)-(Contd.)

Maintainability-Res judicata-(Contd.)

of the plaintiff was therefore barred. (Viscount Haldane.) NAGESHAR PRASAD PANDE F. RAJA NARAIN SINGH.

(1915: 3 L. W. 454 - 20 C. W. N. 265-(1916) 1 M. W. N. 142 = 34 I. C. 673.

#### Parties to.

-Insolvency of mortgagor or his logal representative pending suit.

-Joinder of Receiver in Insolvency-Necessity. See PROVINCIAL INSOLVENCY ACT OF 1907, S. 16 (5) (1927) 54 I. A 100 (1934) - 54 C. 595.

-Paramount title-Persons chaiming under-founder

of-Propriety.

K, being added as a party to the suit as having purchased subsequent to the mortgage sued upon, sets up a peramount title, and does not accept his position as a person who is either to resicem or to be foreclosed. Upon that defence being raised the case came on for settlement of issues, and the court, finding a defence raise I which was quite foreign to a mortgage suit dismissed A with costs. There were several other purchasers of other portions of the mortgaged property who were made parties and who also alleged paramount titles in theuselves, so that the suit would have been multifarious and confused in the highest degree if it had gone on in that shape. They were all dismissed with costs (176-7). (Lord Hobbouse) NILAKANT BANERJI P. SURESH CHUNDER MULLICK. (1885) 12 I. A. 171= 12 C. 414 = 4 Sar. 685.

The jointles in a suit to enforce a mortgage of persons who set up adverse claims to the mortgaged property

is irregular, and only tends to confusion (188).

The confusion arises because the cause of action against the adverse claimant, that is, the right to obtain a declaration of title against his adverse claims, is joined with another which is quite distinct, the enforcement of rights under a mortgage (190). (Lord Buckmaster, L.C.) RADHA KUNWAR P. RUOTI SINGH. (1916) 43 L.A. 187= 38 A. 488 (491) = 20 C. W. N. 1279 = 14 A. L. J 1002 = 20 M. L. T 211-(1916) 2 M. W. N. 200-

24 C. L. J. 603 - 18 Bom. L. R. 853 - 35 I. C. 939 = 31 M. L. J. 571.

-Prior and subsequent mortgages if necessary—Omission to implead person holding peror and subsequent mort gages-Effect-Suit subsequent by him to enforce those mortgages-Maintainability-C. P. C. of 1908. S. 11-Effect.

Held (1) that a third mortgagee, who had also a right to be subrogated to the rights of the first mortgagee was a necessary party to a suit brought to enforce a second mortgage on the same property, under S. 85 of the Transfer of Property Act (79, 82); (2) that a decree made in the suit brought by the second mortgagee without impleading such third mortgagee could not affect the rights of the latter both under his own mortgage and under the first mortgage discharged by him, and S. 13 of the Civil Procedure Code of 1882 did not bar a suit brought by the third mortgagee to enforce his rights both under the third mortgage and under the first mortgage discharged by him (84).

It has been consended that S. 85 of the Transfer of Property Act does not apply to a suit for sale of an equity of redemption and that a puisne mortgagee is not a person "having an interest in the property comprised in a mortgage" of a first or any prior mortgagee who brings a suit for sale on his prior mortgage. That contention, if correct, would lead to the conclusion that neither a prior nor a subsequent mortgagee need be made a defendant to a suit

MORTGAGE -SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE -SUIT TO ENFORCE (OR SUIT FOR SALE ON) - (Contd.)

Parties to-(Contd.)

to which other mortgagees are not made parties, what a puisne mortgagee seeks to sell by means of a decree for sale is not the equity of redemption so described, but the actual property, lands or houses, morigaged (823). (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN v. AMBIKA PERSHAD SINGH. (1911) 39 I. A. 68=

39 C. 527 (556 7)=(1912) 1 M. W. N. 367= 11 M. L. T. 265 = 9 A. L. J. 332 = 14 Bom. L. B. 280 = 16 C. W. N. 505 = 15 C. L. J. 411 = 14 I. C. 496 = 22 M. L. J. 468.

Purchaser pendente lite of mortgaged property in execution of money decree against mortgagor- Joinder of-Necesity.

A person who, in execution of a money decree obtained against a mortgagor, purchases the mortgaged property pending a suit to enforce the mortgage need not be made a party to such suit (178). (Lord Hobbouse.) NILAKANT BANERII D. SURESH CHUNDER MULLICK.

(1885) 12 I. A. 171 = 12 C. 414 (420-1) = 4 Sar. 685.

-Real owner-Mortgage by-Suit to enforce-Benemidar if necessary party to.

S. claiming to be entitled to property which stood in the

name of his son. G, mortgaged the same.

Held that, in a suit brought to enforce the mortgage, according to the practice of Courts of Equity in England. G ought to be made a party to the suit as having what in English Law is termed the legal estate (277). (Mr. Perlerten Leigh.) DOUGLAS v. THE COLLECTOR OF BENARES (1852) 5 M. I. A. 271 = 1 Suth. 231 = 1 Sar. 434.

Subsequent mort gagee if one.

If G had, before bringing the suit to enforce his mortgage, and in order to ascertain who would be, under S, 85 of the Transfer of Property Act, the necessary parties to his suit, taken the ordinary precaution of searching the register of the district in which the mortgaged property was situated, he would have found the existence of the later mortgage (82). (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN P. AMBIKA PERSHAD SINGH.

(1911) 39 I. A. 68=39 C. 527 (556) 9 A. L. J. 332 = 14 Bom L. R. 280 = 16 C. W. N. 605 15 C. L. J. 411 = 14 I C. 496 = 22 M. L. J. 468.

### Personal decree in.

APPLICATION FOR-LIMITATION.

Starting point.

Where a mortgage decree directed that the mortgage property should be sold, and if the proceeds of the sale were insufficient the balance should be realized from the other properties and the persons of the judgment-debtors, held that the starting point of limitation for execution of the latter part of the decree, 222. that under S. 90 of the Transfer of Property Act, was the date of the mortgat decree, and not that on which the mortgage property #25 sold. (Lord Dunedin.) KHULNA LOAN CO., LTD. 5. (1917) 22 C. W. N. 145= JNANENDRA NATH BOSE. 45 I. C. 436.

-See LIMITATION ACT OF 1908, ART. 183-MORT GAGE SUIT-PERSONAL DECREE IN.

(1927) 54 I. A. 123 (133-4)=54 C. 500.

CLAIM TO-PRIVY COUNCIL APPEAL-MAINTAIN-ABILITY FOR FIRST TIME IN.

-Amendment of plaint so as to allow claim-Permissi bility. See MORTGAGE—SUIT TO ENFORCE—PERSONAL his mortgage. The fact is that in suits for sale in India DECREE IN-HINDU JOINT FAMILY. (1925) 47 A. 99. MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR MORTGAGE-SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Contd.)

Personal decree in-(Contd.)

GENERAL RELIEF-PRAYER FOR.

-Grant of personal decree in Privy Council appeal under head of-Propriety-Mortgage invalid as such-Personal relief not claimed in plaint or in courts below.

A suit to enforce a mortgage on land, the validity of which was challenged on the ground that it had not been registered in accordance with the Registration Act, and was, therefore, inoperative, was decreed by the Court of First Instance, but was, on appeal, dismissed by the High Court. In neither Court had the plaintiffs made an alternative claim for a personal judgment for the mortgage debt. On appeal to the Privy Council the plaintiffs prayed for such relief for the first time under the head of general relief. Their Lordships, while feeling that they could not themselves deal with the claim in the then state of the records, thought it desirable, in the circumstances of the case, to allow the plaintiffs an opportunity of bringing the matter before the High Court and gave them 6 months' time for the purpose.

If any such application is made, it will be for the High Court to consider whether any such claim is open upon the present pleadings, and, if not, whether any amendment raising it should be made; and further, whether, under all the circumstances, the claim should be entertained at this stage of the proceedings. If the High Court should think it right to enter upon the consideration of this claim, all defences on the merits or arising out of the lapse of time must be open to the defendants, and the High Court should have power to impose any terms which it thinks just and to deal with the costs (134). (Viscount Finlay.) BISWA-NATH PRASHAD P. CHANDRA NARAYAN CHOWDHURL

(1921) 48 I. A. 127 = 48 C 509 (517-8) = 63 I. C. 770.

GRANT OF, AT TIME OF DECREE FOR SALE.

-Validity-Condition.

It is not a condition precedent to the power of decreeing payment of the balance under S. 90 of the Transfer of Property Act that the mortgaged property must first be sold and found insufficient to satisfy the debt. The words of the section are satisfied in cases where the court passes a decree that, on the happening of the event when the net proceeds of the sale are found to be insufficient, the balance should be paid. The order, though made at the time of the decree for the sale of the mortgaged estate, operates at a future date, and is made in such terms that it can only operate when the sale has failed to satisfy the debt, and this is the event specified and defined in the section as the event when the decree can be made, (Lord Buckmatter.) JEUNA BAHU D. PARMESHWAR NARAYAN MAHTHA.

(1918) 46 I. A. 294 (298) = 47 C. 370 (374-5) = 17 A. L. J. 207 = 25 M. L. T. 278 = 23 C. W. N. 490 = 29 C. L. J. 443 = 21 Bom. L. R. 589 = 10 L. W. 26 = (1919) M. W. N. 347 - 12 Bur. L. T. 80 -49 I. C. 620 = 36 M. L. J. 215.

HINDU JOINT FAMILY-MANAGER OF-MORTGAGE BY -SUIT TO ENFORCE-PERSONAL DECREE AGAINST MANAGER IN.

Claim to -Privy Council appeal-Maintainability for first time in-Amendment of plaint so as to allow-Permissibility.

In a suit brought to enforce a mortgage executed by the manager of a joint Hindu family, the mortgagee for the first time at the hearing of his appeal to the Privy Council claimed a decree against the manager on his personal covenant, in the event of the mortgage being held to be unenforceable as such. He did not ask for it in his plaint, or at any other stage of the case.

Held, that the decree could not be made without an amendment of the plaint, and that the case was not one in SALE ON)-(Contd.)

Personal decree in-(Contd.)

HINDU JOINT FAMILY-MANAGER OF-MORTGAGE BY-SUIT TO ENFORCE-PERSONAL DECREE AGAINST MANAGER IN-(Contd.)

which an amendment ought to be allowed at that stage. (Mr., Ameer Mi.) GAJADHAR MAHTON 1. AMBIKA PRA-SAD TEWARL (1925) 47 A. 459 41 C. L. J. 450= 27 Bom. L. R. 853 - 22 L. W. 306 =

A. I. R. 1925 P. C 169 (1925) M. W. N. 532 = 87 I. C. 292 - 49 M. L. J. 238.

LIABILITY FOR

-Assignor of mortgage-Liability of, to assigneemorigagee saing, on failure of assignce to get decree for fell amount against mortgagor. See MOKIGAGE-SUIT TO ENFORCE-ASSIGNEE-MORTGAGEF.

(1919) 46 I. A. 145 (150 1) - 41 A. 571 (577).

Purchaser of mortgaged property undertaking to pay mortgage-Liability of.

Property subject to a mortgage was sold to the respondent, who retained a portion of the price in order to redeem the mortgage if he thought fit. The mortgagee obtained a decree for sale of the mortgaged property, sold the same, and, as the sale proceeds were insufficient, applied for a decree under S. 90 of the Transfer of Property. Act against the person and property of the respondent.

Held that the respondent was not a person from whom, in the words of S. 90, "the balance was legally recoverable"

The mostgagee has no right to avail himself of the undertaking that the respondent entered into with his vendor, He was no party to the sale. The purchaser (respondent) entered into no contract with him, and the purchaser is not personally bound to pay his mortgage-delg. (Lord Macnagaten.) JAMNA DAS v. RAM AUTAR PANDE.

(1911) 39 I. A. 7 = 34 A. 63 = 15 C. L. J. 68 = 16 C. W. N. 97 = 9 A. L. J. 37 = (1912) M. W. N. 32 = 14 Bom. L R. 1=11 M L. T. 6=13 I C. 304= 21 M. L. J. 1158.

The purchaser of property subject to a mortgage does not become personally liable to discharge the mortgage delt, merely because he retains part of the purchase money to enable him to pay off the mortgage. (Lord Atkinson.) NANKU PRASAD D. KAMTA PRASAD SINGH.

(1922) 26 C. W. N. 771 = 3 Pat. L. T. 637 = A. I. R. 1923 P. C. 54 (1).

#### NECESSITY FOR.

Deficiency in realisation from mortgaged property. Quaere whether a decree under S. 90 of the Transfer of Property Act, now O. 34, R. 6 of C. P. C. of 1908, is requisite in case of deficiency in the realization from the mortgaged property (141). (Mr. Ameer Ali.) GANESH LAL PANDIT P. KHETRAMOHAN MAHAPATRA.

(1926) 53 I. A. 134 = 5 Pat. 585 = 24 A. L. J. 615 = 28 Bem. L. B. 931-43 C. L. J. 545=24 L. W. 50= (1926) M. W. N. 535=3 O. W. N. 591= 7 P. L. T. 501 = 31 C. W. N. 25 =

A. I. R. 1926 P. C. 56-95 I. C. 839-51 M. L. J. 82. OMISSION TO CLAIM-SUPSEQUENT SUIT CLAIMING.

-Maintainability-Res judicata.

It is the policy of the C. P. C. of 1908, as it was the policy of the C. P. C. of 1882, that parties should not have the right to split up a cause of action against defendants and claim a decree on it in a later suit when they might have claimed the same on it in a previous suit.

Where, in a suit brought to enforce a mortgage bond, the mortgagee omits to claim a personal decree, his right to claim it in a subsequent suit on the same mortgage bond is

### MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR | MORTGAGE—SUIT TO ENFORCE (OR SUIT FOR SALE ON)-(Contd.)

Personal decree in-(Contd.)

OMISSION TO CLAIM-SUBSEQUENT SUIT CLAIM-ING-(Contd.)

barred under S. 11 of C. P. C. of 1908. (Sir John Edge.) SOURENDRA MOHAN SINHA P. HARI PRASAD SINHA.

(1925) 52 I. A. 418 (435) - 5 Pat. 135= 42 C. L. J. 592-24 A. L. J. 33-(1926) M. W. N. 49=

7 Pat. L. T. 97 = A. I. R. 1925 P. C. 280 = 91 I. C. 1033 50 M. L. J. 1.

### Prior and subsequent mortgages.

-Suits to enforce. See under MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES.

### Prior and subsequent mortgagees impleaded in-Omission of, to put forward their rights.

Fresh out by them to enforce some-Maintainability -Res judicata.

Where to a suit to enforce a mortgage a puisne mortgagee whose amount was agreed to be, and was, applied in discharge of a mortgage prior to the suit one and who was therefore entitled to be subrogated to the rights of the prior mortgagee was made a party defendant, but failed to set up such rights as he had under his mortgage and under the prior mortgage discharged by him, held, that, being under S. 85 of the Transfer of Property Act, a necessary party to the suit, and not having set up therein his rights under the said mortgages, a subsequent suit by him to enforce those rights against the plaintiff in the prior suit was barred under S. 13, Expl. II of the Code of Civil Procedure, 1882. (Sir John Edge.) MAHOMED IBRAHIM HOSSEIN KHAN E. AMBIKA PERSAD SINGH. (1911) 39 L.A. 68 (79)=

39 C. 527 (552) = (1912) 1 M. W. N. 367 = 11 M. L. T. 265 = 9 A. L. J. 332 = 14 Bom. L. R. 280 = 16 C. W. N. 505 = 15 C. L. J. 411 = 14 I. C. 496 -22 M. L. J. 468.

### Rectification of mortgage deed with regard to description of property.

-- Direction for. See MORTGAGE-DEED OF-REC-TIFICATION OF.

### Redemption right in-Omission to set up, and setting up of paramount title.

-Dismissal from suit of persons to doing-Setting up of such right by them in mortgagee execution purchaser's suit for possession-Bar of, by res judicata.

Pending a suit by the plaintiff for the realisation of a mortgage by foreclosure or sale, the mortgaged property was sold in execution of a simple money decree against the mortgagor, and was purchased by one A. The plaintiff, when he learnt of the purchase by A, applied to make him a party to the mortgage suit as a person having an interest in the mortgaged property. On being made a party, K put in a statement by which he claimed a title paramount to the suit mortgage, but did not set up a defence as claiming through the mortgagor. The Court, finding a defence raised which was quite foreign to a mortgage suit, dismissed A' with costs. A decree was passed in the mortgage suit, and, in September, 1880, the mortgaged property was sold in execution and was purchased by the plaintiff himself. A insisted on being present when the order for sale was settled, and on having a voice in its terms, and he actually got them varied to his satisfaction.

K, however, managed to be in possession of the property purchased by the plaintiff, and plaintiff therefore instituted the suit out of which the appeal arose for the recovery of possession of the same from him.

# SALE ON)-(Contd.)

Redemption right in-Omission to set up, and setting up of paramount title-(Contd.)

Held that K was bound by the decree in the mortgage suit, and that he could not, after that decree was passed ever come in to redeem the property (181-2).

S. 13 of C. P. C. of 1877 has nothing to do with the case. This is not a question whether a person is bound by a de-cree made in some other suit. The question is whether he is bound by the decree made in this very mortgage suit of 1867, in which the plaintiff bought the land, and whether after that decree was passed his rights were not entirely gone (178). (Lord Hobbouse.) NILAKANT BANERJI v. SURESH CHUNDER MULLICK.

(1885) 12 I. A. 171 = 12 C. 414 (420-1) = 4 Sar. 685.

### Reference to arbitration in.

-Award made pursuant to-Decree on-Sale of mortgaged property in execution of, and purchase thereof by See C. P. C. OF 1908, mortgagee himself-Validity. O. 34, R. 14-APPLICABILITY. (1904) 32 I. A. 23 (37)= 32 C. 296 (316).

### Right of -Security for performance of certain act-Mortgage given as.

-No breach on part of executant-Effect. See MORT-GAGE-SUIT TO ENFORCE-DECREE IN-AGREEMENT (1912) 24 M. L. J. 355. INDEPENDENT, ETC.

### Title of mortgagor.

-Onus of proof of. See HINDU LAW-RELIGIOUS ENDOWMENT-MUTT-PROPERTY OF-MORTGAGE OF -SUIT TO ENFORCE-TITLE OF MORTGAGOR.

(1911) 21 M. L. J. 938.

### Unauthorized person-Mortgage by.

-Suit to enforce. See MORTGAGE-UNAUTHORIZED PERSON-MORTGAGE BY-SUIT TO ENFORCE.

### MORTGAGE-UNAUTHORIZED PERSON-MORTGAGE BY-SUIT TO ENFORCE

Prior binding mortgage on property-Amount paid by plaintiff to discharge-Recovery of-Right of.

M executed a mortgage bond dated 12-5-1872 in favour of the appellant mortgaging property of an asthal of which the respondent was the mobunt. M had no authority to mortgage asthal property, and there were no circumstances which would make the mortgage binding on the property A portion of the amount raised by that mortgage was raised for the purpose of, and was utilized in, paying off a prior mortgage of the same property executed in 1869 in favour That prior mortgage was also executed by M and was binding upon the asthal and its property. A portion of the amount raised by it, Rs. 5,489, was applied in the perchase of four small properties which, in a litigation between M and the respondent, were adjudged to be the property of the asthal, because they were purchased with the mose raised by the mortgage to L. Those four properties were not included in the mortgage to the appellant.

In a suit brought by the appellant to recover upon his mortgage of 1872, he contended that, even though his offi mortgage might be invalid and unenforceable against asthal property, he was in any event entitled to recover the sum of Rs. 5,489, which had been utilised in the purchase of properties which had been adjudged to the asthal.

Held, that the appellant was not entitled to recover the

said sum (72-3).

L's mortgage was not kept alive and transferred to the appellant as a security for his loan of 1872. The right of M, if he had any, against the asthal in consequence of the application of the Rs. 5,489 in the purchase of property held

### MORTGAGE - UNAUTHORIZED PERSON-MORT MORTGAGE - USUFRUCTUARY MORTGAGE-GAGE BY-SUIT TO ENFORCE-(Contd.)

to be that of the asthal, cannot, in the absence of an express intention to that effect, be presumed to have been included in the mortgage of 1872 as an additional security for the loan of that date. If may have a claim against the asthal, but that must depend upon the state of accounts between them. Unless M's claim against the asthal was included in the mortgage of 1872, and can be held to have been assigned to the appellant as a security for the loan, there is no privity between the appellant and the respondent in respect of the Rs. 5,489 (73). (Sir Barnes Peaceck.) MOHESH LAL v. MOHUNT BAWAN DAS.

(1883) 10 I. A. 62=9 C. 961 (978-80)= 13 C. L. R. 221 - 4 Sar. 424.

Revenue, road cess, etc., due in respect of most gaged property—Portion of mortgaged money utilises for pay-ment of—Recovery from property of—Plaintiff's right of.

M executed a mortgage deed mortgaging properties of an asthal of which the respondent was the mohunt. . M had no authority to mortgage the said property, and the mortgage was therefore invalid as such. A portion of the amount raised by the mortgage, viz., a sum of Rs. 3,166 odd, was expended on account of the payment of revenue, road tesses, etc., due in respect of the mortgaged property.

In a suit brought to enforce the mortgage against . V and the respondent, held that the mortgagee was not entitled to recover the said sum of Rs. 3,166 odd (73.4).

The credit for the said sum was given to . If and not to the respondent, and there is no privity between the mortgagee and the respondent in respect of the said sum (73-4). (Sir Barnes Peacock.) MORESH LAL F. MOHUNT BAWAN DAS. (1883) 10 I. A. 62-9 C. 961 (980) = 13 C. L. R. 221 - 4 Sar. 424.

## MORTGAGE-USUFRUCTUARY MORTGAGE.

ATTESTATION OF, AS REQUIRED BY S. 59 OF TRANS-FER OF PROPERTY ACT-ABSENCE OF.

COVENANT FOR TITLE IN.

DEED AMOUNTING TO AN.

DEED CREATING AN-DEED MERELY RECITING PRIOR ORAL MORTGAGE OR.

DISCHARGE OF-PAYMENT TO A THIRD PARTY-DIS-CHARGE BY.

FRAUDULENT TRANSACTION OR NOT.

INTEREST ON AMOUNT OF.

MORTGAGED PROPERTY.

MORTGAGEE UNDER.

MORTGAGE FOR TERM.

ORDINARY MORTGAGE.

PERSONAL LIABILITY UNDER.

RECEIPTS UNDER-CASH IF.

REDEMPTION--RIGHT OF-REVENUE SALE BROUGHT

ABOUT BY FRAUD OF MORTGAGEE.

REDEMPTION OF-SUIT FOR.

SALE ON FOOT OF-SUIT FOR-RIGHT OF.

SIMPLE MORTGAGE AND-COMBINATION OF.

WRITING-NECESSITY.

### Attestation of, as required by S. 59. Transfer of Property Act-Absence of.

Enforceability of mortgage as such-Effect on. See MORTGAGE - USUFRUCTUARY MORTGAGE - DEED AMOUNTING TO AN-CHARGE OR.

(1916) 31 M. L. J. 251.

### Covenant for title in.

What amounts to.

A deed of usufructuary mortgage executed by an Oudh talookdar in respect of his talookdari estate provided: any one appears to lay claim to the said estate, it will be my duty to defend the suit, with which the Pande" (mort-gagee) "shall have nothing to do."

# (Contd.)

Covenant for title in-(Contd.)

Held that the stipulation pointed to a possible claim by title paramount to the whole Zemindary, and was in the nature of a covenant for title (154). (Sir James W. Colvile.) Rajah Kishendatt Ram v. Rajah Mumtaz (1879) 6 I.A. 145=5 C. 198 (205)-

5 C.L.R. 213-4 Sar. 17-3 Suth. 637-R. & J.'s No. 58.

### Deed amounting to an.

Held, on a construction of a deed of mortgage proposed to be executed by a company, that the proposed mortgage was an usufructuary mortgage. (Lord Atkin.) KAMLAPAT MOTILAL 7. UNION INDIAN SUGAR MILLS CO., LTD.

(1929) 30 L.W. 893 - A.I.R. 1929 P.C. 256-119 I.C. 631 = (1929) M.W.N 922 = 50 C.L.J. 561 = 57 M. L. J. 633.

-Charge or-Usufrustuary mortgage deed not attestof as required by S. 59 of Transfer of Property Act-Validity of -Personal liability not created by usufructuary mortgage-Suit for sale on foot of mortgage in case of-Mortgage's right of.

In April 1895 a Maharaja executed in favour of his pleader a mortgage deed for the principal sum of Rs. 1,30,000. The principal moneys, together with interest, were to be repaid as provided by the deed, by and out of the rents and cesses of certain mokurrari villages of the Maharaja, which were mortgaged with possession to the pleader. A schedule was annexed to the deed showing how the repayment with interest was to be effected, and that on the determination, on the 14th January, 1903, of the period for which the mortgage was granted, it was contemplated that the delt with interest would be satisfied, and a balance of Rs. 230 and odd would be payable to the Maharaja by the pleader. The total period for which the mortgage was granted was from 1895 to 14th January, 1903, and the times when possession of the different mokurrari villages was to be given to the mortgagee were specified. The deed mentioned certain events in which the mortgagor made himself personally liable to repay the mortgage money and provided that except in those events he was not personally liable to repay the mortgage money or any part of it. The parties treated the mortgage as a usufroctuary mortgage, and under it the mortgagee obtained and held possession of the villages mortgaged.

Held that the document did not create a charge within the meaning of S. 100, Transfer of Property Act, but was a usufroctuary mortgage within the meaning of S. 67 (a) of the Transfer of Property Act, and, not having been attested by at least two witnesses, as required by S. 59 of that Act, it was not enforceable as a mortgage; and that the deed did not contain a personal liability in debt on the part of the mortgagor, and the mortgagoe could not, even if it could be regarded as an enforceable usufructuary mortgage, by reason of S. 67 (a), institute a suit for sale based upon it. (Sir John Edge.) MAHARAJA KAM NARAYAN SINGH D. ADHINDRA NATH MUKHERJI.

(1916) 20 M.L.T. 216 = 20 C.W.N. 989 = (1916) 1 M.W.N. 428 - 14 A.L.J. 1017 -18 Bom. L.R. 862 = 4 L.W. 15 - 34 I.C. 900 = 25 C.L.J. 115 - 31 M. L. J. 251.

Grant of land for fixed term free of rent or-Test. The plaintiff, representing himself to have absolute proprietary right in certain villages, and in consideration of advances which had been made to him by the defendant, executed what purported to be a mortgage of the villages with possession to the defendant for 14 years, the deed providing that on the expiration of the term the mortgagor

### MORTGAGE - USUFRUCTUARY MORTGAGE -(Contd.)

Deed amounting to an-(Contd.)

"shall come into possession of the mortgaged villages without settlement of accounts, that, on the expiration of the term, the mortgagee shall have no power whatever in respect of the said estate, and after the expiration of the term this mortgage deed shall be returned to the mortgagor without accounting for (paying) the mortgage money secured under this document.

Held that the instrument, though it was called a mortgage, was not a mortgage in any proper sense of the word

It is not a security for the payment of any money, or for the performance of any engagement. No a younts were to be rendered or required. There was no provision for redemption expressed or implied. It was simply a grant of land for a fixed term free of rent in consideration of a sum made out of past and present advances (58-9). (Sir John Bouser.) NIDHA SAH :. MURLI DHAR.

(1902) 30 I.A. 54-25 A. 115-7 C.W.N. 289-5 Bom. L.R. 111 = 8 Sar. 435.

-Interest or dispensession from part of mortgaged property-Mortgaga's right to-Acquievence in dispusession-Effect.

The material clause of a mortgage deed was as follows :-I do hereby mortgage the following twelve villages to S at Rs. 2 per cent, interest, and promise and put down in writing that until delivery of possession of the aforesaid villages to S, I shall pay interest at the rate of Rs. 2 per cent. on Rs. 5,000, the mortgage money; that, until I pay up the sum of Rs. 5,600 on account of principal, with interest to the very last pie, S shall continue in possession and occupation (of the aforesaid villages), and that I shall put forward no excuse or objection.

Possession of the entire mortgaged property was delivered to the mortgagee on the execution of the mortgage. By an instrument of even date with the mortgage deed, S, the mortgagee, leased to the mortgagor, six of the mortgaged villages at a consolidated rental of Rs. 2.801 per annum, less Rs. 800 per annum allowed to the lessee as naukar."

The mortgage was of the year 1851, and, in a suit brought in 1894 to redeem the mortgage, it appeared that although possession of the twelve villages originally mortgaged was given to the mortgagee at the time of the mortgage, their number was reduced to six in 1853, and to five by 1858 and 1864, but that the mortgagee did not on that account sue for his mortgage-money, but remained satisfied for 31 years up to date of suit with the diminished security and the possession of the remaining villages. The mortgagee made no attempt to enhance the rent of the villages which were left to him, and they constituted an ample security for the whole amount of his claim.

Held (1) that the mortgage was a usufructuary mort-

and (2) that the mortgagor was entitled to redeem on payment of the principal only.

In this case the arrangement between the parties was completed by the execution of a lease, under which the mortgagor became the tenant of the mortgagee, and paid rent in lieu of interest. Under such a mortgage, the mortgagee takes his chance of the rents and profits being greater or less than the interest which might have been reserved by the bond, and the mortgagor is entitled to redeem on repayment of the mortgage money. The fact that the mortgagee lost possession of some of the villages mortgaged subsequently does not, in the circumstances, constitute a failure on the part of the mortgagor to secure to the mortgagee possession of the mortgaged property, which entitled the mortgagee to claim interest in lieu of the rents and profits of the property of which he was dispossessed. (Sir Andrew

### MORTGAGE - USUFRUCTUARY MORTGAGE-(Contd.)

Deed amounting to an-(Contd.)

Scolle.) RAJA PERTAB BAHADUR SINGH v. GAJADHAR (1302) 29 I.A. 148 = 24 A. 521 = BAKSH. C. W. N. 97 = 4 Bom. L. R. 845 = 8 Sar. 310.

-Mortgage by conditional sale or. See MORYGAGE -CONDITIONAL SALE-MORTGAGE BY-USUFRUCTU-ARY MORTGAGE OR.

-Personal liability under-Exclusion of.

A moragage deed of 1896, after reciting that the mortgagor had borrowed from the mortgagor a sum of Rupees 1 lakh and old and, for the repayment of the loan with interest, as therein mention.d, had given in Zarbharna the rents and cesses of the mokurrari villages therein described, provided that the possession of all the villages was to be redelivered to the mortgagor on 14th January 1903, it being calculated that by that date the amount due to the mortgagee for principal and interest would have been satisfied out of the rents of the several villages, expressly precluded the mortgagor collecting any of the rents during the term of the Zarbharna, and contained the following clause: "If by mistake / " (the mortgagor) " or my heirs make any collection, then I, or my heirs shall be liable to pay the amount collected with interest at the above rate-except in such a case, for no other reason and on no other account, the Zarbhanadar has and shall have any claim whatever against me or my heirs and representatives on the ground of realization and non-realization."

Held, on the construction of the mortgage-deed, that it was usufructuary only, and that, by its terms, any personal liability on the part of the mortgagor was excluded. (Lord Parker.) RAM NARAYAN SINGH 7. ADHINDRA NATH (1916) 44 I.A. 87 = 44 C. 388 (400)= MUKHERJI. 21 M. L. T. 12 = 25 C. L. J. 121 = 15 A. L. J. 107 =

(1917) M. W. N. 94 = 21 C. W. N 383= 19 Bom. L. R. 194 = 38 I. C. 932 = 32 M. L. J. 39.

-Simple mortgagor or -I case part of same transection as mortgage - Rent due under, working out at 6 per cent. for annum on mortgage amount.

A registered mortgage deed expressly stipulated that the profits of the mortgaged property should belong to the mortgagee in lieu of interest. Four days after the date of the said mortgage the mortgagee leased the mortgaged property to the mortgagor. Within ten months the mortgagor gave up possession under his lease and the mortgagee obtained possession under his mortgage. In a suit for redemption brought about 24 years later the mortgagor claimed an account of the rents and profits of the mortgaged property.

The High Court held that the mortgage was usufructuary only in form, and that the security was intended to be simple mortgage carrying interest at 6 per cent. per annum In coming to that conclusion they were influenced by the circumstance that the lease, which was practically contenporaneous with the mortgage and was for the period of the mortgage, was at a rent which worked out at 6 per cent. Per annum on the sum secured.

Held, reversing the High Court, that, though the mortgage and the lease were parts of one and the same transaction, there was no inconsistency between the two instraments, and that the mortgagee was entitled to the rents and profits as provided by the mortgage-deed.

There would not have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted. (Lord Macnaghten). ABDULLAH KHAN D. BASHARAT HUSAIN. (1912) 40 I. A. 31 = 35 A. 48 (56) = 13 M. L. T. 182=

(1913) M. W. N. 131 = 17 C. W. N. 233 = 17 C. L. J. 312=17 I. C. 737=15 Bom. L. B. 592= 25 M. L. J. 91

# MORTGAGE - USUFRUCTUARY MORTGAGE - |

### Deed creating an-Deed merely reciting prior oral mortgage or.

A suit brought by the plaintiffs' ancestors against the predecessors of the defendants for a decree for possession by partition" of a 12-annas share in a certain mauza was dismissed by the first Court. Pending an appeal in the Zillah Court from that dismissal of the suit, the parties came to a compromise, and, on April 1, 1857, filed before the Zillah Judge a petition of compromise, and prayed for a decree in terms of the conditions set forth in that petition. Those conditions" were stated in the body of the petition in the following terms. "Now the parties have come to a settlement in this way, that we, the respondence, admit the ownership of the appellants and that the claim has been brought within time; that the respondents shall remain in possession of the aforesaid property for a period of twelve years in lieu of the mortgage money; that the appellants shall redeem the aforesaid property after twelve years, on payment of the mortgage money out of their own pocket."

In a suit brought by the plaintiffs to redeem the usufructuary mortgage recited in the petition of compromise they relied upon a certified copy of the petition to establish the mortgage. It was objected that the petition of compromise was insufficiently stamped, and that the plaintiffs were not

entitled to sue upon it.

Held, that the suit was not based on any agreement contained in the petition, but was based on a contract made outside and recited in it to enable the Court to make a decree in accordance with the settlement, and that according to the law then in force an usufructuary mortgage might be made verbally (267-8). (Mr. Ameer Ali). AHMED RAZA v. ABID HUSAIN. (1916) 43 L A. 264= 38 A. 494 (501) = 14 A. L. J. 1099 = 21 C. W. N. 265 =

24 C. L. J. 504 = 20 M. L. T. 447 = (1916) 2 M. W. N. 548 = 5 L. W. 153 =

1 Pat. L. W. 90 = 18 Bom. L. R. 904 = 39 I. C. 11. Discharge of-Payment to a third person-

Discharge by. Plea of -Onus of -Proof of -Shifting of-Conditions.

The mortgagor under a usufructuary mortgage pleaded discharge thereof by payment to a third person on behalf of the mortgagee. The mortgagor did not prove ratification of such payment by the mortgagee. It, however, appeared that at about the time of the alleged payment the mortgagee delivered over possession of the mortgaged property to the mortgagor and that the mortgagee was out of possession therefrom for 20 years.

Held, that under all the circumstances of the case the morigage must be held to have been discharged by the alleged payment as if it had been made to him direct. HABIB-UL-LAH KHAN v. ANROODH SINGH. 8 M. J. 311 = 8 M. J. 311= B & J's No. 22 (Oudh).

#### Praudulent transaction or not.

Evidence.

Held, on the evidence, that the usufructuary mortgage set up by the plaintiff in a suit under O. 21, R. 63, to set aside an order for attachment before judgment was not a home fide transaction entered into with the object of securing a debt due to the plaintiff by one D, but was a mere contrivance for defeating or delaying the just claims of the other creditors of D, and retaining the properties for the benefit of or in trust for D.

When the facts are considered as a whole, there can be little doubt that the mortgage was a mere device for reser-ving the bulk of the available ussets of D. for the benefit of

## MORTGAGE - USUPRUCTUARY MORTGAGE -(Contd.)

Praudulent transaction or not-(Contd.)

with which the document was executed, the subsequent negotiations for a composition with the creditors on a payment by them to get the mortgage revoked, the non-production of material books, the unsatisfactory character of the evidence relating to the adjustment, above all the reservation of the entire usufruct of the immoveable properties (mortgaged) for the wife and children of the debtor, not to speak of the relationship of the parties which in other circumstances might not be very material, all tend to the conclassion at which their Lordships have arrived (Mr. Ameer Ali) SETH GHUNSHAN DAS r. ULMA PERSHAD.

(1919) 23 C. W. N. 811 = (1919) M. W. N. 513 = 10 L. W. 511 =

21 Bom. L. R. 472 = 17 A. C. J. 410 = 15 N. L. R. 68 = 50 I. C. 264 = 36 M. L. J. 483 (492-3).

#### Interest on amount of.

-Dispossession from part of mortgaged property-Interest in case of—Right to—Acquiescence in dispossession— Effect. See MORTGAGE—USUFRUCTUARY MORTGAGE— DEED AMOUNTING TO AN - INTEREST ON DISPOSSES-SION, ETC. (1902) 29 I. A. 148-24 A. 521.

-Liability for-Redemption after expiry of 30 years -Liability to come into force only on expiry at the 30

A usufrectuary mortgage deed contained a stipulation that after the expiry of 30 years at the time of redemption interest shall be paid along with the principal at the rate of I per cent. per annum." Held, that, on the proper construction of the deed, the condition to pay interest only came into force on the expiry of the thirty years (714).

The stipulation in the deed did not bind the mortgagor to pay interest from the date of the mortgage. The fact that the property was to remain in the possession of the mortgagee through the whole of this period, and that he was to enjoy the rents and profits, leaves no room for doubt as to the meaning of the stipulation, and the intention of the parties. (Mr. Ameer Ali.) MAHOMED ALI P. RAMZAN ALI. (1921) 14 L. W. 710 (714) = 24 C. W. N. 997 = 23 O. C. 150 = 58 I. C. 891.

-Mortgage money realised in part by mortgagee long prior to redemption-Interest on-Right to-Usufruct to be enjoyed in lieu of interest-Provision in deed for.

In 1863, D lent 7,700 rupees to R, on a usufructuary mortgage. In 1877, a suit was instituted for redemption of that mortgage, and a decree was made on payment of 6,988 rupees, which sum was brought into Court. L appealed on the ground that that sum was not enough, and it was increased by a further sum of 8,956 rupees. While the appeal was pending, he had managed to take the money out of Court, and the mortgagors had then got possession. They paid, however, no more, and accordingly, in 1879, their redemption suit stood dismissed. D then applied to be, and was replaced in possession, and, having sued for mesne profits during the time he was out of possession, he got a decree in 1881, in execution of which the Court sold the mortgagors' equity of redemption at auction. D, being the buyer, was put into possession as full owner in 1883.

D continued in possession of the property as owner till 1897, and as owner he mortgaged it in 1886 to S. D got behind with his payments, and in 1897, on the application of S, the property was put up for sale. The respondents, the defendants in the suit, or their predecessors in interest, bought it and duly obtained possession. Notwithstanding D's purchase of the equity of redemption of the 1863 mortgage in 1881, D's name continued to be recorded in the revenue papers as mortgagee, and the proclamation of sale his family and indirectly for himself. The secrecy and haste | in 1897 similarly stated that the interest of the judgment-

Interest on amount of-(Contd.)

debtor was only a mortgagee's interest. The sale certificate to the respondents was to the same effect.

In 1906, the plaintiffs and appellants, the representatives in interest of D, sued the respondents for redemption of the mortgage rights sold in 1897, the rights of D as mortgagee under the mortgage of 1863. In the suit the plaintiffs claimed that interest ought to be allowed to them on the 6,988 rupees, which D took out of court in 1878, and the question was whether they were entitled to the interest claimed by them. The mortgage of 1863 treated the usufruct as a whole, as a remuneration for the loan or any part of it, so long as it remained outstanding.

Held, that the plaintiffs were not entitled to the interest claimed.

In 1878 the mortgagees under the mortgage of 1863 got 6,988 rupees on account of a redemption, which is only now taking place; therefore they received it over thirty years too soon; therefore they should not only allow it in account, which they have done, but should allow over thirty years' interest on it too. Alternatively, since 1878 the principal mortgage moneys under the mortgage of 1863 must be deemed to have been paid off in the proportion of 6,988 to 15,944, and as the enjoyment of the usufruct by the mortgagees was conceded only in consideration of the continuance of the mortgage loan, the enjoyment should be reduced pro tanto from that date; in strictness, on redemption a part of the rents and profits collected should be returned or credited in account to the mortgagors in the above proportion, but for simplicity's sake interest at a sufficient rate will do as well. (Lord Sumner) KALYAN DAS t. MAQBUL AHMAD.

(1918) 40 A. 497 (503-4) = 22 C.W.N. 866 = 16 A.L.J. 693 = 5 P.L.W. 159 = 28 C.L.J. 181 = 8 L.W. 179 = (1918) M.W.N. 535 = 24 M.L.T. 110 = 20 Bom. L.R. 864=46 I.C. 548=35 M. L.J. 169.

-Possession not given to mortgagec-Interest in case of-Mortgagee's right to-Provision in deed to that effect.

Where a mortgagee stipulates that, in default of his being put into possession of the mortgaged property, he will charge interest at a certain rate, the mortgagee will be entitled to interest in case possession is retained by the mortgagor. (Sir Andrew Scoble.) MAHANT BISHAMBAR DAS v. THAKUR DRIGBIJAI SINGH.

(1905) 32 I.A. 172 (176) = 27 A. 581 (591) = 9 C.W.N. 914 = 2 C. L. J. 182 = 7 Bom. L.B. 869 = 8 O.C. 297 - 8 Sar. 849 = 15 M.L.J. 323.

-Set-off of, against rents and profits-Mortgagee's right to, and liability to account only for balance.

A loan transaction in 1837 was effected by two deeds-(1) a Kabola, an absolute deed of sale, and (2) an ikrarnamah, or deed of agreement, constituting a mortgage. The ikrarnamah provided that, if the mortgagor paid, within ten years, a lump sum at the rate of 12 per cent. interest, he was to recover back the estate and the balance of collections, less charges. The mortgagee entered into possession. No interest on the principal sum was paid at the time stipulated, and in 1859, a redemption sait was brought by the mortgagor's heir for possession.

Held, that on the right construction of the agreement the interest was to be set off from time to time, against the rents and profits, and that the mortgagee was only to account to the mortgagor for any rents and profits and interest on the same which he might have received over and above the interest due to him upon the debt; that the agreement did not take the case out of an ordinary mortgage transaction; and that Bengal Reg. XV of 1793, S. 7, did not apply

MORTGAGE - USUFRUCTUARY MORTGAGE - | MORTGAGE - USUFRUCTUARY MORTGAGE -(Contd.)

Interest on amount of-(Could.)

to such a transaction. (Sir Robert Collier.) RADHA-BENODE MISSER P. KRIPA MOYEE DEBEA.

(1872) 14 M.I.A. 443=17 W.R. 262=10 B.L.B. 386= 2 Snth. 546.

-Usufruct and - Mortgagee's right to both.

That a mortgagee in possession could retain the usufruct of the property mortgaged, together with any amount of interest secured to him by the mortgage deed is a state of the law which is not in conformity with the law which prevails in any civilised country, and it is not consistent with the first principles of justice (16). SETH SEETARAM r. (1874) 3 Suth. 15 = 9 M.J. 150 = ARJOON SINGH. R. & J's No. 29 (Oudh.)

 Without some special agreement or some special custom, a mortgagee in possession should not retain both the usufruct and the interest, but the usufruct should be treated as in satisfaction of the interest, on the mortgage. SETH (1874) 9 M.J. 150= SEETARAM D. ARJOON SINGH. R. & J.'s No. 29 (Oudh). = 3 Suth. 15.

The suit was for redemption of a mortgage dated July 1846. The mortgage was a usufructuary mortgage of a very formal and precise kind; and stated that M, the owner, mortgaged a taluk to O for the sum of Rs. 3,067, and fixed the amount of interest at "rupees three and two annas per cent. per month." The mortgage also stated that possession had been delivered to the mortgagee, and it contained the following clause:-"I moreover agree that whenever I be disposed to redeem I engage to repay every fraction of a pie of the principal and interest in a lump sum at the time when crops are not standing on the ground at the end (fallow portion of the agricultural year) of the month of Jeith, and then have the estate redeemed.

Held, on the construction of the mortgage, that the use fruct was to be set against the interest, and that it was not the intention of the parties that the mortgagee should have both the usufruct of the property and be paid interest at the stipulated rate of 43 per cent. from the time of the mortgage down to the period of redemption (197.8).

It would require very clear words to induce their Lordships to put such a construction upon the deed (198).

Semble: if it had been shown that the usufruct would not have amounted to the stipulated interest possibly an account might be a stipulated interest possibly and account might be a stipulated interest possibly an account might be a stipulated interest possibly and account might be a stipulated interest possible account might be a stipulated interes RAJAH AMEER count might have been decreed (198). HUSSUN KHAN r. MUKHDOON SINGH.

(1875) 3 Suth. 195 = B. & J's No. 38.

-In 1867 the then Financial Commissioner ruled that wherever the land mortgaged was in possession of the mort gagee, no interest should be payable under the terms of the mortgage deed, in addition to the usufruct, after the 13th August 1860. It would appear from that ruling that at the time when he gave that ruling the law of Oudh was in the state, that a mortgagee could retain the usefruct of the property mortgaged, together with any amount of interest secured to him by the mortgage deed. The then Financial Commiscioner appears to have thought that that state of the law should not be recognised beyond a certain date, and their Lordships infer that after that date the law most be taken to have been altered, at all events so far as this, that without some special agreement or some special custom the mortgagee should not retain both the usufruct and the terest, but that the usufruct should be treated as in si faction of the interest on the mortgage, SETH SEETARM a, ARJOON SINGH.

(1874) 3 Suth. 15 = 9 MJ. 150 B. & J's No. 29 (004h)

# MORTGAGE -- USUFRUCTUARY MORTGAGE -- MORTGAGE -- USUFRUCTUARY MORTGAGE --

#### Mortgaged property.

CHARGES AND EXPENSES IN CONNECTION WITH-FIXED ANNUAL SUM TO MORTGAGEE FOR.

DELIVERY OF POSSESSION-SALE IN DEFAULT OF-PROVISION FOR.

IMPROVEMENT BY MORTGAGEE ON-EXPENDITURE ON-KEASONABLENESS OF BOTH-FINDING AS TO. INTEREST OF MORTGAGEE IN-DEFERMINATION OF. MANAGEMENT OF-REVENUE AND OTHER PUBLIC CHARGES DUE ON-PAYMENT OF-MORTGAGEE'S DUTY AS TO.

POSSESSION BY MORTGAGEE OF.

PURCHASE BY MORTGAGEE OF.

RELEASE OF, OBTAINED BY MORTGAGOR.

RENT ARREARS DUE FROM TENANTS OF-MORIGA-GOR'S LIABILITY FOR.

RENTS AND PROFITS OF.

REVENUE DUE ON.

CHARGES AND EXPENSES IN CONNECTION WITH-FIXED ANNUAL SUM TO MORTGAGEE FOR.

Provision for-Validity of.

A clause in a deed of usufructuary mortgage providing for the mortgagee in possession taking credit for a fixed sum annually in respect of certain charges and expenses in connection with the land held not to be invalid on the ground that it gave the mortgagee a collateral advantage under the deed which he was not entitled to enact.

The truth is that it is a fixed payment to be made in respect of a variable charge, and though it may be assumed that the amount was not fixed so as to prejudice the mortgagee, there is nothing to prevent the mortgagor and mortgagee entering into a bargain as to what sum should be charged annually for expenses that may or may not exceed the agreed figure (45). (Lord Buckmaster.) CHALIKANI VENKATARAYANIM D. ZEMINDAR OF TUNI.

(1922) 50 I. A. 41 = 46 M. 108 (113) = 32 M.L.T. 70 = 17 L. W. 383 = 25 Bom. L.B. 541 = 38 C.L.J. 34 = 28 C. W. N. 25 = A.I.R. 1923 P. C. 26 = 71 I.C. 1035 = 44 M L.J. 631

DELIVERY OF POSSESSION OF-SALE IN DEFAULT OF-PROVISION FOR.

Enforceability of.

A deed of mortgage with possession to secure the repayment of Rs. 1,80,000 with interest at the rate of 1 per cent. per mensom provided that the principal of the debt was to be repaid by sums of Rs. 10,000 payable year after year. beginning on February 1, 1892 down to February 1, 1898, and that on Fobruary 1, 1899, the entire balance of the debt and the interest was to be paid. The deed further provided that notwithstanding the arrangement by which the mortgagee was to be put into possession a lease was to be granted by him to the mortgagor for a period of 2 years; and that, if the provisions of the mortgage deed as to redelivery of the estate to the mortgagee by the mortgagor at the ex-piration of the lease for 2 years were not carried out the mortgaged estate should at the end of the time stand sold to the mortgagee for the entire amount due inclusive of the balance of principal and interest, and further that the mortgagor should not sell any portion of the estate to any body except the mortgagee.

Held, that the agreement for the payment of the instalments of the purchase-money was the main obligation of the mortgage deed, and that the whole of the other provisions, however extensive and far-reaching they might be, were really nothing but the security to enforce that obligation, and were therefore invalid and unenforceable (46-7.) (Lord Buckmaster.) CHALIKINI VENKATARAYANIM v. ZEMIN-

(Contd.)

Mortgaged property-(Contd.)

DELIVERY OF POSSESSION OF-SALE IN DEFAULT OF-PROVISION FOR-(Contd).

32 M. L. T. 70 = 17 L. W. 383 = 25 Bom. L. R. 541 = 38 C.L.J. 34 = 28 C.W.N. 25 = A. I. R. 1923 P. C. 26 = 71 I. C. 1035=44 M.L.J. 631.

IMPROVEMENT BY MORTGAGEE ON - EXPENDITURE ON-REASONABLENESS OF BOTH-FINDING AS TO.

-Fact or Law-Concurrent findings-Pricy Council's interference with.

The questions whether any improvement made by a mortgagee in possession is reasonable in its character, and whether the expenditure on such improvement is reasonable in amount, are questions of fact. And where there is a concurrence of opinion between the Courts below on such a question, their Lordships would not, in accordance with their usual practice, be disposed to disturb their finding, even if they did not altogether concur in it. (246-7.) (Lord Davy.) KADER MOIDEEN D. NEPEAN.

(1898) 25 I. A. 241 = 26 C. 1 (8) = 2 C. W. N. 665 = 7 Sar. 394

INTEREST OF MORIGAGEE IN-DETERMINATION OF.

-Liquidation of principal and interest out of untfruct-Effect.

Under Regulation XXXIV of 1803, the interest of the holder of a usufructuary mortgage in the property would cease on the liquidation of the usufruct of the principal and interest of his debt (468.9.) (Sir James W. Colvile.) LALLA BUNSEEDHUR : KOONWAR BINDESEREE DUTT SINGH.

(1866) 10 M.I.A. 454 = 2 Suth. 39 = 2 Sar. 167.

MANAGEMENT OF-REVENUE AND OTHER PUBLIC CHARGES DUE ON-PAYMENT OF-MORTGAGEE'S DUTY AS TO.

-Recovery of payments so made from mortgagor-Right of-Mortgage before Transfer of Property Act.

In British India a mortgagee in possession of immovable property under a mortgage made before the Transfer of Property Act of 1882 came into force was under the ordinary law then in force bound to manage it as a person with ordinary prodence would manage it if it were his own, and, unless there was an agreement to the contrary with the mortgagor, he was bound to pay out of the income of the property the Government land revenue which might during his possession be assessed upon it and such charges of a public nature as might accrue due in respect of the property and be payable by the person in possession of the rents and profits, and was not entitled to charge such payments against his mortgagor in the accounts. (Sir John Edge.) ABDUL HUSAIN KHAN D. KANIZ FATIMA.

(1924) 51 I.A. 157 (162)=46 A. 269= A. I. B. 1924 P. C. 102 = 10 O & A. L. B. 281 = 22 A. L. J. 284 = 34 M. L. T. 78 = 19 L.W. 703 = 27 O. C. 72 = 11 O. L. J. 427 = 29 C. W. N. 214 = (1924) M.W.N. 657 = 80 I. C. 1019

POSSESSION BY MORIGAGEE OF.

-Character of, absolute owner or mortgagee-Redemp tion by payment on date fixed-Mortgagee to become abrolute comer in default of-Provision for-Possession of mort gagee after date fixed-Character of.

A deed of the year 1815, purporting on the face of it to be a usufructuary mortgage, stated that the mortgagees had been placed in possession of the mortgaged property, and provided that they should appropriate the usufruct in a certain way. The deed provided for a settlement of the accounts of the receipts and disbursements in the year 1819-20 DAR OF TUNI. (1922) 50 I.A. 41=46 M. 108 (112-3)= and for the payment on a date fixed in 1820 of the balance if

MORTGAGE - USUFRUCTUARY MORTGAGE - MORTGAGE - USUFRUCTUARY MORTGAGE -(Conid.)

Mortgaged property-(Contd.)

POSSESSION BY MORTGAGEE OF-(Contd.)

any due to the mortgagees and the redemption of the mortgage. The deed also stipulated that for the balance due to the mortgagees at the date fixed for payment they were to take and enjoy the whole or a portion of the mortgaged property, as if under an absolute sale at a rate fixed in the deed. If the entire mortgaged property would not cover the balance due, the mortgagees were to be at liberty to proceed against the mortgagors and their other property.

The mortgagors did not make any payments towards the mortgage; no settlement of accounts took place in 1820 or afterwards. The mortgagees and their successors in interest remained in full possession of the property from the date of

the mortgage up to the date of suit in 1870.

In a suit brought by the mortgagors in 1870 for the recovery of the mortgaged property with mesne profits from 1867, on the ground that the mortgage debt had admittedly been liquidated by the usufruct at the close of the year 1866-7, held that the mortgagees had not become the alisolute owners of the property in 1820, that they continued to hold as mortgagees, and that the mortgagors were entitled to redeem them and to recover the mesne profits claimed. (Sir James W. Colvile.) THUMBUSWAMY MUDALLY D. MAHO-(1875) 2 I.A. 241 a MED HOOSAIN ROWTHEN. 1 M. 1 (16-8)=3 Sar. 531=3 Suth. 198.

Setting aside of mokurruree lease thereof by mortgagor prior to mortgaage and-Mortgagee's suit for-Bona fide and operative nature of lease-Onus of Proof as to-Shifting of-Magistrate's order-Lessee in possession under.

The plaintiffs claimed under a Zur-i-peshgee granted by the Rajah of Ramnugger of certain mouzahs, including mouzah K. They brought the suit under the Zur-i-peshgee against B for possession of moozah K, and to set aside a mokurruree alleged to have been granted by the Rajah to him prior to the mortgage, under which he claimed the possession of the mouzah. The value of the mouzah was Rs, 850 per annum. The courts below concurrently found that the mokurruree was a fabricated and fraudulent instrument, and decreed the plaintiffs' suit.

On appeal to the Privy Council it was contended that the courts below had improperly shifted the owns, and that, in consequence of the form of the suit, it lay upon the respondents, the plaintiffs below, to show affirmatively that the

mokurruree was invalid.

Held that, having regard to the form of the suit, which was not only for possession, but for setting aside the mokurruree, and having regard also to the fact that for sometime under a Magistrate's order, the appellant, or those whom he represented, were in possession under the mokurruree, in the first instance, it did lie upon the plaintiffs to give some evidence to impeach the validity of the mokurruree, and some onus was therefore upon them (66).

Held further that, that onus was satisfied, and a strong prima facie case to impeach the validity of the deed made out, and then the onus was shifted, and it was incumbent upon the appellant to show by satisfactory evidence that the mokurruree was really executed before the date of the Zur ipeshgee, and that it was granted bona fide for a real consi deration and intended to be operative as between the Rajah

and B (66).

There are strong circumstances of suspicion in the case. B was the mookhtar of the Rajah, and notwithstanding that the Rajah had charged him with having acted collusively with the holders of the Zur-i-peshgee in obtaining it from him, he kept him in his service. It appears that the deed was not registered nor stamped at the time, the value of the mouzah was considerable, the rent very small, and there was | mortgage with possession were as follows:-

(Contd.)

Mortgaged property-(Contd.)

POSSESSION BY MORTGAGEE OF -(Contd.)

no evidence that any consideration was paid. Considering the relation of the parties, and the facts which have been referred to, the courts below seem to be perfectly justified in saying that unless the holder of the mokurruree gave satisfactory evidence of its execution and of its bona fides, they could not hold that it was a valid instrument as against the SHAMNARAIN D. ADMINISTRATOR-Zur-i-peshgee (66). GENERAL OF BENGAL.

(1874) 3 Suth. 64 = 23 W. R. 111 = 5 Sar. 734.

-Surrender of, to person entitled to estate subject to his mortgage, on payment by him of instalment then due-Effect of on right to priority in respect of further instalments.

A mortgagee or chargee who is in possession of an estate as such, and gives up possession to a person entitled to it subject to his charge upon payment of what is then due to him is not precluded from afterwards asserting his right against the estate when further instalments, or further payments, become due to him (244-5). (Lord Dury.) (1903) 30 I. A. 238= WEBB P. MACPHERSON.

31 C. 57 (71) = 8 C. W. N. 41 = 5 Bom. L. B. 838= 8 Sar. 554 = 13 M. L J. 389.

PURCHASE BY MORTGAGEE OF. Effect. See MORTGAGE-USUFRUCTUARY MORT-GAGE-MORTGAGEE UNDER-PURCHASES BY.

RELEASE OF, OBTAINED BY MORTGAGOR. -Fraud or force in regard to-Plea by morigage of -Proof of-Onus-Quantum.

In a case in which the plaintiff-appellant, who had been mortgagee in possession of a taluk, alleged that the mortgagor, without paying the mortgage money, held possession of the taluk and forcibly took away all documents and caused the execution of new deeds according to will and left no documents in plaintiffs' possession by which his claim would have been proved, held, affirming the Coarts below. that the plaintiff had not sustained the onus which lay upon him of proving that the release of the mortgaged lands #26 obtained by force or fraud.

Held further that, the allegation of force could not bare been properly sustained by evidence of unfair advantage taken of the relative position of the parties. RAI IBRAN BULLEE D. AGHA HOSSEIN KHAN. (1871) 6 M. J. 231 RENT ARREARS DUE FROM TENANTS OF-MORTGAGORS

LIABILITY FOR.

Arrears barred by limitation-Effect of. Where a clause in a mortgage deed provided; -- When ever after the term of the mortgage or during the said term I pay to the mortgagee in any Khali Fish (fallow season) ic., in the month of Jeith the whole of the mortgage most and the whole of interest together with the Government revenue, arrears of rent and takari advances from tenant ....without raising any objection of law such as termination .... I the mortgagor, shall have the power to redeem," kill, on a construction of the clause, that the mortgagee entitled to get the money due to him from the tenants of account of arrears of rent, whether its recovery is barred by limitation or not. (Lerd Collins.) MUHAMMAD NASEN. MUHAMMAD ABBAS. (1907) 10 Bom. L. B. 126 12 C. W. N. 345 = 7 C. L. J. 215 = 11 O. C. 196 3 M. L. T. 182=18 M. L. J. 153

RENT AND PROFITS OF.

Appropriation of, to debt most burdensome to mort gagor-Mortgagee's duty as to.

The accounts directed by a decree for redemption of a

## MORTGAGE - USUFRUCTUARY MORTGAGE - MORTGAGE - USUFRUCTUARY MORTGAGE -

Mortgaged property-(Contd.)

RENTS AND PROFITS OF-(Contd.)

An account of what is due to defendants for principal and interest on their mortgage in this case, namely, all debts due to them from plaintiff, and all money expended by them on behalf of plaintiff in paying Government dues on the land, together with compound interest at 10 per cent per annum upon these moneys.

II. An account of all sums of money laid out by defendants on improvements and management of the land comprised in the said mortgage with simple interest at the rate of 10 per cent per annum on the amounts expended by the defendants from the respective dates of such expenditure to the date of taking the said accounts.

III. An account of all rents and profits received since

June 3, 1871, by defendants or any of them.

In taking the accounts the Commissioner directed a set off of the receipts in each year against the balance due for interest on expenditure in that year. But inasmuch as the receipts were in each year less than that balance and as (Account II, bearing only simple interest) the balance of interest did not carry interest, it really made no difference in the result whether the receipts were set off year by year or the sum of the receipts at the end of the account was deducted from the sum of the amounts due on Accout II. It was contended for the mortgagor that the receipts ought to have been deducted from the interest due year by year on Account I, which bore compound interest, so as to stop pro tanto the interest running on that interest, or fin other words) that the moragagee was bound to give credit for his receipts against the debt which was most burdensome to the

Held that there was no warrant in principle or in authority for that contention (245-6). (Lord Davey.) KADER MOIDEEN v. NAPEAN. (1898) 25 I. A. 241=

26 C. 1 (7) = 2 C. W. N. 665 = 7 Sar. 394.

-Mortgagee's liability for-Extent of-Mortgage deed -Construction.

On 8-9-1884, the plaintiff executed in favour of the defendant a mortgage of certain villages and a house for a term of seven years, with an extension of 5 years if so agreed, and gave the defendant possession accordingly was stipulated in the mortgage deed that the income of the mortgaged villages should be collected according to the rentroll, and that from that source the mortgagee should pay (1) the Government revenue; (2) a sum of Rs. 800 a year to himself, as interest and for the expenses of the mortgaged villages; and (3) should pay the balance to certain native bankers to whom the mortgagors were indebted. The plaintiffs sued for redemption alleging that the entire mortgage money had been paid off in the first year of the mortgage, and that they were entitled to redeem without further payment.

Held that, on the true construction of the mostgage deed, the mortgagee was liable only for such sums as were actually received by him, or, on his behalf, and for such sums, if any, as might have been received by him but for his own neglect or fault, and that he was not liable for the amount of the gross rentals as shown in the rent-roll. (Lord Macnaghten.) BANARSI PARSHAD P. RAM NARAIN.

(1903) 30 I. A. 66 = 25 A. 287 = 7 C. W. N. 514 = 8 Sar. 447.

#### REVENUE DUE ON.

-Enhanced revenue - Mortgagee paying - Recovery from mort gagor of -Right of-Construction of deed.

On the construction of a clause in a mortgage deed proment and a consequent shrinkage shall give the mortgagee decree for foreclosure.

## (Contd.)

Mortgaged property-(Contd.)

REVENUE DUE ON-(Contd.)

a cause of action, held that the mortgagee was entitled to get from the mortgagor, over and above the usufruct, the amount paid by him on account of maintenance and enhanced Government revenue. (Lord Collins.) MUHAMMAD NASEEM P. MUHAMMAD ABBAS.

(1907) 10 Bom. L. R. 126=12 C. W. N. 345= 7 C. L. J. 215=11 O. C. 126=3 M. L. T. 182= 18 M. L J. 133.

-Most zagee's liability to pay-Enhancement of revenue-Effect of Deduction of amount of enhancement ext of malikana payable to mortgagor-Default to make-Tacking of amount with mortgage debt—Right of, as against purchaser of one of mortgaged items—Mortgagee himself purchasing the other.

Two properties were mortgaged, the mortgagee getting possession and undertaking to realise the rents and profits and pay therewith the Government revenue assessed on each and out of the balance left to retain a certain sum as interest and pay another fixed sum as malikhana to the mortgagor. The deed provided that the mortgagor "shall be entitled and liable" in case the Government revenue is decreased or enhanced " and the mortgagee shall have nothing to do with it." As a matter of fact the revenue respectively assessed on the two properties was subsequently enhanced.

Held, on the construction of the mortgage deed, that the mortgagos did not agree to pay year by year separately the enhanced amount to meet the Government demand, that the clause in question did not in any way alter the liability of the mortgagee in possession to pay the Government revenue assessed upon the mortgaged properties, and that what the parties intended was that the amounts should be deducted from the malikana payable to the mortgagor.

One of the properties mortgaged passed into the hands of a stranger by purchase; he had the malikhana apportioned; and thereafter the mortgagee went on paying to the purchases the malikana payable to him minus the amount by which the revenue of the property had been enhanced, whilst omitting to make a similar deduction from the malikhana payable to the mortgagor.

In a suit by the purchaser for redemption, held that, having by his own laches failed to make the deduction, the mortgagee could not claim to have the amounts tacked on to the mortgage amount, whatever equities he might have against his mortgagor not being available as against the purchaser. (Mr. Ameer Ali). BHORA THAKUR DAS v. COLLECTOR OF ALIGARH.

(1910) 37 I. A. 182 (189-90) = 32 A. 612 (618-9) = 12 C. L. J. 272 = 14 C. W. N. 1034 = 8 M. L. T. 276 = 7 A. L. J. 1132=7 I. C. 732=12 Bom. L. R. 1005= 20 M. L. J. 890.

-Mortgagec paying - Charge in respect of-Right to -Mortgage before T. P. Act .- Mortgagee by conditional sale subsequent in favour of mortgagee-Intention that two mortgages should be treated together and considered as mortgage with possession.

The owner of village P mortgaged the same with possession in May, 1869 and again mortgaged the same by way of conditional sale in June, 1878. The parties intended that the mortgage of 1869 and the mortgage of 1878 should be read together and that until they should be redeemed the mortgagee should be in possession of the mortgaged property in the position of a mortgagee by a conditional sale in possession, and that if the mortgages should not be viding that an enhancement of the revenue at a re-settle- redeemed the right to redeem should be determined by a

MORTGAGE- USUFRUCTUARY MORTGAGE- MORTGAGE- USUFRUCTUARY MORTGAGE-

Mortgaged property-(Contd.)

REVENUE DUE ON-(Contd.)

In a suit brought for redemption of the two mortgages held that the mortgagee was not entitled in the accounts to charge the mortgagor with payments made by him as and for enhanced land revenue and certain cesses after the date of the first mortgage, (Sir John Edge). ABID HUSAIN KHAN D. KAWIZ FATIMA. (1924) 51 I. A. 157 (162)=

46 A. 269 = A. I. R. 1924 P.C. 102 = 10 O. & A. L. R. 281 = 22 A. L. J. 284 = 34 ML. T. 78 = 19 L. W. 703 = 27 O. C. 72 = 11 O. L. J. 427 =

29 C. W. N. 214 = (1924) M.W.N. 657 = 80 I.C. 1019.

Mortgagee under.

DUTY OF CARE OF.

Extent of.

No further duty of care can be imposed upon mortgagees under an usufructuary mortgage than arise out of the statutory duties imposed upon mortgagees in possession under S. 76 of T.P. Act on the one hand, or of the ordinary legal duties of managing agents on the other. (Lord Athin.) KAMPLAPAT MOTILAL v. UNION INDIAN SUGAR MILLS CO.LTD. (1929) 30 L.W. 893 = A.I.R. 1929 P.C. 256= 119 I. C. 631 = (1929) M.W.N. 922 = 50 C.L.J. 551 = 57 M.L.J. 633.

INTEREST ON MORTGAGE AMOUNT.

-See MORTGAGE-USUFRUCTUARY MORTGAGE-INTEREST ON AMOUNT OF.

#### LIABILITY AS.

-Mortgaged property-Nomination by mortgagee of-Effect of-Mortgagee if thereby becomes liable as mortgagee in possession. See MORTGAGE-MORTGAGED PROPERTY -MANAGER FOR-NOMINATION BY MORTGAGEE OF.

(1920) 47 I. A. 265 (271).

MORTGAGE PROPERTY.

-See MORTGAGE - USUFRUCTUARY MORTGAGE-MORTGAGED PROPERTY.

PURCHASE BY.

(See also FIDUCIARY POSITION -PERSON IN-PURCHASE BY).

Benefit of -Mortgagor's right to-English decisions -Authority and applicability of.

The question whether or not a purchase made by a mortgagee enures for the benefit of his mortgagor is determinable on the broad principles of equity and good conscience, and the principle of English decisions on the point is applicable only in so far as it is agreeable to general equity and good conscience and not when it is dependent upon any technical rule of English law. When the principle of the English decisions is applicable because it is agreeable to general equity and good conscience, the limits of its applicability are not to be taken as rigidly defined by the course of English decisions, although those decisions are undoubtedly valuable, in so far as they recognise the general equity of the principle and show how it has been applied by the Courts in England (159). (Sir James W. Celvile.) RAJAH KISHENDATT RAM P. RAJAH MUMTAZ ALI (1879) 6 I. A. 145=5 C. 198 (210-1)= KHAN.

5 C. L. R. 213=4 Sar. 17-3 Suth. 637= B. & J's. No. 58

-Oudh talook-Villages in, mortgaged-Birt rights in respect of, existing at date of mortgage-Purchase of-Talookdar's right on redemption to birt rights on payment of purchase money paid by mortgagee.

An Oudh talookdar mortgaged with possession certain villages comprised in his talook. At the date of the mort(Contd.)

Mortgagee under-(Contd.)

PURCHASE BY-(Contd.)

gage there existed certain subordinate birt tenures in respect of the villages comprised in the mortgage. The mortgagee purchased the rights of the birtias in the different villages-In a suit brought for redemption of the mortgage, the question was whether the mortgagors could, upon paying the purchase-money of the birts, plus the original mortgage money, redeem the estate as it was then enjoyed by the mortgagee; or whether the mortgagee was entitled in any case to retain the rights and interests of the birtia zemindars purchased by him as an absolute under-proprietary tenure in subordination to the talookdar, and to have a subsettlement on that basis.

The stipulations in the deed of mortgage plainly indicated that the mortgagee, until redemption, was to be the zemindar de facto of the estate, with all the rights, privileges and powers of a zemindar as between him and the sub-tenants; that the subject of the mort gage was the talookdary interest, with all its incidents, whatever that might include. The inadequacy of the consideration paid by the mortgagee for the purchase of the rights of the birtias afforded a strong argument for supposing that the transactions might have been in the nature of compromises, which the powers of talookdar were exerted to effect on favourable terms. After his purchase, and up to the date of the institution of the suit, the mortgagee treated the birt tenures as merged in the talook. He did not take any steps to keep them alive as distinct sub-tenures for his own benefit. On the contrary, at the time of the first summary settlement after annexation he never sought to engage for those villages as birtia, and, on the summary settlement after Lord Canning's Proclamation, he did in fact engage for them as talookdar, and as parcel of the talook. The mortgagee, taking advantage of his position of talookdar de facto, had acquired the birts and allowed them to merge in the talooka.

Held that, on repayment of the original mortgage amount and of the amount expended by the mortgagee in purchasing the birts, the mortgagors was entitled to re-enter on the estate with all the rights and privileges enjoyed by the mortgagee (1534). (Sir James W. Colvile.) RAJAH KISHEN-DATT RAM P. RAJAH MUMTAZ ALI KHAN.

(1879) 6 I. A. 145=5 C. 198 (204-5)=5 C. L. B. 213= 4 Sar. 17 = 3 Suth. 637 = R. & J's. No. 58.

-Revenue sale brought about by fraud of mortgager Purchase of mortgaged property at-Plea of, against mort gagor's right of redemption - Maintainability Esteppel.

A title by estoppel is a well-known title.

Where, therefore, a mortgagee in possession entered into an agreement with another for depriving the mortgagor of his right of redemption by means of a fraudulent decree for sale for arrears of revenue, wilfully defaulted to pay the said arrears, and at the sale held in consequence of such default purchased the property himself fraudulenlly, keld, in a suit for redemption and possession brought by the mortgagor, that the mortgagor had a title by estoppel to redeem the mortgagee (557-8)

The mortgagee and the other party to the agreement are estopped or precluded by their acts from setting up, as against a third person the mortgagor, the object of their fraud, and a stranger to the agreement, the illegality of the agreement itself. The plaintiff is entitled to say, this agree ment is the real contract (558). (Sir Edward V. Williams.) NAWAB SIDHEE NUZUR ALLY KHAN (1866) 10 M. I. A. 540= OJOODHYARAM KHAN. 5 W. R. P. C. 83 = 1 Suth. 635 = 2 Sar. 198

## MORTGAGE-USUFRUCTUARY MORTGAGE- MORTGAGE-USUFRUCTUARY MORTGAGE-

Mortgagee under-(Contd.)

PURCHASE BY-(Contd.)

-Revenue sale brought about by fraud of mortgagee -Purchase of mort gaged property at-Validity of-Effect of.

If a mortgagee in possession fraudulently allows the Government revenue to fall into arrears with a view to the land being put up to sale and his buying it in for himself and he does in fact become the purchaserof it at the Government sale for arrears, such a purchase will not defeat the equity of redemption (554-6). (SirEd word V.Williams.) NAWAB SIDHEE NUZUR ALLY KHAN D. RAJAH OJOODHYARAM (1866) 10 M. I. A. 540= KHAN.

5 W. R. P. C. 83 = 1 Suth. 635 = 2 Sar. 198.

Sub-tenure existing at date of mortgage-Purchase of-Benefit of-Mortgagor's right to.

Their Lordships are not prepared to affirm the broad proposition that every purchase by a mortgagee of a subtenure existing at the date of the mortgage must be taken to have been made for the benefit of the mortgagor, so as to enhance the value of the mortgaged property, and make the whole, including the sub-tenure, subject to the right of redemption upon equitable terms. It may well be that when the estate mortgaged is a Zemindary in Lower Bengal out of which a putnee tenure has been granted, or one within the ambit of which there is an ancient mokurraree istimrari tenure, a mortgagee of the zemindary, though in possassion, might purchase with his own funds and keep alive for his own benefit that putnee or mokarrarree. In such cases the mortgagee can hardly be said to have derived from his mortgagor any peculiar means or facilities for making the purchase which would not be possessed by a stranger, and may therefore be held entitled equally with a stranger, to make it for his own benefit. In such cases also the putnee, if the putneedar failed to fulfit his obligations would not be resumable by the Zemindar, and the zemindary would always have been held subject to the mokurraree (153). (Sir James W. Colvile.) RAJAH KISHENDATT RAM v. RAJAH MUMTAZ ALI KHAN.

(1879) 6 I. A. 145 = 5 C. 198 (204-5) = 5 C. L. R. 213 = 4 Sar. 17 = 3 Suth. 637 = R. & J's. No. 58.

#### REDEMPTION.

See MORTGAGE - USUFRUCTUARY Suit for. MORTGAGE-REDEMPTION OF.

#### Mortgage for term.

-Contract to grant-Possession not given by mortgagor-Portion of mortgage money advanced under contract -Damages to mortgagee in case of -Measure of.

S, being indebted to G to the amount of Rs, 16,000, in consideration of that amount and the promise of a further loan of Rs. 5,000, mortgaged to him by way of Zur'i-peshgi lease, dated 11th June 1877, villages comprised in a talukdari estate, in effect contracting to give possession for a term commencing on the 23rd September 1877. The Rs. 5.000 were not advanced by G, and he never entered into possession of the land. On the 7th July, 1877, the mortgaged estate, which had previously been under attachment in execution of a decree against S, was taken under the direct management of the Collector, under S. 326 of C. P. C. of 1882. It therefore became impossible for S to put G into possession.

The question was what were the damages for G not being put into possession? The damages awarded by the Court below were for the Rs. 16,000 which had been received, and interest upon that amount, from the date of the contract, at 12 per cent.

(Contd.)

Mortgage for term-(Contd.)

Held, that the Court below was right in doing so, If S had given possession, as was intended by the terms of this contract, G would have had the property for a period to commence from the 23rd of September, 1877, as a security for the Rs. 16,000 and interest. G not having been put into possession, and S not being able to give him possession, the damage which G sustained by not having that security for the Rs. 16,000 and interest were the Rs. 16,000 and interest which the Court below has allowed. (Sir Barnes Peacock.) SETH JAIDAYAL r. RAMSAHAE. (1889) 17 C. 432 = 5 Sar. 484 = R & J's. No. 115 (Oudh).

-Contract to grant- Void contract or contract which mortgager is not able to fulfil-Property agreed to be mortgaged taken under direct management of Collector under S. 326, C. P. C. of 1882.

S, being indebted to G to the amount of Rs. 16,000, in consideration of that amount and the promise of further loan of Rs. 5,000, mortgaged to him by way of zur-i-peshgi lease, dated 11th June, 1877, villages comprised in a talukdari estate in effect contracting to give possession for a term commencing on the 23rd September 1877. The Rs, 5,000 were not advanced by G, and he never entered into possession of the land. On 7th July, 1877, the mortgaged estate, which had previously been under attachment in execution of a decree, was taken under the direct management of the Collector under S. 326 of C. P. C. of

In a suit brought upon the contract, held that it was not a void contract.

It was a binding contract; but it was one which the defendant (S) was not able to fulfil. (SIr Barnes Peacock.) SETH JAIDAYAL v. RAMSAHAE. (1889) 17 C. 432= 5 Sar. 484 = R & J's. No. 115 (Oudh)

-Minor's property subject to-Sale unauthorized of-Redemption suit by minor on attaining majority-Limitation-Starting point. See LIMITATION ACT OF 1908, (1911) 39 I. A. 49 (56) = 34 A. 213 (223).

-Mortgage-money-Suit by mortgagee for, before expiration of term-Maintainability-Possession of mortgaged property withheld by mortgagor. See MORTGAGE -CONDITIONAL SALE-MORTGAGE BY- MORTGAGE FOR TERM. (1849) 4 M. I. A. 444.

-Mortgaged property-Possession of-Mortgagor's suit for, at expiry of term-Defences to-Failure of mort-gagor to give possession of entire mortgaged property if

Plaintiff's predecessor in interest representing himself to have absolute proprietary right in certain villages, and in consideration of advances which had been made to him by the defendant's predecessor in interest, executed what purported to be a mortgage of the villages with possession to the defendant's predecessor in interest for 14 years, the deed providing that on the expiration of the term the mortgagor "shall come into possession of the mortgaged villages without settlement of accounts, that, on the expiration of the term, the mortgagee shall have no power whatever in respect of the said estate, and after the expiration of the term this mortgage deed shall be returned to the mortgagor without accounting for (paying) the mortgage money secured under this document.

The instrument, though it was called a mortgage, was not a mortgage in any proper sense of the word, and was simply a grant of land for a fixed term free of rent in consideration of a sum made out of past and future advances,

The mortgagor had not absolute proprietary rights in all he villages, and the mortgagee could not accordingly ge-

#### MORTGAGE - USUFRUCTUARY MORTGAGE - | MORTGAGE - USUFRUCTUARY MORTGAGE -(Contd.)

Mortgage for term-(Contd.)

the full benefit purported to be given to him by the mortgage. In a suit brought at the expiration of the 14 years by the representatives of the mortgagor to recover from the mortgagee such portion of the mortgaged property as was in his possassion, held that the mortgagee could not resist the mortgagor's right to recover possession on the strength of his proprietary right, in the absence of any stipulation, express or implied, in the mortgage-deed depriving the mortgagor of such right, notwithstanding that the mortgagee had not had the full benefit of his mortgage contract (59). (Sir John Bonser.) NIDHA SAH r. MURLI DHAR. (1902) 30 I. A. 54 = 25 A. 115 = 7 C. W. N. 289 = 5 Bom. L. R. 111 = 8 Sar. 435.

-Mortgaged property-Possession of, withheld by mortgagor- Mortgagee's remedy in case of-Suit for mortgage money before expiry of term-Maintainability. See MORTGAGE-CONDITIONAL SALE-MORTGAGE BY -MORIGAGE FOR TERM. (1849) 4 M. I. A. 444

principal and interest for un-expired portion of term-Maintainability.

A mortgage bond, dated 28-12-1867, executed by the defendant in favour of the plaintiff, provided that the defendant was to pay interest on the principal sum at a certain rate, and to repay the principal in twelve years from the date of the bond, but that the plaintiff was not either bound to accept payment, or entitled to demand payment, within the said time. Then there was provision for the payment of the interest in three instalments annually. bond further provided: -If any obstruction be caused either by me or my men in respect of any of the conditions aforesaid, you are competent to give me two months' notice, and if I do not within that term fulfil the conditions entered into with you, to sell by auction yourself the mortgaged property or portions thereof, according to your pleasure, to pay yourself at once the principal due to you, and the interest payable on the full amount of principal for the unexpired portion of the twelve years, and to deliver to me the remainder, if any,

It appeared that a portion of the interest became in arrear, and that the plaintiff gave notice in October 1869 of his intention to sell under that power, the plaintiff supposing that he had the power to sell for the purpose of realizing the principal and the interest up to the end of the twelve years. The defendant disputed that right of the plaintiff to sell for that amount on the mere ground of nonpayment of interest, which he alleged not to be an obstruction within the meaning of the bond. The parties not being able to come to a final agreement as to the conditions of sale, the plaintiff brought the suit out of which the appeal arose claiming the full amount of the mortgage money with interest for 12 years.

Held that, the suit was not maintainable, either as an action for damages for the amount which plaintiff could have obtained by the sale, or on the bond itself (60).

The action is not maintainable on the bond itself, inasmuch as no such right of action if not expressly given by the words of the bond, is to be implied from it (60). VENKATAVARADA IYENGAR 2. VENKATA LUCHMAMAL.

(1874) 3 Suth. 58 = 23 W. R. 91.

### Ordinary mortgage.

Differences between.

The difference between a usufructuary mortgage and an ordinary mortgage is not so much a difference in the kind of security created as in the method of enjoying it. In each

## (Contd.)

Ordinary mortgage-(Contd.)

case the property of the mortgagor is pledged to secure the debt, and when the amount secured is paid, the property pledged must be returned to the owner. The main difference between a usufructuary mortgage and an ordinary mortgage is that in the former it is part of the initial agreement by which the security is created that the mortgagee shall at once go into possession of the mortgaged property and apply the proceeds he may derive from the use and occupation of it in discharge of the mortgage debt; while in the case of an ordinary mortgage of the usual sort it is in general not the initial intention of the parties that the mortgagee should go into possession of the property pledged immediately or at all, although he is empowered to do so if the interest on the mortgage money be not paid. Should be go into possession, he must account for the receipts just as must the usufructuary mortgagee. The widow who holds possession of her husband's property until she has been paid her dower has no estate or interest in the property as a mortgagee under an ordinary mortgage (151.) (Lord Atkinson.) MAINA BIBI D. CHAUDHRI VAHIL AHMAD.

(1924) 52 I. A. 145 = 47 A. 250 = 6 L. B. P. C. 25= 2 O.W.N. 180 = 27 Bom. L. B. 796 = 23 A. L. J. 116= A. I. R. 1925 P. C. 63 = 86 I. C. 579 = 48 M. L. J. 667.

#### Personal liability under.

-Absence of-Sale on foot of mortgage in case of-Suit for-Mortgagee's right of. See MORTGAGE-USU-FRUCTUARY MORTGAGE-DEED AMOUNTING TO AN-(1916) 31 M. L. J. 251. CHARGE OR.

-Deed excluding See MORTGAGE-USUFRUCTUARY MORTGAGE-DEED AMOUNTING TO AN-PERSONAL LIABILITY UNDER. (1916) 44 I.A. 87=44 C. 388 (400).

-Wrongful acts of mortgagor creating, though M such liability in first instance-Mortgage deed invalid as such-Transfer of Property Act-S. 68.

A mortgage deed of 1896, after reciting that for the repayment of the loan with interest, as therein provided, the mortgagor had given in Zarbharna the rents and cesses of the mokarrari villages therein described, provided that the possession of all the villages was to be redelivered to the mortgagor on 14-1-1903, it being calculated that by that date the amount due to the mortgagee for principal and interest would have been satisfied out of the rents and profits of the villages, expressly precluded the mortgagor collecting any of the rents during the term of the Zarbharna. The mortgagee obtained possession in pursuance of the mortgage and retained possession till 14-1-1903 when he redelivered the villages to the mortgagor. He did not in fact receive by the collection of the rents sufficient to discharge the principal of the loan with interest as mentioned in the deed. In a suit brought for the recovery of the balance due under the mortgage deed, on the allegation that by sundry wrongs acts of the mortgagor the mortgagee had been prevented from collecting rents and otherwise realising his security. held that the plaint alleged facts calculated to bring the case within S. 68, cl. (6) or (c) of the Transfer of Property Act. and that the mortgagee ought to be allowed an opportunity of proving those allegations and of establishing that those facts were sufficient to bring S. 68 of the Transfer of Property Act into operation.

Held further that the position of the mortgagor under that section could not by reason of the non-attestation of the mortgage deed and its invalidity as a mortgage, be b ter than it would have been if the mortgage had been duly attested and the deed had been valid as a mortgage. Parker.) RAM NARAYAN SINGH D. ADHINDRA NATH (1916) 44 I. A. 87=44 O. 388= MUKERJI.

# MORTGAGE-USUFRUCTUARY MORTGAGE - MORTGAGE-USUFRUCTUARY MORTGAGE-

Personal liability under-(Contd.)

21 M. L. T. 12 = 25 C. L. J. 121 = 15 A. L. J. 107 = (1917) M. W. N. 94 = 21 C. W. N. 883 = 19 Bom. L. B. 194 = 38 I. C. 932 = 32 M. L. J. 39. Receipts under-Cash if.

-Hindu joint family-Members of-Agreement between, for division of cash-Receipts if cash within meaning of. See Arbitration-Award-Hindu Law-Joint FAMILY -PARTITION. (1914) 27 M. L J. 128.

Redemption-Right of - Revenue sale brought about by fraud of mortgagee.

-Purchase by mortgagee of mortgaged property at-Effect of. See MORTGAGE-USUFRUCTUARY MORTGAGE -MORTGAGEE UNDER-PURCHASES BY-REVENUE SALE, ETC. (1866) 10 M. I. A. 540 (557-8.)

#### Redemption of-Suit for.

ACCOUNTS IN.

BAR OF, BY LIMITATION-EFFECT OF, ON TITLE TO

DECREE IN.

DISCHARGE COMPLETE OF MORTGAGE DEBT-PROOF

INTEREST ON MORTGAGE AMOUNT-DEPOSIT OF WHOLE OR PART OF.

LIMITATION FOR-SUSPENSION OF.

LIMITATION BAR TO-PLEA OF-MAINTAINABILITY. MESNE PROFITS PRIOR TO-MORTGAGOR'S RIGHT TO. NATURE OF-LIMITATION LAW APPLICABLE TO-RELIEF OBTAINABLE IN.

ONUS ON MORTGAGOR IN.

SECOND SUIT-MAINTAINABILITY.

#### ACCOUNTS IN.

-Basis of -Actual collections made or ought to have been made by mort gagee-Proof of-Speculations and conjectures.

In a suit for redemption brought against mortgagees in possession, held that, in coming to a conclusion as to the state of the accounts, the courts below erred in proceeding. not upon proof of the actual collections which were or ought to have been made by the mortgagees, but upon materials which were in great measure socculative and conjectural (13). (Lord Justice Knight Bruce.) MOHUN LAL SOOKOOL & GOLUCK CHUNDER DUTT.

(1863) 10 M. I. A. 1=1 W. R. P. C. 19=1 Suth. 533= 2 Sar. 49.

Prior mortgage-Decree on-Money paid in respect of - Interest on-Mortgagee's right to-Sale of mortgaged property in execution and dispossession of mortgagee therefrom in consequence.

A mortgagee with possession paid into court a sum of money in respect of a mortgage decree against a portion of the mortgaged properties. That portion had been sold in court auction, and the sales were confirmed, notwithstanding the mortgagor's application to set them aside, and the mortgagee thereby lost his possession of that portion of the properties. He could not, however, get back the money he had paid into court as stated above till long after.

In a suit for redemption brought by an assignee of the mortgagor's interest against an assignee of the mortgage, held that, in taking the accounts, the mortgagee was entitled to be allowed interest on the entire amount paid into court by him from the time the lost possession of that portion of the mortgaged properties up to the date of the appellate decree (75). (Lord Sinha.) PANAGANTI RAMA-RAYANIMGAR P. MAHARAJA OF VENKATAGIRI. (1926) 54 I. A. 68 = 50 M. 180 = 100 I. C. 86 =

Redemption of-Suit for-(Contd.)

ACCOUNTS IN-(Contd.)

25 L. W. 621 = 8 Pat. L. T. 307 = 29 Bom. L. R. 805 = 45 C. L. J. 395 = 31 C W. N. 170 = A. I. R. (1922) P. C. 32=52 M. L. J. 338.

-Rests and profits-Account for-Mortgager's liabi-

In a suir for redemption of a usufructuary mortgage conducted in the ordinary way, the mortgagee must account for the rents and profits received by him whilst in possession (414). (Sir James W. Colvile.) MAWAB AZIMUT ALI KHAN P. JOWAHIR SINGH. (1870) 13 M. I. A. 404= 14 W. R. P. C. 17 = 2 Suth. 346 = 2 Sar. 573.

-Rents and profits-Account of-Omission to take-Mort gage's objection to decree on ground of- Maintainability. No suggestion of prejudice from omission.

In a suit for redemption of a usufructuary mortgage, the mortgagee, whose duty it is to account for the rents and profits received by him whilst in possession, who has the best means of knowing what would be the result of such an account, if taken, and who does not suggest that he has been prejudiced by the omission to take it, cannot be hear to complain of the decree in the suit in so far as it treats the interest on the mortgage amount as satisfied by the rents and profits (4145). (Sir James W. Celvile.) NAWAB AZIMUT ALI KHAN 2. JAWAHIR SINGH,

(1870) 13 M. I. A. 404 = 14 W. B. P. C. 17= 3 Suth. 346 = 2 Sar. 573.

-Kents and profits-Interest on-Mortgagee's liability for-Interest on mort goge money-Interest upon-Mort. gager disclaiming liability for.

When it was contended that the right construction of an agreement of loan between a mortgagor and a mortgagee was that while the mortgagor could charge the mortgagee with all the annual proceeds of the estate, those annual proceeds carrying interest, the mortgager could only charge the mortgagor with the debt and the interest, the latter not carrying interest, held that the result of such a construction was certainly somewhat extraordinary, and that their Lordships would be loath to put such a construction upon the agreement unless they were compelled to do so by very plain words (450-1). (Sir Robert Collier.) RADHABE. NODE MISSER ? KRIPA MOVLE DEBIA.

(1872) 14 M. I. A. 443=17 W. R. 262= 10 B. L. B. 386=2 Suth. 546.

-Rents and profits-Mortgagee's liability for-Basis of-Actual receipts or reasonably possible receipts.

A mortgagre is not an assurer of the continuation of the same rate of profit which his mortgagor was able to raise. Much depends, in India, on personal qualities. The very change of management and possession may cause a falling off of receipts. In a suit for redemption of a usufructuary mortgage, the mortgagee is chargeable with profits actually received by him, and not with profits which he might have received with common care and attention. As an estimate of a preceding rental does not suffice to show actual receipts, the mortgagee is not chargeable on the basis of such an estimate. (Lord Chelmsford.) SHAH MUKHUN LALL v. BABOO SRFE KISHEN SINGH.

(1868) 12 M. I. A. 157 (192-3) = 11 W.R. P.C. 19 = 2 B L. B. P. C. 44 = 2 Suth. 190 = 2 Sar. 403.

BAR OF, BY LIMITATION-EFFECT OF, ON TITLE TO LAND.

-Limitation Act of 1859. See LIMITATION ACT OF 1908-ART. 148. (1900) 27 I. A. 103 (107-8)= 27 0. 1004 (1010-1).

MORTGAGE - USUFRUCTUARY MORTGAGE - | MORTGAGE - USUFRUCTUARY MORTGAGE -(Contd.)

Redemption of-Suit for-(Contd.)

DECREE IN.

-What plaintiff is entitled to recover under-Specification of-Necessity.

The mortgagor of property held on a Mokureuree lease brought a suit against the mortgagee and against the representative of the Zemindar who had granted the mokurruree. The suit was brought for recovery of the possession of the property and also for the redemption of the property. suit was dismissed by the first Court. On appeal, that decree was reversed by the lower appellate Court; that Court holding merely that the plaintiff had established his right; and its decree was affirmed by the High Court.

On further appeal their Lordships affirmed the judgment of the High Court but remanded the cause to the High Court with directions to amend their decree in conformity with their judgment, by declaring affirmatively what the plaintiff was entitled to recover (300). (Sir Montague E. Smith). LALAH SHAM SOONDUR LAL :, SOORAJ LAL

(1076) 3 Suth. 298 = Bald. 20. -Management of mertgaged property - Money " laid out" by mort gagee in-Allowance for-Salary to Manager

if and when included in.

Where a decree for redemption allowed to the mortgagee in possession "moneys laid out" by him in the management of the mortgaged property, held, that nothing could be allowed by way of disbursement or salary to a manager when no such salary was paid either in form or in substance. But where it appeared that the mortgagee's adoft son had managed the property, that, if he had not, a paid manager must have been appointed for the purpose, and that, though there was no agreement for the payment to the son of any salary or remuneration for his assistance, he had to live away from his father and to have a separate establishment for the purpose, held, that, though a salary could not be allowed as such, the cost of the separate maintenance of the son should be allowed as a disbursement or "Moneys laid out in management." *Held*, however, that neither a salary nor an allowance for the son's maintenance could be allowed for the period subsequent to the death of the mortgagee when the son himself became a mortgagee and managed the property for the benefit of himself and his co-mortgagees (247-9). (Lord Davey). KADER MOIDEEN P. NAPEAN

(1898) 25 I. A. 241 = 26 C. 1 (9-10) = 2 C. W. N. 665 = 7 Sar. 394.

DISCHARGE COMPLETE OF MORTGAGE DEBT-PROOF OF.

-Onus on mort gagor.

In a suit by mortgagors under an usufructuary mortgage to establish their right to redeem, for cancellation of the mortgage deed, possession of the lands, and payment of the surplus, it lies on the plaintiffs to show that the mortgagees were paid in full, out of their receipt. (Lord Chelmsford). SHAH MUKHUN LALL r. BABOO SREE KISHEN SINGH.

(1868) 12 M. I. A. 157 (192) = 11 W. R. P. C. 19 = 2 B. L. R P. C. 44 = 2 Suth. 190 = 2 Sar. 403.

INTEREST ON MORTGAGE AMOUNT-DEPOSIT OF WHOLE OR PART OF.

-Mortgagor's duty as to.

In a suit for redemption of a usufructuary mortgage, it is clearly not necessary for the mortgagor to deposit anything by way of interest on the amount secured by the usufructuary mortgage. He has a right to assume, until the contrary is shown, by taking an account, that that interest was covered by the rents and profits (413). (Sir James W. Colvile).
NAWAB AZIMUT ALI KHAN v. JOWAHIR SINGH.

(1870) 13 M. I. A. 404 = 14 W. R. P. C. 17 =

(Contd.)

Redemption of-Suit for-(Contd.)

LIMITATION FOR -SUSPENSION OF.

-Fusion of interests of mortgagor and mortgagee after accruing of right to redeem-No suspension on ground of. So: LIMITATION ACT-ART. 148.

(1913) 40 I. A. 74 (85) = 35 A. 227 (236-7).

LIMITATION BAR TO-PLEA OF-MAINTAINABILITY.

Decree for possession obtained by mortgagee in suit brought therefor after bar of limitation-Effect,

In 1904, the mortgagees under a usufructuary mortgage of the year 1842 instituted a suit against the mortgagors for possession of the mortgaged properties as mortgagees and obtained a decree based upon their rights as mortgagees. In a suit brought in 1907 for redemption of the same mortgage the mortgagees contended that the suit having been brought more than 60 years after the date of the mortgage was barred under Art. 148 of the Limitation Act, 1877. The mortgagors sought to get over this plea by contending that, inasmuch as, though the suit of 1804 was brought by the mortgagees after the period of 60 years provided by art. 148, they claimed the estate not, as absolute owners but only as mortgagees, they were estopped in the present suit from resisting the right to redeem by Expl. II to S. 13 of the Code of 1882. Held, over-ruling the contention, that the suit of 1904 was no bar.

The plea of the mortgagor that he was entitled to redeem was irrelevant to the suit of 1904 which was by the mortgagee for possession as such. The title of the mortgagor as mortgagor was not in question in that suit, nor could he as a defendant to that suit have converted it into one in which he could have obtained a decree for redemption (81-2). (Sir John Edge.) LALA SONI (1913) 40 I. A. 74= KAM D. KANHAIYA LAL. 35 A. 227 (233-4)=17 C. W. N. 605=11 A. L.J. 359=

13 M. L. T. 437=(1913) M. W. N. 470= 17 C. L. J. 488=13 Bom. L. R. 489=19 I. C. 391=

25 M. L. J. 131. -Decree prior restoring possession to mortgagee of mortgaged property wrongfully taken possession of by mortgagor-Declaration in, entitling mortgagee to hold possession till balance of mortgage money was fully paid to him-Effect. See LIMITATION ACT OF 1908-ART. 148. (1873) 20 W. B. 375.

-Lease by mort gagee to mort gagor after bar of limi tation-Description of lessor as usufructuary mortgage in -Effect.

After the expiry of the period allowed for redemption of a usufructuary mortgage the mortgagee granted a lease of the mortgaged property to the mortgagor, the lessor being described in the grant as usufructuary mortgagee. In a suit for redemption of the mortgage subsequently instituted by the mortgagor, he contended that the mortgagee was estopped from repudiating his character as mortgagee and that the description of the lessor in the lease amounted to a representation which he was bound to make good. Their Lordships over-ruled both those contentions.

If the lessor were seeking to impeach the lease on the ground that he was not usufructuary mortgagee he would be estopped. But the lessee had the full benefit of the lease, and for matters outside the lease, it contains nothing to preclude the lessor from asserting his true title (108).

In order to succeed on the other ground (that the decription of the lessor amounted to a representation which he was bound to make good) the mortgagors must show that the description of the lessor was an essential part of the contract, that the lessee made the contract in reliance on those terms, and that her position was in some way altered 2 Suth. 346 = 2 Sar. 573. by the terms in which her lessor spoke of himself. Unless

# MORTGAGE - USUFRUCTUARY MORTGAGE - MORTGAGE - USUFRUCTUARY MORTGAGE -

Redemption of-Suit for-(Contd.)

LIMITATION BAR TO-PLEA OF-MAINTAINABILITY -(Contd.)

the lessee could shew at least so much she would have no foundation for contending that her extinct right was revived or rather regranted, by the terms of the lease (108-9). (Lord Hobhouse.) FATIMUNNISSA BEGUM P. SOONDER DAS. (1900) 27 I. A. 103 = 27 C. 1004 (1012) = 4 C. W. N. 565 - 7 Sar. 718.

#### MESNE PROFITS PRIOR TO-MORTGAGOR'S RIGHT TO.

Defendant bona fide transferce for value without notice-Mortgage paid off out of usufruct years before.

The suit was for the recovery of possession of certain property with mesne profits for six years before suit. The plaintiff's case was that the suit property had been mortgaged with possession by their predecessors in interest to the predecessors in interest of the defendants, that the mortgage had been paid off out of the usufruct years before the institution of the suit, and that the plaintiffs were therefore entitled to recover possession with six years' mesne profits. The defendants were bone hide purchasers of the suit property for value, and without notice of the suit mortgage. And the plaintiffs were guilty of great laches in instituting the suit. Further, the case was far from being a clear one.

Held, that, under the circumstances of the case, the plaintiffs, though entitled to a decree for redemption, were not entitled to recover mesne profits for any period prior to the date of the suit, and were entitled to such profits only from the date of the suit (66-7). (Sir James W. Colvile.)
JUGGERNATH SAHOO P. SYUD SHAH MAHOMED HOS-SEIN. (1874) 2 I. A. 48 = 14 B. L. R. 386 = 23 W. R. 99 = 3 Sar. 419 - 3 Suth. 61.

#### NATURE OF-LIMITATION LAW APPLICABLE TO-RELIEF OBTAINABLE IN.

-Declaration of forfeiture-Suit for-Distinction. The present suit is one for redemption, not for declaring a forfeiture, and must be decided according to the rules applicable to the former suit. If the transaction were simply void, and no estate at all passed (under the mortgage), it is obvious that the remedy to recover the land would be a possessory suit; against which limitation would run from the moment of entry. It cannot be treated as a voidable or redeemable estate between Mortgagor and Mortgagee, for one purpose, rve., to escape the limitation

law, and as a void estate for another (189). (Lard Chelmsford.) SHAH MUKHUN LALL 2. BABOO SREE (1868) 12 M. I. A. 157= KISHEN SINGH. 11 W. B. P. C. 19 = 2 B. L. B. P. C. 44 = 2 Suth. 190 = 2 Sar. 403.

#### ONUS ON MORTGAGOR IN.

-Absolute title-Defence plea of, found against-Long possession with defendant.

The appeal arose out of a suit brought by the plaintiff to recover from the defendants certain lands as being part of the ancient jenm or domain of his family. By the plaintiff's own showing his family had been out of possession of the suit lands for nearly 120 years, and the defend-ants' family had been in possession of them for nearly 100 years. In order to avoid the effect of that long lapse of time, the plaintiff relied upon a series of mortgages executed by his family to the defendant's family or to persons who had transferred their interest to the defendant's family. Of those mortgages the latest was what was called an othi or usufructuary mortgage. If that mortgage could not be

## (Contd.)

Redemption of-Suit for-(Contd.)

ONUS ON MORTGAGOR IN-(Contd.)

proved, the long possession of the defendants would, under the law of limitation, bar the title of the plaintiff.

The defendants, instead of resting their defence simply upon possession, lapse of time, and lack of evidence on the plaintiff's part, set up the story, which was found to be false, that the jenm or domain of the lands in dispute never belonged to the plaintiff's family at all, but was from ancient and immemorial time the jenm of the defendant.

Held, that nevertheless, the plaintiff must recover by the strength of his own title, and he must prove the Otti mortgage set up by him (419), (Sir Arthur Hobbonse.) THEKKINIVETATH KIRANGATH MANAKKAL NARA-VANAN NAMBUDRIPAD P. IRINGALLUR THARAKATH SANKUNNI THARAVANAR. (1881) Bald. 418.

## SECOND SUIT-MAINTAINABILITY.

-Prior decree for redemption-Possession recovered by mortgagor under-Appeal by mortgagee from decree-Enhancement of mortgage amount in-Mortgagor's default to pay enhanced amount and restitution to mortgagee of possession and mesne profits for period of dispossession-Sale of equity of redemption in execution of decree for mesne profits and purchase thereof by mortgagee-Effect.

A decree for redemption of a usufructuary mortgage was passed under which the mortgagor was put in possession of the mortgaged property on payment of the sum decreed to the mortgagee. On appeal by the mortgagee, the amount payable on redemption was, however, increased. The mortgagor failed to pay the additional amount decreed on appeal whereupon the mortgagee applied to the original Court for possession and for mesne profits for the period during which he had been out of possession. An order for payment of mesne profits was made, and, in execution thereof, the mortgagee caused the sale of and purchased the equity of redemption himself.

In a second suit for redemption brought by an assignee of the mortgagor, on the ground that the order for payment of mesne profits was wholly without jurisdiction, that it and all the proceedings thereunder, culminating in the execution sale at which the mortgagee purchased were without jurisdiction and nullities and conveyed no title to the mortgageepurchaser, held, that the suit was wholly misconceived, and ought to be dismissed.

The Court which awarded the mesne profits had full jurisdiction in that behalf; if it exercised the jurisdiction wrongly, the persons aggrieved had their remedy under the provisions of the C.P.C., either by appeal to the High Court or by an application for revision. Objection was in fact taken under S. 311 of C. P. C. of 1882, to the sale for mesne profits which was disallowed, and there was no appeal from that order. (Mr. Amter Ali.) PARBHU DYAL v. KALYAN DAS. (1915) 48 I. A. 43 =

38 A. 163 = 20 C. W. N. 425 = 19 M. L.T. 206 = 3 L. W. 293 = (1916) 1 M. W. N. 234 = 23 C. L.J. 411 = 18 Bom. L. R. 382 = 33 I. C. 505.

## Sale on foot of-Suit for-Right of.

-Personal liability-Mortgage not containing-Effect. See MORTGAGE-USUFRUCTUARY MORTGAGE -DEED AMOUNTING TO AN-CHARGE OR.

(1916) 31 M. L. J. 251.

## Simple mortgage and—Combination of.

—Anomalous mortgage—Usufructuary mortgage merely—Test. See MORTGAGE—DEED OF—NATURE OF MORTGAGE CREATED BY-ANOMALOUS MORTGAGE,

(1919) 56 I. C. 717.

#### MORTGAGE - USUFRUCTUARY MORTGAGE - MUDDUD-MASH-(Contd.) (Contd.)

Simple mortgage and -- Combination of -(Contd)

- Anomalous mortgage or Test. See MORTGAGE-DEED OF-NATURE OF MORTGAGE CREATED BY ANOMALOUS MORTGAGE. (1926) 54 I. A 68 (77)= 50 M. 180.

- See MORTGAGE - DEED OF-NATURE OF MORT-GAGE CREATED BY-ANOMALOUS MORTGAGE,

(1929) 56 I. A. 299 4 Luck. 363.

.--- Failure of mortgagor to give possession to mortgagee-Decree for money and for sale-Mortgagee's right to. See MORTGAGE-SIMPLE MORTGAGE-USUFRUC-(1929) 56 I. A. 399= TUARY MORTGAGE AND. 4 Luck. 363.

#### Writing-Necessity.

-Transfer of Property Act - Law before.

Before the Transfer of Property Act came into force usufructuary mortgages could be created without any writing, outside the Presidency Towns, by simple delivery of possession. A mortgage made verbally was valid according to the law then in force (268). (Mr. Ameer Ali.) AHMAD RAZA r. ABID HUSSAIN. (1916) 43 I. A. 264-38 A. 494 (501) = 14 A. L. J. 1099 = 21 C. W. N. 265 = 24 C. L. 504 = 20 M.L T. 447 = (1916) 2 M. W.N. 548 = 5 L. W. 158 = 1 Pat. L. W. 90 = 18 Bom. L. R. 904 = 39 I. C. 11.

#### MORTGAGE-VALIDITY OF.

-Interest not awarded by decree-Mortgage for-Validity of-Interest allowed by executing Court and not allowed by it-Distinction between cases of. See MORT-GAGE-DECREE-INTEREST NOT AWARDED BY.

(1878) 5 I. A 78 (85) = 3 C. 602 (609-10).

Right to dispute-Acquiescence-Estoppel by-Void and voidable mortgages-Distinction. See WATAN-WATAN LANDS. (1900) 27 I. A. 86 = 24 B. 556.

#### MORTGAGE-WATAN LANDS.

-Mortgage of. See WATAN-WATAN LANDS-MORTGAGE OF.

#### MORTMAIN ACT.

-Inapplicability to India of. (Lord Brougham.) MAYOR OF THE CITY OF LYONS P. EAST INDIA CO.

(1836) 1 M. I. A. 175 (296) = 1 Moo. P. C. 175 = 3 State. Tr. (N. S.) 647=1 Sar. 107.

#### MOTOR CAR TRADE.

-Agent in-Position of See PRINCIPAL AND AGENT-AGENT-AGENCY. (1925) 49 M. 1. MOUJE.

-Meaning of.

Their Lordships accept the view expressed by Sadasivayar, in I. L. R. 38 M. 891 at 892 that the phrase "mouje" indicates "a village in which there were peasant proprietors owning cultivable lands even then" (at the time

Held that the word in the particular context did not merely mean a defined place. (Lord Atkin.) SEETHAYYA v. SUBRAMANYA SOMAYAJULU. (1929) 52 M. 453=

29 L. W. 804 = 33 C. W. N. 578 = A. I. R. 1929 P. C. 115 = 56 M. L. J. 730 (738).

#### MUDDUD-MASH.

-Nature of.

The nature of the property is not very clearly explained, but it is certain that it had the character of real estate, being part of the land revenue of a certain district original-

poses, or rather burthened with a religious obligation, and subject to it, to be enjoyed by the grantees for their own benefit. This property is denominated a muddud-math. (Mr. Baron Park:.) MEER USUD-OOLLAH v. MUSSUMAT BEELY IMAMAN. (1336) 1 M. I. A. 19 (39-40)= 5 W. R. 26 P. C. = 1 Suth. 46 = 1 Sar. 89.

#### MURDEBER

-Succession to estate of murdered-Right of-Public Policy. See HINDU LAW-INHERITANCE-EX-(1924) 51 I. A. 368= CLUSION FROM-MURDER. 48 B. 569.

#### MUSSULMAN WAKF VALIDATING ACT VI OF 1913.

-Not retraspective.

The Mussulman Wakf Validating Act, 1913, is not restrospective, and cannot be construed as validating deeds executed before its date. (Viscount Cave.) KHAJEH SOLEMAN QUADRI D. SALIMULLAH BAHADUR

(1922) 49 I. A. 153(165) = 49 C. 820(834)= 37 C. L. J. 56 = 21 A.L.J. 1 = A. I.R. (1922) P. C. 107= 31 M.L. T. 79=4 U. P. L. R. (P. C.) 70=

24 Bom. L.R. 1257 = 27 C. W. N. 101 = 69 I. C. 138= 43 M. L. J. 385.

(Sir John Wallis.) BALLA MAL v. ATA ULLAR KHANI (1927) 54 I. A. 372 (373) = 56 M. L. J. 168. -Wakf-Definition in Act of-Applicability to cast!

not governed by Act.

The definition of "wakf" in the Mussulman Wakf Validating Act of 1913 is a definition merely for the purposes of that Act and not necessarily exhaustive apart from that Act, and the question whether a deed is a wakfnama or not, when it arises, cannot be considered exclusively with reference to the definition of the word "wakf" in the Act (27). (Sir John Wallis.) MA MI v. KALLANDER (1926) 54 I. A. 23=5 Rang. 7= AMMAL.

25 A. L. J. 69 = (1927) M. W. N. 76= 38 M. L T. (P. C.) 53 = 4 O.W.N. 300 = 25 L. W. 679 = 6 Bur. L.J. 59 = 29 Bom. L. R. 772 = 100 I. C. 32 = A. I. R. (1927) P. C. 22 = 52 M. L. J. 362.

#### MUTATION.

#### Application for, on death of Share-holder.

-Practice of making-Proceeding on. On the death of a share-holder applications for mutation of names are made to the revenue authority of each village in the revenue papers of which his name had been entered as the owner of a share or shares by or on behalf of the persons claiming to be entitled to the share or shares of the deceased, and, when opposed, an inquiry is held by an official of the revenue authority. (Sir John Edgt.) MUSAMMAT BHAGWANI KUNWAR P. MOHAN SINGH.

(1925) 22 L.W. 211 = 29 C.W.N. 1037 = 23 A.L.J. 589 = 41 C. L.J. 591 = (1925) M. W. N. 421 = 88 I. C. 385 = A. I. B. (1925) P. C. 132 = 49 M. L. J. 55 (59).

#### Consent to.

Party in possession of portion of property-Mate tion in favour of-Consent to-Effect-Admission of title if amounts to.

In a case in which the surviving brother of a deceased person became exclusively entitled to his property on his death, mutation of names in respect of the deceased's property was effected in the following manner, vis., one-half into the name of the surviving brother and one-half into the names of two nephews of the deceased, the sons of a predeceased brother. The three persons signed a document in the mutation proceedings, in which it was stated that the surviving brother was in possession of one-half of the ly granted by the Moghul Government for religious pur- deceased's property, and the two nephews were in possession

### MUTATION-(Contd.)

Consent to-(Contd.)

sion of the other half. The document continued :- "There is no other legal heir except the deponents. The mutation in respect of the deceased's share in all the villages should be allowed and nobody has any objection thereto.

Held that the document contained no words that could be construed as amounting to an abandonment, as a result of compromise or otherwise, by the surviving brother of

his legal rights.

The document is merely a statement of the facts as they existed in regard to the possession of the property-the main point considered by the Revenue authorities upon applications for mutation of names-and, by its silence as to a compromise tends to support the conclusion that no compromise was ever made. (Sir Andrew Scoble.) CHOKHEY SINGH D. JOTE SINGH.

(1908) 36 I. A. 38 (41)=31 A. 73 (80)=5 M.L.T. 167= 9 C. L. J. 151 = 13 C. W. N. 274 = 11 Bom. L. R. 69 = 6 A. L. J. 100 = 12 O. C. 268 = 1 I. C. 166=

19 M. L. J. 123.

-Undue influence in procuring-Proof of.

The only question in the case was as to the validity of certain transactions which took place in May and June 1881, affecting the title to a moiety of a village called N. The parties to the transaction were, first, the plaintiff, the widow of one G, and, secondly, the defendant. D, under whom the other defendant, H, claimed by virtue of a deed

The village N stood in the name of G, husband of the plaintiff. He was recorded in the Collector's books as the owner. In May and June 1881, the plaintiff appeared before the patwari, acknowledged D's title to one moiety of the village, claiming the other moiety for herself, and a mutation of names was effected from that of G into those of the plaintiff herself and of D, one moiety each. The mutation of names was followed by possession on the part of D by receipts of rents and profits, and she was found to be in possession in a proceeding before the Revenue Court in November 1883, when she executed the deed of gift to H, and he applied for possession.

In a suit by the plaintiff for a declaration of title to the village N, and for the cancellation of the order of 27th June, 1881, for change of names in the record-of-rights, on the ground that the plaintiff's assent to such change had been obtained by intimidation, held, reversing the High Court and restoring the Court below, that the plaintiff had failed to prove that in effecting the mutation of names she acted under intimidation, and that her suit was rightly dismissed by the sub-Judge. (Lord Hobhoute.) HAR LAL (1889) 11 A. 399 = 5 Sar. 384.

v. SARDAR.

#### Deed-Mutation pursuant to.

-Presumption that it was made at instance of one of parties to deed.

When a mutation of names has been made pursuant to a deed the reasonable presumption is that it would not have been made except on the application of one of the parties to the deed, of the donor where he is proved to have been on the spot (30). (Sir John Wallis.) MA MIP. KALLANDER AMMAL. (1926) 54 I.A. 23 = 5 Bang. 7=

25 A. L.J. 69=(1927) M. W. N. 76= 38 M.L.T. (P. C.) 53=4 O. W. N. 300=25 L.W. 679= 6 Bur. L.J. 59 = 29 Bom. L. B. 772 = 100 I. C. 32 = A. I. B. (1927) P. C. 22 = 52 M. L. J. 362.

#### Effect of.

Proprietary title not conferred by.

In a case in which the right to the property of a deceased person devolved upon his surviving brother, it appeared that, soon after the death of the deceased, mutation of names Relevancy of same question in.

#### MUTATION-(Contd.)

Effect of-(Contd.)

in respect of his property was effected in the following manner, 2022, one-half into the name of the surviving brother and one-haif into the names of two nephews of the deceased, the sons of a predeceased brother.

Held, that that mutation of names by itself conferred no proprietary title on the nephews. (Sir Andrew Scoble.)

CHOKHEY SINGH P. JOTE SINGH.

(1908) 36 I. A. 38 (41)=31 A. 73 (79) as 5 M. L T. 167 = 9 C. L. J. 151 = 13 C.W.N 274= 11 Bom L R. 69 = 6 A L.J. 100 - 12 O. C. 268 = 1 I.C. 166 = 19 M.L.J. 123.

## Hindu Law-Ancestral Property.

-Mutation of names in respect of, in favour of eldestson on death of father-Effect of-Exclusion of other sons merely by reason of See HINDU LAW-ANCESTRAL PROPERTY-MUTATION OF NAMES, ETC.

(1926) 53 I. A. 220 (227-8)=48 A. 259.

Oudh Estate.

-Mutation of names in respect of-No transfer of estate by. See OUDH ESTATE-TRANSFER OF.

(1898) 25 I. A. 161 (177) - 26 C. 81 (100).

#### Proceedings for.

-Admission in, of legal title in third party-Mutation effected and possession given to third party pursuant to -Claim subsequent by legal owner inconsistent with admission-Maintainability-Est ppel-Limitation-Trust.

On the death of a talukdar, who was entered in List II of the Oudh Estates Act, and who remained legal owner until his death in 1878, his legal title passed to the plaintiff, A few days after the death of the talookdar, plaintiff and his cousin presented an application for mutation to their uncle K, therein admitting the title of K to succeed to the Estate; mutation was effected in favour of A'; and possession of the estate was handed over to him in consequence. In 1889, plaintiff, however, sued K for possession of the estate on the strength of his legal title, and K pleaded, inter alia, that, by reason of the mutation proceedings aforesaid and of plaintiff's representations and admissions therein of K's rights, plaintiff was debarred from recovering the estate. Held, that the mutation proceedings did not bar the right of the plaintiff to assert his legal title.

Supposing that in 1878 plaintiff believed the representations to be true and made them spontaneously, why should he not assert the true state of the case after he has learned it? It would be absurd to suppose that the plaintiff made any misrepresentation to the defendant; neither was the situation of the defendant altered in any way to his prejudice. No consideration was given by the defendant, nor is there anything in the transaction to create a trust. Possibly it might have given the defendant a possession on which time would run; but if so, time has not run long enough to create a bar. The defendant relied upon the admission of title made by the plaintiff; but a gratuitous admission may be withdrawn unless there is some obligation not to withdraw if and there is not here any title on which such an admission can rest. If then, there is no transfer, no estoppel, no har by time, no trust, why should not the plaintiff assert his legal rights, whatever he may, in ignorance of the facts or in deference to his uncle, or for any other cause not injurious to the defendant, have admitted? (177-8). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN v. SAR-DAR HUSSAIN KHAN.

(1898) 25 L A. 161= 26 C. 81 (100-1)=2 C.W.N. 737=7 Sar. 432.

-Adoption by deceased -Question as to-Relevancy of -Widow and brother of deceased-Proceedings between-Succession certificate proceedings between same parties-

THE STUE

#### MUTATION-(Contd.)

#### Proceedings for-(Contd.)

In proceedings, on the death of a Hindu for a mutation of names for the properties enjoyed by the deceased, and for a succession certificate for the collection of debts due to the deceased, in which proceedings the contesting parties are the brother and the widow of the deceased, the question whether the deceased had adopted a boy is an entirely irrelevant

The question of adoption was not, and could not have been, decided in either of those proceedings. It was foreign to the real questions in controversy. It was unnecessary and useless to raise it. (Lord Athinson.) LAL KUNWAR 2. CHIRANJI LAL (1909) 37 I. A. 1 (5-6)=

32 A. 104 (110) = 7 M.L.T. 57 = 11 C. L. J. 172 = 14 C.W. N. 285 = 12 Bom. L. R. 244 = 5 I. C. 249 = 20 M. L. J. 182.

-Heir alleged-Recognition by Crown of title of-Escheat-Crown's subsequent claim by-Maintainability-Estoppel. See ESCHEAT-CLAIM OF, BY ESCHEAT-MAIN-TAINABILITY-ESTOPPEL. (1868) 12 M.I.A. 448 (460).

-Jurisdiction in-Title-Possession-Inquiry as to -Scope of.

In mutation proceedings the Collector's business is to decide whether the title had been duly transferred, and not to proceed upon the basis, or to decide the fact, of possession (195). (Sir Arthur Hobboute.) BAIJNATH SAHAY v. RAGHUNATH PERSHAD SINGH.

(1882) 12 C. L. R. 186=4 Sar. 372=Bald. 437.

On an application for mutation of names, the Collector has only jurisdiction with respect to the possession, or that evidence of possession which the register affords, and that is the only matter which is dealt with on the mutation of names (48). (Sir Arthur Hobbonse.) RAM SAUP v. MUSSUMAT BELA. (1883) 11 I.A. 44=

6 A. 313 (319 20) = 4 Sar. 493. -Possession of the property is the main point considered by the Revenue authorities upon applications for mutation of names. (Sir Andrew Scoble.) CHOKHEY SINGH 2.

JOTE SINGH. (1908) 36 I. A. 38=31 A. 73(80)= 5 M. L. T. 167=9 C. L. J. 151=13 C. W. N. 274= 11 Bom. L.B. 69=6 A.L. J. 100=12 O. C. 268=

1 I. C. 166 = 19 M. L. J. 123. -Sa HINDU LAW - ANCESTRAL PROPERTY-MUTATION OF NAMES, ETC. (1926) 53 I.A. 220 (227-8)= 48 A. 259.

Nature of-Fiscal, not judicial.

Proceedings for the mutation of names are not judicial proceedings in which the title to and the proprietary rights in immoveable property are determined. They are much more in the nature of fiscal inquiries instituted in the interest of the state for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immoveable property may be put into occupation of it with greater confidence that the revenue for it will be paid (227). (Lord Atkinson.) NIRMAN SINGH P. LAL RUDRA PARTAB NARAIN SINGH. (1926) 53 I. A. 220 = 48 A. 529 = 3 O. W. N. 623=(1926) M.W.N. 716=25 A. L. J. 25= 28 Bom. L. R. 1409 = 44 C. L. J. 330 = 25 L. W. 1 =

29 O. C. 316 = A.I. R. (1926) P. C. 100 = 98 I. C. 1013 = 51 M. L. J. 836.

-Order in, referring party to Civil suit-Effect of, on onus of proof in such suit.

An order referring a party objecting to mutation of names in the Collector's Registry to a civil suit cannot, either in reason or law, invert the ordinary course of proof and presumption applicable in such a suit (307).

The very reason of such a reference is that the matter is not in the jurisdiction of the revenue officer (307). (Sir make laws,

MUTATION-(Contd.)

Proceedings for-(Contd.)

e i a mile Robert Phillimore.) JUGGUT MOHINI DOSSEE v. MUSSU-MAT SOKHEE MONEY DOSSEE. (1871) 14 M. I.A. 289= 10 B. L. R. 19 P. C. = 17 W. R. 41 = 2 Suth. 512=

Patwari's report in-Death of a person-Date of-Statement as to, in report-Evidentiary value. See EVI-DENCE-DEATH-DATE OF-PATWARI'S REPORT, ETC. (1902) 30 I. A. 27 (31)=25 A. 143 (151).

Statements made in-Admissibility in evidence of, in Civil suit subsequent. See EVIDENCE-COLLECTOR, ETC. -MUTATION PROCEEDINGS. (1927) 53 M. L. J. 392.

Title of one of parties to-Admission of, by opponent -Effect of-Estoppel by reason of. See ESCHEAT-CLAIM OF, BY ESCHEAT-MAINTAINABILITY-ESTOPPEL

(1868) 12 M. I. A.458 (469).

#### NATIVES.

Accounts—Keeping of—Habits of. See Accounts
-KEEPING OF—INDIANS—HABIT OF.

-Court-Appearance in-Reluctance as to, of natives of high rank. See EVIDENCE-NATIVES OF HIGH RANK. -Evidence of. See EVIDENCE, (1) HINDU TESTI-

MONY, (2) NATIVE TESTIMONY.

-Hindu-Concubine kept by-Communication by him of, to stranger Mahomedan, with particulars-Improbability of. See EVIDENCE-HINDU-CONCUBINE KEPT BY. (1871) 14 M. I. A. 346 (364-5)

-Land-Ownership of-Ideas as to-Community-Individuals-Right of. See LAND-OWNERSHIP OF-NATIVES IDEAS AS TO. (1926) 30 C. W. N. 961= A. I. B. (1926) P. C. 131 (134)

Time-Inaccuracy as to, usual. See EVIDENCE-WITNESSES-TIME. (1872) 14 M. I. A. 412 (421).

#### NATIVE CHRISTIANS.

-See UNDER CONVERTS.

#### NATIVE STATE.

British Crown-Relationship between-Control of British Crown over States-Nature and extent of-Dir tinction-Causes of.

Under the sovereign power delegated to the East India Company up to 1858, and since exercised direct ly on behalf of the Crown, new territories have been added to the actual dominions of the Crown; and under it, many and various powers, rights, and jurisdic tions have been acquired and exercised over territories which yet remain outside the King's dominions. As to the rights and powers of control possessed and exercised over the Native States in India with the corresponding restrictions upon the independent action of those States, some, no doubt, are the necessary consequence of the surrainty vested in the predominant power. Thus, as is recited in 39 and 40 Vict., c. 46, the Indian States, in alliance with the Crown, have "no connexions, engagements, or com-munications with foreign powers." But apart from and beyond the consequences, whatever they may be, flowing from this general source, rights of very varying kinds have been established in connexion with the several States. They The Indian Foreign have different historical origins, Jurisdiction and Extradition Act (XXI of 1879) recites that by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor-General of India in Council has power and jurisdiction within divers places be yond the limits of British India." And that Act proceeded to regulate the exercise of that jurisdiction so far as it was competent for the Indian Legislature to do so, that is to say, so far as it affected persons for whom that Legislature could

## NATIVE STATE-(Contd.)

Such rights over foreign territory differ not only in origin but in kind and in degree in the cases of different States; so that in each instance in which the nature or extent of such rights becomes the subject of consideration, inquiry has to be made into the circumstances of the particular case. (Size Arthur Wilson.) HEMCHAND DEVCHAND F. AZAM SAR-KARLAL CHHOTAM LAL. (1905) 33 I. A. 1= 33 C. 219 (243-4) = 10 C.W.N. 361 - 8 Bom. L. R. 129 = 3 A. L. J. 250 = 3 C.L. J. 395 = 1 M. L. T. 115-

9 Sar. 5=16 M. L. J. 115. Cession of British territory to. See CESSION OF TERRITORY-BRITISH TERRITORY-CESSION TO NATIVE STATE OF

Court of-British Indian Court-Jurisdiction of-Question as to-Importance and nature of-Liability or non-liability of defendant depending upon it-Effect. See JURISDICTION — BRITISH INDIAN COURT — NATIVE STATE—SUBJECT OF. (1925) 53 I. A. 58 = 53 C. 88.

-Court of-Judgment ot-Foreign judgment if a. See JUDGMENT-FOREIGN JUDGMENT-NATIVE STATE. (1894) 21 I. A. 171 (184) = 22 C. 222 (237).

Faridkote-Position of-Foreign State.

Faridkote is a Native State, the Rajah of which has been recognised by Her Majesty as having an independent civil, criminal and fiscal jurisdiction (184). (Earl of Selborne,) SIRDAR GURDYAL SINGH v. RAJAH OF FARIDKOTE.

(1894) 21 I. A. 171 = 22 C. 222 (237)= 112 P.R. 1894 = 6 Sar. 503 = 4 M.L.J. 267.

Railways in-Criminal jurisdiction of British Courts on-Grant of Scope and effect-Offence in British territory-Offender at a station on a railway in Nizam's Dominions-Arrest of-Legality.

Where the question was as to the legality of the arrest of Y, a native of the Nizam's State, while he was at the station on a railway which was totally situated within the dominions of the Nizam, and it appeared that the arrest was made in pursuance of a warrant issued by a Magistrate at Simla for an offence committed in British territory and that the only authority relied upon in support of the power of the British Government to execute a criminal process in the dominions of the Nizam was the grant to them by the Nizam of a criminal and civil jurisdiction "along the line of railway within his dominions as is the case on other lines running through independent states", held, that the jurisdiction granted was confined to offences committed on the railway, or in any way connected with the administration of the railway and did not extend to offences committed in British territory. Crime is in its essential nature local. (Lord Halsbury, L. C.) MUHAMMAD YUSUF-UD-DIN D. THE (1897) 24 I.A. 137 - 25 C. 20 = QUEEN-EMPRESS. 2 C. W. N. 1 = 6 P. R. 1897 (Cr.) = 7 Sar. 239.

-Suit in-Injunction restraining-Suit for-British Indian Court-Jurisdiction to entertain. See C. P. C. OF 1908, S. 11-CASES UNDER-BRITISH INDIAN COURT. (1916) 36 I. C. 710.

#### NATTUKOTTAL CHETTIES.

Banking firm of - Deposit with, under heading " A maral B" .- Liability in respect of to A or to B-Payment to maraldar B if a good discharge-Maraldar--Position and rights of.

In the year 1888 the widow of R, a Nattukottai Chetti, handed over a sum of Rs. 5,000 to her father, V, to be deposited by him with a certain Chetti firm in Rangoon, where high rates of interest prevalled. The deposit was duly made with the agreed firm, but in 1892 the fund was ransferred by V's firm (known by the initials A. M. V. R.)

## NATTUKOTTAI CHETTIES-(Contd.)

made. It was not done at the instance of A's witlow or after consultation with her, and it was evidently a mere change of investment made at the assumed discretion of V. The V. E. A. firm credited the fund, which then amounted to over Rs. 10,000, in their books under the heading "K. M. A. R. R. M." (which denoted the firm of R), "maral A. M. V. R,"

In 1895 a portion of the amount was withdrawn, and shortly afterwards there was a further deposit. The withdrawal and further deposit were apparently made by the A. M. V. R. firm, and there was no direct dealing between either the R. M. A. R. R. M. firm or A", widow and the V. E. A. firm. Interest was duly credited on the deposits by the V. E. A. firm, and accounts were rendered annually to the A. M. V. R. firm, and that continued till 1904, when the A. M. V. R. firm, having opened a branch of their own in Rangson, the balance of the fund was at their request paid over to them by the V. E. A. firm and the V. E. A. deposit account was finally closed. During the whole of that period there was no communication of any sort between R's firm or R's widow and the V. E. A. firm, and no reference was made to either of them or to the appellant, the adopted son of R, who was then of full age, when the V. E. A. account was closed. Between 1904 and 1917, when the suit was filed, A", widow and the appellant, her adopted son, made numerous withdrawals from the A. M. V. R. firm, and apparently regarded it as solely responsible to them for the deposit.

Held, affirming the High Court, that, as regards the liability of the V. E. A. firm to the appellant for the fund which had been deposited with them by V's firm, no conclusion could be based upon the mere use of the word "muruf"; that it was a question to be decided upon all the circumstances of the case whether the intention was that Vand his firm, while remaining directly responsible to those to whom the beneficial interest in the fund belonged, should have authority to change its investment from time to time and to give a valid discharge for its repayment, and that, in view of the relationship of the parties, the course of dealing between them, and the other facts of the case, the only possible inference was that V and his firm were alone to be responsible to the appellant and his mother, and that the repayment in 1904 by the V.E.A. firm to V's firm, with whom alone they had dealt, was a good discharge of their liability.

The maraldar is clearly something more than a bare agent, the limit of his powers and responsibilities depending upon the understanding between the parties. (Sir George Loundes.) ARUNACHALAM CHETII v. VAYIRA-(1929) 119 I. C. 629 - 30 L. W. 1028 = VAN CHETTI. 50 C. L. J. 551 = A. I. R. 1929 P. C. 254 =

57 M. L. J. 628.

Caste of, See HINDU LAW-CASTE-NATTU-KOTTAI CHETTIES. (1921) 48 I.A. 539 (548)= 44 M. 740 (746)

-Nagarathars-Kilamadam Swamiyar of-Appointment to office of - Right of - Last holder of office-Family of last holder in default of appointment by him-Right of -Evidence.

The question was as to the right to appoint to the office of priest or Kilamadam Swamiyar of the Nattukottai

Held, on the evidence, affirming the court below, that according to the usage of the institution in question, the right of appointment vested in the first instance in the last holder of the office, and that in default of appointment by him, the right vested in the family of the last holder. to another Rangoon firm known as V. E. A. There was (Lord Phillimore.) MANICKAVACHAGA DESIKAR v. nothing to show under what circumstances that transfer was PARAMASIVAN. (1928) 33 C.W.N. 382 = 56 M.L.J. 121.

#### NATTUKOTTAI CHETTIES-(Contd.)

-Partition among-Patni bhaga division-Moopu-Custom of. See HINDU LAW-JOINT FAMILY-PARTI-TION-NATTUKOTTAL CHETTIES. (1921) 48 I.A. 539= 44 M. 740.

 Penang - Agents or attorneys through whom business carried on in-Functions and powers of.

The relation in which these attorneys or agents (through whom Nattukottai Chetties carry on business in Penang), when engaged in a money-lending business, stood to their principals, whether the latter were individuals or firms, their functions and powers, are well and authoritatively described as follows :-

' First, when a local representative of a Chetty firm carries on the business under the Vilasam of the firm coupled with his own distinct name, the announcement to to the ex ternal world in general is that, whether a co-partner with, or a mere agent of, other persons, he is to be looked on as a principal. It is to be noted that the Vilasam of a firm is not its full style. Next, a local representative of the type described does not label himself as simply an agent. He regularly sues as a principal on mortgage deeds, bills of sale and promissory notes. The title of his copartners or principals to immoveables granted in form to him is never abstracted or otherwise shown on the occasion of any sale or qualified disposition. The rights of his principals or co-partners are in truth behind the curtain, much to the disadvantage of the Government." (165-6,) (Lord Atkinson.) SOMASUNDARAM CHETTY D. SUBRA-(1926) 25 L.W. 163= MANIAN CHETTY. (1926) M.W.N. 832 = 4 O.W.N. 1 =

A.I.R. 1926 P. C. 136 = 99 I. C. 742. -Penang-Business carried on through attorney and agent in-Vilasam of firm-Agent's or attorney's name-Coupling of-Practice of.

It is the practice for Nattukottai Chetty firms carrying on business in Penang to carry on their business through an attorney and agent and to describe and style the firm by its Vilasam or mark coupled with the name of its Penang agent for the time being (165). (Lord Atkinson.) SOMA-SUNDARAM CHETTY P. SUBRAMANIAN CHETTY

(1926) 25 L. W. 163=(1926) M.W.N. 832= 4 O.W.N. 1 = A.I.R. 1926 P. C. 136 = 99 I.C. 742.

Shop of -What it consists of.

His shop is of a very modest character and consists of a wooden box, a safe and a mat, (Lord Datey.) BHOY HONG KONG v. RAMANATHAN CHETTY.

(1902) 29 I.A. 43 (48)= 29 C. 334 (339)= 6 C.W.N. 401 = 4 Bom. L.B. 378 = 8 Sar. 253.

NAVIGATION.

-See SHIP (SHIPPING.)

## NAWAB NAZIM'S DEBTS ACT (XVII OF 1873).

Commissioners appointed under-Finding of.

Property being held by Government freed and discharged from all claims and incumbrances-Finding of-Jurisdiction as to-Claim inconsistent with-Maintainability in Civil Courts,

The plaintiffs claimed to be entitled to one-eighth of a perpetual annuity of Rs. 600 a month, which was granted in 1858 to their father M, by the late Nawab Nazim. They demanded payment of the annuity with arrears from the Government of India, on the ground that the Government held property on which, as they alleged, the annuity was charged. For the purposes of the suit the plaintiff's limited their claim to pergunnah G, which was the property of the Nawab in 1858, when the annuity was granted, and was at the date of the suit held by the Government.

Complying with the exigency of the Nawab Nazim's Debts Act of 1873, the plaintiff had brought in their claim Nazim".

NAWAB NAZIM'S DEBTS ACT (XVII OF 1873)-(Contd.)

Commissioners appointed under-Finding of-(Contd.)

before the Commissioners appointed in pursuance of that Act. The Commissioners rejected it altogether. Their finding applied to pergunnah G was that the pergunnah was held by the Government for the purposes declared in the Act, freed and discharged from all claims and incumbrances, including the alleged claim or incumbrance of the plaintiffs.

Held, that such a finding was within the competence of the Commissioners and was a bar to the plaintiff's claim (98). (Lord Macnaghten.) OMRAO BEGUM v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1892) 19 LA. 95= 19 C. 584 (590-1)=6 Sar. 192.

-Review of-Civil Courts-Jurisdiction-Harsh or unfair exercise of provers-Remedy in case of.

Their Lordships have no power to review the findings of the Commissioners appointed in pursuance of the Nawab Nazim's Debts Act, 1873; nor is it within their province to express any opinion upon their conduct. The Commissioners were invested with arbitrary powers. If they used those powers harshly, otherwise than in accordance with the principles of fairness and justice to which they were required by the Act to conform, the only remedy open to persons who might conceive themselves aggrieved was to appeal to Government. The Government had the power of removing the Commissioners or permitting re-course to be had to courts of justice (98.9). (Lord Macnaghten.) OMRAO BEGUM v. SECRETARY OF STATE (1892) 19 LA. 95 = FOR INDIA IN COUNCIL. 19 C. 584 (591)=6 Sar. 192

#### Object of.

-The object of this Act was, as stated in the preamble, to put a stop to various suits, to ascertain what property with respect to which there had been some disputes was of was not held by the Government of India for the purpose of upholding the dignity of the Nawab Nazaim, and for the purpose of exempting him for the future from being such in the Courts (43). (Sir Robert P. Collier.) BEGUM P. GOVERNMENT OF INDIA. (1882) 10 I.A. 3 9 C. 704 = 12 C L.B. 595 = 4 Sar. 419.

Machinery employed to attain.

The object of the Nawab Nazim's Debts Act of 1873 was, as stated in the preamble, to put a stop to various suits, to ascertain what property with respect to which there had been some disputes was or was not held by the Govern ment of India for the purpose of upholding the dignity of the Nawab Nazim, and for the purpose of exempting him for the future from being sued in the Court. The Act pointed certain Commissioners for the purpose of determin ing what claims or debts were enforceable against the Nawab Nazim, and how much it was equitable to pay is respect of them, and gave them this jurisdiction withed their being bound by any previous agreement or judical proceeding (43). (Sir Robert P. Collier.) (MRAO BEGUN (1882) 10 LA. 39= P. GOVERNMENT OF INDIA. 9 C. 704 (710) = 12 C.L.B. 595 = 4 Sar. 419.

S. 12.

#### COMMISSIONERS.

-Jurisdiction of-Property conveyed by Name Nazim to his son before Act-Decision that it is Nisand property-Jurisdiction as regards.

Under S. 12 of the Nawab Nazim's Debts Act of 1873 the Commissioners are to ascertain " what jewels and in moveable property are held by the Government of India for the purpose of upholding the dignity of the Navab

## NAWAB NAZIM'S DEBTS ACT (XVII OF 1873)- NAZUL PROPERTY-(Contd.)

S. 12-(Contd.)

COMMISSIONERS-(Contd.)

In a case in which the Commissioners ascertained and certified that a certain Zemindary was nizamut property (i.e., property held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being), held that the fact the property had, before the passing of the Act, been conveyed by the Nawab Nazim to his son, did not deprive the Commissioners of jurisdiction to deal with the question (44). (Sir Robert P. Collier.) OMRAO BEGUM v. THE GOVERNMENT OF INDIA.

(1882) 10 I.A. 39=9 C. 704 (710-1)=12 C.L.R. 595= 4 Sar. 419.

-Powers of-Control of, by words in Preamble of Act -Permissibility.

Their Lordships are of opinion that the power of the Commissioners under S. 12 of the Act is by no means controlled, as it has been contended, by any words in the preamble, but must be construed according to the plain meaning of the language (44). (Sir Robert P. Collier.) OMRAO BEGUM D. GOVERNMENT OF INDIA.

(1882) 10 I.A. 39 = 9 C. 704 = 12 C.L.R. 595 = 4 Sar. 419.

-Property conveyed by Nawab Nazim before Act whether Nizamut property or not-furisdiction to decide.

It was contended on the part of the plaintiffs-appellants that, the Nawab Nazim having admittedly executed a conveyance of the suit property to the second defendant in the year 1859, it was not what may be called Nizamut property, and that the Commissioners had no jurisdiction to deal with it or to declare it to be Nizamut property whether this property had been conveyed to the 2nd defendant; whether the conveyance was valid; whether it was voluntary; whether it was collusive; or whether it was revocable-all these were questions which would come under the jurisdiction of the Commissioners to decide under S. 12 of the Nawab Nazim's Debts Act of 1873; and they have held that this property was immoveable property held by the Government for the purpose of upholding the dignity of the Nawab. Their Lordships have no doubt that was within the jurisdiction of the Commissioners (43-4). (Sir Robert P. Collier.) OMRAO BEGUM D. GOVERNMENT OF INDIA. (1882) 10 I.A. 39 = 9 C. 704 = 12 C.L.B. 595 =

Property rightly declared by, to be Nizamut property

-Suit in Civil Court in respect of -Maintainability. Where, acting within their jurisdiction, the Commissioners rightly declare certain property to be Nizamut property, a suit in respect of such property in the Civil Court cannot proceed (44). (Sir Robert P. Collier.) OMRAO BEGUM v. GOVERNMENT OF INDIA.

(1882) 10 I. A. 39 a 9 C. 704=12 C. L. B. 595=4 Sar. 419.

CONSTRUCTION OF.

-Not controlled by preamble of Act.

The power of the Commissioners under S. 12 of the Nawah Nazim's Debts Act of 1873 is by no means controlled, as it has been contended, by any words in the preamble but must be construed according to the plain meaning of the language (44). (Sir Robert P. Collier.) OMRAO BE-GUM v. THE GOVERNMENT OF INDIA.

(1882) 10 I. A. 39=9 C. 704 (710)= 4 Sar. 419=12 C. L. B. 595.

#### NAZUL PROPERTY.

-Meaning of.

Nasul property is State property which accrues to the State from forfeiture, lapse, or any other cause (68). (Sir

Robert P. Collier.) NAWAB MALKA JAHAN SAHIBA v. DEPUTY COMMISSIONER OF LUCKNOW,

(1879) 6 I. A. 63 = 3 Sar. 244 = 3 Suth. 584 = Bald. 194 = R. & J.'s No. 55.

#### NEGLIGENCE.

-What amounts to, See Law-LIABILITY IN-FAULT OR, ETC. (1922) 32 M.L.T. 36 (38) (P.C.).

-Contractor-Dangerous articles-Installation of-Negligence in-Accident due to-Liability for. See DANGEROUS ARTICLES. (1909) 14 C. W. N. 158 (163-4).

-Dangerous articles-Person installing or sending forth-Duty on part of-Accident-Death or injuries due to-Liability for-Proximate cause of accident conscious act of another volition-Effect. See DANGEROUS ARTI-CLES. (1909) 14 C. W. N. 158 (163-4).

-Death caused by-Damages for-Legal personal representative of deceased-Right to suc.

By the Common Law the legal personal representative of a person whose death is caused by the negligence of another has no right to sue for damages (207). Viscount Cave.)
EDITH MAY WALPOLE P. CANADIAN NORTHERN RAIL-WAY COMPANY. (1922) 32 M. L. T. 205 (P. C.).

-Definition of.

Negligence consists in the omitting to do something that a reasonable man would do, or in the doing something that a reasonable man would not do, in either case unintentionally causing mischief to a third party (386). (Sir Robert P. Collier.) MADRAS RAILWAY COMPANY v. ZEMINDAR OF CARVATINAGARAM. (1874) 1 I. A. 364=

14 B. L. R. 209 = 22 W. R. 279 = 3 Sar. 391.

-Property-Damage caused by negligence to-Owner's right to-Contributory negligence on his part-Effect-English law—Canadian law. See DAMAGES—PROPERTY. (1922) 32 M.L.T. 36 (41) (P. C.).

-Railway Company-Negligence of-Damages for-Suit for--Onus on plaintiff, See RAILWAY COMPANY-NEGLIGENCE OF.

——Rain unusual—Damage caused by—Liability of Cor-poration for—Negligence of Corporation—Lower Canada— Law in. See NEGLIGENCE-VIS MAJOR

(1922) 32 M.L.T. 36 (P. C.).

-Sudden emergency-Negligence in-What amounts to. See CONTRACT ACT, S. 151. (1917) 8 L. W. 4 (8-9).

Vis major-Rain unusual-Damage caused by-Liability of Corporation for-Lower Canada-Low in.

In consequence of unusual rains the sewers in the City of Montreal got flooded and the plaintiff's cellar was damaged by water. It was found, however, that if the Corporation had provided safety valves, the damage could have been

Held, that under the provisions of Lower Canada the Corporation was liable for the damage caused, as, though the unusual rain might be described as being force majeure, the flooding might have been avoided by the Corporation by adopting proper means. (Lord Dunedin.) CITY OF MON-TREAL P. WATT AND SCOTT, LTD.

(1922) 32 M. L. T. 36 (P. C.).

#### NEGOTIABLE INSTRUMENT

BANK NOTE ISSUED BY PRIVATE BANK-MUTILATION BY ACCIDENT OF.

BILL OF EXCHANGE.

HUNDI.

MATERIAL ALTERATION OF.

MATE'S RECEIPT IF A.

OPERATIVE PART OF.

PROMISSORY NOTE.

SALE, ENDORSEMENT, ASSIGNMENT OF-POWER OF, CONFERRED.

TRANSFEREE OF-NEGLIGENCE OF.

## accident of.

-Liability of Bank for payment in case of-Conditions-Note identifiable but number missing-Effect.

On a claim for payment made against a private Banking Corporation on a bank-note issued by it but damaged by honest accident, it is essential to investigate whether there is sufficient of the note remaining to establish its identity as a note of the bank, and to contain all the necessary elements that render it valid and effectual as a negotiable document. To some extent this must depend upon verbal evidence as well as upon pieces of the document. These pieces must be identified, their condition must be explained, and they must be shown to be parts of one and the same instrument. Where every one of these conditions has been satisfied, where it is not denied that the pieces are pieces of one of the notes of the defendant bank, and where it is not, and could not not be, suggested that the missing particles could be used in building up another note, the Bank cannot refuse payment on the ground that the number is missing. (Lord Buckmaster.) HONGKONG AND SHANGHAI HANKING CORPORATION v. LO LEE SHI. (1928) 110 I. C. 127= 28 L. W. 880 = A. I. R. 1928 P.C. 116= 55 M. L. J. 627.

Bill of Exchange.

AGENT. BANKER'S CHEQUE. BILL PAYABLE AFTER DATE. BILL PAYABLE AT, OR A CERTAIN TIME AFTER, SIGHT -PRESENTMENT FOR ACCEPTANCE OF. DRAWER OF. INDORSER OF. MATERIAL ALTERATION OF. OPERATIVE PART OF. PRESENTMENT FOR ACCEPTANCE OF. SHIPPING COMPANY-SHIPPER,

#### AGENT.

-Endorsement of bill-Authority for-Proof of.

A party resident at Baroda indorsed two Hoondies, or Bills of Exchange, in the name of a firm carrying on the business of banking at Surat alleging himself to be the Gomastha or Agent of the firm, and afterwards, on the Bills being dishonoured, absconded. Held, that in order to fix the firm at Surat with the amount of the Bills, clear evidence ought to have been produced of the authority to act as Gomastha, and their Lordships, not being satisfied with the evidence admitted in the Courts below, reversed the decrees of both the Zillah and Sudder Courts with costs. (Lord Brougham.) MADHO ROW CHINTO PUNT GOLAY P. BHOOKUN DAS. (1837) 1 M. I. A. 351=1 Sar. 128= 5 W. R. 33 (P. C.) = 1 Suth. 54.

-Entrustment of bill to, for sale-Misapplication of sale proceeds by him-Principal's right to proceed against purchaser in case of -Conditions.

Where Bills of Exchange are remitted for sale, and the proceeds directed to be applied to a specific purpose, the property in the bills remains in the remitter until the purpose for which they were remitted is satisfied. And, where the money realised by the sale was wrongfully applied by the Agent, held by the Judicial Committee, affirming the Supreme Court, that the remitter was entitled to recover the value of the bills in assumpsit, upon an indebitatus count, from the purchaser of them, who had notice of the purpose for which they were remitted, and the misapplication of the Bill was presented in due form at Hongkong, and notice

#### NEGOTIABLE INSTRUMENT—(Contd.)

Bill of Exchange-(Contd.)

AGENT-(Contd.)

Bank Note issued by Private Bank—Mutilation by SEAL v. LaunceLot Dent. (1853) 5 M. I. A. 328= 8 Moo. P. C. 319 = 1 Sar. 450.

#### BANKER'S CHEQUE.

-Distinction.

A banker's cheque is a peculiar sort of instrument, in many respects resembling a bill of exchange, but in some entirely different. A cheque does not require acceptance; in the ordinary course it is never accepted; it is not intended for circulation, it is given for immediate payment; it is not entitled to days of grace; and though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a bill of exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place. The case of a cheque is not similar to that of regular Bills of Exchange, inland or foreign, drawn payable at or after date (69-70). (Mr. Baron Parke.) RAMCHURN MULLICK v. LUTCHMEECHUND (1854 9 Moo. P. C. 46= RADAKISSEN. 2 C. L. R. (Eng.) 1664.

#### BILL PAVABLE AFTER DATE.

Presentment of, at due date-Due notice-Necessity. With respect to all Bills of Exchange payable after date it is fully settled, that neither the want of presentment at the time the Bill is due, nor the want of due notice, are excused, because the drawer has continued solvent, or the holder incurred no loss by non-presentment, or want of regular notice (68). (Mr. Baron Parke.) RAMCHURN MULLICK D. LUTCHMEECHUND RADAKISSEN.

(1854) 9 Moo. P. C. 46=2 C. L. R. (Eng.) 1664.

BILL PAYABLE AT, OR A CERTAIN TIME AFTER, SIGHT-PRESENTMENT FOR ACCEPTANCE OF.

-Time of-Reasonableness of-Decision of Court below as to-Privy Council's interference with.

In a case in which the Court decided that a Bill of Exchange payable at, or a certain time after, sight, was not presented for acceptance in a reasonable time, their Lordships observed that they would not reverse the judgment below on a matter of fact, unless they were quite satisfied that the Court below were wrong, because their knowledge of local circumstances and the character and appearance of the witnesses enabled them to form a more correct opinion than a tribunal of appeal in England possibly could (67). (Mr. Baron Park) RAMCHURN MULLICK D. LUTCHMEECHUND RADA-KISSEN. (1854) 9 Moo. P. C. 46=2 C L. R. (Eng.) 1664

Time of-Reasonalleness of-Evidence.

The appeal arose out of an action of assumpsit on a foreign Bill of Exchange, brought by the appellant, 25 endorsee, against the respondents, as drawers. The Bill was drawn at Calcutta, on 16-2-1848, on Dent & Co., at Hoos kong, payable to the respondents, or order, sixty days after sight, and endorsed by them in blank, and delivered to M. and by him endorsed to the appellant.

The Bill was transmitted to Hongkong, and presented on the 24th of October in that year, to Dent & Co., for acceptance, who refused to accept the same, whereupon the

Bill of Exchange-(Contd.)

BILL PAYABLE AT OR A CERTAIN TIME AFTER, SIGHT-PRESENTMENT FOR ACCEPTANCE OF-(Contd. )

thereof was served on the respondents, at their house of business in Calcutta, by the appellant. The respondents, however, refused to pay the amount due on the Bill, whereupon the appellant, as indorsee, brought the action out of which the appeal arose against them as drawers and endorsers. The question for decision was, whether the Bill of Exchange on which the action was brought, was presented for acceptance in a reasonable time,

The Court below held that the presentment was not made in reasonable time. The Court below concluded from the evidence, that the Bill was improperly detained for a portion at least of the time which elapsed between 16-2-1848, when it was drawn, and the 28th of July, when it was endorsed over by M, the then holder, to the plaintiff. They thought that the evidence proved, that for the whole of that time, a period of more than 5 months, Bills on China were altogether unsaleable in Calcutta; that such was the permanent and regular state of the market; and that although, if there was a reasonable prospect of the state of things being better in a short time, the holder would have had a right, with a view to his own interests, to keep the Bill for some time, he had no such right when there was no hope of the amendment of that state of thing.

Held that, the evidence fully justified the conclusion drawn from it by the Court below, and that the Court below, deciding on facts as a jury, were perfectly right (67). (Mr. Baron Parke.) RAMCHURN MULLICK v. LUTCHMEE-(1854) 9 Moo. P. C. 46= CHUND RADAKISSEN. 2 C. L. R. (Eng.) 1664.

-Time of-Reasonableness of-Question as to-Mixed late and fact.

The question whether a Bill of Exchange, payable at, or a certain time after, sight, has been presented for acceptance in a reasonable time is a mixed question of law and fact, for the determination of a jury, with the assistance of a Judge, where trial by jury exists, and for the determination of the Court, where they exercise the functions of a jury as well as those of Judges (66). (Mr. Baron Parke.) RAM-CHURN MULLICK v. LUTCHMEECHUND RADAKISSEN.

(1854) 9 Moo. P. C. 46=2 C. L. R. (Eng.) 1664.

Time of-Reasonableness of-Rule as to-Applicability-Solvency of drawer-Loss by lacker-Proof of-Absence of-Effect.

It was urged that as the drawers remained perfectly solvent from the date of the Bill (payable at, or a certain time after, sight) to the present time, the rule as to presenting in a reasonable time did not apply, and that there was no laches which would constitute a defence by the drawers, unless they had incurred a loss by that laches. The Court below decided that the solvency of the drawers and the want of proof of actual loss by laches, constituted no answer to the objection

We think the Court below were right. We agree with the Court below, that the continued solvency of the drawers does not prevent the application of the rule, that the Bill must be presented in a reasonable time, with reference to the interest of the drawer to put the Bill into circulation, or the interest of the drawee to have the bill speedily presented (68.9). (Mr. Baron Parke.) RAMCHURN MULLICK v. LUTCHMEECHUND RADAKISSEN.

(1854) 9 Moo. P. C. 46=2 C. L. R. (Eng.) 1664.

Time within which it must be made-Rule as to. There is as little doubt, that it is now much too late to

## NEGOTIABLE INSTRUMENT-(Contd.)

Bill of Exchange-(Contd.)

BILL PAYABLE AT, OR A CERTAIN TIME AFTER, SIGHT-PRESENTMENT FOR ACCEPTANCE OF-

acceptance of a foreign or other Bill of Exchange, payable at or a certain time after, sight. How otherwise can the time the Isill has to run be fixed, where it is payable after sight? Indeed, the statute of 3 and 4 Anne, c. 9, s. 7, makes an inland Bill of Exchange, received in satisfaction of a debt, a full and complete payment if the holder does not take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and, therefore, in some cases, undoubtedly, it requires the presentment for acceptance; and has the law as been long settled that the holder of a Bill, payable after date, is not obliged to present it for acceptance, it must apply to Bills payable on or after sight. Presentment, then, being necessary for acceptance, the inconvenience of an indefinite postponement of the time of payment of such a liftl, which the unlimited power of presenting when the holder might please would necessarily lead to, long ago suggested that there should be a limit. In some foreign nations it is provided for by positive enactment, fixing the times of presentment with reference to the places where the Bill is drawn, and where the drawee resides, as in the French " Code de Commerce." But in our law, there being no such fixed limit by enactment, where there is no usage of trade to fix the time, it has long been established, that such Bill must be presented in a reasonable time. This rule is adopted for want of a better law not defining the time precisely (65-6). (Mr. Baron Parke.) RAMCHURN MULLICK v. LUTCHMEECHUND RADA-KISSEN. (1854) 9 Moo. P.C. 46 = 2 C. L. R. (Eng.) 1664.

DRAWER OF.

-Acceptor's credit-Failure to avail himself of-Acceptance given at a time when acceptor owes no money to drawer-Discounting of-Effect.

When a drawer discounts an acceptance which acceptance is given at a time when the acceptor owes no money to the drawer, it is idle to say that the drawer does not avail himself of the acceptor's credit (57). (Lord Dunedin.) KAR-MALI ABDULLA ALLARAKHIA D. VORA KARIMJI JIVANJI. (1914) 42 I. A. 48 = 39 B. 261 (278) = 17 M. L. T. 35 = 19 C. W. N. 337 = 2 L. W. 133 = (1915) M. W. N. 606 = 13 A. L. J. 121 = 21 C. L. J. 122 = 17 Bom L. R. 103 = 26 I. C. 915 = 28 M. L. J. 515.

-Liability of, to reimburs: holder for value on dishonour by acceptor-DIA draft.

Drawers of bills of exchange who discount them with a bank are bound, in case of dishonour by the acceptors, to compensate the holder for value (that is, the Bank) unless they (the drawers) can show that, when they discounted the bills, they bargained that the transaction should be without recourse. To relieve the drawers from their liabi-lity and to limit the Bank's prima facie right of recourse against themselves (the drawers), they must show some contract with the Bank to that effect, or some breach of contract or of duty on the part of the Bank, which would have that effect in law.

Where drawers, when discounting the drafts, made over documents of title (bills of lading) to the discounting Bank, and the drafts were marked D/A (which meant "Documents against acceptance"), held that the drawers' description of the drafts as D/A was, in effect, a direction by them to the Bank to surrender the documents to the acceptors against their acceptance, that, consequently, on the Bank presenting the drafts for acceptance to the drawees, and acceptance being duly given, the Bank were justified in handing over the shipping documents to the acceptors, and contend, that the law does not require a presentment for that on the drafts being subsequently dishonoured at

Bill of Exchange-(Contd.)

DRAWER OF-(Contd.)

maturity by the acceptors the drawers became liable to reimburse the discounting Bank.

There was, under the circumstances, no misleading by the Bank with the drawers' rights by way of security as would afford any answer to the Bank's action. (Viscount Summer.) SASSOON & SONS, LTD. v. INTERNATIONAL BANKING CORPORATION. (1927) 54 I. A. 317=

1 Luck. 241 = 23 Bom. L.R. 1181 = 25 A.L. J. 665 = 46 C.L.J. 61 = (1927) M.W.N. 648 = 32 C. W. N. 30 = 96 L J P. C. 153 = A. I. R. 1927 P. C. 195 = 39 M. L. T. 659 = 55 C 1 = 107 I.C. 225 = 27 L.W. 582 = 53 M.L.J. 42

#### INDORSER OF.

-Payment to holder by-Securities given by acceptor-Benefit of-Right to-Rule as to-Promissory note-Applicability of rule to.

It is a rule of equity that if the indorser of a biil of exchange pays the holder of it he is entitled to the benefit of the securities given by the acceptor which the holder has in his hands at the time of the payment, and upon which he has no claim except for the bill itself. The same rule is applicable to the indorser of a promissory note. It is possible that there may be circumstances which would create an exception to this rule (29).

Held, on the facts, that the case before their Lordships was not an exception to the rule (29). (Sir Richard Couch.) AGA AHMAD ISPAHANY D. JUDITH EMMA CRISP.

(1891) 19 I. A. 24 = 19 C. 242 (248) = 6 Sar. 109.

#### MATERIAL ALTERATION OF.

-Due date-Memorandum on top right hand corner of bill as to-Alteration of-Material alteration not a New stamping of bill-Necessity-Stamp Act 11 of 1899, S. 14.

Certain Manchester firms who sold goods to the appellants, merchants in Bombay, drew drafts on the appellants, with shipping documents attached and discounted them with the repondent's bank in London. The respondents then sent the drafts to their Bombay branch to be presented to the appellants for acceptance and for subsequent collection. The drafts fell due generally sixty or ninety, though sometimes 120, days after sight, and on presentation they were accepted. When most, but not all, of the drafts had been already accepted, the dates of payment of the bills were, at the instance of the appellants and with the consent of the respondents, extended by the sellers, the Manchester

In ordinary course, the clerks at the respondent's Bombay branch affixed the necessary revenue stamps to drafts before presenting them for acceptance and also, as a general rule, though not invariably, stamped the word " Due " on the top right-hand corner of the draft and after acceptance added to it the date for presenting the bill for payment according to its usance with the days of grace added. When the duration of a bill was extended, they usually struck through this marginal date and substituted the extended

Held, (1) that the arrangements detailed above did not constitute a discharge by mutual consent of the drawers, indorsers, and acceptors of the bills of exchange;

(2) that the alteration of the memorandum as to the due date made on the top right-hand corner of a bill did not constitute a material alteration of the bill which in law avoided it; and

(3) that the alteration of the memorandum as to the due date made on the top right-hand corner of a bill did not produce the result that there was thereafter a second instru-

#### NEGOTIABLE INSTRUMENT-(Contd.)

Bill of Exchange-(Contd.)

MATERIAL ALTERATION OF-(Contd.)

ment, chargeable with duty under S. 14 of the Stamp Act. As to the material alteration, the answer is that the bill

itself was not altered at all. Of course, if the due date on the face of the bill had been altered, the alteration would have been material, but what was done did not, in fact, affect the bill, nor was it done with any such intention. The date form d no part of the bill, nor did its alteration affect the contract. It was a mere docket for office purposes. If a slip of paper, with the date on it had been pinned on to the bill, the two holes made by the pin in the paper would have been no less liable to be called an alteration (358).

As to the stamp objection, no second instrument, that is, no bill of exchange, was written on the old stamped paper at all. The old instrument remained unaffected, and nothing was added to or taken from it (359). (Viscount Sumner.) PESTONJI & CO. p. COX & CO. (1928) 55 I. A. 353=

52 B. 589 = 5 O. W. N. 706 = 30 Bom. L. R. 1503= (1928) M. W. N. 881 = 26 A L J. 1245 = A.I.R. 1928 P.C. 231.

NEGOTIATE-DISPOSE OF.

-Meaning of, when applied to such instruments. See POWER OF ATTORNEY-NEGOTIABLE INSTRUMENT-(1884) 11 I. A. 94 (108) = 10 C. 901 (912). WORDS.

OPERATIVE PART OF. -Number if part of. See NEGOTIABLE INSTRU-MENT-OPERATIVE PART OF.

(1928) 55 M. L. J. 627 (632).

#### PRESENTMENT FOR ACCEPTANCE OF.

Time of-Reasonableness of-Tests.

In determining the question of "reasonable time" for presentment of a Bill of Exchange, not the interests of the drawer only but those of the holder must be taken into account ; the reasonable time expended in putting the Bill into circulation, which is for the interest of the holder, is to be allowed; and the Bill need not be sent for acceptance by the very earliest opportunity, though it must be sent without improper delay (667). (Mr. Baron Parke.) RAMCHURN

MULLICK r. LUTCHMEECHUND RADAKISSEN. (1854) 9 Moo. P C. 46= 2 C L.R. (Eng.) 1664.

SHIPPING COMPANY-SHIPPER. Shipper-Document accompanying transhipment of goods issued to-Nature of-Assignment by transfer of-Assignee's rights against Co. See SHIP—SHIPPING CO. (1913) 41 C. 670 (6789).

#### Hundi.

ACCOMMODATION ACCEPTOR-LIABILITY OF.

-Release from-Interest paid in advance by drawer to holder-Effect.

field, that the appellant, an accommodation acceptor of certain hundis, was released from liability thereon by the drawer's payment of interest in advance to the holder because it appeared that the appellant knew of, and consented to, the advance interest being taken. (Sir Jamil W. Colvile.) GOURCHANDRA RAI v. PROTAPCHANDRA (1880) 6 C. 241 = 6 C.L. R. 591 = 3 Suth. 780 4 Sar. 156.

#### AGENT-HUNDI BY.

-Principal's liability on—Form of documents in such a case.

A Hundi executed by M in favour of the appellants ran as follows :

"By order of Sirkar may his happiness increase.

To M, son of

Six months from the date of the execution of this bundle or to his order the sum of Rs. please pay to which sum I have received in cash", and was signed by M,

Hundi-(Contd.)

AGENT-HUNDI BY-(Contd.)

Acting Superintendent of the Private Treasury of His Excellency Sir Maharaja, The Prime Minister of H. H. the Nizam.

On the back of the hundi was an endorsement to the effect "This hundi has been accepted by M, son of and containing the signature of M.

In a suit upon the hundi brought against the Maharajah and M, held that the hundi was not executed by M as agent of the Maharajah and that the latter was therefore not liable thereon.

It is of the utmost importance that the name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can instantly be recognised as the document passes from hand to hand.

It is not sufficient that the principal's name should be "in some way "disclosed; it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bill.

name is the real name of the person liable upon the bill.

Ss. 26, 27 and 28 of the Negotiable Instruments Act contain nothing inconsistent with these principles, and nothing to support the contention that in an action on a bill of exchange or promissory note against a person whose name properly appears as a party to the instrument it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

The words "Acting Superintendent, etc." added to M's name at the end of the document is nothing but a description of M's position, and is certainly not a signature in the form necessary for an agent signing on a principal's behalf. The words "By the order of Sirkar, etc." at the beginning of the hundi mean no more than that M had been directed to execute the hundi and do not necessarily imply that he had been authorised to bind his principal by the same. (Lord Buckmaster.) SADUSUK JANKI DAS P. KISHAN PERSHAD,

(1918) 46 I. A. 33 (36-7) = 46 C. 663 (667-9) = 25 M. L. T. 258 = (1919) M. W. N. 310 = 21 Bom. L. B. 605 = 10 L. W. 143 = 12 Bur. L. T. 100 = 23 C. W. N. 937 = 29 C. L. J. 340 = 17 A.L.J. 405 = 50 I. C. 219 = 36 M. L. J. 429.

#### EXECUTION OF.

Proof of.

Held, on the evidence, affirming the High Court, that the hundles sued on were really executed by the defendant, and were not forgeries as pleaded by him. (Lord Hobboute.)

TEWARI JASWANT SINGH v. LALA SHEO NARAIN LAL.

(1893) 21 I. A. 6 = 16 A. 157 = 6 Sar. 404.

INDORSEE OF—LIABILITY TO SUBSEQUENT INDORSEE
—COLLATERAL AGREEMENT AS TO—NATURE OF—
AGREEMENT GOING TO ROOT OF CONTRACT OR MERE
TERM THE BREACH OF WHICH SOUNDED IN DAMAGES.

Case of.

In a suit by an endorsee of hundies against a prior indorsee and the maker to recover the amount of them, the
question was whether a collateral parol agreement between
the prior indorsee and the plaintiff that his liability should
be dependent on the plaintiff's procuring the maker to give
further security by way of mortgage for payment of the
notes was of such a character as to go to the root of the
whole contract or was no more than a term, the breach of
which sounded in damages. The courts below concurrently
found that the stipulation that the plaintiff should get those
further mortgages went to the root of the whole contract
and that its fulfilment was the condition of the prior indorsee's undertaking liability.

## NEGOTIABLE INSTRUMENT-(Contd.)

Hundi-(Contd.)

INDORSEE OF — LIABILITY TO SUBSEQUENT INDORSEE—COLLATERAL AGREEMENT AS TO—NATURE OF—AGREEMENT GOING TO ROOT OF CONTRACT OR MERE TERM THE BREACH OF WHICH SOUNDED IN DAMAGES—(Contd.)

Held that, in the circumstances of the case, the conclusions of the courts below were conclusions of fact and could not be called matters of law as being a legal construction put upon agreed words.

The case was not one, in which it would have been possible to find as facts the precise words used. The agreement itself resulted from conversations in the way of business, of which no note was made, and the time which had elapsed between their date and the hearing in Court was so great as to make the recovery of the actual text of the bargain a hopeless task. (Viscount Sumner.) MAHOMED ALI MAMOOJFE v. HARVEY.

(1928) 29 L. W. 445=33 C. W. N. 675= 31 Bem. L. R. 700=115 I. C. 722= A I. R. 1929 P.C. 63.

-Tat

In a suit by an indorsee of hundies against a prior indorsee and the maker to recover the amount of them, the prior indorsee set up a collateral parol agreement between himself and the plaintiff that his liability should be dependent on the plaintiff's procuring the maker to give further security by way of mortgage for payment of the notes. The question for decision was whether the agreement as to the security to be given was of such a character as to go to the root of the whole contract or was no more than a term, the breach of which sounded in damages and in the circumstances only nominal damages.

Held, affirming the courts below, that the stipulation as to further security was a condition precedent to the liability of the prior indorsee and that the hreach thereof went to the root of the agreement between the parties, so as to put an end to any further liability on the part of the prior indorsee. (Viscount Summer.) MAHOMED ALI MAMOOJEE 2. HARVEY. (1928) 29 L.W. 445 = 33 C.W.N. 675 = 31 Bom L.R. 700 = 115 I.C. 722 = A.I.R. 1929 P.C. 63.

INTEREST-COLLATERAL AGREEMENT AS TO.

Enforceability of—Hundi silent as to interest.

Hundies drawn by defendant upon himself in plaintiff's favour were silent as to interest. But there was a collateral agreement in writing that interest should be paid at 30 per cent. per annum; and, in a suit brought upon the hundies, it was found that the dealing with interest by a collateral agreement, and not on the face of the hundies, was in accordance with the custom prevailing in the district, amongst the class affected by the suit.

Held that the plaintiff's right to interest as provided by the collateral agreement was not affected by S. 80 of the Negotiable Instruments Act.

S. 80 of the Negotiable Instruments Act does not purport to deprive those dealing with such instruments of the freedom of contract possessed by other contracting parties. It purports to confer a right to interest, not to take away such a right otherwise existing.

When a plaintiff has to rely upon the section as the ground of his claim to interest, no doubt the terms of the section must be followed. But to read the section as depriving him of a contractual right of interest would be to read into it something which it does not say, and which cannot reasonably be implied from its language. (Sir Arthur Wilson.) GOSWAMI SRI GHANSHIAM LALJI v. RAM NARAIN.

(1906) 34 I. A. 6=29 A. 33=11 C. W. N. 105= 5 C.L.J. 7=9 Bom. L. B. 1=1 M. L. T. 427= 4 A. L. J. 29=9 Sar. 148=17 M. L. J. 35.

Material alteration of.

——SM NEG. INSTRUMENT.—(1) BILL OF EXCHANGE

—MATERIAL ALTERATION OF. (2) PROMISSORY NOTE

—MATERIAL ALTERATION OF; AND (3) NEG. INSTRUMENTS ACT, S. 87.

#### Mate's receipt if a.

——A mate's receipt is not negotiable (678). (Lord Shatu.) NATCHEAPPA CHETTY v. IRRAWADDY FLOTILLA COMPANY. (1913) 41 C. 670 = (1914) M. W. N. 163 = 18 C. W. N. 457 = 12 A L. J. 211 = 15 M. L. T. 193 = 7 Bur. L. T. 40 = 19 C. L. J. 265 = 22 I. C. 311 = 16 Bom L. R. 298.

#### Operative part of.

--- Number if part of.

The number is no part of the operative portion of a bill of exchange or promissory note. (Lord Buckmaster.) HONGKONG AND SHANGHAI BANKING CORPORATION v. LO LEE SHI. (1928) 110 I. C. 127 = 28 L. W. 380 = A. I. B. 1928 P. C. 116 = 55 M. L. J. 627 (632).

#### Promissory Note.

AGENT—EXECUTION OF NOTE AS, OR AS PRINCIPAL.

AWARD—SUMS FOUND DUE UNDER—PRO-NOTE EXECUTED FOR.

CONDITIONAL DISCHARGE—NOTE EXECUTED ONLY AS A.

CONDITIONAL OR ABSOLUTE DISCHARGE.

DEBIT BALANCE AT END OF YEAR—PROMISSORY NOTE EXECUTED FOR.

EXECUTION OF.

GUARDIAN -- PRO-NOTE BY.

INDORSER OF-PAYMENT TO HOLDER BY.

INTEREST ON AMOUNT OF—RATE OF. HIGHER THAN THAT FIXED IN NOTE.

LIABILITY UNDER.

MATERIAL ALTERATION AVOIDING.

MINOR-NOTE EXECUTED WHILE A.

MINOR AND ADULT PERSON-NOTE BY.

OPERATIVE PART OF.

PAYMENT TOWARDS.

SIMULTANEOUS ADVANCE-NOTE FOR.

SUIT UPON.

WORDS-NEGOTIATE-DISPOSE OF.

AGENT-EXECUTION OF NOTE AS. OR AS PRINCIPAL.

—Indebtedness of another-Execution of note for.

One B, who was a director of a bank, had been allowed by the bank's manager, R, to become indebted in a large sum to the bank, and, in view of the approaching half-yearly audit, it was thought desirable that the account should be squared in some way as not to show the director as a debtor to the bank. The first respondent was accordingly persuaded to execute a promissory note so as to show him as the bank's debtor for the amount of B's indebtedness, and that amount was credited in the books of the bank to B, thus wiping out his indebtedness. No part of the amount for which the note was executed came into the hands of the first respondent, and he apparently had nothing to gain by the transaction, the plain effect of which was to substitute him as a debtor to the bank for the amount of B's indebtedness in the place of B.

Held that the true effect of the transaction was that as between the first respondent and the bank the promissory note was an effective contract, the credit to B being a sufficient consideration, but that as between B and the first respondent, the former undertook to discharge the lia-

bility to the bank.

The learned Judges of the Chief Court seem to have come to the conclusion that the first respondent signed the pro-

#### NEGOTIABLE INSTRUMENT-(Contd.)

Promissory Note-(Contd.)

AGENT-EXECUTION OF NOTE AS, OR AS PRINCI-PAL-(Contd.)

missory note merely as the agent of B, and that therefore the bank could not sue him upon it as principal. They thought that the case came within the exception to S. 28 of the Negotiable Instruments Act. Their Lordships are unable to take this view of the transaction. The theory of agency is negatived by the evidence of both the first respondent himself and his witness B. But, apart from this, their Lordships are satisfied that the essence of the tripartite arrangement was to conceal B's indebtedness from the bank and to make the bank believe that the first respondent was their debtor for the amount of B's indebtedness and interest. The first respondent lent himself to this scheme fully understanding that its object was the deception of the bank, and under these circumstances it would be impossible for their Lordships to hold that he was induced by the bank to believe that he would not be held liable upon his written contract. (Sir George Loundes.) NATIONAL

Bank of Upper India, Ltd. v. Bansidhar, (1929) 57 I. A. 1=51 C. L. J. 56=(1930) M.W. N. 1= 32 Bom. L. R. 136=121 I. C. 193=34 C. W. N. 145= 31 L. W. 1=6 O. W. N. 1136=A. I. R. 1929 P. C. 297.

AWARD—SUMS FOUND DUE UNDER—PRO-NOTE EXECUTED FOR.

——Suit upon— Dismissal of — Suit subsequent for amount found due under award—Maintainability. Set CFYLON CIVIL PROCEDURE CODE, 1889, S. 34—AWARD. (1913) 41 I. A. 142 (148).

CONDITIONAL DISCHARGE—NOTE EXECUTED ONLY AS A.

#### CONDITIONAL OR ABSOLUTE DISCHARGE.

-Note conditional discharge only-Unenforceability of Suit on original consideration-Maintainability.

An award made by arbitrators to whom certain dispotes between the respondent and the appellants were referred found a certain sum to be due by the appellants to the respondent, and provided for the payment in cash of a portion thereof, and for the execution of two promissory notes by the appellants to the respondent for the balance. Two promissory notes were accordingly executed by the appellants in favour of the respondent on the same day, and were accepted by the latter.

Held that the arrangement for the discharge of the amount found due by means of the promissory notes only expressed the mode of payment contemplated and arranged for at the time, that the notes were only given as conditional payment, and that, on the notes being for any reason found to be enforceable, the respondent had a right to bring an action for the unpaid balance of the sum found due, its for the amount of the promissory notes (147).

The substance of the award is that the specified amount was actually due from the appellants to the respondent, and the promissory notes only expressed the mode of payment contemplated and arranged for at the time. The fact that payment in the form contemplated has failed does not affect the substance of the award or the basis of the arrangement, which was liability (147). (Lord Moniton.) PAYANA RUNA SAMINATHAN v. PANA LANA PALANIAPPA.

(1913) 41 I. A. 142=18 C. W. N. 617=26 I. O. 228.

Promissory Note-(Contd.)

DEBIT BALANCE AT END OF YEAR-PROMISSORY NOTE EXECUTED FOR.

Entry showing debit balance as paid off and promissory note as debit item-Practice. See ACCOUNTS-KEEP-ING OF-MODE OF. (1915) 30 M. L. J. 444 (446).

#### EXECUTION OF.

-Fraud-Execution included by-Plea of-Prity Council appeal-Maintainability for first time in.

For the amount of B's indebtedness to a bank, the first respondent executed a promissory note in favour of the bank, the effect of the transaction being to substitute him as a debtor of the bank for the said sum in the place of B. In the appeal to the Privy Council from the decree against him made in a suit brought on the note, the first respondent pleaded that the contract between him and the bank had been induced by fraud, and was, therefore, voidable at his instance. Fraud was, however, not pleaded in the trial Court, nor was any issue directed to it.

Held that it would be impossible to allow such a defence to be raised at that late stage of the proceedings. (Sir George Loundes.) NATIONAL BANK OF UPPER INDIA. LTD. v. BANSIDHAR. (1929) 57 I. A. 1=

51 C. L. J. 56=(1930) M. W. N. 1= 32 Bom. L. B. 136 = 121 I. C. 193 = 34 C. W. N. 145 = 31 L. W. 1=6 O. W. N. 1136=A. I. B. 1929 P. C. 297.

-Illiterate woman-Execution by-Proof of.

The suit was brought by the plaintiff against two defendants for money due by them under their promissory note of 30-6-1917, by which they promised to pay the plaintiff on demand. The makers of the note were the second defendant and her son, the 1st defendant. The 1st defendant admitted execution of the note by him. He and his mother, the 2nd defendant both pleaded that the latter did not execute the note, and that her signature to it was a forgery,

The Sub-Judge found that the note had been made by both the defendants and that there was consideration for it, and made a decree against the defendants. On appeal by the 2nd defendant, the High Court reversed the decree against her and dismissed the suit as against her.

Their Lordships reversed the High Court and restored the Sub-Judge's decree against the 2nd defendant. (Sir John Edge.) BHADRAYYA v. KANAKAMMA. (1924) 22 L. W. 8 = A. I. B. 1925 P.C. 47.

-Proof of.

In a suit based upon a promissory note alleged to have been executed by the defendants, held, on the evidence, affirming the High Court, that, although the case of the plaintiff was to some extent unsatisfactory, that case, resting mainly upon a promissory note deposed to by several witnesses apparently of respectability, and which had not been seriously impugned on the other side, and was fortified by the decision in another case, was too strong to justify the Privy Council in reversing the judgment of the High Court that the note was genuine (437). (Sir Robert P. Collier.) HUSAIN ALI KHAN P. KHURSAID ALI KHAN.

(1882) Bald. 432.

#### GUARDIAN-PRO-NOTE BY.

Personal liability under.

A promissory note ran as follows: -- On demand we the undersigned, Ali Hashim Meter and guardian, Fatima Bibi, do hereby promise to pay to K and M or order the sum of Rs. 20,000 with interest at Re. 1 per cent. per mensem and it was signed thus—Fatima Bibi, Guardian of Ali Hashim Meter.

## NEGOTIABLE INSTRUMENT-(Contd.)

Promissory Note-(Contd.)

GUARDIAN-PRO-NOTE BY-(Contd.)

In a suit upon the promissory note, quarre whether Fatima Bibi made herself liable under it. (Sir John Edge.) MA HMIT D. HASHIM EBRAHAM METER.

(1919) 18 A.L.J. 335 = 32 C.L.J. 214 = 27 M.L.T. 190 = 22 Bom. L. R. 531 = 55 I. C. 793 = 38 M. L. J. 353 (360).

INDORSER OF-PAYMENT TO HOLDER BY.

-Securities given by maker-Benefit of-Right to-Rule as to. See NEGOTIABLE INSTRUMENT-BILL OF EXCHANGE-INDORSER OF-PAYMENT TO HOLDER BY. (1891) 19 I. A. 24 (29) = 19 C. 242 (248).

INTEREST ON AMOUNT OF-RATE OF, HIGHER THAN THAT FIXED IN NOTE.

-Creditor's right to -Conditions.

Monies advanced by the respondent to B, the deceased husband of his daughter, were secured by promissory notes, by which A agreed to repay the loans in three years, with interest at 5 per cent. In a suit brought by the respondent, after B's death, to recover the amounts of the notes, he contended that he was entitled to interest at the rate of 8 per cent., and that his interest was not to be limited to 5 per cent., which was the prescribed rate of interest on the promissory notes.

With reference to that contention their Lordships observed as follows :- He, respondent, might maintain that contention by proving either that at the end of the three years, the time for the repayment of the money, he forebore to press for the money, in consideration of an augmented rate of interest, or he might maintain that the contract, of the terms of which the notes are evidence, was superseded by a new contract, which allowed the money to remain for a longer period of time than three years, at an augmented rate of interest. But unless some such case can be proved, a claim of interest at 8 per cent. founded upon a bare promise of the debtor to pay 8 per cent., or upon the fact that the debtor has in account voluntarily debited himself with 8 per cent, in lieu of 5 per cent, could not be maintained in law for want of consideration, amounting merely to a numbum pactum (135). (Lord Westbury.) GUTHRIE v. LISTER. (1866) 11 M. I. A. 129 = 6 W. R. (P.O.) 59 = 1 Suth. 654 = 2 Sar. 221.

#### LIABILITY UNDER.

Ceasing of, on a certain date—Oral agreement as to -Admissibility in evidence of, See EVIDENCE ACT, S. 92 -PROMISSORY NOTE. (1915) 42 I A. 103 (107) = 39 B. 399 (407).

Oral agreement excluding-Evidence of - Inadmisribility of - Evidence Act, S. 92.

The first respondent executed a promissory note in favour of a bank for the amount of B's indebtedness to the bank. In a suit brought by the hank on foot of the note, the first respondent pleaded that he executed the note on the faith of representations of B and R, the manager of the bank, that he would not be held liable on the note.

Held that, so far as the representations of B and R that the first respondent would not be held liable upon the promissory note were relied upon as an oral agreement between the parties, they were clearly inadmissible in evidence under S. 92 of the Evidence Act. (Sir George Lounder.) NA-TIONAL BANK OF UPPER INDIA, LTD, v. BANSIDHAR.

(1929) 57 I. A. 1 = 51 C. L. J. 56 = 121 I. C. 193 = (1930) M. W. N. 1 = 32 Bom. L. B. 136= 34 C. W. N. 145=6 O. W. N. 1136= 31 L. W. 1 = A.I.B. 1929 P. C. 297.

Promissory Note-(Conf.)

I I SBE ITY UNDER - (Centd.)

-Satisfaction of-Oral agreement as to-Admissibility in evidence of -Proof of -Onus -Quantum. See EVI-DENCE ACT. S. 92. PROVISO 2-PRO NOTE.

(1915) 43 I. A. 103 (107-8) = 39 B. 399 (407-8).

MATERIAL ALTERATION AVOIDING.

- Bords " with interest "- Midition of - Material ulteration if and when not a.

In a case in which a promissory note, as originally executcal, contained a provision for interest. h.ld. that the subsequent interpolation of the words "with inter-t" therein, would not, within the meaning of S. 87 of the Negotiable Instruments Act, amount to a material alteration avoiding the note, for it was intended that interest should be poid and the rate was sufficiently expressed already, (Lord Summer,) LALA TUISI RAM F. RAM SARAN DAS.

(1921) 22 L.W. 86 29 C.W.N. 965 23 A.L.J. 109-2 O.W.N 256 L.R. 6 P.C. 70 = 86 I.C. 552= 27 Bom. L.R. 777 - 26 Punj. L R 419 = A. I. R. 1925 P. C. 80 = 49 M L.J. 132 (136). MINOR-NOTE EXECUTED WHILE A

Note renewing-Execution of, after attaining majority-Effect of. See CONTRACT-MINOR--PROMISSORY NOTE EXECUTED BY, WHILE A. (1891) 19 LA. 4 (67). -Note renewang- Execution of, after attaining majority-Proof of.

The suit was on a pro-note dated 27th September, 1883. alleged to have been executed by the respondent in favour of the appellant for a sum of Rs. 7,200 repayable with interest at 18 per cent. The question for decision was whether the note was in fact executed by the respondent. The District Judge held that it was ; but the High Court, on appeal, differed with the judgment of the District Judge. and came to the conclusion that the note was not executed by the respondent.

The respondent had come of age shortly before the date of the alleged execution of the suit note; and the suit role was admitted to have been in renewal of a prior note alleged to have been executed by the respondent in favour of a nomince of the appellant for the sum of Rs. 5.000 with interest at 36 per cent. It was found that the respondent was a minor at the time when the prior note was executed, and that only a sum of Rs. 1.500 reached the hands of the respondent in respect of that note.

Held, on the evidence in and the probabilities of the case, affirming the High Court, that the suit note was not executed by the respondent. (Lord Morris.) HURRI-CHURN BOSE r. MONINDRA NATH GHOSE

(1891) 19 I.A. 4-Bald 517=6 Sar. 130.

- Void or voidable. See CONTRACT -- MINOR -- PRO-MISSORY NOTE BY. (1919) 38 M.L.J. 353 (359).

MINOR AND ADULT PERSON-NOTE BY.

---- Unenforceability of, as against minor-Liability of adult person in case of. See CONTRACT ACT S. 48.

(1916) 43 I.A. 99 (103) = 39 M. 409 (414)

OPERATIVE PART OF.

-Number if part of. See NEGOTIABLE INSTRU-MENT-OPERATIVE PART OF.

(1928) 55 M.L.J. 627 (632).

PAYMENT TOWARDS.

- Proof of.

The appeal arose out of a suit brought by the respondents on a promissory note executed by the appellant and his brother, A. Shortly before the date of the institution of the suit, A had been adjudicated an insolvent and had absconded.

### NEGOTIABLE INSTRUMENT—(Contd.)

Promissory Note-(Contd.)

PAYMENT TOWARDS-(Contd.)

He did not appear to defend the suit. The appellant made various defences, but the main contest in the suit was whether certain sums amounting to Rs. 14,000 had been paid by A to the plaintiffs, and specifically appropriated by him towards satisfaction of the suit note.

The original court found that issue in favour of the appellant and made a decree for only Rs. 500 with interest. The appellate Court (the court below) varied the decree below by giving a decree for the full amount claimed.

Held, that the judgment of the appellate Court was right, and for the reasons given by that court. (Lord Macnaghten.) CASSIM AHMAD JEWA P. NARAINAN CHETTY

(1910) 37 C. 623 = 8 M. L. T. 229 = 12 Bom. L.B. 646 = 12 C.L.J. 231=7 I.C. 814=9 Sar. 698=20 M.L.J. 630.

SIMULTANEOUS ADVANCE-NOTE FOR.

-Suit upon note and alternatively on the consideration-Maintainability.

In a case in which a hundi was executed for an amount then advanced, held it was open to the payee to frame his plaint in an alternative form and to sue both on the hund and alternatively upon the consideration. (Lord Buckmaster.) SADUSUK JANKI DAS v. KISHAN PERSHAD.

(1918) 46 I A. 33 (35) = 46 C. 663 (667)= 25 M.L.T. 258=(1919) M.W.N. 310= 21 Bom. L R. 605 = 10 L W. 143 = 12 Bur. L.T. 160 = 23 C. W. N. 937 = 29 C.L.J. 340 = 17 A.L.J. 405 = 50 I.C. 219 = 36 M. L. J. 429.

-Suit on note only or alternatively on such considers tion also-Pleadings-Construction.

Held, on the construction of the pleadings in the case that the suit was one brought on a hundi executed for a simultaneous advance and not alternatively upon the consideration. (Lord Buckmaster.) SADI'SUK JANKI DAS .. KISHAN PERSHAD. (1918) 46 I.A. 33 (35)=

46 C. 663 (667) = 25 M. L. T. 258= (1919) M. W. N. 310 - 21 Bom. L B. 606= 10 L.W. 143 = 12 Bur. L.T. 160 = 23 C. W. N. 937 = 29 C. L. J. 340 = 17 A. L. J. 405 = 50 I. C. 219 = 36 M. L J. 429.

#### SUIT UPON.

-Date of note given by plaintiff-Mistake as to-If and when fatal to suit.

The plaintiff sued on a pro-note, alleging that on 5th November, 1907, the defendant, who had borrowed monies of the plaintiff, was found to be indebted to the plaintiff in a certain sum for principal and interest; and that he executed the suit note on 7-11-1907 for that sum and another small sum advanced in cash at the time. The evidence addaced by the plaintiff was also to the effect that the note was ext cuted on 7-11-1907. The defendant's evidence, however, completely established his absence from the alleged place of execution of the note on 7-11-1907. Thereupon plaintiff suggested that 7-11-1907 was a mistake and that the note was post-dated and was really signed on either 5 or 6-11-1907.

The trial Judge found that the plaintiffs' version of the transaction was correct, and that the note was executed on the 5th and not on the 7th, and gave the plaintiff a decree The High Court, however, reversed his decree and dismissed the suit on the ground that the finding of the Court below as to the date of the execution of the note constituted fatal variance from the case pleaded and made by the

Held, reversing the High Court, that the High Court applied the principle in an abstract and unsatisfactory way

Promissory Note-(Contd.)

SUIT UPON-(Contd.)

which misled them in estimating the merits in the controversy before them.

The fundamental questions in the case were whether sum due was paid in cash, and whether the note was a forgery. So long as those questions were found in favour of the plaintiff, he was entitled to a decree, though it turned out that the date assigned for the execution of the note happened to be a mistake. (Viscount Haldane) HAJI UMAR ABDUL RAHIMAN ». MUNCHERJI COOPER.

(1915) 3 L. W. 308 = 20 C.W.N. 297 = (1916) 1 M. W. N. 137 = 34 I. C. 268 = 30 M. L. J. 444

- Genuineness of note-Issue as to-Examination of maker-Necessity-Execution proved by respectable witnesses. See EVIDENCE-PARTY-EXAMINATION OF-NECESSITY-PROMISSORY NOTE.

(1882) Bald. 432 (435).

WORDS-NEGOTIATE-DISPOSE OF.

Meaning of, as applied to pro-note. See POWER OF. ATTORNEY-NEGOTIABLE INSTRUMENT-WORDS.

(1884) 11 I. A. 94 (108) = 10 C. 901 (912).

Sale endorsement, assignment of -Power of, conferred.

-Endorsement without selling-Power of, if included. See POWER OF ATTORNEY-NEGOTIABLE INSTRUMENT -SALE, ETC. (1849) 5 M.I.A. (127. 38. 40).

Transferee of -- Negligence of.

-Effect-Defective title of transferor-Transferee if fixed with.

The negligence of the party taking a negotiable instrument does not fix him with the defective title of the party passing it to him (38). (Lord Brougham.) BANK OF BENGAL : MACLEOD. (1849) 5 M.I.A. 1=7 Moo. P.C. 35= 13 Jur. 945 = Taylor 434 (b) = 1 Sar. 391.

BANK OF BENGAL " FAGAN

(1849) 5 M.I.A. 27=7 Moo. P.C. 61= Taylor. 434 (b) = 1 Sar. 392.

#### NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

(N.B. For all other cases under Negotiable Instruments - See under NEGOTIABLE INSTRUMENT.)

S. 28-Agent-Hundi by-Principal's liabitity on-Form of document in such a case. See NEG. INSTRUMENT -HUNDI-AGENT.

-Agent-Pro-note executed as, or as principal. See NEG. INSTRUMENT-PROMISSORY NOTE-AGENT.

-Guardian-Pro-note by-Personal liability under. See NEG. INSTRUMENT-PROMISSORY NOTE-GUARDIAN. -8. 79-Interest-Rate of, higher than that fixed in note-Creditor's right to-Conditions. See NEG. INSTRU-MENT-PROMISSORY NOTE-INTEREST ON AMOUNT OF.

S. 80-Interest-Collateral agreement as to-Enforceability of-Hundi silent as to interest. See NEG. INSTRUMENT-HUNDI-INTEREST.

Interest - Contractual right to-Effect of section on. S. 80 of the Negotiable Instruments Act does not purport to deprive those dealing with such instruments of the freedom of contract possessed by other contracting parties, It purports to confer a right to interest and not to take away such a right otherwise existing. When a plaintiff has to rely upon the section as the ground of his claim to interest, no doubt the terms of the section must be followed. But to read the section, as derriving him of a contractual right of interest would be to read into it something which it does not say and which cannot reasonably be implied NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)-(Contd.)

from its language. (Sir Arthur Wilson.) GOSWAMI SRI GHANSIAM LALJI v. RAM NARAIN.

(1906) 34 I.A. 6 = 29 A. 33 = 1 M.L.T. 427 = 5 C.L.J. 7=11 C.W.N. 105=9 Bom. L.R. 1= 4 A.L.J. 29 = 17 M.L.J. 35.

-S. 87-Alteration referred to in-Accident -Alteration due to, if included. See BILLS OF EXCHANGE ACT OF 1882, S. 64-ALTERATION, ETC.

(1928) 55 M. L. J. 627 (630-1).

-Bill of exchange-Material alteration of. See NEG. INSTRUMENT - BILL OF EXCHANGE - MATERIAL ALTERATION OF.

S. 87-Promissory-note-Material alteration of. See NEG. INSTRUMENT - PROMISSORY-NOTE - MATERIAL ALTERATION OF.

### NET ANNUAL PROFITS.

-Meaning of-Mining lease-Royalty received under, if included. See BENGAL ACTS-CESS ACT OF 1880, (1910) 38 I.A. 31 (36) = 38 C. 372 (376.7).

NEW SOUTH WALES PUBLIC SERVICE SUPER-ANNUATION ACT OF 1903.

8.4-Gratuity to retired public servants-Fixing of-Discretion of Public Service Board as to-Nature of -Arbitrary exercise of-Court's interference with.

The plaintiff was an employee in the public service of the State of New South Wales. He retired after thirty years' service on 16-9-1905. On his retirement, in accordance with the provisions of S. 4 of the Public Service Superannuation Act, 1903, he became "entitled to a gratuity not exceeding one month's pay for each year of service from the date of his permanent employment." The gratuity, in the words of the enactment, was "to be calculated on the average of his salary during the whole term of his employment and to be payable... in the case of ... retirement after the commencement of the Public Service Act, 1902, only in respect of service prior to such commencement."

The average of the plaintiff's salary during the whole term of his employment was found to be £23-10-1 per

On his retirement the Public Service Board awarded him a gratuity or allowance of £454-11-1. In arriving at that sum, the Board reckoned his service up to 23-12-1895, but no longer. The plaintiff claimed to have his service reckoned up to 16-8-02. The Board, instead of awarding a gratuity or allowance calculated on a salary of £23-10-1 per month, allowed him just one penny for each year of service subsequent to 23-12-1895, or seven pence in all.

In a suit brought by the plaintiff to recover the sum of £139 19-2, being the amount of additional allowance at the full rate of £23 10.1 for each year of additional service, it was not suggested that any fault was to be found with the manner in which the plaintiff had discharged his duties, and it was admitted that he was entitled to have his service reckoned up to 16-8-1902, and the only question for decision by their Lordships was whether the Public Service Board was entitled to assess the gratuity payable at the sum of seven pence.

Held that, though the Government had a discretion to exercise in the matter, they or rather the Public Service Board, in fact did not exercise any discretion at all as regards the plaintiff's claim in respect of the service subse-quent to 23-12-1895, and that they were not entitled to assess the gratuity payable in respect of service between 23-12-1895 and 16-8-1902 at the sum of seven pence.

Nobody, of course, can dispute that the Government or the Board had a discretion in the matter. But it was not an arbitrary discretion. It was a discretion to be exercised

#### NEW SOUTH WALES PUBLIC SERVICE SUPER- | NORTH-WEST FRONTIER PROVINCE REGULA-ANNUATION ACT OF 1903-(Contd.)

reasonably, fairly and justly. It is quite plain that an illusory award such as this-an award intended to be unreal and unsubstantial, though made under guise of exercising discretion-is at best a colorable performance, and tantamount to a refusal by the Board to exercise the discretion entrusted to them by Parliament. (Lord Macnaghten.)
LESLIE WILLIAMS v. GIDDY.

(1911) 15 C.W N. 669 = 10 M.L.T. 288 = 11 I. C. 509 = 21 M.L.J. 641.

#### NIBANDHA.

-Meaning of.

As regards the Sanskrit word "Nibandha", the original text of Vajnawalcya, which is the foundation of all the other authorities, implies that the subject rendered by the word corrody in Colebrooke's Digest, is sometimes created by royal grant. This, too, is included in Professor Wilson's definition of "Nibandha". That the word in the subsequent glosses on Vajnawalcya's text is used in a wider sense, may be due to the want of precision for which Hindu commentators are remarkable (51). (Sir James Colvile.) Maharana Fattehsangji Jaswatsangji 2. Dessai (1873) 1 I.A. 34= KALLIANRAIJI HEKOOMUTRAIJI. 21 W.R. 175 = 10 B.H.C.R. 281 = 13 B. L. R. 254 =

#### NON-REGULATION PROVINCES.

-Administration of justice in-Application of principles obtaining in Regulation Provinces-Discretion of court as to.

It is notorious that in the Non-Regulation Provinces a certain discretion is given to the Courts to apply the principles which prevail in the Regulation Provinces in the administration of justice according to the rules of equity and good conscience. GOKULDOSS v. KRIPARAM.

(1873) 13 B.L. R. 205 = 3 Sar. 279.

3 Sar. 306.

#### NORTH-WEST FRONTIER PROVINCE REGULA-TION VII OF 1901.

#### S. 27-Custom-Evidence of-Riwaj i am.

-Manuals of customary law in accordance with-Oral evidence of custom applicable to community of party according to-Value of, in absence of instances.

Even though there be no evidence of instances, still, if the custom spoken to by the party's witnesses is in accordance with the custom applicable to his community according to the manual of the customary law of the district, there is sufficient prima facie evidence of the existence of the custom, subject, of course, to rebuttal, and it ought not to be held to be insufficient merely for want of instances. (Sir John Wallis.) MUSST. VAISHNO DITTI v. MUSST. RA-(1928) 55 I.A. 407=29 Punj. L.R. 654= MESHRI.

28 L. W. 908 = A. I. R. 1928 P. C. 294 = 55 M. L. J. 746.

-Manuals of customary law in accordance withl'alue of.

Manuals of customary law in accordance with Riwaj-iam, which have been issued by authority for each district, stand on much the same footing as the riwaj-i-am itself as evidence of custom. (Sir John Wallis.) MUSSAMUT VAISHNO DITTI D. MUSSAMUT RAMESHRI.

(1928) 55 I.A. 407 = 29 Punj. L. R. 654 = 28 L.W. 908 = A I.R. 1928 P.C. 294 = 55 M. L. J. 746.

-Nature of-Value of, in absence of instances.

The Riwaj i-am is a public record prepared by a public officer in discharge of his duties and under Government rules; it is clearly admissible in evidence to prove the facts entered therein subject to be rebutted; and the statements therein may be accepted even if unsupported by instances. TION (VII OF 1901)-(Contd.)

S. 27 -Custom-Evidence of-Riwaji-i-am -(Contd.) (Sir John Wallis.) MUSSAMUT VAISHNO DITTI v. MUS-SAMUT RAMESHRI.

(1928) 55 I. A. 407 = 29 Punj L.R. 654= 28 L. W. 908 = A. I. R. 1928 P. C. 294 = 55 M. L. J. 746.

S. 27-Custom-Plea of.

Court's duty in case of.

Where a custom is alleged, a duty is, by S. 27 of the North-West Frontier Province Regulation VII of 1901, imposed on the courts to endeavour to ascertain the existence and nature of that custom; and the Local Government has come to their assistance by establishing a riwaj-j-am or record of custom in the different parts of the Punjab, including the North-West Frontier Province which was formerly included in it. (Sir John Wallis.) MUSSAMUT VAISHNO DITTI P. MUSSAMUT RAMESHRI.

(1928) 55 I. A. 407 = 29 Punj. L. R. 654= 28 L.W. 908 = A.I.R. 1928 P.C. 294 = 55 M. L. J. 748.

S. 27-Object of.

In putting, in S. 27 of the North-West Frontier Province Regulation VII of 1901, custom in the forefront, as the rule of succession, whilst leaving the particular custom to be established as it necessarily must be, the Legislature intended to recognise the fact that in this part of India inheritance and the other matters mentioned in the section are largely regulated by a variety of customs which depart from the ordinary rules of Hindu and Mahomedan Law. (Sir John Wallis.) MUSSAMUT VAISHNO DITTI v. MUSSA-(1928) 55 I.A. 407= MUT RAMESHRI.

29 Punj. L.R. 654 = 28 L.W. 908 = A.I.R. 1928 P.C. 294 = 55 M.L.J. 746.

-S. 28-Justice, equity and good conscience in-Meaning of.

A direction to decide by equity and good conscience is generally interpreted to mean the rules of English Law if found applicable to Indian society and circumstances.

Held, that the expression "justice, equity and good conscience" in S. 28 of the North-West Frontier Province Regulation VII of 1901 must be understood in the same sense. (Lord Tomlin.) KHAN BAHADUR MEHRRAN (1930) 34 C.W.N. 529= KHAN P. MAKHNA.

1930 A.L.J. 544 = 123 I.C. 554 = 31 L.W. 732 = A.I.B. 1930 P.C. 142 = 58 M. L. J. 676.

#### NORTH-WEST PROVINCES ACTS.

-See UNDER AGRA ACTS.

NOTICE.

AGENT-NOTICE TO-EFFECT AGAINST PRINCIPAL OF.

BANKER AND CUSTOMER.

CONTRACT ACT-S. 229.

DEED-NOTICE OF.

DISQUALIFIED PROPRIETOR-CONTRACT BY-INCOM-PETENCY FOR.

JUDICIAL NOTICE.

LEGAL PRACTITIONER.

MORTGAGE.

POWER OF ATTORNEY-SCOPE OF.

T. P. A.-S. 3.

## Agent-Notice to-Effect against principal of.

Agent not interested in disclosing and not disclosing information to principal.

If a communication be made to an agent which it should be his duty to hand on to his principals and if the agent has an interest which would lead him not to disclose to his principals the information which he has thus obtained, and in NOTICE-(Contd.)

Agent-Notice to-Effect against principal of.-

point of fact he does not communicate it, you are not to impute to his principals knowledge by reason of the fact that their agent knew something which it was not his interest to disclose, and which he did not disclose.

It would be straining the doctrine of notice beyond all reasonable limits to hold that, where a company wanting payment of a debt from one of its agents asked that payment should be made, and obtained part of their debt without any knowledge whatever of the sources from which the money came, that money should be earmarked with some independent ownership, because the debtor, who was also a servant of the company, committed a fraud in order to discharge his obligations. (Lord Buckmatter.) Texas COMPANY v. BOMBAY BANKING COMPANY.

(1919) 46 I.A. 250 (258-9)= 44 B. 139 (146-7)= (1920) M.W.N. 40=11 L. W. 320=24 C.W.N. 469= 22 Bom. L. B. 429=54 I.C. 121=26 M. L. T. 370= 30 C. L. J. 446.

By S. 229 of the Contract Act it is enacted that any notice given to, or information obtained by, an agent in the course of his business transacted by him for the principal shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal. And the same is repeated in S. 3 of the Transfer of Property Act, 1882. These enactments are only declaratory of a general principle of law. (Lord Davy.) RAJA RAMPAL SINGH P. BALABHADAR SINGH.

(1902) 29 I.A. 203 (211-2)=25 A. 1 (17)= 6 C.W.N 849=4 Bom. L. B. 832=8 Sar. 340. Knowledge not acquired in matter of agency—Use of, to upset transaction of date before agency commowced.

The view of the Court of appeal imputes to a principal the knowledge of an agent not acquired in the matter for which he was agent, and uses it to upset a transaction of a date before the agency commenced. This is an extension of the doctrine of constructive notice in which their Lordships cannot concur (184). (Sir Arthur Wilson.) CHABILDAS LALLOOBHAI D. DAYAL MOWJI.

(1907) 34 I. A. 179=31 B. 566 (581-2)= 2 M. L. T. 394=6 C. L. J. 674=11 C.W.N. 1109= 9 Bom. L. B. 1065=4 A.L.J. 750=9 Sar. 225= 17 M. L. J. 465.

-Litigation-Agent for purposes of.

The principle of law enacted in S. 229 of the Contract Act and S. 3 of the Transfer of Property Act is in an experial sense applicable to legal proceedings which are usually conducted through an agent, and it would be impossible to conduct such business, and it would lead to grave inconvenience and injustice if it were required to prove afterwards that the client had personal knowledge of the contents of the pleadings, or of some document in suit, or of the general nature of the claim made against him. It is not a mere question of constructive notice or inference of fact, but a rule of law which imputes the knowledge of the agent to the principal, or (in other words) the agency extends to receiving notice on behalf of his principal of whatever is material to be stated in the course of the proceedings (211-2), (Lord Davey.) RAJA RAMPAL SINGH D. BALBHADDAR (1902) 29 I.A. 203 (211·2) = 25 A. 1 (17) = SINGH.

6 O W.N. 849 = 4 Bom. L.B. 832 = 8 Sar. 340.

——Sale—Conveyance—Preparation of—Agent employed for—Notice to—Use of, to upset contract of sale completed before his employment—Propriety. See MORTGAGE—POWER OF SALE OUTSIDE COURT—SALE PURSUANT TO—CONDITIONS IN. (1907) 37 I. A. 179 (184.5) = 31 B. 566 (581).

NOTICE-(Contd.)

### Banker and customer.

——Customer—Money paid by—Ownership of third persons in—Notice constructive to Bank of—What amounts to. See Banker and Customer—Customer—Money Paid by. (1919) 46 I. A. 250 (256) = 44 B. 139 (146-7).

#### Contract Act-S. 229.

Provision of—Merely declaratory of general principle of law. See NOTICE—AGENT—NOTICE TO—EFFECT AGAINST PRINCIPAL OF—CONTRACT ACT, S. 229.

(1902) 29 I.A. 203 (211-2) = 25 A. 1 (17).

#### Deed-Notice of.

—Attestation of deed—Presumption of notice from.

See Deed—Attestation of and Hindu Law—
REVERSIONER WIDOW—ALIENATION BY—ATTESTATION OF DEED OF.

Registration—Presumption of notice from. See

MORTGAGE—NOTICE OF. (1911) 39 I. A. 68 (82) =

39 C. 527 (556).

Registration per se if-Indian Law-English and Irish laws-Distinction.

In England and Ireland no person is affected with notice of any registered deed unless an actual search has been made. This is well established and indispensible law. In England so far as Middlesex is concerned, it was first enunciated by Lord King in Bedford r. Backhouse, and this decision has been accepted without qualification down to the present time (246-7.)

In Yorkshire the statute of 1884 expressly provided that registration should effect notice, but this provision has been subsequently repealed and in the Yorkshire registry also registration does not by itself constitute notice (247).

In Ireland again registration has been held not to create notice (247).

Where the question was whether the effect of the Indian Registration Act, 1877, and the Transfer of Property Act, 1882, was to provide that the registration of a deed shall by the mere fact of registration become presumptive notice to all mankind, held: Notice cannot in all cases be imputed from the mere fact that a document is to be found upon the register under the Indian Registration Act. Whether registration is or is not notice in itself depends upon the facts and circumstances of each case. In each case it should be determined whether in that individual case the omission to search the register, taken together with the other facts, amounts to such gross negligence as to attract the consequence which results from notice (251-2, 253).

It would not be reasonable to hold that registration was notice to the world of every deed which the register contained. The doctrine must be subject to some modification. There may be circumstances in which omission to search the register would, even under the definition already given, result in notice being obtained, and the circumstances necessary for this purpose may be very slight (252). (Lord Buckmaster.) TILAKDHARI LAL v. KHEDAN LAL.

(1920) 47 I.A. 239 = 48 C. 1 (11-2.18-9) = 25 C.W.N. 49 = 32 C. L. J. 479 = 13 L. W. 161 = (1920) M. W. N. 591 = 28 M.L.T. 224 = 18 A. L. J. 1074 = 2 P. L. T. 101 = 22 Bom. L. B. 1319 = 57 I. C. 465 = 39 M. L. J. 243.

Disqualified proprietor—Contract by—Incompetency for.

—Notice express of—Mortgage by proprietor—Prior mortgage recited in—Statements in, of incapacity to contract without sanction of Court of Wards—Mortgagee if must be held to have notice by reason of. See Court of Wards—DISQUALIFIED PROPRIETOR—CONTRACT BY—INCOMPETENCY FOR—NOTICE EXPRESS OF.

(1882) 9 I. A. 182 (195) = 5 A. 142 (156-7).

NOTICE-(Contd.)

#### Judicial notice.

-----Subordinate Courts—Jurisdiction of—Notice of— Duty of superior Courts to take. Ser SUPREME COURT OF BOMBAY—NATIVE COURTS—JURISDICTION OF.

(1829) 1 Knapp 1 (58).

#### Legal Practitioner.

——Notice to—Effect against client of. See LEGAL PRACTITIONER—NOTICE TO.

Mortgage.

- (See also Mortgage-Priority.)

—Mortgage by deposit of title deeds—Notice to subsequent mortgagee of—Omission on his part to ask for title deeds—Effect. See MONTGAGE - EQUITABLE MORTGAGE —NOTICE TO SUBSEQUENT MONTGAGEE OF.

(1923) 50 I. A. 283: 294) - 51 C. 86 = 1 R. 637.

Mortgaged property—Charge of Legacy on—Constructive notice of—What amounts to. See MORTGAGE—EQUITABLE MORIGAGE—MORTGAGED PROPERTY—CHARGE OF LEGACY ON.

(1908) 35 I.A. 139 = 33 B. 1 (20-21).

—Notice of—Registration—Presumption of notice from. See (1) MORTGAGE—NOTICE OF.

and (2) NOTICE-DEED.

(1911) 39 I.A. 68 (82) = 39 C. 527 (556).

——Prior mortgage recited in—Statements in—Notice express of—Mortgagee if must be held to have. See COURT OF WARDS—DISQUALIFIED PROPRIETOR—CONTRACT BY—INCOMPETENCY FOR—NOTICE EXPRESS OF.

(1882) 9 I. A. 182 (195) = 5 A. 142 (156-7).

Power of Attorney-Scope of.

Notice of Notice of indorsement being under power if. See POWER OF ATTORNEY—SCOPE OF.

(1884) 11 I. A. 94 (104-5) = 10 C. 901 (909).

Transfer of Property Act-S. 3.

Provision of Merely declaratory of general principle of law. See NOTICE—AGENT—NOTICE TO—EFFECT AGAINST PRINCIPAL OF—CONTRACT ACT.

(1902) 29 I. A. 203 (21-2) = 25 A. 1 (17).

#### NOVATION.

——Debt—Acknowledgment of—Novation of—Test. See DEBT—ACKNOWLEDGMENT OF—NOVATION.

(1891) 18 I. A. 37 (40) = 14 M. 258 (261-2).

—Debt—Novation of—Bond executed by third party for debt—Intention that dettor should be released only on payment of—No novation in case of. See DEBT—NOVATION.

(1874) 1 I. A. 241 (263-4).

#### NUMUK SAYER MEHAL.

#### (SALTPETRE DUTY).

-Collection and division of -Slodes of, adopted by Native Governments and by East India Company after accession to the Devanny.

The mode in which this revenue (Numuk sayer mehal) was collected before the Company's accession to the Dewanny appears to have been, that the zemindars, on whose lands the saltpetre was produced, collected it from the Nooneeahs or manufacturers in kind, receiving from them about one-half of the produce, of which the zemindars retained one-fourth, and delivered the remaining threefourths to the Officers of the Government; and the same mode of collection and division seems to have prevailed after the Company's accession to the Dewanny, except that the collection from the Nooneeahs, and the subsequent distribution of it, was made in money according to the actual current value of the saltpetre (477-8). (Lord Justice Turner.) BENGAL GOVERNMENT D. NAWAB JAFUE HOSSEIN KHAN. (1854) 5 M. I. A. 467=1 Sar. 472.

### NVMUK SAYER MEHAL-(Contd.)

Nature of - East India Company's right to.

The Numuk sayer mehal is the revenue which, before the accession of the East Indian Company to the Dewanny, was derived by the Native Governments from the manufacture of saltpetre, and upon the Company's accession to the Dewanny they became entitled to this revenue, subject, of course, to any valid and effectual disposition of it which might have been made by the Native Governments, in so far as the Company might be bound by such dispositions (477). (Lord Justice Turner.) BENGAL GOVERNMENT v. NAWAB JAFUR HOSSEIN KHAN.

(1854) 5 M. I. A. 467=1 Sar. 472.

—Resumption by Government of—Right of—Istimrary mokurraree tenures of mehals at permanently fixed

rent-Sunnuds granting-Genuineness of.

The appeal arose out of a claim on the part of the grandmother of the respondent, to be put in possession, at a fixed jummu, of certain Numuk sayer mehals (saltpetre duty estates) in two Pergunnahs in the district of Tirhoot, Bengal, which were resumed by the Bengal Government in the year 1817. The respondent relied upon certain Sunuds of the Soobadar of Bahar, the ruling power previous to the Company's accession to the Dewanny, purporting to grant that Government revenue as mocurraree istimrary, at a permanent fixed rent.

Held that, the sunuds set up by the respondent were not authentic and that the mehals had been rightly resumed by the Government. (Lord Justice Tu ner.) BENGAL GOVENRMENT v. NAWAB JAFUR HOSSEIN KHAN.

(1854) 5 M. I. A. 467=1 Sar. 472

#### OATE

Administering of — Meaning of. See OATHS ACT OF 1873—S. 10.

#### OATHS ACT (X OF 1873).

-S. 8-Oath or solemn affirmation in-Significance of The use of the alternative expression "oath" and "solema affirmation" as a description of the special ritual envisaged in S. 8 of the Oaths Act X of 1873, is intended to indicate that the ritual is to be at least as solemn for the deponent and attended by the same consequences to him as is an ordinary oath or affirmation for and to an ordinary witness. The words were selected primarily to put it beyond the possibility of doubt that the temporal consequences of corrupt falsehood would follow as inevitably for the oot class of witness as for the other; they are descriptive of the nature and result of the ritual; they are in no way connected with its form-a conclusion which is confirmed by the consideration that historically an affirmation technically so called, is merely a substitute for an oath; that the descrip tion includes both "oath" and "affirmation," although, except in the quality of solemnity, these are quite distinct, the one from the other, and that its purpose is revealed by the addition to the word "affirmation" of the adjective which is not in use in connexion with affirmations in the technical sense of the word. (Lord Blanesburgh.) INDAR (1927) 54 I. A. 301= PRASAD v. JAGMOHAN DAS.

2 Luck 316 = 26 L. W. 619 = 39 M. L. T. 618 = 29 Bom. L. B. 1154 = (1927) M. W.N. 534 = 46 C. L. J. 13 = 1 Luck. C. 167 = 103 I. C. 386 = 31 C. W. N. 1053 = A I. B. 1927 P. C. 165 = 53 M. L. J. 1.

S. 8-Oath or solemn affirmation referred to in-Essential part of Invocation or oath or affirmation in the technical sense not an.

Upon a sound consideration of Ss. 8 to 10 of the Oaths
Act of 1873, neither an invocation nor an oath or affirmation in the technical sense of these words is in any way an
essential part of the so-called oath or solemn affirmation
referred to in S. 8 of the Act (312).

## OATHS ACT (X OF 1873)-(Confd.)

The "oath or solemn affirmation" referred to in S. 8 and following sections is something quite distinct from the oaths and affirmations referred to in S. 5 of the Act. These are to be in such form as the High Court shall prescribe: S. 7. With regard to the oath or solemn affirmation referred to in S. 8, however, all that is said is that it may be iss any form common amongst or held binding by persons of the race or persuasion to which (the deponent) belongs and not repugnant to justice or decency". That is to say, it may be as infinite alike in form and content as racial custom or the dictates of any religious persuasion may, within the prescribed limits, sanction or require. But from its very nature and essence it can never be in any part of it dependent upon the direction or dictation of the High Court or of any other extra racial or secular administrative authority. It would or might at once lose its essential distinctive sanction if any such outside interference were permitted to have effect. Again there is no suggestion either in S. 8, 9 or 10 that when the separate " oath or solemn affirmation" is permitted the ordinary oath or affirmation, as prescribed, or any part of it, is to be administered as well. The "outh or solemn affirmation" when permitted is a complete substitute for the other. There is in the sections no warrant for the suggestion that any part of a procedure which is only appropriate where it is gone through before any evidence at all is given, and is designed to cover that evidence when given, is to be transferred to a taking of evidence which is solemnized only by its being given, and while it is given in the actual presence and hearing of the deity himself. Indeed, such a requirement, not made by the sections, would in many cases be entirely out of place. When the whole meaning of the procedure is that a statement made by a witness in the corporeal presence and hearing of his God will be true by reason of the fact that it is so made introductory words of invocation, appropriate enough in other circumstances, become entirely unsuitable. For if the deity be removed before the statement is made the words are nugatory; if the statement be made in his presence they are superfluous (312-4). (Lord Blanesburgh.) INDAR PRASAD P. JAGMOHAN DAS. (1927) 54 I.A. 301-2 Luck 316 = 26 L. W. 619 = 39 M. L. T. 618 - 29 Bom L. R. 1154 -(1927) M. W. N. 534 = 46 C. L. J. 13 = 1 Luck. C. 167 = 103 I. C. 386 = 31 C. W. N. 1063=

103 I. C. 386 = 31 C. W. N. 1063 = A. I. B. 1927 P. C. 165 = 53 M. L. J. 1.—Ss. 8 to 10—Oak before family deity—Agreement to

be bound by-Acceptance of-Binding nature of-Comp.

liance with—What amounts to.

In a suit for partition between two Hindu brothers, the plaintiff, when filing in Court his lists of the joint family property alleged by him to be in the possession of the defendant, offered to give up out of his lists such items as the defendant denied before a named family Deity. The defendant accepted the offer, and the Court, thereupon, appointed a local commissioner, who proceeded to the plaintiff's house, and, in the presence of the plaintiff and the named deity, he recorded the admissions and denials by the defendant of the items in the lists filed by the plaintiff.

Held that the proceedings were tantamount to the administration to the defendant of the special oath or solemn affirmation contemplated by Ss. 8 to 10 of the Oaths Act of 1873, and that, by virtue of the provisions of S. 11 of the Act, the admissions and denials of the defendant so recorded in the presence of the deity were binding on the claimiff.

Held further, that the plaintiff was, under the circumstances, estopped from asserting that the deity was, as a matter of fact, not actually present in the dibba (box) when the defendant's statements were recorded. (Lord Blanesburgh.) INDAR PRASAD v. JAGMOHAN DAS.

(1927) 54 L. A. 301=2 Luck. 316=26 L. W. 619=

OATHS ACT (X OF 1873)-(Contd.)

39 M. L. T. 618 = 29 Bom. L. R. 1154 = (1927) M. W. N. 534 = 46 C. L J 13 = 1 Luck. C. 167 = 103 I. C. 386 = 31 C. W. N. 1053 = A. I. R. 1927 P. C. 165 = 53 M.L. J. 1,

Ss. 8 to 13-Law under-Course of development of. The Indian law on the subject of naths was derived from the English law, with some modifications suggested by Indian conditions. Just as in England, so also in India, it was at one time the rule that there could be no evidence without an oath in the strict sense of the word, and only gradually were exceptions grafted by statute upon that rule. Prior to 1840 the privil ge of making an affirmation instead of taking an oath was enjoyed only by Quakers, Moravians and Separatists. By that timz it had been found that the taking of an oath was highly objectionable to Hindus and Mahomedans, and Act V of 1840 was passed for the purpose of prohibiting the administration of oaths to persons belonging to those communities, a form of affirmation being substituted for an oath. With some extension in 1869 the law so remained until the Act VI of 1872 was passed. By that Act it was provided that every witness who objected to take an oath might in-tead make a simple affirmation, and in S. 4 will be found the statutory provision which, prior to 1873, enabled volunteers to make oaths in special cases. Ss. 8 to 13 of the present Oaths Act X of 1873 correspond to and have taken the place of that section, and their Lordships have no doubt that long before that time the Indian view, embodied afresh in the Act, had come to be that which may, briefly, he taken from the words of the Lord Chancellor in Omy-Chund r. Barker (1 Atk. 22): "The next thing is the form of the oath. It is laid down by all writers that the outward act is not essential to the oath. It has been the wisdom of all nations to administer such oaths as are agree-able to the notion of the person taking (315-6.) (Lord Blanesburgh.) INDRA PRASAD », JAGMOHAN DAS

(1927) 54 I A. 301 = 2 Luck. 316 = 26 L. W. 619 = 39 M. L. T. 618 = 29 Bom. L. R. 1154 = (1927) M. W. N. 534 = 46 C L.J. 13 = 1 Luck. C. 167 = 103 I. C. 386 = 31 C. W. N. 1053 = A. I. R. 1927 P. C. 165 = 53 M. L. J. 1.

S. 10—Words—' Administer'—Meaning.

"Administer" is, in the law, a word of wide and not a restricted import. It would be for instance beyond question that an oath is "administered," not only where the English form is adopted, but where, in the presence of the Court, it is "taken" by the witness in the Scottish form (314-6).

(Lard Blanesburgh). INDAR PRASAD T. JAGMOHAN DAS.

(1927) 54 Î. A. 301 - 2 Luck. 316 - 26 L. W. 619 - 39 M. L. T. 618 - 29 Bom. L. R. 1154 - (1927) M. W. N. 534 - 46 C. L. J. 13 - 1 Luck. C. 167 - 103 I. C. 386 - 31 C.W. N. 1053 - A. I. R. (1927) P.C. 165 - 53 M. L. J. 1.

#### OBARI TENURE

—See CESSION OF TERRITORY—FOREIGN STATE— CESSION TO BRITISH GOVERNMENT BY. (1898) 25 I. A. 195=21 A. 53.

AND TENURE-OBARI TENURE.

OBJECT.

—Intention—Distinction between. See PENAL CODE.
—Ss. 34, 149. (1924) 52 I. A. 40 (52)=52 C. 197.

OBSERVATIONS.

General Rule-Existence of Each case depends upon its own circumstances" if destructive of.

The truism that each case depends upon its own circums-

tances is not destructive of the idea that there can be a general rule. There may be a general rule but each case must nevertheless be examined as to its own circumstances

#### OBSERVATIONS-(Contd.)

to see whether they make it fall within or without the terms of the general rule. (*Lord Duncdin.*) BRIN INDAR SINGH v. KANSHI RAM. (1917) 44 I. A. 218 (224) = 45 C. 94 = 26 C. L. J. 572 = 22 C. W. N. 169 =

19 Bom. L. R. 866 = 126 P. W.R. 1917 = 104 P. R. 1917 = 3 Pat. L. W. 313 = 22 M.L.T. 362 = 6 L. W. 392 = 15 A. L. J. 777 = 42 I. C. 43 =

33 M. L. J. 486.

- Things not proved—Things not existing—Reckoning in Court of law same in both cases.

Of things that do not appear and things that do not exist the reckoning in a Court of law is the same (16). (Sir Lawrence Jenkins.) RADHA KISHUN P. KHURSHED HOSSEIN. (1919) 47 I. A. 11 = 47 C. 662 (669) = (1920) M. W. N. 308 = 11 L. W. 518 =

22 Bom. L. R. 557 = 55 I. C. 959 = 38 M. L. J. 424. OCCUPANCY.

——Possession — Distinction. See MADRAS ACTS— ESTATES LAND ACT—S, 6, SUB-S, (1)—OCCUPANCY. (1921) 48 I. A. 387 (394) = 44 M. 856 (863).

OCCUPANCY RIGHT.

-----See PERMANENT OCCUPANCY RIGHT.

#### OCCUPATION.

——Meaning of—Legal and popular senses of. See OCCUPY—OCCUPATION.

(1922) 31 M. L. T. 114 (115-6) P.C.

#### OCCUPY.

--- Occupation-Legal and popular senses of.

The word "occupy" is a word of uncertain meaning. Sometimes it denotes legal possession in the technical sense, as when occupation is made the test of ratability; and it is in this sense that it is said in the rating cases that the occupation of premises by a servant, if such occupation is subservient and necessary to the service is the occupation of his master. At other times "occupation" denotes nothing more than physical presence in a place for a substantial period of time, as where a person is said to occupy a seat or pew or where a person who allows his horses or cattle to be in a field or to pass along a highway is said to be the occupier of the field or highway for the purpose of S. 68 of the Railway Clauses Act, 1845. Its precise meaning in any particular statute or document must depend on the purpose for which, and the context in which, it is used.

Held that the word "occupy" in S. 4 (b) of the Vrededrop Stands Act, 1907, was used in the second or more popular sense above described (115-6.) (Viscount Cave). MADRASSA ANJUMAN ISLAMIA OF KHOLWAD v. MUNICIPAL COUNCIL OF JOHANNESBURG.

(1922) 31 M. L. T. 114 (P.C.)

4 Sar. 474.

#### OFFENCES.

- Difinition-Punishment-Procedure for trial-Penal Code-Cr. P. C.-Purposes of.

The Penal Code merely defines the several offences thereby created, and provides the punishment to which offenders are to be liable. It does not at all affect the procedure by which offenders are to be brought to punishment. That is provided for by the Code of Criminal Procedure (177.) (Sir Barnes Penceck.) SURENDRANATH BANEKJEE v. CHIEF JUSTICF AND JUDGES OF THE H. C. OF BENGAL. (1883) 10 I. A. 171 = 10 C. 109 (129) =

#### OFFICE.

AMANAT DUFTER.
APPOINTMENT TO.
CHOWDHURI IN OKISSA.
DIGNITY.

#### OFFICE-(Contd.)

GRANT OF, BY SUPREME POWER OF STATE IN WAY DIFFERENT FROM THAT IN WHICH IT MIGHT HAVE BEEN GRANTED BEFORE.

HEREDITARY OFFICE.

HOLDERS OF-JOINT POWER TO.

KARNAM.

NOMINATION TO.

REMOVAL FROM-GROUNDS.

SARBARAKAR.

SERVAGAR IN YETTIAPURAM.

SPIRITUAL GURU OR MINISTER

#### Amanat Dufter.

-See AMANAT DUFTER.

(1854) 5 M. I. A. 467 (486).

#### Appointment to.

-Hereditary right of-Legal right if a.

The hereditary right to appoint to an office is a possible legal right. (Lord Phillimore.) MANICKA VACHAGA DESIKARP. PARAMASIVAN.

(1928) 33 C. W.N. 382=(1929) M.W.N. 161= 113 I. C. 476=29 L.W. 414=A.I.R. 1929 P. C. 53= 56 M. L. J. 121 (126).

-Hereditary right of-Vesting in a family of-

The hereditary right to appoint to an office may, according to law, vest in a family. (Lord Phillimore.) MANICKA VACHAGA DESIKAR v. PARAMASIVAN.

(1828) 33 C. W. N. 382=(1929) M.W. N. 161=

(1828) 33 C. W. N. 382=(1929) M.W. N. 1612 113 I. C. 476=29 L. W. 414=A.I. B. 1929 P. C. 53= 56 M. L. J. 121 (125)

- Hereditary right of, vested in a family-Exercit of in favour of stranger to family-Validity.

The hereditary right to appoint to an office, which vests in a family, may be exercised by appointing some one who is not a member of the legal family. (Lord Phillimort.)
MANICKA VACHAGA DESIKAR v. PARAMASIVAN.

(1928) 33 C. W. N. 382 = (1929) M. W. N. 161 = 113 I. C. 476 = 29 L. W. 414 = A. I. B. 1929 P. C. 83. 56 M. L. J. 121 (125).

— Nomination or election by others—Confirmation of

—Rights of—Distinction. See HINDU LAW—RELIGIOUS

ENDOWMENT—MUTT—MOHUNT OF — OFFICE OF—
APPOINTMENT TO—RIGHT OF—NOMINATION, ETC.

(1874) 1 I.A. 209 (228).

Nomination to—Rights of Distinction—Nomination
by an individual—Appointment by Court—Decree directing
See Office—Nomination TO—Appointment TO.

(1894) 21 I. A. 71 (81)=17 M. 343 (355)

Nomination to—Rights of, vested in different persons—Unfitness of person nominated—Discovery of—Remedy in case of, of person entitled to nominate. Sw. OFFICE — MOMINATION TO — APPOINTMENT TO—RIGHTS OF, VESTED IN DIFFERENT PERSONS.

(1894) 21 .I. A. 71 (81)=17 M. 343 (353)

Power of—Fraudulent exercise of—What amounts to—Invalidity of appointment in case of See HINDU LAW—RELIGIOUS ENDOWMENT—MUIT—MOHUNT OF—OFFICE OF—APPOINTMENT TO—POWER OF—FRAUDULENT EXERCISE OF.

Right of—Last holder of office—Family of last holder in default of appointment by him—Rights of—Evidence. See NATTUKOTTAI CHETTIES—NAGARATHARS. (1928) 56 M. L. J. 181.

#### Chowdhuri in Orissa.

Office of. See ORISSA—CHOWDHURI. (1908) 36 I. A. 49 = 36 C. 590 (595.6). OFFICE-(Contd.)

#### Dignity.

—Usurpation of—Suit by aggrieved party in respect of —Maintainability—England and India. See DIGNITY— USURPATION OF. (1843) 3 M. I. A. 198 (217)

Grant of, by Supreme power of State in way different from that in which it might have been granted before.

Validity.

Semble: a grant by the Supreme Power of the State of an office in a different way from that in which it might have been granted before in the same family might be valid (486). (Lord Brougham.) BABUN WULLAD RAJA KATIK DAVOOD WULLAD NUNDOO. (1841) 2 M. I. A. 480 = 6 W. R. 10=1 Suth. 108=1 Sar. 221.

Hereditary office.

-Fees incident to Recovery of -Suit for -Limitation. See BOMBAY REGULATIONS-ACKNOWLEDGMENT OF DERTS, ETC., REGL. V OF 1827-Ss. 3 AND 4.

-Fees incident to-Right to-Condition-Duties of office-Actual performance of-Necessity-Readiness to perform them when required-Sufficiency of.

The plaintiffs sued to recover from the owners of the village of D the amount of the arrears of certain hereditary rights of office, alleging that the appellants were the hereditary Mujoomdars, Paick, and Mehta of a pergunna, and that the owners of the village of D which was situate within the pergunna were bound to pay the hereditary Mujoomdars and their officers a certain sum annually. The defendants alleged that the plaintiffs never performed the duties of their several offices in respect of the village of D and denied the plaintiff's right to recover anything.

Held that, to entitle the plaintiffs to the fees incident to their hereditary offices, it was not essential that the duties of the offices should have been actually performed by them, and that it was enough if they were prepared to discharge them when required (33). (Mr. Justice Erskine.) BEEMA SHUNKER v. JAMAR JEE SHAPOR-JEE.

(1837) 2 M. I. A. 23 = 5 W. R. 121 = 1 Suth. 84 = 1 Sar. 149.

-Proof of - Quantum-Mujoomdar - Paick and Mehta-Offices of.

In a case in which the plaintiffs alleged that they were the hereditary Mujoomdars, Paick and Mehta of a pergunnah, and that the owners of the village of D which was situate within the pergunna were bound to pay the hereditary Mujoomdass and their officers a certain sum annually, held, affirming the Courts below, that, although the evidence of the office was slight, there was nevertheless sufficient, in the absence of all opposing testimony, to show the plaintiff's title to it, and the receipt of the dues from the village of D hefore and down to the grant of the village to the defen-dant's father in 1803 (33.) (Mr. Justice Erskine.) BEEMA SHUNKER D. JAMAS JEE SHAPOR-JEE

(1837) 2 M. I. A. 23=5 W. R. 121=1 Suth. 84= 1 Sar. 149

-Right to-Proof of-Quantum-Butchers-Head ship of-Office of.

The suit was by the appellant against the respondent to recover from him the hereditary office of the headship of the butchers, in the town of Ahmednuggur, together with damages by way of compensation for the profits of the office.

Held, affirming the Court below, that the plaintiff appellant failed in making out even a prima facie case.

The evidence taken amounts really to no more than this, that the witnesses, with various degrees of accuracy and consistency, two or three of them, particularly the older ones, speaking to the exercise of this office, by B, calling himself OFFICE-(Contd.)

Hereditary office-(Conld.)

respecting B, and his relationship to the plaintiff, is really the only proof that there is in the cause, of the right of the plaintiff. Admitting, therefore, the office to exist and to be bereditary, in which both parties were to be agreed, there is no evidence whatever of any descent of the office in the family of the appellant who now claims it (485.) (Lord Brougham.) BABUN WULLAD RAJA KATIK v. DAVOOD WULLAD NUNDOO. (1841) 2 M. I. A. 480 =

6 W. R. 10 P. C. = 1 Suth. 108 = 1 Sar. 221. Holders of-Joint power to.

-Death of one of donees of-Exercise of power by Sarvivor. See POWER-JOINT POWER-DEATH OF ONE OF DONEES OF. (1913) 41 I. A. 51 = 37 M. 199 (225).

Karnam.

-Office of. See KARNAM-OFFICE OF.

#### Nomination to.

-Appointment to-Rights of-Distinction-Nomin. ation by an individual- Appointment by court-Decree directing.

A decree of the High Court declared the right of the appellant as the head of one Mutt to see that a competent Tambiran was appointed as the head of another Mutt, and directed that the Sub-Judge of K should direct the appellant to name such a Tambiran and should appoint him, if he saw no objection to the fitness of the person named by the appellant. In case the Sub-Judge objected to the person named by the appellant, the decree directed that he should himself appoint a competent person, and should thereupon direct the appellant to invest the person appointed as usual and certify it, and that, upon the investiture being certified, the Sub-Judge should place the person so appointed and invested in possession of the Mutt etc.

Held that, in the right construction of the decree, the appellant had merely a right to nominate a competent Tambiran, that it was his duty to do so, and that the right of appointment rested with the Sub-Judge (81) (Sir Richard Couch.) PONNAMBALA TAMBIRAN D. SIVAGNANA DESIKA GNANASAMBHANDA PANDARA SANNADHI.

(1894) 21 I. A. 71=17 M. 343 (355)=6 Sar. 434.

Appointment to-Rights of, vested in different per sons-Unfitness of person nominated-Discovery of-Remedy in case of, of person entitled to nominate.

In a case in which a decree of the High Court empowered the appellant to nominate a competent person to a particular office, and directed the Sub Judge to appoint the person so named, if he saw no objection to his fitness, and, if he did, to appoint another himself, held that the remedy of the appellant, on discovering any ground of unfitness in the person nominated by him was to inform the Sub-Judge, who was to decide whether there was any objection to the fitness of the person named (81). (Sir Richard Couch.)
PONNAMBALA TAMBIRAN v. SIVAGNANA DESIKA GNANASAMBHANDA PANDARA SANNADI.

(1894) 21 I. A. 71 = 17 M. 343 (355)=6 Sar. 434. Withdrawal of-Validity-Competent person-Nomination of-Withdrawal before inquiry into his fitness

by appointing authority.

A decree of the High Court declared the right of the appellant, as head of one mutt to nominate a competent Tambiran to the office of head of another mutt, and directed that the Sub-Judge should appoint the person named, if he saw no objection to his fitness, and, if he did, to appoint another himself. On being directed to name a competent person, the appellant presented a petition to the Sub-Judge, stating that P was a competent person, and praying that he might be appointed to the office in question. speaking to the could inquire as to the fitness of P,

#### OFFICE-(Contd.)

Nomination to-(Contd.)

the appellant died, and was succeeded by S as head of the Mutt of which the appellant was the head. S brought himself on record in place of the deceased, and presented a petition to the Court stating that P was not a competent person, and praying that he might be permitted to withdraw the petition filed by the deceased, and to appoint another Tambiran to the office.

Held that the nomination of P could not be withdrawn, and a second one substituted before the inquiry (81),

The person nominated has a right to have the decision of the Sub-Judge, and would be deprived of it by the nomination being withdrawn and a new nomination being made (81). (Sir Richard Couch.) PONNAMBALA TAMBIRAN v. SIVAGNANA DESIKA GNANASAMBHANDA PANDARA (1894) 21 I. A. 71=17 M. 343 (355)= SANNADI. 6 Sar. 434.

#### Removal from-Grounds.

-Trustee-Rules applicable to-Applicability of, to persons in fiduciary relationships other than trustee. See HINDU LAW-RELIGIOUS ENDOWMENT-SHEBAIT-OFFICE-REMOVAL FROM. (1921) 48 I. A. 258 (264-5)= 48 C. 1019 (1026-7).

#### Sarbarakar.

-Office of. See SARBARAKAR.

#### Servagar in Yettiapuram.

-Office of. See SERVAGAR.

(1861) 8 M. I. A. 327 (334).

#### Spritual Guru or Minister.

-- Office of. See SPIRITUAL MINISTER.

#### OFFICERS.

-Court-Officers of. See COURT-OFFICERS OF. -Crown-Officers of. See CROWN-OFFICERS OF AND GOVERNMENT-OFFICERS OF.

#### OFFICIAL

-Protection of-Statute intended for-Words-" In respect of "-" For anything done or intended to be done " Distinction. See STATUTE - INTERPRETATION -(1927) 54 I. A. 338 (356-7). OFFICIALS.

-Surety for-Discharge of. See SURETY-OFFICIAL -SURETY FOR.

-Surety for-Embezzlement by official-Suit against surety in respect of. (1) Evidence of embezzlement in. (2) Maintainability-Estoppel. (3) Proof necessary in See SURETY-OFFICIAL. (1871) 14 M. I. A. 86

#### ONUS OF PROOF.

(N. B .- For cases not collected under this head reference must be made to the headings in relation to which the question of onus arises).

ABSTRACT DOCTRINE OF - NON PRODUCTION OF MATERIAL EVIDENCE IN POSSESSION OF PARTY TRUSTING TO.

ALLUVIAL LAND-POSSESSION OF-SUIT FOR.

ARBITRATION-CONSENT TO-THREATS AND UNDUE INFLUENCE IN PROCURING.

ARBITRATOR-INQUIRY PROPER BY-ABSENCE OF. BENAMI TRANSACTION.

BONA FIDES-WANT OF-CHARGE OF.

BOND-PAYMENT OF.

BOUNDARY DISPUTE.

CHUR LAND.

COMPROMISE-FRAUDULENT REPRESENTATION OF FACT FALSE TO KNOWLEDGE OF OPPOSITE PARTY. CONSIDERATION.

ONUS OF PROOF-(Contd.)

CR. P. C.—ORDER UNDER—PARTY IN POSSESSION UNDER.

DEATH OF A PERSON-DATE OF.

DEBT-PAYMENT TO THIRD PARTY-DISCHARGE BY. DECEASED.

DEED.

DILUVIATED LAND-RE-FORMATION OF.

EJECTMENT SUIT.

ERROR AS TO.

ESCHEAT -- CROWN'S CLAIM BY-EJECTMENT SUIT IN RIGHT OF.

EVIDENCE ADDUCED TO DISCHARGE.

EXECUTION SALE-PURCHASE AT, BENAMI FOR JUDGMENT-DEBTOR.

FIDUCIARY RELATIONSHIP-PERSON IN-GIFT 08-TAINED BY.

FUNCTION TRUE OF.

HEIR-AT-LAW.

HINDU JOINT FAMILY-FIRM BOOKS OF-ENTRIS IN-INACCURACY OF.

HINDU LAW- DAUGHTER-FATHER'S ESTATE-SUIT TO RECOVER ALLEGED, AS HEIR.

HINDU LAW-RELIGIOUS ENDOWMENT.

HINDU LAW-REVERSIONER-SUIT AGAINST, BY DONEE FROM DECEASED WIDOW OF LAST MALE OWNER.

HINDU LAW-REVERSIONER-SUIT BY, TO RECOVER LAST MALE OWNER'S PROPERTY.

HINDU LAW-WIDOW.

JUDGMENT UNDER APPEAL-INCORRECTNESS OF.

LETTERS OF ADMINISTRATION-ORDER GRANTING, REFUSING TO ADJUDICATE UPON RIVAL CLAIMS. MAHOMEDAN LAW.

MINORITY-EXECUTION OF DEED DURING.

MORTGAGE DEED-ADMISSION OF MORTGAGOR IN. MUTATION PROCEEDINGS--ORDER IN, REFERRING PARTIES TO CIVIL SUIT.

NON-ASSUMPSIT-PLEA BY DEFENDANT OF.

OBJECTION TO.

PARTNER-PARTNERSHIP BOOKS-ENTRIES IN-IN-ACCURACY OF.

PARTY SUBJECT TO.

PARTY NOT SUBJECT TO.

PAYMENT-ONUS OF PROOF OF.

PERMANENT SETTLEMENT OF, 1793-LAND WHE THER INCLUDED IN OR NOT.

POSSESSION-LONG POSSESSION-DISTURBANCE OF. PHOMISSORY NOTE-LIABILITY UNDER-SATISFAC-TION OF-ORAL AGREEMENT AS TO.

QUESTION AS TO -MATERIAL WHEN AND WHEN NOT. RAILWAY COMPANY.

RELATIONSHIP-RECOGNITION BY CONDUCT OF.

SHIP-LOSS OF GOODS BY FIRE-DAMAGEES FOR, ON GROUND OF ALLEGED NEGLIGENCE.

SURVEY PROCEEDING-PARTY IN POSSESSION UN-

THAKBUST PROCEEDING-PARTY IN POSSESSION UNDER.

TRANSFER-VALIDITY OF.

ZEMINDAR-ZEMINDARI.

ZEMINDARI-REVENUE SALE PURCHASER OF.

Abstract doctrine of-Non-production of material evidence in possession of party trusting to -Impropriety of. See EVIDENCE-PARTY-EVID

ENCE MATERIAL IN POSSESSION OF. (1916) 44 I. A. 98 = 40 M. 402 (408-9) and (1929) 57 M. L. J. 565

Alluvial land-Possession of-Suit for Ones on plaintiff in. See ALLUVION AND DILLUVION -ALLUVIAL LAND-POSSESSION OF-SUIT FOR

Arbitration—Censent to—Threats and undue influence in procuring.

-Plea of-Proof of. See ARBITRATION-CONSENT TO-THREATS AND UNDUE INFLUENCE ETC.

(1859) 7 M. I. A. 441 (470.)

## Arbitrator-Inquiry proper by-Absence of.

Objection to validity of award on ground of-Onus of Proof in case of. See ARBITRATION-AWARD-VALI-DITY OF-INQUIRY PROPER. (1914) 36 A. 336 (343).

#### Benami transaction.

-See Under BENAMI-PRESUMPTION-ONUS OF PROOF.

### Bona fides-Want of-Charge of.

-Onus in case of.

When the charge is made of want of bona fides, it certainly lies upon the party making that charge to substantiate it by evidence satisfactory to those who have to decide the question (929). (Sir Montague E. Smith.) BENODERAM SEIN v. BROJENDRO NARAIN ROV.

(1873) 2 Suth. 926 = 13 B. L. R. 169 = 3 Sar. 328.

#### Bond-Payment of.

-Onus of Proof of-Shifting of-Conditions. See BOND-PAYMENT OF. (1887) Bald. 483 (486).

#### Boundary dispute.

-Appeal in-Onus on appellant. See BOUNDARY DIS-PUTE-PRIVY COUNCIL APPEAL IN-(1) ONUS ON AP-PELLANT IN & (2) RIDDLES.

Onus in. See BOUNDARY DISPUTE-ONUS ON PLAINTIFF IN.

——Privy Council appeal in—Onus on appellant in. See BOUNDARY DISPUTE—PRIVY COUNCIL APPEAL IN (1) ONUS ON APPELLANT IN & (2) RIDDLES-PROPOUND-ING OF.

#### Chur land.

-Navigable river -- Detached chur formed in middle of a—Purchaser bona fide of—Ejectment suit against—Onus on plaintiff in. See RIVER—NAVIGABLE RIVER—CHURS (1868) 12 M. I. A. 136 (141-2). DETACHED ETC.

Re-formation in situ-Claim to land on ground of -Suit for possession of-Onus in. See ALLUVION AND DILUVION-CHUR LAND-RE-FORMATION in situ.

-Suit for possession of-Onus on Plaintiff in-Long possession with defendant.

The dispute was between the appellant and the respon dent, two riparian proprietors holding estates respectively on the opposite sides of a river, concerning certain chars formed in the course of that river. The appellant sought to oust from possession persons who had enjoyed the suit property for nearly 40 years, and for nearly 20 years of that delay he was responsible.

Held that under those circumstances clear proof was required to satisfy their Lordships of the grounds which he alleged for disturbing a possession of such long continuance

(601).

The hardship may be great of calling upon persons who may have been long in undisturbed possession of such property for strict proof of their title after landmarks may have been washed away or witnesses may have died (601). (Sir Robert P. Collier.) SHAM CHAND BYSACK D. KISHEN PROSAUD SURMA. (1872) 14 M. I. A. 595= 18 W. B. 4 = 2 Suth. 587 = 3 Sar. 113.

In a suit to recover possession of chur land and to impeach the Thakbust award, held that plaintiff failed to establish the boundary line on which he relied by evidence on which a Court ought to disturb the possession of the de-

### ONUS OF PROOF-(Contd.)

Chur land-(Contd.)

fendant since 1852, and before. PROTAB CHUNDER BUR-ROOAH P. RANEE SURNOMOVEE.

(1873) 19 W. R. 361 = 2 Suth. 851 = 5 Sar. 716.

## Compromise-Fraudulent representation of fact false to knowledge of opposite party.

Execution under—Plea of—Onus of Proof of. See COMPROMISE—EXECUTION OF—FRAUDULENT REPRE-SENTATION FTC. (1839) 2 M. I. A. 181 (244).

#### Consideration.

-Deceased-Bond by-Suit against his heirs ou-Consideration for bond-Proof of-Onus on obligee-Issue raised only as to due execution of bond. See BOND-CON-SIDERATION FOR-ONUS OF PROOF OF.

(1866) 11 M. I. A. 120 (124.)

-Deed-Consideration for-Absence of-Plea of-Onus of Proof in case of-Admission in deed of receipt of consideration-Effect. Ser Admission-Consideration AND DEED-CONSIDERATION FOR-SUIT TO RECOVER.

-Deed-Consideration for-Onus of Proof as to-Possession and enjoyment under deed admitted-Suit to enforce deed-Suit to set aside deed for want of consideration-Distinction. See DEED-CONSIDERATION FOR-PRESUMPTION. (1869) 12 M. I. A. 282 (313-4).

-Registering Officer-Admission of receipt of consideration before-Record of, under S. 58 of Registration Act of 1908—Presumption from—Onus of rebutting. See CONSIDERATION—SALE DEED—CONSIDERATION FOR -REGISTERING OFFICER. (1873) 19 W. B. 149.

#### Cr. P. C.-S. 145-Order under-Party in possession under.

Suit by unsuccessful party against-Onus in. See CR. P. C.-S. 145-ORDER UNDER-PARTY IN POSSES-SION UNDER.

## Death of a person-Date of.

-Proof of.

The ones of proving death of any person at any particular period must rest with the person to whose title that fact is essential (33). (Lard Blanesburgh.) LAL CHAND MARWARI D. RAMRUP GIR. (1925) 51 I. A. 24=

5 P. 312 = 24 A. L. J. 105 = (1926) M. W. N. 203 = 7 P. L. T. 163 = 3 O. W. N. 335 = 43 C. L. J. 249 = 28 Bom. L. B. 855 - 30 C. W. N. 721 = A. I. B. 1926 P. C. 9 = 93 I. C. 280 = 50 M. L. J. 289.

Debt-Payment to third party-Discharge by.

-Plea of-Authority of third party to receive-Proof of-Onus on debtor. See DEBT-PAYMENT TO THIRD (1926) 53 I. A. 84=49 M. 435.

#### Deceased.

-See Onus of Proof-Heir-at-Law.

#### Deed.

-Alteration of-Explanation for-Onus of Proof as to-Rule-Exception-Condition of deed when first produced-Issue as to-Applicability of rule to case of-Conditions. See DEED-ALTERATION OF-EXPLANATION (1861) 9 M. I. A. 1 (17-8).

-Alteration of-Time of, before signature-Onus of Proof of -Suit upon altered deed. See DEED-ALTERA-TION OF-TIME OF, BEFORE SIGNATURE.

(1837) 1 M. I. A. 420 (429). -Consideration for-Onus as to. See ONUS OF PROOF-CONSIDERATION-DEED.

-Effect of-Misrepresentation as to-Plea of-Onus of Proof of. See DEED-EFFECT OF-MISREPRESENTA-(1900) 27 I. A. 168 (181)=

23 A. 137 (150).

Deed-(Contd.)

----Executant of-Minority of-Proof of, See DEED -- EXECUTANT OF-MINORITY OF.

Execution of—Date of—Date appearing on face of deed—Incorrectness of—Onus of Proof of. See DEED— EXECUTION OF—DATE OF. (1916) 44 I. A. 72 (77)= 44 C. 662 (671).

—Execution of—Onus of Proof of—Deed of very doubtful authenticity and linked to deeds previously fabricated. See DEED—EXECUTION OF—ONUS OF PROOF OF. (1885) 13 I. A. 20 (27).

——Forgery of—Plea of—Unus of Proof of—Laches in instituting suit to set aside deed on that ground—Principals in transaction and some of attestors dead. See DEED—FORGERY OF—SETTING ASIDE OF DEED ON GROUND OF. (1879) 3 Suth. 581 (583).

——Fraud in regard to—Consideration—Absence of— Setting aside of deed on ground of—Suit for—Onus of Proof in. Src DEED—FRAUD IN REGARD TO—CONSI-DERATION. (1869) 12 M. I. A. 282 (321).

——Fraud in regard to—Duress—Setting aside of deed on ground of—Suit for—Onus on plaintiff in. See DEED —FRAUD IN REGARD TO—DURESS.

(1836) 1 M. I. A. 1 (17).

——Setting aside of—Suit for—Onus in. See DEED— SETTING ASIDE OF—SUIT FOR—ONUS OF PROOF IN.

#### Diluviated land-Re-formation of.

Proof of—Onus. See ALLUVION AND DILLUVION— ILUVIATED LAND—RE-FORMATION OF—PROOF OF. (1899) 29 I. A. 44=27 C. 336.

#### Ejectment suit.

----Onus on plaintiff in. See under EJECTMENT SUIT-ONUS ON PLAINTIFF IN.

#### Error as to.

- Immaterial when.

In a case in which the burden of proof was upon the defendants, the District Judge before the trial made an order that the plaintiff should give his evidence first on all issues. On appeal much stress was laid on that error. It was said that the District Judge was led by it into misconceptions as to the truthfulness of the plaintiff's witnesses, to have thought that the plaintiff must fail if his witnesses were not believed, and to have been provoked by the conduct of the plaintiff's case into believing the wrong side.

A perusal of the judgment of the District Judge showed, however, that when he came to weigh the evidence, his mind was fully alive to the true aspect of the burthen of proof, and that his reasons for giving credence to some witnesses and not to others were judicial and clear, and that his conclusions of fact were not vitiated by any error of law as to the burthen of proof.

Held that the order of the District Judge directing the plaintiff to give his evidence first on all issues worked no injustice to the plaintiff in substance (760-1). (Lord Sumner.) EAST INDIAN RAILWAY CO. P. KIRKWOOD.

(1919) 48 C. 757 = 15 L. W. 248 = A. I. R. 1922 P. C. 195 = 62 I. C. 921 (P. C.).

## Escheat—Crown's claim by—Ejectment suit in right of.

----Onus on Crown. See ESCHEAT-EJECTMENT SUIT BY, EEC. (1868) 12 M. I A. 448 (453-4).

#### Evidenced adduced to discharge.

-Insufficiency of Adverse inference from Propriety of Party adducing insufficient evidence not subject o onus but undertaking to adduce counter evidence.

#### ONUS OF PROOF-(Contd.)

#### Evidence adduced to discharge-(Contd.)

In a case in which the onus of proof is on the plaintif, the defendant may leave the plaintiff to prevail by the force of his own case, contending that he is not called upon to answer it unless it is such as if unanswered will dispose of the case. But if, instead of relying upon the weakness of the plaintiff's case, he meets it and undertakes to rebut it by counter-evidence, the court must then look to the sort of evidence produced, and, if it is not such as might have been expected, it may draw therefrom an inference adverse to the defendant (124-5), (Lord Brougham.) SOORIAH ROW v. COTAGHERY BOOCHIAH.

(1838) 2 M. I. A. 113=5 W. B. 127= 1 Suth. 91=1 Sar. 159.

-Insufficiency of Decision favourable to party
subject to anus on strength of opponent's evidence in case of
Permissibility.

Where a plaintiff on whom the burden of proof rests fails to adduce evidence sufficient to discharge it, it is perfectly open to the defendant not to adduce evidence himself, and to demand that the action should be dismissed for want of proof. Where the defendant does not adopt this course, and adduces evidence in his behalf, it is nevertheless not open to the Court to decide adversely to the defendant on inferences drawn from the evidence so adduced by him (4i4). (Lord Phillimore.) SETH MANIKIAL MANSUKBHAI D. RAJA BIJOY SINGH DUDHORIA.

(1920) 25 C. W. N. 409=(1921) M. W. N. 80= 62 I. C. 356

-Insufficiency of -Effect.

Party on whom onus lies must fail. HURMUT-00L-NISSA REGUM 7. ALLABDIA KHAN AND HAJI HIDAYAT. (1871) 2 Suth. 525 (529)= 17 W. R. 108.

-Insufficiency of-Opponent's failure to practis

Where, in a case in which the appellant claimed to be the legitimate son of his deceased father U by T, the repondents alleged that he was the son, not of T, but of some other lady, held that it was not incumbent on the respondents to disprove the appellant's case, and that their failure to support their own theory did not prove the truth of his (Lard Lindley.) NARENDRA NATH PAHARI v. RAM (1901) 29 I. A. 17 (20)= 29 C. 111 (123)=6 C. W. N. 146=4 Bom. I. B. 245= 28 c. 156.

-lusufficiency of Opposite party's proof Delett is
-Criticism of, if will avail.

When the party on whom the onus lies brings no reliable evidence to discharge it, the defect in his proof cannot be cured by a mere criticism of the evidence brought by the opposite party (101). (Lord Dunadin.) RAJA OF DBO proposite party (101). (1918) 45 I. A. 97 = 45 C. 909 (917) = 16 A. L. J. 576 = (1918) M. W. N. 406 =

22 C. W. N. 891 = 8 L.W. 163 = 24 M. L. T. 63 = 28 C. L. J. 162 = 20 Bom. L.B. 851 = 45 I. C. 770 = 35 M. L. J. 48.

——Quantum of—Opposite party having better opportunities of giving evidence—Effect. See MORTGAGE-REDEMPTION—SUIT FOR—PERIOD FIXED FOR REDEMPTION. (1875) 3 I. A. 85 (88-9)

## Execution sale—Purchase at, benami for judgment debtor.

Plea of—Proof of. See BENAMI—EXECUTION SALE—JUDGMENT-DEBTOR—PURCHASE BENAMI FOR.

## Fiduciary relationship—Person in—Gift obtained by.

-Validity of-Onus of proof of-Solicitors-Onus in case of. See FIDUCIARY RELATIONSHIP-PERSON IN-GIFT OBTAINED BY. (1927) A. I.B. 1927 P.C. 148 (150).

#### Function true of.

Question as to-When material and when not.

Onus is always on a person who asserts a proposition or fact which is not self-evident To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion because it is self-evident that he had been born. But to assert that he was born on a certain date if the date is material, requires proof; the onus is on the person making the assertion. Now, in conducting any inquiry, the determining tribunal, be it judge or jury. will often find that the onus is sometimes on the side of one contending party, sometimes on the side of the other, or, as it is often expressed, that in certain circumstances the onus shifts. But onus as a determining factor of the whole case can only arise if the tribunal finds the evidenc pro and con so evenly balanced that it can come to no sure conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence. comes to a determinate conclusion, the onus has nothing to do with it, and need not be further considered (905.6). (Viscount Dunedin.) WILLIAM ROBINS P. NATIONAL TRUST CO, LTD. (1927) 101 I. C. 903=4 O. W. N. 463= A. I. R. 1927 P.C. 66.

#### Heir-at-law.

## DECEASED-BOND BY-CONSIDERATION FOR.

-Onus of proof as to-Suit on bond against heir-atlaw-Issue in, only as to due execution of bond-Effect. See BOND-CONSIDERATION FOR.

(1866) 11 M. I. A. 120 (124).

#### DECEASED-DEBT OF.

-Admission oral of-Suit against heir-at-law based on -Onus on plaintiff in. See DECEASED-DEBT OF-AD-MISSION ORAL OF. (1883) 10 I. A. 74 (79). Suit for, against heir-at-law or executor-Onus on plaintiff in. See DECEASED-DEBT OF- SUIT FOR AGAINST HEIR-AT-LAW OR EXECUTOR.

#### DECEASED-DEED BY.

-Suit to set aside, and to confirm his own possession of property covered by-Onus on heir-at-law in-Proof of heirship if enough, See DECEASED- HEIR-AT-LAW -DEED BY DECEASED-SUIT TO SET ASIDE, ETC.

(1874) 1 I. A. 192 (206).

DECEASED-PROPERTY OF-SUIT TO RECOVER. Deceased's ownership of suit property-Onus of Proof of. See DECEASED- HEIR-AT-LAW-PROPERTY (1899) 26 I. A. 226 = 26 C. 871 (873). OF DECEASED. -See HINDU LAW- DAUGHTER-FATHER'S ES-TATE-SUIT TO RECOVER ALLEGED, ETC.

(1919) 13 L. W. 436 (439). -See HINDU LAW-REVERSIONER- WIDOW . DEATH OF-POSSESSION OF LAST MALE OWNER'S PRO-

PERTY ON—SUIT FOR—TITLE OF LAST, ETC.

See EJECTMENT SUIT-HINDU LAW—WIDOW-SUIT BY LAST MALE OWNER'S

(1847) 4 M. I. A. 137 (167).

-Heirship of plaintiff-Proof of-Onus of. See ONUS OF PROOF—HINDU LAW—REVERSIONER—SUIT BY, TO RECOVER PROPERTY OF LAST MALE OWNER—ONUS IN -RELATIONSHIP OF ETC.

Mortggage by mother of heir-at-law during his minority set up by defendant in-Onus of Proof of. See DE-CEASED-HEIR-AT-LAW-PROPERTY OF DECEASED.

(1856) 6 M. I. A. 393 (414).

## ONUS OF PROOF-(Contd.)

Heir-at-Law-(Contd.)

DECEASED-PROPERTY OF-SUIT TO RECOVER-(Contd.)

-Onus in-Defendant's equal title with plaintiff-Admission by plaintiff of, acted upon for many years. See EJECTMENT SUIT-HEIR-AT-LAW.

(1880) Bald. 388 (391).

-Will by deceased in their favour set up by defendants in-Onus of Proof of. See UNDER ONUS OF PROOF -HINDU LAW-REVERSIONER-SUIT BY, TO RE-COVER PROPERTY OF LAST MALE OWNER-WILL OF DECEASED, ETC.

### DECEASED-RELEASE BY.

-Onus of Proof of. See DEED-GENUINENESS OF ONUS OF PROOF OF. (1858) 7 M. I. 148 (155).

RIGHT OF, DEPENDING UPON ILLEGITIMACY OF DEFENDANT-ONUS ON HEIR-AT-LAW IN CASE OF.

Succession Property Protection Act XIX of 1841-Defendant in possession under, claiming to be lawful son of last male owner—Plaintiff's relationship admitted. See EJECTMENT SUIT—ONUS ON PLAINTIFF IN—SUCCES. SION PROPERTY PROTECTION ACT.

(1863) 9 M. I. A. 492 (503).

## Hindu joint family-Firm books of-Entries in-Inaccuracy of.

-Plea of , by member of family and partner of firm-Proof of . See ACCOUNT BOOKS-HINDU JOINT FAMILY. (1866) 10 M. I. A. 490 (508).

## Hindu Law-Daughter-Father's estate-Suit to recover alleged, as heir

Father's ownership of property-Onus of Proof of. See HINDU LAW-DAUGHTER-FATHER'S ESTATE-SUIT TO RECOVER ALLEGED, ETC.

(1919) 13 L. W. 436 (439).

## Hindu Law-Religious Endowment.

-Shebait of-Person claiming to be-Suit to recover property of endowment by-Onus of proof in-Defendant general attorney and storekoeper under previous shebait.

See EJECTMENT SUIT-HINDU LAW-RELIGIOUS EN. (1915) 42 I. A. 115 = 37 A. 294 (304-5).

-Shebait-Person claiming to be de jure-Suit by, to recover office and properties of endowment-Onus of Proof in-Defendant in possession and acting as shebait. See EJECTMENT SUIT-HINDU LAW-RELIGIOUS ENDOW-MENT. (1867) 11 M. I. A. 405 (430-1).

-Shebait-Suit by, to recover idol and its property-Onus of Proof in. See EJECTMENT SUIT-HINDU LAW -RELIGIOUS ENDOWMENT.

(1882) 10 I. A. 32 (38) = 9 C. 766 (772).

## Hindu Law-Reversioner-Suit against, by donee from deceased widow of last, male owner.

Onus in. See EJECTMENT SUIT-HINDU LAW-WIDOW-GIFT DEED BY. (1870) 13 M. I.A, 419 (423).

## Hindu Law-Reversioner-Suit by, to recover last male owner's property.

ADOPTED SON OF LAST MALE OWNER-PERSON CLAIMING TO BE-SUIT AGAINST-ONUS IN.

Defendant's title-Inquiry into, unnecessary. See EJECTMENT SUIT-HINDU LAW-REVERSIONER-SUIT BY, AGAINST, ETC, (1928) 56 I.A. 21 = 52 M. 175,

-Eath denying relationship of other See EJECT-MENT SUIT-HINDU LAW-REVERSIONER-SUIT BY. AGAINST PERSON, ETC. (1890) 17 I. A. 159 (162) = 18 C. 201 (205-6).

Hindu Law-Reversioner-Suit by, to recover last male owner's property-(Contd.)

RELATIONSHIP OF PLAINTIFF-PROOF OF-ONUS AS TO.

-Sa EJECTMENT SUIT-HINDU LAW-REVER-SIONER-SUIT BY, FOR POSSESSION, ETC.

(1918) 9 L.W. 416 (421-2).

-Daughter of deceased -Defendant in possession being. See EJECTMENT SUIT-LEGITIMACY.

(1873) 21 W.R. 89.

-See HINDU LAW-REVERSIONER - WIDOW-DEATH OF-POSSESSION OF LAST MALE OWNER'S PRO-PERTY ON-SUIT FOR-TITLE AS NEAREST REVER-SIONER.

TITLE OF LAST MALE OWNER TO SUIT PROPERTY.

Onus of Proof of, Sec (1) HINDU LAW-REVER-SIONER - WIDOW-DEATH OF-POSSESSION OF PRO PERTY ON-SUIT FOR-TITLE OF LAST MALE OWNED, LTC. AND

(2) HINDU LAW-DAUGHTER-FATHER'S ESTATE (1919) 13 L. W. 436 (439)

WIDOW OF LAST MALE OWNER-DEFENDANT CLAIMING TO BE.

Onus in case of. See EJECTMENT SUIT-HINDU LAW-REVERSIONER-SUIT BY, FOR FOSSESSION OF ETC. (1866) 10 M.I.A. 511 (528) and (1901) 29 I.A. 1= 24 A. 94 (107).

WILL BY DECEASED SET UP BY DEFENDANT IN-PROOF OF-ONUS.

-Forgery of will-Declaration of-Reversioner's suit for-Defendant's persons claiming under will. See HINDU LAW-WILL-EXECUTION OF-ONUS OF PROOF AS TO -REVERSIONER'S SUIT FOR DECLARATION OF INVALI-(1919) 24 C.W.N. 674 (675, 684).

-Intestacy of deceased-Declaration of-Reversioner's suit for-Widow defendant setting up will in her favour. See HINDU LAW-WILL-EXECUTION OF-ONUS OF PROOF AS TO-REVERSIONER'S SUIT AGAINST WIDOW.

(1) (1847) 4 M. I. A. 259 (285). and (2) (1901) 28 I.A. 186 (188-9) = 23 A. 405 (413).

#### Hindu Law-Widow.

Gift deed by—Donees under—Suit against rever-sioner by—Onus of Proof in. See EJECTMENT SUIT— HINDU LAW-WIDOW-GIFT DEED BY.

(1870) 13 M. I. A. 419 (423).

Suit by last male owner's-Onus in. Ser EJECT. MENT SUIT-HINDU LAW-WIDOW.

(1847) 4 M. I.A. 137 (167).

-Suit to recover husband's estate by-Will of last male owner in their favour set up by defendants in-Onus of Proof as to. See HINDU LAW-WILL-EXECUTION OF-ONUS OF PROOF AS TO-WIDOW'S SUIT, ETC.

(1856) 6 M.I.A. 309 (338).

#### Judgment under appeal-Incorrectness of.

-Onus on appellant to show. See APPEAL-APPEL-LANT-JUDGMENT UNDER APPEAL.

### Letters of Administration—Order granting, refusing to adjudicate upon rival claims.

Suit by unsuccessful claimant in case of, against party to whom Letters were granted-Onus in. See EJECT-MENT SUIT-SUCCESSION-RIVAL CLAIMANTS TO-LETTERS OF ADMINISTRATION, ETC.

ONUS OF PROOF-(Contd.)

#### Mahomedan Law.

-Inheritance-Right to, depending upon sect of deceased-Sect of deceased in case of-Onus of Proof as to-Defendant in possession and registered as owner in revenue books, See EJECTMENT SUIT-MAHOMEDAN LAW-INHERITANCE. (1890) 17 I. A. 73 (75)= 12 A. 290 (295).

-Residuary heir-Person claiming as - Suit by, against widow in possession for over 11 years -Onus in. See EJECTMENT SUIT-MAHOMEDAN LAW-RESIDUARY (1871) 17 W. B. 108.

#### Minority-Execution of deed during.

-Plea of-Onus of Proof of. See (1) DEED-EXE CUTANT OF and (2) SALE DEED-EXECUTANT OF

#### Mortgage deed—Admission by mortgagor in.

-Correctness of-Presumption-Onus of rebutting-See MORTGAGE - DEED OF-ADMISSION, ETC.

#### Mutation Proceedings-Order in, referring parties to Civil suit.

-Onus in Civil Suit-Effect on. See MUTATION-PROCEEDINGS FOR-ORDER IN, REFERRING PARTIES (1871) 14 M.I.A. 289 (307). TO CIVIL SUIT.

#### Non-assumpsit-Plea by defendant of

-Onus on plaintiff in case of.

As the new rules of pleadings clearly do not extend to India, there can be no doubt whatever that the plea of non assum psit puts the plaintiff there to a proof of his title, as it did here incontestibly up to the making of those rales (289). (Lord Brougham.) JAMES CLARK D. BABOO (1839) 2 M.I.A. 263= ROUPLAUL MULLICK.

3 Moo. P.C. 252 = Morton 430 = 1 Bar. 188.

#### Objection to.

MATERIAL WHEN AND WHEN NOT.

-Sw Onus of Proof-Question as to.

PRIVY COUNCIL APPEAL-MAINTAINABILITY IN.

-Acceptance of onus in trial Court-Appeal to lower Court, not on ground of error as to onus, but on ground that onus has been discharged-Objection not maintainable in such a case. (Mr. Erskine.) SREE RAJA ROW VEN-CATA NILADRY ROW P. VUTCHAVGY VENKATAPUTTY (1834) 5 W.R. 80 = 1 Suth. 17 (19)= RAZ. 3 Knapp. 23 = 1 Sar. 59.

Acceptance of onus by objector in trial Court-Appellate decision based on evidence and not on question of OWNE.

The suit was brought by the respondents against the ap pellant for a confirmation of their possession of certain mouzahs; and their plaint, which declared that their sail was for that confirmation, also prayed that it might be done after a reversal of a summary proceeding, and after setting aside a fraudulent and fabricated deed of sale set up by the appellant. The deed was executed by a purdanashin lady in favour of the appellant, and the respondents were the

heirs of that lady. The plaintiffs did not rest their case before the trial Judge simply upon their title as heirs, but did, by evidence challenge the validity of the deed. They called witnesse to show the circumstances under which the lady lived, and to challenge proof of the consideration having passed which the deed alleged to have been given. The evident might have been weak, but the appellant accepted the owner which that evidence prima facie cast upon him; and he went into his whole case, and gare the evidence that he thought would best support it. Upon review of that evidence, the High Court came to the coocle (1917) 44 I.A. 251 = 45 C. 1 (6-7). | sion that it was utterly insufficient to establish the raidity

#### ONUS OF PROOF-(Contd.)

Objection to-(Contd.)

PRIVY COUNCIL APPEAL-MAINTAINABILITY IN-(Contd.)

of the deeds under the circumstances of the case. From the judgment of the High Court, however, it appeared that the High Court regarded the suit as if it were an action of ejectment brought by the respondents as the heirs of the deceased lady, and held that, on proof by them that they were her heirs, the burden was thrown upon the appellant to shew a better title.

Held, on objection taken that the High Court had wrongly thrown the onus, that though the judges did not quite correctly state the principle of fixing the onus their judgment was substantially right (206). (Sir Montague E. Smith.) TACOORDEEN TEWARY P. NAWAB SVED ALI HOSSEIN KHAN. (1874) 1 I. A. 192 = 21 W. R. 340 = 13 B. L. R. 427 = 3 Sar. 368.

-Acceptance of onus in Courts below-Trial proceed-

ing on that basis in Courts below-Effect.
In an appeal to the Privy Council plaintiff-appellant complained that the onus of proof had been wrongly placed on him by the courts below.

It appeared, however, that the plaintiff had accepted the onus on the issues as they were framed that evidence had been gone into on that basis, that the parties had proceeded to trial evidently on that assumption, and that, but for that, the procedure might have been different in many respects.

Held that it was too late to raise any such question at that stage (367). (Lord Sinhe.) SECRFTARY OF STATE FOR INDIA D. GIRIJABAL. (1927) 54 I. A. 359 = 51 B 957 = 26 A.L.J 32 = 29 Bom. L.R. 1503 =

46 C.L.J. 420 - 39 M L. T. 463 = 106 I.C. 1 = 27 L.W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

Evidence entire before Courts below-Decision based on, and not on onus. See ONUS OF PROOF-QUESTION AS TO-MATERIAL WHEN-WHEN NOT MATERIAL

#### SECOND APPEAL-MAINTAINABILITY IN.

In Second Appeal when the relevant facts are before the Court, discussion as to the burden of proof is not pertinent, and all that remains for decision is what inference should be drawn from those facts. (Sir Lawrence Jenkins.) SETURATNAM AIYAR D. VENKATACHALA GOUNDAN,

(1919) 47 I. A. 76 (85) = 43 M. 567 (577) = 18 A. L J. 707 = 27 M L. T. 102 = 11 L. W. 399 = 22 Bom. L B 578=(1920) M. W. N. 61= 56 1. C. 117=25 C. W. N. 485=38 M. L. J. 476.

Partner-Partnership books-Entries in-Inaccuracy of

-Plea of-Proof of. See ACCOUNTS BOOKS-(1866) 10 M. I. A. 490 (508). HINDU JOINT FAMILY. Party subject to.

Evidence adduced by, insufficient. See ONUS-EVI-DENCE ADDUCED TO DISCHARGE-INSUFFICIENCY OF. Party not subject to.

Counter-evidence undertaken to be adduced by-Insufficiency of -Adverse inference from-Propriety. Sec-ONUS OF PROOF-EVIDENCE ADDUCED TO DISCHARGE -INSUFFICIENCY OF-ADVERSE INFERENCE FROM.

#### Payment-Onus of Proof of.

-Rule as to. See PAYMENT-PROOF OF-ONUS. (1867) 11 M. I. A. 619 (633).

#### Permanent Settlement of 1793-- Land whether included in or not.

-Proof of. See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-PERMANENT SETTLEMENT OF 1793. (1902) 30 I. A. 44=30 C. 291.

### ONUS OF PROOF-(Contd.)

Possession-Long possession-Disturbance of.

-Party seeking-Onus on, See POSSESSIOU-LONG POSSESSION-DISTURBANCE OF,

Promissory note-Liability under-Satisfaction of-Oral agreement as to.

-Onus of Proof of. See EVIDENCE ACT-S. 92, PROVISO 2-PRO-NOTE-LIABILITY UNDER.

(1915) 42 I. A. 103 (107-8) = 39 B 399 (407-8.)

Question as to-Material when and when not.

-Entire cridence before Court-Decision based on, and not on onus-Question not material in ease of.

(Mr. Erskine.) SREE RAJA RAO VENCATA NILADRY ROW D VUTCHAVOY VENCATAPUTTY RAZ. (1834) 5 W. B. 80=1 Suth. 17 (19)=3 Knapp. 23=

1 Sar. 59. -See ONUS OF PROOF-OBJECTION TO-PRIVY APPEAL-MAINTAINABILITY IN- ACCEP-COUNCIL TANCE OF ONUS BY OBJECTOR IN TRIAL COURT.

(1874) 1 I. A. 192 (206).

-Held that plaintiff-appellant could not effectively urge, as a ground of appeal, that the courts below wrongly cast the onus of proof on him, because the case was fully gone into in the Courts below, the evidence offered by either party was received and the whole of it was considered by both the courts below and they concurred in finding the question of fact involved in the case against the plaintiff. (Sir Richard Couch.) RAM CHARAN D. DEBI DIN.

(1890) 13 A. 165 = 5 Sar. 616.

-Quaere whetherany question of onus remains after the parties go into evidence. (Mr. Ameer Ali.) MOHAMMAD MEHDI HASAN KHAN D. MANDIR DAS.

(1912) 39 I. A. 184 (187)=34 A. 511 (516)= 10 A. L. J. 373 = 12 M. L. T. 392 = 14 Bem. L. R. 1073 = 17 C. W. N. 49 = 16 C. L. J. 629 = (1912) M. W. N. 1052 = 17 I. C. 396 = 23 M. L. J. 741.

-When the evidence in the case is sufficient to establish a clear conclusion of fact, it cannot matter by which party it was given. No question as to the onus of proof will arise in such a case. (Lord Sumner.) KUMAR BAS-ANTA ROY D. SECRETARY OF STATE FOR INDIA.

(1917) 44 I. A. 104 (111) = 44 C. 858 (869) = 21 C. W. N. 642=15 A. L. J. 398=25 C. L. J. 487= 19 Bom. L. B. 480=22 M. L. T. 310=6 L. W. 117= 1 Pat. L. W. 593=40 I. C. 337=32 M. L. J. 505.

Their Lordships do not, after considering facts which appear to them to be sufficiently established in the two suits, attach much importance to the question on whom the initial onus lay (237). (Viscount Haldone.) KUNDAN LAL v. MUSSAMAT BEGAM-UN-NISSA.

(1918) 8 L. W. 233 = 22 C. W. N. 937 = 47 I. C. 337.

-However important the question of the burthen of proof may be in the early stages of a case, after all the evidence is out on both sides, it must be looked at as a whole, and the truth of the point at issue must be inferred from it (761.) (Lord Sumner.) EAST INDIAN RAILWAY CO. D. KIRKWOOD. (1919) 48 C 757=15 L. W. 248= (1922) P. C. 195 = 67 I. C 921 (P. C.),

-When the entire evidence on both sides is once before the Court the delvate as to onus is purely academical. On this point their Lordships desire to associate themselves with the observation of the Board in L. R. 47 I. A. 76: "The controversy had passed the stage at which discussion as to the hurden of proof was pertinent; the relevant facts were before the Court, and all that remained for decision was what inference should be drawn from them." (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA P. VEERAMA REDDI.

(1922) 49 I. A. 286 (303)=45 M. 586 (607)=

#### ONUS OF PROOF-(Contd.)

Question as to-Material when and when not-(Contd.)

27 C. W. N. 245 = 37 C. L. J. 199 = 16 L. W. 102= 31 M. L. T. 54 = (1922) M. W. N. 749 = A. I. R. 1922 P. C. 292 = 68 I. C. 538 = 43 M. L. J. 640.

It may be that as the plaintiff was dispossessed by the British Government in 1901 there is a certain onus upon the appellant to justify his dispossession, but this becomes of little materiality when evidence is adduced from which a conclusion in fact may be legitimately drawn. (Lord Sal-TYPEN.) SECRETARY OF STATE FOR INDIA IN COUNCIL P. LAXMIBAL (1922) 50 I. A. 49 (55)=

47 B. 327 (332)=17 L. W. 405=28 C. W. N. 49= 32 M. L. T. 111 = 37 C. L. J. 464 = 25 Bom. L. R. 527 = A. I. R. 1923 P. C. 6 = 72 I. C. 898 = 44 M. L. J. 471.

 Onus is always on a person who asserts a proposition or fact which is not self-evident. To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion because it is self-evident that he had been born. But to assert that he was born on a certain date if the date is material, requires proof; the onus is on the person making the assertion. Now, in conducting any inquiry, the determining tribunal, be it judge or jury, will often find that the onus is sometimes on the side of one contending party, sometimes on the side of the other, or, as it is often expressed, that in certain circumstances the onus shifts. But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pre and com so evenly balanced that it can come to no sure conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it. and need not be further considered (69.) (Viscount Dunedin,) WILLIAM ROBINS v. NATIONAL TRUST CO. LTD.

(1927) 4 O. W. N. 463=101 I. C. 903= A. I. B. 1927 P. C. 66.

-When all the circumstances have been ascertained so far as the parties have thought fit to ascertain them, discussion on the point of onus becomes immaterial and the decision must be come to on the whole of the circumstances so ascertained, and the question of onus only becomes important if the circumstances are so ambiguous that a satis factory conclusion is impossible without resort to it. (Lord Warrington of Clyffe.) SIME DARBY & CO. LTD. +. OFFICIAL ASSIGNEE OF THE ESTATE OF LEE PANG ENG. (1927) 30 Bom. L. R. 290=107 I. C. 233= I. L. T. 40 Cal. 104=47 C. L. J. 839=27 L. W. 744= A. I. R. 1928 P. C. 77 = 54 M. L. J. 337 (339).

Where all the evidence is in, the question of burden of proof is not of much importance, as the Court has then to decide upon the whole evidence. (Viscount Sumner.) SUNDER MULL P. SATYA KINKAR SAHANA

(1927) 55 I.A. 85 = 26 A. L. J. 364 = 9 P. L. T. 203 = 27 L. W. 461 = (1928) M. W. N. 242 = 5 O. W. N. 400 = 47 C. L. J. 403 = 108 I. C. 337 = 30 Bom. L. R. 793 = 32 O. W. N. 657=7 Pat. 294=A. I. R. 1928 P. C. 64=

54 M. L. J. 427.

-Onus probandi applies to a situation in which the mind of the judge determining the suit is left in doubt as to the point on which side the balance should fall in forming a conclusion. It does not happen that as a case proceeds the onus may shift from time to time. There never is any duty upon the part of the Judge to be blind to facts established before him. (Lord Shaw.) YELLAPPA RAMAPPA NAIK v. TIPPANNA BIN LAXMANNA. (1928) 27 A. L. J. 4= 33 C. W. N. 238 = A. I. R. 1929 P. C. 8=

56 M. L. J. 287 (293). | OF,

ONUS OF PROOF-(Contd.)

#### Railway Company.

-Negligence of-Damages for-Suit for-Onus on plaintiff in. See RAILWAY COMPANY - NEGLIGENCE OF -DAMAGES FOR.

-Passenger in-Duty of care which he is prima facie entitled to expect from Company Contract depriving him of benefit of-Onus of Proof of. See RAILWAY CO .- PASSEN GER-DUTY OF CARE, ETC.

(1915) 19 C. W. N. 905 (909-10).

#### Relationship-Recognition by conduct of.

 Dispute of relationship subsequently by party recognising—Onus in case of. See RELATIONSHIP—RECOGNITION BY CONDUCT OF. (1880) 8 C. L. R. 346 (349).

#### Ship-Loss of goods by fire-Damages for, on ground of alleged negligence.

-Suit for-Onus on plaintiff in. See SHIP-LOSS OF GOODS-FIRE. (1917) 8 L. W. 4 (7-8).

#### Survey Proceeding-Party in possession under.

-Suit against, by unsuccessful party in such proceeding -Onus in, See SURVEY PROCEEDING-PARTY IN POSSESSION UNDER. (1869) 12 M. I. A. 292 (340)

#### Thakbust proceeding—Party in possession under.

-Suit against, by unsuccessful party in such proceeding-Onus in. See THAKBUST PROCEEDING-PARTY IN (1869) 12 M. I. A. 292 (340). POSSESSION UNDER.

#### Transfer-Validity of.

Onus of Proof of-Suit based on transfer. See TRANSFER-VALIDITY OF. (1900) 28 I. A. 46 (53)= 24 M. 377 (384)

#### Zemindar-Zemindari.

LANDS WITHIN AMBIT OF.

Ghatwal or Digwar-Lands held by-Zemindar's claim to-Onus of Proof in case of. See GHATWALLY TENURE-ZEMINDAR'S CLAIM TO, ETC.

(1926) 53 I. A. 100 (112) = 53 C. 533.

Ghatwally tenure permanent and fixed in respect of -Claim to-Onus of Proof of. See GHATWALLY TENURE (1894) 22 I. A. 60 (67)= -ZEMINDARI. 22 C. 533 (545-4).

-Mocurruri or dur-mocurruri rights in-Plea of-Ones of Proof of. See ZEMINDAR-ZEMINDARI-LANDS WITH IN AMBIT OF-MOCURRURI OR,

(1894) 22 I.A. 60 (66)= 22 C. 533 (542)

-Mocurruri grant in perpetuity at fixed rent in respect of-Plea of-Onus of Proof of. See LEASE-ZEMINDAR -LEASE BY-MOCURRURY LEASE, ETC.

(1873) 19 W. B. 252 (254).

-Rent-free-Claim to land as being-Onus of Proof of. See BENGAL ACTS-TENANCY ACT OF 1885-S. 103-B-RECORD OF RIGHTS-ENTRY IN.

(1922) 49 I. A. 399 (408-9) = 2 P. 38 (48-9) Shikmee talook—Settlement of lands as—Plea of

Onus of Proof of See ZEMINDAR-ZEMINDARY-LANDS WITHIN AMBIT OF-SHIKMEE TALUK.

(1863-5) 10 M. I. A. 165 (171)

-Zemindar's title to—Claim adverse to—Onus of Proof of. See ZEMINDAR—ZEMINDARI—LANDS WITHIN AMBIT OF-ZEMINDAR'S TITLE TO.

(1929) 57 M. L. J. 776

MAL ASSETS OF-PROPERTY INCLUDED IN. -Rent of-Enhancement of-Zemindar's right of Tenant disputing—Onus on. See LANDLORD AND TEN-ANT-RENT-ENHANCEMENT OF-ZEMINDAR'S RIGHT (1870) 5 M. J. 589.

### ONUS OF PROOF-(Contd.)

Zemindar-Zemindari-(Contd.)

MAL VILLAGE IN-LESSEE OF.

-Minerals-Right to-Onus of Proof of. See MINE-RALS-LEASE-ZEMINDARI. (1910) 37 I A. 136= 37 C. 723.

MOUNTAIN LAND IN-CLAIM TO, AS BEING PART OF ZEMINDARI.

Onus of Proof of-Claim as against Government-Zemindari held under Government grant. See ZEMINDAR ZEMINDARI-MOUNTAIN LAND IN.

(1891) 18 I. A. 149 (154-5)=15 M. 101 (107-8).

PERMANENT SETTLEMENT-ZEMINDARI SUBJECT OF-CLAIM TO PORTION OF.

Onus on claimant-Zemindari traversed by navigable river of variable course. See ZEMINDARI-PERMANENT SETTLEMENT OF-OBJECT OF. (1917) 43 I.C. 361 (368).

#### Zemindari -- Revenue Sale Purchaser of.

-Julkur rights incident to tenure which cannot be avoided by him-Suit for recovery of-Onus of Proof in. See ZEMINDARI-REVENUE SALE OF-PURCHASER AT -JULKUR RIGHTS, ETC. (1873) 20 W. B. 45.

-Rent of sub-tenure-Enhancement of-Suit for-Tenure held at fixed and invariable rent for more than 12 years prior to Perpetual settlement-Defence-Plea of-Onus of Proof of. See ZEMINDARI—REVENUE SALE OF —PURCHASER AT—RENT OF SUB-TENURE—ENHANCE-MENT OF-SUIT FOR-TENURE, ETC.

(1865) 10 M. I. A. 183 (189).

#### ORDER.

Acquiescence in.

-Appeal from-Right ot. See DECREE-ACQUIES-CENCE IN.

#### Affirmative order-Power to make.

——Negative order—Power to make, if implied. See REGISTRATION ACT OF 1871—S. 76.

(1876) 3 I. A. 221 (2256) = 2 C. 131 (137).

Ambiguity in.

-Validity of-Presumption in favour of. See COURT ORDER OF -AMBIGUITY IN. (1900) 28 I. A. 28 (33)= 23 A. 220 (226).

Appeal from-Bight of.

——Jurisdiction—Usurpation of—Order made in. See JURISDICTION—USURPATION OF—ORDER MADE IN. (1882) 10 I. A. 4(17)= 9 C. 482 (493-4).

Case stated to Court-Order of Court on.

-Advisory or final-Test. See COURT-CASE STAT. ED TO. (1923) 50 I.A. 212 (224-5) =47 B. 724 (739-40).

Consent-Order by.

-Appeal from-Right of. See DECREE-APPEAL FROM-RIGHT OF-CONSENT DECREE OR ORDER.

-Estoppel by-Order of Court not made by consent-Effect of-Distinction. See EVIDENCE ACT-S, 115-CASES UNDER-CONSENT ORDER.

(1929) 57 M. L. J. 429.

-Fraud or mistake-Order obtained by-Void or voidable-Setting aside of - Mode of.

A consent order, even where it has been obtained by fraud or mistake, is not a nuility. At the best, so far as the party aggrieved by it is concerned, the order embodies an agreement which possibly may well remain voidable at his instance. But that means that the order stands until it has been effectively set aside. It can only be so set aside in an action or proceeding directed to that special end. (Lord Blanesburgh.) CHARLES HUBERT KINCH P. ED-WARD KEITH WALCOTT. (1929) 118 I. C. 7= 50 L. W. 606=A. I. B. 1929 P.C. 289=

ORDER-(Contd.)

Consent-Order by-(Contd.)

Invalidity of, on ground of its being contrary to statute—Plea of—Estoppel. See CENTRAL PROVINCES TENANCY ACT OF 1883 - S. 42. (1921) 48 I. A. 230= (1921) 48 I. A. 230= 48 C. 501.

-Setting aside of-Conditions, See RECEIVER-AD-MINISTRATION BY-CONSENT ORDER AS TO.

(1924) 47 M. L. J. 286 (293).

-Suits different-Consent orders in, intended to stand or fall together-Repudiation of one only of-Permissihility.

Where consent orders in two suits were intended to stand or fall together, Quare whether it is possible for one of the parties to the orders to stand by the order in one suit while repudiating the order in the other. (Lord Hanesburgh.) CHARLES HUBERT KINCH D. EDWARD KEITH WAL-COTT. (1929) 118 I. C. 7 = (1929) A. C. 482 = 30 L. W. 606 = A. I. B. 1929 P.C. 289 =

57 M. L. J. 429.

Court-Order of.

-Case stated-Order on-Nature of. See COURT-CASE STATED TO. (1923) 50 I. A. 212 (224-5)=

47 B. 724 (739-40). -Government's disobedience of-Improbability of. See GOVERNMENT-COURT'S ORDER.

(1898) 26 I. A. 16 (29) = 22 M. 270 (283). Prejudice to party by—Impropriety of. See C. P.C. OF 1908—S. 144—DECREE REVERSED ON APPEAL— STATUS QUO IN CASE OF. (1922) 49 I. A. 351 (355-6)= 2 P. 10 (16).

#### Ex parte order.

-Application for-Good faith on part of applicant-Necessity-Absence of good faith-Rescinding of order on ground of.

Their Lordships attach great importance to the obligation which rests on all persons seeking ex parte orders to be thoroughly open with the Court, (Lord Hobbonse.) MAHO-MED MEERA ROWTHAR P. SAVVASI VIJAYA RAGHU-NADHA GOPALAR. (1899) 27 I. A. 17 (27) = 23 M. 227 (237)=4 C. W. N. 228-2 Bom. L. R. 640-7 Sar. 661=10 M. L. J. 1.

-See also UNDER PRIVY COUNCIL-APPEAL-SPE-CIAL LEAVE FOR-APPLICATION FOR.

-Application for-Notice to party likely to be affected Necessity-Party outside jurisdiction of Court.

It is perfectly familiar to the practice of the Court of chancery, when an order is applied for which may be made ex parte, to direct notice of the application to be given to the party who may be affected by it, to the intent that such party, though not subject to the jurisdiction of the Court, may appear, if he pleases, to protect his interests (344). (Mr. Pemberton Leigh.) KERAKOOSE v. SERLE.

(1844) 3 M. I. A. 329=4 Moo. P. C. 459=1 Sar. 286. Final order.

-What amounts to a. See UNDER C. P. C. OF 1908 -S. 109 (A).

#### Form of-Error in.

Advantage if can be taken of.

A party cannot take advantage of the wrong form of an order to escape a liability to which he would have been subject if the order had been made in proper form (122). (Lord Parker.) MEYYAPPA CHETTY 7: SUBRAMANIAN CHETTY. (1916) 43 I. A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N. 455 = 18 Bom. L. B. 642 =

#### 35 I. C. 323. Hearing of party-Order made without.

-Propriety of. See MAXIM-AUDI ALTERAM (1929) A. C. 482 = 57 M. L. J. 429. PARTEM. (1906) 33 I. A. 134 (138) = 33 C. 1178 (1182).

OBDER-(Contd.)

#### Illegal order-Setting aside of.

-Suit for - Necessity - Attempt to enforce order-11 gives a cause of action to aggricave party.

If the order was illegal, the plaintiff against whom it was made was not bound to file a suit to set it aside, but was entitled to wait until it was enforced against him, and the attempt to enforce it against him would give him a good cause of action (394). (Sir John Wallis.) LAXMANRAO

MADHAVRAO r. SRINIVAS LINGO. (1927) 54 I.A. 380 = 51 Bom. 830 = 46 C. L. J. 393 = 39 M. L. T. 527 = 29 Bom. L. R. 1484 - A. I. R. 1927 P. C. 217 = 53 M. L. J. 475.

#### Interlocutory order—Appeal from final decree.

-Questioning of order in-Right of-No appeal from interlocutory order. See APPEAL - INTERLOCUTORY ORDER.

Invalid order—Recalling and cancellation of.

-Power and duty of Court. See C. P. C. OF 1908-S. 151-INVALID ORDER. (1871) 14 M. I. A. 40 (47-8).

Judicial or administrative or executive order.

-See PRESS ACT OF 1910-S, 3 (1) PROVISO.

(1919) 46 I. A. 176-43 M. 146 (158). -See ALL OTHER CASES UNDER JUDGE (1) FUNC-TION OF AND (2) PERSONA DESIGNATA OR.

Jurisdiction—Usurpation of—Order made in.

-Appeal from. See JURISDICTION-USURPATION OF-OREER MADE IN. (1882) 10 I. A. 4 (17) = 9 C. 482 (493-4).

### Party-Order behind back of, to his prejudice.

-Making of-Propriety. See MAXIM-AUDI AL-TERAM PARTEM. (1906) 33 I. A. 134 (138) = 83 C. 1178 (1182).

#### Statute-Wrong section of-Order under.

-Right to take advantage of. See LIMITATION ACT OF 1908-S. 22. (1916) 43 I. A. 113 (121-2).

#### ORDERS IN COUNCIL.

-Crown's power of making-Deprivation of, only by Statute-Prior inconsistent orders-Effect of, on validity of later order. See CROWN-ORDERS IN COUNCIL.

(1926) A. I. R. 1926 P.C. 131 (136) = 30 C. W. N. 961. ORDINANCE IV OF 1919.

-Construction - Validity-Consistion by Commissioner's Court-Legality-Accused not named in order for trial-Effect

The appellant, who was the editor of a newspaper called the Tribune published at Lahore, was convicted by a Court of Commissioners sitting at Lahore under the Martial Law Ordinance I of 1919 of an offence under S. 124 A of the Penal Code. The order of the Lieutenant-Governor made under Ordinance IV of 1919, did not name the accused who were to be so tried, but applied to "all persons charged with offences connected with the recent disturbances;" Held that the validity of the Ordinance being established by the decision in 47 I.A. 128 the Commissioner's Court had jurisdiction, although the order of the Lieutenant-Governor did not name the accused persons. (Viscount Care ) KALI NATH. ROY D. EMPEROR. (1920) 48 I. A. 96=

2 Lah. 34 = 19 A. L. J. 65 = (1921) M. W. N. 49 = 25 C. W. N. 701 = 33 C. L. J. 124 = 13 L. W. 253 = 22 Cr. L. J. 129 = 59 I. C. 641 = 40 M. L. J. 101.

#### ORISSA.

-Chowdhuri-Office of-Nature and remuneration of. See CHOWDHURI. (1908) 36 I. A. 49 = 36 C. 590 (595-6). -Land tenures in. See TENURE-LAND TENURE-ORISSA.

#### ORISSA-(Contd.)

-Three well-defined tracts of-Description of. (Mr. Ameer Ali.) SECRETARY OF STATE FOR INDIA D. KIR-TIBAS BHUPATHI HARICHANDAN MAHAPATRA.

(1914) 42 I. A. 30 (33-4)=42 C. 710 (718-9)= 17 M. L. T. 1=2 L. W. 2=17 Bom. L. B. 32= 19 C. W. N. 95 = 26 C. L. J. 31 = 26 I. C. 676= 28 M. L. J. 457.

#### OUDH-

AHBAN THAKURS IN. CONFISCATION IN. HARD CASE CIRCULAR NO. 4 OF 1867. LAND IN. LAND TENURES IN. LAW APPLICABLE IN, IN 1859-60. LIMITATION.

MORTGAGE OF LANDS IN-REDEMPTION OF. NAZUL REGISTER-LANDS ENTERED IN,

OUDH ESTATE.

REGISTRATION RULES OF 1862.

REVENUE AUTHORITIES IN-SUITS INSTITUTED BE-FORE-SCOPE OF.

REVENUE SETTLEMENT IN-COMPLETION OF. SETTLEMENT IN.

SETTLEMENT CIRCULAR ORDER, 29-1-1861.

OUDH-AHBAN THAKURS IN.

-Sa AHBANS.

#### OUDH-CONFISCATION IN.

#### Canning's proclamation of 15-3-1858-Effect of.

The effect of the well-known proclamation of Lord Canning issued on 15-3-1858 was to divest all the landed property from the proprietors in Oudh, and to transfer it to, and vest it in, the British Government (67). (Sir Robert P. Collier.) NAWAB MALKA JAHAN SAHIBA D. DEPUTY (1879) 6 L A. 63= COMMISSIONER OF LUCKNOW.

3 Sar. 244 = 3 Suth. 584 = Bald. 194=

R. & J's No. 55.

-No change of, by Outram's proclamations of 22.3 1858 and 25-3-1858.

The proclamations of General Outram of 22.3-1858 and 25-3 1858 cannot be taken as changing the effect of the proclamation of Lord Canning, or having any operation, in 25 far as they may be inconsistent with it. Certainly they have not the effect of divesting any property from the British Government which had been vested in it. The object of General Outram, doubtless, was to exhibit a conciliatory policy to those who should promptly come in and tender their submission to the British Government (678). (57 Robert P Collier.) NAWAB MALKA JAHAN SAHIBAR DEPUTY COMMISSIONER OF LUCKNOW.

(1879) 6 I. A. 63=3 Sar. 244=3 Suth 584 Bald. 194=B & Ja No. 55

## Canning's and Outram's proclamations-Effect of.

-Lucknow-Houses in-Effect on.

By Lord Canning's proclamation of the 15th of March 1858, all the proprietary rights in the soil of the province week confiscated; and by a proclamation of Sir James Outram was notified that " for those who have fled from the city" speaking of the city of Lucknow—"having locked up their houses, that if they would not return within ten days and it occupy their houses, the property, with their houses, will be confiscated"

Quaere what was the effect of Lord Canning's proclams tion with reference to the houses, or what was the effect of Sir James Outram's proclamation of the 22nd of March 1858 (81). (Sir Barnes Peacock.) PRINCE MIRZA JEHAN KUDR BAHADUR v. NAWAB AFSUR BAHU BEGUM.

(1878) 6 I. A. 78=4 0. 797 (751)= 3 Sar. 865 = B. & J's. No. 5

### OUDH-CONFISCATION IN-(Contd.)

Canning's and Outram's proclamations—Effect of —(Contd.)

-Lucknow-Property in-Umao district-Mouzaks in -Letter of 6-7-1863 from Secretary of Chief Commissioner to Officiating Commissioner-Effect of.

By Lord Canning's proclamation of the 15th of March, 1858, all the proprietary rights in the soil of the province were confiscated; and by a proclamation of Sir James Outram it was notified that" for those who have fled from the city"—speaking of the city of Lucknow—"having locked up their houses, that if they would not return within ten days and re-occupy their houses, the property, with their houses, will be confiscated".

The property in respect of which the suit out of which the appeal arose was brought consisted of two portions, the one of certain houses in the city of Lucknow, and the other of a mouzah situate in the district of Umao in the province of Oudh. The properties originally belonged to one M. K. The defendant, one of the heirs of M. K. obtained possession of both properties, and the plaintiff, another heir of M. K., brought the suit claiming his share in them.

Held, having regard to the letter 6-7-1863 from the Secretary of the Chief Commissioner to the Officiating Commissioner, that it was the intention of the Government to abandon altogether the confiscation as regards the houses and property in the city of Lucknow, and to leave the former owners to their rights in the same way as if there had never been any confiscation (82).

Held further, with regard to the mouzah, that the effect of Lord Canning's proclamation of 1858 was to put an end to all previous titles (82-3).

Whatever title, then, either party has to the mouzah must have been acquired by some grant or some proceeding of the Government subsequent to that proclamation (83). (Sir Barnes Peacock.) PRINCE MIRZA JEHAN KUDR BAHA-DOOR v. NAWAB AFSUR BAHU BEGUM.

(1878) 6 I. A. 76 = 4 C 727 (732-3) = 3 Sar. 865 = B. & J.'s No. 54.

#### Extent of.

Intention of Government-Occupiers-Rights of-

In 1858 came the confiscation of Oudh; the result of which was the determination of all existing interests, and taking them into the hands of the Government. But the Government of India did not intend any such injustice as an absolute confiscation of those rights. In certain instances. where talookdars or others had been guilty of great crimes, absolute confiscation did take place; but otherwise it was intended, under certain regulations, to settle and restore the talookdars, and to protect, as far as necessary, by subsettlement, or by some other process, the existing rights of the occupiers. Though in the letter of Lord Canning in 1859, and in the subsequent circulars which were issued from time to time, every intention is shown to do justice to all the parties, and to compel the talookdars to do justice to the occupiers, yet there is nothing to shew any intention to advance beyond what the rights were at the time of the confiscation, and the intention was generally to restore and to protect those rights (62). (Lord FitzGerald.) THAKUR ROHAN SINGH D. THAKUR SURAT SINGH.

(1684) 12 I. A. 52=11 C. 318 (334)=4 Sar. 590.

### OUDH-HARD CASE CIRCULAR NO. 4 OF 1867.

Proceedings under-Nature of.

Proceedings under the Hard Case Circular (Book Circular No. 4 of 1867) cannot be treated as judicial proceedings. It appears from the circular that the talukdars had engaged to take cases of proved hardship into their favourable consideration. But relief was to be granted not as a matter of right, enforceable by process of law, but as a matter of

# OUDH-HARD CASE CIRCULAR NO. 4 OF 1867-

concession in a spirit of fairness and liberality (110). (Lord Macnaghten.) AMANAT BIRLD. IMPAD HUSAIN.

(1888) 15 I. A. 106=15 C 800 (806)=5 Sar. 214. OUDH-LAND IN.

Claim to-Government grant subsequent to confineation-Proof of Necessity.

Any person claiming land in Oudh must shew a title from Government subsequent to the confiscation (175). (Lord Davey.) CHOWDHRI MAQBUL HUSAIN v. LALTA PERSHAD. (1901) 28 I. A. 169 = 24 A. 1 (8) = 8 Sar. 65.

Person in possession of, and paying rent—Status of.

In the case of lands situated in the Province of Oudh a person in possession and paying rent is either an under-proprietor, an occupancy tenant, a tenant under a special agreement, or a tenant at will. (Lord Buckmatter.) RAJA MAHOMED MUMTAZ ALI KHAN 2. DHANNA SINGH.

(1929) 51 C.L.J. 121 = 34 C.W.N. 375 = 121 I.C. 530 = 31 L. W. 735 = 58 M. L. J. 226, OUDH—LAND TENURES IN.

Birts-Kinds of-Incidents of-Bishunprit birt-Birt bankati-Origin and incidents of-Distinction.

There exist various kinds of birts, the incidents of each of which differ from those of others. Some are acquired by purchase, and are accordingly called bai birts; some are given from motives of piety to Brahmins, and are designated hishauprit birts. Bishunprit hirts were cessions similar in almost every respect to the hai or purchased hirts, save that these were given to Brahmins for the honour and glory of God (if not for that of the giver) and no consideration was taken. A bishunprit khushast is not a grant for "valuable consideration, " but a mere " grant by favour." There is little or no analogy except in the common use of the word hirt between a gratuitous grant like the bishunprit birt and a jungle clearing grant where the grantee has to incur considerable outlay before he can obtain any return from the land. (Mr. Ameer Ali.) RAJA MUHAMMAD ABDUL HAS-SAN KHAN P. LACHMI NARAIN.

(1921) 48 I.A. 267 (277) = 43 A. 355 (365-6) = 24 O. C. 122 = 29 M.L.T. 373 = (1921) M.W.N. 359 = 26 C W.N. 249 = A.I.R. 1922 P. C. 41 = 63 I.C. 694.

-Birt Bankati-Under-proprietary right-Dakeya

The question for decision was whether or not the defendants were under-proprietors of the suit village. The defendants held the village under a birt grant created in 1802 by the then owner of the property. The grant, which was called a Pottah, was in the following terms:—

"I have given the village to P by way of birt. He is free to settle himself and others (therein) and to cultivate himself or get it cultivated, year after year; that is to say, he is free to have it cultivated and populated. He should pay the revenue to the Sarkar at the rate prevalent in the taluqa and take the dasaundh at the rate prevalent in the taluqa. I have written this: none should act against this."

For the first year, the rent was fixed at Rs. 4 rising in the course of 5 years to Rs. 36. The clause relating to future rent provided:—" He (meaning the grantee) is to enjoy it free for 5 or 6 years. Thereafter at the rate for bankati prevalent in the taluga."

In 1871 a Settlement Court decreed upholding the birtholder's possession and occupation as an under-proprietor under Circular No. 2 of 1861, upon the condition that the taluqdar could alter the rent in accordance with the practice, before the annexation, the birt-holder being entitled to deduct a dahyak of 10 per cent., and to be paid it if he refused a patta. The evidence in the case showed that for a number of years the defendants had been paying a rent of Rs. 500, less their tenth.

#### OUDH-LAND TENURES IN-(Contd.)

Held, that the birt-holders, the defendants, were underproprietors, and that the taluquar could not capriciously enhance the rent, which must be at the rate prevalent in the taluqa; and that, in case of dispute, it was wholly within the jurisdiction of the Revenue Court to determine whether the proposed rent was so.

It is alleged that between 1875 and 1879 there was an interruption of the possession of the defendants, and the village was let on a higher rental to other people. Interruption of that character cannot affect or alter the defendants' rights under the pottalt 1802, or the decree once they got back into possession. (Mr. Ameer Ali.) RAJA MUHAMMAD ABDUL HASSAN KHAN 7. LACHMI NARAIN.

(1921) 48 I.A. 267 (279-80) = 43 A. 355 (367-8) = 24 O. C. 122 = 29 M. L.T. 373 = (1921) M. W. N 359 = 26 C.W.N. 249 = A.I.R. 1922 P. C. 41 = 63 I. C. 694. -Rirt Bankati or Bantaraski-Nature and incidents

of.

Large tracts of land in the Province of Oudh were lying unreclaimed and uncultivated, and the usual method for large proprietors was to let out the waste lands on favourable terms and security of tenure to tenants to bring them under cultivation. These grants were usually called hirt bankati or bantarashi, the names indicating the purpose for which they were made. The birtia or birt-holder had to cut down the forest, clear the land, build tanks and induct raiyats. (Mr. Ameer Ali.) RAJA MUHAMMAD ABDUL HASSAN KHAN P. LACHMI NARAIN.

(1921) 48 I. A. 237 (271) = 43 A. 355 (359) = 24 O. C. 122-29 M. L. T. 373-(1921) M. W. N. 359-26 C. W. N. 249 - A.I.B. 1922 P. C. 41 = 63 I. C. 694.

-Birt tenure-Nature of-Relations between birtias

and superior zemindar

Under the nuwahi, birt tenures were presumably carved out of the talookdar's or superior zemindar's estate; they were held under him upon terms varying according to the terms of the particular puttah or contract, and possibly according to the custom of a particular district; they did not necessarily entitle the holders of them to engage directly with the Government for the revenue; when such direct engagements took place malikhana was payable to the talookdar; they were sometimes resumable, and when resumed would fall into the parent estate; and in all cases the relation of superior lord and tenant subsisted between the zemindar and the birtias, a relation which in an unsettled state of society like that of Oudh under the nuwabi, would probably involve more or less of power in the former over the latter, and in dealings between them, give to the zemindar advantages which would not be possessed by a stranger. On the other hand, birts still subsisting are tenures which would entitle their holders to sub-settlement under the Oudh Sub-Settlement Act of 1886 (156-7). (Sir James W. Colvile.) RAJAH KISHENDATT RAM v. RAJAH MUNTAZ ALI KHAN. (1879) 6 I. A. 145 =

5 C. 198 (207.8) = 5 C.L.B. 213 = 4 Sar. 17 = 3 Suth. 637 = B. & J.'s No. 58.

-Birt Zemindars-Heritable and transferable right of, as against taluqdar.

The plaintiff was an Oudh taluqdar, and the defendants were persons who, either by themselves or their predecessors in title, claimed under proprietary rights in villages in his taluqa. Those rights were what were known in Oudh as birt, or birt zemindari rights; and the question for decision was whether persons holding under that tenure had a heritable and transferable right, as against the talundar, in the villages in respect of which the birt had been created.

Held, affirming the judgment below, that as the defendants had shown themselves to come within the benefit of the policy announced in the circular known as the Record of Rights Circular No. 2 of 1861, they acquired, upon the

#### OUDH-LAND TENURES IN-(Contd.)

annexation of Outh by the British Government, absolute under-proprietary rights as against the taluqdar in the villages in suit. (Sir Andrew Scoble.) MUMTAZ ALI KHAN D. MURAD BAKHSH. (1907) 34 I.A. 142=29 A. 708= 2 M. L. T. 402 = 6 C.L.J. 693 = 11 C. W. N. 913 = 9 Bom. L. R. 851=4 A.L.J. 737=10 O. C. 318= 17 M.L.J. 400.

-Birt Zemindari-Meaning of.

It is admitted that the words "Birt Zemindari" may import the transfer of merely a sub-proprietary right (13). (Sir James W. Colvile.) GOWRI SHUNKER v. THE (1878) 6 I. A. 1= MAHARAJAH OF BULRAMPORE. 4 C 839 (853)=3 Sar. 873=3 Suth. 567= B. & J.'s No. 53.

-Matahatdars-Meaning of.

Matahatdars is a description applicable to under-proprietors or persons holding a heritable and transferable right in the land as defined in Cl. 15 of S. 4 of the United Province Land Revenue Act III of 1901 (88). (Sir John Wallit.) UDIT NARAYAN SINGH P. MUBARAK ALI.

(1928) 56 I. A. 86=51 A. 359=27 A. L. J. 81= 13 R. D. 159 = 114 I. C. 577 = 49 C. L. J. 406 = 30 L. W. 246 = 6 O. W. N. 915 = A.I.R. 1929 P. C. 75= 57 M. L. J. 13.

-Navabi-Late under-Grant in perpetuity at rent varying only with the amount of Government revenue-

Writing-Necesity.

It was said in the course of the agreement that under the Nawabi a grant might have been made of the character which the defendant seeks to set up (rez., a grant, in perpetuity, at a rent to be varied at a certain percentage according to the Government revenue) unevidenced by writing Their Lordships may entertain doubt as to whether such was the law of Oudh under the Nawabi, but for the parposes of this case only, they will assume that the law under the Nawabi was as alleged, that is to say, that such a claim as the defendant sets up might have been established and maintained, though unevidenced by any written evidence, or any writing, or written contract, or grant (58). (Lod Fitz Gerald.) THAKUR ROHAN SINGH v. THAKUR (1884) 12 L A. 52= SURAT SINGH. 11 C. 318 (329-30)=4 Sar. 590

-- Pukhtadari tenants-Meaning of.

Pukhtadari tenants is a term applicable to tenants holding under a sub-settlement (88). (Sir John Wallis.) UDIT NARAYAN SINGH D. MUBARAK ALL.

(1928) 56 I. A. 86=51 A. 359=27 A. L. J. 81= 13 R. D. 159=114 I. C. 577=49 C. L. J. 406= 30 L. W. 246 = 6 O. W. N. 915 = A.I.R. 1929 P.C. 75 57 M. L. J. 13.

-Sir-Meaning of-Oudh Rent Act of 1886-Meaning

given in-Applicability.

The restricted meaning of the word Sir given in Ad XXII of 1886 is a meaning based to some extent upon the meaning of the word in the Province of Agra, and is large) the creation of the English Revenue authorities. The word Sir used by an Oudh man would bear the meaning assigned to it by Mr. Sykes, and would not be confined to the me ing which it bears in Act XXII of 1886. (Sir John Edg.) JAI INDRA BAHADUR SINGH D. BIJAI RAJ KUNWAR.

(1922) 49 I. A. 262 (273)= 44 A. 435 (446)= 25 O. C. 260 = 31 M. L. T. 69 (P.C.) = 9 O. L. J. 386 4 U. P. L. B. (P.C.) 76 = A.I.B. 1922 P.C. 318 36 C. L. J. 511=21 A. L. J. 125=27 C. W. N. 201 68 I. C. 876=43 M. L. J. 682

-Under-proprietor - Occupancy tenant-Different

between.

One of the differences between an under-proprietor an occupancy tenant having a more or less fixed tenare is

### OUDH-LAND TENURES IN-(Contd.)

that the former is not liable to pay interest on arrears of rent. (Lord Salvesen.) MOHAMMAD MUMTAZ ALI KHAN v. MOHAN SINGH. (1923) 50 I. A. 202 (206) = 45 A. 419 (422)=21 A. L. J. 757 = 26 O. C. 231 =

33 M. L. T. 321 = 9 O. & A. L. R. 901 = 10 O. L. J. 383 = A. I. R. 1923 P. C. 118 = 19 L. W. 283 = 39 C. L. J. 295 = 28 C. W. N. 840 = 74 I. C. 476 = 45 M. L. J. 623.

-Under-proprietor- Tenure of-Origin of- Prevalence of before Oudh Rent Act of 1868.

The position of a Qubiz darmiani or "under-proprietor" was fully understood in Oudh before the passing of Act XIX of 1868, which definitely crystallised and gave statutory recognition to his right and status. It had come into being from the circumstances of the times; the exactions of the revenue collectors under the old regime had forced many small proprietors to protect themselves against oppression by engaging with some more powerful neighbour to pay the Government revenue through him, but retaining their right in the property. In 1866 the Indian Legislature recognised their right to obtain a sub-settlement of their property, and the Act of 1868 clearly defined their position. (Mr. Americalia) Lal. Sripat Singh v. Lal. Basant Singh. (1918) 8 L. W. 328 = 23 C. W. N. 985 = 21 O. C. 180 =

(1918) M. W. N. 638=5 O. L. J. 497= 16 A. L. J. 817=5 P. L. W. 255=28 C. L. J. 468= 24 M. L. T. 434=20 Bom. L. B. 1101= 47 I. C. 424=35 M. L. J. 595 (601).

-Under-proprietary right-Proof of.

In the settlement that was made in 1867, the talugdar of the suit estate was clothed with rights which excluded the predecessors of the defendants from claiming to have any greater interest in the village than that of thekadars; in other words, it excluded them from proprietary or underproprietary rights. A dispute having arisen early with regard to their claims, a decree was passed on April 7, 1868, which declared that the rights possessed were thekadari and not pukhtadari rights. From the date of that decree until shortly before the institution of the suit everything that took place was, however, upon the footing that the defendants really possessed the rights which the appellant, the talukdar, said they could not enjoy. The Wajib-ul-arz, the khawat and every public document relating to the estate proceeded upon that footing. Further, in 1887 in proceedings taken against a lady who was described as the wife of the talugdar of the suit estate, the defendant judgment-debtor, the respondents once more claimed they had under-proprietary rights and that claim was allowed. Again when the original settlement ended in 1897 or 1898, another settlement was effected upon the footing that the respondents were underproprietors. Further, following upon the settlement, proceedings were taken on behalf of the Court of Wards, on behalf of the then taluqdar, against those under-proprietors on 2-6-1899, for the purpose of obtaining rent, and they were definitely sued there as pukhtadars.

Held, affirming the Courts below, that the title of the respondents which had been so long recognised could not be overthrown. (Lord Buckmaster.) PRITHIPAL SINGH D. GANESH DIN SINGH. (1923) 50 I.A. 210 N

### OUDH-LAW APPLICABLE IN, IN 1859-60.

-Punjab Code-Custom-Applicability of-Despatch of 4-2-1856-Effect.

The effect of Ss. 44 and 45 of the Despatch of the 4th of February, 1856, is, that the principles of law as well as the rules of procedure laid down in the Punjab Code are to be adopted as the basis of the administration of justice in Oudh, and to be applied as far as they may appear to the

#### OUDH-LAW APPLICABLE IN, IN 1859-60-(Contd.)

Commissioners to be not unsuited to the circumstances of the country; but that, as far as they are founded upon local customs, varying the general law, whether Hindu or Mahomedan, they are not to be applied to Oudh, where the local customs would probably differ from those of the Punjab (274). S. 46 of the said Despatch is perfectly consistent with those which precede, and shows that the rules were to be generally acted upon, though strict obedience to them was not required, until it had been ascertained how far they were applicable to the peculiarities of the Province and the customs of its people. With this view, its application is to be carefully watched by those who administer it, who, after a certain period, are to make a report upon the subject, with any suggestions which may occur to them for amending it

On the whole, their Lordships entertain no doubt that the articles of the Punjab Code generally were in force at the time of the date of these orders, the first of which was made on 25-8-1859, and the last on 23-3-1860 (276). (Lord Kingidown.) MULKA DO ALUM NOWAB TAJDAR BOHOO P. MIRZA JEHAN KUDR. (1865) 10 M.I.A. 252=

2 W. R. P. C. 53 - 1 Suth. 554 - 2 Sar. 106 -R. & J.'s No. 2 (Oudh).

#### OUDH-LIMITATION.

### Circular Order No. 104 of 1860.

S. 9-Applicability of.

S. 9 of the Circular Order No. 104, especially when contrasted with S. 10 of that Order, means that the rule referred to in it, is not to apply where there is a written engagement, and where, there being a written engagement, it is registered within six months of its date in cases in which a Registry Office existed at the date of the engagement (121). (Lord Justice Turner.) SALIGRAM v. MIRZA AZIM ALI (1864) 10 M. I. A. 114 = 2 Sar. 87 = R. & J.'s No. 1.

-Ss. 9, 14 - Applicability and effect of. By sec. 9 of the Limitation Rules for the guidance of Civil Courts in Oudh, as explained by the Circular Order of the Judicial Commissioner, No. 104 of 1860, the limitation of suits is fixed for three years in "suits for money lent for a fixed period, or for interest payable on a specified date, or dates or for breach of contract, unless there is a written engagement or contract, and where Registry Offices existed at the time such engagement was registered, within six months of its date." That section held not to apply in the case of a Bond executed in 1855, before the annexation of Oude, when there was no Registry at the place it was made, and sued for in 1860, such transaction falling within section 14 of that Circular Order, where the period of limitation is six years for "all suits on Bonds registered within six months of their date, or on Bonds formally attested when there was no means of registry, and all other suits for which no other limitation is expressly provided by these rules;" and a decree of the Judicial Commissioner of Oude, holding that a suit on the Bond was barred by the three years' limitation, provided by section 9 of the rules, reversed on appeal. (Lord Justice Turner.) SALIGRAM v.
MIRZA AZIM ALI BEG. (1864) 10 M T A 214 (1864) 10 M. I. A. 114= 2 Sar. 87 = R. & J.'s No. 1.

#### Law of.

-If in force in Province.

Quaere, Whether there is or is not in force, in the province of Oude, any period of limitation (120). (Lord Junice Turner.) SALIGRAM P. MIRZA AZIM ALI BEG. (1864) 10 M. I. A. 114 = 2 Sar. 87 = B. & J.'s No. 1.

#### OUDH-MORTGAGE OF LANDS IN-REDEMP- | OUDH-OUDH ESTATE-(Contd.) TION OF.

-Foreclosure proceedings debarring right of-Necessity-Letter of Government of India to Chief Commissioner of Oudh shortly after annexation-Effect. See MORTGAGE -OUDH LANDS. (1872) 8 M.J. 69.

## OUDH-NAZUL REGISTER-LANDS ENTERED

-Removal subsequent of, from said register - Government order for-Effect of-Right to lands-Owners before confiscation-Right of.

The original plaintiff by his plaint claimed to be entitled to the land or soil occupied by a bazaar in the town of Sandila in Oudh as his ancestral property. He alleged that the residents of the said bazzar lived there as ryots having built houses at their own costs, and that the defendant was one of such residents in occupation of two shops and having without permission built another shop on a piece of fallow. The plaint alleged a custom that if the Zamindar desired the ryot to vacate a house or shop he paid the ryot three-fourths of its estimated price. The plaint accordingly prayed for possession of the land occupied by the defendant subject to the payment of three-fourths of the price of the defendants' shops (other than the one erected without permission) according to the custom. The defence was in substance a denial of the plaintiff's title.

After the mutiny the town of Sandila shared the general confiscation of Oudh territory. Other family property was restored to the plaintiff, but in 1860 the bazaar was entered in the Nazul Register under the mistaken belief that it was previously the property of the King of Oudh. In 1879, however, the Government released the bazzar from the nazul. And the principal question in the appeal was as to the effect of that act of the Government. The contention for the plaintiff was that the Government's letter of the 26th of May 1879 was according to its true construction and when read by the light of previous proceedings a regrant to the zemindar of the land and soil of the bazaar. defendant, on the other hand, contended that the letter was a grant to the occupiers of full proprietary rights in their houses and shops and the land upon which they were constructed and thus turned them from ryots and occupiers into land owners

Held, that the letter of 26th May, 1879, coupled with the consequent removal of the bazaar from the Nazul Register operated as a surrender and regrant by the Government of the bazzar and the shops and houses in it to those persons, who if they had not been confiscated, would be entitled thereto according to their several rights and interests.

The intention of the Government was simply to annul the entry in the Nazul Register and restore the rights which existed when it was erroneously made. And the effect of expunging the entry in the register was a disclaimer by the Government of all title, and a surrender or release of the property to those whom it might concern or (in other words) those who would have been entitled but for the confiscation, according to their several rights and interests, thus following out the policy of the Government at the general settlement of the land in Oudh. (Lord Davy.) CHOW-DHRI MAQBUL HUSAIN P. LALTA PRASAD.

(1901) 28 I.A. 169=24 A. 1=8 Sar. 65.

#### OUDH-OUDH ESTATE

-(See OUDH ACTS-ESTATES ACTS OF 1869 & 1910 AND SETTLED ESTATE ACT OF 1900).

ACCRETION TO.

CONFISCATION AND RE-GRANT OF.

CROWN GRANT OF.

CUSTOM RELATING TO-FAMILY CUSTOM-EVIDENCE

DESCENT OF, TO SINGLE HEIR BUT NOT NECESSARILY TO MALE HEIR UNDER RULE OF PRIMOGENITURE. GRANT OF.

IMPARTIBILITY AND DESCENT TO NEAREST MALE HEIR OF.

JOINT FAMILY ESTATE.

LEASE BY TALUKDAR OF, OR OF VILLAGES IN. LETTER OF 10TH OCTOBER, 1859.

PRIMOGENITURE SANAD.

REGISTERED TALUKDAR OF.

REGISTRATION OF MEMBER OF MAHOMEDAN FAMILY AS SOLE OWNER OF, FOR FISCAL PURPOSES.

RESTORATION OF CONFISCATED.

SETTLEMENT OF.

SUB-PROPRIETARY RIGHT IN.

SUCCESSION TO.

SUNUD HOLDER OF.

TALUQUAR OF.

TRANSFER OF.

VILLAGES COMPRISED IN.

#### Accretion to.

#### PRESUMPTION.

-1858-Accumulations and savings from income of estate prior to-Family joint for some purposes.

The plaintiff-appellant, a cousin of the defendant respondent, sued to recover from him the half of a talook in Oods together with the savings, accumulations and investments made by the defendant, or his father, or his ancestors, from

the income and proceeds of the talook. The talook in question was one which for a very considerable time had descended to the eldest son, who had taken the whole of it, and had given maintenance to other members of the family. In 1858 a summary settlement of the talook was made with A, the father of the defendant, and in 1860 A received a Sunnud in pursuance of that summary settlement, whereby the talook was granted to him and to his heirs on the principle of primogeniture, and his name was subsequently inserted in the first and second lists of talookdars in the Oudh Estates Act of 1869. The plaintiff. therefore, had no right to the talook. With regard to the savings or accumulations claimed, the plaintiff alleged that the family was joint, and that the onus was therefore on the defendant to prove that there were no savings or accumulations other than that out of the proceeds of the talook, or before 1858 (any savings made from the proceeds of the talook since the summary settlement of 1858 being admitted to belong to the defendant).

Held, that even if the family was for some purposes to divided, still as the case was not the case of an ordinary undivided Hindu family, the presumptions in such a case must depend upon somewhat special circumstances (1145) (Sir Robert P. Collier.) RAI REGHUNATH BALLT. RA MAHARAJ BALI. (1885) 12 I. A. 112=11 C. 777 (783)= 4 Sar. 642.

PURCHASES BY TALUKDAR SUBSEQUENT TO SUN-MARY SETTLEMENT-ACCRETION TO ORIGINAL ESTATE IF.

-Family custom as to- Proof of. Held, affirming the Courts below, that the evidence adduced to establish a custom of the family by which proper ties acquired by purchase by an Oudh talukdar subsequent to the regular settlement with him became part of the orginal estate, and were, therefore, not subject to the ordinary rules of inheritance was insufficient to establish such a custom (181). (Mr. Ameer Ali.) JANKI PERSHAD SINGH (1913) 40 IA. 170= v. DWARKA PRASHAD SINGH.

35 A. 391 (400·1) = 20 I.C 78 = 17 C.W.N. 1089= (1913) M.W.N.630=14 M.L.T. 110=18 C.L.J. 900= 15 Bom. L.B. 853=11 A.L.J. 818=25 M.L.J. 36

Accretion to-(Contd.)

PURCHASES BY TALUKDAR SUBSEQUENT TO SUM-MARY SETTLEMENT—ACCRETION TO ORIGINAL ESTATE IF—(Contd.)

The question whether properties acquired by purchase by an Oudh talookdar subsequent to the regular settlement with him became part of the original estate for the purpose of his succession depends on his intention to incorporate the acquisitions with the original estate (181).

Held, affirming the Courts below, that the evidence was insufficient to establish that the subsequent acquisitions were as a matter of fact incorporated with the talega (181). (Mr. Ameer Ali.) JANKI PERSHAD SINGH PRASHAD SINGH. (1913) 40 I. A. 170 =

35 A. 391 (401)=20 I. C. 73=17 C. W. N. 1029=
(1913) M. W. N. 630=14 M. L. T. 110=
18 C. L. J. 200=15 Bom. L. B. 853=11 A. L. J. 818=
25 M. L. J. 34

#### Confiscation and re grant of.

Canning's proclamation—Confiscation under, and re-grant to former owner—Extent of new title—Declaration of title according to old sunnuds—Suit for—Maintainability.

The plaintiff was one of the widows of a King of Oudh M. A., who occupied the throne some time before the annexation of Oudh. In the years 1839 and 1840 she had four sunnuds from the king, granting to her a large tract of land within the city of Lucknow, comprising royal palaces, gardens, houses, and shops.

On the suppression of the mutiny in Oudh the well-known proclamation of Lord Canning was issued on the 15th of March, 1858, which had the effect of vesting the property, the subject of the suit (viz., the royal palaces granted to the plaintiff under the sunnuds aforesaid), together with all other landed property in Oudh, in the British Government. Then followed a letter of the 8th of April, 1858, addressed by the Secretary of the Chief Commissioner of Oudh to Mr. George Campbell, who was then the Judicial Commissioner of Oudh, in these terms: "Sir, the Chief Commissioner requests that you will consider the Nazul department as under you, and that you will at once order lists to be made out and carefully prepared of all Nazul property. The houses and gardens of all rebels should be prima facie entered in the lists, and can be restored or not, as may hereafter appear expedient. The property of the late royal family will necessarily all come within the lists." From this document, coupled with others, it appeared that the intention of the Government, which was carried into effect, was to put upon the Nazul register all the property which in any sense could be considered property of the royal family, or royal property, including the property, the subject of the

The other documents in the case showed that the Government did not recognise any absolute right in the plaintiff to the suit property but merely allowed her to remain only as occupier for life of the suit premises.

Thereupon the plaintiff instituted the suit out of which the appeal arose claiming a declaration of her absolute title in the suit premises. She alleged that she was absolutely entitled to them under the sunnuds granted to her by her husband, and that the Government had wrongly declared that her interest in them was only one for her life. She further asserted that the cause of action arose when she had previously presented a petition to Government to recognise her absolute title, and the Government refused to act upon it.

Held that the suit was not maintainable (73).

### OUDH-OUDH ESTATE-(Contd.)

Confiscation and re-grant of-(Cont.1.)

The proclamation of Lord Canning had the effect of vesting the property, the subject of the suit, together with all other landed property in Oudh, in the British Government, and all who claim title to it must claim through the Government. The question then is, what interest, if any, has been granted or allowed to this lady by the Government? Their Lordships do not think it necessary to determine the effect of the construction of the sunnuds under which she formerly held, whether they would, if Oudh had remained under the old dynasty, have conferred upon her a life-interest or an interest in perpetuity. Those rights, whatever they were, were confiscated, and the sole question is, what interest, if any, was regranted to her? Looking at the whole of the proceedings which have been quoted, it appears to their Lordships abundantly clear that no more was granted to her than a permission to occupy the palace for her life. If the acts which she seeks to impugn on the part of the officers of the Government were nullities, it would follow she has no interest at all, but that her property remains in the British Government to which it was confiscated (73.4).

Their Lordships may further observe that this being a declaratory suit, it is clearly not maintainable on the ground that no possible relief could be given (74) (Sir Robert P. Collier.) NAWAB MALKA JAHAN SAHIBA P. DEPUTY COMMISSIONER OF LUCKNOW.

(1879) 6 I. A. 63 = 3 Sar. 244 = 3 Suth. 584 = Bald. 194 = R. & J.'s No. 55.

- Nature of estate in hands of grantee - Joint family

Before the annexation of Oudh two estates belonged to an undivided Hindu family, the members of which were G, U and R, G being the eldest and the manager. The family property was confiscated because G was discovered to be in possession of a quantity of concealed arms. Ultimately, however, the Government made him a grant of village S, which in value was about equal to one-third of the whole family property.

The question for decision was whether the village of S was the self-acquired property of G, or whether it was the joint property of the three bruthers.

G himself, when examined with a view to the preparation of the Khewat of ilaka S, stated that he and his two brothers were "joint in equal shares," and the khewat, which was signed by G, U and R and countersigned by the presiding officer, gave under the head "Shares of Proprietors," and "Names of Zemindars," "G, U & R, all three in equal shares." G never disputed the right and title of his two brothers to a joint share in the property.

Held that it must be inferred that under a family arrangement, which could not be subsequently questioned, the three brothers became jointly entitled as members of an undivided Hindu family to the estate S, although the Government grant was to G alone. (Lord Marnaghten.) KEDAR NATH v. RATAN SINGH.

(1910) 37 I. A. 161 = 32 A. 415 = 8 M. L. T. 193 = 12 C. L. J. 225 = 14 C. W. N. 985 = 12 Bom. L.B. 656 = 7 I. C. 648 = 20 M. L. J. 900.

#### Crown grant of.

Estate held under—Surrender of, and acceptance of fresh grant prescribing different mode of descent—Validity of—Effect of. See CROWN—GRANT BY—ESTATE HELD UNDER—SURRENDER OF, ETC.

Crown grant of-(Contd.)

-Inheritance rule prescribed by-Custom-Contrary to-Proof of-Permissibility-Instances of custom prior to grant -Evidence of-Admissibility. See CROWN-GRANT BY-INHERITANCE RULE PRESCRIBED BY.

(1922) 49 I. A. 276 (285) = 44 A. 449 (457).

#### Custom relating to-Family Custom-Evidence of.

-Committee of Talookdars-Conclusions of-Value

In a question of family custom in the case of Oudh Talookdars it is impossible to disregard the conclusions of gentlemen who discharged such functions as those of the Committee of Talookdars (169). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN D. SARDAR HUSAIN (1898) 25 I. A. 161 = 26 C. 81 (91) = 2 C. W. N. 737 - 7 Sar. 432.

-Wajibul-ar: of village-Value of.

Another piece of evidence on this part of the case (relating to the custom of the family of an Oudh talookdar) is the Wajib-ul-arz of the village. This class of document is always admissible in evidence, being an official village record. Its weight may be very slight or may be considerable according to circumstances (169) (Lord Hobbouse,) MUHAMMAD IMAM ALI KHAN v. SARDAR HUSAIN (1898) 25 I. A. 161-26 C. 81 (92)= KHAN. 2 C. W. N. 737 = 7 Sar. 432.

#### Descent of, to single heir but not necessarily to male heir under rule of primogeniture.

-Family custom of-Estates subject granted for-Forms of, before and after 1860.

Down to the end of 1859 the Sanads granted for taluqus which by family custom descended to a single heir, but not necessarily to a male heir under the rule of primogeniture were in a form sanctioned by the Government of India. It is a grant to the taluqdar and his heirs, without specifying any particular rule of inheritance. In 1860, however, it was considered desirable to encourage the settlement of talugas so that they should descend to male heirs only under the rule of primogeniture. And a new form of Sanad was approved by Government embodying this rule of descent. It was further thought desirable to communicate the new form of Sanads to taluqdars already holding sanads in the older form to point out its advantages and to offer to such persons the option of taking the new type of Sanad in place of the old. It would appear that a large number of such exchanges were carried out (211-2). (Sir Arthur Wilson,) THAKUR SHEO SINGH v. RANI RAGHUBANS KUNWAR.

(1905) 32 I. A. 203=27 A. 634 (649-50)= 9 C. W. N. 1009 = 2 C. L. J. 194 = 8 O. C. 317 = 8 Sar. 791=15 M. L. J. 352.

#### Grant of.

-Hindu joint family-Member of-Grant to-Nature of estate in grantee's hands-Estate originally belonging to joint family and estate not such-Distinction. See HINDU LAW-JOINT FAMILY-MEMBER OF-SELF-ACQUISI-TION OF (1876) 3 I. A. 259 (269).

-Hindu joint family-Member of-Re-grant of confiscated estate to-Nature of estate in grantee's hands. See OUDH-OUDH ESTATE-CONFISCATION AND RE-GRANT (1910) 37 I. A. 161 = 32 A. 415.

-Widow and her heirs-Grant to-Estate taken under -Estate ancestral estate in possession of widow as heir of husband.

An estate, which, at the time of the annexation of Oudh, was in the possession of K, a Hindu widow, to whom it had descended as the surviving widow of her deceased husband, was, in 1858, confiscated by the British Government by

#### OUDH-OUDH ESTATE-(Contd.)

Grant of -(Contd.)

virtue of Lord Canning's Proclamation of the 15th of March in that year. The Summary Settlement for 1858-9 was made with K. In the kabuliyat executed on her behalf on that occasion, she was described as the widow of her husband, and she admitted that in virtue of the ancestral right of her husband the regular settlement had been made with her.

A sunnud was afterwards granted to her by Government by which the full proprietary right, title, and possession of the estate was conferred upon her and her heirs for ever, subject to certain immaterial conditions. It was also declared to be another condition of the grant that is the event of her dying intestate, the estate should descend to the nearest male heir, according to the rule of primogeniture, but that she and all her successors should have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever she should please. It was also further declared that as long as the obligations imposed by the grant should be observed by her and her heirs in good faith, so long would the British Government maintain her and her heirs as proprietor of the estate.

The evidence in the case showed that the Government intended to confer a full proprietary and transferable right in the estate upon A and her male heirs according to the law of primogeniture, and not merely to confer upon her an estate for life, with full power of alienation, and with remainder to the male heirs of her husband, in the event of her dying intestate without having alienated it in her lifetime.

The title of K did not, however, depend entirely upon the Sunnud, for when the Oudh Estates Act of 1869 was passed the name of K was entered in the first of the lists prepared under S. 8 of the Act. It was also entered in the second of the lists mentioned in S. 8 of the Act, the result being that the estate conferred upon K was one of the estate referred to by the Act, and that by virtue of S. 3 of the Act K must be deemed to have acquired by the sunned a permanent heritable and transferable right in the estate is dispute.

Held, on a construction of the sunnud, and on a consider ration of the circumstances set out above, that the Sunni conferred, and was intended to confer, a full proprietary and transferable right in the estate upon K and ber mak heirs according to the law of primogeniture, and not merti to confer upon her an estate for life, with full power of alienation, and with remainder to the male heirs of ho husband, in the event of her dying intestate without haring alienated it in her lifetime (11-2).

If the interest which K, as the widow of her deceased husband, originally took in the property had remained unaltered, she would have had no power of alienation either in her life-time or by will. The estate would have descended to the heirs of her husband, and not to her beits but her interest as widow and that of the reversionary bein were absolutely destroyed and put an end to by the confidence cation under Lord Canning's Proclamation, by which it declared that "the whole proprietary right in the soil is confiscated to the British Government, which will dispose of that right in such manner as to it may seem fitting." disposing of that right by the Sunnud, the Government granted to K and her heirs male, according to the land primogeniture, the full proprietary right and title to the estate (12). (Sir Barnes Peacock.) BRIJ INDAR BAHADUR (1877) 5 L A 1= SINGH v. RANEE JANKI KOER. 1 C. L. B. 318=3 Sar. 763=Bald. 148=3 Suth. 474=

B. & J.'s No. 48

## Impartibility and descent to nearest male heir of.

-Plea of -Proof of -Onus -Quantum - Junior member's rights to share in profits and to demand partition thereof admitted.

The suit was for partition of a taluqulari estate. The defence was that under the terms of the Sanad granting the estate, it was descendible to the nearest male heir, according to the rule of primogeniture, and that the other members were not entitled to a partition of the taluq, though they were entitled to share in the profits, and to demand partition of such shares. It was maintained that the arrangements led to the inference that the family was to have a sole head to it, and that he would take the title of talukdar, and have the management of the property, and though he would be accountable to his brothers, the younger branches, for certain shares of the profits, yet the property was to be held in one hand as an entire estate; and that they could not displace the head of the family from that position.

Held, on the evidence, affirming the Courts below, that there must be some very clear arrangements between the parties to prove the existence of such an estate, that the Sunnud in question was nullified or superseded by family arrangements, under which the respondents acquired separate interests in the taluq, and that they were therefore entitled to a decree for partition (82) (Lord Hobbonse.) SHANKAR BAKSH v. HARDEO BAKSH.

(1888) 16 I. A. 71=16 C. 397 (412)=5 Sar. 299.

#### Joint family estate.

Decree declaring estate in hands of Sanad-holder to be, and to be partible among all members of family-What

In a suit brought against /, the person with whom a summary settlement of an Oudh estate had been made and to whom a Sanad had been granted, by the junior members of the family of J, the Judicial Committee made a decree declaring that the villages in suit comprising the estate were held by / in trust for the joint family of himself and the plaintiffs, and as a joint family estate governed by the rules of the Mitakshara, and directing / to cause the suit villages and the proceeds thereof to be managed and dealt with and applied accordingly.

Held, in a subsequent suit brought by one of the plaintiffs in the prior suit for a partition of the estate and for separate possession of his share thereof, that, on the right construction of the decree of the Privy Council in the prior suit, the estate was ordinary divisible family property in the hands of J, and that the plaintiff was entitled to a partition thereof (60 2).

The contention that the effect of the decision of the Privy Council in the prior suit was that I held the estate as an integral impartible and indivisible estate, subject only to the beneficial interest of the junior members in respect of the profits thereof to the extent of their share is inconsistent with the declaration in that decision that the estate was to be governed by the rules of the Mitakshara, and the direction therein that / should cause and allow the villages and the proceeds thereof to be managed and dealt with and applied "accordingly" i.e., as a joint family estate (61). (Sir Richard Conch.) PIRTHI PAL SINGH P. THAKUR JEWAHIR SINGH. (1887) 14 I.A. 37 = 14 C. 493 (511 2) = 4 Sar. 758.

Estate which is indivisible and descendible to nearest male heir, subject to rights of junior members to share in profits and to demand partition of such shares-Validity in law of.

In a suit for partition of an Oudh Estate, the appellant, the representative of the eldest branch, admitted that, as

## OUDH-OUDH ESTATE-(Contd.)

Joint family estate-(Contd.)

participation between the members of the family. But he maintained that the arrangements in the family led to this inference, that the family was still to have a sole head to it and that he would take the title of talukdar, and have the management of the property, and though he would be accountable to his brothers, the younger branches, for certain shares of the profits, yet the property was still to be held in one hand as an entire estate; and that they could not displace the head of the family from that position.

Quaere, whether such an estate could legally exist (75). It is extremely difficult to understand what sort of an estate that would represent. It would be a kind of trusteeship, managership, or headship, which could never be displaced or disturbed by the persons having the beneficial possession. Such an estate is entirely foreign to the common Hindu law of Oudh-the Mitakshara law. Nor is any such thing apparently contemplated by the Oudh Estates Act. Assuming that such an estate could legally exist, there must be some very clear arrangements between the parties to prove its existence (75). (Lord Hobbouse.) SHANKAR BAKSH P. HARDEO BAKSH.

(1888) 16 I. A. 71=16 C. 397 (405)=5 Sar. 299.

-Partition of-Suit for-Decree making junior member sub-proprietor of talukdar in respect of his share-Validity.

In a suit brought against the registered talukdar of a joint family Oudh estate by a junior member of the joint family for a partition of the said estate and for separate possession of plaintiff's share therein, the court below made a decree declaring plaintiff's right to have his share of the estate separately apportioned to him, but directing that the said share should be held by the plaintiff as a sub-proprietor, and subject to the payment of the Government revenue, plus 10 per cent.

Held, that the decree was wrong (61).

One member of a joint family could not rightly be made a sub-proprietor to another member of his share of the family property (61). (Sir Richard Couch.) PIRTHI PAL SINGH D. THAKUR JEWAHIR SINGH.

(1887) 14 I. A. 37 = 14 C. 493 (511) = 4 Sar. 758. Lease by talukdar of, or of villages in.

See LEASE-OUDH TALUKDAR.

### Letter of 10th October, 1859.

-Applicability-Conditions.

The order of 1859 of the Government of India set out in the Act I of 1869 declared that every talookdar with whom a summary settlement had been made since the re-occupation of the province had thereby acquired certain rights. To bring any person within the operation of this clause, he must be shown to be one with whom a summary settlement was made between the 1st of April, 1858, and the 10th of October, 1859, as talookdar (232). (Sir James W. Colvile.) WIDOW OF SHUNKER SAHAI P. RAJAH KASHI PERSHAD. (1873) Sup. I. A. 220 = 3 Sar. 289 =

3 Suth. 4 = B. & J.'s No. 23. -Applicability - Temporary revenue settlement-Death of grantee and resumption of estate long before date of said order-Effect-Claim of heir of deceased grantee-Maintainability.

Plaintiff was grandmother and heiress to a deceased infant Rajah, with whom a summary and temporary settlement of an Oudh talooka had been made. Plaintiff sued on 26-1-1867 to establish her right to the proprietorship of the talooka on the ground of her being the grandmother and heir to the deceased.

The term of the revenue settlement was three years which regards the beneficial interest in the profits, there must be expired long before the plaintiff's suit was commenced. Tree

Letter of 10th October, 1859-(Contd.)

infant Kajah died on 25-3-1859, and the talooka was on his death resumed by the Government.

Held, that the letter of the Governor-General in Council of the 10th of October, 1859, did not apply to the revenue settlement for which the infant Rajah was permitted to engage and which was resumed by Government after his death and before the letter was written; and that it was not intended by that letter to create in the plaintiff a proprietary right by inheritance in the talook by virtue of a temporary revenue settlement for three years to which she had not been allowed to succeed (243).

The letter of the Governor-General of India in Council of the 10th of October, 1859, ought no doubt to receive a liberal interpretation in order to effectuate the intentions of the Government; but it would be acting in direct opposition to those intentions if the letter were to be read as one which pledged the Government to restore a possession to which they had, in fact, put an end, and to vest in a dispossessed claimant an interest which the settlement itself did not give. Such an interpretation would be contrary both to the letter and spirit of the document, and at variance with every legitimate rule of construction (242-3). RANEE OF CHILLAREE P. THE GOVERNMENT OF INDIA.

> (1873) Sup. I.A. 237 = 3 Sar. 298 = 3 Suth. 12 = R. & J.'s No. 24.

-Object and effect of -Talukdar dying between time of engagement and date of order-Heirs of-Rights of.

The letter of the Governor General of India in Council of the 10th of October, 1859, and the recital contained in it shew that the object of the Government was to maintain in possession those talookdars who then were in possession under summary settlements entered into with them after the re-occupation of the province. The talookdars, who were declared to have acquired the right conferred by the letter, were those who had been permitted to engage. Nothing was said as to the heirs of talookdars who had been permitted to engage and who had died between the time of the engagement and the date of the letter. It is necessary to decide whether such heirs, if in possession at the date of the letter, would have been within the spirit or meaning of it. It is clear that the letter, which was a mere act of grace, was not intended to operate as an original grant to such heirs, for, if such were the case, the heir, if a widow, mother, or grandmother, would have taken an estate descendible to her own heirs instead of the estate of a Hindu female heiress descendible to the heirs of the person to whom she succeeded; and thus the estate would have been taken out of the family of the talookdar who had been permitted to engage. The letter could not operate as a grant of an hereditary estate to a deceased talookdar and his heirs. The only way in which it could operate for the benefit of the heirs of a deceased talookdar, who had been permitted to engage in a summary settlement, would be, by its being treated as a retrospective declaration of the effect of the revenue settlement for which he had been permitted to engage. Such a construction cannot be put upon the letter with reference to a talookdar who had died long before the date of the letter; upon whose death the estate had been resumed by Government, and whose heirs had not been permitted by Government to succeed to the talooka even during the continuance of the temporary revenue settlement (242). RANGE OF CHILLAREE P. THE GOVERN-MENT OF BENGAL. (1873) Sup. I.A. 237=3 Sar. 298= 3 Suth. 12=R. & J.'s No. 24.

Object and meaning of.

The object and meaning of the Letter of the 10th of October, 1859, are well known and very clear. Soon after the annexation, it was suggested that the true and normal

#### OUDH-OUDH ESTATE-(Contd.)

Letter of 10th October, 1859-(Contd.)

proprietorship of land in Oudh was that ownership by village communities which had been discovered or established in the North-West Provinces, and that the alleged Talookdary and Zemindary rights were simply a recent usurpation due to the violence and fraud which had marked the last years of the Oudh monarchy; that at all events many of the individual Talookdars and Zamindars had by violence and fraud or the corruption of the Government possessed themselves of other peoples' estates. The old question, moreover, was further mooted whether a Zemindar was really an hereditary landlord or only a Government functionary (126).

The Zemindars and Talookdars were threatened with an

universal quo warranto (126).

It was to announce the abandonment of this policy, and to quiet men's titles and possessions, that the Letter was written. It said in substance, we acknowledge the Talookdary tenure-we acknowledge that the tenure does confer an hereditary lordship descendible in fee simple, and we will not allow the existing titles to be disturbed by old dormant claims (126). (Lord Justice James.) MUSSUMAT THAKOO-RAIN SOOKRAJ KOER P. GOVERNMENT OF INDIA.

(1871) 14 M.I.A. 112 - 3 Suth. 1 = 2 Sar. 705 = R. & J.'s No. 11 (Oudh).

Registered talukdar-Estate conferred by Letter on-The settlement with B was effected in July, 1858. By the letter of the Governor-General in Council of October 10, 1859, the settlement thus made conferred full proprietary title on every talukdar with whom it was made, and be acquired thereunder a permanent, heritable and transferable right in the estate (13). (Mr. Ameer Ali.) NAND RANI (1926) 54 I. A. 5= KUNWAR P. INDAR KUNWAR.

1 Luck. 583 = (1927) M. W. N. 21 = 4 O. W. N. 80 = 31 C. W. N. 485 = 45 C.L J. 282 = 100 I.C. 485 = 25 L. W. 751 = A. I R. 1927 P. C. 8 52 M.L.J. 497.

Registered talukdar-Estate conferred by Letter on -Equitable rights created by talukdar by valid agreement -Effect of Letter on.

The Letter of 10th of October, 1859, gave the registered talookdar, in English language, the absolute legal title 25 against the estate and against adverse claimants to the Talookdary; but it did not relieve the Talookdar from any equitable rights to which he might have subjected himself with a view to the completion of the settlement by his 043 valid agreement (127). (Lord Justice James.) MUSSUMAT THAKOORAIN SOOKRAJ KOER D. GOVERNMENT OF (1871) 14 M. I. A. 112=3 Suth 1= INDIA. 2 Sar. 705 = R. & J.'s No. 11 (0mdh).

### Primogeniture sanad.

ESTATE HELD UNDER.

-House allotted by Government subsequently for use st talukdar-Devolution of-Rule applicable.

Where subsequent to the grant of a taluqa by the Govern ment by a primogeniture sanad, the Government allotted to the taluqdar a house for his use as taluqdar of the taluqa so granted, held, that such right to possession of the house he had passed not to his widow but to his successor in the taluqdari of the taluqa (146-7). (Sir John Edge.) RAIN-DRA BAHADUR SINGH D. RANI RAGHUBANS KUNWAR

(1918) 45 I.A. 134 = 40 A. 470 (485) 20 Bom. L. R. 1075 = 22 C.W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 28 C.L.J. 456 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. L. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 = 24 M. T. T. 989 = (1036) 25 W.N. 101 24 M. L. T. 282=(1918) M. W. N. 331=8 L.W. 570= 21 O. C. 106=48 I. C. 213

-Lands comprised in-Exchange of, with Government for other lands-Devolution of latter-Rule of, applicable In a case in which a taluqa was held by a person und a primogeniture sanad granted by the Government, held

Primogeniture sanad-(Contd )

ESTATE HELD UNDER-(Contd.)

that lands acquired by the talukdar from the Government in exchange for lands which were included in that sanad would be subject to the rule of descent prescribed in the sanad (143).

Held, therefore, that non-talukdari villages, which were not included in the sanad, but which the Government subsequently transferred to the talukdar in exchange for three of the talukdari sanad villages or parts of them, must be treated as talukdari villages which on the talukdar's death descended to his nearest male heir according to the rule of primogeniture (145). (Sir John Edge.) RAJINDRA BAHA-DUR SINGH v. RANI RAGHUBANS KUNWAR.

(1918) 45 I. A. 134 = 40 A. 470 (482) = 20 Bom. L. R. 1075 = 22 C.W.N. 101 = 28 C. L. J. 456 = 24 M. L. T. 282 = (1918) M. W. N. 331 = 8 L. W. 570 = 21 O. C. 106 = 48 I. C. 213. GRANT OF ESTATE UNDER.

—Validity of—Crown—Private individual—Grants by
—Distinction. See CROWN—GRANT BY—INHERITANCE— LEGAL COURSE OF.

### GRANTEE UNDER-PROPERTY ACQUIRED BY.

-Succession to, according to rule of succession entered in sanad-Grantee's power to subject such property to. See CROWN-GRANT BY-INHERITANCE - LEGAL COURSE OF. (1918) 45 I. A. 134 (143) = 40 A. 470 (480).

INHERITANCE RULE PRESCRIBED BY-CUSTOM

CONTRARY TO. Proof of-Permissibility-Instances of custom prior to grant of sanad—Admissibility in evidence of See CROWN—GRANT BY—INHERITANCE RULE PRESCRIBED

(1922) 49 I. A. 276 (285) = 44 A. 449 (457). MALE PRIMOGENITURE SANAD

-Estate held under-Succession to. See OUDH-OUDH ESTATE-SUCCESSION TO-MALE PRIMOGENI-TURE SANAD.

#### PRIMOGENITURE IN.

-Meaning of See CROWN-GRANT BY-PRIMO-GENITURE IN. (1910) 37 I. A. 168 (178, 181)= 32 A. 599 (607, 610).

#### SUCCESSORS IN-MEANING OF.

-Heirs of grantee-Alienees from him-If included. A sanad granted in 1862 to a Mahomedan lasly conferred a taluqdari estate in Oudh upon her and her heirs for ever, subject to the payment of an annual revenue. The sanad provided:--" It is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption to whomsoever you please . . . . As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate."

Held, over-ruling the appellant's contention, that the word " successors " was an inartistic phrase used for the purpose of expressing that, in the event of there being no alienation, those who succeeded to the estate by virtue of the grant would succeed subject to the conditions and with the same provision as to succession as the person to whom the grant was originally made.

The word "successors" includes the designated parties who would succeed in the event of intestacy, and those designated parties cannot escape the obligations of the grant by

### OUDH-OUDH ESTATE-(Conld.)

Primogeniture sanad—(Contd.)

SUCCESSORS IN-MEANING OF-(Contd.)

having acquired the property through other means than succession. (Lord Buckmaster.) GHULAM ABBAS KHAN P. AMAT-UL-FATIMA. (1921) 48 I.A. 135 = 43 A. 297 = 19 A. L. J. 433 = 24 O. C. 118 = (1921) M. W. N. 349 = 29 M. L. T. 409 = 34 C. L. J. 113 - 14 L. W. 380 =

60 I. C. 937 = 40 M. L. J. 577. Widow of granter obtaining title to estate, not by right of inheritance under ranad, but under will of her husband if a " successor".

The British Government granted to N, a Sunni Mahoniedan, a primogeniture sanad conferring upon him the full proprietary right, title and possession of the estate of J. One of the conditions of the grant was stated to be that in the event of the grantee dying intestate or of any of his successors dying intestate, the estate should descend to the nearest male heir, according to the rule of primogeniture, " but you and all your successors shall have full power to alienate the estate either in whole or in part by sale, mortgage, gift, bequest, or adoption to whomsoever you please.

N' made a will by which, after reciting that the Government had asked for a will from him, declared that "after me, my wedded wife shall be the owner and possessor of the moveable and immoveable property, like myself."

Had it not been for N's will the taluqdari property would, on his death, have vested by right of inheritance under the sanad in L, who was the elder of his two brothers.

The question was whether the widow of N was a "successor" of N within the meaning of the sanad; if she was, she had power to make a gift of, or to bequeath the whole taluqa or any part of it to whom she pleased. If she was not a " successor "of N within the meaning of the sanad, she had power to make such a gift as would be recognised as a valid gift by the Mahomedan law applicable to Sunnis of the whole taluqu or of any part of it to whom she pleased.

Held, affirming the opinion of one of the judges of the Court below, that as N'1 widow obtained her title to the talasquari property, not by right of inheritance under the sanad but under the will of her husband, she was not a successor within the meaning of the sanad, and that the widow's right to dispose by gift or by will of the taluqdari property was the right of an owner under the Mahomedan law.

In L. R. 48 L. A. 135 the Board held that the word " successors" in a similar primogeniture sanad, meant those designated persons who would succeed in the event of an intestacy, and not persons who took by sale, gift, or bequest. (Sir John Edge.) MOHAMMAD ABDUL GANNI v. FAKHR JAHAN BEGAM. (1922) 49 I. A. 195 (202, 206)=

44 A. 301 (312)=25 O. C. 95=31 M. L. T. 21= 9 O. L. J. 369 = 27 C. W. N. 53 = 24 Bom. L. R. 1268 = 20 A. L. J. 994 = A. I. R. 1922 P. C. 281 = 37 C. L. J. 1 = 68 I. C. 254 = 43 M L. J. 453.

Registered talookdar of. See OUDH -OUDH ESTATE-SUNUD HOLDER OF.

Registration of member of Mahomedan family as sole owner of, for fiscal purposes.

-Effect of, on rights of other members. The mere fact that a member of a Mahomedan family in

Oudh was, for fiscal purposes, registered as sole owner of an estate, is not evidence of his exclusive right to the property. Such presumption from registration may be rebutted by evidence showing that the property was enjoyed in common by the family (408). (Sir Jam's W. Calvile.) HYDER HOS SAIN v. MAHOMED HOSSAIN. (1872) 14 M. I. A. 401 =

17 W. B. 185 = 2 Suth. 539 = 3 Sar. 46 = R. & J.'s No. 12.

#### Restoration of confiscated.

-Policy of British Government as regards-Old titles to establish a title to talookdary, or even to malgoozaree -Recognition of.

It must be remembered that the British Government made a great point of recognising old titles, and of restoring as many estates as they could with due regard for security. They felt that the position of the Oudh talookdars was a very peculiar and painful one; that the inducement to take up arms was in many cases very strong; and that when the political necessity of putting down armed revolt had been satisfied, it was both the most prudent course, and the most consistent with a fair consideration of the case, to reinstate those who would enter frankly into the new conditions (171). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN P. SARDAR HUSAIN KHAN. (1898) 25 I. A. 161= 26 C. 81 (94) = 2 C. W. N. 737 = 7 Sar. 432.

#### Settlement of.

-Deed of -Heirs and representatives in-As provided by S. 22 of Act I of 1869 in-Meaning and effect of-Estate conveyed.

The holder of an Oudh taluka in list 2 under Act I of 1869 executed a deed of settlement which provided that he himself was for his life to be the proprietor of the estate, that the son of his predeceased eldest son was after his (the talukdar's) death to be proprietor of the estate for his (grandson's) life only, that in the event of the grandson predeceasing him, the talukdar, the mother of that grandson (the eldest son's wife) was to have her son's estate for her life, and that, in the event of both the grandson and his mother predeceasing the talukdar, the latter was to have the absolute proprietary right with the power of making a will, sale or transfer in accordance with the power given by Act I of 1869. The deed further provided that, in the event of the talukdar dying first, and then the grandson, the widow of the eldest son should be owner of the estate for her life. The deed also provided by cl. 7 that, on the deaths of the talukdar, his grandson, and the mother of that grandson, L, the second son of the talukdar, and his beirs and representatives, should succeed to the entire estate, as provided by S. 22 of Act I of 1869, but that L should not interfere in any way with the said ilaga.

The talukdar died first, then the widow of the eldest son,

and then the grandson leaving no son.

Held, on a construction of clause 7 of the settlement, that L received an absolute estate in reversion, and that he took the property as self-acquired property, and not ances-

tral property, and could dispose of it by will.

The words "heirs and representatives" in cl. 7 are to be treated as words of limitation and not of purchase. The words "shall succeed as provided by S. 22 of Act I of 1869" may be regarded either as an idle attempt to derogate from the grant previously made and therefore to be rejected, or, as words of description only, stating the legal incidents which the grantor conceived to belong to the estate which he had granted. His mistake as to the legal consequences does not affect the grant which he has made (273). (Lord Phillimore.) LAL RAM SINGH P. DEPUTY COMMIS-SIONER OF PARTABGARH. (1923) 50 I. A. 265 =

45 A. 596 (603) = 21 A. L. J. 777 = (1923) M. W. N. 591 = 33 M. L. T. 355 = 26 O. C. 257 = 9 O. & A. L. R. 746=A. I. R. 1923 P. C. 160= 10 O. L. J. 513=76 I. C. 922=29 C. W. N. 86.

-Direct settlement-Right of-Suit to establish-Subordinate right to which plaintiff entitled - Relief on foot of-Right to.

In a case in which the appellant sued to establish right to a direct settlement with her of four villages, and of a onethird share in seven others out of the twenty-six villages of which the respondent's talook was composed, but she failed | UNDER-SURRENDER OF, ETC.

### OUDH-OUDH ESTATE-(Contd.)

Settlement of-(Contd.)

rights, held that there could be no reason why the appellant because she might have originally claimed the superior, should not be allowed to assert in the suit any subordinate right to which she might be entitled. (Sir James W. Colvilc.) WIDOW OF SHUNKER SAHAI D. RAJAH KASHI PERSHAD. (1873) Sup. I. A. 220 = 3 Sar. 289= 3 Suth. 4= B. & J.'s No. 23.

-Estate conveyed by-Letter of 10th October, 1859-Effect of. See OUDH-OUDH ESTATE-LETTER OF 10TH OCTOBER, 1859-REGISTERED TALUKDAR.

(1926) 54 I. A. 5 (13) = 1 Luck. 583.

-Estate conveyed by-Letter of 10th October, 1859-Effect of-Equitable rights created by talukdar by valid agreement-Effect of letter on. See OUDH-OUDH Es-TATE-LETTER OF 10TH OCTOBER, 1859-REGISTERED TALUKDAR. (1871) 14 M. I. A. 112 (127).

-Village forming part of another estate included in settlement-Plea by talukdar of its being for first time ineluded in estate which he settled with Government-Main-

A talukdar, who had obtained a settlement of his talek including another estate of which the village in question in the suit formed a part, could not be heard to say that the said village was for the first time included in the estate which he settled with the Government. (Sir Robert P. Collier.) RAJAH JUNG MOHAN SINGH D. DOOHUN. (1876) Bald. 105=R. & J.'s No. 44 (Oudh)=1 I.J. 69.

#### Sub-proprietary right in.

-Condition of -Substantial rent or service to be rendered by sub-proprietor to talukdur if a.

It was argued that there can be no sub-proprietary right unless there be a substantial rent or service to be rendered by the sub-proprietor to the talookdar, and that in this case all that could be paid by the mortgagee after foreclosure would be the Government revenue assessed upon those villages, without giving the talookdar any beneficial interest in the collections of the villages in respect of which the right is claimed. This was not treated as an objection in L.R. 4 I.A. 198. Nor do their Lordships find, either in the letters of Lord Canning or in the rules annexed to Act XX of 1866, anything which necessarily imports that it is essen tial to the enforcement of the rights of one who would otherwise be a subordinate zemindar, that the talookdar should have some pecuniary interest in the sub-tenure (13-4). (Sir James W. Colvile.) GOURI SHUNKAR F. (1878) 6 L A. 1= MAHARAJAH OF BULRAMPORE. 4 C. 839 (853-4)=3 Sar. 873=3 Suth. 567=

B. & J.'s No. 53 -Superior proprietary right-Settlement of-Sul for-Sub-proprietary right-Sub-settlement of-Claim for

-Amendment in appeal so as to set up. A sait for the direct settlement of a superior proprietal right in an estate may, in appeal, be allowed to be amended into one for sub-settlement of a sub-proprietary right (89) (Sir James W. Colvile.) GOURI SHUNKER t. THE (1878) 6 I. A. 1= MAHARAJAH OF BULRAMPOR.

4 C. 839 (848) = 3 Sar. 873 = 3 Suth. 567 = B. & J.'s No. 53

#### Succession to.

(Sec also OUDH ACTS-ESTATES ACT I OF 1869.) CROWN GRANT.

-Estate held under-Surrender of, and acceptance of fresh grant prescribing different mode of descent-Validity of-Effect. See CROWN-GRANT BY- ESTATE HELD

Succession to-(Contd.)

CROWN GRANT-(Conod.)

-Inheritance rule prescribed by-Custom contrary to -Proof of-Permissibility- Evidence. See Crown -GRANT BY-INHERITANCE RULE PRESCRIBED BY.

(1922) 49 I. A. 276 (285) = 44 A. 449 (457).

MALE PRIMOGENITURE SANAD—ESTATES HELD UNDER-NEAREST MALE HEIR-WIDOW.

Preference.

In the case of a taluk held as an impartible talog on the terms of a sanad which contained the following clause:-It is another condition of this grant that, in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part by sale, mortgage, gift, bequest, or adoption to whomsoever you please", held that, on the death of the taluqdar leaving a widow but no issue, it could not be disputed that if the rule of succession laid down in the sanad was to have effect, the nearest male heir of the deceased would be entitled to the succession in preference to his widow. (Viscount Care.) BADRI NARAIN SINGH P. (1922) 49 I. A. 276 (283)= HARNAM KUAR. 44 A. 449 (455) = 31 M. L. T. 195 (P.C.) =

9 O.L.J. 428 = A.I.R. 1922 P.C. 289 = 27 C.W.N. 129 = 25 O. C. 313=68 I. C. 1000 = 21 A. L. J. 13 = 37 C. L. J. 305 = 9 O. & A. L. R. 49 = 44 M. L. J. 337.

-Preserence of latter to former-Custom of-Proof of-Another branch of family holding under same sanad-Single instance of preference in-Insufficiency of.

An Oudh taluqa was held under a sanad which provided that, in the event of the grantee dying intestate or of any of his successors dying intestate, the estate was to descend to the nearest male heir according to the rule of primogeniture. On the death of the taluqdar leaving a widow but no male issue, the question arose whether there was a custom in the family entitling the widow to succeed in preference to the nearest male heir of the deceased. One instance was proved in which the widow of another of the grantees under the same sanad was allowed to take possession of his estate to the exclusion of his male heirs.

Held that the single instance, which was unexplained, was wholly insufficient to establish a custom binding on another branch of the family. (Viscount Cave.) BADRI NARAIN SINGH P. HARNARAIN KUAR.

(1922) 49 I. A 276 (285) = 44 A. 449 (457) = 31 M. L. T. 195 (P.C.) = 9 O. L. J. 428 = A.I.R. 1922 P. C. 289 = 27 C.W.N. 129 = 25 O. C. 313 = 68 I. C. 1000 = 21 A. L. J. 13 = 37 C. L. J. 305 = 9 O. & A. L. R. 49 = 44 M. L. J. 337.

#### Sunud holder of-

(See also OUDH-OUDH ESTATE-TALUQDAR.)

CONFISCATION DECREE AGAINST.

EQUITABLE RIGHTS OF THIRD PARTIES,

TITLE OF.

TRUSTEE OF BENEFICIAL INTEREST FOR OTHERS.

### Sunud holder of-Confiscation decree against.

-Cestui que trust of talukdar-Effect on.

In a case in which it was established that the appellant was the acknowledged cestui que trust of the registered talukdar of an Oudh estate, held that she (appellant) being the equitable owner, the decree of confiscation against the registered talookdar, her trustee, could on no principle of law, equity, or good conscience, be made to affect her, and certainly not to justify a sentence which, in effect, made her the sufferer for his offence (127-8). (Lord Justice James.) OUDH-OUDH ESTATE-(Contd.)

Sunud holder of-Confiscation decree against-

MUSSUMAT THAKOORAIN SOOKRAJ KOER 2. GOVERN. MENT OF INDIA. (1871) 14 M. I. A. 112 = 3 Suth. I = 2 Sar. 705 = R. & J.'s No. 11 (Oudh).

Sunnd holder of—Equitable rights of third parties.

-Agreement valid by registered talukdar-Rights created by-Effect of letter of 10th October, 1859, on. See OUDH-OUDH ESTATE-LETTER OF 10TH OCTOBER, 1859-REGISTERED TALUKDAR.

(1877) 14 M. I. A. 112 (127).

-Confiscation-Rights persessed by them before-Effect of grant of estate on.

The grant of an estate under the Oudh Estates Act to a specific individual does not operate as an absolute conferment of an exclusive title on the taluquar, independent of the equitable rights of other parties possessing rights thereto before the confiscation of the estate by the Crown (20). (Mr. Ameer Ale.) NAND RANI KUNWAR & INDAR KUNWAR. (1926) 54 I. A. 5 = 1 Luck. 583 = (1927) M. W. N. 21 = 4 O. W. N. 80 = 31 C W. N. 485 =

45 C. L. J. 282 = 100 I. C. 485 = 25 L. W. 751 = A. I. R. 1927 P. C. 8 = 52 M. L. J. 497.

Sunud holder of-Title of.

Letter of 10th October, 1859-Effect of. See OUDH -OUDH ESTATE-LETTER OF 10TH OCTOBER, 1859-REGISTERED TALUKDAR.

-Prima facie absolute.

A sanad granted in conformity with Act I of 1869 confers an absolute title on the grantee prima facie (55). (Lord Hobbouse.) BABU RAM SINGH P. DEPUTY COMMIS-SIONER OF BARA BANKI. (1889) 17 I. A. 54=

17 C. 444 - 5 Sar. 486 - R. & J.'s. No. 116. Sunud holder of-Trustee of beneficial interest for others

EVIDENCE.

HINDU JOINT FAMILY-SUNUD HOLDER MEMBER OF TRUSTEE FOR OTHER MEMBERS OF FAMILY.

POSSIBILITY OF HIS BEING A. RECOGNITION OF.

WIDOW.

#### EVIDENCE.

-IIdd, on the evidence in the case, that the appellant was the acknowledged cestus que trust of the registered Talookdar of an Oudh estate, who had bound himself expressly in writing that he would respect her rights if she permitted him to be alone so registered (127). (Lord Justice James.) MUSSUMAT THAKOORAIN SOOKRAJ KOER D. GOVERNMENT OF INDIA.

(1871) 14 M. I. A. 112=3 Suth. 1=2 Sar. 705= B. & J.'s. No. 11 (Oudh).

The defendant-respondent held a sanad under the Oudh Estates Act of 1869, by which talukdari rights over the suit lands were granted to him. Held that there was nothing in the case to show that the defendant had by any agreement, or by any arrangement, or other means, become clothed with any trust as regards the lands included in the sanad and that he was, therefore, entitled as proprietor to the lands included in the sanad. (Sir Barnes Potecek.) HAIDAR ALI KHAN D. NAWAB ALI KHAN.

(1889) 16 J. A. 183 = 17 C. 311.

-The plaintiffs base their claim upon the principle of those decisions of this Committee in which it has been held that the conduct of the holder of a sanad has been sufficient to establish against him a liability to make good, out of his sanad, interests in the property which he has by that conduct either granted to other people, or given them ground to

Sunud holder of Trustee of beneficial interest for others-(Contd.)

EVIDENCE-(Contd.)

claim. But the plaintiffs do not shew that there has been any such conduct beyond the fact that they have been left in possession of the property during the whole time of the troubles in Oudh, and down to the present time. The talookdar has paid to the Government the revenue for the whole talook, and the plaintiffs have paid the talookdar that share of the revenue which would be payable for the villages that they held. Their Lordships are of opinion that the mere fact of possession, which is consistent with an intention to give maintenance as well as proprietorship, does not establish any case against the talookdar obliging him to make the plaintiffs proprietors of that portion of his talook. (Lord Hobbouse ) BARU RAM SINGH P. DEPUTY COM-MISSIONER OF BARA BANKI. (1889) 17 I. A. 54= 17 C. 444 = 5 Sar. 486 = R. & J.'s No. 116.

-B, the talukdar of an Oudh estate, was entered in List II of the Oudh Estates Act, namely, as one whose estates according to the custom of the family on and before 13-2-1856, ordinarily devolved on a single heir. His title was either conferred or recognised by the Mahomedan Government before the annexation. After that event both summary settlements were made with him, and the sunnud was granted to him. He remained legal owner until his death in 1878, when his legal title passed to the plaintiff, B's brother. At that time K, the uncle of B and the plaintiff, was managing the estates and receiving the rents. the death of B, plaintiff instituted a suit to recover possession of the estate from K'.

A's defence was that he and his brother T were really instrumental in prevailing upon the authorities to recognise B and to take a kabuliat from him; but he alleged that the real benefit was given to T and himself, who became joint proprietors, B being in effect a benamidar for them. As for the settlements, K contended that the first was the consequence of B's position as kabuliatdar at the annexation, and that the second and the sunned were arranged by T with the British Officers, and that whatever legal interests were passed to B were clothed with a trust for his two uncles.

Held, on the evidence over-ruling the defendant's contention, that B was the apparent and the real owner of the talook, and was not a trustee for his uncles K and T (165). (Lord Hobhouse.) MUHAMMAD IMAM ALI KHAN v. SARDAR HUSAIN KHAN. (1898) 25 I A. 161= 26 C. 81 = 2 C. W. N. 737 = 7 Sar. 432.

-At the time of the first settlement of Oudh in 1859 a lady applied as malik for settlement of the villages in suit. Her claim was opposed by a Nawab, who was in possession, on the ground that he was entitled to remain in possession until certain monies which he had disbursed on her account, were paid off. That objection was upheld and the settlement was made with the Nawab "in accordance with possession", and the lady was directed to proceed by a separate application to get the property released by payment of the money due by her. In 1867, when the regular Settlement of the Province was in progress the lady's application for settlement of villages with her was again resisted by the Nawab on the ground that they were included in the Sanad granted by Government to him, and dismissed on the 31st October, 1868. In a suit instituted in 1905 to recover possession of a half share in the villages on the ground that the proceedings in 1859 constituted the Nawab a trustee on behalf of the lady, held that the correlative obligation that lay on the Nawab to release the property on payment of the money did neither create a trust nor constitute the Nawab a trustee for the lady; that when she applied for the fact that the case was not decided by the Court of

OUDH-OUDH ESTATE-(Contd.)

Sunud holder of-Trustee of beneficial interest for others - (Contd.)

EVIDENCE-(Contd.)

regular settlement, an adverse title was distinctly set up by the Nawab, and from the 31st October 1868, the date of the dismissal of her application, the Nawab's possession was adverse to the lady; and that the suit was therefore clearly barred. (Mr. Amcer Ali.) MUHAMMAD BAKAR D. MUHAMMAD BAKAR ALI KHAN. (1910) 38 I. A. 23=

33 A. 125=8 A. L J. 132=9 M. L. T. 200= 15 C. W. N. 273 = 13 Bom L. B. 75 = 13 C. L. J. 63 = 14 O. C. 95 = 9 I. C. 391 = 21 M. L. J. 109.

HINDU JOINT FAMILY-SUNUD HOLDER MEMBER OF-TRUSTEE FOR OTHER MEMBERS OF FAMILY.

Ancestral estate subject of settlement-Property granted for services rendered during muliny-Property acquired with profits of estate-No distinction between

In a case in which it was found that it was the intention of the defendant that the villages included in the summary settlement made with him and the sunned granted to him should be held by him in trust for the joint family consisting of himself, the appellant, and one P, and as a joint family estate subject to the law of the Mithakshara, held that there were no grounds for making any distinction as regards the rights of the parties between the ancestral villages which were the subject of the summary settlement, and the villages which were granted by the sunnud for services during the mutiny, or those which were acquired from the profits of the estate (166 7).

It appears from the evidence, as well as from the finding of the Court below, that the appellant and P were just as loyal as the defendant, and rendered loyal services to Government equally as valuable as those which were resdered by him. Those loyal acts, if not in the remembrance of the Government or of its officers, must have been known by the defendant, and it must also have been known to him that the loyal services which he rendered to the Government were rendered by means of the then joint family property, and that in accepting the reward from Govern ment he acted as the representative of the family. It may therefore reasonably be presumed that the knowledge of these facts induced him to treat the reward villages granted by the sunnud in the same manner as the ancestral village which were the subject of the summary settlement, and accordingly it appears that from the time of the sanned to the time of the quarrel in 1865, the reward villages, like al the others, were treated as part of the joint family estate. and were subject to the common management (167-8). (Sir Barnes Peacock.) THAKOOR HURDEO BUX P THAKOOR (1879) 6 I A. 161 = 4 Sar. 10= JOWAHIR SINGH. Baid. 218 = 3 Suth. 608 = B. & J.'s No. 57.

-Effect of Act I of 1869 upon-Ss. 3, 11 and 15. In a suit commenced long before the passing of Act I of 1869, the question was whether the respondent had in any and what manner agreed or become bound to hold the villages comprised in the summary settlement or sunnel or any and what part thereof, or of the rents and profits thereof, in trust for the appellant and P, or either and which of them. The evidence in the case afforded sufficient grounds for presuming that, up to 1865, it was the intention of the respondent that the villages included in the summar settlement and sunnud should be held by him in trust for the joint family, and as a joint family estate subject to the law of the Mitakshara. And if judgment had been given before the passing of the Act, it ought to have been hed that the respondent was bound by the trust to be presumed as abovementioned. The question was whether, in view of fact that the core was

Sunud holder of -Trustee of beneficial interest for others-(Contd.)

HINDU JOINT FAMILY—SUNUD HOLDER MEMBER OF--TRUSTEE FOR OTHER MEMBERS OF FAMILY—(Contd.)

instance until after the passing of the Act. the Act (I of 1869) operated so as to change the relative conditions of the parties, and to put an end to the trust upon which the respondent had previously held the estate.

Held, that it did not (164).

The defendant (respondent), as well as the villages Nos. 1 and 2 in the detail, fall within the category of S. 3 of the Act.

That section, it should be observed, does not state that the talookdar shall be deemed to have, but that he shall be deemed to have acquired by the summary settlement and sunnud a permanent heritable and transferable right in the The right so acquired was subject to the provisions of Ss. 11 and 15 of the Act, by the latter of which it was enacted that if any calookdar should theretofore have transferred or should thereafter transfer the whole or any portion of his estate to a person not being a taleokdar or grantee, and if such person would not have succeeded according to the provisions of the Act to the estate if the transferor had died without having made the transfer and intestate, the transfer of and succession to the property so transferred should be regulated by the rules which would have governed the transfer of such property if the transferee had bought the same from a person not being a taloo'dar (165),

If, therefore, the defendant had, before the passing of Act I of 1869, and at any time after the date of the summary settlement and sunnud, and after he had thereby acquired the right which, according to the provisions of the 3rd section, he must be deemed to have acquired thereby, expressly declared that he held and would hold the estate in trust for the joint family as joint family estate governed by the rules of the Mitakshara, there can be no doubt that the estate would have been subject to the trust so declared, and that it would not have been converted by Act I of 1869 into an estate held by the defendant for his own sole use and benefit discharged from the trust. There can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the defendant (165-6). (Sir Barnes Poscock.) THALOOR HURDEO BUX D. THAKOOR JAWAHIR SINGH. (1879) 6 I.A. 161= 4 Sar. 10 = Bald. 218 = 3 Suth. 608 = R. & J.'s No. 57.

- Evidence

The question for decision was whether the respondent had in any and what manner agreed or become bound to hold the villages comprised in the summary settlement or sunnud, or any and what part thereof, or of the rents and profits thereof, in trust for the appellant and P, or either and which of them.

Upto the time of Lord Canning's proclamation, the whole of the villages mentioned in the summary settlement were the joint family property of the appellant, the respondent, and P. and they were either ancestral or purchased with the proceeds of ancestral estate. The evidence adduced upon the trial fully warranted the conclusion that the actual relation of the appellant, the respondent, and P remained that of a joint and undivided Hindu family from the date of Lord Canning's Proclamation up to the quarrel and removal of the respondent to Kaswara in 1865. The evidence also proved that during that period there had been a joint interest in, and common management of, the property.

Held, that the facts so found, coupled with the statement of the respondent in his application for a summary settle-

OUDH-OUDH ESTATE-(Contd.)

Sunud holder of—Trustee of boneficial interest for others—(Contd.)

HINDU JOINT FAMILY—SUNUD HOLDER MEMBER OF—TRUSTEE FOR OTHER MEMBERS OF FAMILY—(Contd.)

ment to the effect that the appellant was his partner, and with his deposition of the 8th of July, 1859, in which he stated that the custom prevailing in his family was that if his courins, meaning the appellant and P, who were his partners, should claim, they could get their shares divided, afforded sufficient grounds to justify their Lordships in presuming that, up to the time of the quarrel in 1865, it was the intention of the respondent that the villages included in the sammary settlement and sunnud should be held by him in trust for the joint family, and as a joint family estate sabject to the law of the Mithakshara (163-4). (Sir Barnes Powerk), THAKOOR HUPDEO CUP v. THAKOOR JOWAHIR SINGH. (1879) 6 I. A. 161-4 Sar. 10

Bald. 218 = 3 Suth. 608 = E. & Js. No. 57.

-In September 1858, when the three-year summary settlement was in progress, K applied to have the settlement of a talooka made with him. He stated that the estate was ancestral family property in which he was a co-sharer. The first summary settlement on the annexation of the province had been made, he said, with his co-sharers, M and S, but they had absconded, fearing that they would be called upon to pay what they had collected in excess during the mutiny, He offered to pay what was due to Government in respect of the whole estate. At the same time, he declared that if his co sharers re-appeared and paid up what he might have paid to Government they should get their shares. The settlement officer entered the name of K alone as malguzar, and sent the papers to the head office in Lucknow for confirmation. The Special Commissioner of Revenue, to whom the papers went in the first instance, put up a note in these words: "Correct but I would have a door open to admit the other sharers if they explain their conduct by and by." The Chief Commissioner, to whom the papers then went, wrote against the Special Commissioner's note:

The man agrees to this." The papers were then returned to the settlement officer, who accordingly retained the name of K, recording in the column of the summary settlement statement headed "Abstract of the case", an abstract in English of K"s statement, which was as follows:-" I am entitled to half and those two"-that is, M and S-"to the . . I want the settlement of the whole other half. talooka. When the sharers come back, if they pay up what they owe me, I will willingly give up their share." Following the summary settlement the sannad was granted to K. and his name was entered in Lists I and II referred to in the Oudh Estates Act of 1869. S did return subsequently, and neither K, nor his daughter and heiress who succeeded him, ever disputed the right of S to share in the estate. On the other hand, there was evidence to show that K did not consider himself to be absolute owner to the exclusion of S.

Held, on the above facts, reversing the judgments below, that in the events which happened K became and was, as to one-fourth of the estates comprised in the sanad granted to him, trustee for S, and that the appellants, as representatives of S, were entitled to recover one-fourth of those estates.

If K became a trustee for S on his return, the fact that the sanad was granted to K alone would not deprive S of his rights. The grantee under a sanad of that description takes subject to trusts which have been validly created. (Lard Macnaghten.) HASAN JAFAR v. MUHAMMAD ASKARI. (1899) 26 I. A. 229 = 26 C. 879 =

4 Q. W. N. 65=7 Sar. 550.

Sunud holder of-Trustee of beneficial interest for others-(Contd.)

#### POSSIBILITY OF HIS BEING A.

 A person who has been registered as a talukdar under Act I of 1869 and has thereby acquired a talukdari right in the whole property may, nevertheless, have made himself a trustee of a portion of the beneficial interest in lands comprised within the taluk for another and be liable to account accordingly (196).

As the Courts below had decided the case merely upon the ground that the defendant (the registered talukdar) was protected by the sunnud, without adverting to S. 15 of Act I of 1869, or inquiring whether, notwithstanding the summary settlement, the sunnud and the statute, the defendant had in any and what manner agreed or become bound to hold the villages comprised in the settlement and the sunnud, or any and what part thereof, or the rents and profits thereof, or any and what part thereof, in trust for the appellant and another, or either and which of them, their Lordships remanded the case for the trial of that issue. (Sir Barnes Peacek.) THAKOOR HARDEO BUX D. THAKOOR JAWAHIR SINGH.

(1877) 4 I. A. 178 (196, 197) = 3 C. 522 (537-8) = 3 Sar. 704 = Bald. 218 = R. & J.'s No. 45 = 3 Suth. 427.

-Although the title conferred by the British Government, after the general confiscation of the land of Oudh, is absolute aud over-rides all other titles, nevertheless the grantee under the Government may by an express declaration of trust, or by an agreement to hold in trust, constitute himself a trustee. (Sir Robert P. Collier.) THUKUR SHERE BAHADOOR SINGH v. THAKURAIN DARIAO (1877) 3 C. 645 (652) = 3 Suth. 472 = KUAR. 3 Sar. 769 = R. & J.'s No. 47 (Oudh).

-A person who has been registered as a taluqdar under Act I of 1869, and has thereby acquired a taluqdari right to the whole property, may nevertheless have made himself a trustee for another of a portion of the beneficial interest in the lands comprised within the estate (21). (Mr. Ameer Ali.) NAND RANI KUNWAR P. INDAR KUNWAR. (1926) 54 I. A. 5=1 Luck. 583=(1927) M. W. N. 21= 4 O. W. N. 80 = 31 C. W. N. 485 = 45 C. L. J. 282 = 100 I. C. 485 = 25 L. W. 751 = A. I. R. 1927 P. C. 8 =

52 M. L. J. 497.

#### RECOGNITION OF.

#### -Ss. 10 and 11 of Act I of 1869 no bar to.

It has been held that, notwithstanding the strong language of the Oudh Estates Act of 1869, and in particular the enactment in S. 10 that the Courts are to accept the lists framed under the Act as conclusive that the persons included in them are taluqdars or grantees, and those of S. 11. the Courts may nevertheless go behind the Act to the extent at least of recognizing trusts, and may give effect to beneficial titles as distinct from the statutory title under the Act (217). (Sir Arthur Wilson.) LAL SHEO PERTAB BAHA-DUR SINGH P. ALLAHABAD BANK, LTD.

(1903) 30 I. A. 209 = 25 A. 476 (491) = 7 C. W. N. 840 = 5 Bom. L. B. 883 = 8 Sar. 535 = 13 M. L. J. 336.

#### WIDOW.

### Trustee for adopted son-Evidence.

The defendant was the widow of one B, who died without issue on 12-11-1857. The plaintiff claimed to be the adopted son of B, the allegation being that he was adopted by the defendant on 25-4-1858 in pursuance of a direction to that effect given to her by her husband, B. In May 1858 a summary settlement of the suit estate was made with the defendant, and a sunnud was granted to her. The plaintiff alleged that the defendant had constituted herself a trustee

#### OUDH-OUDH ESTATE-(Contd.)

Sunud holder of-Trustee of beneficial interest for others-(Contd.)

WIDOW-(Contd.)

on his behalf of the suit estate. The question was whether there was evidence to show that the defendant had declared herself or had agreed to be a trustee on behalf of the

Two letters were relied upon by the plaintiff in support of his case that the defendant had so declared herself or had so agreed. One letter, which was written by the defendant to the plaintiff, contained a promise to put him in posses sion of the estate on his becoming of age. The second letter, addressed to B, between whose daughter and plaintiff a marriage was arrranged, was to the same effect as the letter addressed to the plaintiff.

Held that those letters, if proved, might, coupled with surrounding circumstances, constitute sufficient evidence on which the Court would be justified in holding that the defendant had declared herself or had agreed to be a trustee on behalf of the plaintiff (652). (Sir Robert P. Cellier.) THAKUR SHERE BAHADOOR SINGH P. THAKURAIN DARIAO KUAR. (1877) 3 C. 645=3 Suth. 472= 3 Sar. 769 = R. & J.'s No. 47 (Oudh).

Trustee for purposes of husband's will - Evidente. N, an Oudh talookdar, left a will which provided for the succession to the talook of each of his succeeding wives after the death of her prior wife, and, after the death of all his five wives, for the succession of one S.

On the death of N, a summary settlement was made with R, one of his widows, on 2-12-1858, and a sunned was granted to her on 15-3-1861, followed by the entry of her name on the first and third lists prepared under S, 8 of Act I of 1869. In a suit by the appellant, another widow of N the question was whether, notwithstanding that the legal title was thereby conferred upon R, she had so conducted herself that she must be deemed in equity to be bound to hold the estate in trust for the purpose of carrying into effect the provisions of her husband's will.

The evidence showed that R had all along, certainly from April, 1856, to the time when she obtained the sunnud, held herself out as claiming the estate under the terms of be husband's will. Without the will R and the appellant would have been ordinary Hindu widows, and R would not have been in a position to claim the sole benefit of the two settlements and of the sunnud which were granted to ber-Further two important documents to which R was a party were inexplicable except on the supposition that she was abiding by the will, which, on other occasions, she expressly set up and successfully used as a defence to her possession

Held that R had by her conduct constituted herself in equity a trustee for the purpose of carrying into effect the provisions of her husband's will, and that the appellant was entitled to succeed to the talook after the death of R (52.3) (Sir Robert P. Collier.) THAKURAIN RAMANUND KOER THAKURAIN RAGHUNATH KOER.

(1882) 9 I. A. 41=8 C. 769 (781-2)=11 C. L. B. 149= 4 Sar. 316=R. & J.'s Nos 67 & 68

#### Taluqdar of.

-(See also OUDH-OUDH ESTATE-SUNUD HOLDER OF AND OUDH-OUDH ESTATE-VILLAGES COMPRISED

-Lease by. See LEASE-OUDH TALUKDAR.

-Maintenance of cadet of family-Grant of Village comprised in taluk for-Duration of-Revenue payable for villages granted—Liability for. See HINDU LAW-MAINTENANCE—GRANT FOR—OUDH TALUKDAR. (1896) 23 I. A. 64=23 O. 838.

Taluqdar of-(Contd.)

-Sub-proprietary right in village held by relatives of. under provision for maintenance in accordance with Rules of British Indian Association of Oudh-Construction Suit in rent Court-Jurisdiction-Maintenance-Payment made on account of

Where in Oudh sub-proprietary rights in a village were held by the relatives of a Talukdar, who held superior proprietary rights in it, under the provision for maintenance in accordance with one of the Rules of Practice, framed by the British Indian Association with regard to suits instituted and decrees passed therein, dated, 23rd September 1867, triz., "This class will remain in possession of what they actually have at annexation or rent-fee "during their lifetime but subject to payment in the second generation of 25 per cent. to the Talukdar, and in the third 50 per cent. and will not have transferable rights. If such persons pay the Government Revenue, plus 10 per cent. to the Talukdar, they will have heritable rights in addition.

Held, that the bulk sum out of which the percentages were to be struck was the assumed rental, of which 50

per cent, was the Government Revenue.

Held also, that it was not within the province of a Rent Court to determine whether maintenance was or was not payable; and consequently that certain payments made on account of maintenance to the respondent by the Court of Wards which represented the appellant during his minority, could not be opened up by the appellant in suit brought in a Rent Court by him after he attained his majority. (Lord Shate.) NAWAB ALI KHAN P. WARID ALL

(1909) 37 I. A. 12 = 32 A. 92 = 13 O. C. 74 = 12 Bom. L. B. 161 = 5 I. C. 156 = 11 C. L. J. 116 = 14 C. W. N. 237 = 7 A. L. J. 41 = 20 M. L. J. 195.

-Sub-settlement for life-Grant of-Binding nature of, on successor.

Upon the construction of a letter of a deceased talukdar, held that the appellant was entitled to a sub-settlement for life and that it was binding not only upon the deceased, but also upon his successor. (Sir Barnes Peaceck.) KISHNA NUND MISSER D. THE SUPERINTENDENT OF ENCUM-BERED ESTATES, MAHDOWNA. (1879) 3 Suth. 649 = Bald. 278 = R. & J's No. 59 (Oudh).

-Under-proprietor (pukhtadar) right- Possession of property with-Denial of right of-Estoppel-Rent from person in possession-Acceptance of-Effect-Mesme Profits-Possession-Recovery of-Bar of.

The question was whether the appellants were estopped from denying the 1st respondent's right to hold the suit villages for life as an under-proprietor without power of

alienation.

The 1st respondent was the second wife of one B. The sole basis of title she could found upon was a compromise of the year 1878. Under that compromise, S, the then wife of B, was the only person entitled to possession of the suit property as an under-proprietor during her lifetime without the power of transfer and sale. On the death of S her rights came to an end and the 1st respondent, the subsequently married wife of B, had no rights under the compromise. On the death of S, and after the marriage of the 1st respondent, the latter took possession of the property and remained in possession for a period of 8 years. She obtained a mutation of names, and paid rent to the talukdar, that is, the Court of Wards in charge of the appellant's estate, the Court of Wards taking the rent from the 1st respondent evidently on the mistaken assumption that she, another wife of B, was possessing the property on the same title as her predecessor.

Held that the appellants were not, on discovering the

### OUDH-OUDH ESTATE-(Contd.)

Taluqdar of-(Contd.)

recovering possession of the property on the ground that the 1st respondent had no title to the same.

The taking of a rent each year, might, and did, bar by estoppel the Court of Wards from any claim for mesne profits during the particular year or years for which such rent was received. It estopped the Court of Wards from main taining that the 1st respondent possessed the property with a liability to account or possess on any other or further terms than on payment of the rent made and taken. But there estoppel stops and it can never be reared up into the creation of a pukhtadari right of a proprietary, heritable and transferable character, nor can it ever create a right of possession of the property for life under the same terms as some other person had previously possessed it upon. (Lord Sager.) MITRA SEN SINGH : JANKI KUAR.

(1924) 51 I.A. 326=46 A. 728-AIR. 1924 P.C. 213= 23 A. L. J. 172=20 L. W. 566-(1924) M. W. N. 703= 26 Bom. L. R. 1134 = 40 C. L. J. 468 = 29 C. W. N. 533=35 M. L. T. 247=27 O. C. 208=

3 Pat. L. R. 169 = 82 I. C. 946 = 47 M. L. J. 591. Widow sub-proprietor-Adoption by-Setting aside

of-Right of.

The suit was to set aside an adoption of the second defendant by the 1st, a Hindu widow, and also to set aside a decree given under S, 15 of C. P. C. of 1859, declaratory of the adoption, obtained by the defendants. The plaint alleged that the minor, on whose behalf the suit was brought was an Oudh talookdar, that at the time of the said decree, the widow, the first defendant, was a sub-proprietor of the plaintiff's talook, and liable to him for the Government revenue demand plus a certain percentage; and that the effect of the adoption and decree, so long as they were not set aside, was to put the so-called adopted son in the place of the widow as sub-proprietor, and thus to thrust upon the talookdar, in a method contrary to law, an obnoxious subproprietor. The plaintiff further stated that the minor talookdar was entitled in reversion to the sub-proprietary estate held by the defendant No. 1, and the effect of the so-called adoption and of the ducree was illegally to injure and postpone that reversion.

Held, reversing the Courts below, that as talookdar the plaintiff had no right to have the alleged adoption and declaratory decree set aside as against him (21). (Sir Robert P. Collier.) RANI ANUND KOER v. COURT OF WARDS. (1880) 8 I. A. 14 - 6 C. 764 (771)=

8 C. L. R. 381 = 4 Sar. 195 = R & J's. No. 63 (Oudh). -Will by See HINDU LAW-WILL-OUDH TALUKDAR. AND UNDER HINDU LAW - WILL GENERALLY.

#### Transfer of.

-Modes of -Oudh Estates Act-Special modes prescribed by.

An Oudh talook cannot be transferred like an ordinary estate under Mahomedan or Hindoo law, because the Oudh Estate Act requires special modes of transfer (177). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN v. SARDAR HUSSAIN KHAN. (1898) 25 I. A. 161=

26 C. 81 (100) = 2 C. W. N. 737 = 7 Sar. 432. Mutation of names in respect of estate-No transfer

It is not now contended that the mutation of names in respect of the talook operated as a transfer (177). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN P. SARDAR HUSAIN KHAN. (1898) 25 I. A. 161 =

26 C. 81 (100)=2 C. W. N. 737=7 Sar. 432.

Villages comprised in.

--- Maintenance of cadet of family--Grant of Villages mistake committed by the Court of Wards, estopped from by talukdar for-Duration of-Revenue payable for villages

Villages comprised in - (Contd.)

granted-Liability for. See HINDU LAW-MAINTE-NANCE-GRANT FOR-OUDH TALOOKDAR.

(1896) 23 I. A. 64 - 23 C. 838.

— Mortgage with possession of—Firt tenures in villages mortgaged—Mortgagee's purchase of—Redemption of mortgage—Birt rights—Talookdar's right to, on payment of purchase money paid by mortgagee. See MORTGAGE— USUFRUCTUARY MORTGAGE—MORTGAGEE UNDER— PURCHASE BY—OUDH TALOOK.

(1879) 6 L. A. 145 (153-4) = 5 C. 198 (204-5).

Proprietary right in-Suit on foot of Sub-proprietary rights-Relief on foot of-Grant of-Conditions.

The plaintiffs claim that, if they are not proprietors they have at all events a sub-proprietary right; and there are cases in which it would be quite just and proper to allow one who comes to claim recovery of villages, or the right to a settlement in villages, on the ground of a proprietary right, to maintain upon the same facts that he is in effect a sub-proprietary right is entirely irrelevant to the relief claimed in this suit, which is for a declaration of right on which to found a mutation of names in order that effect may be given to the dealings with the estate by the plaintiffs (56-7). (Lord Hobburse.) BABU RAM SINGH 2. DEPUTY COMMISSIONER OF BARA BANKI.

(1889) 17 I. A. 54=17 C. 444=5 Sar. 486= R. & J's. No. 116.

Sub-Settlement of sub-proprietary right, in—Right to—Mortgagee by conditional sale before confiscation— Right of—Birt Zemindari interest—Mortgage of—Malikana—Talockdar's right to, on Sub-Settlement.

On 4—3—1856 the then Rajah of an Oudh talook borrowed from the plaintiff a sum of money, and as a security for that sum, executed, a few weeks after the first annexation of Oudh, a mortgage by way of conditional sale, by which he made a conditional sale to the plaintiff of four villages, which were part of the said talook, with all the four boundaries, and birt Zemindary rights for the period of 4 years, commencing from 4—3—1856, and ending on 4—3—1860. The deed of mortgage went on to say: "The abovenamed creditor is allowed to take possession of the aforesaid villages, to pay the Government revenue, and to appropriate the surplus profits to his use in lieu of interest. Neither will I have any claim to profits, nor will the creditor have any claim to interest. I shall be entitled to get back the deed when I pay the money at the stipulated period."

At the summary settlement which the British Government proceeded to make upon the first annexation of the province, the plaintiff applied to have the settlement of those four villages made directly with him. That settlement was not completed until 4-6-1857; and, when made, was made to endure only for the time during which the plaintiff would be in possession of the villages strictly in the character of mortgagee, that is, only up to the time fixed for the redemption of the mortgage. Then came the Mutiny and Lord Canning's Proclamation of 15-3-1858. Early in 1859, the Government, having apparently retained during the intermediate period the talooka in question under some kind of attachment, finally determined to grant it to the respondent. He was admitted to engage for the revenue on 21-1-1859, and the settlement was completed on 25-5-1859. The plaintiff, who was in actual possession of the villages as mortgagee, was dispossessed on 31-1-1859, when, in anticipation of the final settlement, the respondent was put in possession. plaintiff's attempts to assert his rights and to recover possession were unsuccessful, and he was directed to urge his

#### OUDH-OUDH ESTATE-(Contd.)

Villages comprised in-(Contd.)

Accordingly when the settlement was in progress, the plaintiff filed the suit out of which the appeal arose claiming to be entitled to a sub-settlement of a sub-proprietary right in the four villages.

Held, reversing the Court below, that the grant by the mortgage deed of the birt Zemindary interest should be treated as the conveyance of a Sub-Zemindary interest; that the 4 villages were at the time of the settlement properly treated as still in the talooka in question settled with the respondent; and that the plaintiff's claim to a subsettlement was valid, but that it was to be without prejudice to the right, if any, of the respondent to malikana at a rate not less than 10 per cent. (14-5).

Quare whether if the interest created were not in the strict sense of the term a sub-proprietary interest, the case in L. R. 4 I. A. 198 would not have justified a sub-settlement of it (14). (Sir James W. Colvile.) GOURI SHUNKER v. THE MAHARAJAH OF BULRAMPORE.

(1878) 6 I.A. 1=4 C. 839=3 Sar. 873=3 Suth. 567= R. & J's. No. 53.

#### OUDH—REGISTRATION RULES OF 1862.

Registration of gift deed in accordance with-Validity-Attendance of Registrar at grantor's house.

The question was as to the legality of the registration of a deed of gift. The objection taken to the instrument was that it was not presented at the office of the Registrar, bet that the Registrar was sent for to the executant's residence where the deed was executed and registered. The executant was a purdanasheen; and the mode in which registration was effected was in this manner: She sent for the pargana registrar, and he attended at her house. Her house was near the office of the pargana registrar, and actually within the very village which was the subject of the gift. The registrar having attended her, and having the deed acknowledged in his presence, word for word, by the granting party and having examined it, it was handed to him for registration. The sole objection to that registration was that the grantor did not go to the office of the pargana registrar, but that he came to her, and received the deed and copy at her house.

Held that the registration was effective, complete and full, and that the deed ought not to be disturbed on that account.

The registration, in fact, took place at the office of the pargana registrar, though the officer attended to receive the deed, to receive its acknowledgment, and to compare the deed with the copy. He brought it all to his own office, and the registration is, in fact, the recording of that copy in the office of the pargana registrar, all the other requisites provided by the rule having been otherwise compiled with (22). (Lord Fitz Gerald). MAJID HOSAIN r. MUSSA.

MAT FAZL-UN-NISSA. (1888) 16 I. A. 19=16 C. 488.

### OUDH-REVENUE AUTHORITIES IN-SUITS BEFORE-SCOPE OF.

Title to property-Lambardarship of it-Adjudice

the intermediate period the talooka in question under some kind of attachment, finally determined to grant it to the respondent. He was admitted to engage for the revenue on 21—1—1859, and the settlement was completed on 25—5—1859. The plaintiff, who was in actual possession of the villages as mortgagee, was dispossessed on 31—1—1859, when, in anticipation of the final settlement, the respondent was put in possession. The plaintiff's attempts to assert his rights and to recover possession were unsuccessful, and he was directed to urge his claims at the regular settlement to be thereafter made.

# OUDH-REVENUE AUTHORITIES IN-SUITS | OUDH-SETTLEMENT IN-(Contd.)

her death the father of the original appellant, and after him the appellant, had been registered as the persons responsible for the revenue assessed, from time to time on the village; and so far, the ostensible proprietors of it. But it was insisted that that was merely an arrangement for fiscal purposes, and that notwithstanding the registration in the name of one member of the family on behalf of the others, both branches continued jointly to possess the village and to enjoy the revenues of it.

Held that a suit so framed, though tried by the Revenue authorities, and in the course of proceedings for effecting a settlement of the public revenue, did not, in the Province of Oude, merely determine who was to be Lumbardar, or the person entitled to engage for the payment of revenue, leaving the party excluded a remedy in the Civil Courts, but that such a suit involved a final adjudication on the question of proprietary right (404). (Sir James W. Colvile.) HYDER HUSSAIN P. MAHOMED HUSSAIN

(1872) 14 M. I. A. 401 = 17 W. R. 185 = 2 Suth. 539 = 3 Sar. 46 - R. & J's. No. 12.

### OUDH-REVENUE SETTLEMENT IN-COM-PLETION OF.

Finding as to-Fact or Law. See C. P. C. OF 1908, S. 100-OUDH-REVENUE SETTLEMENT IN.

(1873) Sup. I. A. 237 (240).

#### OUDH-SETTLEMENT IN.

### Possession-Weight to.

-Duty of settlement officers to give great. RAJAH AMEER HUSAIN KHAN D. ABDUL RAHEEM.

R. & J's. No. 13 (Oudh).

#### Right to.

-Proprietor not being kabuliyatdar in his mon name under native Government-Malzamin - Kabuliyatdar under native Government as-Rights of

The mere fact that the proprietor of a taluk at the time of the annexation of Outh had not become a kabuliyatdar in his own name under the native government does not disentitle him to have a settlement made with him after the annexation of the Province. And the fact that a person had entered into the kabuliyat with the native government. as malzamin and not in the exercise of any proprietary rights does not entitle him to a settlement. THAKUR BENI SINGH v. RAJA BEHARI LAL. B. & J's. No. 15 (Oudh).

#### Sub-settlement.

-Claim to, as under-proprietor-Onus in case of-Presumption.

In order to entitle a person to sub-settlement it is necessary that he should prove that he, or some person under whom he claims, had within the prescribed period held the lands as an under-proprietor under the taluquar. It is not sufficient for the claimant to show that he had been a proprletor of the land (of which a sub-settlement is sought) by a title adverse to the taluqdar, and that although he might have lost his right to engage for the Government revenue, under the peculiar laws that had prevailed, it is to be presumed that, having once had the better title to the land, he has nevertheless a right to a sub-settlement still in respect of that land. SAIYID MIR WAHID ALI P RANI R. & J's. No. 34.

Right to -Confiscation and re-grant to defendant-Plaintiff's right in case of - Acquiescence by defendant for 11 years-Admission of plaintiff's right by defendant's ancestor -Effect.

At the regular settlement the plaintiffs claimed to be settled with as under-proprietors of the village in dispute, The defendant denied the plaintiff's right to sub-settlement

### Sub-settlement-(Cont.)

at all, After the confiscation, the taluqa, to which the suit village was annexed, was granted.

Held that the fact that the taluka was granted to the defendant did not deprive the plaintiffs from getting a subsettlement of the village.

Held further that the defendant having acquiesced for 11 years from 1859 to 1870 in the Settlement Officer's order granting a sub-settlement to the plaintiffs could not successfully impugn a title established by an adjudication between the parties. SETH SEETA RAM 2. SETH JANKI PRASHAD.

R. & J's. No. 30 (Oudh).

## Under-proprietary right in land in.

Meaning of.

Under-proprietary right in any land in the Settlement of Oudh means the right to hold the land in perpetuity for a heritable and alienable estate at a fixed rent, subject to a revised assessment. (Lord Atkinson.) MAHESHAR PARSHAD v. MUHAMMAD EWAZ ALI KHAN.

6 M. L. T. 168 = 10 C. L. J. 133 = 13 C. W. N. 1093 = 11 Bom. L. R. 868=12 O. C. 293-3 I. C. 200= 19 M. L. J. 442.

### Under proprietary settlement

-Suit for-Decree in-Relationship created by-Landlord and Tenant-Under-proprietary rights.

In a suit against a taluqdar praying for an under-proprietary settlement in a village within the ambit of the defendant's taluq, judgment was pronounced by the Settlement Officer decreeing a "permanent lease" of the village in favour of the plaintiff, and he was ordered to pay malikana to the defendant "at the rate of 25 per cent, on the revised jama." Held that, though the words "permanent lease" were used in the decree, it could not have been meant that the relation of landlord and tenant was to be created between the parties. The decree was meant to be, and was, one for under proprietary rights. (Lord Atkinson.) MAHESHAR PARSHAD P. MUHAMMAD EWAZ ALI KHAN,

(1909) 36 I. A. 114 (119 20) = 31 A. 394 (407-8) = 6 M. L. T. 168 = 10 C. L. J. 133 = 13 C. W. N. 1093 = 11 Bom. L. B. 868 = 12 O. C. 293 = 3 I. C. 200 = 19 M. L. J. 442.

## OUDH - SETTLEMENT CIRCULAR ORDER.

-Ss. 1 & 24-Effect-If enactments of limitation-Repeal of by Act XVI of 1865 and by Act XIII of 1866-Birteeah suit of-Cognizability-Possession in 1855 if a condition of.

Sections 1 & 24 of the Chief Commissioner's Circular Order of 29th Jannuary 1861 enact in effect that if a birteeah is out of possession in the year 1855, his claim cannot be recognised. They are not, in the technical sense, enactments of limitation, though their effect is in some respects the same, viz., to prevent the owner of a birt tenure being heard to support his claim; and they appear to be treated as enactments of limitation by the authorities in Oudh, and to some extent by the Legislature itself (20).

Whether the provision in the circular Order referred to be considered a provision of limitation or not, it was in effect repealed by Act XVI of 1865 and Act XIII of 1866, and the suit of a birteeah became thereupon cognizable, notwithstanding that he may not have been in possession in 1855 (20-1). (Sir Robert P. Collier.) SIR MAHARAJAH DRIG BIJAI SINGH D GOPAL DATT PANDAY

(1879) 7 L. A. 17 = 6 C. 218(222.3) = 6 C. L. B. 146= 4 Sar. 117 = 3 Suth. 715 = R. & J's. No. 62 (Oudh).

CIRCULAR ORDER | OUDH ACTS-(Contd.) OUDH - SETTLEMENT 29-1-1861- (Centil.)

S. 24-Applicability of words of limitation in, to

all birt tenur .- Applicability to shankallaps.

The words treated as words of limitation in S, 24 of the Chief Commissioner's Circular Order of 29th January, 1861 apply to all birt tenures. If a shankallap be a birt tenure they apply to it; if it be not a birt tenure they do not apply to it, and it follows that there is no term of limitation in the regulation applicable to shankallaps (20).

The ruling referred to by the Judicial Commissioner draws a distinction in reference to the application of the term of limitation (as it is called) to birt tenures, and to tenures in the nature of shankallap, which are to some extent different from birt tenures, and are assumed to be held at the option of the talookdar; but their Lordships find no such distinction in the Circular of 1861 (20), Sir Robert Collier). SIR MAHARAJAH DRIG BIJAI SINGH z. (1879) 7 I.A. 17= GOPAL DATT PANDAY.

6 C. 218 (222-3) = 6 C.L.R. 146 = 4 Sar. 117 = 3 Suth. 715 = 4 I. J. 144 = R. & J's No. 62 (Oudh).

#### OUDH ACTS.

APPEALS ACT XXXVII OF 1867. CIVIL COURTS ACT XXXII OF 1871. COURTS ACT XIV OF 1891. ESTATES ACT I OF 1869. ESTATES AMENDING ACT III OF 1910. LAND REVENUE ACT XVII OF 1876. LAWS ACT XVIII OF 1876. RENT ACT XIX OF 1868 RENT ACT XXII OF 1886. RENT ACT AMENDMENT ACT III OF 1901. REVENUE COURTS ACT XVI OF 1865. SETTLED ESTATES ACT, 1900. SUB-SETTLEMENT ACT XXVI OF 1866. TALOOKDARS' RELIEF ACT XXIV OF 1870.

#### Appeals Act XXXVII of 1867.

Commissioner-Review of Financial Commissioner's judgment-Jurisdiction-Order rejecting application for review-Appeal to Privy Council from-Leave for-Grant of - Jurisdiction.

It was never the intention of the Legislature in enacting Oudh Appeals Act XXXVII of 1867 to enable the Chief Commissioner of Oudh to refer to the Judicial Commissioner an application to review the judgment of the Financial Commissioner and to decide whether the Financial Commissioner had passed an erroneous judgment or not. The Judicial Commissioner has no authority whatever to interfere and decide whether or not an application for review of the Financial Commissioner's judgment should be either granted or refused. He has also no power to allow an appeal to the Privy Council from a decision pronounced by him refusing an application to review such a judgment. NEHALUDDIN v. AHMAD HUSAIN.

R. & J's No. 39.

### Civil Courts Act XXXII of 1871

-S. 4-Commissioner-Decision of, affirming that of Settlement Officer- Privy Council appeal from-Right of. By S, I of Act II of 1863, the right of appeal to Her Majesty in Council was limited to final judgments, decrees, or orders, made on appeal or revision by the Court of highest civil jurisdiction. By S. 15, cl. (3) of Oudh Act XXXII of 1871, an appeal from a decree of the Commissioner, when an appeal was allowed by law, lay to the Judicial Commissioner; but by S. 4 of that Act it was enacted that if the Court of first appeal confirmed the decision of the Court of first instance, such decision should be final.

In a case in which the Commissioner had affirmed the judgment of the Settlement Officer, held that, though the OCTOBER, 1859,

Civil Courts Act XXXII of 1871-(Contd.)

decision of the Commissioner was final within the meaning of S. 4 of Oudh Act XXXII of 1871, he was not in the particular case the Court of highest Civil jurisdiction in the province within the meaning of Act II of 1863, and that he was not competent to grant leave to appeal to the Privy Council against his judgment.

If the Commissioner had reversed the decree of the Settlement Officer, his decision would not have been final, because an appeal could have been preferred against it to the Judicial Commissioner. (Sir Barnes Peacock). THAROOR HARDEO BUX 27 THAKOOR JAWAHIR SINGH.

(1877) 4 I.A. 178 (183) = 3 C. 522 (527)= 3 Suth. 427=3 Sar. 704=Bald 218= R. and J's No. 45.

#### Courts Act XIV of 1891.

S. 8-Appeal in cases falling under-Hearing of, by Additional Judicial Commissioner alone-Legality of. Where a case falling within S. 8 of the Oudh Courts Act of 1891 had been heard on appeal, contrary to its provisions by the Additional Judicial Commissioner sitting alone, the Privy Council set aside the judgment below and remanded the case to he tried by a Court properly constituted in accordance with the provisions of that section. (Lord Hothouse). GANGA BAKHSH SINGH P. DALIP SINGH.

(1901) 28 I. A. 181 = 24 A. 13 = 5 C.W.N. 781= 8 Sar. 139.

#### Estates Act I of 1869.

(See also OUDH-OUDH ESTATE).

ADOPTION.

-Adopted son-Succession of-Scheme as to-Act III of 1910-Distinction.

The result of the alterations made by the Act of 1910 is that adopted sons, whether in Hindu families or otherwise, being thereunder separately introduced into the seccession, "Sons" in cls. 1, 2 and 3 of that Act do not include adopted sons, although a change in the general Hinds Law of Succession results from the change in the Act. the Act of 1869, Hindu adopted sons came in either as sons under the first three clauses or under cl. 11, the latter being barely credible. Under that of 1910, all sons adopted by men come under cl. (4) and by widows under cl. (7). The resultant alterations in general Hindu Law are deliberate and are considerable. (Viscount Sumner.) RAGHURAJ CHANDRA P. RANI SUBHADRA KUNWAR

(1928) 55 I.A. 139 = 3 Luck. 76 = 5 O.W.N. 445 26 A.L.J. 609 = 108 I.C. 673 = 30 Bom. L.B. 829 = 32 C.W.N. 1009 = A.I.B. 1928 P.C. 87 55 M. L. J. 778.

-Authority for-Writing-Registration-Necessity Writing by which authority is exercised-Registration of Necessity.

Oudh Estates Act I of 1869 requires the writing by which an authority to adopt a son is exercised to be to gistered. It also requires the authority to be in writing. it does not require that writing to be registered. of 1877, S. 17, which does require authorities to adopt a so to be registered, expressly excepts authorities conferred BHAIJA RABIDAT by will (57). (Lord Macnaghten). SINGH P. MAHARANI INDAR KUNWAR.

(1888) 16 I.A. 53=16 C. 556 (562)=5 Sar. 505

GOVERNMENT OF INDIA'S LETTER OF 10TH OCTOBER. 1859, SET OUT IN.

-See OUDH-OUDH ESTATE - LETTER OF 10TH

Estates Act I of 1869-(Contd.)

LEGAL AND EQUITABLE ESTATES.

English law distinction of-Introduction by Act of. The Oudh Estates Act introduces a mode of tenure more nearly resembling the English principle of distinction between legal and equitable estates (166). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN P. SARDAR HUSSIN KHAN. (1898) 25 I.A. 161 = 26 C. 81 (89) = 2 C. W. N. 737=7 Sar. 432.

### PERSONAL LAW APPLICABLE UNDER.

Law as it exists when question has to be decided.

In construing the Acts of 1869 and of 1910 the personal law applicable is the personal law as it exists at the time when the question in the suit has to be decided. (Viscount TEWARI RAGHURAJ CHANDRA P. RANI SUBHADRA KUNWAR. (1928) 55 I.A. 139=

3 Luck. 76=5 O.W.N. 443=26 A.L.J. 609= 108 I.C. 673 = 30 Bom. L R.829 = 32 C.W.N. 1009 = A.I.R. (1928) P. C. 87 = 55 M.L.J. 778.

SUCCESSION UNDER.

-(Cases not noted under this head will be found under OUDH-OUDH ESTATE-SUccession to; and under this Act, Ss. 8 AND 22).

-Adopted sons--Succession of. Ser OUDH ESTATES ACT OF 1869-ADOPTED SONS.

(1928) 55 I.A. 139 = 3 Luck. 76.

-Collateral-Right of, during widow's lifetime-Spes successionis-Decree declaring his right to succeed on widow's death-Effect-Transfer of interest by him after decree and before widow's death-Validity.

Under the Oudh Estates Act the succession to collaterals opens on the death of the widow just as under the ordinary Hindu law. During her lifetime, the presumptive reversioner has, therefore, no more than an expectancy, and has no interest in the property of the last male owner which he is competent to transfer or bind. The position is not aftered by the fact that the next reversioner has, prior to the date of a transfer of his interest, obtained a decree declaring that a will, alleged by the widows of the last male owner to be the will of their deceased husband and to have authorised them to adopt, was void and invalid, and that the next reversioner was entitled to succeed to the properties of the last male owner on the death of his last surviving widow.

Where, after obtaining a decree of the Deputy Commissioner to the effect above stated and before the death of the last surviving widow, the presumptive reversioner purported to sell half the estate, declaring by the sale deed that when he succeeded he would put the vendee in proprietary possession, held that the transfer was inoperative and ineffectual to pass title to the property. (Sir Lawrence Jenkins). HARNATH KUAR V. INDAR BAHADUR SINGH.

(1922) 50 I. A. 69 (74-5)=45 I A. 179 (1823)= 9 O.L.J. 652=37 C.L.J. 346=A.I.B. 1922 P.C. 403= 9 O. & A.L.B. 270 = 27 C.W.N. 949 = 5 P.L.T. 281 = 2 P.L.R. 237 = 33 M.L.T. 216= 18 L. W. 383 = 26 O. C. 223 = 71 I. C 629 = 44 M. L. J. 489.

-Lists 1 and 2 of Act-Estate entered in-Property of talukdar not parcel of -Succession to-Law applicable. See under this Act-S. 8-LISTS 1 AND 2 PREPARED UNDER. (1877) 4 I.A. 228 (246) = 3 C. 626 (644).

Lists 1 and 4 of Act-Estate entered in-Daughters -Exclusion by collaterals of-Custom of-Proof of. Sec UNDER THIS ACT, S. 8-LISTS I AND 4 PREPARED UN-(1909) 36 I.A. 125 = 31 A. 457 (474, 476).

-List 2 of Act-Estate entered in-Succession to-Family custom of-Inquiry into-Propriety. See UNDER OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

SUCCESSION UNDER-(Contd.)

THIS ACT, S. 8-LIST 2 PREPARED UNDER. (1928) 3 Luck. 372-56 M. L. J. 601.

-List 2 of Act-Estate entered in, and not in List 3 -Single heir in case of -Ascertainment of -Mode of. Sa UNDER THIS ACT S. 8-LIST II PREPARED UNDER,

(1899) 26 I.A. 194 (195-6) - 27 C. 344 (346-7). Scheme of Acts as regards-Personal law of talukdar not excluded from.

Acts I of 1869 and III of 1910 are not designed to force one arbitrary and unnatural line of succession on all talukdars regardless of their family law, but are meant to be adapted to the circumstances of different classes of talukdars, except where an express deciation is made from the rules ordinarily applicable, (Viscount Sumner.) TEWARI RAGHURAJ ČHANDRA P. RANI SUBHADRA KUNWAR.

(1928) 55 I. A. 139 = 3 Luck 76 = 5 O.W. N. 443 = 26 A. L. J. 609 = 108 I. C. 673 = 30 Bom. L. R. 829 = 32 C. W. N. 1009 = A. I. R. 1928 P.C. 87 = 55 M. L. J. 778.

TENURE INTRODUCED BY.

-Legal and equitable estates-English law distinction of. See Under this ACT-LEGAL AND EQUITABLE ES-(1898) 25 I. A. 161 (166) = 26 C. 81 (89). TATES. Section. 2.

-Estate within meaning of -Kabuliyat excented after 10th October, 1859-Effect.

Held that the fact that the Kabuliyat was not executed until after 10th October, 1859, did not deprive a taluqa of the character of an "estate" within the meaning of S. 2 of Act I of 1869 (179).

A summary settlement might be made within the timelimit, and yet the formal documents connected therewith might not, owing to causes beyond the control of the person with whom the settlement is made, be executed until later, The law must be absolutely explicit that non-execution within the time is fatal to the right which it expressly gives before it can be so construed. Under S. 3 of the Act the right the talukdar is declared to have acquired comes into existence with the settlement, the rest of the clause merely describes the properties with respect to which it takes effect (179). (Mr. Ameer Mr.) JANKI PERSHAD SINGH P., DWARKA PRASHAD SINGH. (1913) 40 I. A. 170=

35 A. 391 (399 400) = 20 I. C. 73 = 17 C. W. N. 1029 = (1913) M. W. N. 630 = 14 M. L. T. 10 = 18 C. L. J. 200 = 15 Bom. L. R. 853 = 11 A.L. J. 818 = 25 M. L. J. 34.

-Estate within meaning of-Villages settled at summary settlement on grantee whose name entered as owner in Lists 1 and 2 if an.

The nucleus of the taluqa in dispute, was formed by one S. He owned nine villages, but the number increased to 16 in the hands of his son and successor, who lived about the close of the 18th century. In 1856, when the British first occupied the Kingdom of Oudh, the taluqa included 21 villages, and was held by A. On the outbreak of the muttiny A disappeared, and did not make his appearance on Lord Canning's Proclamation issued in March, 1858. The British authorities accordingly proceeded to make a settlement of his confiscated villages with third parties. But sometime in July, 1859, A appeared before the authorities, and on 5-10-1859, an order was passed on his application, sanctioning the summary settlement with him of the remaining nine villages which had not been finally settled with others. The kabuliyat, however, was not signed by him until the 13th of that month,

In the course of the Regular Settlement which followed shortly after. A recovered decrees for possession of six more

Estates Act I of 1869-(Contd.)

SECTION 2-(Contd.)

villages. He was thus in possession of some villages when Act I of 1869 was passed into law. Later on he acquired by purchase several other properties. A's name was entered in the Lists prepared under the statutory provisions of S. 8 of the Act.

Held that the properties settled with A in 1859, together with those of which he obtained possession under decrees passed in his favour in the course of the regular settlement, constituted an "estate" within the meaning of Act I of 1869, and were consequently impartible (179). (Mr. Ameer Ali.) JANKI PERSHAD SINGH v. DWARKA PRASHAD SINGH.

(1913) 40 I A. 170 = 35 A. 391 (400) = 20 I. C. 73 = 17 C. W. N. 1029 = (1913) M. W. N. 630 = 14 M. L. T. 110 = 18 C. L. J. 200 = 15 Bom. L. R. 853 = 11 A. L. J. 818 = 25 M. L. J. 34.

- Legatec-Legatec under bequest before Act if a.

A legatee in whose favour a brquest comes into operation before the passing of Act of I of 1869 is not a legatee within the meaning of that term in S. 2 of the Act. (Lord Macnaghten.) THAKURAIN BALRAJ KUNWAR v. RAE JAGATPAL SINGH. (1904) 31 I. A. 132 (143)=

26 A. 393 (406) = 8 C. W. N. 699 = 11 Bom. L. R. 516 = 1 A. L. J. 384 = 3 I. C. 359 =

7 O. C. 248=8 Sar. 639.

- Will under-Succession-Gavernment's inquiry as to talukdar's wishes as to-Statement by talukdar in reply to-Will if a.

That which was not a will in the ordinary sense of the word, might, in their Lordships' opinion, have amounted to a will within the definition of Act I of 1869. By S. 2 of that Act it is declared that the word "will" means "the legal declaration of the intention of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death." (276).

One of the documents, dated 14-2-1860, executed by an Oudh talookdar with respect to his property ran as follows:—

"I, Rajah G. S, Talookdar of Jubroulee, etc., do hereby declare that the British Governmen' has conferred upon me. in perpetuity, the proprietary right in the estate of Jubroulee, etc, and has asked for a statement regarding the custom of primogeniture, with a view that the estate may not be divided. In my family the custom for generations past has been that the eldest member of the family has been considered by all the sharers as the head, to whom the other sharers in the family have been subject, but at the same time have possessed their right to share in the estate. Any sharer wishing to have his share separated on any account, can do so under the custom of the family. eldest member of the family, who is regarded as the chief, cannot, according to the custom of the family, transfer the estate to another, without consulting all the sharers in the family. I therefore wish that the custom which has hitherto prevailed in my family may be adhered to, and not that of a single member succeeding to the whole estate."

The other documents were similar in effect, though not in the identical terms.

Held, that the document of 14—2—1860, and the other documents, which were very similar, did declare the intention and wishes of G. S., which he wished to be carried into effect after his death with respect to all the estates which the Government had assumed to confer upon him by the Sunnud, etc., including that part which was ancestral, as well as that which was granted to him for the first time, and that they were correctly described as wills (276-7). (Sir Barnes Peacock.) HURPURSHAD v. SHEO DYAL

(1876) 3 I.A. 259 = 26 W.B. 55 = 3 Sar. 611 = India, the respondents and others in the court of the 3 Suth. 304 = Bald. 25 = R. & J's No. 41 (Oudh). Assistant Settlement Officer in the course of a regular

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

SECTION 2-(Contd.)

On the 6th of April 1860, F, an Oudh talukdar, whose name was entered in list 2 prepared under the Act I of 1869, made a statement in reply to inquiries by the Government under Circular Orders regarding the succession of talookdars. It was as follows :- 'I am talookdar of T. Whereas the Government has been pleased to confer upon me the proprietary rights in this estate, to be enjoyed from generation to generation, I do hereby request that after my death my estate may be maintained intact and without partition according to Raj Gaddi custom, and that, owing to my not having a male issue, Z, my daughter, shall be considered entitled to succession and inheritance. But as I have taken T from my brother M, and have commenced to bring him up and educate him as my son, if he finishes his education during my lifetime and is married to Z, he shall after me succeed to my estate as my adopted son." F made other replies about the same, the talook being in three districts, in which no reference was made to his daughter or T, and it was contended that the reply of the 6th of April was not intended more than the others to be testamentary; bet in a letter from F to the Deputy Commissioner, dated 20-6-1877, in reply to questions that had been asked, he said in reply to the fourth question, which was to give the name and title of any boy who might be his successor, whether his begotten or adopted son, "The reply to this question refers to the will which has been submitted to the Lucknow district through the tahsil of Kursi on the 6th of April. 1860.1

Held, that the document of the 6th of April, 1860, was a will within the definition in S. 2 of Act I of 1869 (85.6).

(Sir Richard Couch.) HAIDAR ALI v. TASSADUK RASUL KHAN. (1890) 17 I A. 82 = 18 C. 1 (6-7)=

5 Sar. 529 = B. & J.8. No. 119.

- S. 3—Hindu widow—Summary settlement of estate with, and Sunad granting same to her absolutely—Estate taken under. See HINDU LAW—WIDOW—OUDH ESTATE—SUMMARY SETTLEMENT ETC.

(1877) 5 I.A. 1 (15-7)

--- Hindu widow-Villages and rights within talk inherited from husband by-Estate in-Widow's estate of life estate.

The appellant is to be treated not as talukdar, but as the proprietor of certain villages and rights within a tale. These she acquired by inheritance from her husband, and her estate is not a life interest, but the estate of inheritance of a Hindu widow with all its rights and all its disabilities (235.6). (Sir James W. Celvile.) WIDOW OF SHUNKER SAHAL v. RAJAH KASHI PERSHAD.

(1873) Sup. I.A. 220=3 Sar. 289=3 Suth 48 B. & Js. No. 23

- Hindu widow with whom summary settlement made
- Entry of name of, in Lists 1 and 2 of Act-Edde war

The name of a Hindu widow with whom a Summary Settlement of an Oudh estate was made was entered in the Lists 1 and 2 of the lists mentioned in S. 8 of the Act. Held that, by virtue of S. 3 of the Act the widow must be deemed to have acquired by the Sunnud a permanent heritable and transferable right in the estate (12.) (Sir Barnes Poscek).

BRIJ INDAR BAHADUR SINGH v. RANEE JANKI KOIS.

(1877) 5 I.A. 1=1 C.L.B. 318=3 Sar 763= Bald. 148=3 Suth 474=B. & Fs. No. 48

not entered in List 1 prepared under S. 8 of Act if a.

The suit was by the appellant against the Government of India, the respondents and others in the court of the

Estates Act I of 1869-(Contd.)

SECTION 3-(Contd.)

revenue settlement for the province of Oudh. The object of the suit was to establish the alleged right of the plaintiff to the proprietorship of talooka C. The plaint was filed on the 26th of January, 1867.

The plaintiff claimed as grandmother and heiress to a deceased infant Rajah, with whom a summary and temporary settlement of the talooka had been made. It appeared, however, that the talooka had been, after the death of the infant Rajah, and before the order of the Government of India of the 10th of October, 1859, set out in the Oudh Estates Act I of 1869, resumed by the Government.

Held, that the case of the appellant did not fall within tither the words or the spirit of the Oudh Estates Act I of 1869 (243).

Their Lordships are of opinion that Act I of 1869 cannot apply to this case, in which the suit was commenced in 1867, and finally decided by 'he Courts in Oudh in 1868; but even if the Act could apply by retrospective operation it would not vest a right in the plaintiff, for the word "talook-dar" in the 3rd section of the Act, was defined to mean "a person whose name is entered in the first of the lists mentioned in S. 8," and the plaintiff's name has never been entered in such list. RANEE OF CHILLAREE D. GOVERN.
MENT OF INDIA. (1873) Sup. I.A. 237 = 3 Sat. 238 = 3 Suth. 12 = R. & J.'s No. 24.

——— S. 3 (4)—Conditions referred to in. Set UNDER THIS ACT—S. 22—LIMITATIONS IN.

(1877) 5 I.A. 1 (13).

Ss. 3 and 4-Title if conferred by-Talookdar's rights over property-Heritability and transferability of property.

By the 8th Paragraph of the Oudh Proclamation of March, 1858, it was declared, amongst other things, that G.L, Zemindar of Mourawan, and 5 other persons therein mentioned, were thenceforward the sole hereditary proprietors of the lands which they held when Oudh came under British rule. G.L had died in 1854, long before the mutiny. Subsequently summary settlements were made with G.S., (the son of G.L) by the Government between the dates specified in S.3 of Act I of 1869; and a talook-dari Sannad was granted to him before the passing of the Act, and subsequently to the 1st of April, 1858, viz., on the 11th of December, 1859, by which the Government bound itself to maintain him and his heirs as sole proprietors of the estate. The name of G.S. was not contained in the 2nd Schedule annexed to the Act, but that of G.L. was, G.L. did not enter into a Kabooliyat for the lands to which the suit related, but G.S. did.

The Judicial Commissioner held that Act I of 1869 did not confer title in landed estate.

Held, dissenting from his view, that G S. must, in consequence of the Act, be deemed to have acquired a permanent heritable and transferable right in the estates to which the suit related, being those which comprised the villages named in the lists attached to the agreements or kabooliyats, executed by him when the settlements of the different portions of the estates were made; and that, as regards both the villages which were, and those, if any, which were not, previously part of the family property (271-2).

Held further, that G S had power by will or by alienation in his lifetime to transfer the estates which, by virtue of the Act, were not merely heritable, but transferable (272).

GS came within S. 3 of the Act. If he did not, he came within S. 4. It makes no difference, however, in the result which is the section within which the case falls, for

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

SECTIONS 3 AND 4-(Contd.)

both sections confer the same right and title (271). (Sir Barnes Beacock.) HURPURSHAD v. SHEO DYAL.

(1876) 3 I.A. 259 = 26 W.R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).

St. 3 and 8—Sunud-holder dying before Act—
Status and rights of—Applicability of Act to his estate—
His name entered in lists prepared under S. 8 of Act. See
UNDER THIS ACT—S. 8—LISTS PREPARED UNDER—

UNDER—

(1916) 43 I.A 269 (276.7) =

Ss. 3, 11 and 15—Sunud holder—Trustee of beneficial interest for joint family before Act—Effect of Act on his right, See OUDH—OUDH ESTATE—SUNUD HOLDER OF—TRUSTEE OF BENEFICIAL INTEREST FOR OTHERS—HINDU JOINT FAMILY. (1879) 6 I.A. 161 (165-6).

S. 6—Mortgage—Redemption suit—Onus on plaintiff—Mortgage ten years before annexation—Deed of morts.

A mortgage transaction which took place ten years before the annexation of Oudh comes within the purview of the Oudh Estates Act, 1869, S. 6 of which imposes certain restrictions on the right of redemption in respect of properties held by the taluqdars on mortgage. Where in a suit for redemption of such a mortgage, the plaintiffs are unable to produce the deed of mortgage, the onus is on them to show that they have, in view of S. 6 of the Oudh Estates Act, the right to redeem (626). (Mr. Ameer Ali.) SHANKAR DIN D. GOKAL PRASAD. (1912) 34 A. 620 e.

14 Bom. L. R. 1098 = 15 O. C. 285 = 12 M. L. T. 419 = (1912) M. W. N. 1061 = 10 A. L. J. 344 = 17 C. W. N. 1 = 17 C. L. J. 9 = 16 L. C. 78 = 23 M. L. J. 621

S. 8—LISTS PREPARED UNDER—CONCLUSIVE NATURE OF.

S. 10 of the Oudh Estates Act provides that the court shall take judicial notice of the lists and shall regard them as conclusive evidence of the facts they record (20). (Mr. Ameer Ali.) NAND RANI KUNWAR v. INDAR KUNWAR. (1926) 54 I. A. 5=1 Luck. 583=

(1927) M. W. N. 21 = 4 O. W. N. 80 = 31 C. W. N. 485 = 45 C. L. J. 282 = 100 I. C. 485 = 25 L. W. 751 = A. I. R. 1927 P. C. 8 = 52 M. L. J. 497.

By S. 10 of the Oudh Estates Act, List No. 1 of the lists mentioned in S. 8 of the Act is conclusive evidence that the person whose name was entered in that list was a talukdar within the meaning of the Act (12). (Sir Barnes Peacock.) BRIJ INDAR BAHADUR SINGH T. RANEE JANKI KOER.

(1877) 5 I A. 1 = 1 C. L. R. 318 = 3 Sar. 763 = Bald. 148 = 3 Suth. 474 = R. & J's. No. 48. -Lists 1 & 3—Entry in—Conclusive evidence of

S. 10 of the Oudh Estates Act of 1869 compels the courts to regard the lists ordered to be made by the Act as conclusive evidence that the persons named therein are taluqdars or grantees within the meaning of the Act. M's name is entered in the first and third lists. The entries therefore by Ss. 8 & 10 are conclusive evidence (1) that he is to be considered as having been a taluqdar within the meaning of the Act; and (2) that he was a taluqdar to whom a sanad had been made declaring that the succession to the estates comprised in it should be regulated by the rule of primogeniture. (Lord Lindley.) MUHAMMAD ABDUS SAMAD v. QURRAN HUSAIN. (1903) 31 I. A. 30 = 26 A. 119 (129) =

8 C. W. N. 201=6 Bom. L. R. 238=7 O. C. 254=

8 Bar. 593.

Estates Act I of 1869-(Contd.)

SECTION 8-LISTS PREPARED UNDER-CONCLUSIVE NATURE OF- (Contd.)

-List 2-Entry in-Primogeniture custom in family-Existence of-Entry conclusive as to.

In List 2 of the lists prepared under Act. I of 1869 such talukdars alone are included whose estates, according to the custom of the family "on and before February 13, 1856" ordinarily (the date of the first annexation of Oudh), ' descended upon a single heir." Their title to have their names inserted in that list is based on the specific family custom set out in the section. Under S. 10 of the Act the Courts are bound by the statute to regard as conclusive the fact that there was such a pre-existing custom attaching to these estates on which their inclusion in List 2 was based (280). (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN P. MAHOMED VASIN ALL (1916) 43 I. A. 269= 38 A. 552 (566) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555-4 L. W. 538-19 O. C. 290-18 Bom. L. R. 884 = 25 C. L. J. 1 = 1 Pat. L. W. 122 = 21 C. W. N. 410 = 36 I. C. 299 = 31 M. L. J. 804.

Non-taluqdari property-Inapplicability to.

The provision as to the conclusiveness contained in S. 10 of Act I of 1869 is confined to estates within the meaning of the Act; it does not apply to non-taluqdari property. The existence, however, of the pre-existing custom gives rise to a presumption (280-1). (Mr. Amer Ali.) MURYAZA HUSAIN KHAN D. MAHOMED YASIN ALL.

(1916) 43 I. A. 269 = 38 A. 552(566) = 14 A.L.J. 1083 = 20 M. L. T. 362-(1916) 2 M. W. N. 555= 4 L. W. 538-19 O. C. 290-18 Bom. L. R. 884= 25 C. L. J. 1=1 Pat. L. W. 122=21 C. W. N. 410= 36 I. C. 299 - 31 M. L. J. 804.

-Status assigned to person named in list-Fact basis of-List if conclusive evidence as to.

The provision in S. 10 of Act I of 1869 that " the Courts shall take judicial notice....such talukdars or grantees" within the meaning of the Act does not mean that the said lists shall be conclusive merely as to the fact that the persons interested therein are talugdars as defined in S. 2 of the Act. The provision of the section goes much further; it means that the Courts shall regard the insertion of the names in those lists " as conclusive evidence " of the fact on which is based the status assigned to the persons named in the different lists (280). (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN D. MAHOMED YASIN ALL.

(1916) 43 I. A. 269 = 38 A. 552 (566) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555=4 L. W. 538=19 O. C. 290= 18 Bom. L. R. 884=25 C. L. J. 1=1 Pat. L. W. 122= 21 C. W. N. 410=36 I. C. 299=31 M. L. J. 804.

S. 8-LISTS PREPARED UNDER-DEAD MAN'S NAME-ENTRY OF.

-Practice of.

It is a matter of familiar knowledge that entries of dead men's names in the lists prepared under the Oudh Estates Act of 1869 were not uncommon (209). (Sir Arthur Wilson.) THAKUR SHEO SINGH P. RANI RAGHUBANS KUNWAR. (1905) 32 I. A. 203 = 27 A. 634 (647) = 9 C. W. N. 1009 = 2 C. L J. 194 = 8 O. C. 317 =

8 Sar. 791=15 M. L. J. 352.

-Propriety and effect of.

Entries of the names of deceased persons in the lists mentioned in S. 8, do not appear to have been contemplated by the Oudh Estates Act I of 1869, but such entries have no doubt been made, and they are practically harmless if the names were already in former lists made under the orders in Council, or if the entries do not alter the previously acquir- in Lists 1 and 2 of the Oudh Estates Act of 1869 would be

OUDH ACTS-(Contd.)

Estates Act I of 1869--(Contd.)

SECTION 8-LISTS PREPARED UNDER-DEAD MAN'S NAME-ENTRY OF-(Contd.)

ed rights of any one. (Lord Lindley.) MUHAMMAD ABDUS SAMAD D. QURRAN HUSAIN.

(1903) 31 I. A. 30 (37) = 26 A. 119 (129)= 8 C. W. N. 201=6 Bom. L. R. 238=7 O. C. 254= 8 Sar. 593.

-At the time of the annexation of Oudh, an Oudh taluqa was found to be in the possession of Junder a firman of the deposed king, a summary settlement of the Government revenue of the taluqa was made with J on 22-1-1859, and a talundari sanad was granted to him on 17-10-1861. He died in 1865, but his name was nevertheless entered as talukdar in the Lists 1 and 2 mentioned in Act I of 1869.

Held that Act I of 1869 was applicable to the taloga in question, and J's name was rightly entered in the lists pre-

pared under the Act (275).

I had acquired, as declared by S. 3 of the Act, "a permanent, heritable, and transferable right" in his estate, and was unquestionably a taluqdar within the meaning of the Act. His death before the Act was passed into law makes no difference in his status or in his rights. The lists which the Chief Commissioner was directed to "cause to be prepared " were obviously in course of preparation long before the passing of the Act; the limit of six months was clearly meant as a limit for their completion, and not for their in tiation (276-7). (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN P. MAHOMED YASIN ALI. (1916) 43 I. A. 269=

38 A. 552 (560, 562)=14 A. L. J. 1083a 20 M. L. T. 362=(1916) 2 M. W. N. 555= 4 L. W. 538=19 O. C. 290=18 Bom. L. R. 884= 25 C. L. J. 1=1 Pat. L. W. 122=21 C. W. N. 410= 36 I. C. 299 = 31 M. L. J. 804.

S. 8-LIST I PREPARED UNDER.

-Person whose name not entered in-Taluqdar within meaning of S. 3 if a. See under this Act-S. 3-TALUK-DAR WITHIN MEANING OF. (1873) Sup. I. A. 233 (243).

S. 8-LISTS I AND II PREPARED UNDER.

Death before Act of sunud-holder whose name entered in-Taluqdar within meaning of-Act if a. See under this section. LISTS PREPARED UNDER-DEAD MAN'S NAME

(1916) 43 I. A. 269 (276-7)=38 A. 552 (560, 562)

-Estate entered in-Impartible or partible-Goors ment sunud-Estates created by, and made descendible to nearest male heir under rule of primogeniture.

A taluk called D was created by a sunud by the Governor-General after Lord Canning's proclamation, and it was stated that it was a condition of the grant that it should descend to the nearest male heir under the ruled primogeniture. The estate was entered in the Lists No. 1 and No. 2, established by S. 8 of Act I of 1869; and coo sequently, it descended according to the rules pointed out in S. 22 of that Act.

On the question whether, upon the construction of class 11 of S. 22 of Act I of 1869, the estate descended as all impartible estate, their Lordships were of opinion, looking to the provisions of Act I of 1869, List 2, S. 8 and S. 22 that it was the intention of the Legislature that the estate should descend as an impartible estate (175). (Sir Barnet Poscock.) DEWAN RAN BIJAI BAHADUR SINGH P. RAS (1890) 17 I. A. 173= JAGATPAL SINGH.

18 C. 111(114)=5 Sar. 590=B. & J. s No. 120

-Estate entered in-Property of talukdar not paren of-Succession to-Law applicable.

The personal or other property of an Oudh talakdar which is not properly parcel of his talukdari estate entere

Estates Act I of 1869-(Contd.)

SECTION 8—LISTS I AND II PREPARED UNDER— (Contd.)

descendible according to the ordinary law of succession (246). (Sir James W. Colvile.) MAHARAJAH PERTAB NARAIN SINGH v. MAHARANEE SUBHAO KOOER.

(1877) 4 I. A. 228 = 3 C. 626 (644) = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J.'s No. 46.

Hindu widow's name entered in -Estate acquired by.

See under the Act S. 3-HINDU WIDOW. ETC.

Talukdar whose name entered in-Will of, in 1800

-Revoration by Act of.

F, the talookdar of J, held a sanad for the estate of J. and his name was entered in List No. 2, prepared according to Act I of 1869. On the 6th of April, 1860, he made a statement in reply to inquiries by the Government under Circular Orders regarding the succession of talookdars. That document was held to be a will within the definition in S. 2 of Act I of 1869. The question was whether that will was revoked by the Act of 1869. Held that it was not (87). (Sir Richard Couch.) HAIDAR ALI 2: TASSADUK RASUL KHAN. (1890) 17 I. A. 82 = 18 C. 1 = 5 Sar. 529 = R. & J.'s No. 119.

### S. 8-LISTS I AND IV PREPARED UNDER.

-Estate entered in-Succession-Daughters-Exclusion by collaterals-Custom of-Proof of.

The question in the appeal related to the right to succession to a Taluka entered in Lists I and IV of the Lists in the Oudh Estates Act of 1869. The last talukdar died son-less, leaving a widow and two daughters. The question for decision was whether there was a custom in the family of the plaintiff (the surviving daughter of the last Talukdar) and the defendants "that a daughter is excluded by the collaterals of the deceased from inheritance."

Held, affirming the concurrent findings of the Courts below, that the custom set up had been duly proved. (Lord Collins.) PARBATI KUNWAR v. CHANDARPAL KUNWAR.

(1909) 36 I. A. 125 = 31 A. 457 (474, 476) = 10 C. L.J. 216 = 6 A. L. J. 767 = 13 C.W.N. 1073 = 11 Bom. L. R. 890 = 12 O. C. 304 = 4 I. C. 25 = 19 M. L. J. 605.

#### S. 8- LIST II PREPARED UNDER.

- Estate entered in-Succession to-Family custom of -Existence of -Inquiry into-Propriety.

The talukdar is entered in List 2 of the Oudh Estates Act, in respect of these very talukas, and it is declared by S. 8 of the Act that as to these very estates there is a family custom (not created by the Act but recited in the Act) by which these talukas descend to a single heir. As to these talukas the Act renders an enquiry as to the existence or otherwise of a family custom of descent idle. (Lord Phillimore.) DEPUTY COMMISSIONER OF BARA BANKRUPTCY OF THE ESTATE OF CHAUDHRI SHALIQ-UZ-ZAMAN. (1928) 3 Luck. 372=5 O. W. N. 565 = 32 C. W. N. 1120 = 48 C. L. J. 418 = A I. B. 1928 P. C. 202 = 56 M.L. J. 601.

- Estate entered in, after grantee's death-Succession to non-taluquari property acquired by taluquar-Primageniture-Custom of-Applicability-Presumption-Ss. 9 and 10 of Act-Effect.

On 22-1-1859 a summary settlement of the Government revenue of an Ouch taluqa was made with one J, a Mahomedan; on 17-10-1861 a taluqdari sanad was granted to him; and his name was entered as a taluqdar in the Lists 1 and 2 mentioned in Act I of 1869. The sanad declared that the succession was to be by primogeniture. J died in 1865 before the passing of Act I of 1869. It was contended

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

SECTION 8-LIST II PREPARED UNDER-(Contd.) that, although the name of J was included in List 2, the fact that the succession was declared in the sanad to go by primogeniture showed that the estate really came under List 3 and not under List 2, and that, consequently, no presumption as to a custom relating to the descent of the estate could arise. For this contention reliance was placed upon the Chief Commissioner's circular of January, 1860, and J's reply to it of February, 1860 (in which he stated his wish to be that the estate should continue in his family, generation after generation in its entirety, without partition, according to the custom of raj-gaddi, and that the younger brother should get maintenance from the gadhi-nishin) as showing that family custom or usage did not form the basis of the declaration as to the rule of descent by primogeniture, which did not come under List 2 but came only under

Held, affirming the Court below, that descent by primogeniture was not confined to cases coming under List 3; that the inclusion of finame in List 2 could only have been made by virtue of a pre-existing custom governing the devolution of the estate to a single heir and S. 10 made the entry of his name conclusive evidence of that fact, that though the provision as to conclusiveness contained in S. 10 did not apply to non-taluqdari property, the existence of the pre-existing custom gave rise to a presumption, and that the onus of establishing that the devolution of the non-taluqdari property was subject to a rule different from that governing the estate lay upon the party setting up such different rule (284). (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN 2. MAHOMED VASIN ALI. (1916) 43 I. A. 269 =

38 A. 552 (566 568, 570) = 14 A. L. J. 1083 =
20 M. L. T. 362 = (1916) 2 M. W. N. 555 =
4 L. W. 538 = 19 O. C. 290 = 18 Bom. L. R. 884 =
25 C. L. J. 1 = 1 Pat. L. W. 122 = 21 C. W. N. 410 =
36 I. C. 299 = 31 M. L. J. 804.

Estate catered in, and not in List 111-Single heir in case of Awertainment of Mote of.

In the case of a talook entered in List II, and not in List III of the Lists prepared under the Oodh Estates Act of 1869, the single heir is, in the absence of any family custom to the contrary, to be ascertained by the rules of the Hindu Common Law. (Lord Hobboute.) BALBHADDAR SINGH P. SHEO NARAIN SINGH.

(1899) 26 I. A. 194 (195-6) = 27 C. 344 (346-7) = 4 C. W. N. 203 = 7 Sar. 625.

Estate entered in. and not in List 111-Succession to-Primageniture lineal-Descent according to-Evidence of-Provisions of Act if displaced by.

In the case of an Oudh Estate in respect of which the talukdar's name was entered in List 2, and not in List 3, of the lists prepared under Act I of 1869, Quarre, whether evidence showing that the estate had descended according to the rules of lineal primogeniture could have got rid of the provisions of the Act under which it would not be so descendible (56). (Sir Barnes Peacerk.) ACHAL RAM v. UDAI PARTAB. (1883) 11 I. A. 51 = 10 C. 511 (518) = 4 Sar. 507 = R. & J.'s No. 47 (Oudh).

Estate entered in, and not in List 111-Succession to-Primageniture lineal-Rule of-Applicability.

P's name was not entered in List 3 of the Lists prepared under S. 8 of Act I of 1869, and it is contended that because he was in the list of estates which ordinarily devolved upon a single heir, it is to be presumed that the heir was to be ascertained according to the rules of linea primogeniture. Their Lordships cannot concur in that con tention. They are of opinion that when a taluqdar's nam was entered in the second list and not in the third, the

Estates Act I of 1869-(Contd.)

SECTION 8-LIST II PREPARED UNDER-(Contd.)

estate, although it is to descend to a single heir, is not to be considered as an estate passing according to the rules of lineal primog:niture (56). (Sir Barnes Peaceck) ACHAL RAM v. UDAI PARTAB. (1883) 11 L A. 51= 10 C. 511 (518) - 4 Sar. 507 = R. & J.'s No. 47 (Oudh.).

S. 8-LIST III PREPARED UNDER.

-Estate entered in-Sanad being a primageniture sanad-Entry if con Insite as to-No evidence to show that entry was wrongly made in List 3 instead of in List 4.

In the absence of any evidence to show that a person's name was wrongly inserted in List 3, instead of in List 4, of the lists under S. 8 of the Act, his inclusion in that list is conclusive that the sanad he obtained was a primogeniture sanad, in other words, that he was a talukdar taking an estate under a primogeniture sanad under the provisions of the Act (20). (Mr. Ameer Ali.) NAND RANI KUNWAR r, INDAR KUNWAR. (1926) 54 I. A. 5=

1 Luck. 583 = (1927) M. W. N. 21 = 4 O.W.N. 80 = 31 C. W. N. 485 = 45 C. L. J. 282 = 100 I. C. 485 = 25 L. W. 751 = A. I. R. 1927 P. C. 8 =

52 M. L. J. 497.

-Estate entered in-Succession to-Primogeniture-Custom of.

The estate is one of those which were entered in List III of Act I of 1869; which means that, not being one in which the custom of primogeniture had previously prevailed, the talookdar elected that it should so descend in future (80). (Lord Hobhouse.) FAIZ MUHAMMAD KHAN D. MUHAM-MAD SAEED KHAN. (1898) 25 I. A. 77=

25 C. 816 (820) = 2 C. W. N. 385 = 7 Sar. 320. Ss. 8 AND 10.

Person dying before Act-Successors of estates of-Rights of-Effect of sections on.

The Court cannot construe Ss. 8 and 10 of the Oudh Estates Act of 1869 so as to deprive the successors of the estates of a person who had died before those sections came into operation of rights which they acquired on his death. The contention that the entry of the name of a person who died before the Act came into force can divest rights previously acquired on his death cannot be supported.

In this case the death occurred in 1865, and the successors then acquired their rights under the ordinary Muhammadan law by which the deceased was governed. The Oudh Estates Act did not come into operation until 1869; and to construe its provisions as altering the succession would be not only unjust but plainly contrary to well-settled legal principles. (Lord Lindley.) MUHAMMAD ABDUS-SAMAD v. QURRAN HUSAIN. (1903) 31 L.A. 30 =

26 A. 119 (129-30) = 8 C. W. N. 201 = 6 Bom. L. R. 238=7 O. C. 254=8 Sar. 593. S. 10.

-Adoptive father-Entry of name of, on talukdar's list-Effect-Adopted son's right under Mitakshara law in property on foot of its being ancestral immoveable property-Assertion of-Entry not a bar to.

In a case in which it was found, that property given to an adoptive father under a family arrangement was given to him for such interest and with such right of succession to his adopted son as by virtue of the law of the Mitakshara attached to ancestral immoveable property as between father and son, held that the entry of the adoptive father's name on the talookdar's list was, under S. 10 of Act I of 1869, no bar to the assertion by the adopted son of the interest vested in him in such property (228). (Sir Arthur Hobhouse). SETH JAIDIAL v. SETH SITA RAM.

(1881) 8 I. A. 215=4 Sar. 297=Bald. 400=

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

SECTION 10-(Contd.)

-Lists prepared under S. 8-Conclusive nature of. See under S. 8 of this Act-LISTS PREPARED UNDER-CONCLUSIVE NATURE OF.

Ss. 10 AND 11.

-Trusts or beneficial interests to which estate subject in hands of sanad holder-Recognition of-Sections not a bar to. See ALL CASES COLLECTED UNDER OUDH-OUDH ESTATE-SANAD HOLDER-TRUSTEE FOR BENE-FICIAL, ETC.

S. 11.

-Daughter of lady with whom settlement was made and to whom sanad granted-Alienation of-Power of. absolute or limited.

The summary settlement of a zemindary which, at the time of the annexation of Oudh, was in the possession of a Hinds lady, was made with her, a sanad was granted to her and she was entered in Lists 1 and 2 under S. 8 of the Outh Estates Act. She had a permanent beritable and transferable right in the zemindary, and on her death it passed to her daughter.

Held, that the daughter had no absolute power of mortgaging the zemindary, and that her power to do so was

limited to her own lifetime (217).

The power conferred upon an heir by S. 11 of the Outh Estates Act to alienate " his estate or his right and interest therein " certainly means his estate, if he owns the estate. or his right and interest therein if he owns less than the estate. The words "otherwise than as a Hindu widow" is S. 2 were relied upon as indicative of an intention to give to all heirs other than widows some power which widows do not possess. Much clearer language would have to be shown to justify their Lordships in saying that the Legislature has departed so far from the ordinary principles of law as to enpower people to alienate what may not belong to them. (216-7). (Sir Arthur Wilson.) LAL SHEO PERTAB BAHADUR SINGH P. ALLAHABAD BANK, LTD.

(1903) 30 I. A. 209 = 25 A. 476 (4901) 7 C. W. N. 840 = 5 Bom. L. R. 883 = 8 Sar. 535= 13 M. L. J. 336.

-Will by succeeding talukdar altering character and incidents of estate fixed by predecessor-Validity.

S. 11 of Act I of 1869 gives not only to the original talukdar, but to every heir and legatee of a talukdar, post to transfer or to bequeath the estate which is granted to him

The will of a succeeding talukdar cannot be held to be ultra vires on the ground that it has purported to after the character and incidents of the estate which had been fire by a predecessor of his (143). (Sir Arthur Holdense) THAKUR ISHRI SINGH P. BALDEO SINGH.

(1884) 11 I. A. 135=10 C. 792 (802)=13 C. L. B. 418 4 Sar. 528 = R. & J.'s No. 79 (00dk)

Ss. 11, 14 AND 15.

Talookdar-Alienation inter vivos by transferrial property to joint family to be held as joint family property -Evidence of.

G. S., with whom summary settlements were made by Government between the dates specified in S. 3 of Act 10 1869, and to whom a talookdari sannad was granted before the passing of the Act and subsequently to the 1st of April 1858, both in respect of properties which had previous) belonged to the joint family of which he was a member and in respect of properties which did not so belong, executed several documents, one of which, called his will and dated B. & J.'s No. 65. | 14-2-1860 ran as follows :-

Estates Act I of 1869-(Contd.)

SECTIONS 11, 14 AND 15-(Contd.)

I, Rajah G. S., Talookdar of Jubroulee, etc., do hereby declare that the British Government has conferred on me, in perpetuity, the proprietary right in the estate of Jubusulee, etc., and has asked me for a statement regarding the custosn of primogeniture, with a view that the estate may not be divided. In my family the custom for generations past has been that the eldest member of the family has been considered by all the sharers as the head, to whom the other sharers in the family have been subject, but at the same time have possessed their right to share in the estate. Any sharer wishing to have his share separated on any account can do so under the custom of the family. The eldest member of the family, who is regarded as the chief, cannot, according to the custom of the family, transfer the estate to another. without consulting all the sharers in the family. I therefore wish that the custom which has hitherto prevailed in my family may be adhered to, and not that of a single member succeeding to the whole estate."

Other documents applicable to property in other districts were similar in effect, though not in the identical terms.

Held that, even if some part of the property was selfacquired by G. S., the declaration in those documents of the wish of G. S. acted upon as it was by him and by the other members of the family in his lifetime, and coupled with the tabular statement (set out on p. 274 of the report), was evidence sufficient to prove an alienation intervitor, which in the lifetime of G. S. transferred the property to the family, to be held by them as joint family property (277). (Sir Barnes Poscock.) HURPURSHAD v. SHEO DYAL.

(1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).

S. 13.

-Registration of will in accordance with-Depositing of it under Part IX of Act VIII of 1871 if amount, to.

The question was whether the will of a Mahomedan lady and an Oudh talukdar, whose name had been entered as such, in Lists 1 and 3 of the lists prepared under the Oudh Estates Act of 1869, had been registered in accordance with S. 13 of the said Act. It appeared that the will was simply deposited under the provisions of Part IX of Act VIII of 1871.

Held that the will was not registered in accordance with the provisions of the said section (124-5). (Sir Robert P. Collier.) HAJI ABDUL RAZZAK D. MUNSHI AMIR HAIDAR. (1884) 11 I. A. 121 = 10 C. 976 (983-4)= 4 Sar. 555 = R. & J.'s No. 81 (Oudh).

Will bequeathing estate included in List 4 executed less than 3 months before talugdar's death-Validity.

In this case it was admitted that a will by an Ouslh talogdar bequeathing the taluq which was included in List 4 was inoperative (under S. 13 of Act I of 1869) to pass the estate, because it had been executed less than 3 months before the death of the taluquar. (Viscount Cave.) BADRI NARAIN SINGH P. HARNAM KUAR. (1922) 49 I. A. 276 (282)=

44 A. 449 (454)=31 M. L. T. 195 (P. C.)= 9 O.L.J. 428 = A.I.B. 1922 P.C. 289 = 27 C.W.N. 129 = 25 O. C. 313 = 68 I. C. 1000 = 21 A. L. J. 13 = 37 C. L. J. 305 - 9 O. & A. L. B. 49 - 44 M. L. J. 337.

Will bequeathing maintenance to junior widow Registration-Necessity-Sub-Sec. (1) of S. 13-Interest in estate-Meaning of.

The right of the junior widow of an Oudh talakdar, who has died intestate, to a life-estate in the talukdari property expectant on the determination of the life estate of the first married widow but subject to be defeated by an adoption made by her, with the consent in writing of her husband, is an interest in the estate within the meaning of S, 13, sub-s. OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 13-(Contd.)

(1) of Act I of 1869. Held therefore that maintenance bequeathed to her by the will of the talukdar was payable, notwithstanding its not being registered, as well out of the talukdari as out of the non-talukdari estate of the testator (148). (Lord Macnaghten.) MAHARANI INDAK KUNWAR MAHARANI JAIPAL KUNWER. (1888) 15 I. A. 127 = 15 C. 725 (750) = 5 Sar. 150 = R. & J.'s No. 102.

Well bequeathing talug in favour of sister's son of

talukdar-Registration-Necessity.

The appellant set up a will executed by Mussumat K, the talukdar of an Oudh estate under a sunnud granted to her by the Government of India, and claimed to be entitled under the said will to the taluka and the greater part of the

property of A'.

The appellant was a sister's son of K. He was not a minor at the time of the death of K, or at the execution of the will. He was not therefore a "nephew of the deceased, being a fatherless minor," upon whom a right to mainte-nance was conferred by S. 26, taken in conjunction with S. 24 of the Oudh Estates Act of 1869. He had no right of succession under S. 22 of the Act. He was not an adopted son within the meaning of cl. 5 of the section, and the other clauses thereof were admittedly inapplicable to

Held that the will set up by the appellant was one which, in order to be valid so far as to pass the taluka, required registration (123-4). (Sir Robert P. Collier.) HAJI ABDUL RAZZAK P. AMIR HAIDAR. (1884) 11 I. A. 121-

10 C. 976 (982-3) = 4 Sar. 555 = R. & J.'s No. 81 (Oudh). -Will by talugdar executed in 1869 in favour of younger son-Validity of-Non-registration-Effect-Estate not entered in List 3 or 5.

S. 13 of the Oudh Estates Act I of 1869 requires a will in favour of a younger son of the talookdar whose name does not appear in the third or fifth of the lists mentioned in S. 8 of the Act to be registered within a certain specified time. Consequently a bequest to a younger son made by a will executed in 1869 but never registered under the provisions o that section is invalid and inoperative. (Mr. Ameer Ali.) I. UAR MATA PRASAD D. KUAR NAGESHAR (1925) 52 I.A. 398 (414-6)=47 A. 883= SAHAI.

6 L. R. P. C. 195 = 3 O. W. N. 1 = 28 O. C. 352 = 24 A. L. J. 1 = (1926) M. W. N. 83 = 43 C. L. J. 51 = 13 O. L. J. 19 - A. I. R. 1925 P. C. 272 -91 I. C. 370 = 50 M. L. J. 18.

-Will in favour of other than next heir-Validity-Formalities necessary-Taluqdari and non-taluqdari property- Distinction.

The Taluqdars of Oudh and their estates are the subject of special legislation mentioned in the Oudh Estates Acts. In terms of these Acts, a will to affect Taluqdari property must be executed in a certain manner. If a bequest is made to any one other than the heir entitled to succeed to the Taluqdari property ab intestato, it must, to be good, be made by a will or codicil executed at least three months before death. Quantal non-Taluqdari property, however, the Taluqdar is under the ordinary Hindu law, which in Oudh is unaffected by statute and by that law no formalities for the execution of a will are required (987-8). (Lord Dunedin.) DEPUTY COMMISSIONER OF KHERI P. RANI BIJAI (1917) 43 L C. 987=8 L. W. 1= (1918) M.W.N. 324 - 22 C. W. N. 305 = 20 O. C. 260 =:

-Will not duly registered under-Personal property bequeathed if passes under.

A Mahomedan lady and an Oudh talukdar, whose name had been entered, as such, in Lists 1 and 3 of the lists pre-

Estates Act I of 1869-(Centd.)

S. 13-(Contd.)

pared under the Outh Estates Act, executed a will in favour of her nephew bequeathing the taluka and her personal property. The will was found not to have been registered in accordance with the provisions of S. 13 of the said Act, and, therefore, to have no operation as far as the taluk was concerned.

Held, that the will was operative to pass her personal property, because so much of it did not require to be registered (125). (Sir Robert P. Collier.) HAJI ABDUL RAZZAK v. MUNSHI AMIR HAIDAR. (1884) 11 I.A. 121-10 C. 976 (984) = 4 Sar. 555 = R. & J.'s No. 81 (Oudh). -Will not duly registered but will or codicil subsequent incorporating it duly registered-Effect-Succession Act, S. 51.

A will executed by an Oudh talukdar in April, 1881, was not registered within a month of its execution as required by S. 13 of Act I of 1869. In April, 1883, the talukdar made what was called an addendum to that will. The addendum purported to be a will and in terms declared that all the provisions entered in the former will would take effect after the testator's death, and it was duly executed and registered on the date of its execution.

Held that, whether the addendum was regarded as a will or as a codicil, it was perfectly good as a testamentary instrument, that, inasmuch as it had been duly registered as required by S. 13 of Act I of 1869, it was a valid testamentary instrument, and that the will of 1881 was, by virtue of S. 51 of the Succession Act, incorporated and formed part of the addendum, and was legally enforceable. (Lord Macnaghten.) SATRUPA KUNWAR v. HULAL KUNWAR.

(1902) 25 A. 121.

## S. 13 (1)-INTEREST IN THE ESTATE WITHIN MEANING

-Junior widow-Right to life estate of, expectant on death of senior widow but liable to be defeated by adoption by latter pursuant to husband's written consent-If such an interest. See under S. 13, WILL BEQUEATHING MAIN-TENANCE TO JUNIOR WIDOW.

(1888) 15 I. A. 127 (148) = 15 C. 725 (750).

-Maintenance-Mere title to-If such an interest. Their Lordships are far from affirming that a mere title to maintenance would be such an "interest therein," as would come within Sub-S. (1) of S. 13 of Act I of 1869. (Sir Robert P. Collier.) HAJI ABDUL RAZZAK D. AMIR (1884) 11 I. A. 121=10 C. 976 (982 3)= HAIDAR. 4 Sar. 555 = R. & J.'s No. 81 (Oudh).

-Widow getting maintenance from taluka if has an. An Oudh talookdar, whose name was entered in List 3 prepared under Act I of 1869, made a will bequeathing the talooka to his widow for life, and, upon the termination of her life estate, to his son by her. The will being unregistered, the question arose whether, with reference to clause 1, S 13 of Act I of 1869, the will in favour of the widow was invalid. The Courts below held that a widow who got maintenance from a taluka must be considered to have succeeded to an interest in it under cl. 1, S. 13 of Act I of 1869, and that consequently registration was not necessary to validate a will in her favour.

Their Lordships did not express any dissent from the opinion expressed by the Court below. (Sir Barnes Peacock.) AJUDHIA BUKSH v. MUSSUMAT RUKMAN KUAR.

(1883) 11 I. A. 1=10 C 482=4 Sar. 497= R. & J.'s No. 75 (Oudh).

S. 13 (1)—INTESTATE.

-Meaning of-Person toho would have succeeded to an intestate-Adopted son adopted under authority conferred by will of intestate if a.

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 13 (1) INTESTATE-(Contd.)

The word "intestate" in Sub-S. (1) of S. 13 of Act I of 1869 evidently means intestate as to the talukdar's estate, that is, his estate as that expression is defined by the Act, the taluk or immoveable property to which alone the Act is declared to extend. This is plain on consideration of S. 13 taken by itself, but it is made still plainer, if possible, by reference to S. 22, which is closely connected with S.13, and which expresses what otherwise would necessarily be implied, and qualifies the word "intestate" by the addition of the words " as to his estate" (58).

Held, that an adopted son was a person who would have succeeded to an intestate within the meaning of S. 13 of the Act, although the authority to adopt him was conferred by the will of such intestate (57-8). (Lord Macnaghten.) BHAIYA RABIDAT SINGH v. MAHARANI INDAR KUN-(1888) 16 I. A. 53=16 C. 556 (5623)= 5 Sar. 505

S. 13 (2).

-Disregarding altogether of-Permissibility.

Cl. (2) of S. 13 of the Oudh Estates Act of 1869 was not introduced by mistake and cannot be disregarded altogether. On the contrary that clause throws a good deal of light on the words "would have succeeded" in Ss. 13 and 14 of the Act. (Lord Macnaghten.) THAKURAIN BALRAJ KUNWAR (1904) 31 I.A. 132= F. RAE JAGATPAL SINGH. 26 A. 393 (405) = 8 C. W. N. 699 = 11 Bom. L.B. 516= 1 A. L. J. 384 = 3 I.C. 359 = 7 O. C. 248 = 8 Sar. 639.

SS. 13 AND 14.

-Not retrospective.

Ss. 13 and 14 of Act I of 1869 provide for certain formalities as regards gifts or transfers to be made by talookdars of estates acquired or held in the manner mentioned by \$.3 of the Act; but it has been held that the formalities thereby required are not requisite to give validity to gifts or transfer executed by a talookdar before the passing of the Act (166). (Sir Barnes Peacock.) THAKOOR HURDEO BUX P. THA-(1879) 6 I. A. 161= KOOR JOWAHIR SINGH. 4 Sar. 10 = Bald. 218 = 3 Suth. 608 =

R. & J.'s No. 57.

SS. 13, 16 AND 17.

-Gift of immoveable property in Oudh by talubdaria favour of adopted son-Registered deed-Necessity-Vet hal gift-Validity.

Under Ss. 16 and 17 of the Oudh Estates Act a transfer (which is defined in the Act as " an alienation inter tint" by a talukdar of immoveable property in Oudh can be valid made only by an instrument in writing and attested by or more witnesses and registered within one month from the date of the execution of the instrument. This provise applies to a gift to a person in the position of an adopted son.

It is difficult to discover any contradiction in these se tions (16, 17 and 13) or to understand how it can be upper that a gift in contravention of S. 16 may be valid in case the object of the gift is exempt from the operation of S. I. and the gift therefore is not subject to the additional feter imposed by that section. (Lord Macnaghten.) Upal Ral SINGH D. BHAGWAN BAKHSH SINGH.

(1909) 37 I. A. 46 (57-8)=32 A. 227 (238-9)= 7 M. L. T. 410=11 C. L. J. 387=(1910) M. W.N. 110= 7 A. L. J. 274=14 C.W.N. 641=6 I.C. 279 12 Bom. L. R. 409=13 O. C. 172=20 M. L. J. 458

Ss. 14 AND 15.

Ss. 14 and 15 of Act I of 1869 speak of transfers "bereto fore made," and it never could have been the intention of

Estates Act I of 1869-(Contd.)

Ss. 14 AND 15-(Contd.)

the Legislature to render void sales or transfers made before the passing of the Act by one talookdar to another talookdar under S. 14, or by a talookdar to any other person under S. 15, if not made by a writing signed by the transferor in the presence of two or more witnesses (278). (Sir Barnes Peacock.) HURPURSHAD v. SHEO DYAL.

(1876) 3 I.A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).

SS. 14, 15 AND 22.

-Person who would have succeeded according to the provisions of the Act-Meaning of-Younger son of talukdar mentioned in List 3 or 5 acquiring taluk by transfer from predecessor-Death of, without issue but leaving widow-Succession on.

It is not correct to hold that any person mentioned in S. 22 of the Oudh Estates Act, 1869, as a possible heir may be said to be " a person who would have succeeded according to the provisions of the Act to the estate if the testator had died intestate " within the meaning of S. 14 of the Act. The expression " would have succeeded " must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the transfer, or, in the case of a gift by will, at the time when the succession opened. In short, the expression " a person who would have succeeded according to the provisions of the Act " is equivalent to " the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of S. 22 applicable to the particular case."

A younger son of a talugdar named in List 3 or List 5 is no doubt among the possible heirs of his father, but he is not within the prescribed line of succession if the father leaves an eldest son or a male lineal descendant of an eldest son.

Where a deceased talukdar, younger son of his predecessor, had acquired the taluk by transfer from his predecessor, and died intestate, held, that his widows were his next heirs and not the son of his elder brother, as being the eldest male lineal descendant of his father.

The transferee not being within the prescribed line of succession, his estate devolved at his death, under S. 15, as it would have done if he had purchased from a stranger; in other words, the fetter of the statutory order of succession no longer applied, (Lord Macnaghten.) THAKURAIN BAL-RAJ KUNWAR D. RAE JAGATPAL SINGH.

(1904) 31 I.A. 132 (141 2)=26 A. 393 (405-6)= 8 C. W. N. 699 = 11 Bom. L. R. 516 = 1 A. L. J. 384 = 8 Sar. 639 = 7 O.C. 248 = 3 I.C. 369

SS. 14, 15 AND 22 (11).

List 3-Estate entered in-Succession to-Breaking line of-What amounts to-Bequest to mother-Effect.

S was the holder of a taluque entered in the 1st and 3rd lists enumerated in S. 8 of the Oudh Estates Act (I of 1869), the taluqu having been granted to his grandfather under a primogeniture sanad. S died in 1899, having by his will bequeathed the taluqua to his mother. Had the taluqdar died intestate the taluna would have descended under S. 22, cl. 11, of the Act to" such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe" of the talegdar were subject. Upon the death of the mother in 1906 a dispute arose as to the rule of succession applicable. If the succession was governed by primogeniture, the appellant (plaintiff) was admittedly entitled to succeed; while if the succession was governed by the ordinary Hindu Law unOUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

Ss. 14, 15 AND 22 (11)-(Contd.)

equal shares upon the appellant as to one half and upon the respondents as to the other half. Held, that, treating cl, 11 as regulating the succession, the mother of the taluqdar (S) was not the proper successor according to the Act; and that the will bequeathing the property to her, took the property out of the limitations of the Act, and rendered it under S. 15 subject to the ordinary Hindu Law, according to which the appellant and respondents as representing two lines of egnates would divide the property.

Quere whether as the mother, if she succeeded by inheritance, would only have succeeded to a Hindu woman's estate, which is a limited one without power of bequest, and with only certain powers of transfer inter tites, while the effect of the will had been to give her an absolute estate, the will would have broken the line even if she had been the next heir (241). (Lord Phillimore.) SITLA BAKSH SINGH P. SITAL SINGH. (1921) 48 I. A. 228= 43 A. 245 (256-7) = 33 C. L. J. 520 = 25 C. W. N. 721 =

19 A. L.J. 337 = 24 O. C. 107 = 29 M. L. T. 390 = 60 I. C. 548 = 40 M. L. J. 449.

Applicability to case falling within S. 14.

S. 15 of the Outh Estates Act of 1869 has no application to a case falling within S. 14 of the Act. (Lord Macnaghten.) THAKURAIN BALRAJ KUNWAR P. RAE JAGATPAL (1904) 31 I.A. 132 = 26 A. 393 (405) = SINGH.

8 C.W.N. 699 = 11 Bom. L.R. 516=1 A. L. J. 384= 3 I. C. 359=7 O.C. 248=8 Sar. 639.

-List 2-Estate entered in-Transfer of, to person in line of succession but not immediate successor-Devolution of-Rules applicable to.

In a case in which the holder of an Oudh taluqa in List 2 under Act I of 1869 executed in 1871 a deed of settlement, their Lordships observed : This transaction took place before the amending Act of 1910; so that a transfer to a person who is not the immediate successor, even though that person be in the line of succession, operates to take the estate out of the special limitations of descent. The principle has been finally established by the case of L. R. 48 I. A. 135. (Lord Phillimore.) Lal Ram Singh v. Dy Commissioner OF Partabgarh. (1923) 50 I. A. 265 (270) =

45 A. 596 (600-1) = 21 A. L. J. 777= (1923) M. W. N. 591 = 33 M. L. T 355 = 26 O. C. 257 = 9 O. & A. L. R. 746 = A. I. R. 1923 P. C. 160 = 10 O. L. J. 513 = 29 C. W. N. 86 = 76 I. C. 922.

-Not retrospective. See under this Act SS. 14, 15-NOT RETROSPECTIVE. (1876) 3 I. A. 259 (278).

Transfer within meaning of - Award settling succession dispute and granting portion of estate to person not entitled under Act if a-Effect of, on custom of succession mentioned in Act.

An Oudh talukdar possessed of talukas entered in Lists 2 and 5 of the Lists of the Oudh Estates Act, 1869, died leaving a will by which he bequeathed the said talukas in the manner stated therein to his brother, widow, and daughter and her male issue. After his death disputes arose between his widow and his brother, and they referred their disputes with reference to the properties dealt with by the will and with reference to other properties of the deceased to the arbi tration of certain persons, authorising them to settle the disputes after perusing the clauses given in the will and considering other matters. The arbitrators made an award which awarded some of the talukas to the widow, and divided the other properties of the deceased in a certain way.

Held that, with regard to the succession of the widow, qualified by any family custom, the estate would devolve in the effect of the will and of the award was to bring into

Estates Act I of 1869-(Contd.)

S. 15-( outd.)

operation S. 15 of the Oudh Estates Act, and to take the property out of the limitations or entail prescribed by that Act, because the brother and not the widow was the person who would have conformed to S. 1 of Sub-S. (13) as the only qualified legatee, and a daughter was no beir at all under the Act.

The taking of an estate out of the statutory entail does not for so render inoperative a statement made in the Act that the particular estate descended by custom in a particular manner, (Lord Phillimore.) DEPUTY COMMISSIONER OF BARA BANKI v. RECEIVER IN BANKRUPTCY OF THE ESTATE OF CHAUDHRI SHALIQ-UZ-ZAMAN.

(1928) 3 Luck. 372 = 5 O. W. N. 565 = 32 C. W. N. 1120 = 48 C. L. J. 418 = A. I. R. 1928 P. C. 202 = 56 M. L. J. 601.

S. 16

-Not retrospective.

S. 16 of Act I of 1869 was not intended to be retrospective or to affect transfers made previously to the passing of the Act. It cannot be held to apply to a transfer made by deed, will, or otherwise nine years befor the Act was passed (278). (Sir Barnes Peacock.) HURPURSHAD v. SHEO DVAL. (1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (Oudh).

-Transfer of part of taluga-Registered instrument
-Necessity-Will of deceased talugdar registered under
S. 13-Transfer pursuant to.

An Oudh taluk/lar whose name was entered in List No. 4 prepared under S. 8 of the Oudh Estates Act of 1869, died leaving a will duly registered under S. 13 of the Act, by which will he devised the taluk to the appellant (his great-grandson). The will also provided that in the event of the respondents (the grandsons of the deceased) separating themselves from the appellant, they should receive from him maintenance allowance to be allowed in the form of the grant of the entire village, or a portion thereof; that the land or the entire village given to the respondents (the guara-holders) should not be interfered with by the proprietor of the estate except that he should receive the Government revenue and 10 per cent. (his own does).

It was subsequently arranged between the appellant and the respondents that the latter should live separately from the appellant and should receive maintenance in the form of villages to be appropriated for that purpose under the will. The appellant, to whom the will gave the power and duty of selecting villages for that purpose, allotted certain specified villages to the respondents. Possession of the villages so allotted was given to, and accepted by the respondents, who subsequently paid rent to the appellant for the allotted villages. Shortly afterwards, the respondents applied for mutation of names, the appellant petitioned that the mutation should be allowed "by virtue of the deed of will" of the deceased talukdar, and mutation was effected as prayed for.

In a suit subsequently brought by the appellant claiming possession of the villages allotted to the respondents on the ground that the transfer of the villages was void, as not having been made by registered deed as required by S. 16 of the Oudh Estates Act, held that S. 16 had no application to the case.

The respondents' right to maintenance out of the estate was conferred by the will, which imposed on the talukdar the duty of selecting the particular villages out of which the maintenance should be received. In making this selection the talukdar imposed no additional burden on the estate, but limited and defined in accordance with the will the Lurden imposed by that instrument. The selection, once

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 16-(Contd.)

made and accepted, could not be disturbed either by the talukdar or by the guzara-holders; and if it had been necessary to confirm it by a registered and attested instrument, it would have been the duty of the talukdar to furnish such confirmation. But no such instrument was required, and the provisions of the will followed by the appropriation of villages and delivery of possession vested in the guzara-holders a good and sufficient title (123). (Viscoust Care.)

LAI. JAGADISH BAHADUR SINGH v. MAHABIR PRA-SAD SINGH. (1920) 47 I. A. 116 = 42 A. 422 (428-30) = 13 L.W. 19 = 24 C.W.N. 529 = 23 O. C. 54 = 58 L.O. 845.

SS. 17 AND 18.

—Net retrespective.

Ss. 17 and 18 of Act I of 1869 are clearly not retrospective (278). (Sir Barnes Peacock.) HURPURSHAD v. SHEO DYAL. (1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (0udh).

S. 18.

Not retrospective. See under this Act SS. 17 AND 18-NOT RETROSPECTIVE. (1876) 3 I.A. 259 (278).

S. 19.

Not retrospective.

S. 19 of Act I of 1869 applies only to future cases, and it provides expressly that nothing shall affect wills executed before the passing of the Act. It cannot be held to apply to a transfer made by deed, will, or otherwise nine years before the Act was passed (278). (Sir Barnet Peacock.)

HURPURSHAD v. SHEO DYAL. (1876) 3 I. A. 259 = 26 W. R. 55 = 3 Sar. 611 = 3 Suth. 304 = Bald. 25 = R. & J.'s No. 41 (0udh).

S. 19, PROVISO.

-Object and purpose of.

S. 19 of Act I of 1869 is for the purpose of applying to wills made under Act I of 1869 a number of sections contained in the Indian Succession Act; and the provise to it only applies to the sections or provisions contained in S. 19, and not to those contained in the whole of Act I of 1869 (143). (Sir Arthur Hobbouse.) THAKUR ISHRI SINGH W. BALDEO SINGH. (1884) 11 I.A. 135 = 10 C. 792 (802) = 13 C.L.R. 418 = 4 Sar. 528 = B. & J.'s No. 79 (Onda).

S. 20

Will not registered in accordance with-Validity

of, as regards talugdari estate.

F, the talookdar of J, held a sanad for the estate of J, and his name was entered in List No. 2, prepared according to Act I of 1869. On 19—8—1878 he executed a will which, however, was not registered in accordance with S. 20 of Act I of 1869.

Held that the will was therefore invalid as regards the talookdari estate (87). (Sir Richard Couch.) HAIDAR ALI v. TASSADUK RASUL KHAN. (1890) 17 I.A. 82= 18 C. 1 (7)=5 Sar. 529= B. & J.'s No. 119.

S. 22.

-Construction of.

S. 22 must be read, so far as its language permits, so as to be rational and orderly, not so as to be arbitrary and capricous. (Viscount Summer.) TEWARI RAGHURAJ CHANDRA C. RANI SUBHADRA KUNWAR. (1928) 55 I. A. 139

3 Luck. 76 = 5 O. W. N. 443 = 26 A. L. J. 609 = 108 I. C. 673 = 30 Bom. L. B. 829 = 32 C.W.N. 1009 = A.I.B. 1928 P. C. 87 = 55 M.L.J. 778

Estate dealt with by Impartible estate-Succession

Estates Act I of 1869-(Contd.) S. 22-(Contd.)

The estate the succession to which was dealt with by S. 22 of the Oudh Estates Act was from beginning to end of those sections dealt with as an impartible estate; and the preservation of the estate as impartible appears to be in entire accord with the language and policy of the legislation. Giving full effect to Act I of 1869, the succession to a taluq must be to an impartible estate, whether the estate " ordinarily devolved upon a single heir," to quote the language of List 2 of S, 8, or whether the succession was to be regulated by the rule of primogeniture, to quote Lists 3 and 5 of S. 8. (Lord Share.) DEBI BAKHSH SINGH T. CHANDRABHAN SINGH. (1910) 37 I. A. 168 (178. 180) = 32 A. 599 (608-9) = 12 C. L. J. 303 = 14 C. W. N. 1010 = 8 M. L. T. 273 = 7 A. L. J. 1122 = 12 Bom. L R. 1015 = 13 O. C. 316=7 I. C. 734=20 M. L. J. 917

Government sanad after Lerd Canning's proclama-tion-Estate created by, and entered in Lists 1 and 2-Succession to.

The appeals relate principally to a talook called D, which was created by a sunnul by the Governor-General after Lord Canning's proclamation, and as to which it was stated that it was a condition of the grant that it should descend to the nearest male heir under the rule of primogeniture, The estate was entered in the Lists No. 1 and No. 2, established by S. 8 of Act I of 1869; and consequently, according to a former decision of this Board, it descended according to the rules pointed out in S. 22 of that Act (174). (Sir Barnes Peacock.) DEWAN RAN PIJAI BAHADUR P. RAE JAGATPAL SINGH. (1890) 17 L.A. 173 -

18 C. 111 (114) = 5 Sar. 590 = R. & J.'s No. 120. Legatee within meaning of-Legatee succeeding as such before Act not a.

A legatee who succeeded as such before the passing of the Oudh Estates Act is not a legatee within its meaning. (Sir Arthur Wilton.) THAKUR SHEO SINGH P. RANI (1905) 32 I. A. 203 (211) = RAGHUBANS KUNWAR. 27 A. 634 (648-9)=9 C. W. N. 1009=2 C. L. J.194=

8 O. O. 317 = 8 Sar. 791 = 15 M. L. J. 352. -limitations in-Control of, by S. 3-S. 3 (4)-

Conditions referred to in.

The positive limitations in S. 22 of the Oudh Estates Act, 1869, are in no way controlled by the provision in S. 3 of the Act, to the effect that the right acquired by virtue of the talukdari sunnud should be subject to all the conditions affecting the talukdar contained in the sunnud under which the estate is held. The conditions referred to in clause 4 of that section are the conditions of loyalty and good service mentioned in the letter of the 19th of October, 1859, republished in the first Schedule of the Act, and the other conditions of a similar nature, such as those of surrendering arms, destroying forts, etc., contained in the sunnud (13). (Sir Barnes Peacock.) BRIJ INDAR BAHADUR SINGH P. RANKE JANKI KOER. (1877) 5 I. A. 1= 1 C. L. B. 318-3 Sar. 763-Bald. 148-3 Suth. 474-R. & J.'s No. 48.

-List 2-Tolugdar whose name entered in-Death intestate of-Succession to-Rule applicable to-Rule in S. 22-Limitation in sanad-Effect of Act upon.

A summary settlement of an Oudh Estate was made with a Hindu widow, and a sunnud granted to her prior to the passing of the Oudh Estates Act, 1869, conferring a full proprietary and transferable right in the estate upon her and her male heirs according to the law of primogeniture. After the passing of the Act, her name was entered in Lists I and II of the lists mentioned in S. 8 of the Act.

Held that, as regards the succession to the estate, the limitation in the sunnud was wholly superseded by Act I of OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 22-(Contd.)

be governed by the provisions of S. 22 of that Act. By that section it was enacted that if any talookdar whose name should be inserted in the second, third, fifth of the lists mentioned in S. 8, or his heir or legatee, should die intestate, such estate should descend in manner therein described (13), (Sir Barnes Peacack.) BRIJ INDAR BAHADUR SINGH P. RANGE JANKI KOER. (1877) 5 I.A. 1= 1 C. L. B. 318 = 3 Sar. 763 = Bald. 148 = 3 Suth. 474 = R. & J.'s No. 48.

SS, 22, 23,

-Applicability-Distinction.

S. 22 of the Oudh Estates Act I of 1869 relates to estates held by talukdars included in List 3 prepared under S. 8 of the Act. In the case of other estates where the descent is governed by the personal law, S. 23 applies (12). (Mr. Ameer Ale.) NAND RANI KUNWAR P. INDAR KUNWAR.

(1926) 54 I.A. 5 = 1 Luck. 583 = (1927) M.W.N. 21 = 4 O.W.N. 80 = 31 C.W.N. 485 = 45 C.L.J. 282 = 100 I.C. 485 = 25 L.W. 751 = A.I.R. 1927 P.C. 8 = 52 M.I.J. 497.

S. 22 (1). (2) AND (3).

-Son-Meaning of Adopted son not included.

The word "son" used um pliciter means in the Oodh Estates Act of 1869 sons by natural generation and means nothing more. The word does not include an adopted son. (Viscount Summer.) TEWARI RAGHURAJ CHANDRA :: RANI SUBHADRA KUNWAR. (1928) 55 I.A. 139 at

3 Luck. 76 = 5 O.W.N. 443 = 26 A.L.J. 609 = 108 I.C. 673 = 30 Bom. L.B. 829 = 32 C.W.N. 1009 = A.I.R. 1928 P.C. 87 = 55 M.L.J. 778.

S. 22 (1 TO 10).

Succession prescribed by Statutory substitute for succession prescribed by sanad granting estate.

S. 22 of the Act in so far as it describes in the first ten of its sub-sections the specific order of beirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession which might have been set forth in the sanad, (Lord Shate,) DER BAKHSH SINGH D. CHANDRABHAN SINGH.

(1910) 37 I A. 168 (180) - 32 A. 599 (610) = 12 C.L.J. 303 = 14 C.W.N. 1010 = 8 M.L.T. 273 = 7 A.L.J. 1122=12 Bom. L.R. 1015=13 O.C. 316= 7 L.C. 734=20 M.L.J. 917.

S. 22 (3), (4) AND (6).

-Male lineal descendants in-Meaning of

"Male lineal descendants," in Sub-S. (3) of S. 22 of Act I of 1869 are intended to include the descendants of a son dying in his father's lifetime. Those words must have the same meaning in Sub-Ss. 4 and 6 of the section (87-8).

(Sir Richard Couch.) HAIDAR ALI v. TASSADUK RASUI. (1890) 17 I.A. 82= 18 C.1 (8)=5 Sar. 529=

B. & J.'s No. 119. S. 22 (4).

-Daughter's son of talukdar within meaning of-Som of daughter of rival wife of taluquar if a.

Quaere, whether the son of a daughter of a rival wife of the taluqdar would be the son of a daughter of the taluqdar the tanaquar would be the Sala (4) of S. 22 of the Act. (Sir Barnes Peacock.) BRIJ INDAR BAHADUR SINGH v. RANEE JANKI KOER. (1877) 5 I.A. 1 (13)=

1 C.L.B. 318 = 3 Sar. 763 = Bald. 148 = 3 Suth. 474 = R. & J.'s No. 48.

S. 22 (4)—DAUGHTER'S SON—TREATMENT BY TALUQUAR OF, IN ALL RESPECTS AS A SON. What amounts to.

Cl. (4) of S. 22 of Act I of 1869 is perhaps not very clearly 1869, and the rights of the parties claiming by descent must or happily expressed, and considerable doubt appears to

Estates Act I of 1869- (Contd.)

S. 22 (4)-DAUGHTER'S SON - TREATMENT BY TALUQUAR OF, IN ALL RESPECTS AS A SON-(Contd.)

prevail in Oudh as to the construction to be put upon it. One passage in the Commissioner's judgment almost implies that, inasmuch as the actual treatment of a son by his father varies in all countries according to the characters of the parent and the child, it is impossible to say what the Legislature meant by the treatment of a grandson "in all respects as a son". Other passages of the same judgment seem to assume that the treatment must in some way be tantamount to an adoption under the Hindu Law, involving the legal consequences of such an adoption, as, e.g., the subjection of the grandson to prohibitions as to marriage which would not otherwise attach to him (233).

Their Lordships are disposed to think that the clause must be construed irrespectively of the spiritual and legal consequences of an adoption under the Hindu law. The fourth clause, like every other clause in S. 22 applies to all the talukdars whose names are included in the second or third of the lists prepared under the Act, whether they are Hindus, Mahomedans, or of any other religion; and it is not until all the heirs defined by the ten first clauses are exhausted that, under the 11th clause, the person entitled to succeed becomes determinable by the law of his religion and tribe (233.4).

It is necessary, then, to put a general as well as a rational construction upon the provision advisedly introduced by the Legislature into the statutory law of succession. And, taking the whole section together, their Lordships are of opinion that wherever it is shown by sufficient evidence that a talukdar, not having male issue, has so exceptionally treated the son of a daughter as to give him in the family the place consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment in question (234). (Sir James W. Colvile.) MAHARAJAH PERTAB NARAIN SINGH P. MAHARANEE SUBHAO KOOFR.

(1887) 4 I.A. 228 = 3 C. 626 (631-2) = 1 C.L.B. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J.'s No. 46.

-What amounts to-Evidence-Nature of, required-

L. R. 4 I.A. 228-Explanation of.

In the case reported in L.R. 4 I.A. 228 it was pressed upon the Committee that the treatment of the daughter's son required by the Oudh Estates Act must be something of the nature of adoption. In answer to that suggestion, their Lordships pointed out that the section applies, not to Hindus alone, but to all religions, and they continue as follows :-

"It is necessary, then, to out a general as well as a rational construction upon the provision advisedly introduced by the Legislature into this statutory law of succession. And, taking the whole section together, their Lordships are of opinion that wherever it is shewn by sufficient evidence that a talookdar, not having male issue, has so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son, if one existed, and would not ordinarily be conceiled to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment in question."

Upon this passage it has been argued that the Committee intended to lay down an authoritative interpretation of the language of sub-S, 4 of universal application; that treatment which does not conform to the description there given cannot rightly be held to fall within the sub-section; and that the Committee meant to indicate that the acts of treatment OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 22 (4)-DAUGHTER'S SON - TREATMENT BY TALUQUAR OF, IN ALL RESPECTS AS A SON-

able to any other relationship than that of a son. But this argument puts a strained and unnatural construction on the words of the Committee. Their expression "general construction" clearly refers to the propriety of construing the Act that it may apply to Mahomedans and others as well as Hindus. The rest of the passage is only a statement in abstract form of circumstances which will clearly bring a case within sub-S. 4. In the sequel of the judgment they shew that those circumstances exist in the case before them. There is nothing to shew that the Committee intended to set up a standard to which all cases must conform, or that they demanded more demonstrative proof for this kind of question than for any other,

Their Lordships hold that whenever the evidence shews that a daughter's son has been treated by the talookdar in all respects as his own, it is sufficient to bring the case within sub-S. 4; that the question is one of fact, and must be tried and determined by the same methods as other questions of fact; and that it is very difficult, if not impossible, to lay down a test for such a question in terms less wide than those of the Act itself (168). (Lord Hobbouse.) UM-RAO BEGAM P. IRSHAD HUSAIN. (1894) 21 I. A. 163=

21 C. 997 (1002-3) = 6 Sar 469 = R. & J.'s No. 135. -Concurrent findings as to-Privy Council's interference with.

The question whether a daughter's son has been treated by an Oudh talookdar in all respects as his own son within the meaning of sub-S. 4 of S. 22 of the Oudh Estates Act is not only a question of fact, but it is one which embraces a great number of facts whose significance is best appreciated by those who are most familiar with Indian manners and customs. Their Lordships would be specially unwilling in such a case so depart from the general rule, which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the lower Courts (166). (Lora Hob house.) UMRAO BEGUM P. IRSHAD HUSAIN.

(1894) 21 I. A. 163=21 C. 997 (1002)=6 Sar. 469= B. & J.'s No. 135

Where the courts below concurrently found that the appellant was not treated in all respects by the recorded talukdar as his own son, and therefore was not entitled to the statutory right of succession under clause 4 of S. 22 of Act I of 1869, and that, according to the custom of the family, a daughter's son did not succeed to the property of his maternal grandfather, held that the findings were conclusive against the appellant.

To use the language of Lord Hobhouse: The question is not only a question of fact, but it is one which embrace a great number of facts whose significance is best apprecial ed by those who are most familiar with Indian manners and customs. Their Lordships would be specially unwilling in such a case to depart from the general rule, which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the lower courts. (Lord Macrast ten.) SANWAL SINGH P. SATRUPA KUNWAR.

(1905) \$3 I. A. 53 = 28 A. 215 = 3 C. L. J. 86= 10 C.W.N. 230=1 M.L.T. 6=8 Sar. 903=16 M.L.J. 77

In a case in which the courts below had concurrently found that the appellant, the daughter's son of a deceased re corded talugdar of an Oudh talug, had not been treated by the deceased as his own son, and therefore was not entited to the statutory right of succession under cl. 4 of S. 22 of the Oudh Estates Act of 1869, and that, according to the custom of the family, a daughter's son did not succeed to the property of his maternal grandfather, the Privi must be absolutely unequivocal and not by possibility refer. Council, following their general rule in case of concurrent

Estates Act I of 1869-(Contd.)

S. 22 (4)—DAUGHTER'S SON — TREATMENT BY TALUQDAR OF, IN ALL RESPECTS AS A SON — (Contd.)

findings of fact, declined to interfere. (Lord Macnaghten.)
KUNWAR SANWAL SINGH v. RAVI SATRUPA KUNWAR.
(1905) 33 TA 52-98 A 935-297 X 807 X 807

(1905) 33 I.A. 53 = 28 A. 215 = 3 C.L.J. 86 = 10 C.W.N. 230 = 1 M.L.T. 6 = 8 Sar. 903 = 16 M.L.J. 77. Evidence.

Held, on the evidence that the appellant, the son of a daughter of a deceased Oudh talukdar, had "been treated by him in all respects as his own son" within the meaning of cl. 4 of S. 22 of Act I of 1869, and that he was therefore entitled to succeed to the taluk, the talukdar having died intestate, (Sir James W. Colvile.) MAHARAJA PERTAB NARAIN SINGH v. MAHARANEE SUBHAO KOOER.

(1877) 4 I. A. 228 = 3 C. 626 = 1 C. L. R. 113 = 3 Sar. 740 = 3 Suth. 458 = R. & J.'s No. 46.

It was contended in the lower Court that the appellant being the son of a daughter of a rival wife, and having been treated by his step-mother, the talukdar, in all respects as her own son, came within the meaning of cl. 4 of S. 22 of the Oudh Estates Act, 1869. It was, however, found by both the lower Courts that there was no proof that he had been so treated, and their Lordships agree in that finding (13). (Sir Barnes Peacock.) BRIJ INDAR BAHADUR SINGH v. RANKE JANKI KOER.

(1877) 5 I. A. 1=1 C. L. R. 318=3 Sar. 763= Bald. 148=3 Suth. 474=R. & J.'s No. 48.

The question was whether a daughter's son was treated by an Oudh talookdar in all respects as his own son within the meaning of sub-S. 4 of S. 22 of the Oudh Estates Act.

It was common ground that the mother of the daughter's son in question was after her marriage taken into the house of her father (the talukdar), and that the daughter's son was born there, and from that time until the talookdar's death he was treated as a child of the house. Evidence was given of a number of incidents, some apparently trivial and some important, for the purpose of shewing that the talukdar's treatment of the daughter's son was that of a son. As against that it was contended that all those incidents were sufficiently accounted for by the circumstance that the daughter and her son were inmates of the talukdar's house, and that the daughter's son was his grandson, and in the line of succession. Both the Courts below held that the daughter's son had been treated as a son by the talookdar.

Held, affirming the Courts below, that the evidence was enough to justify the conclusion that the daughter's son had been treated as a son by the deceased taluqdar within the meaning of Sub-S. 4 of S. 22 of the Act (166). (Lord Hobbouse.) UMRAO BEGUM v. IRSHAD HUSAIN.

(1894) 21 I. A. 163 =
21 C. 997 (1003-4) = 6 Sar. 469 = B. & J.'s No. 135.

——Question as to—Fact or Law. See under this Act
S. 22 (4)—DAUGHTER'S SON—TREATMENT BY TALUQDAR OF, IN ALL RESPECTS AS SON—CONCURRENT
FINDINGS AS TO. (1894) 21 I. A. 163 (166) =
21 C. 997 (1002).

S. 22 (4) AND (7).

——Lists 2 and 3—Estate entered in—Succession to— Talukdar dying without son but leaving widow, daughter, and daughter's son.

An Oudh talook, which is entered in Lists 2 and 3 under the Oudh Estates Act, descends to a single heir by primogeniture, and falls under the provisions of S. 22 of that Act. On the death of the talookdar of such a talook without a son but leaving a widow, daughters, and a daughter's son, if the daughter's son was treated by the deceased as a son, OUDH ACTS-(Contd.)

Estates Act I of 1869—(Contd.) S. 22 (4) AND (7)—(Contd.)

the talook would pass to him and his male lenial descendants by virtue of Sub-S. 4; if not, it would pass to the wislow for her life by virtue of Sub-S. 7 (165-6). (Lord Hobbause.) UMRAO BEGUM v. IRSHAD HUSAIN.

(1894) 21 I. A. 163=21 C. 997 (1001)=6 Sar. 469=

R. & J.'s No. 135.

S. 22. (4). (7) and 11—Lists 2 and 3—Estate entered in—Succession to—Widow claiming under ct. 7—Suit by, against daughter's son claiming under ct. 4—Dismissal of—Appeal by widow against—Death of widow pending—Daughter's right to review and prosecute appeal in case of.

The original plaintiff in the suit, A, was the widow of an Oudh talookdar, who died leaving no son. The defendants in the suit were U and S, the daughters of the deceased, and a son of S. The talook was entered in Lists 2 and 3 under the Oudh Estates Act; it devolved to a single heir by primogeniture; and it fell under the provisions of S. 22 of the Act.

On the death of the talookdar, the son of S claimed to be entitled to the talook under sub-section 4, inasmuch as he had been treated by the deceased talookdar in all respects as his own son, and obtained possession of the talook. A thereupon instituted the suit out of which the appeal arose for the recovery of the talook. The lower Courts held that the son of S had been treated by the deceased talookdar in all respects as his own son, and that he was therefore entitled to the talook. They accordingly dismissed the suit of A. A appealed to Her Majesty in Council and died pending the appeal. Thereupon U. being in the line of succession, applied to the Court below (the Judicial Commissioner) to be allowed to revive and prosecute the appeal. The Judicial Commissioner was of opinion that the application ought not to be granted, because A only claimed a life-estate in the talook, and U's claim did not arise as representing A, but under an independent title (if any) based on S. 22, Sub-S. 11 of the Act; but be directed the proceedings to be forwarded to the Registrar of the Privy Council as a supplementary record, U then applied to Her Majesty in Council for an order of revivor and substitution.

Their Lordships granted leave to U to revive and prosecute the appeal, especially as both parties desired that she should be allowed to do so (169).

Their Lordships also felt difficulty in acceding to U sapplication, and in fact the case is peculiar and novel. But it appeared to them that the question of the status of the son of S must be settled even if it should only affect the past income; that it would be simpler and less expensive to try it by the existing appeal than by a new suit; and that the Oudh Estates Act so far created a unity of interest between the persons in the line of succession as to justify the substitution, at least in such a case as this, of the more remote claimant for the nearer one (168.9). (Lord Hobbonse.) UMRAO BEGAM v. IRSHAD HUSAIN.

(1894) 21 I. A. 163=21 C. 997 (1004-5)= 6 Sar. 469 = R. & J.'s No. 135.

Brother" in.

Meaning of, as regards HIndu talukdar who had himself been adopted into another family—Natural or blood brother of talukdar not included. (Viscount Sumner.) TEWAKI RAGHURAJ CHANDRA 2. RANI SUBHADRA KUNWAR.

(1928) 55 I. A. 139 = 3 Luck. 76 = 5 O. W. N. 443 = 26 A. L. J. 609 = 108 I. C. 673 = 30 Bom. L. R. 829 = 32 C. W. N. 1009 = A. I. B. 1928 P. C. 87 = 55 M. L. J. 778,

Estates Act I of 1869-(Contd.)

5, 22 (6).

Brother—Includes half-brother. (Lord Marinaghten.)
THAKURA BALRAI KUNWAR F. RAE JAGATPAL SINGH.
(1904) 31 I. A. 132 (142) = 26 A. 393 (406) =
8 C. W. N. 699 = 11 Bom. L. R. 516 = 1 A. L. J. 384 =
3 I. C. 359 = 7 O. C. 248 = 8 Sar. 639.

- Brother vounger-Sour of prodeconed elder brother - Succession-Preferential right.

Held that the reasonable construction of Sub-S, 6 of S, 22 of Act I of 1860 was that the brothers of a deceased talookdar were intended to take in the same manner as sons were directed to take by the preceding sub-sections, and that the descendants of a predeceased elder brother were preferential heirs to a surviving younger brother (88).

S. 22 begins by saying that if a talookdar or groutee whose name shall be inserted in the second, third, or fifth of the lists mentioned in S. 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, and then there are eleven sub-sections forming a scheme of descent. The plaintiff claims under sub-section 6, but in constraing that the whole of the sub-sections should be looked at. The first says that the estate shall descend to the eldest son of the talookdar and his male lineal descendants. The second says that if such eldest son shall have died in the life-time of the talookdar leaving male lineal descendants, the estate shall descend to his eldest and every other son successively according to their respective seniorities and their respective male lineal descendants. The third says that if such eldest son shall have died in his father's lifetime without leaving male lineal descendants, the estate is to descend to the second and every other son of the talookdar successively according to their respective seniorities and their respective male lineal descendants. That male lineal descendants here are intended to include the descendants of a son dying in his father's lifetime is apparent from Sub-S. 4. That is " or in default of such son or descendants," then to such son of a daughter as has been treated by the talookdar in all respeets as his own son, and to the male lineal descendants of such son. The estate is to go to the daughter's son only in default of male lineal descendants of a second or other son, In Suh-S. 4 male lineal descendants of a daughter's son must have the same meaning as in Sub-S. 3, for by Sub-S. 5 the estate is to descend to a person adopted by the talookdar only in default of such son or descendants, prz., a daughter's son or his male lineal descendants. The 6th section says, in default of an adopted son the estate is to Jescend to the eldest and every other brother of the talookdar success. ively according to their respective seniority and their respective male lineal descendants. The words here should be held to have the same meaning as they have in Sub-Ss. 3 and 4. In Sub-S. 7 the words are " in default of any such brother "to the widow, omitting " descendants "; but their Lordships cannot think that it was intended by this omission to postpone the succession of male lineal descendants of brothers who died in the talookdar's life-time t'll after persons mentioned in Sub-Ss. 7, 8, 9, and 10, and only to allow such male lineal descendants to succeed under Sub-S. 11 according to the ordinary law to which the talcokdar is subject. It is the reasonable construction that the brothers were intended to take in the same manner as sons (87.8) (Sir Richard Couch.) HAIDER ALI P. TASSADUK RASUL KHAN. (1890) 17 I. A. 82=18 C. 1 (8-9)=5 Sar. 529= R. & J.'s No. 119

Construction—Reference to whole of sub-sections— Necessity

In construing sub-section (6) of S. 22 of Act I of 186 the v hole of the sub-sections should be looked at (87). (Si Richard Couch.) HAIDAR ALL v., TASSADUK RASU

OUDH ACTS-(Centd.)

Estates Act I of 1869-(Contd.)

KHAN. (1890) 17 I. A. 82=18 C. 1 (8)=5 Sar. 529= R. & J.'s No. 119.

S. 22 (6) AND (7).

List 3-Estate entered in, and granted to Hindu is int family under primageniture sanad-Succession to-Widow daughter and brother of grantee-Preference between,

B and G, two brothers, subject to the law of the Mitakshara, became on the death of their father jointly entitled to an ancestral taluga, and they held the taluga as a joint family until the general confiscation of the landed estates in Oudh in 1858. Later, under the Governor-General's proclamation of March, 1858, B, the elder brother, as the head of the joint family, received back the taluga, and what was called the " second summary settlement" was made with him in July, 1858. In 1800 a sanad was granted to him. He was entered in list 3 under the Oadh Estates Act, 1869-namely, as being a taluqdar to whom a primogeniture sanad had been given. From the serond summary settlement up to the regular settlement in 1864. R, by his acts and declarations, obtained the estate for himself and his brother G as members of the joint Mitakshara family. In 1867, however, there was a sepration between the brothers, and an agreement by which B took the estate absolutely and G an annuity. B died in 1871 leaving G. his brother, a widow, and a daughter, the plaintiff, but no male issue.

Meld, that on the death of B without male issue or adopted son, the taluka devolved under Cl. (6) of S. 22 of the Ad on his sole surviving brother, G, and that on G's death it devolved, under Cl. (7) on his surviving widow, the defendant (22-3). (Mr. Ameer Ali.) NAND RANEE KUNWAR 2. INDAR KUNWAR. (1926) 54 I. A. 5 = 1 Luck. 583

R. (1926) 54 I. A. 5 = 1 Luck. 583= (1927) M. W. N. 21 = 4 O. W. N. 80=

31 C W. N. 485=45 C. L. J. 282=100 I. C. 485= 25 L. W 751=A. I. R. 1927 P. C. 8=52 M. L. J. 497.

S. 22 (11).

-Mather-Right to succeed to unmarried son-Ethale taken by her-Lists 1 and 2-Estate entered in.

A talook called D was created by a sunnud by the Governor General after Lord Canning's proclamation; and it was stated that it was a condition of the grant that it should descend to the nearest male heir under the rule of primogeniture. The estate was entered in the lists No. 1 and No. 2, established by S. 8 of Act I of 1869; and, consequently, it descended according to the rules pointed of in S. 22 of that Act. On the death of the last male owner of the estate, it descended, according to clause (11) of S. 22, to the heir according to Hindu law.

On the death of the heir without having been married, held, that his mother became his heir, and took a nother's interest in the estate, which was not an estate for life, but a woman's estate by inheritance (174). (Sir Barnes Pessek).

DEWAN RAN BIJAI BAHADUR SINGH v. RAE JAGATAL SINGH. (1890) 17 I. A. 173 = 18 C. 111 (114)=

5 Sat. 590 = R. & J.'s No. 190

——See under this Act S. 22 (11)—PRIMOGENITURE
SANAD. (1910) 37 I.A. 168 (180-2) = 32 A. 599 (610-1).

—Ordinary law in—Sanad conditions if included is.

The decisions in L. R. 20 I. A. 77, 37 I. A. 168 and 48
I. A. 228 clearly establish that the "ordinary law" referred to in the Oudh Estates Act of 1869 is the law which would govern the parties apart from the statute and includes any sanad giving title to the property in dispute. It is true that these decisions were rendered with reference to clause (11) of S. 22, and not with reference to S. 23 of the Act; but the terms of the latter section are precisely similar to those of S. 22, clause (11), and their Lordships see no sufficient reason for giving to them a different construction,

Estates Act I of 1869-(Contd.)

S. 22 (11)-(Contd.)

The dictum of the Board in the judgment of the Board of S. 8 of the statute. While, therefore, the specific rules delivered by Sir Barnes Peacock in L. R. 5 I. A. 1 at p. 13 is no authority for the view that the effect of S. 22, cl. (11) or of S. 23 of the Act, was wholly to destroy the rules of succession laid down under sanads which had been so recently granted. Probably the dictum means no more than this, that the Act supersedes the sanad where the two are in conflict. (Viscount Care). BADRI NARAIN SINGH P. HARNAM KUAR. (1922) 49 I.A. 276 (284 5) -

9 O. L. J. 428=(1922) P. C. 289=27 C. W. N. 129= 25 O. C. 313 = 21 A. L. J. 13 = 37 C. L. J. 305 = 9 O. & A. L. R. 49 = 68 I. C. 1000 - 43 M. L. J. 337.

Primogeniture Sanad-Estate granted under, and entered in lists 1 & 5-Succession to-Linial primogeniture -Nearness of degree-Rule-Ordinary law of religion and tribe in cl. (11)-Sanad conditions if included in.

By a Government sauad dated 1860 a taluşa was conferred upon R on the condition, amougst others, that in the event of R dying intestate, or any of his successors dying intestate, the estate should descend to the nearest male heir according to the rule of primogeniture. R's name was entered in Lists 1 and 5 mentioned in the Outh Estates Act, 1869, On R's death intestate and without issue, the estate passed into the possession of his widow. On the death of the widow the succession to the estate was contested by R's cousin, the respondent, who would be the heir if the succession was governed by the rule of lineal primogeniture, and his uncle, the appellant, who would succeed if it was regulated by nearness of degree.

Held, that the rule of lineal primogeniture applied to the case and not that of nearness of degree, and that the res-

pondent was entitled to succeed.

The appellant contends that he is entitled to the succession because, by the ordinary law to which it must be supposed reference is made in S. 22, (11) of the Oudh Estates Act, nearness in decree is preferable to lineal discent in other words, that sub-S. (11) amounts to a revocation or an abrogation of the rule of succession laid down in the sanad under which the taluqdar, R. received his property and that S. 8 of the Act did not really amount to a declaration that the succession "shall thereafter be regulated by the rule of primogeniture." but only used that phrase in the course of a narrative identifying the fifth list of grantees. It is fairly clear, however, that, if a repugnancy does not arise within the statute itself, at least some thing which would have the same effect has been produced, namely, an inconsistency between the order of succession specified in the sanad and some other law of succession under the ordinary law of the taluqdar's religion and tribe; and it is maintained that in these circumstances the statute, and the statute alone, must govern.

S. 22 of the Act in so far as it describes in the first ten of its sub-sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession which might have been set forth in the sanad. The provision in sub-S. (11) that, in default of any one taking under the previous sub-sections, there should be preferred " such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee are subject is, however, nothing else than a general relegation of parties to the situation in which they would have been found apart from the statute. But that situation is found in the sanad itself; and it is also contained, either by way of affirmance or at least by way of narrative, in the fifth list

OUDH ACTS-(Contd.) Estates Act I of 1869-(Contd.) S. 22 (11)-(Contd.)

of succession in sub-Ss. 1 to 10 of the Act, must be held to displace the rule of succession prescribed by the sanad, the general reference to what is not covered by those specific rules must include a reference to the rights of parties as contained in the sanad, which was the original title to the property. By this simple construction the alleged repugnancy disappears. The declaration and condition of the sanad being part of the original title to the property is an essential part of that regulation of the ordinary law of the religion and tribe and would have been respected accordingly. (Lord Shaze). DEBI BAKSH SINGH 7. CHANDRABAN SINGH. (1910) 37 I.A. 168(180.2) = 32 A. 599 (610.1) =

12 C L J 303 = 14 C. W. N. 1010 = 8 M.L T. 273 = 7 A.L.J. 1122=12 Bom. L.R. 1015=13 O C. 316= 7 I.C. 734 = 20 M.L.J. 917.

Rule of ancession under.

The rule of succession set up by sub-S. 11 of S. 22 of the Oudh Estates Act of 1869 is nothing else than a general relegation of parties to the situation in which they would have been found apart from the statute. (Lord Shaw) DEBI BAKHSH SINGH 2. CHANDRABHAN SINGH.

(1910) 37 I. A. 168 (180-1) = 32 A. 599 (610) = 12 C L.J. 303=14 C. W.N. 1010=8 M.L.T. 273= 7 A.L.J. 1122=12 Bom. L.R. 1015=13 O.C 316=

7 I. C. 734 = 20 M.L.J. 917. -Rule of succession under-Family custom if taken into account.

It was suggested rather than argued that in a case of distribution ordered by sub-S. 11 of S. 22 of the Act the family costom is not to be taken into account. Their Lordships consider that the effect of sub-S, 11 is simply to refer the parties to the law which would govern the descent of the property when the special provisions of the Act are exhausted. That law clearly takes in the family custom (79). (Lord Hobbonic). NARINDAR RAHADUR SINGH (1893) 20 I. A. 77 = 20 C. 649 =

6 Sar. 310 = R. and J's No. 128. -Rule of succession under-Hindu widow-Estate absolute or separate property of-Daughter-Step-son-Husband's male heirs-Preference-Mitakshara Law.

The question was as to the right to succeed to an Oudh taluqa held by a Hindu widow as her absolute or separate property. The rival claimants were her daughter, a son of the daughter of the widow's rival wife, and the male heirs of her husband. The rights of the parties fell to be determined by the provisions of cl. (11) of S. 22 of the Oudh Estates Act. The ordinary law to which the parties were subject was the Mithakshara law.

Held that the daughter of the deceased widow (talukdarini) was entitled to succeed to the estate in preference to the son of the daughter of her rival wife, and the male heirs of her husband (17). (Sir Barnes Peacock). BRIJ INDAR BAHADUR SINGH & RANFE JANKI KOER.

(1877) 5 I.A. 1=1 C.L.B. 318=3 Sar. 763= Bald 148 = 3 Suth. 474 = R and J.'s No. 48.

Rule of succession under-List 2-Estate entered in. The subject of the present dispute is a taluq in Oudh which was granted by the British Government in 1858 to one H. His name was entered in lists I and 2, prepared under the provisions of the Oudh Estates Act of 1869. It results that the succession is regulated by S. 22 of that Act; and, as the first 10 sub-sections do not apply, the rule is to be found in sub-S. (11); the estate goes to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such talugdar are subject (30). (Lord Robertson). RAI JAGATPAL SINGH P. RAJA JAGESHAR BAKSH SINGH.

Estates Act I of 1869-(Contd.)

S. 22 (11)-(Contd.)

(1902) 30 I.A. 27 = 25 A. 143 (150) = 7 C.W.N. 209 = 8 Sar. 367.

-Rule of succession under-List 2 and not list 3-Estate entered in-Degree-Line-Preference.

In the case of an estate placed in class 2 of Act 1 of 1869, and not in class 3, if the heir according to lineal primogeniture is more remote in degree from the ancestor than other collaterals, or other persons in the line of heirship, the degree prevails over the line according to the classification under the Act; but if two collaterals, or persons in the line of heirship are equal in degree, then, as the property can only go to one, recourse must be had to the seniority of line to find our which that one is (78). (Lord Hobbouse) NARINDRA BAHADUR SINGH P. ACHAL (1893) 20 L. A. 77 - 20 C. 649 = 6 Sar. 310 = RAM. R. & J's. 128.

-Rule of succession under-Last 2 and not list 3-Estate entered in-Primogeniture-Lineal primogeniture -Kulis of.

The effect of an estate being placed in class 2 of Act I of 18(9), and not in class 3, is that the estate is labelled as one which, according to the custom of the family, descends to a single heir but not necessarily by the rule of lineal primogeniture (78). (Lord Hobbouse.) NARINDAR BAHADUR SINGH :- ACHAL RAM. (1893) 20 I. A. 77=

20 C. 649 = 6 Sar. 310 = R. & J's. No. 128

-Rule of succession under-Lists 2 and 3-Estates entered in-Distinction.

While there are several decisions on cases coming under list 2 to the effect that it is enough to provide a single heir, and that when the succession is regulated by clause 11 of \$.22 of the Oudh Estates Act this single heir is the nearest in the succession, and may be male or female; there is no decision to this effect when the case comes under list 3 where the rule is that of primogeniture. But there are two decisions -26 All. 308, when the succession was regulated by the sanad; and 32 All 599, which came under list 5-which show that the rule of male lineal primogeniture applies after the special successions provided by clauses (1)—(10) are exhausted and where clause (11) is invoked (240).

Clause (11) does provide special limitations, and does not simply remit the succession to the unqualified ordinary

law of the religion and tribe (235-6).

If clause (11) should be treated as providing special limitations then, though the descent is to be according to the ordinary law of the religion and tribe, yet this ordinary law operates only so far as it is not inconsistent with the overriding consideration that the succession is to be governed by the rule of primogeniture, which implies also impartibility (235). (Lord Phillimore.) SITLA BAKHSH SINGH 2. SITAL SINGH-(1921) 48 I. A. 228=

43 A. 245 (256, 252, 251) = 33 C. L. J. 520 = 25 C. W. N. 721=19 A. L. J. 337=24 O. C. 107= 29 M. L. T. 390 = 60 I. C. 548 = 40 M. L. J. 449.

-Succession under, to estate entered in list 2-Impartible character of estate if affected by.

The impartible character of an Oudh taluk entered in List 2 of S. 8 of Act I of 1869 as descendible to a single heir is not affected by a succession under S. 22, Cl. (11) of the Act, to heirs entitled under the ordinary law (107.) (Lord Darry.) JAGDISH BAHADUR v. SHEO PARTAB SINGH. (1901) 28 I. A. 100 = 23 A. 369 (379) = 51C.W.N. 602 =

3 Bom. L. R. 298 = 8 Sar. 19 = 11 M. L. J. 178. S. 23-HINDU WIDOW.

—Inheritance—Talook taken by—Estate in.
Quare. whether the effect of the Governor General's

OUDH ACTS-(Contd.)

Estates Act I of 1869-(Contd.)

S. 23-HINDU WIDOW-(Contd.)

Hindu widow, though a ialookoas from the disabilities imposed upon her by the general law. Such a construction seems opposed to S. 23 of the Oudh Estates Act, at least as regards a widow who takes a talook by inheritance (235.) (Sir James IV. Colvile) WIDOW OF SHUNKER SAHAID. RAJAH KASHI PERSHAD. (1873) Sup. I. A. 220= 3 Sar. 289 = 3 Suth. 4 = R. & J's. No. 23.

-Inheritance-Talook taken by-Villages and rights within-Estate in. See UNDER S. 3-HINDU WIDOW. (1873) Sup. I. A. 220 (235-6.)

S. 23-ORDINARY LAW IN.

Ordinary Law-Family custom if included in.

Under Act I of 1869 the succession to estates in List IV is regulated by "the ordinary law to which members of the intestate's tribe and religion are subject" (Act I of 1869, S. 23) which has been held to embrace any "family custom." (135.) (Lord Collins). PARBATI KUNWAR P. (1909) 36 I.A. 125= CHANDARPAL KUNWAR.

31 A. 457 (474-5) = 10 C. L. J. 216=6 A. L. J. 767= 13 C. W. N. 1073 = 11 Bom. L. R. 890 = 12 O. C. 304 = 4 I.C. 25=19 M. L. J. 605

-Sanad conditions if included. See UNDER THIS ACT-S. 22 (11)-ORDINARY LAW IN.

(1922) 49 I. A. 276 (284-5) = 44 A. 449 (456-7) S. 23-SANAD-ESTATE HELD UNDER.

-Succession to-Rule of, prescribed by sanad-Section if supersedes.

An Oudh estate which had been confiscated by the British Government on the annexation of Oudh in 1856, was re-granted under a Sanad which provided that, in the event of the grantee dying intestate, or of any of his successors dying intestate, the estate should descend to the nearest male heir according to the rule of primogeniture. On the death of the taluqdar leaving a widow but no issue, the question arose who was entitled to succeed to the estate, the nearest male heir of the deceased, or his widow. The taluqa was included in Lists 1 and 4 of Act I of 1869. The nearest male heir founded his claim on the terms of the sanad; the widow contended that, by virtue of S. 23 of the Act, the succession was to be regulated not by the sand but by the Mithakshara law which was the ordinary law to which the members of the deceased's tribe and religion were subject, and that under that law she was entitled to the estate.

Held, that the effect of S. 23 of the Act was not to displace the rule of succession prescribed by the sanad and to substitute for it the ordinary rules of succession prevailing among Hindus who are subject to the law of the Mithal shara, and that the nearest male heir was entitled to sacre under the terms of the sanad (283.4). (Viscount Care.) BADRI NARAIN SINGH P. HARNAM KUAR.

(1922) 49 I. A. 276 = 44 A. 449 (455 6)= 31 M. L. T. 195 (P.C.) = 9. O. L. J. 428 (1922) P. C. 289 = 27 C. W. N. 129 = 25 O. C. 313 68 I. C. 1000 = 21 A. L. J. 13 = 37 C. L. J. 305

9 O. & A. L. R. 49=44 M. L. J. 37. S. 33—BRITISH INDIAN ASSOCIATION OF OUDB-

Binding character of Award not filed in Conf within time allowed.

An award of the British Indian Association of Ord which is not filed in Court with the Commissioner's proval, within 6 months of the passing of the Oudh Esta Act of 1869, does not come within the provisions of S. 3 of that Act, and has not therefore the character of a bind ing judgment of a Court of competent jurisdiction. But the letter of 1859 and the subsequent legislation is to relieve a laward is not on that account invalid. It does not

Estates Act I of 1869-(Contd.)

S. 33—BRITISH INDIAN ASSOCIATION OF OURH-AWARD OF—(Contd.)

tute res judicata in the proper sense of the term; yet it is obligatory upon both parties to the submission and upon those whose interests they represented. (Lord Watson.) BHAIYA ARDAWAN SINGH v. UDEY PARTAB SINGH.

(1896) 23 I A. 64 = 23 C. 838 (847.8) = 7 Sar.24 = 6 M. L. J. 79.

Construction of Evidence—Antecedent possession— Evidence of, bearing on point independent of proceedings in submission—Quasi—judicial acts of arbiter up n which award based—Admissibility.

In a case in which an award of the British Indian Association of Oudh found "that the two villages, given as maintenance, be decreed in favour of f (to continue) as heretofore," the question arose whether the expression "(to continue) as heretofore" in the award signified that f was to take by succession the same right of possession which had been previously enjoyed by his father and grandfather, or whether it merely gave f a right of possession for his lifetime, determinable on his death by the grantor's representative for the time being.

Held, that, in construing the award of the British Indian Association, it was legitimate to refer not only to evidence of antecedent Possession bearing upon that point which was independent of the proceedings in the submission to the Association, but to those quasi-judicial acts of the arbiters upon which their ultimate award was based. (Lerd Wation.) BHAIJA ARDAWAN SINGH v. UDEY PARTAB SINGH. (1896) 23 I. A. 64 = 23 C. 838 (849-50) = 7 Sar 24 = 6 M. L. J. 79

### S. 33-COMMITTEE OF OUDH TALUKDARS.

—Adoption—Question of—Jurisdiction to decide— Effect of decision in subsequent Civil suit. See HINDU LAW—ADOPTION—ADOPTED SON—STATUS OF—OUDH TALUKDARS. (1907) 34.I.A. 125 (131) = 29 A. 519 (522.3) —Awards of—Force and effect of.

The Committee of Talookdars made many awards respecting the provisions to be made for relatives of talookdars which, by force of S. 33 of the Oudh Estates Act, became when duly approved and filed, legal decrees (167.) (Lord Hobbourg). MUHAMMAD IMAM ALI KHAN P. SARDAR HUSAIN KHAN. (1898) 25 I. A. 161 = 26 C. 81 (90) = 2 C. W. N. 787 = 7 Sar. 432.

SCH. II TO.

- Sanad granted to person named in-Re-formation of 
-Power of Government of India-Special Act of Legislature-Necessity.

Quorre whether since the passing of the Oudh Estates Act I of 1869, the re-formation of a sunnul granted to any person named in the second schedule of that Act could be effected even by the Governor-General in Council without a special Act of the Legislature (230-1). (Sir James W. Colvile.) WIDOW OF SHUNKUR SAHAI v. RAJAH KASHI PERSHAD. (1873) Sup. I. A. 220 = 3 Sar. 289 = 3 Suth. 4 = B. & J's. No. 33.

### Estates Amending Act III of 1910.

--- Not retrospective.

The Oudh Estates Amending Act III of 1910 has no application to a case in which the succession in dispute opened before it was passed, notwithstanding that in certain respects it is made retrospective. (Lord Phillimore.) SITLA BAKSH SINGH v. SITAL SINGH.

(1921) 48 I. A. 228 (233) = 43 A. 245 (250) = 33 C. L. J. 520 = 25 C. W. N. 721 = 19 A. L. J. 337 = 24 O. C. 107 = 29 M. L. T. 390 = 60 I. C. 548 = 40 M. L. J. 449. OUDH ACTS-(Contd.)

Estates Amending Act III of 1910 -(Contd.)

The Oudh Estates (Ame dment) Act of 1910 has no application to a case which arose before that Act was passed, (Viscount Care.) BABRI NARAIN SINGH. P. HARNAM (1922) 49 I. A. 276 (284) = 44 A. 449 (456) = 31 M. L. T. 195 (P. C.) = 9 O. L. J. 428 = (1922) P. C. 289 = 27 C. W. N. 129 = 25 O. C. 313 = 68 I. C. 1000 = 21 A. L. J. 13 = 37 C. L. J. 305 =

9 O. & A. L. R., 49 = 44 M. L. J. 337.

S. 6 of the Amending Act of 1910 is not retrospective and does not validate a bequest which had already failed. (Mr. Ameer Ali.) MATA PRASAD v. NAGESHAR SAHAL.

6 L. R. P. C. 195 - 3 O. W. N. 1 = 28 O. C 352 = 24 A. L. J. 1 = (1926) M. W. N. 83 = 43 C. L. J. 51 = 13 O. L. J. 19 = A. I. R. 1925 P. C. 271 = 91 I. C.370 = 50 M. L. J. 18.

S. 6-Will of 1860 bequeathing property-Invalidity of, for non-registration-Property if brought back under Act of 1860 by operation of Amending Act.

A bequest to his younger son by a talookdar whose name did not appear in lists 3 or 5 of the lists under S. 8 of Act I of 1869 by a will which was made in 1869 but which was never registered as required by S. 13 of that Act became invalid and inoperative.

Held that, the Amendment Act of 1910 had not the effect of making the property bequeathed once more subject to Act 1 of 1869, and that with the failure of the bequest the property passed out of the Act and became subject to the Hindu law.

It would be anomalous, to say the least, to suppose that the legislature intended by Act III of 1910 to revive rights that had disappeared in consequence of the failure of the bequest in 1869 when other rights had been created in the meantime. (Mr. Ameer Ali.) MATA PRASAD P. NAGESHAR (1925) 52 I.A. 398 (415-6)=

HAI. (1925) 52 I.A. 398 (415-6)= 47 A. 883 = 6 L. R. P. C. 195 = 3 O. W. N. 1 = 28 O. C. 352 = 24 A. L. J. 1 = (1926) M. W. N. 83 = 43 C. L. J. 51 = 13 O. L. J. 19 =

A. I. R. 1925 P. C. 271 = 91 I. C. 370 = 50 M. L. J. 19 = Land Revenue Act XVII of 1876.

S. 52—Perpetual lease by proprietor—Resumption by successor on ground that it was at a favourable rate of rent—Suit for—Onus of Proof in—Evidence—Lease if a grant within section.

A, the then taluqdar of P, executed in 1874 in favour of the father of the defendants, a perpetual lease of three villages. It was agreed in the deed of lease that the lessee should pay annually to the lessor for rent, Rs. 2,191, and should be liable to contributions such as chut (presents), marking presents to dancers, raised (supply) and other dues paying also the patieuris and chaukidars, and defraying the village expenses. The lessee was not to alienate on pain of the lease becoming void.

Lessor and lessee both died in 1889. The plaintiff, the heir and devisee under A's will then brought the suit out of which the appeal arose for a declaration that the lease was lialde to resumption by him, on the ground that it was granted at a favourable rate of rent, without the sanction referred to in S. 52 of the Oudh Land Revenue Act, 1876.

The Court below held that the lease in question was a grant within the meaning of the Oudh Land Revenue Act, but dismissed the suit on the ground that the plaintiff had failed to prove that the lease was granted at a favourable rate of rent.

Their Lordships affirmed the judgment below, observing: The Courts have treated the matter as a question of inquiry whether the rent was a favourable one or not and they have

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Land Revenue Act XVII of 1876-(Contd.)

held, as it appears to their Lordships quite justly, that the appellant has not adduced any proof to show that the rent was a favourable rent. The undefined charges, the expenses of management, and so forth, may have been such as to make it a perfectly reasonable rent as between lessor and lessee. (Lord Hobboure.) PERTAB BAHADUR SINGH 2. (1897) 25 C. 479 = 7 Sar. 350.

——8. 61—Pardanashin lady's petition under—Statements in—Admissions by her if—Proof that she understood statements—Necessity.

It was contended that no weight or significance was to be attached to statements contained in a petition for mutation of names signed by a pardanashin lady and presented under the provisions of S. 61 of the Oudh Land Revenue Act of 1876, upon which petition mutation of names was ordered, unless and until it was proved affirmatively that the contents of the petition were fully understood by her.

Held, over-ruling the contention, that, in view of the duty of official inquiry imposed by S. 62 of the said Act, statements in the petition would be admissions by her to which weight should be attached (226-7). (Lord Atkinson.) SADIK HUSSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212=38 A. 627 (650-1)= (1916) 2 M. W. N. 577=21 M. L. T. 40=6 L. W. 378= 21 C. W. N. 133=25 C. L. J. 363=14 A. L. J. 1248= 18 Bom. L. R. 1037=19 O. C. 192=1 Pat. L. W. 157= 36 I. C. 104=31 M. L. J. 607.

——S. 62—Inquiry under—Nature of—Regularity as to—Presumption—Maxim " Omnia praesumentur recte esse acta"—Applicability.

The duties of inquiry imposed by S. 62 of the Outh Land Revenue Act of 1876 are the administrative duties of a quasi-judicial character imposed upon the public officials therein mentioned. It is scarcely conceivable that when the application is grounded upon the statement contained in a petition signed by a pardanashin lady, those officials would omit to take adequate steps to ascertain whether she knew the purport and effect of the document she signed. He would utterly fail in his duty if he omitted to do so, and in the absence of all evidence that he did fail in his duty in this respect the maxim omnia praesumunuar recte esse acta must be applied to the proceedings (226). (Lord Atkinson.) SADIK HUSSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212 = 38 A. 627 (650·1) = (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

—S. 74—Partition Proceedings—Allotment of share to person not entitled at—Effect of—Decision of title in Civil Court—Allotment subject to.

One of the villages appeartaining to the estate of a deceased person to which his surviving brother became exclusively entitled on his death was the subject of partition proceedings under the Oudh Land Revenue Act of 1876, and a portion thereof was, in the said proceedings, allotted to two nephews of the deceased, the sons of a predeceased brother. It appeared from an application filed by the surviving brother in reply to the objections taken by the nephews in those proceedings that the surviving brother asked that "the property of the deceased should be divided at present according to possession, and a separate suit will be filed in a competent Court as regards the title in respect of the property of the deceased." The Revenue Court gave effect to that application, no inquiry under S. 74 of the Act was made, and the question of title was left to be decided by the Civil Court,

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Held that, the surviving brother was not thereby estopped from claiming the village. (Sir Andrew Scotle.) CHOKHEV SINGH r. JOTE SINGH.

(1908) 36 I. A. 38 (43)=31 A. 78 (80·1)= 5 M. L. T. 167=9 C. L. J. 151=13 C. W. N. 274= 11 Bom. L. R. 69= 6 A. L. J. 100=12 O. C. 268= 1 I. C. 166=19 M. L. J. 123.

——Ss. 108, 112, 121—Co-sharer in Mehal—Proprietor

—Pre-emption right—Share in mehal consisting of separate

chak—Non-residence in village—Effect. See OUDH ACTS

—LAWS ACT OF 1876, S. 9.

(1904) 31 I.A. 212=26 A. 574.

——Ss. 121. 123—Rent arrears—Shares of underproprietors in—Transfer of—Interest on rent from transferce—Right to—Oudh Kent Act (XXII of 1886), S. 141. See OUDH ACTS—RENT ACT (XXII of 1886), S. 141— RENT—ARKEARS. (1898) 26 I. A. 41 (44)= 26 C. 523 (528).

-Ss. 121, 123-Transfer of share of defaulter under S. 121-Rent-Liability for-Effect on.

Under Proprietors, whose beneficial interest is transferred, under the provisions of S. 121 of the Oudh Land Revense Act of 1876, to persons who thereby become possessors of the whole mahal do not continue to be liable to pay rent to the talukdar. S. 123 of the Land Revenue Act has not the effect of making them so liable.

Such liability as the co-sharers incur, whether to the Government or to the talookdar, is to remain joint as before; but there is no provision for charging them with any liability at all when they have been deprived of the property in respect of which liability arises. In fact they have ceased for the time to be co-sharers and during that time they have no liability, joint or other, directly to the talookdar. (Lard Hobbonse.) MUHAMMAD MEHNDI ALL KHAN T. MUHAMMAD YASIN KHAN.

(1898) 26 I. A. 41 (43-4) = 26 C. 523 (527-8) = 3 C. W. N. 218 = 7 Sar. 468

S. 172-Court of Wards-Alienation of wards per perty-Power of Voluntary alienation in perpetuity-Validity.

The Court of Wards has all the ordinary powers of a guardian over a Ward's property, supplemented by certain additional powers given by statute. It is not within the power of a guardian to make a voluntary alienation in prepetuity of his ward's real estate, and it is open to the ward on attaining tweaty-one to challenge the validity of such a transaction. It is not for the advantage of a disqualifed proprietor or the benefit of his property within the meaning of S. 172 of the Oudh Land Revenue Art, 1876, that two considerable portions of his estate should be disposed of without consideration (195.6). (Sir Ford North.) RAJAH MOHAMMAD MUMTAZ ALI KHAN v. SAKHAWAT ALI KHAN.

(1901) 28 L A. 1902

23 A. 394 = 5 C. W. N. 881 = 8 Sar. 85.

Ss. 178, 174 - Disqualified proprietor - Dek-Right to contract-Simple debt band executed while edde under charge-Validity.

From a perusal of the group of sections (161 to 177) in the Oudh Land Revenue Act, 1876, intituled "Chapter VIII, Court of Wards," it will be clear that the Act we not intended to interfere with the personal status or right of an adult disqualified proprietor who is neither idiot not lunatic, except as regards the management of his property or anything expressly prohibited. There is no prohibition of a disqualified proprietor contracting debts, or borrowing money, and it is contemplated in S. 174 that such a person may enter into contracts which, but for the provisions of

Land Revenue Act XVII of 1876-(Contd.)

that section, might result in his property being taken in execution. But the disqualified proprietor may not without the sanction of the Court create any charge upon his property. It was argued, however, that to allow a disqualified proprietor to contract debt would enable him by amicipation to waste the estate when restored to his care, and so defeat the objects of the Act, and would therefore be inconsistent with the other provisions and purposes of the Act. This argument would have been a cogent one for the consideration of the Legislature in framing the Act. But there is no necessary implication of a prohibition to contract personal obligations and their Lordships are not entitled to read into the Act a curtailment of the proprietor's personal rights which they do not find there.

Held, therefore, that a person, who, on his own application, was declared a disqualified proprietor under the provisions of the Oudh Land Revenue Act, 1876, and whose property was placed under the charge of the Court of Wards, was not incompetent to execute a simple money bond without the sanction of the Court. (Lord Darry). DHANIPAL DAS v. RAJA MANESHAR BAKSH SINGH.

(1906) 33 I. A. 118 (123-4)=28 A. 570 (580-1)= 10 C. W. N. 849=4 C. L. J. 1-3 A. L. J. 495= 8 Bom. L.R. 491=1 M.L.T. 205=9 O.C. 188= 9 Sar. 60-16 M.L.J. 292. Ss. 173, 174-Object of.

The object of Ss. 173 and 174 of the Outh Land Revenue Act of 1876 was the protection of the property against either transactions entered into by the person under tutelage by way of direct transactions of sale or of mortgage, and also the protection of the property against the consequences of any execution in respect of contracts entered into by a person under such tutelage. S. 174 deals with the latter situation (71). (Lord Shaw). DEBI BAKHSH SINGH v. SHADI LAL.

(1916) 43 LA. 69-38 A. 271 (274)= 20 M.L.T. 53 = 20 C.W.N. 770 = 14 A.L.J. 477 = (1916) 1 M. W. N. 425 = 3 L.W. 525 = 24 C.L.J. 15 = 19 O.C. 55 = 18 Bom. L. B. 412 - 33 I.C. 681 = 31 M. L. J. 72.

S. 174 Disqualified proprietor - Debt of incurred while estate under management-Decree for-Execution of, against estate after release from management.

A disqualified proprietor in Oudh, whose estate had been taken under the superintendence of the Court of Wards under the Oudh Land Revenue Act, borrowed certain sums of money while the estate was under management. After the estate was released from superintendence, the creditors obtained a personal decree against the proprietor for the recovery of the said sums and sought to execute the same against the estate after its release from superintendence.

Held that the decree could not be executed against the

The object of the Act would be frustrated if the decree were so allowed to be executed. Further S. 174 of the Oudh Land Revenue Act expressly provides against such a course. The phrase in that section, "while his property is under such superintendence," is a phrase annexed to and elucidative of the verbal expression "contract entered into by any such person." S. 174 is meant to protect properly against the execution of a decree made in respect of "any contract entered into" during a certain period of time, namely, while the property is under such superintendence (71-2). (Lord Shaw). DEBI BAKHSH SINGH & SHADI LAL.

AL. (1916) 43 LA. 69 = 38 A. 271 (275 6) = 20 M.L.T. 53 = 20 C.W.N. 770 = 14 A. L.J. 477 = (1916) 1 M.W.N. 425 = 3 L.W. 525 = 24 C. L. J. 15 = 19 O. C. 55=18 Bom. L. B. 412=33 I.C. 681=

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Land Revenue Act XVII of 1876-(Contd.)

-Ss. 175, 176-Disqualified proprietor-Debt of-Suit for-Party-defendant in-Court of Wards-Guardian appointed for proprietor.

11, who owed money to the appellant under certain bonds, became a lunatic, and was so declared by an order of Court, and his estate became subject to the administration of the Court of Wards, and was placed under the charge of the Deputy Commissioner of Bara Banki. Subsequently the appellant sued the Deputy Commissioner for the recovery of the amount due to him. It appeared that the wife of H had been appointed his guardian, and that she was guardian at the time the decree of the first Court was made. The appellate Court dismissed the suit, on the ground that the guardian of H, and not the Court of Wards, ought to have been sued.

Held that the Court below was wrong in dismissing the suit on that ground.

Even if the wife was appointed guardian, and was guardian at the time the decree of the first Court was made, still the fact remains that the appellant had made party to the suit the Court of Wards, the authority which had the property of the lunatic under its control, and which would have to answer a decree if a decree were made, (Lord Hobbouse). ASHARFI LALP. DEPUTY COM-MISSIONER OF BARA BANKI.

(1895) 22 I. A. 90 = 22 C. 729 = 6 Sar. 590 = 5 M. L. J. 77.

# Laws Act XVIII of 1876.

Preemption rights conferred by-Transfer of Property Act-Statutory rights attaching to ogreement for-Sale under-Conflict between-Effect.

Another question turned upon the possible competition between the rights acquired by a contract for sale and those attaching under the Oudh Act to a completed conveyance. It was found that the agreement for sale of Raja M's plots was prior in date to the agreement for sale of block No. 19 to the appellant, but that the registered sale deed of the appellant preceded by some ten days the completion of Kaja M's purchase.

Quarre whether under those circumstances the appellant had, as held by the Courts below, no right of pre-emption as against Raja M.

It may be that in such a case there is a direct conflict between the statutory rights attached under Chapter III of the Transfer of Property Act to an agreement for sale, and the right of pre-emption conferred by the Oudh Laws Act. (Sir George Lenoudes). RAJA PATESHWARI PAR-TAB NARAIN SINGH P. SITARAM.

(1929) 55 I.A. 356-4 Luck. 421-119 I.C. 627-30 L.W. 885 = (1929) M.W.N. 926 = 50 C.L.J. 555 = 6 O.W.N. 763 - A. I. R. 1929 P.C. 259 -57 M. L. J. 637.

-Chapter II of - Pre-emption right under-Waiver by conduct of-Evidence of-Effect of.

A large tract of waste land, which had originally been granted by the Secretary of State to one C, and which had under subsequent settlement proceedings been constituted a separate "village" (the word "village" denoting little, if anything, more than a revenue unit), was vested, on C's death, under the provisions of his will in ten persons living in England, and was managed on their behalf in India by one S. The owners being decisions of disposing of the property, it was divided up into a number of blocks, which were offered for sale locally by S. Appellant purchased one of those blocks; and he claimed a right of pre-emption in respect of the salss of other blocks to other persons, basing his claim on the provisions of Chapter II of the Oudh 31 M. L. J. 72. | Laws Act of 1876.

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It appeared that the appellant, knowing that all the blocks were in the market, told S that he wished to purchase only that block which was adjacent to his own estate, and which he eventually purchased, and that he did not wish in purchase any other block. The oral agreement for sale with one of the resuondents was no doubt entered into some time prior to the agreement with the appellant, but when the appellant refused to purchase any of the other blocks he was aware of the agreement with that respondent and acquiesced in it.

Held that even if the prior completed purchase by the appellant would, under other circumstances, have given him the right of pre-emption in respect of the blocks purchased by the respondents, he must be taken by his conduct to have waived that right, and that it would be inequitable to allow him to re-assert it. (Sir George Lownder.)

RAJA PATESHWARI PARTAR NARAIN SINGH T. SITA-

RAM.

(1929) 56 I.A. 356=4 Luck. 421=119 I. C. 627= 30 L.W. 885=(1929) M. W. N. 926=50 C.L.J. 555= 6 O.W.N. 763=A. I. R. 1929 P.C. 259= 57 M. L. J. 637.

-S. 3-Gift-Meaning of-Trust-Gift through medium of, if included.

The Court of the Judicial Commissioner has held that the term "gifts" as used in S. 3 of the Oudh Laws Act (XVIII of 1876) does not include gifts in trust. Their Lordships cannot adopt such a narrow construction of the term "gifts" as would exclude any gift where the donor's bounty passes to his intended beneficiary through the medium of a trust, so that while a gift by A to C direct would be governed by the Mahomedan Law, a gift by A to B in trust for C would be governed by some other law. So to hold would defeat the plain purpose and object of the section of the statute. (Lord Atkinson) SADIK HUSAIN KHAN v. HASHIM ALI KHAN.

(1916) 43 I. A. 212 (221)=38 A. 627 (645)= (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 = 21 C. W. N. 133 = 25 C. L. J. 363 = 14 A. L. J. 1248 = 18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

——S. 5—Dower exorbitant fixed by contract—Reduction of, and award of reasonable amount—Discretion as to—Interference in appeal with—Annuity fixed by contract—Disallowance of. See MAHOMEDAN LAW—DOWER.

(1893) 20 I. A. 144 (148-9) - 21 C. 135.

S. 7—Village community within meaning of —Interest in land acquired by devise—Persons having, if constitute a village community merely by reason thereof— Village community not existing otherwise.

In 1872, the Secretary of State made a grant of a large tract of waste land in the Gonda district to one. C. The land was described in the deed of grant as situated in the village of Agya, but under subsequent settlement proceedings it was constituted a separate "village "known as Cookenagar Grant, the word "village "in that connection, however, denoting little (if anything) more than a revenue unit. The village was, on C's death, vested under the provisions of his will in ten persons living in England, and was managed on their behalf in India by one S.

Quarte whether C's devisces merely by reason of an interest in the land so acquired should be assumed to constitute a village community which was not shown to exist apart

from themselves.

The expression "village community" is not defined in the Oudh Laws Act of 1876, and no evidence was given in any of the suits out of which this appeal has arisen as to the existence of a "village community" in Cookenagar

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Laws Act XVIII of 1876-(Contd.)

Grant. It may be that, as appears ta have been held in other cases by the Oudh Courts, only persons having an interest in the village lands should be deemed to be members of the community. (Sir George Lounder.) RAJA PATESHWARI PARTAB NARAIN SINGH v. SITARAM.

(1929) 56 I. A. 356 = 4 Luck. 421 = 119 I. C. 627 = 30 L. W. 885 = (1929) M. W. N. 926 = 50 C.L.J. 555 = 6 O. W. N. 763 = A. I. B. 1929 P. C. 259 = 57 M. L. J. 637.

— S. 9—Co-sharer in Mehal—Proprietor—Right of pre-emption—Oudh Land Revenue Act (XVII of 1876) St. 108, 112, 121—Effect—Share in mehal consisting of uparate chak—Non-residence in village—Effect.

Where the question was whether the plaintiff was entitled to pre-empt the village of Pahladpur, under S. 9 of the Oudh Luws Act, which admittedly applied to the sale of that village, and it appeared that the plaintiff was owner of a chak of thirty-three acres in Pahladpur, and that by the settlement under which he held, he paid Rs. 40 per annum of revenue, the same being payable through the lambardars of the village; but that he did not reside in the village, keld that he was under the combined operation of Ss. 108 and 112 of the Oudh Land Revenue Act, 1876, liable for the revenue assessed on the whole mehal and was therefore a co-sharer of the whole mehal within the meaning of \$.96 the Oudh Laws Act, 1876, with a right of pre-emption thereunder. Held, further that the fact that the share of the plaintiff in the mehal consisted of a separate chak did not make him the less a co-sharer in the sense of the Ad. and that the circumstance of his being non-resident was immaterial. (Lord Robertson.) MUNNU LAL v. MAULVI (1904) 31 I. A. 212= SAIVID MUHAMMAD ISMAIL.

26 A. 574 = 9 C. W. N. 129 = 2 A. L. J. 769 = 6 Bom. L. R. 761 = 8 Sar. 670.

- S. 9 - Mahal - Meaning of - Co-sharers of mahal-Who arc - Co-sharers of Sub-division of tenure - Preenttion - Right of.

By a compromise one-half of a taluka was assigned to Ganga as superior proprietor and the other half to B & U in equal shares in under-proprietary right, they paying the Government revenue plus malikana at the rate of 10 p. c. to the talukdar, and being jointly liable to him in respect of the same as rent. Gajadhar and Ganesh became ultimately entitled to the half share allotted to B & U; add at a patition made between Gajadhar and Ganesh the suit property was assigned to Gajadhar. A decree was made in accordance with the partition, and mutation of names was effected accordingly, but no separate engagement was made for payment of the Government revenue in respect of the three entire villages or the two pattis assigned to Gajadhar. Gajadhar sold the suit property to the respondent, who had succeeded his father Ganga as talukdar.

In a suit for pre-emption filed by Ganesh in respect of the properties sold to the respondent, held, that the plainfil was not entitled to pre-empt either under the first, or, under the second, clause of S. 9 of the Oudh Laws Act, 1876.

Although Gajadhar and Ganesh may have been jointly liable to the talukdar for the Government revenue plus malikana, as the rent of the villages and pattis assigned to B & U under the compromise, Gajadhar and Ganesh wet not at the date of the sale to the respondent co-shares in any sub-division of the tenure in which the property is question was comprised or in the whole mahal.

The word "mahal" means any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue and for which a separate record of rights has been prepared. (Lord Managites.)

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THAKURAIN SHEORAJ KUNWAR v. THAKUR HARIHAR BAKSH. (1910) 37 I.A. 124 = 32 A. 351 = 14 C. W. N. 817 = 12 C. L. J. 40 = 12 Bom. L. R. 508 = 8 M.L.T. 89 = 13 O.C. 165 = 7 I. C. 196 = 7 A.L.J. 709 =

S. 9 (1) & (2)—Pre-emption right—Co-sharers of sub-division of tenure—Co-sharers of whole mahal—Meaning of.

The suit related to a claim to pre-emption under the Oudh Laws Act, 1876, in respect of three entire villages and two patties or portions of two other villages forming part of a taluqa called S.

In 1864 on the occasion of the regular settlement a compromise was made between Ganga, who had obtained a sanad of the taluqa and B and P, by which one-half of the taluqa was assigned to Ganga as superior proprietor and the other half to B and P in equal shares in under-proprietary right; they paying the Government revenue plus malikana at the rate of 10 p.c. to the taluqdar, and being jointly liable to him in respect of the same as rent. On the death of P, on whom both the shares devolved, his (P's) property devolved upon Gajadhar and Ganesh. In 1893, a partition was made between Gajadhar and Ganesh under which the suit property was assigned to Gajadhar. A decree was made in accordance with the partition, and mutation of names was effected accordingly, but no separate engagement was made for payment of the Government revenue in respect of the three entire villages or the two pattis assigned to Gajadhar.

In 1902, Gajadhar sold the property in question to Harihar, who had succeeded his father Ganga as taloqdar of S. Thereupon Ganesh filed the suit against Harrihar and Gajadar.

The Courts below held that the suit ought to be dismissed as regards the three entire villages, and that as regards the two pattis Ganesh and Harrihar were equally entitled to the right of pre-emption, as being the only other members of the village communities to which the patties respectively appertained. Lots were ordered to be drawn as regards the two pattis, and as the result of their being drawn, the right to buy two pattis was found to be with Harrihar. The suit was therefore dismissed in its entirety.

Held, that the decision of the Court below was right.

The villages assigned to P did not form a separate mahal in the ordinary sense. The kabuliyat of the taluqa in which they are included shews that each village in the taluqua was separately assessed to revenue, and that the taluqdar entered into one engagement for the payment of the revenue on all the villages. The whole taluqua is, therefore, what is called in the Act a talqudari mahal, consisting of a large number of villages each of which is separately assessed to revenue and may be regarded as an inferior mahal. The plaintiff is certainly not a co-sharer in the taluqdari mahal, for the taluqudar has no co-sharer. Nor is the plaintiff a co-sharer in any of the inferior mahals of which the taluqua is made up.

Although Gajadhar and Ganesh may bave been jointly liable to the taluqdar for the Government revenue plus malikana, as the rent of the villages and patties assigned to D & P under the compromise of 1864, Gajadhar and Ganesh were not at the date of the sale to Hariar co-sharers in any sub-division of the tenure in which the property in question was comprised or in the whole mahal. (Lord Macnaghten.) SHEORAJ KUNWAR v. HARIHAR BAKSH SINGH. (1910) 37 I. A. 124=32 A. 351=

8 M. L. T. 89 = 12 C. L J. 40 = 14 C. W. N. 817 = 12 Bom. L R. 508 = 7 A. L. J. 709 = 13 O. W. N. 165 = 13 O.C. 165 = 7 I. C. 196 = 20 M. L. J. 609.

-8.9 (2)-Makal-Meaning of-Inferior mahal-Pre-emption-Right of. OUDH ACTS-(Contd.)

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The word 'Mahal' in the Oudh Laws Act (XVIII of 1876), means any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue, and for which a separate record of rights has been prepared. Each Mauza or village is, as a general rule, a separate Mahal hat a Mahal may consist of two or more Mouzas or only a portion of one Mauza. Where each village in a Taluk is separately assessed to revenue and the Talukdar enters into one engagement for the payment of the revenue on all the villages, the whole Taluk is a Talukdari Mahal consisting of a number of villages each of which is separately assessed to revenue and may be regarded as an inferior Mahal. (Lord Macmaghten.) SHEORAJ KUNWAR v. HARIHAR BAKHSH SINGH.

(1910) 37 I. A. 124 (132) = 32 A. 351 (362-3) = 8 M. L. T. 89 = 12 C. L. J. 40 = 14 C. W. N. 817 = 12 Bom. L. R. 508 = 7 A. L. J. 709 = 13 O. C. 165 = 7 I. C. 196 = 20 M. L. J. 609.

Ss. 9 to 13—Preemption—Claim to—Maintainability—Denial of right of cosharer tendor and setting up exclusive title—What amounts to—Effect.

The respondent sucd to recover from the appellant her moiety of the estate of M, the whole of which had been taken possession of by the appellant, but in which he was only entitled to a moiety. The respondent had prior to suit sold half of her moiety to certain persons, and they were also added as plaintiffs in the suit. The appellant pleaded that the respondent had no right or interest whatever in the estate of M, because she had, by a relinquishment deed executed by her before the sale to the co-plaintiffs, withdrawn all her claim to any right and interest in the estate of M. and she (respondent) had therefore no longer any power of alienation. The appellant further pleated that he had, in any event, a right of pre-emption in respect of the property, and that no notice as required by law was issued. He claimed that upon payment by him of the price mentioned in the deed, the sait should be dismissed. The deed of relinquishment set up by the appellant was found to be not genuine.

Held that the appellant's claim to pre-empt was unsustainable (32).

The provisions of Ss. 9, 10, 11 & 13 of the Oudh Laws Act, 1876, as to pre-emption were inapplicable where the person who would be entitled to pre-emption denied the title of the person who proposed to sell, and alleged that they were not co-sharers, and that he was entitled to the whole of the property. The appellant, by setting up the relinquishment deed, had done that. The position taken up by him was altogether inconsistent with claiming a right of pre-emption (32-3). (Sir Richard Couch.) ABDUL WAHID KHAN P. SHALUKA BIBL

(1893) 21 I. A. 26=21 C. 496 (501.2)= 6 Sar. 399= R. & J's. No. 134.

S 10-Notice under-Omission to give-Right to complain of Complainant refusing to purchase the plot in question and acquiescing in its sale to another-Effect.

The owners of a large tract of waste land, which had under settlement proceedings been constituted a 'village," being desirous of disposing of the same, had it divided up into a number of blocks, and offered the blocks for sale. Appellant purchased one of those blocks and he claimed a right of pre-emption io respect of the sales of other blocks to other persons, basing his claim on the provisions of Ch. II of the Oudh Laws Act of 1876.

It appeared that the appellant, knowing that all the blocks were in the market, told the owners that he intended to purchase only that block which was adjacent to his own estate, and which he eventually purchased, and that he did

### Laws Act XVIII of 1876-(Contd.)

not wish to purchase any other block. The oral agreement for sale with one of the respondents was no doubt entered into some time prior to the agreement with the appellant, but when the appellant refused to purchase any of the other blocks he was aware of the agreement with that respondent and acquiesced in it. No formal notice of the proposal to sell any of the plots was given to the appellant.

Held that the appellant, who refused to purchase any of the other plots and who acquiesced in the sale to the respondent could not complain of the want of notice under S. 10 of the Oudh Laws Act. (Sir George Lowndes.) RAJA PATESHWARI PARTAB NARAIN SINGH P. SITARAM.

(1929) 56 I. A. 356 = 4 Luck. 421 = 119 I. C. 627 = 30 L. W. 885 = (1929) M. W. N. 926 = 50 C. L.J. 555 = 6 O. W. N. 763 = A. I. R. 1929 P. C. 259 = 57 M. L. J. 637.

### Rent Act XIX of 1868.

-Tenure recognised by Under proprietor and tenant
-Distinction.

The Oudh Rent Act XIX of 1868 recognises three classes of persons, and three only, as having an interest in and entitled to hold land for the purposes of the Act in the province of Oudh, viz., "proprietor", "under-proprietor" and "tenant." That the Act does not recgnise any other status except the three it defines is clear from S. 102.

The Act draws a sharp distinction between an "underproprietor" and a "tenant." (Mr. Ameer Ali.) LAL SRIPAT SINGH v. LAL BASANT SINGH.

(1918) 8 L. W. 328 = 23 C. W. N. 985 = 21 O. C. 180 = (1918) M. W. N. 638 = 5 O. L. J. 497 = 16 A. L.J. 817 = 5 P. L. W. 255 = 28 C. L. J. 468 = 24 M. L. T. 434 = 20 Bom. L. B. 1101 = 47 I. C. 424 = 35 M. L. J. 595 (601.2).

-Under proprietor - Status of -Incidents of-Variation with assent of the tenure-holder-Legality of-Dicree declaring a person" under-proprietor" without right of transfer-Validity-Effect.

The law attaches certain rights to the status of an "under-proprietor"; so long as he retains that status he remains clothed with those rights, and he cannot be divested of those rights unless and until he loses that status.

Where the final order of the Settlement Officer ran as follows:—"Decree—an under-proprietary right in Mauza D in favour of plaintiff without right of transfer, subject to an annual payment of 46-4 rupees", held that the plaintiff acquired the status of an "under-proprietor" with right of transfer, and that the words "without right of transfer " in the decree did not affect the rights of the plaintiff as under-proprietor. (Mr. Amear Ali.) LAL SRIPAT SINGH : LAL BASANT SINGH. (1918) 8 L W. 328 = 23 C. W. N. 985 = 21 O. C. 180 = (1918) M.W.N. 638 = 5 O. L. J. 497 = 16 A. L. J. 837 = 5 D. L. W. 658

5 O. L. J. 497 = 16 A. L. J. 817 = 5 P. L. W. 255 = 28 C. L. J. 468 = 24 M.L. T. 434 = 20 Bom. L. R. 1101 = 47 I. C. 424 = 35 M. L. J. 595 (603).

-Ss. 83 (4), 41-Lessee in the position of underproprietor not entitled to sub-settlement-Liability of.

In 1869, a claim was made before a settlement officer by the respondents, who were villagers occupying mouzah P in co-parcenary, for sub-settlement of that village as against the appellant, the talukdar. That claim was compromised, and the decree passed on foot thereof declared the respondents to be entitled to a heritable, but not transferable, lease of the village, at a rent leaving 12 per cent. profit to the lessees. The decree further provided that the lease was, for default in payment of rent, liable to be cancelled "by the decree of any competent court, according to any law which may be in force in Oudh, with respect to persons holding an undergroup of the court of the court, according to any law which may be in force in Oudh, with respect to persons holding an undergroup of the court of the co

### OUDH ACTS-(Contd.)

### Rent Act XIX of 1868-(Contd.)

ary right in land." In March, 1879, the respondents being then in arrear, they and the appellant agreed that the lesses might be dispossessed for non-payment. In 1882 and 1883, the appellant obtained decrees for arrears of rent against the respondents. Those decrees remaining unsatisfied, the appellant filed a suit for possession of mouzah P under S. 83, cl. (4) of the Oudh Rent Act for non-payment of rent and for cancellation of the lease.

Held that the suit was unsustainable.

It is clear that under the decree of 1869 the parties had not a right to cancel the lease under the terms of the Reat Act. With regard to the agreement of 1879, the plaintiff could not seek to enforce that agreement by suing in the Rent Court. His only remedy would have been to have seed in the civil court upon that agreement. (Sir Barnas Proceeck.) RAJAH MADHO SINGH v. AJUDHIA SINGH.

(1888) 15 I. A. 77=15 C. 515=5 Sar. 165

——Ss 83 (15), 106—Applicability—Hindu joint family —Member of, not entered as a co-sharer in register under Oudh Act XVII of 1876—Suit for partition and profit of his share by.

In a suit brought against /, the person with whom a summary settlement of an Oudh Estate had been made and to whom a sanad had been granted, by the junior members of the family of /, the Judicial Committee made a decree in 1879 declaring that the suit 113 villages comprising the estate were held by / in trust for the joint family of himself and the plaintiffs, and as a joint family estate governed by the rules of the Mithakshara law, and directing / to cause the said villages and the proceeds thereof to be managed and dealt with and applied accordingly.

H, one of the plaintiffs in the prior suit, afterwards obtained entry of his name as a co-sharer in the said 113 villages in the register kept under S, 56 of the Oudh Land Revenue Act XVII of 1876.

In 1880 H instituted the suit out of which the appeal arose, for a partition of the said 113 villages, and of other 144 villages since purchased by f with the profits of the joint estate, and of a number of mortgage and bond debt and moveable property, forming part of the joint estate bet not included in the prior suit. The plaint prayed for separate possession of H's share in all the abovementioned properties, and for an account of the profits of such share (with the exception of the share of the profits relating to the 113 villages from the date when H was entered as a co-share thereof), and for payment by I of the profits of such share.

thereof), and for payment by J of the profits of such shart.

Held that S. 83, cl. 15 and S. 106 of the Oudh Rent Act
of 1868 had no application to the case, that the suit was
cognizable by a civil court and was not barred by limitation

S. 83, cl. 15 and S. 106 of the Oudh Rent Act might apply to the profits of the 113 villages after H had been entered in the register as a co-sharer, but they are applicable only to co-sharers, and it seems only where the co-sharer and lambardar are entered in the register, and therefore they could not apply to the 144 villages, and certainly not to the moveable property of the family (58). (Sir Richard Contech.) PIRTHI PAL SINGH v. THAKUR JEWAHIR SINGH (1887) 14 I. A. 37 = 14 C. 493 (508) = 4 Sar. 75.

### Rent Act XXII of 1886.

### CHAPTER VII-A.

- Applicability-Thikadars-Persons holding land to
-S. 3 (10)-Tenant-Definition of-Effect.

payment of rent, liable to be cancelled "by the decree of any competent court, according to any law which may be in force in Oudh, with respect to persons holding an under-propriet."

It has been contended that Chapter VII-A of the Ord Rent Act of 1886 does not apply to persons holding land is thikadars. That contention is based on the definition of a thikadars. That contention is based on the definition of a thikadars. That contention is based on the definition of a thikadars. That contention is based on the definition of a thikadars.

Rent Act XXII of 1886-(Contd.)

CHAPTER VII-A-(Contd.)

part of the Act XXII of 1886 as it was passed in 1886. Chapter VII-A, which deals with the resumption and the enhancement of the rent of land held rent free or at a favourable rate of rent and contains S. 107 A to S. 107 K was added to Act XXII of 1886 in 1901 by an amending Act, U. P. Act IV of 1901, and consequently the specific enactments of Chapter VII-A are not limited in their application by S. 3, sub-S. 10, which must be regarded as a mere glossary defining the terms "tenant" and "thikadar" as those terms are employed in the Act XXII of 1886 as it stood in 1886 when it was passed (114-5) (Sir John Edge.) PAR-BATI KUNWAR v. DEPUTY COMMISSIONER OF KHERI. (1918) 45 I. A. 111=40 A. 541 (547)=16 A.L.J. 865=

20 Bom. L. R. 1095=23 C.W.N. 125=28 C.L.J. 449= 5 Pat L. W. 302 = 24 M. L. T. 292 = 8 L. W. 586= (1918) M. W. N. 880 = 47 I. C. 394 = 35 M. L. J. 525.

Object of. The object of enacting Ch. VII A of XXII of 1886 which the Government of India had in view obviously was the protection of the Government revenue assessed upon agricultural lands, and as far as possible to maintain proprietors of lands in a position to enable them to pay the Government revenue and the local rates assessed upon their lands and thus to avoid losing their lands by making default in payment of the revenue due to the estate (115.) (Sir John Edge.) PARBATI KUNWAR D. DEPUTY COMMIS-SIONER OF KHERI. (1918) 45 I. A. 111 = 40 A. 541 (547)=16 A. L. J. 865=20 Bom. L. R. 1095= 23 C. W. N. 125 = 28 C. L. J. 449 = 5 Pat. L. W. 302 = 24 M. L. T. 292 = 8 L. W. 586 = (1918) M. W. N. 880 = 47 L. C. 394=35 M. L. J. 525.

S. 12.

-Applicability-Agreement before Act. See UNDER THIS ACT, S. 12-RENT. (1904) 31 LA. 116= 26 A. 299 (309).

-Rent-Payment-Time for-Compromise and decree of 1864 not fixing-Provisions of section if can be import-

S. 12 of the Act provides that, unless otherwise agreed, the rent payable to the proprietor by the under-proprietor shall be held to become due one month before the date fixed for the payment of the revenue on account of the village in which the land is situated.

Where a compromise and decree of 1864 did not prescribe any time for payment of rent, the provisions of S. 12 of the Oudh Rent Act could not be imported into them. (Lord Datey.) THAKUR GANESH BAKHSH D. THAKUR HARI-HAR BAKHSH. (1904) 31 I. A. 116 = 26 A 299 (309) = 8 C. W. N. 521 = 6 Bom. L. B. 505 = 7 O. C. 116 =

8 Sar 628=14 M. L. J. 190.

S. 56.

Declarations of defendant's status to be that of mere lessee and of his liability to be ejected by notice-Possession -Decree for-Suit for-Civil and Revenue Courts-Jurisdiction.

In a suit in which the relief sought by the plaint was (1) possession of the suit village; (2) mesne profits; (3) (alternatively) a declaration that the defendant had no right in the suit village beyond that of a lessee having no right, and that he was liable to be ejected by an ordinary notice of ejectment; (4) further relief. Held that, having regard to the provisions of the Oudh Rent Act of 1886, the civil court had no jurisdiction either to decree possession of the village or to make a declaration in the form prayed by the plaint. (Lord Divey.) RAJA RAMPAL SINGH v. BALABHADAR SINGH. (1902) 29 I A. 203 (210) = 25 A. 1 (15) =

OUDH ACTS-(Contd.)

Rent Act XXII of 1886-(Contd.)

S. 107-A.

-Thikadar-Reut favourable payable by-Enhancement of.

Where the defendant (appellant) was a thekadar or person to whom the collection of the rents of a mowza belonging to a taluqa had been leased in 1891 by the then taluqdar at a " favourable rate of rent," held that the rent was fiable to enhancement under Chapter VII A of Act XXII of 1886 in accordance with the provisions, and on the conditions, of that chapter suitable to the circumstances of the case. (Sir John Edge.) PARBATI KUNWAR P. DEPUTY COMMISSIONER OF KHERL (1918) 45 I. A. 111 =

40 A. 541 = 16 A. L. J. 865 = 20 Bom. L. R. 1095 = 23 C. W. N. 125 = 28 C. L. J. 449 = 5 Pat. L. W. 302 = 24 M. L. T. 292 = 8 L. W. 586 = (1918) M. W. N. 880 = 47 I. C. 394 = 35 M. L. J. 525.

S. 107-G. -Assessment under-Liability for-Will by Oudh talukdar bequeathing village to his wife for life without-What amounts to. See HINDU LAW-WILL-OUDH TALUKDAR-WIFE OF. (1922) 49 I. A. 262 (274) = 44 A. 435 (447.)

S. 141.

-Rent arrears-Interest on-Sub-proprietors-Liabtlity of.

Sub-proprietors are not tenants within the meaning of S. 141 of the Oudh Rent Act of 1886 and are not liable under that section or under any other law for interest on arrears of rent due by them. (Lord Hobbouse.) MUHAM-MAD MEHNDI ALI KHAN D. MUHAMMAD YASIN KHAN.

(1898) 26 I. A. 41 (44)=26 C. 523 (528)= 3 C. W. N. 218=7 Sar. 468,

-Tenants-Sub-proprietors if. See Under this Act, S, 141-RENT ARREARS. (1898) 26 I. A. 41 (44)= 26 C. 523 (528.)

-Tenant-Under-proprietor if a-Rent-Arrears-Interest on-Under-proprietor's liability for.

An under-proprietor is not a tenant within the meaning of S. 141 of the Oudh Rent Act of 1886 and will not be liable under that section to pay interest on arrears of rent. But the Oudh Rent Act does not exclude any liability for payment of interest which the under-proprietor may be under apart from the Act. (Lerd Dairy.) THAKUR GANESH BAKHSH 2. THAKUR HARIHAR BAKHSH.

(1904) 31 I. A. 116=26 A. 299 (308-9)= 8 C. W. N. 521 = 6 Bom. L. R. 505 = 7 O. C. 116 = 8 Sar. 628=14 M. L. J. 190.

# Bent Act Amendment Act III of 1901.

CIVIL AND REVENUE COURTS-JURISDICTION.

-Proprietor-Tenant-Ejectment-Declaration that a person has no proprietary or under-proprietary right in a village but is merely a tenant-Cause of action-Decision of Revenue Court that he has under-proprietary right.

The suit was brought by the appellant for a decree for the proprietary possession of a mawza in Oudh and for a declaration that the defendant had no proprietary right and no under-proprietary right in that mawza. The defendant claimed that he had an under-proprietary right in the village. The title of the plaintiff as proprietor within the meaning of that term in Act XXII of 1886 and Act III of 1901 was not disputed.

The Sub-Judge, who tried the suit, found on the evidence that the defendant had no proprietary or under-proprietary right in the village and was merely a tenant. On that finding he dismissed the suit, so far as the claim to eject the tenant was concerned, but gave the plaintiff a decree declaring that the defendant had no proprietary or under-proprie-6 C. W. N. 849 -4 Bom. L. B. 832-8 Sar. 340. | tary right in the village,

Rent Act Amendment Act III of 1901-(Contd.) CIVIL AND REVENUE COURTS-JURISDICTION-(Contd.)

On appeal, the Judicial Commissioner agreed with the Sub-Judge that the defendant had no proprietary or underproprietary right in the village, and held that the defendant was only a tenant, but declined to affirm the declaration which the Sub-Judge had made, and dismissed the suit.

Held, reversing the Judicial Commissioner, that the plaintiff was entitled to the declaration which had been made by

the Sub-Judge.

On the finding of the Sub-Judge that the defendant had no proprietary or under-proprietary right in the village and was merely a tenant, the civil court had no jurisdiction to give the plaintiff a decree for possession, an ejectment of a tenant to whom Act III of 1901 applies being in Oudh exclusively within the jurisdiction of the Court of Revenue, But the Civil Court was competent to make the declaration that the defendant had no proprietary or under-proprietary right in the village, and it was necessary that it should be made by the Civil Court, as the Court of Revenue, holding that the defendant had an under-proprietary right in the village, had declined jurisdiction in proceedings for the ejectment of the defendant which the plaintiff had brought in the Court of Revenue. The question as to whether the defendant had or had not a proprietary or an under-proprietary right was one for the Civil Court and when raised and persisted in was one which the Court of Revenue could not finally decide. (Sir John Edge.) MAHOMED ABOUL HUSSAN KHAN v. PRAG. (1916) 15 A L. J 113 n

21 M. L. T. 102=19 Bom. L. B. 202= (1917) M. W. N. 232 = 21 C. W. N. 582 = 20 O. C. 8 = 5 O. L. J. 34 = 26 C. L. J. 165 = 38 I. C. 814 = 32 M. L. J. 388 (390).

-Tenant-Status and terms of holding of-Proprietary or under-proprietary rights of his in lands held by him-Decision as to-Declaration that he is not proprietor or under proprietor-Cause of action-Decision of Board of Revenue.

The suit was by the plaintiff for a declaration that the defendants had no proprietary right of the nature of zemindari, superior or inferior, in a mawza, and for a declaration that a decision of the Board of Revenue of the 26th March. 1897, did not affect his rights. That decision of the Board of Revenue was in effect that the defendants were in 1852 owners of Zemindari rights in the village; that there was nothing to show that they had ever lost their zemindary rights; that there was reasonable ground for presuming that they were not ordinary lessees; and that it was for the predecessor in title of plaintiff to prove in the civil court that they were ordinary lessees. In their written statement the defendants alleged that they were perpetual Thekadars of the village; they did not set up any right to possession by virtue of any proprietary or under-proprietary rights; and they pleaded that the suit could not be maintained in a civil court. The defendants did not by their written pleadings claim to hold any proprietary or under-proprietary right in the village, or any position in the village other than that of tenants. But they had in 1896 filed objections in the Court of Revenue, in reply to a notice of ejectment issued by the predecessor in title of the plaintiff, in which they claimed to be in possession of the suit mauza as Zemindars, and in the suit out of which the appeal arose they tried to prove certain alleged acts of theirs which, if established, would tend to suggest that they held a proprietary right in the village.

The Sub-Judge gave the plaintiff a decree for the two declarations for which he had asked in his plaint. On appeal the Judicial Commissioner reversed the Sub-Judge OUDH ACTS - (Contd.)

Rent Act Amendment Act III of 1901-(Contd.)

CIVIL AND REVENUE COURTS-JURISDICTION-(Contd.)

had not in the suit claimed any proprietary or under-proprietary right in their written statement.

Held, reversing the Judicial Commissioner, that the plaintiff was entitled to the declarations which the Sub-

Judge had given them.

In Oudh, in cases to which Act III of 1901 applies, the Court of Revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands, and what are the special or other terms upon which such tenant holds, and the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or an under-proprietary right in the lands. The decision of the Board of Revenue of the 20th March, 1897, which was subsequently acted upon in the preparation of the khewat of the mauza in question, made it necessary for the plaintiff to bring the suit to establish that the defendants had no proprietary or under-proprietary right in the village, and the fact that the defendants did not in their written statement in the suit set up that they had any proprietary or under-proprietary right, did not disentitle the plaintiff to the declarations claimed by him (391-2). (Sir John Edge.) ABDUL HUSSAIN KHAN F. PRAG. (1916) 15 A. L. J. 113 = 21 M. L. T. 102= 19 Bom. L. R. 202=(1917) M. W. N. 232= 21 C. W. N. 582 = 20 O. C. 8 = 5 O. L. J. 34 26 C. L. J. 165 = 38 I. C. 814 = 32 M. L. J. 388.

Revenue Courts Act XVI of 1865. -Retrospective operation of. The provisions of Act XVI of 1865 have a retrospective effect (404). (Sir James Colvile.) HYDER HOSSAIN F.

MAHOMED HOSSAIN. (1872) 14 M. I. A. 401=17 W. R. 185= 2 Suth. 539 = 3 Sar. 46 = B. & J's. No. 12

> Settled Estates Act, 1900. NATURE OF.

-The Act is facultative and permissive only. It does not become operative proprio vigore. (164). (Lord Blant) burgh.) KRISHNA KUMARI DEVI D. BHAIYA RAJENDRA (1929) 56 I. A. 156 = 4 Luck 122 = SINHA.

27 A. L. J. 686 = 116 I. C. 397 = 33 L.W. 301 A. I. R. 1929 P. C. 121 = 57 M. L. J. 496.

SETTLED ESTATE-OWNER OF.

-Interest of under the Act.

The interest of an owner of a settled estate is not strictly under the Act either an estate for life or an estate of inheritance. It is a statutory estate which in its incidents partakes of the nature of both (165). (Lord Blantiburgs) KRISHNA KUMARI DEVI D. BHAIYA RAJENDRA SINHA (1929) 56 I. A. 156=4 Luck. 122=27 A. L. J. 686= 116 I. C. 397 = 33 L. W. 301 = A. I. B. 1929 P. C. 191

57 M. L. J. 496 S. 16.

-Leasing power under-Object and purpose of-Rapect due to.

By S. 16 of the Act, the holder in possession of a settled estate has vested in him the power to grant leases of the estate or any part of it for a term not exceeding 7 years and with the consent of the Collector for a term not exceeding ing 14 years. The provisions of Sub-Ss. 2 and 3 of the same section, inserted clearly for the protection of the st cessor in interest of the holder in possession of a settled estate show plainly enough that this leasing power is by the Act attached as an incident to the estate of such a bolds for the public benefit and in the general interest, and is cet and dismissed the suit on the ground that the defendants to be respected as such (164.5). (Lord Blancharth)

Settled Estates Act, 1900-(Contd.)

S. 16-(Contd.)

KRISHNA KUMARI DEVI 2. BHAIYA RAJENDRA SINHA. (1929) 56 I. A. 156 = 4 Luck. 122 = 27 A. L. J. 686 = 116 I. C. 397 = 33 L. W. 301 = A.I.R. 1929 P. C. 121 = 57 M. L. J. 496.

S. 18.

Bequest of settled estates-Power of-Scope of, and limits to.

The power of bequest of settled estates conferred by S. 18 of the Act is very strictly limited. The owner of a settled estate thereby constituted a fresh stock of descent is not to be permitted by his will to invade that part of the scheme of the Act which has been enacted in the general interest Clearly enough he is by this section given power by his will to select as his successor to the settled estate any person, tracing through himself, who belongs to any of the classes specified in S. 22 of the Act I of 1869. He may make the last of these first if he be so minded. But may he do anything more, and, if so, to what extent and in what way? The answer to these questions is beset by doubts of varying intensity (166). (Lord Blanesburgh.) KRISHNA KUMAPI DEVI D. BHAIYA RAJENDRA SINHA.

(1929) 56 I. A. 156=4 Luck. 122=27 A. L. J. 686= 116 I. C. 397 = 33 L.W. 301 = A. I. R. 1929 P. C. 121 = 57 M. L. J. 496.

S. 18 (2) PROVISO.

-Estate placed under Act after will but before death of testator-Bequest by will of bare life interest in to daughter in law, subject to such bare life interest to widow, and with gift over to heir-at-law of testator who might be living at death of daughter in law-Validity of bequest to daughter-in-law.

S, a talukdar, whose name was entered in Lists 1 and 2 prepared under S. 8 of the Oudh Estates Act of 1869, owned 3 mahals, B, L, and U, and certain furniture and moveables. In 1906, S applied for permission to declare that Mahal B might thereafter become a settled estate subject to the provisions of the Oudh Settled Estates Act of 1900. The permission asked for was granted by notification dated 24-4-1908, and, on 21-5-1908, S, by a statutory declaration made irrevocable and duly registered and published on the 5th September following, declared that Mahal B should thereafter be held subject to the provisions of the Act of 1900 aforesaid. While his application to Government was still in suspense, S executed and registered a will on 17-6-1907 devising and bequeathing all his property and estate whatever and wheresoever situate, to his wirlow for her life, and subject thereto to his daughter-in-law for her life. The will provided that neither the widow nor the daughter-in-law should have power under any circumstances by sale, alienation, mortgage, or otherwise, to dispose of or incumber the whole or any portion of the property bequeathed for any period extending beyond the term of her natural life. The will also provided that, upon the death of the daughter-in-law, the property was to descend "to the person or persons then living who under the provisions of the said Act I of 1869" (Oudh Estates Act of 1869) "would be entitled to succeed thereto on the failure or determination of the limitations hereinbefore contained." S died in July,

Held that the devise of Mahal B made by the will in favour of the daughter-in-law was invalid in virtue of the provisions of the Oudh Settled Estates Act of 1900 to which, at the testator's death, the Mahal was subject.

The devise of the Mahal to the daughter-in-law made by the testator was not a devise of an estate to be held by her OUDH ACTS-(Contd.)

Settled Estates Act. 1900-(Contd.)

S. 18 (2) PROVISO-(Contd.)

because the devise to her did not carry with it the leasing power referred to in \$.10 of the Act, and, by its terms, prevented her from becoming a fresh stock of descent. The devise to her was a devise of a bare life interest shorn of the incidents attached, for the public benefit, to the statutory estate created by the Act. As such, it is a devise prohibited by this proviso. The gift to the daughter in law cannot be treated as a gift to her for her life of the rents and profits of the estate charged upon that estate in the hands of the first respondent, upon whom, as the testator's heir-at-law, the estate had devolved as an estate undisposed of during the life of the appellant (the daughter-in-law), because that would subject the estate or the profits thereof to a demand, charge or incumbrance in her favour and, as such, it would be a gift made unlawful or ineffective by the second part of the said proviso (167-8).

Quarr whether the devise to the daughter-in-law was also invalid as being "to a stranger so as to exclude from succession any person belonging to any of the classes specified in S. 22 of the Oudh Estates Act, 1869" within the

meaning of the said proviso (168-9).

Quarre whether the testator had, by the first devise of Mahad H to his widow for her life, which in the event took effect, exhausted his testamentary power of disposition, and the bequest in favour of the daughter-in-law, and the gift over, were bad for that reason (160-7).(Lord Blanesburgh.) KRISHNA KUMARI DEVI D. BHAIYA RAJENDRA SINHA.

(1929) 56 I. A. 156 = 4 Luck. 122 = 27 A. L. J. 686 = 116 I. C. 397 = 33 L. W. 301 = A. I. R. 1929 P. C. 121 = 57 M. L. J. 496.

"Exclude" - Meaning of - Bequest which delays enjoyment of estate by some one of testator's kindred if can be said to "exclude" such kindred from succession

Quarre, whether the word "exclude" in the proviso to Sub-S. (2) of S. 18 of the Act ought to have a generous or a narrow signification attributed to it, and whether a bequest which merely delays the enjoyment of the estate by some one of the testator's kindred, but does not and cannot "exclude" such kindred "from succession" altogether is within the mischief provided against by the proviso (1689). (Lord Blanesburgh.) KRISHNA KUMARI DEVI D. BHAIYA RAJENDRA SINHA. (1929) 56 I.A. 156 = 4 Luck. 122 = 27 A.L.J. 686 = 116 I.C. 397 - 33 L.W. 301 =

A.I.R. 1929 P.C. 121 = 57 M.L.J. 496.

-Stranger-Bequest to-1f invalid in any circumstances whatever.

Their Lordships feel that the words "to a stranger, etc." in the proviso to Sub-S. (2) of S. 18 of the Act are not strong enough to prevent a valid devise of the estate being made to a "stranger" in any circumstances whatever. If for instance, a testator was so unusually circumstanced that he left behind him no person belonging to any of the specified classes, their Lordships can see nothing which, under the proviso, would affect in such a case the validity of a devise to a stranger otherwise unimpeachable. To them it does not seen permissible as a mere matter of construction to treat the concluding words of the proviso as being no more than a definition of the word "stranger" (168.9). (Lord Blanesburgh.) KRISHNA KUMARI DEVI D. BHAIYA RAJENDRA SINHA. (1929) 56 I.A. 156 = 4 Luck. 122 = 27 A.L.J. 686 = 116 I.C. 397 = 33 L.W. 301 =

A.I.B. 1929 P.C. 121 = 57 M.L.J. 496.

Stranger-Daughter-in-law of holder in possession of settled estate if a.

A daughter-in-law of the holder in possession of a settled the testator was not a newise of an estate to be used by meaning of the provisions of (the) Act" within the estate is a "stranger" within the meaning of that word as meaning of the proviso to Sub-S. (2) of S. 18 of the Act. She

Settled Estates Act, 1900-(Contd.)

S. 18 (2) PROVISO-(Contd.)

is not, in relation to the holder, within any of the classes specified in S. 22 of the Outh Estates Act I of 1869. She is not, under any other right, entitled to inherit, ab intestato any property of the holder (168). (Lord Blanesburgh.) KRISHNA KUMARI DEVI 2. BHAIVA RAJENDRA SINHA.

(1929) 56 I.A. 156=4 Luck. 122=27 A.L.J. 686= 116 I.C. 397=33 L.W. 301=A.I.R. 1929 P.C. 121= 57 M.L.J. 496.

Stranger-Devise to-Exclusion of testator's kindred by-If and when amounts to-Validity of devise in case of.

Except in the possible case of the stranger being a female who "under the ordinary law to which persons of her religion and tribe are subject would "(not) "constitute a fresh stock of descent if she succeed to the estate on an intestacy" a devise to a stranger otherwise valid necessarily excludes the testator's kindred and can only be valid if there are none to be excluded (169). (Lord Blanchurgh.) KRISHNA KUMARI DEVI v. BHAIYA RAJENDRA SINHA.

(1929) 56 I.A. 156=4 Luck. 122=27 A.L.J. 686= 116 I.C. 397=33 L.W. 301=A I.R. 1929 P.C. 121= 57 M.L.J. 496.

## Sub-Settlement Act XXVI of 1866.

LEASE-FARMING LEASE FOR 30 YEARS-DECREE FOR.

Construction-Permanent heritable lease, rent of which alone fixed for 30 years-Decree if for.

Where, after the passing of the Oudh Sub-Settlement Act of 1866 the Financial Commissioner in a suit claiming subsettlement, held that the provisions of the said Act had not been complied with, and that, as the original proprietary title had not been proved the plaintiff was in no way entitled to sub-settlement, but as the defendant's agent was willing to compromise the suit he decreed a farming lease to the plaintiff, he (the plaintiff) paying the Government demand plus 25 per cent, to the defendant Talukdar for a period of 30 years. Held, that the lease decreed was only a lease for a term of 30 years from date of the decree, and not a permanent heritable lease, the rent of which alone was fixed for the period of 30 years. (Lord Atkinson.) MAHESHAR PARSHAD v. MUHAMMAD EWAZ ALI KHAN.

(1909) 36 I.A. 114 (122.3) = 31 A. 394 (408.9) = 6 M.L.T. 168 = 10 C.L.J. 133 = 13 C.W.N. 1093 = 11 Bom. L.R. 868 = 12 O.C. 293 = 3 I.C. 200 = 19 M.L.J. 442.

#### OBJECT OF.

Sub-settlements and other subordinate rights of property in Oudh-Rules regarding-Applicability.

The Oudh Settlement Act 26 of 1366 was passed to give the force of law to certain rules regarding sub-settlements and other subordinate rights of property in Oudh. They seem to apply to all persons possessed of subordinate rights of property in talooks in Oudh (235). (Sir James W. Colvile.) WIDOW OF SHUNKER SAHAL v. RAJAN KASHI PERSHAD. (1873) Sup. I.A. 220 = 3 Sat. 289 = 3 Suth. 4 = R. & J.'s No. 23.

- Purpose of Under-proprietary rights-Enjoyment under Act-Conditions.

The history of the Oudh Sub-Settlement Act 26 of 1866, together with its provisions, and the rules attached to it, show that the object and purpose with which it was passed were to revise and correct what had been hastily and imperfectly, or loosely done, and to secure that no person should enjoy under-proprietary rights who could not establish his claim in the manner prescribed by those rules. Revision would be a perfunctory and useless operation on any other

OUDH ACTS-(Contd.)

Sub-Settlement Act, XXVI 1866-(Contd.)

OBJECT OF-(Contd.)

terms (121-2). (Lord Atkinson.) Maheshar Parshad v. Muhammad Ewaz Ali Khan.

(1909) 36 I.A. 114 = 31 A. 394 (410) = 6 M.L.T. 168 = 10 C.L J. 133 = 13 C.W.N. 1093 = 11 Bom. L.B. 868 = 12 O.C. 293 = 3 I.C. 200 = 19 M.L.J. 442

RESUMPTION OF VILLAGES WITHIN HIS TALOOK—SUIT BY TALUKDAR FOR.

Perpetual tenure—Plea by lessee of—Proof of— Long enjoyment coupled with payment of rent—Presumption of perpetual tenure from—Conditions. See OUDH— OUDH ESTATE—VILLAGES COMPRISED IN—RESUMP-TION OF. (1884) 12 I.A. 52 (66)=11 C. 318 (337-8).

#### SUB-SETTLEMENT.

- Claim to-Onus on claimant.

The question was whether the appellant was entitled to a sub-settlement of Taluka B. The respondent, as the talook-dar of that property had those proprietary rights which were assured to talookdars of Oudh holding talookdar sunnuds by "The Oudh Estates Act, 1869," and the only question was whether the respondent, who alleged himself to be the Zamindar of Taluka B, was entitled to a sub-settlement under the terms of "The Oudh Sub-Settlement Act, 1866."

Held, that, in order to entitle the appellant to such a sub-settlement, it was necessary that he should prove that he, or some person under whom he claimed, had within the prescribed period held those lands as an under-proprietor under the talookdar or the predecessors of that ralookdar (82).

It was, indeed, contended that it was sufficient for him to show that he had been a proprietor of those lands by a title adverse to the talookdar, and that although he might have lost his right to engage for the Government revense under the peculiar laws that have prevailed in the province of Oudh since the reconquest of that province, it was to be presumed that, having once had the better title to the lands he had still a right to a sub-settlement. This broad proposition cannot be maintained (82-3). (Sir James W. Colvile.) SYUD MEER WAHID ALI v. RANEE SADHA BEBEE. (1875) 3 Suth. 82=R & J.'s No. 34 (Oudh).

### UNDER-PROPRIETARY RIGHTS.

Enjoyment of, under Act-Conditions. Secunder
this Act OBJECT OF-PURPOSE OF.

(1909) 36 I.A. 114 (121-2) = 31 A. 394 (410),

-Sub-settlement in respect of Right to "Holdist under contract" in Rule 2 of rules framed under Ad-Meaning.

The terms "holding under contract," in Rule 2 of the Rules framed under Act XXVI of 1466, embrace 237 holding under arrangements from which a contract may be inferred (227).

In this case the question was whether the respondents were entitled to a sub-settlement for certain villages in respect of under-proprietary rights held under the appellant. All the Courts below held that they were so entitled, finding that the holding of the respondents was a "holding under contract" within the meaning of Rule 2, and that the land in dispute was not granted "on account of service or by farour of the talookdar" within the meaning of that rule.

Their Lordships saw no reason to reverse the judgments below. (Sir Montague E. Smith.) MAHARAJAH OF

BULRAMPUR P. UMAN PAL SINGH. (1878) 5 I.A. 225 = 3 Sar. 870 = Bald. 180 = 3 Suth. 566 = B. & J.'s No. 88,

19 M. L. J. 442.

OUDH ACTS-(Contd.)

Sub-Settlement Act. XXVI of 1866—(Contd.)

RULE 7 (3) OF RULES REGARDING SUB-SETTLEMENTS AND OTHER SUBORDINATE RIGHTS OF PROPERTY IN OUDH.

Imposition of 10 per cent. under-Liability for, of subordinate Zemindar liable to make sub-settlement.

It is impossible to treat the interest of the appellant in the suit villages as other than that of a subordinate Zemindar. If she has lost the right of settling directly with Government for the revenue, she must, if she retains any interest in the villages, be treated as one entitled to, and liable to make a sub settlement for them. And if this be so, she seems to fall within the provisions of Cl. 3 of Rule 7 of the Rules regarding sub-settlements and other subordinate rights of property in Oudh to give the force of law to which the Outh Settlement Act 26 of 1866 was passed, and is liable to the imposition of 10 per cent, provided for by that clause (235). (Sir James W. Colvele.) WIDOW OF SHUNKER SAHAL v. RAJAH KASHI PERSHAD.

(1873) Sup. I. A. 220 = 3 Sar. 289 = 3 Suth. 4 = R. & J.'s No. 23.

# RULE 13 OF RULES ATTACHED TO.

-Under-proprietary rights-Decree for, before det-Review of, after Act - Jurisdiction

On 2-2 1864, the predecessor-in-title of the defendants instituted a suit in the Court of the Settlement Assistant Commissioner against the then talukdar, praying for an under-proprietary settlement in the village held by him within the ambit of the taluq. Judgment was pronounced in the suit by the Assistant Settlement Officer, on March 15, 1864, and a permanent lease of the lands in suit was decreed to the plaintiff against the talukdar, the words "permanent lease" meaning "under-proprietary rights." That judgment was affirmed by the Settlement Commissioner and the Chief Commissioner.

After the passing of the Oudh Sub-Settlement Act of 1866, the talukdar presented under that Act a petition to the then Financial Commissioner for a review of the late

Financial Commissioner's judgment.

On January 17, 1867, judgment was delivered, and the case was remanded to the Settlement Court for reinvestigation under the new rules framed under the Act on the ground that it did not appear from the judgments of the lower Courts that the possession of the predecessor-in-title of the defendants was "sufficiently continuous to entitle him to sub-settlement." Ultimately, on January 6, 1869, the same Financial Commissioner pronounced judgment, decreeing a farming lease to plaintiff (the predecessor-in-title of the defendants), he paying the Government demand plus 25 per cent, to the talukdar for a period of 30 years.

In a suit brought by the succeeding talukdar against the defendants at the expiration of the period of 30 years referred to above for declaration of title, held that the Financial Commissioner had jurisdiction to make the decree of January 6, 1869, and that it was a valid and binding decree. (Lord Atkinson,) MAHESHAR PARSHAD P.

MUHAMMAD EWAZ ALI KHAN.

(1909) 36 I. A. 114 (121-2)= 31 A. 394 (407-10) = 6 M. L. T. 168 = 10 C. L. J. 133 = 13 C. W. N. 1093 = 11 Bom. L. R. 868 = 12 O. C. 293 = 3 I. C. 200 - 19 M. L. J. 442

-Words "Claims which have been disposed of otherwise than in accordance with these rules" - Meaning of.

"Claims which have been therefore disposed of otherwise than in accordance with these rules " within the meaning of Rule 13 in the Schedule of Rules attached to the Oudh Sub-Settlement Act 26 of 1866 must refer to those claims which have not been supported by the proofs prescribed by OUDH ACTS-(Contd.)

Sub-Settlement Act, XXVI of 1866-(Contd.)

RULE 13 OF RULES ATTACHED TO-(Contd.)

Rules 2 and 3, amongst others, for the establishment of future claims. Rule 13 would be meaningless, unless it authorized an inquiry into those matters (122-3). (Lord Atkinson.) MAHESHAR PARSHAD & MUHAMMAD EWAZ ALI KHAN. (1909) 36 I. A. 114 = 31 A. 394 (409) =

6 M. L. T 168 = 10 C. L. J. 133 = 13 C. W. N. 1093 = 11 Bom. L. R. 868=12 O. C. 293=3 I. C. 200=

SS. 1 AND 2

-Applicability and effect-Birt Shankallap and Khooshut Shankallap-Claim to-Maintainability.

Plaintiff made a claim to a settlement in virtue of his under-proprietary right, which he described as that of a "Birt Zemindar" in two villages and half of a third, alleging that the said villages had been granted as "Birt for maintenance" to him and his predecessors in estate, and had been held by them and him for a long time down to 1258 Fasli (1850-1), when he stated that he was forcibly ejected by the appellant.

The Settlement Officer, and the Commissioner, found that the plaintiff was entitled to the right he claimed, which was sometimes described as a "Hirt Shankaltap" right, sometimes as a "Shankallap" right (some kinds of Shankallap being almost identical with that of Birt, some being different from it), and an under-settlement was decreed to him,

Held that, on the findings of fact of the Courts below, the plaintiff was not excluded, by the words of S. 2 of Act XXVI of 1866, from the right of coming before the Court,

and proving his case (22-3).

The effect of the finding of the Courts below is that the plaintiff did hold, not merely in the words of the section through privilege granted on account of services or by fasour of the talookdar," but by an under-proprietary right, which is distinguished from a holding through privilege or favour; that he was entitled to hold, not merely during the will of the talookdar, to which the latter part of the section appears to point, but in invitum; and their Lordships are of opinion that from the length of his holding which appears to be considerable, and the circumstances which have been found in the case, it may fairly be inferred that he held pucka or under-contract, or at all events under an arrangement from which a contract might be inferred (23). (Sir Robert Collier.) SIR MAHARAJAH DRIG BIJAI SINGH P. GOPAL DATT PANDAY.

(1879) 7 L. A. 17=6 C. 218 (224-6)=6 C. L. R. 146= 4 Sar. 117=3 Suth. 715=R. & J.'s No. 62 (Oudh). Talukdars' Relief Act XXIV of 1870.

-Manager of estate-Appointment of-Effect of, on ownership of estate.

The appointment of a manager under the Oudh Talookdars' Relief Act (24 of 1870) does not vest in him the estate in respect of which he is appointed manager. It remains in the owner as before (210). (Sir Montague E. Smith.) PARTAB NARAIN SINGH D. TRILOKIANATH (1884) 11 I. A. 197=11 C. 186 (200)= SINGH. 4 Sar. 567 = Bald. 174 = R. & J.'s No. 86.

-Object of.

The Oedh Talookdars' Relief Act of 1870 appears to have been enacted mainly in the interest of the talookdars, for the purpose of protecting them in some degree against the claims of money lenders by which their estates were being consumed, and undoultedly some of its provisions are somewhat stringent against creditors (200). (Sir Robert Collier.) RAMJISDAS v. RAJAH BHAGWAN BAX.

(1878) 5 I. A. 197 = 3 Sar. 843 = 3 Suth. 562 = B. & J.'s No. 51.

Talukdars' Relief Act. XXIV of 1870-(Contd.)

S. 4 (3)—Talugdar whose estate under management
 Hypotheration by while under management—Validity.

The respondent was the taluqular of an Oudh Taloka, which was taken under the management of the Government according to the provisions of the Oudh Talookdars' Relief Act 24 of 1870, from November, 1872. During the time the estate was under the operation of the said Act, the respondent executed in favour of the plaintiff a bond which was a mere hypothecation of the taluka which was then under management.

In a suit by the plaintiff to enforce the bond, keld that the deed being a mere hypothecation of the property fell clearly within S. 4, Cl. (3) of the Act, and that it was consequently invalid (87). (Sir Barnes Peaceck.) NAROTAM DAS v. SHEO PARGASH SINGH. (1884) 11 I. A. 83 = 10 C. 740 (743) = 4 Sar. 522 = R. & J.'s No. 78 (Oudh).

——S. 4 (3)—Taluqdar volone estate under management—Personal contract by—Competency of.

Ouere, whether a talogdar, while his taloka is under management in pursuance of the Incumbered Estates Act. 24 of 1870, is competent to make a personal contract (85). (Sir Barnes Peacock). NAROTAM DAS v. SHEO PARGASH SINGH. (1884) 11 I. A. 83=10 C. 740 (741-2)=4 Sat. 522=R. & J.'s No. 78 Oudh).

—S. 10—Appeal—Delay in presentation—Excuse of, on sufficient cause for delay being thoson—Power of—C. P. C. of 1859, S. 333—Applicability.

In this case the Commissioner, to whom an appeal was preferred under S. 10 of the Oudh Talookdars' Relief Act after the expiry of the period fixed by the section, thought that S. 333 of C. P. C. of 1859, under which appeals were admissible beyond the term, when sufficient cause was shown for delay, was applicable to the case, and that he had therefore power to excuse the delay on being satisfied about the sufficiency of the cause for it. Held, that S. 333 of Act VIII of 1859 was inapplicable to the case (204). (Sir Robert Collier.) RAMJISDAS v. RAJAH BHAGWAN BAX. (1878) 5 I. A 196 = 3 Sar. 843 = 3 Suth. 562 = B. & J.'s No. 51.

S. 10—Appeal time-barred-Interference in— Appeal to Privy Council in case of—Refusal to interfere in—Conditions.

On an appeal preferred te His Majesty in Council against the decision of the Commissioner of a Division in an appeal from a decision of a manager appointed under the Oudh Talookdars' Relief Act, the main objection taken was that the appeal to the Commissioner was out of time, as it had been presented after the period prescribed by S. 10 of the Act and that he had no jurisdiction to entertain it. In view of the circumstances that the appellant in the court below was a minor and was incapable of exercising his right of appeal except through the manager, who himself made the order appealed from, and that the respondents in the court below (the appellants before their Lordships) had after the expiration of the period prescribed by S. 10 themselves prayed for a judicial determination of substantially the same questions as were raised by the appeal before their Lordships, they however declined to reverse the decision of the Commissioner (2045). (Sir Robert Collier.) RAMJISDAS D. RAJAH BHAGWAN BAX. (1878) 5 I.A. 197= 3 Sar. 843 = 3 Suth. 562 = R. & J.'s No. 51.

\_\_\_\_\_S. 10-" Determination " by manager-Memoran-

Held, that a memorandum made by a manager was not a "determination" by him under S. 10 of the Oudh Talookdars' Relief Act of 1870 (202). (Sir Robert Collier.) RAMJISDAS D RAJAH BHAGWAN BAX. (1878) 5 I. A. 197 = 3 Sat. 843 = 3 Sutb, 562 = R. & J.'s No. 51.

OUDH ACTS-(Contd.)

Talukdars' Relief Act, XXIV of 1870-(Centd.)

S. 25-Escale under management-Succession to-Suit as to-Parties-Manager not impleaded, though propries or impleaded-Effect-Validity of judgment in mit inter parties.

M, an Oudh tajookdar, executed a will in favour of his wife constituting her the full representative of the taluk with power to appoint another heir to and representative of the talook. On M's death M's widow presented a petition under the Oudh Talookdars' Relief Act 24 of 1870, praying that the talook to which she had succeeded might be placed under the management of the Government, and an order was made on the petition appointing the Depoty

Commissioner of Fyzahad to be manager.

Subsequent to the order appointing a manager, a suit was instituted by the appellant, the daughter's son of M, in which a decree was made declaring that the will of M had been duly revoked by him in his lifetime, and that the appellant was entitled, under Act I of 1869, to succeed, as ab intestate, to the talookdari estate of M, M's widow, and the respondent, who had been appointed by her heir to the estate were defendants in that suit. The manager of the estate, appointed under the Oudh Talookdars' Relief Act, was not, however, made a party, and no objection was taken to the suit on the ground of his non-joinder.

In a suit subsequently brought by the respondent, raising the same issue upon the revocation of the will of M, Add that the omission to join the manager as a party to the prior suit did not affect the validity of the decree therein as between the appellant and the respondent (210).

The appointment of the manager did not vest the estate in him. It remained in M's widow as before. Nothing in the previous part of the Oudh Talookdars' Relief Act takes away the jurisdiction of the Courts in suits relating to succession, and S. 25 of the Act expressly declares that it is not taken away. The section does not enact or purport to enact that judgments given in such suits shall be void as between the parties contesting the right to succession (210). (Sir Montague E. Smith.) PARTAB NARAIN SINGH.

TRILOKIANATH SINGH. (1884) 11 L A. 197=

11 C. 186 (199-200)=4 Sar. 567=Bald. 174= B. & J.'s No. 86

Rate of to be awarded.

The combined effect of the Oudh Talookdars' Relief Act of 1870, and of Rule 8 of the Rules made under it is that the manager is to determine the amount due for the principal and interest up to the date of his determination, calculating such interest according to the contract rate (if any), and may allow subsequent interest on the amount so determined, as upon a judgment-debt, up to the time of payment, provided the rate of such subsequent interest does not exceed 6 per cent. (201).

Future interest at 12 per cent. per annum is prohibited by Rule 8 (203). (Sir Robert Collier.) RAMJISDAS 6. RAJAB BHAGWAN BAX. (1878) 5 I A. 197=3 Sat. 843= 3 Suth. 562= B. & J.'s No. 51

### OWNERSHIP-COMMUNITY OF.

Insertion of one or two names as representatives is

It is, and has for many years, under the decisions, been acknowledged that even one or two names may be inserted, as represented by a community of ownership, the details of which need not be minutely recorded 66). (Lord Shen.)
NAGESHAR BAKHSH SINGH v. GANESHA.

(1919) 47 I. A. 57= 42 A. 368 (378) = 18 A. L. J. 532= 23 O. C. 1 = 22 Bom. L. B. 596=28 M. L. J. 531 56 I. C. 306=38 M. L. J. 531

### PANCHAYAT.

Caste Panchayat—Power of. See LIBEL—CASTE PANCHAYAT. (1917) 44 I. A. 192 = 39 A. 561.

——Native Panchayat—Hindu usage—Dispute as to— Decision of—Fitness peculiar for. See HINDU LAW—CUS-TOM—DECISION AS TO—NATIVE PANCHAYAT.

(1875) 3 Suth. 218 (222) = 25 W. R. 81.

### PARAKUDI.

-Meaning of.

The term "parakudis" has a well-understood and definite meaning, and has been construed as giving no permanent right of occupancy. (Sir Andrew Scole.) SEENA PENA REENA SEENA MAYANDI CHETTIAR 2. CHOCKALINGAM PILLAI. (1904) 31 I.A. 83 (92.3) = 27 M. 291 (299) = 8 C. W. N. 545 = 8 Sar. 587 = 14 M. L. J. 200.

### PARSEE.

ADOPTION BY.

BRITISH SUBJECT WITHIN MEANING OF ROYAL CHARTERS OF JUSTICE IF A.

FIRE TEMPLE AT RANGOON.

RACIAL PARSEE—CLAIM TO—CONDITION.
RESTITUTION OF CONJUGAL RIGHTS.

WILL BY.

ZOROASTRIAN RELIGION.

### Adoption by.

ADOPTED SON—FUNERAL CEREMONIES OF ADOPTIVE FATHER—RIGHT TO PERFORM.

The adopted son and heir of a deceased Parsee would, in respect of that character, be the person to perform the ceremonies of the deceased, the adopted son being treated as the son of the person who adopts him, to all intents and purposes, if he is Paluk-beta, as if he was the natural born son, unless there is a restriction of the nature mentioned in this case, and he was only Dhurm putr. (Mr. Justice Bosanguet.) HOMABAEE v. PUNJEABHAEE DOSABHAEE.

(1835) 5 W. R. 102 (P. C.)=1 Suth. 28 (28 9)= 1 Sar. 68.

ADOPTION BEFORE DEATH—WILL EXECUTED A SHORT TIME BEFORE.

-Revocation by adoption of.

Quaere whether an adoption made by a Parsee regularly and with ceremonies immediately before his death would have the effect of revoking a will executed by him a very short time previous to that. (Mr. Justice Beaumquet.)

HOMABAEE v. PUNJEABHAEE DOSABHAEE.

(1835) 5 W. R. 102 (P.C.)=1 Suth. 28 (30)= 1 Sar. 68.

### DHURM-PUTR-ADOPTION AS.

-Declaration on third day after decease of adoptive father-Writing from adopted boy-Practice at to-Omission to conform to-Inference from.

Although it may not be indispensably necessary, as a matter of law in Dhurm-putr that a declaration should be made on the third day after the decease of the adoptive father, yet it does appear it is usual to do so; and not only is it usual to make such a declaration, but it is usual, in case of Dhurm-putr, to take a writing from the Dhurm-

Where it appeared that it was usual in the family of the parties to take such a writing, held that it was of importance to notice, in deciding whether there was an adoption as a Dhurm-putr or not, that what was usual was not observed. (Mr. Justice Bosanquet.) HOMABAEE 2. PUN-JEABHAEE DOSABHAEE. (1835) 5 W. R. 102 (P. C.) = 1 Suth. 28 (31)=1 Sar. 68.

PARSEE - (Contd.)

Adoption by-(Contd.)

DHURM-PUTR—PALUK-PUTR OR—NATURE OF ADOPTION.

-Evidence.

The question was whether the adoption of the respondent by a deceased Parsee immediately before his death was as a Paluk-putr, or merely as a Dhurm-putr.

Besides the testimony with respect to the adoption, there were circumstances that took place, respecting which there was no doubt and no contradiction, namely, that three days after the death of the deceased there was a meeting of the caste, and at that meeting there were present, among other persons, two cousins of the alleged adopted son. They, as being the descendants of one of the three brothers, of whom the deceased was one, were present at that meeting; and the priest being there, the tunderooste was read, and it was read, admittedly, in the name of the person who claimed to be the adopted son.

There was some contradiction between the witnesses as to anything being said about the adoption being Paluk or not. Some of the witnesses said he was expressly declared to be Paluk, or adopted son generally; others said nothing was said; but all agreed in this, that no remark was made and no mention was made of its being Dhurm-putr. The deceased's widow herself was manifestly present, and she made no objection to the tunderooste being read in general terms. It was said by one of the witnesses, no distinction was made as to the mode of reading, whether it was Dhurm-putr or Paluk; but inasmuch as an adoption generally would imply that the adopted son is the heir of all, and the adoption by Dhurm-putr is an exception, one should expect, if there was any exception made, it would be notified.

Again, no writing was produced, or pretended to have been given, as an acknowledgment by the respondent that be was merely adopted as Dhurm-putr. It, however, appeared that there were instances where a writing was taken in the suit family itself, and that there was another instance where it having been given, it was notified at the Parsee Church.

Held, affirming the Court below, that, under all the above-mentioned circumstances, there was very strong evidence to show that there was, in point of fact, a general adoption of the respondent. (Mr. Justice Bosanquet.) HOMABAEE 2: PUNJEABHAEE DOSABHAEE.

(1835) 5 W. B. 102 (P. C.) = 1 Suth. 28 (30·1) = 1 Sar. 68.

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An adoption by a Parsee generally would imply that the adopted son is heir of all, and the adoption by Dhurm-putr is an exception. (Mr. Justice Bosanquet.) HOMABAEE v. PUNJEABHAEE DOSABHAEE.

(1835) 5 W. R. 102 (P. C.)=1 Suth. 28 (31)=1 Sar. 68.

PALUK-PUTR-ADOPTION AS.

-Evidence

Where the question was whether the adoption of the respondent by the deceased as Paluk-putr immediately before his death had been proved, keld, on the evidence affirming the Court below, that the adoption had been proved. (Mr. Justice Bosanguet.) HOMABAEE v. PUNJEABHAEE DOSABHAEE. (1835) 5 W. R. 102 (P. C.) = 1 Sar. 68 = 1 Suth. 28 (31, 35).

# British subject within meaning of Royal Charters of Justice if a.

Quaers whether the parties to the suit, who were Parsees, natives of the Island of Bombay, and there resident, and whose religion was that of Zoroaster, were persons, PARSEE-(Contd.)

British subject with in meaning of Royal Charters of Justice if a-(Contd.)

who, prior to the date of the Letters Patent establishing the Supreme Court of Bombay, were described and distinguished in the Royal Charters of Justice by the appellation of "British Subjects " (392). (Dr. Lushington.) ARDASEER CURSETJEE :: PEROZEBOYE. (1856) 6 M. I. A. 348 = 4 W. R. 91 - 10 Moo. P. C. 375 = 1 Suth. 265 = 1 Sar. 548.

### Fire temple at Rangoon.

-Use of -Participation in ceremonies performed at-Right of of different kinds of Parsecs.

In 1859 the Government granted a piece of land at Rangoon to two Parsee trustees upon trust to maintain it " as a cemetery and to the free use of persons of the Parsi denomination," and power was reserved to the Government to appoint new trustees, and to revoke the trust in case the land was applied to other uses. In 1868 another similar grant was made "upon trust to build and maintain upon the land a temple for the use of the Parsi population," and power was again reserved to the Government to nominate new trustees, and to revoke the grant if the temple was not erected within a year. Both grants were renewed in 1882. and schemes were subsequently drawn up for the management of the temple and burial ground, that for the latter providing that it " was to be used for burying persons who shall at his or her death be actually professing the Zoroas-tran religion and no other;" and that "no one shall be taken to be actually professing the Zoroastrian religion who has not been duly invested with the Sudra and Kusti, in accordance with the rites prescribed by that religion.

In 1915, a person, whose father was a Goanese Christian, and mother a Parsi, was converted to or initiated into the Zoroastrian religion, and began to attend the temple, and, within the sacred precincts thereof, to face the sacred fire and to perform the ceremonies in common with other worshippers.

In an action instituted by certain members of the Parsi community against the convert for an injunction restraining her from using the temple or attending its ceremonies, keld, that the benefits of the trust created by the said documents were confined to persons who possessed the double qualification of Zoroastrians and racial Parsis, and that Parsis who ceased to be Zoroastrians had no claim to the benefit of the said trust.

The Parsi community had grown up to be such a distinct body, and admissions into it from outside had been so very rare, that at the time when these grants at Rangoon were made the Government must have intended that the temple should be for the benefit of professing members of the Parsi community, i.e., racial Parsis or people deemed after a long lapse of ages to be racial Parsis. Lord Phillimore.) SAKLAT v. BELLA.

T v. BELLA. (1925) 53 I. A. 42 = 3 R. 582 = 43 C. L. J. 23 = 92 I. C. 200 = 30 C. W. N. 289 = 28 Bom. L. R. 161 = A. I. R. 1925 P. C. 298 = 23 A. L. J. 1016 = 49 M. L. J. 821 (829 30).

# Racial Parsee-Claim to-Condition.

Mother also a Partee if a.

On a claim to be recognised as a racial Parsee, the fact that the claimant's mother was a Parsee is of no importance. (Lord Phillimere.) SAKLAT v. BELLA.

(1925) 53 I. A. 42 (49) = 3 R. 582 = 43 C. L. J. 23 = 92 I. C. 200 = 30 C. W. N. 289 = 28 Bom. L. R. 161 = A. I. R. 1925 P. C. 298 = 23 A. L. J. 1016 = 49 M. L. J. 821 (826).

Restitution of conjugal rights.

-Suit for. See RESTITUTION OF CONJUGAL RIGHTS.

PARSEE-(Contd.)

Will by.

CONSTRUCTION OF.

-English rules - Applicability of.

Various cases were referred to in the argument which depend on rules of construction, adopted in the construction of wills made in this country (England) and applicable to documents framed with the knowledge of the rules of construction which are afterwards applied to them. These cases are not of assistance in the construction of a Paris will made at Karachi. (Lord Parmoor.) DINBAI P. NUSSERWANJI RUSTOMJI. (1922) 49 I.A. 323 (329-30)= 49 C. 1005 (1012) = 27 C. W. N. 199=

17 L. W. 174 = 37 C. L. J. 420 = 25 Bom. L. R. 625 = A. I. R. 1922 P.C. 311 = 31 M. L. T. 213= (1922) M. W. N. 787 = 69 I. C. 323 = 45 M. L. J. 572

- Joint family rights-Conception of-Regard for, in construing words used-Necessity.

Although the principle of joint family may not apply to a Parsi with the rigidity with which it applies, for example, in the case of a Hindu, still the conception of joint family rights which is common in oriental countries ought not to be left wholly out of sight in interpreting the words used by a Parsi in his will. (Viscount Haldane.) PUTLIBAI r. SORABJI NAROROJI GAMADIA. (1923) P. C. 122=

(1923) M. W. N. 626 = 25 Bom. L. B. 1099 = 33 M. L. T. 401 (P. C.) = 28 C. W. N. 737= 76 I. C. 996-45 M. L. J. 780 (787).

Son-Bequest to-Estate taken under-Vesting of estate in him a morte testoris or enjoyment for life or till majority of his own son. See HINDU LAW-WILL-SON -BEQUEST TO-ESTATE TAKEN UNDER.

(1914) 42 I. A. 71 (77-8)=39 B. 296

-Sou-Son's widow-Exclusion of-Terms offit priate for.

The material portions of the will of a Parsi, dated 21-0 1907, were as follows :--

Cl. 7 .- From and after the death of my wife my executors shall stand possessed of the residuary trust estate upon trust to spend from and out of the same a sum of Rs. 2,000 for the funeral expenses of my wife and for other ceremonis for one year after her death, and shall hold the residue spon trust to pay the net income thereof to my son J, for and during his lifetime and from and after his death upon trust for the wirlow and children of my son / absolutely as tenants in-common in such proportions that each male child shall go double the share of each female child, and the widow shall get the same share as a female child. Provided, however, that if any child of my son I shall have died in his lifetime leaving a child or children him surviving, then such child of children shall take the share which his or her parent would have taken of the residuary trust estate, if such parent had survived my son J, and if more than one the males always taking twice the share of the females.

C1. 8.—In the event, however, of the said son / dying with out leaving any issue how low soever, but leaving only a widow, then my executors shall pay out of such residuary trust funds a sum of Rs. 10,000 absolutely to such widow, and in such case and also in the event of the said / dying without leaving any widow or issue how low soever, my executors shall stand possessed of the balance of the said residuary trust estate in trust to spend Rs. 2,000 for the funeral expenses of the said son / and to appropriate a moiety of the balance to such charitable objects for the jects for the purpose of promoting liberal and religious ed cation amongst the Parsi Zoroastrians of Karachi as my cat cutors may in their discretion think fit, and divide the other molety amongst my heirs according to the law of intestate among Parsis, but including the widow of / from getting

any share in such distribution.

PARSEE-(Contd.) Will by-(Contd.)

CONSTRUCTION OF-(Contd.)

The testator died in 1908, his widow predeceased him; and J died childless in 1913 leaving a widow surviving him. I's widow instituted the suit out of which the appeal to the Privy Council arose for a declaration that as representative of her husband she was entitled to a half of f's foursevenths share of the residuary estate of the testator under Ss. 3 and 6 of the Parsi Intestate Succession Act. 1865.

Held, affirming the Court below, that, on the right construction of the will, the testator intended that f's widow should be entirely excluded from any share in the distribution, whether as heir of her husband or otherwise; and that the testator did not intend to include f as one of his "heirs" as that term was used in para. 8 of his will.

The testator intended that the only interest in his property which I should take or have was a right of maintenance under para, 6 during the lifetime of the testator's wife if she survived the testator, and a life-interest under para. 7 in the testator's property undisposed of under the earlier paragraphs of the will, and that he did not intend to include / as one of his "heirs" as that term is used in para. 8 (330).

The words "excluding the widow of J from getting any share in such distribution" in cl. 8 of the will would apply to funds coming to J's widow as representative of J, in the event of / being included in the class of heirs to the testator. There is no reason why the said words should not have their natural meaning, and to limit them to the event of I predeceasing the testator is to introduce a fimitation not to be found in the terms of the will (327-8). (Lord Parmoor.) DINBAI v. NUSSERWANJI RUSTOMJI. (1922) 49 I.A. 323 = 49 C. 1005 (1010-1)=

27 C.W.N. 199 - 17 L.W. 174 - 37 C.L.J. 420 -25 Bom. L.R. 625 = A.I.R. 1922 P. C. 311 = 31 M.L.T. 213 = (1922) M.W.N. 787 = 69 I.C. 323 = 45 M.L.J. 572.

Sons and daughters-Residence and maintenance of -Provision for Benefit of -Persons entitled to-Wives and families of sons and husbands and families of daughters if -Nature of their right-Widows or families of deceased persons - Right of. See HINDU LAW-WILL-RESI-DENCE-SONS AND DAUGHTERS.

(1923) 45 M.L.J. 780 (787-8).

-Wife-Estate bequeathed to-Life estate-Absolute estate-Testamentary power conferred on her-Nature of-General testamentary power or power according to oral directions of testator. See HINDU LAW-WILL-WIFE -ESTATE BEQUEATHED TO-LIFE ESTATE.

(1921) 48 I. A. 69 (734)=45 B. 711 (716).

EXECUTION OF -ADOPTION BY TESTATOR SHORTLY AFTER WILL AND IMMEDIATELY BEFORE HIS DEATH.

Presumption in case of.

If the adoption before the death of the testator (a Parsee) is clearly made out and established at the time that the adoption in this case was alleged to have taken place, namely, almost immediately before the death of the testator, it would render the execution of a will by him a very short time previous to that, extremely improbable. In such a case very clear proof will be required to establish the existence of the will. (Mr. Justice Botanquet.) HOMA-BAEE P. PUNJEABHAEE DOSABHAEE. (1835) 5 W. R. 102 (P.C.) = 1 Suth. 28 (30) = 1 Sar. 68.

-Proof of execution will in case of.

The question was whether a will alleged to have been executed by a deceased Parsee had been established. The deceased had adopted the respondent as Palukputr immediPARSEE-(Contd.)

Will by-(Contd.)

EXECUTION OF-ADOPTION BY TESTATOR SHORTLY AFTER WILL AND IMMEDIATELY BEFORE HIS DEATH-(Contd.)

ately before his death, and the will set up was alleged to have been executed by him a very short time previous to

Held, on the evidence affirming the Court below, that the will had not been established. (Mr. Justice Bosanquet.) HOMABAEE P. PUNJEABHAEE DOSABHAFE. (1835) 5 W.R. 102 (P.C.) = 1 Suth. 28 (33-5) = 1 Sar. 68.

EXECUTION OF-CAPACITY (SOUND DISPOSING STATE OF MIND).

-Proof of, See HINDU LAW-WILL-EXECUTION OF-PROOF OF. (1923) 29 C.W.N. 45.

POWER AS TO.

Extent and limits of

Their Lordships desire it to be understood that in what has been said as to the testamentary power of Parsees, they are far from having intended to intimate any doubt as to the extent of that testamentary power, or to give any encouragement to the notion that any such limit as the appellant has contended for in fact exists. They do not mean in any manner to disturb what has been decided in India upon that subject (463). (Lord Justice Turner.) MODEE KAIKHOOSCROW HORMUSJEE P. COOVERBHAEE.

(1856) 6 M.I.A. 448=4 W.R. 94=1 Suth. 268-1 Sar. 562.

### REVOCATION OF.

-Adoption made by testator shortly after will and immediately before his death-Revocation by. See PARSEE -ADOPTION BY-ADOPTION BEFORE DEATH.

(1835) 5 W.R. 102 (P.C.)=1 Suth. 28 (30).

# Zoroastrian religion.

-Ceremonial necessary for initiation into-Burnshnun if an essential part of.

Held, that the evidence in the case warranted the conclusion of the Chief Court that the ritual cailed Burushnun was not an essential part of the ceremonial necessary for initiation into the Zoroastrian religion (42.50). (Lord Phillimore.) SAKLAT P. BELLA.

T = . liella. (1925) 53 I.A 42 = 3 R. 582 = 43 C. L. J. 23 = 92 I. C. 200 = 30 C.W.N. 289 = 28 Bom. L.R. 161 = A.I.R. 1925 P.C. 298 = 23 A. L. J. 1016 = 49 M.L.J. 821 (827).

## PARTITION.

(See also C. P. C. of 1908, S. 11-Cases under Partition; and Hinde Law-Joint family-Partition.) AGREEMENT NOT TO EFFECT.

CO-SHARERS.

DECREE FOR.

EJECTMENT SUIT-PARTITION DECKEE IN.

IJMALI MAHAL - SHARE IN-POSSESSION OF-DE-CREE FOR-PARTITION OF MAHAL PRIOR TO. JURISDICTION TO EFFECT.

RIGHT OF-PERSONS HAVING.

SUIT FOR.

# Agreement not to effect.

-Binding nature of - Contracting parties themselves -Their heirs and successors-Distinction,

An agreement not to partition property, even if binding between the contracting parties, cannot bind their heirs and successors. (Lord Lindley.) JAFRI BEGUM v. SYED ALI (1901) 28 I.A. 111 (118) = 23 A. 383 (391-2) = 5 C.W.N. 585=

3 Bom. L. B. 311=8 Sar. 27=11 M. L. J. 149.

PARTITION-(Could.)

### Co-sharers.

-Partition between. See CO-SHARERS-(1) MORT-GAGE BY ONE OF, AND (2) PARTITION.

#### Decree for.

-Encumbrances created by each party to-Indemnity to the other against-Provision in decree for-Effect of-Rights of parties on.

A compromise decree of 1901 in a partition suit between an uncle and a nephew allotted properties A to the uncle and properties II to the nephew. Another compromise decree of 1908 in another suit in 1904 between them merely substituted A for B and B for A. The decree of 1908, after providing that the one set of properties should be changed for the other, provided, by cl. 7, as follows :-

'That if the plaintiff or the defendant No. 1 has sold at a time when he was in possession under the decree of 1901 any of the said properties respectively allotted to him he do pay to the other party the consideration money received by such sale, and if any property have been mortgaged or otherwise encumbered, the party mortgaging or encumbering it do redeem the property or otherwise indemnify the other party of any loss that the latter may sustain.

Held that, by virtue of the said clause 7 in the decree of 1908, each party was to hand over to his opponent, so to speak, intact those lands which he got under the decree of 1901, and, if he could not do it, then he was liable for damages, and that the rights of one party did not depend upon whether the dealings with the property by his opponent constituted an encumbrance or not. (Viscount Dunedin.) GAJADHAR PRASHAD SAHU P. MAHADEO PRASHAD (1926) 24 L W. 139 = (1926) M.W.N. 611= SAHU. 96 I.C. 936 - A.I.R. 1926 P.C. 110.

-Error in-Remedy of aggreered defendant-Suit fresh to rectify error-Maintainability-Res judicata.

Supposing any error is made in the partitioning out in pursuance of a decree for partition, the remedy of a defendant co-sharer aggrieved by such error lies in proceedings in that suit suitable to correct that error; and the Code of Civil Procedure provides adequate means for the correction of such error. But apart from such proceedings it is the clearest possible example of ret judicata, a judicial decree made against a party in a suit in which he is defendant (79). (Lord Moulton.) NALINI KANTA LAHIRI P. SARNAMOYI DEBYA. (1914) 41 I. A. 247 = 1 L. W. 607=16 M. L. T. 544=(1914) M. W. N. 948= 21 C. L. J. 23 = 17 Bom. L. R. 1 = 19 C. W. N. 531 =

24 I. C. 294 = 27 M. L. J. 76 (79). -Ryots or tenants-Possession of-Clause in decree protecting -Incumbrances created by judgment-debtor pendente lite-Putni granted by him pendente lite-Clause if covers. See DECREE-POSSESSION -DECREE FOR-RYOTS OR TENANTS. (1876) 26 W. R. 93.

### Ejectment suit-Partition decree in.

-Grant in appeal of -Propriety -Conditions, See EJECTMENT SUIT-PARTITION DECREE IN.

(1898) 25 I. A. 195 (208) = 21 A. 53 (69-70).

### Ijmali mahal-Share in-Possession of-Decree for-Partition of mahal prior to.

Recovery of substituted share allotted at-Right of -Mode of-Execution-Separate suit. See DECREE-IJMALI MAHAL. (1922) 49 I. A. 139 = 1 Pat. 378.

### Jurisdiction to effect.

-Immoveable property outside territorial jurisdiction-Partition of-Supreme Court's jurisdiction to make. See SUPREME COURT OF BOMBAY-PARTITION.

(1880) 7 I. A. 181 (190) = 5 B. 48 (57).

PARTITION-(Contd.)

Right of-Persons having.

Beneficial interest in shares in estate-Persons entitled to

The ordinary rule is that if persons are entitled beneficially to shares in an estate they may have a partition (75). (Lord Hobbouse.) SHANKAR BAKSH v. HARDEO BAKSH. (1888) 16 I. A. 71=16 C. 397 (405)=

Permanent but not identical titles-Persons in possession of estate under-Forfeiture of interest of one in certain events-Liability for-Effect.

The right to partition exists when two parties are in joint possession of land under permanent titles, although those titles may not be identical. Quaere whether a right to partition exists in any other case,

Appellants were proprieters of a mokurrari interest in the suit properties, and the respondents were owners of a fractional share in the Zemindari interest in the same properties. The mokurrari interest of the appellants was, however, liable to forfeiture in certain contingencies.

Held, reversing the High Court, that the appellants were entitled to partition of the suit properties as against the

respondents.

The title of the appellants is a permanent title, though liable to forfeiture in events which have not occurred, and the rights incidental to that title must be those which attach to it as it exists, without reference to what might be lost in future under changed circumstances. (Sir Arthur Willem.) BHAGWAT SAHAI P. BEPIN BEHARI MITTER.

(1910) 37 I. A. 198 = 37 C. 918 = 8 M. L. T. 228= 12 C. L. J. 240 = 14 C. W. N. 962 = 12 Bom. L. B. 997 = 7 A. L. J. 1137 = 6 I. C. 549 = 20 M. L. J. 907.

Possession joint of estate—Persons having—Title to estate in others-Effect. See HINDU LAW-WIDOW-CO-WIDOWS-PARTITION BETWEEN.

(1889) 16 I. A. 186=12 A. 51.

#### Suit for.

(See also HINDU LAW-JOINT FAMILY-PARTITION -SUIT FOR.)

Commissioners for partition appointed by Supreme Court in-Allotment by-Binding nature of-Error in-

Onus of proof of.

In September, 1822, a suit was brought in the Seprene Court of Calcutta on the equity side by I, one of the son of R, deceased, and K, son and heir of another deceased son of R, against the other members of their family, which was an undivided Hindu family, to have a partition of the immoveable estate of R, subject to the provisions of his ril On the 22nd of April, 1823, by an order of the Suprime Court, Commissioners were appointed to make the partition On the 28th of June, 1825, the Commissioners made their report, and thereby certified that they had allotted to A. with other property, a portion of tenanted ground called Sontose's Garden, containing by admeasurement about 4 bighas and thirteen cottahs. On the death of K and his widow, C became the heir of K, and entitled to his estate In August, 1885, C brought a suit in the Supreme Court, in its ordinary original civil jurisdiction, against the respond dents for possession of 4 bighas 13 cottahs of Sontoe's Garden, as having been allotted to K by the decree in the partition suit. The defendant pleaded as to portion of the land, that it had been included in such allotment by mistake of the Commissioners. There was, however, no ground for assuming that the members of R's family, who were parties to the suit for partition, were under any mistake as to the property which belonged to their father, or that there and any error or want of due care on the part of the Commissioners whose proceedings appeared to have been perfectly regular,

# PARTITION-(Contd.)

Suit for-(Contd.)

Held, reversing the Court below, and restoring the trial Judge, that the title of the plaintiff to the land claimed in the plaint was proved (79). (Sir Richard Couch.) SARODA PROSUNNO PAUL r. SHAMLALL PAUL

(1892) 19 I. A. 75=19 C. 618=5 Sar. 189.

Declaration in, of plaintiff's right to share of annual income of estate during his life, with liberty to apply in suit for ascertainment of each year's income-Propriety-Right to partition found against.

An inam grant was made to A and B and their male descendants in perpetuity. A died leaving three daughters only, and B died leaving male descendants. The daughters of A instituted a suit against the male descendants of B for a partition and delivery to them of their share of the estate covered by the grant in right of their father. Their Lordships held that the daughters of A were not entitled to a partition of the estate. They, however, found that there was a binding prior decision between the parties to the effect that the plaintiffs were entitled during life to a defined share of the annual income of the estate. To obviate further litigation between the parties, their Lordships, therefore, added a declaration in the decree that by virtue of the decree in the prior suit each of the plaintiffs was during her life and as against the defendant and his successors in interest in the property in dispute entitled to the share of the income defined by the prior decree, with liberty after each year to apply to have the amount of such income determined by further proceedings in the suit and declared in a further decree (304). (Lord Blanesburgh.) SUBHAN ALI P. IMAMI BEGUM. (1925) 52 I. A. 294 - 52 C. 971 =

23 A. L. J. 667 = 88 I. C. 347 = (1925) M. W. N. 535 = 21 N L R 117=30 C. W. N. 122=

A. I. R. 1925 P. C. 184 = 50 M. L. J. 136 (142-3).

Parties.

If any co-sharer applies for a partition of a property he must make the other co-sharers defendants, because the partition which is made in his favour is a partition against his co-sharers. That which gives him a portion of the property takes away all right which they would otherwise have to that portion, and therefore it is a decree against them, and in favour of himself. (Lord Moulton.) NALINI KANTA LAHIRI D. SARNAMOVI DEBYA.

(1914) 41 I. A. 247 = 1 L. W. 607 = 16 M. L. T. 544 = (1914) M. W. N. 948 = 21 C L. J. 23 = 17 Bom L B 1=19 C. W. N. 531= 24 I. C. 294 - 27 M. L. J. 76 (78).

Partner-Joint family member-Suits on bases of -Distinction-Test. See HINDU LAW-JOINT FAMILY-PARTITION-SUIT FOR-PARTNER.

(1866) 10 M. I. A. 490 (504-5).

-Preliminary decree in-Enquiry directed by-Nonappearance of plaintiff at -Dismissal of suit on ground of -Jurisdiction-Proper order in such a case. See C. P. C. OF 1908, O. 17, R. 2-PARTITION SUIT.

(1924) 51 I. A. 321 (325) = 4 Pat. 61.

-Shares of admitted sharers-Challenge of, by person not entitled to a share-Right of.

In a partition suit, a person held not entitled to participate at all is not competent to challenge the extent of the shares which may belong to others who do participate. (Lord KARIMUNNESSA KHATUN D. MAHOMED Sumner.) FAZLUL KARIM. (1924) 88 I. C. 149= A. I. B. 1925 P. C. 70 (74).

#### PARTNERSHIP.

ACCOUNTS OF. ACCOUNT BOOKS OF. ADMISSION INTO.

# PARTNERSHIP-(Contd.)

BUSINESS OF-BEQUEST ABSOLUTE OF, TO SONS CONTRACT OF-AGREEMENT AMOUNTING TO.

CONTRACT OF-BALANCE RESULTING FROM-SUIT BY ONE PARTNER AGAINST ANOTHER FOR-JURIS-

DICTION. DISSOLUTION OF.

DISSOLUTION AND ACCOUNTS-SUIT FOR.

DURATION OF-MANAGING PARTNER-LIFETIME OF -AGREEMENT FOR CARRYING ON BUSINESS AT LEAST DURING.

HINDU JOINT FAMILY.

LAW GOVERNING-ENGLISH LAW.

LIMITED COMPANY (R. W. & CO., LTD.)-FIRM OF SAME NAME (R. W. & CO.).

MANAGER OR EMPLOYEE OF, ENTRUSTED WITH TRANSACTION OF BUSINESS OF PARTNERSHIP.

NATTUKOTTAI CHETTI-BANKING FIRM OF-DEPO-SIT WITH, UNDER HEADING " A MARAL B ".

PARTNER OF.

PARTNERSHIP AT WILL. PARTNERSHIP FOR TERM.

SURVIVING PARTNER

TRADING PARTNERSHIP.

### Accounts of.

ADJUSTMENT OF, FROM YEAR TO YEAR—RE-OPENING OF ACCOUNTS AFTER LONG LAPSE OF TIME IN CASE OF.

COMMISSIONER FOR TAKING,

DISSOLUTION AND.

PARTNERSHIP FOR TERM.

SUIT FOR.

TAKING OF, FOR WORKING OUT PARTNERSHIP DECREE-PRODUCTION OF DOCUMENTS RELATING TO PARTNERSHIP IN HIS POSSESSION-DUTY OF EACH PARTY TO SUIT AS TO.

ADJUSTMENT OF, FROM YEAR TO YEAR -- RE-OPENING OF ACCOUNTS AFTER LONG LAPSE OF TIME IN CASE OF,

Conditions.

To open up the accounts of a partnership compared and adjusted from year to year after a long lapse of time would require a very strong case (295). (Sir Lawrence Jenkins.)

Damisetti Ramachundrudu v. Damisetti Janaki-RAMANNA. (1919) 13 L. W. 293 = 63 I. C. 740.

# COMMISSIONER FOR TAKING.

-Appointment of, in suit for dissolution and accounts -Practice of-Ruling erroneous of Commissioner-Remedy of party aggrieved by. See PARTNERSHIP-DISSOLUTION AND ACCOUNTS-SUIT FOR-COMMISSIONER FOR, ETC. (1923) 19 L. W. 425.

## DISSOLUTION AND.

- See Partnership - Dissolution and accounts

# PARTNERSHIP FOR TERM.

-Refusal of some partners to perform duties undertaken by them under partnership agreement before expiry of term-Partnership work carried on by remaining partners for full term-Accounts in case of. See PARTNERSHIP-PARTNERSHIP FOR TERM—DISSOLUTION—ACCOUNTS.

(1920) 39 M. L. J. 257 (261-2).

### SUIT FOR.

-Deceased partner-Representatives of-Suit against surviving partner by-Assets in hands of latter-Deposit into Court of-Order for-Discretion of Court below as to -Privy Council's interference with,

In an action brought by the representatives of a deceased partner against the surviving partner, inter alia, to have

Accounts of -(Contd.)

SUIT FOR-(Contd.)

partnership accounts taken, the trial Judge, in his discretion, ordered the defendant to deposit a certain sum in Court as partnership funds remaining in his hands. Held that the amount ordered to be brought into Court was a matter of discretion, and that, as that discretion was not exercised on any wrong principle, the order could not be interfered with (96). (Lard Summer.) AHMED MUSAJI SALEJI P. HASHIM EBRAHIM SALEJI. (1915) 42 I. A. 91 = 42 C. 914 (925) = 19 C. W. N. 449 = 21 C. L. J. 419 = 17 M. L. T. 312 = 2 L. W. 377 = (1915) M. W. N. 485 = 13 A. L. J. 540 = 17 Bom. L. R. 432 = 28 I. C. 710 = 29 M. L. J. 70.

——Deceased partner—Representatives of—Suit against surviving partner by, for accounts of partnership—Hasis of accounts in—Business continued by survivor after death of deceased partner—Remuneration for managing business—Survivor's right to—Profits of business—Representatives' right to. Sα Partnership—Surviving Partner—BUSINESS CONTINUED BY — REPRESENTATIVES OF DECEASED PARTNER—ACCOUNTS OF, ETC.

(1923) 19 L. W. 425.

Dismissal of, at barred—Specific sums realised before date of that suit—Suit subsequent for share of—Maintainability—C. P. C., O. 2, R. 2.

The plaintiff-respondent instituted a suit against the appellants claiming an account of a partnership which had subsisted between them. That suit was dismissed on the ground that it was barred under Art. 106 of the Limitation Act of 1908. Subsequent to the date of that decree, the respondent instituted the suit out of which the appeal to the Privy Council arose alleging that certain specific sums had been received by the appellants on the partnership account, and claimed his partnership share in them. The items in question had been received at various dates all of which were before the date of the decree in the prior suit, and the majority before the prior suit was instituted.

Quare, whether the claim in the subsequent seit was barred by res judicata by reason of the dismissal of the prior seit. (Lord Phillimore.) GOPALA CHETTY v. VIJIARAGHAVA-CHARIAR. (1922) 49 I A. 181 (194) = 45 M. 378 = 30 M. L. T. 283 = (1922) M. W. N. 386 = 16 L. W. 200 =

26 C. W. N. 977 = 20 A. L. J. 862 = 24 Bom. L. B. 1197 = 36 C. L. J. 308 = A. I. R. 1922 P. C. 115 = 74 I. C. 621 =

43 M. L. J. 305

-Interest from date of dissolution up to date of suit
-Plaintiff's right to-Rate of interest.

The suit was filed on 1st December, 1882, for partnership accounts with interest against the defendants, representing P and S, by whom a banking business had been carried on from 1863 to 10th May, 1869. By the decree which the Recorder of Rangoon (the Court below) made in favour of the plaintiffs he awarded interest at 12½ per cent. to the plaintiffs from the 27th January, 1878, when the business was closed, till the institution of the suit on 1st December, 1882.

Held, that the award of interest by the Court below was right and ought not to be interfered with (620). (Mr. Shand.) MUTIA CHETTI v. SUBRAMANIAM CHETTI.

(1891) 18 C. 616=6 Sar. 49.

— Jurisdiction—Business carried on outside jurisdiction—Funds of partnership in hands of officer within jurisdiction—Cause of action—Attempt of surviving partners to misappropriate funds.

The defendants 1 & 2, who resided in Sind and a wislow, H, carried on business in partnership in Sind and at Behrin in the Persian Gulf. H died, and, after her death, the 2nd

PARTNERSHIP -(Contd.)

Accounts of-(Contd.)

SUIT FOR-(Contd.)

defendant filed suits in the High Court of Bombay in the name of the 1st defendant and himself, as surviving partners of the firm, to recover debts due to the firm. The amounts realised in the said suits were by consent of defendants 1 and 2 paid over to the 3rd defendant, a receiver appointed by Court, to be held by him until further order. The Administrator-General of Bombay, as representing the estate of H, filed a suit in the High Court of Bombay, against defendants 1 to 3 praying for a declaration that the moneys in the Receiver's (3rd defendant's) hands belonged to the plaintiff, and, if necessary, for an account of the partnership. Leave to sue was obtained by the plaintiff under cl. 12 of the Letters Patent, 1865. It was contended that the Bombay High Court had no jurisdiction to order accounts of a firm in Sind and Behrin, and that neither the fact that the amounts sued for were recovered from debtors living in Bombay, nor the fact that the amounts were in the Receiver's hands, gave that court jurisdiction.

The Court below (High Court on its appellate side) held that the High Court had jurisdiction, because a part of the cause of action at least arose within its jurisdiction and leave under cl. 12 of the Letters Patent had been obtained.

On appeal their Lordships affirmed the decision of the Court below that the jurisdiction of the Court was not limi-

ted to the assets recovered in Bombay.

What is the cause of action alleged? It is that the 2nd defendant is endeavouring under cloak of his position as surviving partner to get into his hands a sum of money within the jurisdiction of the Court, nay in the hands of its officer, with a view to deprive the representatives of his deceased partner of the fund, and to employ it for his own purposes. That is a most substantial part of the cause of action—Per The High Court in appeal. (Lord Macrosphies.) BHUGWANDAS MITHARAM v. RIVETT CARNAC.

(1898) 26 I. A. 32 (36) = 23 B. 544 (549) = 3 C. W N. 186 = 7 Sar. 451

Managing partner—Expenses incurred for partnership purpose by—Disallowance of, on ground of his mixing up partnership and private accounts.

Where in taking the accounts of a partnership, the count below did not allow to the managing partner even expensionsestly incurred by him for the partnership on the ground that he had mixed up his private affairs with those of the partnership and had omitted to keep clear accounts of any kind, held that the court below acted rightly in doing so (1967). (Lord Hobbouse.) MOUNG THA HNYIN 5.

MAHA THEIN MYAH. (1900) 27 I. A. 183

28 C. 53 (62-3) = 5 C. W. N. 114 = 7 Sar. 778

Member of dissolved partnership—Suit against widow of deceased partner by, for balance due on partner ship accounts—Objections by defendant in—Decret to partify subject to—Propriety—Procedure proper in case of the subject to partnership—Suit against the subject to partnership accounts—Objections by defendant in—Decret to partnership accounts—Objections b

In a suit by a member of a dissolved partnership against the widow of a deceased partner for balance due on partnership accounts, the parties agreed to refer the accounts to arbitrators. The arbitrators made a report stating that a certain sum was due to the plaintiff subject to certain objections of the defendant. The report stated that those objections could not be settled without an inspection of the joint concern papers of a Kottee in an another place, and that those papers were not before the arbitrators. The Court, without either sending for those papers for the purpose of invesienther sending for those papers for the purpose of invesienther sending for those papers for the purpose of invesienther sending for those papers for the purpose of invesienther sending for those papers for the purpose of invesienther sending for those papers for the purpose of invesient the produced, made a decree confirming the copies thereof to be produced, made a decree confirming the award subject, however, to the defendant's right to see the plaintiff upon the objections advanced by her. The original

Accounts of-(Contd.)

SUIT FOR-(Contd.)

books themselves were brought subsequent to the decree, and the defendant applied for a review on the strength thereof. That court rejected the application for review, and, though, in the appeal preferred by her, the defendant brought those facts to the notice of the appellate court, that court merely affirmed the decree below.

Held that the first court ought to have postponed making its decree, till the defendant's objections could be adjudicated upon, and that, in any event, the appellate court ought, under S. 16 of Regulation VI of 1793, to have used the evidence furnished by the books produced for the purpose of ascertaining the real balance due after deciding upon the validity of the defendant's objections. (Vice-Chancellor.) MUSSAMUT SEETUL BABOO v. BABOO HURKISHEN DOSS. (1834) 5 W. B. 76 = 1 Suth. 12 =

Preliminary decree in—Omission to appeal from— Validity of, if can be questioned in appeal from final decree. See C. P. C. of 1908, S. 97.

(1915) 42 I.A. 91 (94·5) = 42 C. 914 (924·5).

2 Knapp. 255-1 Sar. 50.

TAKING OF, FOR WORKING OUT PARTNERSHIP DECREE

-PRODUCTION OF DOCUMENTS RELATING TO
PARTNERSHIP IN HIS POSSESSION—DUTY
OF EACH PARTY TO SUIT AS TO.

-Taking of accounts in spite of their non-production -Propriety.

For the purpose of working out a partnership decree each party to the action is bound to produce and discover all documents in his possession relating to the partnership.

Where partnership accounts had been taken in the absence of such accounts, plaintiff's application for discovery having been refused, held that the accounts must be taken afresh on the footing that every party was bound to account to the best of his ability and to give full discovery of all documents in his possession relating to the matters in dispute. (Lord Parker.) RAI DWARKA NATH SARKAR BAHADUR v. HAJI MAHOMED AKBAR.

(1914) 18 C. W. N. 1025 = 1 L. W. 697 = (1914) M. W. N. 876 = 16 M. L. T. 521 = 21 C. L. J. 1 = 17 Bom L. B. 5 = 24 I. C. 307 = 27 M. L. J. 192 (194-5).

### Account books of.

——Entries on—Binding nature on partner of—Inaccuracy of entries—Plea by him of—Onus of proof of. See ACCOUNT BOOKS—HINDU JOINT FAMILY.

(1866) 10 M. I. A. 490 (508).

—Non-production for inspection of, in spite of order therefor—Decision in partnership action in favour of opposite party on ground of—Propriety. See C. P. C. of 1908, O. 11, R. 21. (1924) 27 Bom. L. B. 746.

Production of, for working out partnership decree—
Duty of each party to suit as to—Taking of accounts in spite of their non-production—Propriety. See PARTNERSHIP—ACCOUNTS OF—TAKING OF, ETC.

(1914) 27 M. L. J. 192 (194-5).

### Admission into.

Debts and obligations of firm incurred before—
Liability for, of partner so admitted. See PARTNERSHIP
PARTNER—DEBTS OF FIRM—LIABILITY FOR.

(1914) 42 I.A. 48 (55) = 39 B. 261 (275-6).

Deceased partner-Widow of-Admission of-Evi-

The question was whether on the death of one of three divided brothers who carried on business as partners, the appellant as acceptor. Appellant there appellant, his widow, was admitted as a partner to a new for recovery of money so paid by him.

# PARTNERSHIP-(Contd.)

Admission into-(Contd.)

partnership. Though the existence of such a partnership was denied, not a scrap of evidence was produced on behalf of the appellant to prove an agreement admitting her as a partner in the place of her husband, and all that appeared was that the widow got a mere allowance of Rs. 51 a month and that her husband's share continued, even after his death, to be dealt with in the books of the partnership.

21 A. L. J. 582 = A. I. R. 1923 P. C. 136 = 18 L. W. 273 = (1923) M. W. N. 687 = 28 C. W. N. 785 = 25 Bom. L. R. 1256 = 33 M. L. T. 283 = 74 I. C. 462 = 45 M. L. J. 355.

Minor—Admission of, to benefit of partnership. See PARTNERSHIP—PARTNER—MINOR—ADMISSION OF, TO BENEFIT OF PARTNERSHIP.

(1922) 49 I. A. 108-49 C. 560

# Business of-Bequest absolute of, to sons.

Direction that, on death of any of them without leaving son, his share was to go over to other sons—Company's
paper in name of one of them—Indorsement in blank of,
by him before his death without sons—Effect—Right of his
widow to his share therein. See Hindu Law—WILL—
SONS—PARTNERSHIP BUSINESS.

(1867) 12 M. I. A. 41 (64).

# Contract of -Agreement amounting to.

-Wherever the agreement between parties creates a relation which is in substance a partnership, no mere words or declarations to the contrary will prevent, as regards third persons, the consequences flowing from the real contract (103). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. P. THE COURT OF WARDS.

(1872) Sup. I. A. 86=10 B. L. R. 312= 18 W. R. 384=3 Sar. 168=9 Moo. P. C. (N. S.) 214= 2 Suth. 715.

To constitute a partnership the parties must have agreed to carry on business and to share profits in some way in common (103). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. v. THE COURT OF WARDS.

(1872) Sup. I. A. 86=10 B. L. R. 312= 18 W. R. 384=3 Sar. 168= 9 Moo. P. C. (N. S.) 214=2 Suth. 715.

- Joint venture in business-Agreement for. A and B entered into an agreement for the stated purpose of doing business in partnership in brown sugar from Mauritius to Hong Kong. Under the agreement, each partner after consultation, was to buy sugar in his own name giving to the other a delivery order for half the quantity. When sufficient sugar had been purchased it was to be shipped to Hong Kong, separate invoices for half the quantity being made out separately. Separate accounts of sales were to be kept, but the profit or loss on the entire transaction was to be divided equally. Under the agreement A and B were each to draw bills for the sugar purchased, which, under certain circumstances, were to be accepted by the appellant before their Lordships. Under the agreement, A and B bought sugar and in each case bills in respect of the price were drawn by the individual purchaser and accepted by appellant, to whom the sugar was consigned. When the bills became due A retired those which he had drawn, but B having become insolvent, failed to meet those drawn by him, and they were discharged by appellant as acceptor. Appellant thereupon sued A and B

Contract of -Agreement amounting to-(Contd.)

Hcld, (1) that there was a partnership between A and B within the definition of the term given in the Contract Act, though it was one of a limited character;

(2) that both of them were liable for the amounts of the bills.

The criterion to be applied to see whether a transaction is or is not a partnership transaction is stated in the well-known judgment of Lord Ellenborough thus: If a number of persons agree to share in goods to be purchased, and in consequence of that agreement one of them go into the market and make the purchase, it is the same as if all the names had been announced to the seller, and therefore all are liable for the value of them. He distinguishes the case in which each of several persons buys his separate parcel of goods which are afterwards mixed in a common adventure. In such cases till the admixture the partnership in the goods does not arise (54-5). KARMALI ABOULLA ALLARKHIA 12, VORA KARINJI JEWANJI. (1914) 42 I. A. 48 = 39 B. 261(274) = 17 Bom L. R. 103 =

19 C. W. N. 337 = 21 C. L. J. 122 = 13 A. L. J. 121 = 17 M.L. T. 35 = 2 L. W. 133 = (1915) M. W. N. 606 = 26 I. C. 915 = 28 M. L. J. 515

Profits of trade—Participation in -Agreement for.

It is now established that, although a right to participate in the profits of trade is a strong test of partnership, and that there may be cases where, from such perception alone it may, as a presumption, not of law but of fact, be inferred; yet that whether that relation does or does not exist must depend on the real intention and contract of the parties (102).

It may well be, that where there is an agreement to share the profits of a trade, and no more, a contract of partner-ship may be inferred, because there is nothing to show that any other was contemplated; but such an inference does not arise in a case where another and different contract is shown to have been intended, viz., one of loan and security (104). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. v. THE COURT OF WARDS. (1872) Sup. I. A. 86 = 10 B. L. R. 312 = 18 W. B. 384 = 3 Sar. 168 = 9 Moo. P. C. (N. S.) 214 = 2 Suth. 715.

-It appears to have been at one time understood that some decisions of the English Courts had established, as a positive rule of law, that participation in the net profits of a business made the participant liable as a partner to third persons. The rule was evidently an arbitrary one, and subsequent discussion has led to the rejection of the reason for it as unsound. Whilst it was supposed to prevail, much hardship arose from its application, and a distinction, equally arbitrary, was established between a right to participate in profits generally " as such," and a right to a payment by way of salary or commission "in proportion" (to use the words of Lord Eldon) " to a given quantum of the profits" (101). This distinction has always been admitted to be thin, but it may be observed that the supposed rule itself was arbitrary in the sense of being imposed by law and of being founded on an assumption opposed in many cases to the real relation of the parties; and when the law thus creates a rule of liability and a distinction both equally arbitrary, the distinction which protects from liability is entitled to as much weight as the rule which imposes it (102). (Sir Montague E. Smith.) MULLWO MARCH & CO. P. THE COURT OF WARDS (1872) Sup. I. A. 86=10 B. L. B. 312=18 W. B. 384=

3 Sar. 168=9 Moo. P. C. (N. S.) 214=2 Suth. 715.

See Partnership—Partner of—Lender if
AND WHEN A.

See Partnership—Partner of—Servant or agent remunerated by Share of profits or a.

### PARTNERSHIP-(Contd.)

Contract of -Balance resulting from-Suit by one partner against another for-Jurisdiction.

—Contract of partnership at one place—Business intended to be, and, in fact, principally carried on at another Sα JURISDICTION — PARTNERSHIP CONTRACT — BALANCE RESULTING FROM. (1860) 8 M. I. A. 291.

#### Dissolution of.

AGREEMENT ON, FOR FIRM'S BUSINFSS AND LIABL-LITIES BEING TAKEN OVER BY ONE OF PARTNERS. ARRANGEMENT FOR.

ASSETS OF FIRM REALISED BY ONE PARTNER AFTER.
ASSETS OF FIRM RETAINED AND USED BY ONE
PARTNER ON, FOR CONTINUING BUSINESS ON HIS
OWN ACCOUNT.

BUSINESS BEING CARRIED ON AT A LOSS-DISSOLU-TION ON GROUND OF-RIGHT OF.

CONDITION PRECEDENT UNDER PARTNERSHIP ARRANGEMENT TO.

GUARDIAN'S ARRANGEMENT FOR.

HINDU JOINT FAMILY - PARTNERSHIP WITH STRANGER OF.

NOTICE TO OLD CUSTOMER OF.

PARTNER'S REFUSAL TO PERFORM DUTIES UNDER-TAKEN BY HIM UNDER PARTNERSHIP AGREEMENT. PARTNERSHIP AT WILL.

PARTNERSHIP FOR TERM.

PRESUMPTION—CESSATION OF ANNUAL ACCOUNTS
AND MAKING OF FINAL ACCOUNT.

SETTLEMENT OF ACCOUNTS AND — PARTNERSHIP ASSET RECEIVED BY ONE OF PARTNERS AFTER. SUIT FOR.

SUIT FOR-RECEIVER IN.

AGREEMENT ON, FOR FIRM'S BUSINESS AND LIABI-LITIES BEING TAKEN OVER BY ONE OF PARTNERS.

- Creditors not parties to-Effect of agreement when, and upon partners inter se.

When on the dissolution of a partnership an agreement is arrived at by which one of the partners takes over the firm's assets and makes himself personally responsible for its debts and liabilities, a creditor of the firm who is sola party to the dissolution agreement is not affected by it. The direct joint liability of each of the partners to such creditor remains entirely unaffected by the execution of such and ment. But by that agreement, the partner who took out the firm's assets and liabilities, as between himself and each of his former partners, becomes solely responsible for the firm's debts to that creditor, and each of the other former partners becomes entitled to an indemnity from the partner who took over the liabilities against all liability as a former partner of his in respect of that debt. Each of the other partners is entitled to have that right of indemnity declared and enforced (by an order on the partner took over the debts, for example, to pay off the debt) if the right were disputed or the obligation neglected. But each of the other partners is entitled to no more. He cannot recover the debts from the partners who took over the liabilities unless and until he has himself paid it. (Les Blanesburgh.) VEERAPPA CHETTY P. ARUNACHALLAN (1924) 20 L. W. 388= CHETTY.

26 Bom. L. R. 661 = (1924) M. W. N. 59= A. I. R. 1924 P. C. 192 = 35 M. L. T. 161= 29 C.W.N. 438 = 86 I. C. 259 = 47 M. L. J. 168 (1734).

### ARRANGEMENT FOR.

G and L were two brothers. The respondent was the widow of G, who died leaving a daughter, but no male is sue. L died leaving a widow, B, and an only son, the appellant. Up to 1889 the two widows managed a family

Dissolution of-(Contd.)

ARRANGEMENT FOR-(Contd.)

business, which was held in partnership between G and L. Differences of opinion arose between the ladies, and in that year, on the advice of friends, the family business was divided into two shops, one of which was carried on by the respondent for her own profit, the other being in like manner carried on by B for herself and the appellant. A complete and apparently exact division was then made of the stock-in-trade, book debts, and other assets of the business. The parties, however, continued to live in the family house, though whether they messed together was not clear, until 1894, when the final rupture took place, and the respondent went to reside elsewhere.

In a suit brought by the appellant alleging that the division in 1889 was only an arrangement for management only to avoid quarrels and as a matter of convenience, held, on the evidence, that the transaction of 1889 was a dissolution of the partnership theretofore subsisting between the appellant and the respondent, as heir and representative of G and that the arrangement of 1889 was not, as alleged by the appellant, of a merely temporary character, but was intended to be a permanent family settlement, and in the circumstances could not be impeached by him, and was binding upon him (138). (Lord Durcy.) BALABUX LADHURAM (1903) 30 I. A. 130 = 30 C. 725 (736-7) = 7 C. W. N. 642 = D. RUKHMABAI.

5 Bom. L. R. 469 = 8 Sar. 470.

ASSETS OF FIRM REALISED BY ONE PARTNER AFTER.

-Right and remedy of other partner in respect of. See PARTNERSHIP-PARTNER-ASSET OF FIRM RECOVERED BY A. (1922) 49 I. A. 181 = 45 M. 378.

ASSETS OF FIRM RETAINED AND USED BY ONE PARTNER ON, FOR CONTINUING BUSINESS ON HIS OWN ACCOUNT.

-Accountability to other partners for-Liability to them for interest on.

In certain cases, when on the dissolution of a firm one of the partners retains assets of the firm in his hands without any settlement of accounts and applies them in continuing the business for his own benefit, he may be ordered to account for these assets with interest thereon, and this apart from fraud or misconduct in the nature of fraud (96). (Lord Sumner.) AHMED MUSAJI SALEJI D. HASHIM EBRAHIM (1915) 42 I. A. 91 = 42 C. 914 (925) =

19 C. W. N. 449 = (1915) M. W. N. 485 = 17 M. L. T. 312 = 21 C. L. J. 419 = 2 L. W 377 = 13 A. L. J. 540 = 17 Bom. L. B. 432 = 28 I. C. 710 = 29 M. L. J. 70.

BUSINESS BEING CARRIED ON AT A LOSS-DISSOLUTION ON GROUND OF-RIGHT OF.

-Partnership for term or for life of a particular person-Effect.

The partners possess an inherent right, notwithstanding that the partnership were established for the life of a particular person, or even for a definite term, of winding it up, or applying to have it wound up, in the event of its not being able to be carried on with success (207). (Sir Robert P. Collier.) COWASJEE NANABROY D. LALLBHOY (1876) 3 I. A. 200 = 1 B. 468 (473-4) = VULLUBHOY. 26 W. R. 78=3 Sar. 645.

-Relinquishment of - Agreement amounting to-Compensation to managing partner in event of dissolution on that ground during his lifetime-Agreement providing for.

An agreement of partnership formed for the purpose of establishing a factory for the manufacture of cotton twist entrusted the appellant, one of the partners, with the whole management of the said factory during his life, and provided, as a remuneration for his services, for the pay-

# PARTNERSHIP -(Contd.)

Dissolution of-(Contd.)

BUSINESS BEING CARRIED ON AT A LOSS-DISSOLU-TION ON GROUND OF-RIGHT OF-(Contd.)

ment to him of a certain percentage of commission upon sales. The clause in the agreement relating to the said matter ran as follows:—"All we shareholders having agreed to make this agreement or settlement (1/12.) that in return for the trouble you have been at in getting up this factory we have appointed you for your life the agent or broker of this factory, as to that it is to be understood as follows: whatever corton may have to be parchased for this factory do you purchase, and whatever yarn may be made in this factory all that do you sell, and for whatever you may sell on account of the factory do you hereby receive from the company the commission at the rate of Rs. 5, 1/2., 5 per cent. during your lifetime."

Held that by no fair and reasonable intendment could it be inferred from the whole of the agreement that the partners relinquished their right of dissolving or applying to have the company dissolved if the business could not be carried on at a profit, or that they agreed, if they did exercise that right, to pay the app flant compensation (208). (Sir Robert P. Collier.) COWASJEE NANABHOY D. LALL. BROY VULLUBHOY (1876) 3 I. A. 200=

1 B. 468 (473-4) = 26 W. B. 78 = 3 Sar. 645.

CONDITION PRECEDENT UNDER PARTNERSRIP ARRANGEMENT TO.

-Butiness stopped before happening of -No dissolution even in case of.

Where, under the terms of a partnership, a final dissolution of the partnership cannot take place until certain assets are realised, the partnership must be held to go on until those assets are realised even though it does not do any business. (Lord Phillimore.) SATHAPPA CHETTI P. SUBRAMANIAN CHETTI. (1927) 31 C. W. N. 857 =

(1927) M. W. N. 500 = 25 A. L. J. 687 = 25 L. W. 265 = 39 M. L. T. 232 = 4 O. W. N. 491 = 101 L. C. 17 = A. I. R. 1927 P. C. 70 = 53 M L. J. 245.

GUARDIAN'S ARRANGEMENT FOR.

-Binding character on minor of, See PARTNERSHIP -MINOR.

(1903) 30 I. A. 130 (138) = 30 C. 725 (736-7). HINDU JOINT FAMILY-PARTNERSHIP WITH STRANGER OF.

-Dissolution of, by partition of family property. See PARTNERSHIP-HINDU JOINT FAMILY-PARTNERSHIP WITH STRANGER OF. (1913) 36 M. 185 (192).

NOTICE TO OLD CUSTOMER OF.

-Publication in news papers-Sufficiency of-Actual intimation-Necessity. See PARTNERSHIP-PARTNER-RETIRING PARTNER. (1929) 56 M. L. J. 739.

PARTNER'S REFUSAL TO PERFORM DUTIES UNDER-TAKEN BY HIM UNDER PARTNERSHIP AGREEMENT.

-No dissolution by reason of -Remedy of other partners in case of.

Refusal and neglect on the part of any one partner to perform the duties undertaken by him would give to any other partner the right to apply for dissolution, or without legal proceedings the partnership could by agreement be dissolved, but for such agreement the consent of all the partners is necessary.

In respect of a contract with the Corporation of Madras which was to run for three years from April 1911, the two appellants and the respondent entered into a partnership, on the terms, inter alia; that the two appellants were to do all the work and have stated shares in the profits. The first appellant gave up the work in October 1911, and the respon,

Dissolution of-(Contd.)

PARTNER'S REFUSAL TO PERFORM DUTIES UNDER-TAKEN BY HIM UNDER PARTNERSHIP AGREE MENT—(Contd.)

dent accepted that position. Similarly the 2nd appellant gave up the work in March 1912, and the respondent accepted that position also, and performed what other work was required, either himself or through his agents, until the completion of the contract in April, 1914. In a suit by the two appellants for a declaration that the partnership terminated from 31st March 1914, with the usual and proper accounts and enquiries, held that the partnership came to an end only by efflux of time and that the appellants were entitled both to the declaration they sought as to the period of dissolution and to the account of profits earned.

The view of the appellate Court is that the partnership was ended by the 1st appellant in October, 1911; that the 1st appellant then gave up the work and the respondent accepted that position. But this is not sufficient to determine the partnership. The partnership when constituted was a partnership between three people, and could be dissolved only by agreement between all the partners. It is not suggested that there was any such agreement. The rights, therefore, given to the respondent by the action of the 1st appellant were not exercised, and the partnership continued. The same result occurred when the 2nd appellant himself declined to go on. (Lord Buckmaster.) KRISHNAMA-CHARIAR v. SANKAMA SAH.

(1920) 12 L. W. 777 = 28 M. L. T. 265 = 25 C. W. N. 314 = 33 C. L. J. 1 = 2 P. W. R. 1921 = 57 I. C. 713 = 39 M. L. J. 257 (261).

PARTNERSHIP AT WILL.

——Dissolution of. See PARTNERSHIP—PARTNERSHIP AT WILL—DISSOLUTION OF.

PARTNEPSHIP FOR TERM

PRESUMPTION—CESSATION OF ANNUAL ACCOUNTS
AND MAKING OF FINAL ACCOUNT.

-Ffeet

When in a partnership mutual accounts cease to be rendered and a final account showing division of both capital and revenue is made out the presumption is that there is a dissolution as at the definite date of the year in account thus closed.

In a suit for the winding up of a partnership in which the plaintiffs alleged their family had a share, it appeared that in 1891 there was a division in respect of some other family property and that in respect of the partnership also a final account was taken in that year and that there was no further rendering of yearly accounts as was previously the case, or any interposition of the family in the partnership business. It also appeared that sometime in 1901 the dispute between the plaintiffs and the defendant was arranged by a letter signed by the plaintiffs in which there was reference to verbal arrangement by which they agreed to divide properties acquired with the partnership funds equally. Defendant's case was that there was a dissolution and a settlement of accounts in 1891 and that the plaintiffs' claim was barred. Held that the dissolution of the partnership in 1891 was made out and the suit having been instituted more than three years from that date was barred by limitation under Article 106 of the Limitation Act. (Lord Shaw.) JOOPOODY SARAYYA 2. LAKSHMANASWAMY.

(1913) 36 M. 185 = 11 A. L. J. 556 = 18 C. L. J. 13 = 15 Bom. L. R. 634 = 14 M. L. T. 7 = 17 C. W. N. 1006 = (1913) M. W. N. 571 = 19 I. C. 513 = 25 M. L. J. 128.

PARTNERSHIP-(Contd.)

Dissolution of-(Contd.)

SETTLEMENT OF ACCOUNTS AND-PARTNERSHIP ASSET RECEIVED BY ONE OF PARTNERS AFTER.

-Right of other partners in.

Where it appeared that, after the winding up of a partnership and the settlement of its accounts, two items were received by one of the quandam partners which were destined for the assets of the firm but which had not been included in the accounts previously taken, held, that the items so received should be included in the partnership assets, and that all the partners were entitled to participate in them in proportion to their shares in the partnership. (Lord Shaw.) HAVELI SHAH v. CHARAN DAS.

(1929) 115 I. C. 727 = A. I. R. 1929 P. C. 184.

SUIT FOR.

Dismissal of Grounds of Extravagant groundless charges of fraud in plaint if one.

While extravagant and groundless charges of fraud are to be deprecated, and may well attract the consequence of an adverse order as to costs, their Lordships cannot accede to the suggestion. somewhat faintly made, that the plaintiff (in a suit for a dissolution of partnership) had by these charges forfeited his right to the protection of the court if he otherwise had a good cause of action (64). (Sir Lawrence Jenkins.) RAHMAT-UN-NISA BEGAM P. POST.

(1917) 45 I. A. 61=42 B. 380 (387)= 23 M. L. T. 400=22 C. W. N. 601=16 A. L. J. 613= 27 C. L. J. 623=8 L. W. 53=5 Pat. L. W. 25= 20 Bom. L. R. 714=45 I. C. 568=35 M. L. J. 262

-Final decree in-Appeal from-Remand for further account of particular transaction-When will not be made.

On an appeal from the final decree in a suit for disclition of partnership and consequential relief, the question was whether the case ought to be remanded for taking a further account as to a particular transaction. The transaction was a purchase of certain plots made in 1900 for the benefit of the 1st defendant (one of the partners) with perchase-money undoubtedly derived from the firm funds. Though the litigation had been pending for a number of years, the first suggestion of the right to the account chised was made only in the course of the argument of the appeal before the High Court. The learned Judges of the High Court considered it was then too late to ask the ist defendant's representatives to trace the particular item through the accounts.

Their Lordships concurred in the view of the High Court more especially because the case was not one where it could be said to be patent on the face of the accounts that the 1st defendant's liability to the firm for the purchase money had not been discharged.

No doubt there is no single entry in the accounts recoving the discharge of the amount in question, but the accounts are consistent with it and are far from indicating on their face that the liability still exists, more especially when regard is had to the balances brought forward each year and the annual comparison and adjustment of accounts as between the two branches of the firm up to March 100A. To open up accounts thus compared and adjusted from year to year after this lapse of time would require a very strong case, and that certainly has not been made out. (Sir Laurence Jenkins.) Damisetti Ramaghandrud.

2. Damisetti Janakiramanna.

(1919) 13 L. W. 293 (295)=69 L C. 744

Dissolution of-(Contd.)

SUIT FOR-(Contd.)

Properties purchased out of profits of business and misconduct was brought to the notice of the Court, it left in several possession of partners according to their respective shares in profits-Mode of dealing with.

The plaintiff and the defendant were partners in a firm. the plaintiff being entitled to a 10-anna share of profits, and the defendant to a 6-anna share. The partnership was governed by a deed of the 2nd August, 1905, under which the management was vested in the plaintiff, and there was a stipulation for annual accounts. Interest on capital contributed was allowed at 9 per cent., and each partner was at liberty to add his profits to his capital if he so desir-

Out of the profits of the business certain house properties had been from time to time purchased by the firm, and they were left in the several possession of the partners according to their respective shares in profits. In a suit for dissolution of the partnership the question arose whether in the final division those properties were to be specifically divided between the partners in the proportion of 10 to 6, or whether, like other partnership assets, they could be made available first to satisfy the partners' claims on capital account.

Held, affirming the High Court, that under the partnership deed those houses were partnership assets burdened with the liabilities of the partnership whether to outsiders or to the partners; and it was only after all such liabilities had been adjusted and in full-with recourse, if necessary, to the houses for the purpo-e-that they, or such of them as then remained available, would be distributable as surplus assets between the partners severally and in proportion to their shares in the profits. (Lord Blanesburgh.) MUSSA-MAT NAG KUER P. SHAM LAL SAHU.

(1925) 92 I.C. 274 = A.I.B. 1925 P.C. 257 (258) = 23 A.L.J. 1045 = (1926) M.W.N. 101 = 7 Pat. L.T. 275 - 23 L.W. 628.

# SUIT FOR-RECEIVER IN.

-Mortgage of partnership property-Power of-Construction of order of appointment.

Pending a suit for the dissolution of a firm, R was appointed receiver by an order of the Court in the suit in the following terms: "It is ordered that R be and he is hereby appointed receiver to take charge of the property of the firm pending the decision of the suit for dissolution of partnership, with power to collect outstandings and do all things necessary for the realisation and preservation of the assets of the firm."

Held that R, the receiver, was not under the order appointing him authorised to create any morigages of the partnership property. (Lord Carson.) SUBRAMANIAN S. LUTCHMAN. (1922) 50 I.A. 77 (84)=

50 C. 338 (341-2, 346) = 1 B. 66 - 32 M.L.T. 184 = 2 Bur. L.J. 25 = 38 C.L.J. 41 = 18 L.W. 446 = (1923) M. W. N. 762 = 28 C. W. N. 1 = 25 Bom. L.B. 582 = A.I.B. 1923 P.C. 50 = 71 I.C. 650 = 44 M L.J. 602.

Party himself appointed as-Partnership funds in hands of-Appropriation to personal use of-Sanction of Court-Appropriation without-Court's duty in case of.

In a suit for dissolution of a partnership the Court appointed the plaintiff, the managing partner, to be receiver and manager pendente lite without remuneration and without security, and directed him to submit his accounts every month. Without leave of the court or consent of parties the plaintiff withdrew from the partnership funds in his hands as such receiver two large sums of money, and although

# PARTNERSHIP-(Contd.)

Dissolution of-(Contd.)

SUIT FOR-RECEIVER IN-(Contd.)

remained comparatively inactive originally, and later on condoned the plaintiff's unauthorised retentions by treating them, without even any charge for interest, as being on account with the defendants both regular and final,

Hell, that the action of the plaintiff in the matter, fully acknowledged and neither explained nor excused, amounted to a breach of duty as serious in character as any that could be committed by an officer of the Court in his

It ought not to have been overlooked to any degree by any Court jealous of its responsibility for the action of its own officers. (Lord Blanesburgh.) MUSSAMMAT NAG KUER (1925) 92 I C. 274 =

A.I.R. 1925 P.C. 257 (258.9) = 23 A.L.J. 1045 = (1926) M. W. N. 101 = 23 L. W. 628 = 7 Pat. L.T. 275.

-Party himself appointed as-Partnership funds perongfully appropriated to personal nie by-Interest at mercantile rate on - Liability for.

Where a partner appointed receiver and manager pendente lite in a suit for dissolution of partnership withdrew from the partnership funds in his hands as such receiver certain sums of money without leave of the Court or consent of parties, held, that the strict order to be made in distributing the assets would be one charging the plaintiff with the sums withdrawn by him as being partnership assets in his hands with at least mercantile interest from the dates of withdrawal. (Lord Blanciburgh.) MUSSA. MAT NAG KUER P. SHAM LAL SAHU.

(1925) 92 I.C. 274 = A.I.R. 1925 P.C. 257 (260) = 23 A.L.J. 1045 = (1926) M.W.N. 101 = 7 Pat. L.T. 275 = 23 L.W. 628.

# Dissolution and accounts-Suit for.

-Asset of firm recovered by one partner-Right of other partner in respect of-Suit by him to recover his share in-Maintainability. See PARTNERSHIP-PARTNER -ASSET OF FIRM RECOVERED BY A.

(1922) 49 LA. 181 (191) = 45 M. 378 (390).

-Commissioner for taking accounts-Appointment of -Practice-Ruling erroneous of Commissioner-Remedy of party aggricaed by.

In a suit for dissolution of a partnership and for accounts, it is a matter of ordinary procedure to leave all matters of account within the discretion of the Commissioner, and, if exception is sought to be taken to any ruling of the Commissioner, for the party who seeks to make the complaint to apply to the Court. (Lord Parmoor.) HAJI HEDAYETULLA 2. MAHOMED KAMIL

(1923) 19 L.W. 425 = A I.R. 1924 P.C. 93 = 34 M.L.T. 69 = 22 A.L.J. 382 = (1924) M.W.N. 660 = 81 I.C. 525 = 29 C.W.N. 161.

-Decree for payment of money in -Appeal against-Respondent's death pending—Omission to bring his legal representatives on record—Abatement of appeal. See C. P. C. OF 1908, O. 22, R. 4; S. 107 (2).

(1904) 31 I.A. 71 = 31 C. 487.

-Party to-Superior partnership between suit firm and third party not a member of suit firm-Third party if

In a suit for a dissolution of partnership and accounts and consequential relief, held that a person who was not in as such receiver two large sums or money, and any over superior partnership of which he was one side and the those moneys he failed to do so. When the plaintiff's grave whole of the suit firm as a unit was the other side was not

Dissolution and accounts - Suit for-(Contd.)

a necessary porty. (Lord Phillimore.) SATHAPPA CHETTI P. SUBRAMANIAN CHETTY.

(1927) 31 C.W.N. 857 = (1927) M.W.N. 500 = 25 A.L.J. 687 - 25 L.W. 265 - 39 M.L.T. 232 -4 O.W.N. 491 = 101 I.C. 17 = A.I.B. 1927 P.C. 70 = 53 M.L.J. 245 (247),

-Preliminary secree in-What amounts to a.

In a suit for the taking of partnership accounts and for that purpose to have various matters decided by the Court, one of the points in dispute was whether or not certain persons were partners. The trial Judge, by his formal adjudication, "declared" that the partnership in question was dissolved as from a date prior to suit, and then "ordered and decreed" that-It is referred to the assistant referee of this Court to take the following account and to make, inter alia, the following inquiries, that is to say:-"(1) To inquire who were the partners who were entitled to share in the assets and goodwill of the said partnership business; and (2) to take an account of the dealings of the parties with the assets of the said partnership business."

Held that the adjudication was a "decree within the meaning of S. 2, sub-S. (2) of C. P. C. of 1908," and that it was a "preliminary decree" within S. 97 of the Code (94-5).

The adjudication itself began by declaring that the partnership was dissolved as from a certain date, and thus in limine settled rights between the parties. This declaration was the foundation for all subsequent accounts and proceedings, which were merely incidental thereto and consequential thereon. It matters not whether the instrument of partnership fixed the dissolution at a date which had passed before the suit began, or whether the parties had agreed to a dissolution or agreed in submitting to a dissolution by the Court, or whether the Court decreed a dissolution for cause shown before it after a litis contestatio. The declaration when so made was what the Court's adjudication and indeed the appellant's own case call it, a decree. The adjudication was in substance a decree; it did not cease to be such because a subordinate part of it, if correctly made, might have been made separately as an order. It conclusively determined the rights of the parties in regard to certain, and those essential, matters involved in the suit (95). (Lord Sumner.) AHMED MUSAJI SALEJI 2. HASHIM EBRAHIM SALEJI. (1915) 42 I.A. 91=

42 C. 914 (924-5) = 17 M.L.T. 312= (1915) M.W.N. 485=2 L.W. 377=19 C.W.N. 449= 21 C.L.J. 419 = 17 Bom. L.R. 432 = 13 A.L.J. 540 = 28 I.C. 710 = 29 M.L.J. 70

Duration of - Managing partner-Lifetime of-Agreement for carrying on business at least during.

-What amounts to.

The appellant entered into an agreement with a number of persons, who were to form a partnership with him for the purpose of establishing a factory for the manufacture of cotton twist. The beginning of the agreement was to this effect :- "To Cowasjee" (the appellant), "written by us the undersigned, (who) do give in writing to you as follows :- You are establishing a factory for the manufacture of 'water' cotton twist. . . . Relative to the same, we have given in writing to you this instrument, agreeably to the particulars written below. The first clause is this :- For the above mentioned factory (ground is to be procured), and a building is to be erected, and machinery is to be sent for from Europe, and the same is to be set up here. In regard thereto, whatever husiness may have to be transacted, i.e., the employment of persons, and whatever outlays may have to be made for the said factory, the whole management thereof, all we the undersigned sharePARTNERSHIP-(Contd.)

Duration of-Managing partner-Lifetime of-Agreement for carrying on business at least during-(Contd.)

ment, do you duly carry on during your lifetime, and the entire authority for signing and carrying on the entire management of the said factory belongs to you, and after the decease of you, Cowasjee, the whole of the shareholders are to approve of such agent or trustee as the shareholders, having held general meeting, may appoint." Cl. 4 of the agreement ran thus: "All we shareholders having agreed to make this agreement or settlement (viz.), that in return for the trouble you have been at in getting up this factory, as to that it is to be understood as follows: Whatever cotton may have to be purchased for this factory do you purchase, and whatever yarn may be made in this factory all that do you sell; and for whatever you may sell on account of the factory do you duly receive from this company the commission at the rate of Rs. 5, viz., 5 per cent. during your lifetime . . . . "

Quarre, whether the terms of the agreement set out above imported an agreement that the partnership should Le carried on at least as long as Cowasjee (the appellant) lived (207). (Sir Robert P. Collier.) COWASJEE NANABHOY :: LALLBOY VULLUBHOY.

(1876) 3 I. A. 200 = 1 B. 468 (4734)= 26 W. R. 78 = 3 Sar. 645.

### Hindu joint family.

-Business of. See All cases collected under. HINDU LAW-JOINT FAMILY-BUSINESS OF.

-Partnership with stranger of-Dissolution of by

partition of family property.

A dissolution of all the businesses which a joint Hinds family share with a stranger is a natural incident of a partition of the joint family property among the members of the family. By the partition, different person arise in law, and with these it is open to the stranger to say whether he should be allied in partnership or not (192). (Lord Show.) JOOPOODY SARAYYA v. LAKSHMANA (1913) 36 M. 185=11 A. L. J. 556a SWAMY.

18 C. L. J. 13-15 Bom. L. B. 634-14 M. L. T. 7-17 C. W. N. 1006 = (1913) M. W. N. 571 = 19 I. C.513= 25 M. L. J. 128.

# Law governing-English law.

-Applicability of-Limitations.

The case (in which the question was whether, by an agreement between one P and certain persons called the Watsons, P became, at least as regards third persons, a partner with the Watsons) has been argued in the Courts of India and at their Lordships' bar, on the basis that the law of England relating to partnerships should govern the decision of it. Their Lordships agree that, in the attence of any law or well-established custom existing in India of the subject, English law may properly be resorted to it mercantile affiairs for principles and rules to guide the courts in that country to a right decision. But whilst this is so, it should be observed that in applying them the usages of trade and habits of business of the people of India, so far as they may be peculiar, and differ from the in England, ought to be borne in mind (100). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. 7. THE (1872) Sup. L. A. 85= COURT OF WARDS.

10 B. L. R. 312=18 W. R. 384=3 Sar. 168 9 Moo. P. C. (N. S.) 214 = 2 Suth. 715.

Limited Company (R. W. & Co., Ltd..)-Firm of same name (R. W. & Co.)

-Distinction. See COMPANY-FIRM OF INDIVIholders having agreed, have entrusted to you that manage- DUALS. (1915) 42 I. A. 97 (101-2) = 42 C. 1099 (1011)

Manager or employee of, entrusted with transaction of business of partnership.

-Acts of-Liability of partnership for. See FIRM-MANAGER OR EMPLOYEE, ETC.

(1922) 31 M. L. T. 104 (106) (P. C.)

### Minor.

ADMISSION OF, TO BENEFIT OF PARTNERSHIP.

Case of - Appeal - Permissibility for first time in. Though the fact that the minor defendant had been admitted to the benefits of the partnership in question within the meaning of S. 247 of the Contract Act was neither pleaded nor made an issue at the trial, the High Court on appeal, without inviting evidence specifically directed to that point, held the admission proved, and thus set up a new case in appeal. The defendant has just ground of complaint as to this, and the procedure is not one to be commended. (Sir Lawrence Jenkins.) SANYASI CHARAN MANDAL P. KRISHNADHAN BANERJI.

(1922) 49 I. A. 108 (116) = 49 C. 560 (569) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L.B. 700 = 35 C. L. J. 498=(1922) M. W. N. 364=

26 C. W. N. 954=16 L. W. 536= A. I. B. 1922 P. C. 237 = 67 I. C. 124 = 43 M. L. J. 41.

Minor's liability on-Limit of.

Under S. 247 of the Contract Act liability is limited to the share of the minor in the property of the firm (116). (Sir Lawrence Jenkins.) SANVASI CHARAN MANDAL KRISHNADHAN BANERJI. (1922) 49 I. A. 108=

49 C, 660 (569) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L. R. 700 = 35 C, L. J. 498 = (1922) M. W. N. 364 = 26 C, W. N. 954 = 16 L. W. 536 = A. I. R. 1932 P. C. 237 67 I. C. 124 = 43 M. L. J. 41.

Proof of-Necessity.

To bring S. 247 of the Contract Act into play it must be proved that the minor has been admitted to the benefits of the partnership (116). (Sir Lawrence Jenkins). SANYASI CHARAN MANDAL D. KRISHNADHAN BANERJI.

(1922) 49 I. A. 108 = 49 C. 560 (569) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L. R. 700 = 35 C. L. J. 498 = (1922) M. W. N. 364 = 26 C. W. N 954 = 16 L. W. 536 = A. I. B. 1922 P. C. 237 = 67 I. C. 124 = 43 M. L. J. 41.

CONTRACT-PARTNER BY.

-If can be a.

A person under the age of majority cannot become a partner by contract (116). (Sir Lawrence Jenking.) Sanyasi Charan Mandal v. Krishnadhan Banerji.

(1922) 49 I. A. 108=49 C. 560 (570)= 30 M. L.T. 228 = 20 A. L. J. 409 = 24 Bom. L. R. 700 = 35 C. L. J. 498 = (1922) M.W.N. 364 = 26 C. W. N. 954 = 16 L. W. 536 = A. I. B. 1922 P. C. 237 = 67 I. C. 124 = 43 M. L. J. 41.

DISSOLUTION OF PARTNERSHIP-GUARDIAN'S ARRANGEMENT FOR.

-Binding character on minor of. See PARTNERSHIP
-DISSOLUTION - ARRANGEMENT FOR-TEMPORARY ARRANGEMENT OR PERMANENT FAMILY SETTLEMENT. (1903) 30 I. A. 130 (138) = 30 C. 725 (736-7).

Nattukottai Chetti-Banking firm of-Deposit with, under heading "A maral B".

-Liability in respect of, to A or to B - Payment to maraldar B, if a good discharge. See NATTUKOTTAI CHETTI-BANKING FIRM OF. (1929) 57 M. L. J. 628.

# PARTNERSHIP-(Contd.)

### Partner of.

ADVANCE BY ONE, TO ANOTHER TO BE PAID OFF OUT OF PROFITS OF PARTNERSHIP.

ASSETS OF FIRM RECOVERED BY A-RIGHT OF OTHER PARTNER IN RESPECT OF -SUIT BY HIM TO RECOVER HIS SHARE IN-MAINTAINABILITY.

BILL IN FIRM'S NAME DRAWN BY A.

BOOKS OF PARTNERSHIP-ENTRIES IN.

DEATH OF A.

DEBT OF A.

DEBTS OF FIRM.

DECEASED PARTNER.

DISPUTES BETWEEN ONE, AND ANOTHER-TRANSAC-TION SETTLING-NATURE OF.

DISSOLUTION OF PARTNERSHIP.

DISSOLUTION OF PARTNERSHIP AND SETTLEMENT OF ACCOUNTS - PARTNERSHIP ASSET RECEIVED AFTER.

DISSOLVED PARTNERSHIP-MEMBER OF.

DUTIES UNDERTAKEN UNDER PARTNERSHIP AGREE-MENT BY 4-REFUSAL TO PERFORM. ESTOPPEL-PARTNER BY.

INTEREST IN PARTNERSHIP OF A.

LENDER IF AND WHEN A.

MANAGING PARTNER.

MINOR.

MORTGAGE BY A.

PURCHASE BY A.

PURCHASE FOR BENEFIT OF A, WITH FIRM FUNDS.

RETIRING PARTNER-LIABILITY OF, TO FIRM'S OLD CUSTOMER. SERVANT OR AGENT REMUNERATED BY A SHARE OF

PROFITS OR A. SLEEPING PARTNER.

SURVIVING PARTNER. TRADING PARTNERSHIP.

TRANSACTION WITHIN SCOPE OF PARTNERSHIP -LOSS FROM.

ADVANCE BY ONE, TO ANOTHER TO BE PAID OFF OUT OF PROFITS OF PARTNERSHIP.

-Mortgage equitable by one to another or Evidence. See MORTGAGE-EQUITABLE MORTGAGE.

(1923) 1 R. 545. ASSETS OF FIRM RECOVERED BY A - RIGHT OF OTHER PARTNER IN RESPECT OF-SUIT BY HIM TO RECO-VER HIS SHARE IN-MAINTAINABILITY.

-Dissolution of partnership and taking of accounts-Item not taken into account in.

If a partnership has been dissolved and the accounts have been wound up and each partner has paid what he has to contribute to the debts of the partnership and received his share of the profits, the mutual rights and obligations having been thus all discharged, and then it turns out afterwards that there was some item to the credit of the partnership which was either forgotten or treated as valueless by reason of the supposed insolvency of the debtor or for any other cause, which item afterwards becomes of value and falls in, it ought to be divided between the partners in proportion to their shares in the original partnership. There is no reason why one should have it more than the other (190). In all cases where for any reason it did occur that after the dissolution and complete winding up of a partnership an asset which had not been taken into account fell in it ought to be divided between the ex-partners or their representatives according to their shares in the former partner-ship (191). (Lord Phillimore). GOPALA CHETTY v. VIJAYARAGHAVA CHARIAR. (1922) 49 I. A. 181= 45 M. 378 (390)=30 M. L. T. 283=

Partner of-(Contd.)

ASSETS OF FIRM RECOVERED BY A-RIGHT OF OTHER PARTNER IN RESPECT OF-SUIT BY HIM TO RECOVER HIS SHARE IN-MAINTAINABILITY -(Contd.)

(1922) M. W. N. 386 = 16 L. W. 200 = 26 C.W.N. 977 = 20 A. L. J. 862 = 24 Bom. L.R. 1197 = 36 C. L. J. 308 - A. I. R. 1922 P. C. 115= 74 I.C. 621 = 43 M L. J. 305.

Dissolution of partnership but no taking of accounts -Kight to sue for accounts barred.

If a partnership has been dissolved and no accounts have been taken and there is no constat that the partners have squared up, the proper remedy of a partner in respect of an asset received by another partner is to have the accounts of the partnership taken; and it it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets, and the plaintiff does not prove and cannot prove that upon the due taking of the accounts he would be entitled to that share (191). (Lord Phillimore). GOPAL CHETTY v. VIJAYARAGHAVA CHARI-(1922) 49 I. A. 181 = 45 M. 378 (389) = 30 M. L. T. 283 = (1922) M. W. N. 386 = 16 L W. 200 = 26 C. W N. 977 = 20 A. L J. 862 =

24 Bom. L. R. 1197 = 36 C. L. J. 308 = A. I. R. 1322 P. C. 115 = 74 I. C. 621 = 43 M. L. J. 305.

BILL IN FIRM'S NAME DRAWN BY A.

-Liability of other partners on-Trading partner-

thip-Sleeping partner-Liability of.

Every one of the partners in a mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognised trading name of the firm for a transaction incident to the business of the firm, although his name does not appear on the face of the instrument, and although he be a sleeping and secret partner. In order to take a case out of these principles of the general law, it must be shown that the holder of the the bill knew at the time he received it that the transaction was the private affair of a single partner.

A contract entered into by a Railway company and P to supply the company with Railway Sleepers, was partly performed by P, before he entered into a partnership with R under the name of Firm of P. and Co., after which it was completed. Before the partnership, P had entered into a sub-contract with H and M, to supply the sleepers, and, after the partnership, drew bills in the name of P. and Co., payable at Calcutta in favour of H. M. in part-payment of their account. These bills were dishonoured. In an action brought against P. and Co., the evidence showed, that R was aware of P's contract which was subsisting and completed after the partnership. Held that R, as a member of P and Co., was liable in the absence of proof by him that the holder of the bills knew at the time he received them that the transaction was a private contract of P, and not one with a partnership. (Sir Robert Phillimore.) BUNARSEE DOSS P. GHOLAM HOSSEIN

(1870) 13 M. I. A. 358 (363) = 13 W. B. P. C. 29 = 2 Suth. 312 = 2 Sar. 551.

# BOOKS OF PARTNERSHIP-ENTRIES IN.

-Binding nature on partner of-Inaccuracy of-Plea by him of-Onus of Proof of. See ACCOUNT BOOKS HINDU JOINT FAMILY. (1866) 10 M. I. A. 490 (508).

DEATH OF A.

-Business continued by surviving partner after-Representatives of deceased partner. See PARTNERSHIP SURVIVING PARTNER-BUSINESS CONTINUED BY-REPRESENTATIVES OF DECEASED PARTNER.

### PARTNERSHIP-(Contd.)

Partner of -(Contd.)

DEATH OF A-(Contd.)

-Business continued by survivor after-Rights and duties of parties in case of. See PARTNERSHIP-SURVI-VING PARTNER-BUSINESS CONTINUED BY-RIGHTS AND DUTIES ETC.

-Nature of partnership after.

After the death of a partner, the partnership becomes a partnership at will (426). (Lord Parmoor.) Hall HEDAYETULLA D. MAHOMED KAMIL.

(1923) 19 L. W. 425 = A. I. R. 1924 P. C. 93= 34 M.L.T. 69-22 A. L. J. 382-(1924) M.W.N. 660-29 C. W. N. 161=81 L C. 525.

- Shares on - Arrangement new as to-Prof of.

The appeal related to a banking business which was carried on in Kangoon from 1863 to 1878 by Chidambaram Chetty and others. The parties were agreed as to the terms on which the co-partnership existed from 1863 to 1869. They were further agreed that in the latter year an account was made up showing the profits which had been realised during the six preceding years, and bringing out as at that date the sums of capital and profits belonging to each of the partners. The controversy between them had reference to the period from May 1869 until January 1878, when, in consequence of the death of Chidambaram Chetti, the co-partnership was dissolved and had to be wound up.

The plaintifis in their plaint averred that it had been agreed between the partners that after the 10th of May 1809 each share of the business should be of the amount and value of Rs. 4,000; that Chidambaram Chetti represented by defendants 1 to 3, should have four shares that Armanialai Chetti, the 1st plaintiff, and the 2nd and 3rd plaintiffs, should have 21 shares; that the 4th defendant, Arunachellam, who was afterwards made a plaintiff in the suit, should have 1; shares; and that a small part of a share should be set aside for charitable purposes. It was further alleged that the business had been carried on until its close upon that agreement; and the plaintiffs claimed to have the partnership accounts ascertained and stated on that footing accordingly.

The defendants maintained that no such change took place in the year 1869 in the arrangements and agreements of the partners as the plaintiffs alleged, but that what & cured in 1869 was merely that an account showing the shares of capital and accruing profits of each partner, after debiting their respective drawings was made up, the profit being only apportioned, and allowed to remain as capital without any further change being made in the partners interests, and that capital was not drawn out or added to

by any of the partners.

The Court below (the Recorder of Rangoon) by its judgment and decree gave full effect to the plaintiff's chim.

Held, affirming the Court below, that its judgment was sound, and in accordance with the great preponderant of the evidence. (Mr. Shand.) MUTIA CHETTI P. SUBRI-(1891) 18 C. 616=6 Sar. 49. MANIEM CHETTI.

-Surviving partner-Suit for accounts by representatives of deceased partner against—Assets in hands of survivor Deposit into Court of Order for Discretion of Court below as to-Privy Council's interference with. PARTNERSHIP—ACCOUNTS OF—SUIT FOR—DECEASED (1915) 42 I. A. 91 (96) =42 0. 914 (935)

-Widow of deceased-Admission into partnership of -Evidence of. See PARTNERSHIP-ADMISSION INTO-(1923) 50 L A. 192 (195)= DECEASED PARTNER.

# PARTNERSHIP-(Contd.) Partner of-(Contd.)

#### DEBT OF A.

- Compromise on dissolution by which latter under took to pay pertion of debt-Farlure to pay in pursuance of Payment by former to satisfy deere; obtained on debt - Liability of latter to contribute-Pobt, held not binding on latter fartner in suit brought thereon-Effect.

L, one of the partners of a firm, brought a partition suit against the other partner. B. following on a dissolution of the partnership in which the Court gave effect to a compromise which the two parties themselves had effected. There had been a mortgage granted by B in favour of N which purported to convey, as security for the debt which was thereby constituted, the whole of the partnership property. It was a moot point, however, between the purtneras to whether B had in truth any right to subject the whole of the partnership property to the debt, or whether he was not in fact only able to hurden his own share. One of the terms of the arrangement which was made binding between the parties in the judgment pronounced was that L should pay to N a sum of Rs. 8 000 and odd, and that B shoul! free the other parties' portion of the property from the mortgage. L did not pay the amount, and accordingly A' brought a suit on his mortgage in the course of which it was held by the Privy Council that the mortgage only bound B's share and not the whole partner-hip property. B paid the sum of Rs. 8.000 and odd payable by L to A under the compromise, discharged the mortgage, and sued L for contribution. L pl-aded that he was not liable because B never did free the other part of the property from the mortgage, the same having been freed by the judgment of the Privy Council in the mort gage suit, and not by anything done by B. Held, over-ruling the plea, that L was bound by the compromise.

L might have paid the money direct to N; he did not pay it, and B had in consequence to pay it to him. Accordingly, to make good the terms of the compromise. L must pay it to B. (Lord Dunctin.) SETH RAMLAL v. NAR SINGDAS. (1914) 2 L. W. 163=19 C. W. N. 193=

DAS. (1914) 2 L. W. 163 = 19 C. W. N. 193 = 17 M. L. T. 45 = 11 N. L. B. 53 = 21 C. L. J. 137 = 17 Bom. L. R. 404 = 1915) M. W. N. 392 = 26 I. C. 924 = 28 M. L. J. 448.

-Partnership of limited character.

The partnership is however, a partnership of a limited character, and consequently liability to be enforced against one partner, when there is no document of debt which on its face binds him, can only be justified if it was shown that what he (the other partner) did was within the operation, natural to the partnership and for the partnership (54). (Lord Dunedin.) KARMALI ABDULLA ALLARAKHIA P. VORA KARIMII IIW NJI. (1914) 42 I. A. 48 = 39 B. 261 (274) = 17 M L. T. 35 = 19 C. W. N. 357 = 2 L. W. 133 = (1915) M. W. N. 606 = 13 A. L. J. 121 = 21 C. L. J. 122 = 17 Bom. L. B. 103 = 26 I. C. 915 =

#### DEBTS OF FIRM.

28 M. L. J. 515.

- Liability for Admission of that partner into partnership - Debts incurred before.

Where goods are purchased or money is raised for a joint anventure, and the dealing though ostensibly by an individual is truly and substantially a dealing of the joint adventure, the adventurers are liable as partners. But there is no such responsibility for goods, etc., purchased on the credit of an individual adventurer previously to the contract though afterwards brought into stock as his contribution. It may be and often is a difficult matter to say on which side of the line thus indicated the facts of a particular case fall, and cases will be found illustrating both results (55). (Lord.)

## PARTNERSHIP-(Contd.)

Partner of-(Contd.)

DEBTS OF FIRM-(Contd.)

Duncdin.) KARMALI ABDULLA ALLAKAKHIA v. VORA KARIMJI JIWANJI. (1914) 42 I A 48=

39 B. 261 (275.6) = 17 Bom. L. R. 103 = 19 C. W. N. 337 = 21 C. L. J. 122 = 13 A. L. J. 121 = 17 M. L. T. 35 = 2 L. W. 133 = (1915) M. W. N. 606 = 26 I. C. 915 = 28 M. L. J. 515

Mortgage for Effect Novation Release of liability of other partners for debt.

Where during the continuance of a partnership, one of the partners executed to a creditor of the firm a mortgage to secure, inter alia, the debt due to him from the firm, held, on the evidence in the case, that the mortgage did not work either a novation of the firm's debt to the creditor or a release of any of the partners from full liability in respect of it. (Lord Blanciburgh.) VEERAPPA CHETTY v. ARUNACHELIAM CHETTY. (1924) 20 L. W. 368 = 26 Bom. L. R. 661 = (1924) M. W. N. 559 =

A. I. R. 1924 P. C. 192=35 M. L. T. 161= 29 C. W. N. 438=86 I. C. 259=47 M. L. J. 168 (178).

### DECEASED PARTNER.

See ALL CASES COLLECTED UNDER PARTNERSHIP

1) PARTNER—DEATH OF A AND (2) SURVIVING PARTNER.

### DISPUTES BETWEEN ONE, AND ANOTHER— TRANSACTION SEITING—NATURE OF.

Test. Settlement of account-Arbitration and Award-

On disputes arising between two partners, who were residing in different places, one of the partners sent a representative of his armed with a power of attorney which did not authorise the representative to appoint an arbitrator on behalf of his employer or to submit disputes to arbitration in accordance with a clause in the articles of partnership, but which did authorise him, in discussion with the other partner, to settle the accounts of the partnership, and to collect what money he could. Certain proceedings took place at a place called Meidi between the representative and the other partner, and the question for decision was whether those proceedings amounted to an arbitration of a dispute which had arisen between the two partners, followed by an award pronounced by arbitrators between them, or they were in truth an adjustment of the partnership accounts between the respresentative and the other pariner, taking the form of a settled account and followed by such a delivery of goods in stock and cash in hand as constituted a discharge of the balance shown upon the account so stated.

Held, affirming the High Court, that, on a true construction of the document evidencing the proceedings, it constituted a direct settlement of account of all questions arising between the partners, and did not amount to an arbitration and award. (Lord Sumner.) AHMED KHAN v. ALI EBRAHIM. (1924) 27 Bom. L. R. 746= A. I. B. 1925 P. C. 177 (178).

### DISSOLUTION OF PARTNERSHIP.

Agreement on, for firm's business and liabilities being taken over by one partner—Creditors not parties to—
Effect of agreement upon, and upon partners inter it. See
PARTNERSHIP— DISSOLUTION OF—AGPEFMENT ON,
FOR FIRM'S ETC. (1924) 47 M L. J. 168 (173-4).

—Assets of firm recovered by a partner after—Right of other partner in case of—Suit by him to recover his share in—Maintainability. See PARTNERSHIP— PARTNER —ASSETS OF FIRM RECOVERED BY A.

(1922) 49 I. A. 181=45 M. 378.

Partner of-(C.ntd.)

DISSOLUTION OF PARTNERSHIP-(Contd.)

-Assets of firm retained and used by one partner on, for continuing business on his own account-Accountability to other partners for-Liability to them for interest on. Sec. PARTNERSHIP-DISSOLUTION OF - ASSETS OF FIRM (1915) 42 I. A. 91 (96) = 42 C. 914 (925).

DISSOLUTION OF PARTNERSHIP AND SETTLEMENT

OF ACCOUNTS-PARTNERSHIP ASSET RECEIVED AFTER. Right of other partners in. See PARTNERSHIP-DISSOLUTION OF-SETTLEMENT OF ACCOUNTS AND

(1929) 115 I. C. 727.

### DISSOLVED PARTNERSHIP-MEMBER OF,

-Suit against widow of deceased partner by, for balance due on partnership accounts-Objections by defendant in-Decree to plaintiff subject to Propriety-Procedure proper in case of. See PARYNERSHIP-ACCOUNTS OF-SUIT FOR-MEMBER OF DISSOLVED PARTNERSHIP

(1834) 5 W. R. 76.

## DUTIES UNDERTAKEN UNDER PARTNERSHIP AGREEMENT BY A-REFUSAL TO PERFORM,

-Dissolution of partnership by reason of-Remedy of other partners in case of. See PARTNERSHIP-DISSOLU-TION OF-PARTNER'S REFUSAL ETC.

(1920) 39 M. L. J. 257 (261).

## ESTOPPEL-PARTNER BY.

-Where a man holds himself out as a partner, or allows others to do it. he is properly estopped from denying the character he has assumed, and upon the faith of which creditors may be presumed to have acted. A man so acting may be rightly held liable as a partner by estoppel (103). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. P. THE COURT OF WARDS. (1872) Sup. I. A. 86=

10 B. L. R. 312=18 W. R. 384=3 Sar. 168= 9 Moo. P. C. (N.S.) 214 = 2 Suth. 715.

### INTEREST IN PARTNERSHIP OF A.

-Abandonment of-Loss by lackes of-Evidence-Subject matter of partnership precarious-Refusal to adtunce money for partnership purposes in case of-Effect.

Even in a case in which the subject-matter of a partnership is as precarious as a mining speculation, it is a matter of inference to be drawn, from the facts of each case, whether or no there has been abandonment by a partner of his interest in the partnership or loss of such interest by laches. Proof that the partner declined to advance more money for partnership purposes and left with occasional intervention the management to a co-partner was held insufficient to show abandonment or loss by laches (193).

In the case before their Lordships, the partnership was for obtaining logs of teak timber, (Lord Hobboure.) MOUNG THA HNYIN P. MAH THEIN MYAH.

(1900) 27 I. A. 189 = 28 C. 53 (59) = 5 C. W. N. 114 = 7 Sar. 776.

-Assignment of-Effect- Novation - Assignment without consent of other partners - Assignor's liability for accounts on winding up.

Where a partner in a trading venture assigns his interest therein without the consent of the remaining partners there is no novation of contract and the latter are entitled, under a winding-up decree to an account against their original partner and his assignee. (Lord Watson.) DOMATY NURSIAH v. S.R.M. RAMEN CHEITY.

(1899) 26 I. A. 202 (208-9)=27 C. 93(101 2)=

### PARTNERSHIP-(Contd.)

Partner of - (Contd.)

### LENDER IF AND WHEN A.

-Two persons, known as the Watsons, who carried on business in partnership, entered into an agreement with Rajah P on 27-8-1863, whereby in consideration of money already advanced, and which might be thereafter advanced by the Rajah to them, the Watsons agreed to carry on their business subject to the control of the Rajah in several important particulars. They further agreed to and in fact did, hand over to him "as security" the title deeds of certain tea plantations, and they also agreed, that "as forther security" all their other property, landed or otherwise, including their stock in trade, should be answerable for the debt due to him.

Cl. 10 of the agreement provided: "In consideration of the said advances made, and the liability incurred as aforesaid by the Rajah, and in consideration of any future advances which may be made by him, the firm agrees that he shall receive from them a commission of 20 o/o on all net profits made by the firm from time to time, commencing from the 1st of May 1862, or until such time as the whole amount of the debt due to him shall be paid off, and the liability so incurred by him as aforesaid shall be wholly extinguished." Cl. 13 provided as follows: in addition to the said commission pay to the Rajah interest at the rate of 12 o/o per annum upon all cash advances which have been or are to be hereafter made by him to the firm, and shall also pay to the banks all discount and interest now as hereafter payable on the said acceptances."

The agreement was not signed by the Rajah, but he was undoubtedly an assenting party to it. Though the arrange ment conferred upon the Rajah large powers of control, and empowered him to take possession of the consignments and their proceeds, in addition to the commission on net profits. in point of fact, the Rajah never received possession of any of the property or moneys of the firm, nor any of the proceeds of the business, and did not in fact receive any commission. He knew little of the details of the business, and he availed himself only in a slight degree of the powers of control conferred upon him by the agreement.

Held that the Rajah was not liable for the debts of the firm of Watson & Co., either on the ground that by the agreement of 27-8-1863 he became a partner with the Watsons, or on the ground that, if he was not "a true part ner", the Watsons were his agents in carrying on the business, and the debts in question were contracted by the

Watsons within the scope of their agency. By the arrangements between the Watsons and the Rajah

the parties did not intend to create a partnership, and the true relation under the agreement was that of creditor and debtors. There is no sufficient ground for holding that the business was carried on for the Rajah as principal, in as other character. The agreement, in terms, and, in sabstance, is founded on the relation of creditor and debtors, a

establishes no other (105). (Sir Montague E. Smith)
MOLLWO, MARCH & CO. v. THE COURT OF WARDS. (1872) Sup. I. A. 86=10 B. L. B. 318= 18 W. R. 384 = 3 Sar. 168 = 9 Moo. P. C. (N.S.) 214=

Their Lordships epinion in this case is founded of their belief that the contract the construction and effect of which are in question is really and in substance what it pro fesses to be, viz., one of loan and security between delters and their creditor. If cases should occur where any persons under the guise of such an arrangement, are really tracing principals, and putting forward, as ostensible traders, other who are really their agents, they must not hope by sad devices to escape liability; for the law, in cases of the kind, will look at the 7 Sar. 615. kind, will look at the body and substance of the arrange

Partner of - (Contd.)

LENDER IF AND WHEN A-(Contd.)

ments, and fasten responsibility on the parties according to their true and real character (105 6). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. P. THE COURT OF (1872) Sup. I. A. 86=10 B. L. R. 312 = 18 W. R. 384 = 3 Sar. 168 = 9 Moo. P. C. (N S.) 214 = 2 Suth. 715.

### MANAGING PARTNER.

-Duration of partnership at least during life-time of -Agreement for-- What amounts to. See PARTNERSHIP -DURATION OF-MANAGING PARTNER.

(1876) 3 I. A. 200 (207).

Expenses incurred for partnership purposes by-Disallowance of, on ground of his ouxing up partnership and private accounts. See PARTNERSHIP-ACCOUNTS OF-SUIT FOR-MANAGING PARTNER.

(1900) 27 I. A. 189 (1967) = 28 C. 53 (62-3).

MINOR.

-See PARNERSHIP-MINOR.

MORIGAGE BY A.

-Equitable mortgage to another partner-Advance by one to another to be paid off out of profits of partnership or-Evidence. See MORIGAGE-EQUITABLE MORIGAGE. (1923) 1 R. 545.

-Partnership account-M regage on-Binding nature of, on partner not joining in.

By a mortgage-bond the revenues of a village were mortgaged by a firm, in which the respondent was a partner, though he did not actually execute the bond. The bond was executed for an advance made for the purpose of paying the partnership debts of the respondent and his co partners, and it was executed by two of the co-partners. It was executed on the partnership account.

Held that the respondent was bound by the contents of that bond, and that he must be considered as being a mort gagor (499-500). (Mr. Baron Parke.) JUGJEEWUN DAS KEEKA SHAH v. RAMDAS BRIJBOOKUN DAS.

(1841) 2 M. I. A. 487=6 W. R. 10 P. C. = 1 Suth. 109 - 1 Sar. 222

Partnership debt-Mortgage for-Effect-Novation -Release of liability of other partners for debt. See PARTNERSHIP-PARTNER OF-DEBTS OF FIRM-MORT-(1924) 47 M. L. J. 168. GAGE FOR.

### PURCHASE BY A.

-Partnership property or property held in co-stonership.

Held, on the facts, that, with regard to certain buildings purchased by the appellant's husband and his partner while they were still in partnership, the High Court had rightly held that the true position was co-ownership in the properties and not that they were partnership assets belonging to the firm. (Lord Sumner.) JAMNABAI 2. FAZALBHOY HEPTOOLA. (1923) 18 L. W. 437 (440)=

A.I.R. 1923 P. C. 184 = 33 M. L. T. 376 (P.C.) = 26 Bom. L. R. 189 = 40 C. L. J. 272 = 77 I. C. 355 = 47 M. L. J. 164.

PURCHASE FOR BENEFIT OF A, WITH FIRM FUNDS,

-Liability of that furtner in case of.

Where property is purchased for the benefit of one of the partners with money derived from the firm funds, it is incumbent on the partner for whose benefit the purchase is made to discharge himself of the purchase money. (Sir Lawrence Jenkins.) DAMISETTI RAMACHANDRUDU D. DAMISETTI JANAKIRAMANNA

PARTNERSHIP-(Contd.)

Partner of-(Contd.)

RETIRING PARTNER-LIABILITY OF, TO FIRM'S OLD CUSTOMER.

-Publication of retirement in necespapers -- No actual notice to old customer-Effect-Contract Act-S. 264-Eff. et of.

Appellant was a partner of a firm which, along with another firm, granted in respect of a loan a promissory note in favour of the respondent, who was an old customer, Subsequently the firm dissolved partnership and the appellant retired. The firm continued to do business under the same name and by the deed of dissolution a certain interest in the business was secured to the appellant though he was no longer a partner. Thereafter, the old promissory. note was cancelled and a new promissory-note given by the two firms for the same sum, the rate of interest being, however, higher. The retirement of the appellant from the from was advertised in the Bombay Gazette and in four other newspapers but no intimation was sent or conveyed in any way to the respondent.

Held that the appellant was liable on the second pro-

The appellant founded his non-liability on the terms of S. 264 of the Contract Act. He argued that "persons" in that section includes both old and new customers, and that though the section is expressed in a negative form there must be extracted therefrom the positive proposition that persons will be affected by a dissolution of which public notice has been given. Against that it is urged that the section is merely negative and must be strictly limited to what it says, which is the effect of the dissolution of the firm on the rights of persons dealing with it, but not on the liabilities of the firm to the persons so dealing. If this were a new statute which was to be construed for the first time, there would be great force in the appellant's argument. But the question was settled against the contention of the appellant as long ago as 1882, and, in view of the ambiguity of the expression used in the section, their Lordships do not think they would be justified to give effect to a view which would upset what has been considered by the commercial community as the law for such a long period. (Viscount Dungdin.) JWALADATT v. BANSILAL MOTILAL.

(1929 56 I A. 174 = 53 B. 414 = 27 A. L J. 579 == 49 C. L. J. 485 - 31 Bom. L. R. 687 = 115 I. C. 707 = A. I. R. 1929 P C. 132 = 29 L. W 884 = 1929 M. W. N. 440 = 56 M. L. J. 739.

SERVANT OR AGENT REMUNERATED BY SHARE OF PROFITS OR A.

-In December 1910, the Corporation of Madras invited tenders for a contract to mend roads and supply the necessary material. Negotiations took place between the two appellants and the respondent as to the best means by which the tender for the contract might be put forward and the resulting profits divided between them. It was arranged that a lease of certain quarries from which the metal would be obtained should be taken from the corporation in the name of the 1st appellant who should then transfer it to the respondent, the tender for the work being made in the name of the respondent. This arrangement was put in writing and its terms appeared in a letter which was signed by the respondent on 30th December, 1910, was addressed to the two appellants, and was as follows :-

In respect of the work to be sanctioned in my name in the tender which is going to be given in the year 1911, by the Municipality the advance and the money required therefor should be supplied by me alone. That sum should bear interest at 12 annas per cent. You two should do the work taking pains. In respect of the profit and loss the 1st appel (1919) 13 L. W. 293 (295) = 63 I. C. 740. | lant should have 5/16 ths share and the 2nd appellant 1/4th

Partner of - (Contd.)

SERVANT OR AGENT REMUNERATED BY SHARE OF PROFITS OR A-(Contd.)

share for doing the work taking pains and 17/16 ths share. In this manner the one share should be divided and taken at the end. Accounts, cash and all, should remain with me alone. The expenses of gumasta, etc, should be borne in

Held, that the relationship between the appellants and the respondent was that of partners and that the appellants were not more servants of the respondent remunerated by a cular transaction should be borne, not by the firm, but by (Lerd Bukemaster). KRISHNAMAshare in profits. CHARIAR T. SANKARA SAH.

(1920) 33 C. L. J. 1=2 P. W. B. 1921= 25 C. W. N. 314 - 12 L. W. 777 - 28 M. L. T. 265 = 57 I. C 713 = 39 M. L. J. 257 (260-1).

-Sea Customs Act I'III of 1878-S. 20. Proving-Goods belonging to Government-Importation into India-

Liability for custom's duty

The defendant company (the Great Indian Peninsula Ry. Co.), was incorporated in 1849 by an Act of the Imperial Parliament. By another Act of the Imperial Parliament of 1900, the railways and other property of the defendant company were transferred to and vested in the Secretary of State in Council of India as and from 30th June 1900. On 21st December, 1900, an agreement was made between the Secretary of State in Council and the defendant Company, the opening recital of which stated that it had been agreed between the parties that the defendant Company should maintain, manage, and work the Great Indian Peninsula system on the terms thereinafter mentioned. Provisions followed which were intended to secure the carrying into effect of the recited agreement for the maintenance, management, and working of the Great Indian Peninsula Railway System, The agreement, however, contained a clause under which the surplus arising from excess of receipts over payments was to belong as to nineteen equal twentieth parts thereof to the Secretary of State and as to one equal twentieth part thereof to the defendant,

On a question arising as to whether stores purchased and imported by the defendant. Company into India for the use of the undertaking were exempt from Customs duties under S. 20, of the Sea Customs Act VIII of 1878, on the ground that the goods were, at the time of the importation, goods belonging to Government within the proviso to that section, it was found that the money for the purchase of the Stores in question was supplied by the Secretary of State, Held, that the defendant ( ompany purchased and imported the Stores into India merely as the agent for the Secretary of State, and that the goods were goods belonging to Government and were therefore exempt from customs duties.

Under the agreement the Secretary of State and the defendant Company were not co-adventurers or partners, and the defendant Company was merely an agent for the Secretary of State remunerated by a share of the profits. (Sir Laterence Jenkins). SECRETARY OF STATE FOR INDIA IN COUNCIL D. GREAT INDIAN PENINSULA RY. CO.

(1924) 52 I. A. 167 = 49 B. 320 = 2 O. W. N. 379 = (1925) M. W. N. 358 = 27 Bom. L. R. 810 == 30 C. W. N. 76=A. I. R. 1925 P C. 103= 88 I. C. 107 = 48 M L. J. 539.

# SLFEPING PARTNER.

-Trading partnership-Sleeping partner in-Bill in Firm's name drawn by a partner-Liability for. See PART NERSHIP-PARTNER OF-BILL IN FIRM'S NAME DRAWN BY A. (1870) 13 M. I. A. 358 (363)

SURVIVING PARTNER.

-See PARTNERSHIP-SURVIVING PARTNER.

# PARTNERSHIP-(Contd.)

Partner of-(Contd)

TRADING PARTNERSHIP.

-Partner of a. See PARTNERSHIP-TRADING PART-NERSHIP.

TRANSACTION WITHIN SCOPE OF PARTNERSHIP-LOSS FROM.

-Liability solely for-Evidence.

In a suit for dissolution of nartnership and consequential relief, it was contended that the loss resulting from a partithe 1st defendant, one of the partners. Reliance was placed in support of that contention on the correspondence and on the opening of a separate Khata for the transaction in accordance with the 1st defendant's request.

Held, that the transaction being well within the scope of the partnership, the circumstances relied upon could not be regarded as being in any way conclusive against the lst defendant. (Sir Lawrence Jenkins.) DAMISETTI RAMA-CHANDRUDU 2. DAMISETTI JANAKIRAMANNA.

(1919) 13 L. W. 293 (296) = 63 I. C. 740.

Partnership at will.

DEATH OF PARTNER.

-Partnership if becomes one at will on. See PART-NERSHIP-PARTNER - DEATH OF A-NATURE OF (1923) 19 L. W. 425 (426). PARTNERSHIP AFTER.

#### DISSOLUTION OF.

Grounds - Agreement working unsatisfactorily if one. See DEBTOR AND CREDITOR-AGREEMENT BET-WEEN-TERMINATION OF. (1880) 7 I. A. 83(105)= 2 M. 239 (262-3).

-Right of partner to-Legal or equitable-Minorduct in falsifying accounts-Effect of.

In the case of a partnership at will, the right of a partner to obtain dissolution is a legal right, under the statute and under the contract. The relief sought by him in a suit for dissolution is not a relief of an equitable nature, and his suit cannot be dismissed on the ground that he was guilty of gross misconduct in falsifying the account books. (Lord Dunedin). RAM SINGH v. RAM CHAND.

(1923) 51 I. A. 154=5 Lah. 23=22 A. L. J. 14= 19 L. W. 4 = A. I. B. 1924 P. C. 20 (1924) M. W. N. 76 = 26 Bom. L. B. 196= 2 P. L. B 1924 = 10 O. & A. L B 156s 28 C. W. N.566 = 40 C. L. J. 276 = 79 I. C. 94 = 46 M. L J. 158

Suit by partner claiming dissolution if amounts to In the case of a partner-hip at will, a suit by a partner claiming dissolution intimates his will to dissolve, which of itself is enough to put an end to the partnership. (Let Phillinore). SATTAPPA CHETTY v. SUBRAMANIYAN (1927) 31 C. W. N. 857= CHETTI. (1927) M W. N. 500 = 25 A. L. J. 687 = 25 L.W. 265 = 39 M L. T. 232 = 4 O. W. N. 491 = 101 I. C.17

A. I. R. 1927 P. C. 70 = 53 M.L J. 245 (248)

Partnership for term.

CONTINUANCE OF, AFTER EXPIRY OF TERM.

-Terms of partnership in case of-No fresh agric ment.

Where a partnership is entered into for a fixed term, and the term expires but the partners continue the business partners at will without fresh articles, the business is deemed to be continued upon the old terms so far as they are apply cable to a partnership at will. (Lord Warrington). War-(1927) 47 C. L. J. 295 = SON D. HAGGITT. 107 I. O. 459 = 1928 A. C. 127 = A.I.B. 1928 P. O. 116=

29 L. W. 581 = 56 M. L. J. 91(99)

Partnership for term-(Contd.)

DEATH OF PARTNER DURING TERM—BUSINESS CARRIED ON BY SURVIVING PARTNER AFTER.

"Net annual profits" to be paid under partnership agreement to representatives of deceand partner in case of —Meaning of—Salary allowed to surviving partner during lifetime of deceased—Deduction of, in calculating such profit:—Survivor's right to.

Where under partnership articles it was provided that in the event of a partner dying or becoming insane, etc., during the term of the partnership, the surviving or remaining partner would pay to the representatives of the partner so dying, etc., a share of the "net annual profits" of the partnership business, the P. C. held that the net annual profits, by which the amount of the sum to be paid by the surviving partner was to be measured, would be ascertained by deducting from the receipts and earnings of the business such outgoings and ordinary business expenses as were under the partnership articles or by the practice of the partners so deducted during the partnership, the business for this purpose being treated as a continuation of the partnership business. A payment, however, which under the partnership business. A payment, however, which under the partnership articles ceased with the dissolution of the partnership would not be properly deducted.

Upon the construction of the partnership articles in the case, held that, without an express provision to that effect, the surviving partner was not entitled, in calculating the amount of "net annual profits", payable to the representatives of the deceased partner, to deduction of the salary allowed by the agreement to the surviving partner during the lifetime of the deceased. (Lord Warrington.) WAT SON v. HAGGIT. (1927) 47 C. L. J. 295 =

A. I. R. 1928 P. C. 115 - 29 L. W. 581 - 56 M. L. 91 (93 4).

- Rights and duties of parties in case of.

Where a partnership is dissolved by the death of a partner, the basiness if carried on by the surviving partner is so carried on by him on his own account and for his own benefit, the annual sum payable (under the partnership articles) to his deceased partner's executors being in substance, purchase money for his interest in the assets of the business. (Lord Warrington.) WATSON v. HAGGITT.

(1927) 47 C. L. J. 295 - 107 I.C. 459 - 1928 A. C. 127 -A. I B. 1928 P. C. 115 - 29 L. W. 581 -56 M. L. J. 91 (94).

### DISSOLUTION OF.

Accounts—Refusal of some partners to perform duties undertaken by them under partnership agreement before expiry of term—Partnership work carried on by remaining partner alone for full term—Accounts in case of.

'In respect of a contract with the Corporation of Madras which was to run for three years from April, 1911, the two appellants and the respondent entered into a partnership on the terms, inter alia, that the appellants were to do all the work and have stated shares in the profits. The 1st appellant gave up the work in October, 1911, and the respondent accepted that position. Similarly the 2nd appellant gave up the work in March, 1912, and the respondent accepted that position also, and performed what other work was required, either himself or through his agents, until the completion of the contract in April, 1914.

In a suit by the two appellants for a dissolution of the partnership and for accounts, held that, in taking the account of profits earned, a proper allowance ought to be made to the respondent for the fact that owing to the refusal of the appellants to perform their obligation under the partnership agreement, the business was continued by him from the 31st October, 1911, without the assistance of the 1st appel-

# PARTNERSHIP-(Contd.)

Partnership for term-(Contd.)

DISSOLUTION OF-(Contd.)

lant, and from the 31st March, 1912, without the assistance of the 2nd appellant.

The appellants alleged indeed that as from the date when they ceased working there was little more work to do, that the work really depended upon the initial organisation of the whole enterprise and that when this was once done, the matter could easily proceed. This may or may not be the fact and it is quite possible that services rendered during the first 12 months of the partnership may be of greater value than those rendered during the remaining portion of the time. But the claim of the plaintiffs for an account of the profits without a proper allowance being made for the fact that their services were deliberately withheld, is a claim which cannot be maintained. (Lard Buckmaster.) KRISH-NAMACHARIAR P. SANKARA SAH. (1920) 12 L W. 777 =

28 M. L. T. 265 = 25 C. W. N. 314 = 33 C. L. J. 1 = 2 P. W. R. 1921 = 57 I. C. 713 = 39 M. L. J. 257 (261-2).

Expiry of term—Dissolution before—Suit for— Maintainability—Grounds—Business could not be carried on except at a loss if one—Decree for dissolution—Discretion as to—Appeal—Interference in.

A partner's claim to a decree for dissolution rests, in its origin, not on contract, but on his inherent right to invoke the protection of the court on equitable grounds in spite of the terms in which the rights and obligations of the partners may have been regulated and defined by the partnership contract (65).

It is not any contravention of S. 252 of the Contract Act for a partner to seek a dissolution or for the court to decree it on the ground that the business of the partnership could only be carried on at a loss, though the partnership agreement contemplates the continuance of the partnership beyond the date at which the suit is instituted (65). It is to meet that precise predicament that the court's power to decree dissolution is conferred by sub-S. (6) of S. 254 of the Contract Act (66).

In a case in which a partnership agreement for the supply of stone for the construction of a dock provided that the partnership should continue until the completion of the supply for the works, one of the partners sued for a dissolution before that event and established that the business could only be carried on at a loss. The trial judge, in the exercise of his discretion, passed a decree for dissolution in plaintiff's favour. But his decree was reversed on appeal.

Held that, the trial judge not having acted capriciously or in disregard of any legal principle in the exercise of his discretion, there was no sufficient ground for disturbing his decree (66). (Sir Laturence Jenkins.) RFHMAT-UN-NISSA BEGAM 2. PRICE. (1917) 45 I. A. 61 =

22 C. W. N. 601 = 16 A. L. J. 513 = 27 C. L. J. 623 = 23 M. L. T. 400 = 8 L. W. 53 = 5 Pat. L. W. 25 = 45 I. C. 568 = 35 M. L. J. 262.

—Partner's refusal to perform duties undertaken by him under partnership agreement—No dissolution by reason of—Remedy of other partners in case of. See Partner. SHIP—DISSOLUTION OF—PARTNER'S REFUSAL, ETC. (1920) 39 M. L. J. 257 (261).

Right of a partner to—Grounds—Business being carried on at a loss if one. See PARTNERSHIP—DISSOLU.
TION OF—BUSINESS BEING CARRIED ON AT A LOSS.
(1876) 3 I. A. 200 (207) = 1 B. 468 (473-4).

### Surviving partner.

BUSINESS CONTINUED BY-REPRESENTATIVES OF DECEASED PARTNER.

-Accounts of partnership -Suit for-Basis of accounts-Romanication to survivor for managing business-Profits of business-Representatives' right to-Extent of.

There was a parinership carried on between the defendant-appellant and one F. F died on 3-8-1915. Although the partnership terminated on the death of F, the same business was carried on. In a suit brought by the represen tatives of F against the appellant in order that proper accounts might be taken, it was found that accounts had already been taken in the partnership, up to some date in 1913, and that it was not necessary to re-open them. The first court ordered that a further account should be taken up to the date of the death of F, but for some reason, no order was made for taking any subsequent accounts.

The appellate Court made an order :- "that accounts be taken of the profits of the business, since the death of F up to the date when the final decree is made, all just allowance. including fair remuneration to be allowed in favour of the defendant for managing the business. And it is further ordered that the plaintiffs, as representatives of F. will be entitled to the same share, as F would have taken, if the partnership had not been dissolved, and the profits will be assessed on the basis of what may be found due to F, at the time of his death."

Held that the order of the appellate Court was a proper order to make.

The order as made is in the proper form, in leaving all matters of account within the discretion of the Commissioner, subject to the direction that all just allowance should be made, including fair remuneration for management of the business and to the further order that the respondents, as representatives of F, will be entitled to the same share. as F would have taken, if the partnership had not been dissolved. The business is to be regarded, up to the date of the final decree, as a continuing business, although F died in 1915. (Lord Parmeer.) HAJI HEDAVETULLAP, MA-HOMED KAMIL. (1923) 19 L. W. 425=

A. I. R. 1924 P. C. 93 = 34 M. L. T. 69 = 22 A. L. J. 382 = (1924) M. W. N. 660 = 29 C. W. N. 161 = 81 I. C. 525.

-Assets realized by survivor after death of deceased-Suit for -Decree in- Form of.

The representative of a deceased partner sued the surviving partners for the recovery of certain sums realised by them in pursuance of decrees obtained by them against the debtors of the firm after the death of the deceased partner. The plaintiff claimed such payment on the ground that the deceased was the capitalist of the firm and the surviving partners were its debtors. Held that the proper decree to be passed in the case was to direct an account to be taken of the partnership dealings and transactions, to inquire what was due to the estate of the deceased partner in respect of her share at the time of her death and how the amount due to her estate had been dealt with, and, if it appeared that such amount or any part thereof had been employed in the business continued by the surviving partners, to direct the accounts of such business to be taken. (Lord Macnaghten.) BHUGWANDAS MITHARAM 2. (1898) 26 I. A. 32 = 23 B. 544 = RIVETT CARNAC. 3 C. W. N. 186=7 Sar. 451.

"Net annual prefits" to be faid under fartnershif agreement to-Meaning of-Salary allowed to surviving partner during lifetime of deceased-Deduction of in calculating such profits-Survivor's right to.

### PARTNERSHIP-(Contd.)

Surviving partner-(Contd.)

BUSINESS CONTINUED BY-REPRESENTATIVES OF DECEASED PARTNER-(Contd.)

Where under partnership articles it was provided that in the event of a partner dying or becoming insane, etc., during the term of the partnership, the surviving or remaining partner would pay to the representatives of the partner so dying, etc., a share of the "net annual profits" of the partnership business, held that the net annual profits, by which the amount of the sum to be paid by the surviving partner was to be measured, would be ascertained by deducting from the receipts and earnings of the business such outgoings and ordinary husiness expenses as were under the partnership articles or by the practice of the partners so deducted during the partnership, the business being for this purpose treated as a continuation of the partnership business. A payment, however, which under the partnership articles ceased with the dissolution of the partnership could not be properly deducted.

On the construction of the partnership articles in the case, held further, that without an express provision to that effect, the surviving partner was not entitled, in calculating the amount of "net annual profits" payable to the repre-sentatives of the deceased partner, to a deduction of the salary allowed by the agreement to the surviving partner during the lifetime of the deceased. (Lord Warrington of Clyffe.) WATSON P. HAGGITT. (1528) 29 L. W. 581= 47 C. L. J. 295=107 I. C. 459=1928 A. C. 127=

A I. R. 1928 P. C. 115=56 M. L. J. 91.

### BUSINESS CONTINUED BY.

Rights and duties of parties in case of.

Where a partnership is dissolved by the death of a partner, the business if carried on by the surviving partner is so carried on by him on his own sole account and for his sole benefit, the annual sum payable (under the partnership articles) to his deceased partner's executors being in substance, purchase money for his interest in the assets of the business. (Lord Warrington of Clyffe.) WATSON 1. (1928) 29 L. W. 581=47 C. L. J. 295= 107 I. C. 459 = 1928 A. C. 127 = A.I.B. 1928 P. C. 115 56 M. L. J. 91 (94).

CONTRACT BETWEEN PARTNERSHIP AND THIRD PARTY-DISPUTE RELATING TO-ARBITRATION OF -REFERENCE TO, AND AWARD ON-LEGAL REPRESENTATIVES OF DECEASED PARTNER.

-Invalidity against-Relief in case of, on fool of reference being binding but negligibly and improperly entered into-Grant of-Propriety.

Assuming that an agreement by the surviving partners of a partnership to refer to arbitration a dispute relating to a contract between the partnership and a third party is not binding on the legal personal representatives of a decessor partner, it can hardly follow that they are entitled to reid on the footing that it is binding, but had been negligible and improperly entered into. (Lord Parker.) RAI DWARKA NATH SARKAR BAHADUR D. HAJI MAHAMEU AKBAR.

(1914) 18 C. W. N. 1025=1 L. W. 697= (1914) M. W. N. 876=16 M. L. T. 521=21 O.L. J. 1= 17 Bom. L. B. 5 = 24 I. C. 307 = 27 M. L. J. 192 (195)

Reference binding on, but negligibly and improperly entered into-Damages in case of Measure of Onat ! proof of.

In a partnership action brought by the legal personal representatives of a deceased partner against the surning partners, it appeared that the surviving partners had referred to arbitration a dispute relating to a contract between the partnership and a third party, to which reference the

Surviving partner-(Contd.)

CONTRACT BETWEEN PARTNERSHIP AND THIRD PARTY--DISPUTE RELATING TO-ARBITRATION OF-REFERENCE TO, AND AWARD ON-LEGAL REPRESENTATIVES OF DECEASED PARTNER-(Contd.)

legal personal representatives of the deceased partner were not parties, that the arbitration resulted in the award of a certain sum as payable to the firm, and that that sum had been paid and brought into the partnership accounts. The legal personal representatives of the deceased partner contended that the reference and the award were not binding

Held that, assuming that in such a case relief could be given to the legal personal representatives of the deceased partner on the footing that the reference was binding, but had been negligibly and improperly entered into, the measure of damages was not necessarily the difference between the amount originally claimed from the third party and the amount payable under the award, and that the onus of proving that it was any less sum would not be thrown on the persons accused of negligent and improper conduct. (Lord Parker.) RAI DWARKA NATH SARKAR

BAHADUR v. HAJI MAHOMED AKBAR. (1914) 18 C. W. N. 1025 = 1 L. W. 687 = (1914) M.W.N. 876 = 16 M. L. T. 521 - 21 C. L. J. 1 = 17 Bom. L. R. 5 = 24 I. C. 307 = 27 M. L. J. 192 (195).

-Validity against.

The question whether the legal personal representatives of a deceased partner are bound by an agreement by the surviving partners to refer to arbitration a dispute relating to a contract between the partnership and a third party and the award made thereon is not a simple question of law, to be decided without reference to the facts of the case, or any evidence which might be available. Even if the original contract with the third party did not contain a submission binding on the legal personal representatives of the deceased partner, and the agreement to refer was not originally binding on such legal personal representatives, it may become binding on them by their acquiescence therein, or their acceptance of benefits thereunder. (Lord Parker.) RAI DWARKA NATH SARKAR BAHADUR 5. HAJI MAHAMED AKBAR. (1914) 18 C. W. N. 1025 = 1 L. W. 697 = (1914) M. W. N. 876 = 16 M. L T. 521 = 21 C. L. J. 1 = 17 Rom. L. R. 5 = 24 I. C 307 = 27 M. L. J. 192 (194).

-Validity against-Objection to-Appeal-Maintainability for first time in.

In a partnership action instituted by the legal representatives of a deceased partner against the surviving partners, it appeared that the partnership's firm had in 1903 entered into a contract with the Secretary of State for India to construct a bridge which was completed in due course, but a dispute arose between the firm and the Secretary of State as to the amount payable to the firm under the contract, The surviving partners, or one of them, agreed with the Secretary of State that that dispute should be referred to the arbitrament of a named person. The legal personal representatives of the deceased partner were not parties to the reference. The arbitration resulted in the award of a certain sum as payable to the firm, and that sum was paid and brought into the partnership accounts. On the appeal to the Court below the legal personal representatives of the deceased partner put forward for the first time a contention that they were not bound by the agreement of reference or the award; and the High Court upheld that contention.

Held that the High Court ought to have rejected the contention as having been put forward at too late a stage in the proceedings.

# PARTNERSHIP-(Contd.)

Surviving partner-(Contd.)

CONTRACT BETWEEN PARTNERSHIP AND THIRD PARTY-DISPUTE RELATING TO-ARBITRATION OF-REFERENCE TO, AND AWARD ON-LEGAL REPRESENTATIVES OF DECEASED PARTNER-

The question whether the legal personal representatives were bound by the agreement and award was not a simple question of law, to be decided without reference to the facts of the case, or any evidence which might have been available. The original contract with the Secretary of State is not in evidence, and it is possible that it contained a submission binding on the legal personal representatives of the deceased partner. Even if it did not, and the agreement to refer was not originally binding on such legal personal representatives, it may have become binding on them by their acquiescence therein, or their acceptance of benefits thereunder. The point not having been raised prior to the hearing of the appeal, there has been no opportunity of ascertaining the relevant facts. (Lord Parker.) RAI DWARKA NATH SARKAR BAHADUR 2. HAJI MAHA-MED AKBAR. (1914) 18 C. W. N. 1025=1 L. W. 697= (1914) M. W. N. 876 = 16 M. L. T. 521 = 21 C. L. J. 1 = 17 Bom. L. R. 5 = 24 I. C. 307 =

27 M. L J. 192 (194-5). SUIT FOR ACCOUNTS BY REPRESENTATIVES OF DECEASED PARTNER AGAINST.

-Assets in hands of survivor-Deposit into Court of -Order for-Discretion of Court below as to-Privy interference with. See PARTNERSHIP-ACCOUNTS-SUIT FOR-DECEASED PARTNER.

(1915) 42 I. A. 91 (96) = 42 C. 914 (925).

# Trading partnership.

Mortgage of all its assets by-Reconstitution of firm subsequent to-Validity of mortgage against neso firm and its assets-Reconstitution with assent of mertgagee and without prejudice to his security.

A trading partnership assigned by mortgage all its assets to a creditor, who simultaneously made a substantial advance to the firm, and agreed to make future advances. After the mortgage and before the insolvency of the firm, it was reconstituted, new partners being introduced with the mortgage e's assent, the arrangement being that the assets of the new firm should continue as security, a new payment being made to it or for its benefit by the mortgagees. It was argued that as regards the partners who came into the firm newly at the time of the said arrangement, and as regards the new stock-in-trade which was brought into the business after that time, the mortgage deed could not

Held, overruling the contention, that the arrangement did not invalidate the prior valid security, because it amounted to a mere substitution of persons and goods at the time of the change (21 2). (Lord Hobbouse.) KHOO KWAT SIEW D. WOOI TAIK HWAT.

(1891) 19 I. A. 15 = 19 C. 223 (232-4) = 6 Sar. 98.

-Partner of-Bill in firm's name drawn by a-Liability of other partners on—Sleeping partner—Liability of.

See Partnership—Partner OF—Bill in Firm's (1870) 13 M. I. A. 358 (363).

-Share in-Sale of-Voluntary and execution sales-Purchaser's rights under-Distinction,

A partner cannot himself sell his share in a trading partnership so as to introduce a stranger into the firm without the consent of his co-partners; but the purchaser at an execution sale of his interest in the firm acquires the interest sold, with the right to have the partnership accounts

Trading partnership-(Cnotd.)

taken in order to ascertain and realise its value, (Sir Junes W. Celvile.) DEFNDVAL LALT. JUGDEEP NARAIN SINGH. (1877) 4 I. A 247 (255) = 3 C. 198 (209) = 1 C. L. R. 49 = 3 Sar. 730 = 3 Suth. 468.

#### PART PERFORMANCE.

- Agreement as to land rendered by statute of no "force or avail in law" - Applicability of doctrine to case of.

Clause 2 of Ceylon Ordinance No. 7 of 1840 provides:

"No sale purchase transfer or mortgage of land or other immor able property and no promise bargain or contract or agreement for effecting any such object or for establishing any security, interest or incumbrance affecting land or other immovable property (other than a lease at will or for any period not exceeding one month) nor any contract or agreement for the future sale or purchase of any land or other immovable property shall be of force or avail in law unless the same shall be in writing and signed by the party making the same ... in the presence of a licensed notary public and two or more witnesses present at the same time and unless the execution of such writing deed or instrument be duly attested by such notary and witnesses."

Held, affirming the Court below, that no suit could be maintained in Ceylon upon an agreement affecting land which had not been executed and attested in manner required by clause 1 of the Ordinance, and that in the case of such an agreement the operation of the Ordinance could not be avoided under the equitable doctrine of part performance.

The doctrine of part performance has reference to S. 4 of the English Statute of Frauds, and has no application to the stringent provisions of clause 2 of the Ordinance by which an agreement as to land not duly attested by a notary and two witnesses is rendered of no "force or avail in law." (Lord Chancellor.) JOHN H ARSECULERATNE P. PERERA. (1927) 111 I. C. 351

A. I. R. 1928 P. C. 273 = (1929) M. W. N. 1.

——Condition—Proposal with—Acceptance of—Binding contract on—Settlement of property in consideration of a person living with settlor—Contract for—Living of that person with settlor pursuant to—Title to property of that person in case of. Sec Contract—Proposal—Condition.

(1916) 43 I. A. 138 (1467)—39 M. 509.

-English law doctrine as to.

It is no doubt true that there is a locus ponitonliac, that is, "a power of resiling from an incomplete engagement. from an unaccepted offer, from a mutual contract to which all have not assented, from an obligatin to which writing is requisite, and has not yet been adhibited in an authentic This is the situation where the parties stand upon nothing but an engagement which is not final or complete, But where the actings and conduct of parties are founded on, then in all such cases "rei-interventus raises a personal exception, which excludes the plea of locus penitentiac. It is inferred from any proceedings, not unimportant, on the part of the obligee, known to and permitted by the obligor to take place on the faith of the contract as if it were perfect; provided they are unequivocally referable to the agreement, and productive of alternation of circumstances, loss. or inconvenience, though not irretrievable" (8). Equity will not fail to support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon. If confessed or in part carried into execution, it will be binding on the parties, and carried into further execution as such, in equity. The law of India is not inconsistent with these principles. On the contrary it follows them (9). (Lerd Shaw.) MAHOMED MUSA v. AGHORE KUMAR GANGULI.

### PART-PERFORMANCE-(Contd.)

42 C. 801:817)=(1915) M. W. N. 621= 17 Bom. L. R. 420=17 M. L. T. 143=2 L. W. 258= 19 C. W. N. 250=21 C. L. J. 231=13 A. L. J. 229= 28 I. C. 930=28 M. L. J. 548.

Mortgage-Redemption-Extinguishment of right of, and transfer of portion of property absolutely to mortgagee-Compromise as to-Decree on foot of-Actings of parties pursuant to-No registered conveyance by mortgager to mortgagee-Applicability of doctrine to case of.

A suit of the year 1873 between mortgagor and mortgagees was compromised on the terms (1) that the debts due under the mortgages were to be for ever extinguished, and (2) that the mortgaged property itself was to be divided among the parties in specific shares, and that the mortgagor should transfer certain shares, of the property to the mortgagees, and reserve one to himself free from incumbrances. It was also agreed that the mortgagees should get their names registered as proprietors of the proportions of the property to which they were entitled under the arrangement.

The razinama concluded by stating that the suit should be decided by declaring that the mortgagees should get the amount claimed to their satisfaction in the manner stated in the razinama. The razinama was accordingly produced to the court, and it ordered "that the suit be decided in persuance of the terms of the razinama, and that the suit be

struck off from the list of pending cases".

The compromise agreement was not registered and to transfers or conveyances were ever executed. The compromise was, however, acted upon by all the parties to it, and by their successors in title from the date of the compromise for a period of between thirty and forty years. The motigagor dealt with the property reserved by him reciting the arrangement made by the compromise. There were also transfers of the interests of the mortgagees. In 1878 the respective mortgagees caused their names to be registered as proprietors of their shares and there was also registration of mutation of names in respect of subsequent transfers by them. The rights of the parties were dealt with precisely upon the same footing as if the mortgager had made as express conveyance parting with the equity of redemption, and transferring allotted shares of the property itself to the mortgagees, and reserving a share to himself.

In a suit brought in 1908 by the heirs and representative of the mortgagor for redemption of the said mortgage, hild that the plaintiffs had no subsisting right to redeem (6).

Even although the razinama and the decree taken to gether were considered to be defective or inchoate as dements making up a final and validly concluded agreement for the extinction of the equity of redemption, the acting of parties have been such as to supply all such defects (7-8), (Lord Shaw.) MAHOMED MUSA v. AGHORE KUMAN (Lord Shaw.) MAHOMED MUSA v. AGHORE KUMAN (1914) 42 I. A. 1 = 42 C. 801 = 4

(1915) M. W. N. 621 = 17 Bom. L. R. 42 = 17 M. L. T. 143 = 2 L. W. 258 = 19 C. W. N. 250 = 21 C. L. J. 231 = 13 A. L. J. 229 = 28 I. C. 9 % = 98 M. L. J. 548

Surrender of property in certain events—Agrands registered for, signed by transferee only. Subsequent unregistered letter evidencing acceptance by transferer and happening of event—Applicability of dectrine to can

Appellant and his two uncles were co-sharers in certain in part carried into ties, and carried into the law of India is
On the contrary it MAHOMED MUSA 2.

(1914) 42 I. A. 1=

Appellant and his two uncles were co-sharers in certain villages of which the appellant was the registered proprietor. A deed of settlement signed by the appellant and addressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant and an appellant was the registered proprietor. A deed of settlement signed by the appellant and an appellant was the registered proprietor. A deed of settlement signed by the appellant was the registered proprietor. A deed of settlement signed by the appellant and addressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided that the appellant was to dressed to his two uncles provided t

## PART-PERFORMANCE-(Contd.)

villages. That deed was presented for registration by one of the uncles and daly registered. In the year following, there was loss in respect of one of the villages. On a demand by the appellant, the uncles wrote a letter to him that he was liable for the profit or loss accrued or accruing, that they were not to take shares and pay the loss, and that he might manage as he liked. That leater was not registered. Subsequently the ancies transferred their shares in the village in question to the predecessor in interest of the 1st respondent.

In a suit brought by the 1st respondent against the appellant and others for partition and possession of the share in the village in question conveyed to his prede essor in interest. held, reversing the court below, that the arrangements evidenced by the dee's of settlement and the letter were sufficient for the purpose of conveying the shares of the uncles to the appellant, that the uncles had no right to convey the shares they purported to convey to the predecessor in interest of the 1st respondent, and that his suit must

therefore have been dismissed with costs.

The real argument that has been brought before this Board against the effect mentioned above being gives to the transactions evidenced by the said deed of settlement and the letter is that the first document was not formally signed by the uncles, and that the second document was not registered and therefore could not be given in evidence. Their Lordships think that both these contentions fail. With regard to the first, the arrangement was a perfectly good one according to the law in India accepted by the uncles and acted upon by the appellant, even although the document was not in fact signed by the persons to whom it was addressed. That the appellant did act upon it is be-yond dispute. The only question that follows is whether the subsequent letter was an effective instrument necessary for the purpose of transferring the property, or whether it was only a piece of evidence not constituting acceptance of the earlier proposal but showing that it had been accepted and that the uncles admitted that the condition upon which the first agreement was to operate had in fact arisen. Their Lordships think that the latter is the true interpretation. The document itself contains no statement of conveyance or release. It repeats that the uncles are not to take a share and pay the losses because they are unable to do so, and read, as it must be read, as a sequel to the earlier document, it is a recognition that the share will pass as that document provides. There was consequently no need for its registration. (Lord Buckmaster.) PANDURANG KRISH-NAJI v. MARKANDEYA TUKARAM.

(1921) 49 I. A. 16 (20-1)=49 C. 334 (339-40)= 26 O.W.N. 201 = 18 N. L. R. 1 = 20 A. L. J. 305 = 15 L. W. 486 = 30 M. L. T. 249 = 35 C. L. J. 409 = 24 Bom. L. R. 557 = 3 U. P. L. R. (P. C.) 85 = 5 N. L. J. 6 = A. I. B. 1922 P. C. 20 = 65 I. C. 954 = 42 M. L. J. 436

-Unaccepted proposal-Resiling from-Right of-Actings of parties on faith of proposal - Effect - Part. Performance-Doctrine of-Applicability to India.

Plaintiff and her hasband had agreed to live with one P on condition of her purchasing property for the plaintiff.

While they were living with P, the latter purchased a village called Repudi, the title to which she took in her own name. Being dissatisfied with her so doing, the plaintiff and her husband withdrew from her Thereupon, with a view to induce the plaintiff and her husband to return to her, P wrote a letter to the plaintiff in which she (P) promised that the village had been purchased for the plaintiff alone, that the ownership thereof was to be in her, and that possession would be given to her immediately

## PART-PERFORMANCE-(Contd.)

reserved to herself. Taereapon the plaintiff and her husband returned to P and lived with her till her death for a period of about seven years.

In a suit brought by the plaintiff after the death of P for a declaration that she was entitled to the village of Repudi; held, that, even if the proof of the acceptance made to P, that is to say, of an acceptance in terms, was defective, yet, having segard to the demand by the plaintiff and her husband for a definite proposal as a condition of their staying on with P, that the actings of the plaintiff and her husband took place upon the footing of the proposal so made, and that they were known by P to have taken and to be taking place upon that footing, the objection that the contract itself was inchoate or incomplete could not be maintained (148.)

The law in this sense was fully explained by Lord Selbone in the case of Maddison v. Alderson. After such actings. Incut fenitentiae, or the power of resiling from an incomplete engagement or an unaccepted offer is barred by rei-intercentus, which raises a personal exception which excludes the plea of locus positentiae.' The Law of India is in this respect the same as that in Scotland (148). (Lord Show.) MALRAJU LAKSHMI VENKAYAMMA v. VENKATA NARASIMRA APPA RAO.

(1916) 43 L. A. 138 = 39 M. 509 = 20 M. L. T. 137 = (1916) 2 M. W. N. 23 = 4 L. W. 58 = 20 C. W. N. 1054 = 24 C L. J. 229 = 14 A. L. J. 797 = 18 Bom. L. R. 651 = 35 I. C. 921 = 31 M. L. J. 58.

PATENT.

## Analogous user -Doctrine of.

-Applicability-Auticipation by prior description and by prior user-Distinction.

Analogous user is what its name denotes, something which has to do with user. The trial judge has applied the doctrine not to things used but to things described. But as to things only described, there must either be anticipation or not. The distinction between anticipation by prior description and by prior user is well understood. The doctrine of analogous user only applies to cases as to things in actual use. (Viscount Duncain.) POPE APPLIANCE CORPORATION v. SPANISH RIVER PULP AND PAPER MILLS, LTD. (1928) 116 I. C. 593 =

(1929) A. C. 269 - A I. R. 1929 P. C. 38.

#### Anticipation.

Objection to patent on ground of-Test of. The test of anticipation has been dealt with in many

cases. The specification which is relied upon as an anticipation of the invention must give you the same knowledge as the specification of the invention itself. When the question is solely a question of prior publication, it is not enough to prove that the apparatus described in an earlier specification could be made to produce this or that result. It must also be shown that the specification contain clear and unmistakeable directions so to use it. The test is, would a man who was grappling with the problem solved by the patent attacked, and having no knowledge of that patent, if he had had the alleged anticipation in his hand, have said, That gives me what I wish?"

To find out whether or not there has been anticipation, it is not legitimate to interpret the earlier patent in the light of the knowledge given by the later one.

Again, as observed by Lord Moulton "in order to render a document a prior publication of an invention it must be shown that it publishes to the world the whole invention, i. e., all that is material to instruct the public how to put the invention in practice. It is not enough that there should be suggestions which, taken with suggestions upon the expiry of the life interest therein, which P had derived from other and independent documents, may be PATENT-(Contd.)

Anticipation-(Contd.)

shown to fore-hadow the invention or important steps in it, Since the date of the vigorous protest of Lord Justice James against such a mosaic of prior publications, this has been a universally accepted and most salutory principle. It applies with exceptional force in cases where the alleged prior publications are the specifications of unsuccessful inventions which have accordingly never passed into public general knowledge, but have rightly been forgotten. (Viscount Dunction.) POPE APPLIANCE CORPORATION P. SPANISH RIVER PULP AND PAPER MILLS, LTD.

(1928) 116 I. C 593 = (1929) A. C. 269 = A. I. R. 1929 P. C. 38.

## Discovery same by independant investigators.

-First applicant -- Patent granted to-Validity of. There are many instances in various branches of science of independent investigators making the same discovery. That does not prevent the one who first applies and gets a patent from having a good patent, for a patent represents a quad pro quo. The quid to the patentee is the monopoly; the quo is that he presents to the public the knowledge which they have not got. That knowledge the other inventor has kept sealed in his own breast, and he therefore cannot complain that his rival got the patent. And if this is the case when a person can show that he actually made the discovery, surely that is a much stronger case than the one in which the objector does not say that he did discover but only that if he had experimented he would have discovered. (Viscount Dunedin.) POPE APPLIANCE COR-PORATION D. SPANISH RIVER PULP AND PAPER MILLS, LTD. (1928) 116 I. C. 593 = (1929) A. C. 269 = A. 1. B. 1929 P. C. 38.

## Escape of, by obvious mechanical equivalent.

It cannot be supposed that the patent being good can be escaped by such an obvious mechanical equivalent (as the one in question in the case.) (Viscount Duncdin.) POPE APPLIANCE CORPORATION v. SPANISH RIVER PULP AND PAPER MILLS. LTD. (1928) 116 I. C. 593=

(1929) A. C. 269 = A. I. R. 1929 P. C. 38.

Infringement of - Damages for.

In an action of damages for the alleged infringement of certain exclusive rights secured to the plaintiff by three patents, the District Judge, who found that the alleged infringement had been established, assessed damages at Rs. 10,000. That sum was fixed, on the footing that it was a fair consideration for the defendant to pay for a license to use the plaintiff's inventions.

Held that the principle of assessment was erroneous, and that the damages due (if any) must be limited to the loss occasioned to the patentee by reason of the defendant's infringement (141). (Lord Watson.) LEDGARD v. BULL.

(1886) 13 I. A. 134=9 A. 191 (199)=4 Sar. 741

Suit for - Jurisdiction - Sub-Court - Suit instituted in, contrary to provisions of S. 22 of Patent Act - Transfer of, by District Judge to file of his own Court - Effect of -Validity of -C. P. C. of 1908 - S. 24.

The plaint in an action of damages for the alleged infringement of certain exclusive rights secured to the respondent by three Indian patents was originally filed in the Court of the Subordinate Judge at Cawnpore on 2—2—1882, whereas S. 22 of the Indian Patent Act XV of 1859 provided that no action for infringement "shall be maintained in any court other than the principal court of original jurisdiction in civil cases within the local limits of whose jurisdiction the cause of action shall accrue, or the defendant shall reside as a fixed inhabitant." The principal

PATENT-(Contd.)

Infringement of-Damages for-(Contd.)

Court of original jurisdiction was the Court of the District Judge. On 15—2—1882, the defendant personally signed, along with the plaintiff and his pleader, a petition praying the District Judge to withdraw the case from the Court of the Subordinate Judge, and to try the suit in his own Court. On the same day an order was made in the District Court in these terms:—"That the case be transferred from the Subordinate Judge's Court to the file of the Court, and the date will be fixed hereafter."

The District Judge had no power to make that order except under S. 25 of C. P. C. of 1877, and, as by reason of S. 22 of the Patent Act the Sub-Judge had no jurisdiction to try the action, the District Judge had no power to make an order of transfer of the case. In his written statement filed before the District Judge, the defendant pleaded that he had no jurisdiction to entertain the suit, in respect it had not been regularly brought into Court.

Held, differing from the Courts below, that, apart from any question of estoppel affecting the defendant, there was no competent suit depending at the plaintiff's instance on the 6th of April, 1882, when the defendant raised the plea of no jurisdiction in his written statement of defence (144).

The suit was instituted before a Court incompetent to entertain it, and the order of transference was also incompetently made (144-5.) (Lord Watson). LEDGARD P. BULL. (1886)13 I. A. 134=9 A. 191 (201-2)=

4 Sar. 741-

Suit for Particulars of breaches Specification by plaintiff of Necessity—Particulars of objection for word of novelty—Distinction—Patent Act of 1859—S. 34—Construction.

In so far as it relates to particulars of breaches, S. 34, of the Indian Patent Act XV of 1859 is expressed in substantially the same terms with S. 41 of the English Patent Act of 1852. In Talbet v. La Roche, which was an action for violation of a patent. Chief Justice Jervis distinguishing between particulars of breaches, and particulars of objection for want of novelty, observed, that, in the latter case the particular instances might not be within the knowledge of the patentee and must be specified, while in the former the defendant must know whether and in what respect he had been guilty of infringement (142). (Lord Watten). LEDGARD v. BULL. (1886) 13 I. A. 184–9 A. 191 (200-1)=4 Sar. 71.

#### Infringement of-Suit for.

Judge and Jury in-Functions of Judge fullling functions of both judge and jury-Finding of fact of -Concurrent findings-Privy Council rule as to-Applicability.

It is quite true that, dealing with the respective functions of judge and jury, there is high authority to the effect that while it is for the judge to construe a specification, it is for the jury to contrast the specification so construed with the jury to contrast the specification so construed with the facts of the case as found so as to arrive at a conclusion either as to anticipation or as to novelty and subject matter, but there must be no misdirection as to the facts found or as to how they may be handled. In a case tried by a Judgalome he fulfils the functions of both judge and jury. It therefore, it can be shown that in the view he has taken there is something which, if addressed to a jury, would be misdirection, there is no finding of pure fact in the judgment, and the rule as to concurrent findings does not apply. (Viscount Dunedin). POPE APPLIANCE CORPORATION SPANISH RIVER PULP AND PAPER MILLS, LTD.

(1928) 116 I. C. 593=(1929) A. C. 989= A. I. B. 1929 P.C. St.

## PATENT-(Contd.)

Infringement of-Suit for-(Contd.)

-Privy Council appeal in-Special leave for-Grant of-Propriety-Judgments below concurrent.

Speaking generally, a patent case has to do with the construction and the infringement of one or more particular patents, and it cannot often be said that any general question is thereby raised. In such cases where there have been concurrent judgments of the judge of first instance and the Court of Appeal, their Lordships would deprecate the idea that leave should be given to appeal to the King in Council. (Viscount Dunedin). POPE APPLIANCE CORPORATION v. SPANISH RIVER PULP AND PAPER MILLS, LTD.

(1928) 116 I. C. 593 = (1929 A. C. 269 = A. I. R 1929 P. C. 38.

## Validity of Novelty-Want of, and prior user-Effect

-Improvements alleged subject of distinct and separate claims in letters patent-Adjudication of each claim independently - Necessity - Invalidity of either claim Effect. See PATENTS AND DESIGNS ACT OF 1911-S, 29. (1923) 18 L. W. 141.

## PATENT ACT XV OF 1859.

-S. 22—Infringement of patent—Damages for—Suit for-Jurisdiction-Sub-Court-Suit instituted in, contrary to provisions of section-Transfer of, by District Judge to file of his own Court-Effect of-Validity of. See PATENT -INFRINGEMENT OF-DAMAGES FOR-SUIT FOR-JURISDICTION. (1886) 13 I. A. 134 (144-5) =

9 A. 191 (201.2) -S. 34-Infringement of patent-Damages for-Suit for-Particulars of breaches-Specification by plaintiff of-Necessity-Particulars of objection for want of novelty Distinction. See PATENT INFRINGEMENT OF-DAMA-GES FOR-SUIT FOR-PARTICULARS OF BREACHES.

(1886) 13 I. A. 134 (142)=9 A. 191 (200-1).

Object of-Particulars of breaches-Specification in plaint-Necessity.

The sole object of S. 34 of the Indian Patent Act XV of 1859, is to give the defendant fair notice of the case which he has to meet; and it is quite immaterial whether the requisite information be given in the plaint itself, or in a separate paper (148). (Lord Watson). LEDGARD D. BULL.

(1886) 13 I. A. 134 = 9 A. 191 (200) = 4 Sar. 741.

Provisions of-Compliance with-What amounts

The appeal arose out of an action of damages for the alleged infringement of certain exclusive rights secured to the plaintiff by three Indian patents. The defendant pleaded, inter alia, that the plaintiff had failed to comple with the provisions of S. 34 of the Indian Patent Act, XV of 1859, inasmuch as no particulars of the breaches complained of had been delivered with the plaint; and that, in the absence of such particulars, he could not be called upon to state a defence to the action upon its merits.

The High Court held, differing from the District Judge, that there had been an entire failure on the part of the plaintiff to observe the requirements of S. 34 of the Patent Act, and consequently " that the plaintiff came into court without any case which could possibly be tried."

All three of the plaintiffs' patents related to one article, a kiln for burning bricks, and the second and third in date were improvements upon the invention specified in the first, The plaintiff pointed to a particular kiln constructed anused by the defendant, and in his plaint he not only referred to his patents, but indicated in the case of each of them the distinctive features of his invention which he alleged to have been appropriated by the defendant in the construction and use of the kiln.

## PATENT ACT XV OF 1859-(Contd.)

Held, reversing the High Court and restoring the District Judge, that there had been a sufficient compliance with the provisions of S. 34 of the Patent Act (142-3).

The learned Judges of the High Court have misconstrued the enactments of S. 34, which refer to the particulars of breaches to be delivered by a plaintiff complaining of infringement. The sole object of these enactments is to give the defendant fair notice of the case which he has to meet; and it is quite immaterial whether the requisite information be given in the plaint itself, or in a separate prper (142). (Lord Watson). LEDGARD v. BULL,

(1886) 13 I. A. 134 = 9 A. 191 (200) = 4 Sar. 741.

Previsions of Non-compliance by plaintiff with-Procedure upon-Amendment of plaint to as to include particulars and presentation thereof to proper Court-Order for-Validity.

In an action for damages for alleged infringement of certain patents, the High Court, differing from the Court below, upheld the defendant's plea that there had been an entire failure on the part of the plaintiff to observe the requirements of S. 34 of the Patent Act, and that the plaintiff came into Court without any case which could possibly be tried. They, however, allowed the plaintiff to amend his plaint, to present it in the proper Court, and to deliver with the plaint the particulars required by S. 34 of the Patent

Held, that the decree of the High Court was unsustainable (141).

It sets aside, or at least ignores, the whole previous proceedings including the plaint in which the suit originated; and it directs a new and amended plaint to be presented to the Court, which is simply equivalent to directing a new suit to be instituted. The High Court ought simply to have given the plaintiff the alternative of having his suit dismissed, or of withdrawing it, with liberty to bring a new action (141-2). (Lard Watson). LEDGARD P. BULL.

(1886) 13 I. A. 134 - 9 A. 191 (200) - 4 Sar. 741.

## PATENTS AND DESIGNS ACT II OF 1911.

-S. 29-Patent-Validity -Newelty-Want of, and prior user-Effect-Improvements alleged subject of distinct and separate claims in letters patent-Adjudication of each claim independently-Necessity-Invalidity of either claim-Effect,

The question for decision was whether the respondents' Indian Patent No. 2191 was a valid patent.

The said letters patent were granted to the respondents in respect of "improvements in the manufacture of a medicinal preparation," and, as stated in the specification, the present invention relates to improvements in the treatment of a substance found in the interior of some Bamboos and known as 'tabakshir' or 'Bamboo manna,' for the purpose of refining the same when in the raw state to convert it into a nutritious and saleable article.

This medicinal preparation was commonly known and marketed as "Bauslochan" and admittedly had for many years prior to the date of the said patent been refined and sold throughout India.

Admittedly prior to the date of the said patent "Bauslochan" had been prepared for the market by a process which included (a) washing the crude material in water; (6) treating it at some period of the process with sulphuric acid; and (r) calcining the mass which had been so treated in an iron stove or pan at a high temperature.

The improvements alleged to have been discovered by the respondents, and in respect of which the said letters patent were granted, consisted broadly (1) in the addition of sulphuric acid to the substance at a defined stage of the process, viz., when red hot, and (2) in the use of the process

## PATENTS AND DESIGNS ACT II OF 1911-- | PATTA-(Contd.)

(Contd.)

of heating of a stove constructed as described and illustrated in the said letters patent.

The alleged improvements were the subject of distinct

and separate claims in the said letters patent.

Held that the first claim in the specification, viz., "In the preparation of the sail substance the treatment of the same when red hot with an acid" was invalid, on the grounds of want of novelty and prior user, that therefore the letters patent were invalid, and that the appellate court erred in not keeping sufficiently clearly before their minds the necessity of adjudicating on each claim independently and in constraing the specification as if it was one for a combination and not for subject-matters which were distinctively claimed.

Quaere whether, when, as found by the appellate Court, "that in some form or another, and at some stage or another in the process of manufacture, acid has always been used for purifying the material," a valid claim for patent could be made for the use of such acid for the same purpose at a definite stage, e.g., when the material was red hot,

Semble, the substitution of well-known earthernware vessels in lieu of iron ones for the purpose of carrying out the process of manufacture would not necessarily be a good subject matter for a patent. (Lord Carson.) GOPI LAL v. LAKHPAT RAL (1923) 18 L. W. 141-

A. I. R. 1923 P. C. 103 = L. R. 4 P. C. 155 = 33 M. L. T. 279 - 28 C. W. N. 343.

## PATTA.

-(See also LANDLORD AND TENANT AND LEASE.) -Acceptance of-Prior title in grantee-Existence of -Presumption as to-Effect on.

A pottah may be a confirmatory grant only, and there is nothing in accepting such a grant inconsistent with the presumption that a prior title existed. RAM CHUNDER DUTT v. Jughesh Chunder Dutt. (1873) 19 W. R. 353 =

12 B. L. R. 229 = 2 Suth. 836 (839) = 3 Sar. 249.

-Crown grant by-Estate conveyed under-Revenue -Proprietary interest in land. See CROWN-GRANT BY (1924) 51 I. A. 357 (362) = 48 B. 613. -POTTAH.

#### MEANING OF.

-The term pottah, like the word jote in Bengal, is a general expression and comprehends all tenures and subordinate interests, from a permanent mokurrari tenure to a yearly lease. (Mr. Ameer Ali.) RAJA MUHANMAD ABUL HASAN KHAN V. LACHMI NARAIN.

(1921) 48 I. A. 267 (277) = 43 A. 355 (365) = 24 O.C. 122 = 29 M. L. T. 373 = (1921) M. W. N. 359 = 26 C. W. N. 249 = A. I. R. (1922) P.C. 41 = 63 I.C. 694.

 A kabuliyat predicates a patta. A patta is granted by the zemindar as a title-deed to the tenant. The Kabuliyat, as its name implies, is a mere acknowledgment, an engagement by the tenant to carry out the terms of the patta (153). (Mr. Ameer Ali.) SRINATH RAI v. PRATAP UDAI NATH SAHI DEO. (1923) 28 C. W. N. 145=

33 M. L. T. 408 = (1923) M. W. N. 702 = A. I. B. 1923 P. C. 217.

Hereditary tenure if necessarily imparted by.

"Pottah" is only a generic term which embraces every kind of engagement between a zemindar and his undertenants or Ryots. Their Lordships cannot accede to the argument that a Pollah must prima facie be assumed to give an hereditary interest, though it contains no words of inheritance (463.4). (Sir Richard Kindersley.) BABOO DHUNPUT SINGH v. GOOMAN SINGH.

(1867) 11 M. I. A, 433=9 W. R. (P. C.) 3= 2 Suth. 92 = 2 Sar. 309.

-Landlord and Tenant-Persons already in relation of-Written engagement between-Word if covers. Sa MADRAS ACTS-RENT RECOVERY ACT, S. 3-POTTAH -MEANING OF. (1879) 6 I. A. 170 (174-5)= 2 M. 67 (73).

-Perpetual hereditary interest if created by-Word Dawani-Use of-Effect. See TENURE-PERPETUAL HEREDITARY TENURE-POTTAH CREATING.

(1839) 26 I. A. 216 (224-5) = 27 C. 156 (165-6).

#### TITLE

Evidentiary value as regards.

Pattas constitute the evidence of title given to the holders under ryotwari tenure (72). (Lord Salvesen.) Maharaja OF VIZIANAGARAM.v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1926) 53 I. A. 64=49 M. 249=

43 C. L. J. 378 = 94 I. C. 501 = 28 Bom. L. B. 865= 24 L. W. 9 = (1926) M. W. N. 589= A. I. R. 1926 P. C. 18=50 M. L. J. 391 (397).

Pettah not part of, but evidence of.

The pottah is issued by the Collector. The Regulations under which it is issued is nothing more than a fiscal regu lation, introduced for the purpose of collecting the tribute to which the land is subject. In establishing a title to land in a Court of Justice, the pottah is not necessary. The pottah, therefore, forms no part of the title; it is the conveyance that gives parties a right to claim the pottah; and by having the latter, the amount of the sum payable to the Government is ascertained, and future doubt prevented (346). (Lord Chancellor.) FREEMAN v. FAIRLIE.

(1828) 1 M. I. A. 305=1 Sar. 193.

-The pottah proves no part of the title, it is the conveyance that gives parties a right to claim the polital. The pottak is evidence of title (359). Pottah is not the title, but the evidence of title (363). (Lord Romilly.) GUNGA GOBIND MUNDUL P. COLLECTOR OF THE TWENTY-FOUR PERGUNNAHS

(1867) 11 M. I. A. 345=7 W. B. (P. C.) 21= 1 Suth. 676=2 Sar. 284.

## PAUPER

-See C. P. C. OF 1908, O. 33; AND MADRAS REGULATIONS-PAUPER SUITS REGULATION VII OF 1818.

## PAYMENT.

## Bond.

Payment of. See BOND (1) LIABILITY UNDER AND (2) PAYMENT OF.

## Debt.

Payment of. See DEBT (1) PAYMENT OF AND (2) PROMISE TO PAY.

Decree-Payment directed by, as a condition of recovery of property.

-Deposit into Court-Necessity-Payment to decree holder in person—Sufficiency of. See DECREE—POSSES SION-DECREE FOR-PAYMENT DIRECTED BY, ETC. (1924) 51 I. A. 236 (247)=48 B. 404

-Mortgagee from plaintiff prior to decree Deposit by -Effect of-Benefit of-Person entitled to-Withdrawa fraudulent by him subsequently to defeat right of one son entitled to benefit of payment—Deposit subsequent by that person-Effect. See DECREE - POSSESSION DECREE FOR-PAYMENT DIRECTED BY, ETC. (1924) 51 I. A. 236 (240 1)= 48 B. 404

-Mortgagee from plaintiff prior to sult-Payment by -Right of-Validity of. See DECREE-POSSESSION-DECREE FOR-PAYMENT DIRECTED BY, ETC.

(1924) 51 I. A. 236 (240)=48 R. 404

PAYMENT-(Contd.)

Decree-Payment of amount of-What amounts to

-Set off of that decree against decree held by judgment-debtor-Consent order of-Effect. See C. P. C. OF 1908-S. 64-MONEY ATTACHED.

(1881) 8 I. A. 65 (74 5)=7 C. 107 (117-8.)

Evidence of.

-See EVIDENCE-PAYMENT.

Inheritance in particular estate—Payment out of obligor's share of-Stipulation for.

Enforceability of-Estate insolvent and obligor inheriting nothing-Effect. See COMPROMISE-CONSTRUC-TION OF-PAYMENT OUT OF ETC.

(1919 23rd May) H. C. File for 1919 (P. C. A. 64 of 1918).

Mesne profits to be realised in execution-Payment of amount out of-Bond for.

-Enforceability of-Profits not realizable in execution or otherwise-Obligor giving up claim to such profits under compromise in case of—Effect. See BOND—MESNE PRO-FITS, ETC. 1894) 22 I. A. 68 (74) = 22 C. 434 (443) Payment " on demand."

-Deed creating obligation of-Effect-Demand prior to enforcement of obligation—Necessity. See DEED—CONSTRUCTION OF—PAYMENT "ON DEMAND ".

(1855) 6 M. I. A. 211 (229).

## Proof of-Onus.

-Rule as to.

The ordinary rule requires the party who alleges payment to prove payment (633.) (Sir James W. Colvile.) CAVALY VENCATA NARRAINAPAH D. COLLECTOR OF MASULI-PATAM. (1867) 11 M. I. A. 619 = 10 W. R. P. C. 47 = 2 Suth. 103 = 2 Sar. 338.

#### PEDIGREE.

-Sa EVIDENCE-PEDIGREE.

## PENAL CODE

-Interpretation -Mode of -Prior law -Alteration or enactment of -Intention of -Assumption of - Propriety.

The Penal Code has first of all to be construed in accordance with its natural meaning and irrespective of any assumed intention on the part of its framers to leave unaltered the law as it existed before. The code must not also be assumed to have sought to introduce differences from the prior law (55.) (Lord Sumner.) BARENDRA KUMAR GHOSH v. KING-EMPEROR. (1924) 52 I. A. 40 =

52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. B. Cr. 1=6 L. R.P.C. Cr. 1= 27 Bom. L. B. 148=6 Pat. L. T. 169= 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. B. 50 = A. I. B. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

-Purpose of-Offences - Definition - Punishment Procedure for trial. See OFFENCES-DEFINITION.

(1883) 10 I. A. 171 (177) = 10 C. 109 (129.).

-Scope of-If exhaustive of criminal law of India-English criminal law and criminal law in India-Differences between.

The criminal law of India is prescribed by, and, so far as it goes, is contained in the Indian Penal Code; the criminal law of India and that of England accordingly differ in many respects (55.) (Lord Sumner.) BARENDRA KUM-AR GHOSH v. KING-EMPEROR. (1924) 52 I. A. 40=

52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. B. Cr. 1 = 6 L. B. P. C. Cr. 1 = 27 Bom. L. B. 148 = 6 Pat. L. T. 169 = PENAL CODE-(Contd.)

23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

-S. 34-Criminal Act-Meaning of Meaning of, in regard to offence of murder under S. 302.

A criminal act " in S. 34, L. P. C. means that unity of criminal behaviour which results in something for which an individual would be punishable, if it were all done by him self alone, that is, in a criminal offence. The expression, in so far as murder is concerned, is not confined to an act which takes life criminally within S. 302, I. P. C. (56), (Lord Sumner.) BARENDRA KUMAR GHOSH D. KING-EMPEROR. (1924) 52 I. A. 40 = 52 C. 197 =

29 C. W. N. 181 - (1925) M. W. N. 26 = 3 Pat. L. R. Cr. 1=6 L. R. P. C. Cr. 1=

27 Bom L R 148=6 Pat. L T. 169= 23 A. L. J. 314-41 C. L. J. 240-26 Cr. L. J. 431-26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543,

-\$. 34 - Separate acts done by several persons-Result of them all-Liability of each for.

S. 34, I. P. C., deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for that act " and "the act" in the latter part of the section must include the whole action covered by " a criminal act " in the first part, because they refer to it (51-2). (Lord Summer. J HARENDRA KUMAR GHOSH P. KING-EMPEROR.

(1924) 52 I. A. 40 = 52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. R. Cr. 1 = 6 L. B. P. C. Cr. 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 - 23 A. L. J. 314 - 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

-Ss. 34, 114, 302-Murder-Person present at commission of effence of - Consection as abetter of - Participation by him-Proof of-Conviction under St. 34 & 302

Even if it be the case that an accused could have been convicted as an abettor, present at the commission of the offence of murder, this is not to say that, if, to presence there is added proof of participation, he could not also be convicted under Ss. 34 & 302. Participation must depend upon the facts, but it is not negatived merely because actual presence and prior abetment are proved (54.) (Lord Sammer.) BARENDRA KUMAR GHOSH v. KING EMPE-(1924) 52 I. A. 40 = 52 C. 197 =

29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. R. Cr. 1=6 L. R. P. C. Cr. 1= 27 Bom L.R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. B. 50 = A. 1. B. 1925 P. C. 1=85 I. C. 47=48 M. L. J. 543.

-Se 34, 149-Scope and effect of-Distinction-Object and intention-Distinction between.

S. 149, I. P. C. creates a specific offence and deals with the punishment of that offence alone. It postulates an assembly of five or more persons having a common object. ter., one of those named in S. 141, and then the doing of acts by members of it in prosecution of that object. There is a difference between object and intention, for, though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of S. 34, is replaced in S. 149 by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an

#### PENAL CODE-(Contd.)

offence. Thus they have a certain resemblance and may to some exent overlap, but S. 149 cannot, at any rate, relegate S. 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all (52). (Lord Sumner.) BARENDRA KUMAR GHOSH P. KING EMPEROR. (1924) 52 I. A. 40=52 C. 197=

29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. R. Cr. 1 = 6 L. R. P. C. Cr. 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

——Ss. 34, 302—Murder in pursuance of a common intention—Person participating in—Liability for murder of —Fatal act if must be some by him. See PENAL CODE—Ss. 302, 34.

S, 37 of I. P. C. provides that, where several acts are done so as to result together in the commission of an offence the doing of any one of them, with an intention to co-ope rate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence (52). (Lord Summer.) BARENDRA KUMAR GHOSH P. KING-EMPEROR.

(1924) 52 I. A. 40 - 52 C. 197 - 29 C. W. N. 181 = (1925) M. W. N. 26 - 3 Pat. L. R. Cr. 1 = 6 L. R. P. C. Cr. 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 - 23 A. L. J. 314 - 41 C. L. J. 240 -26 Cr. L. J. 431 - 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 - 85 I. C. 47 - 48 M. L. J. 543

--- S. 38-Scope and effect of.

S, 38 of L. P. C. provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other (52). (Lord Summer). BAR-ENDRA KUMAR GHOSH v. KING-EMPEROR.

(1924) 52 I. A. 40 = 52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. R. Cr. 1 = 6 L. R. P. C. Cr. 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543. S. 59 — Transportation for 14 years — Sentence of — Legality of. See Penal. Code — SS. 304, 59.

S. 71-Consecutive sentences-Legality - Separate
offences-Test,

In a case in which on a complaint filed against two directors and the general manager of a Bank, the Magistrate framed against each of the accused a charge with three heads in which he charged them that they did respectively "by means of false and fraudulent balance-sheet and by intentionally keeping the bank open as a going concern after it had ceased to be solvent", falsely and fraudulently induced three named persons to deposit moneys with the Bank and passed consecutive sentences in respect of the separate charges, their Lordships of the Privy Council were of opinion that technically there were separate offences and the passing of consecutive sentences was not opposed to \$5.71 of the Penal Code. (Lord Haldane, L. C.) CLIFFORD \$5. KING-EMPEROR.

(1913) 40 I. A. 241 = 41 C. 568 = (1914) M. W. N. 11 = 16 Bom. L. B. 1 = 19 C. L. J. 107 = 18 C. W. N. 374 = 12 A. L. J. 75 = 15 M. L. T. 84 = 7 Bur. L. T. 37 = 22 I. C. 496 = 15 Cr. L. J. 144 = 2 Bom. Cr. C. 173.

PENAL CODE-(Contd.)

S. 114—Applicability and effect — Abettor present when crime is committed—Liability of — Crime for which he is punishable.

S. 114, J. P. C. is a provision which is only brought into operation when circum-tances amounting to abetment of a particular crime has first been proved, and then the presence of the accused at the commission of that crime is proved in addition. Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart. S. 114 deals with the case, where there has been the crime of absiment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abested. The section is evidentiary, not punitary. l'ecause participation de facto may sometimes be obscure in detail, it is established by the presumption juris of de jure that actual pre-ence Nus prior abetment can mean nothing el-e but participation. The presumption raised by S. 114 brings the case within the ambit of S. 34 (523) (Lord Summer.) BARENDRA KUMAR GHOSH P. KING EMPEROR. (1924) 52 I. A. 40 = 52 C. 197 =

29 C. W. N. 181 = (1925) M. W. N. 26= 3 Pat. L. R. Cr. 1 = 6 L. R. P. C. Cr. 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314= 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50= A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

Ss. 114. 34, 302—Murder—Person present at commission of offence of—Conviction as abettor of—Participation by him—Proof of — Conviction under Ss. 34 & 302 in case of. See Penal. Code—Ss. 34, 114, 302.

(1924) 52 I. A. 40 (54) = 52 C. 197.

S. 124-A - Seditions character of publications-Decision of Indian Courts as to-Interference by Prity Council seith.

The question whether the principles of the law of sedition as defined by S. 124 A, of the Penal Code were properly applied in detail to the language of the various articles complained of is one which partakes so much of the nature of a question of fact that it would be difficult for the Board to interfere on this ground with the conclusions arrived a by a Court in India. The decision of such a Court med nece sarily depend, not only on the construction of the writ ten matter complained of, but also on the local condition obtaining at the time of publication and a just appreciated of the effect which the publication under those condition of the articles in question would be calculated to product and the Board could not revise the conclusions of the local tribunal on facts of this nature without putting themselve into a position which they have repeatedly declined to at sume, namely, that of a Court of Appeal in Criminal Cases (Viscent Care.) KALI NATH ROY D. KING-EMPEROR

(1920) 48 I. A. 96 = 2 Lah 34 = 19 A. L. J. 65 = (1921) M. W. N. 49 = 25 C. W. N. 701 = 33 C. L. J. 124 = 13 L. W. 253 = 22 Cr. L. J. 139 = 59 I. C. 641 = 40 M. L. J. 101

Ss. 149. 34—Scope and effect of—Distinction. Se PENAL CODE—SS. 34, 149.

—— Ss. 201. 302—Charge of offence under S. 302— Conviction for offence under S. 201—Legality of. Sw Cr. P. C. OF 1898—SS. 235, 237. (1925) 52 I. A. 191= 6 Lah. 256

S. 228 Applicability Contempt of Court commit-

S. 228 of the Penai Code relates merely to insult of interruption to a public servant while sitting in a stage of public

## PENAL CODE-(Contd.)

cial proceeding. It does not provide against a contempt of Court committed by the publication of a libel out of Court when the Court is not sitting (177). (Sir Barnes Powerk.) SURENDRANATH BANNERJEA 7. CHIEF JUSTICE AND JUDGES OF THE HIGH COURT OF BENGAL

(1883) 10 I.A. 171 = 10 C. 109 (130) = 4 Sar. 474.

-S. 290-Public Nuisance - Cremation of dead bodies in place dedicated for the purpose-Privy Council-Criminal Case-Special leave to appeal.

In a case in which the High Court had held "In India the burning of dead bodies by the inhabitants of a village, in a particular spot attached to that village and dedicated for the communal purpose of cremation, in a manner neither unusual, nor calculated to aggravate the inconveniance necessarrily incident to such an act as it is generally performed in the country, is lawful and does not amount to a public nuisance, punishable under the Penal Code," their Lordships refused special leave to appeal to His Majesty in Council against the decision of the High Court VIRA PILLAI D. SAMINATHA PILLAI. (1897) 7 M. L. J. 33.

-S. 300-Motive for murder - Existence of-Conviction based on Legality of -Conditions,

However strong and convincing the evidence of an arlequate motive may be, that evidence can never counteract the harm done by the reception of inadmissible evidence, or the injustice its use may lead to, nor by itself supply the want of all reliable evidence, direct or circumstantial, of the commission of the crime with which an accused person may be charged (Lord Atkinson.) VAITHINATHA PILLAI THE KING-EMPEROR. (1913) 40 L. A. 193 (199) = 36 M. 501 (520) = 17 C. W. N. 1110 = 14 M. L. T. 263 (1913) M. W. N. 806-15 Bom. L. R. 910-

2 Bom. Cr. C. 123 = 18 C. L. J. 365 = 14 Cr. L. J. 577 = 21 I. C. 369 = 11 A. L. J. 881 = 25 M. L. J. 518.

-Ss. 302, 34-Murder in pursuance of a common intention-Person participating in-Liability for murder of -Fatal act if must be done by him.

A Sub-Postmaster was counting money at his office table in the back room, when several men appeared at the dear which led into the room from a courtyard, and, when just inside the door, called on him to give up the money. Almost immediately afterwards they fired pistols at him. He was hit in two places, and died almost at once. Without taking any money the assailants fled separating as they ran. The appellant, though he fired his pistol several times, was pursued and eventually was secured just after he had thrown it away. The others e-caped. There was evidence for the prosecution, such as the jury was entitled to act upon, that three men fired at the Postmaster, of whom the appellant was one. An ejected shell was found just inside the room near the door, and it fitted appellant's pistol. The bullet which killed the postmaster also fitted the ejected shell and the pistol carried by the prisoner. It was not, however, conclusively proved that no other assailant had a similar pistol to that which the appellant had or used a similar bullet to that found in the deceased.

The trial Judge directed the jury upon the footing that the prisoner was one of the men inside the room, that he was one of those who fired, and might be the man who fired the fatal shot, and that, in any event, if they were satisfied in terms of S. 34 of the Penal Code, that the Postmaster was killed in furtherance of the common intent of all, then the appellant was guilty of murder, whether he fired the fatal shot or no.

Held, that the trial Judge, and the Full Bench which affirmed him, took a right view of S. 34, of the Penal Code. I.L.R. 41 C. 1072 over-ruled. (Lond Summer.) BRIENDRA KUMAR GHOSH V KING EMPEROR. (1924) 52 I.A. 40 = 58 O. 197 = 89 C. W. N. 181 = (1925) M. W. N. 26 = PENAL CODE-(Contd.)

3 Pat. L. R. Cr. 1-6 L. R. P. C. Cr 1= 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 - A. I. R. 1925 P. C. 1 = 85 I. C 47 = 48 M. L. J. 543.

-Ss. 302. 114 34-Murder-Person present at commission of offence of-Conviction as abettor of - Participation by him-Proof of-Conviction under Ss. 34 & 302 in case of. See PENAL CODE - St. 34, 114 & 302.

(1924) 52 I. A. 40 (54) = 52 C. 197.

Ss. 302, 201-Charge of offence under S. 302-Conviction for offence under S. 201-1 egality of. See Cr. P. C. OF 1898-SS, 230, 237-CHARGE OF ONE OFFENCE. (1925) 52 I. A. 191 - 6 Lah. 226.

-Ss. 304. 59 - Controller under S. 304-Transport. ation for 14 years-Sentence et-Legality.

S. 304, read with S. 59, of the Penel Code, while it authorizes a sentence of transportation for life, does not empower a court to impose a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed-namely, ten

On a conviction of the appellants under S. 304, L. P. C., the High Court passed on them sentences of transportation for 14 years. Held, that the sentences were illegal (37-8), (Lord Buchmerder). SAVVAPUREIGH & KING-EMPEROR.

(1920) 48 I. A 35 (1921) M. W. N. 26 = 23 Bom. L. R. 705 - 3 U P L R (P C) 10 = 13 L. W. 223 - 19 A. L. J. 164 - 33 C. L. J. 222 = 22 Cr. L. J. 174 = 30 M. L. T. 192 = 59 I. C. 926 = 40 M. L. J. 194.

-S. 405. See SCYCHELLES PENAL CODE-S. 216.

--- S. 463—Subpoenas--Alteration by legal practitioner of-Convi tion for forgery on ground of-Legality. See LEGAL PRACTITIONER-FORGERY

(1912) 23 M. L. J. 194 (199).

-8. 499-Contempt of Court by publication of likel-Office of Pumilment summary for-furisdiction-Officers am unting to Defamation-Effect.

Chapser 21 of the Penal Code "Of defamation," does not define "contempt of court" or make any provision for the panishment of a contempt of court by the publication of a fibel reflecting upon a Judge in his judicial capacity or in reference to his conduct in the discharge of his public duties. The offence, as a case of defamation, might doubtless be punished under that chapter with simple imprisonment, not exceeding two years, or with fine, or with both. But it is not be ause the publisher might have gees punished for defamation that he could not be punished summarily as for a contempt of Court (177.) (Sir Rarnet Peacock). SURENIDRANATH BANERJEAD. CHIEF USTICE AND JUDGES OF THE HIGH COURT OF BENGAL. (1883) 10 I. A. 171 = 10 C. 109 (130) = 4 Sar. 474.

-Defamation-Truth of imputation-Plea of-Discovery of untruth in course of trial-Duty of accured

in case of.

Where, in a prosecution for defamation, the accused pleads the truth of the imputation but in the course of the trial discovers that the imputation was not true in fact, the a case I should not thereafter adhere to the libel for a moment but should a knowledge the mistake and tender an apology. (Lord Shaw.) ARNOLD v. KING EMPEROR.

(1914) 41 L A. 149 (1678) = 41 C. 1023 (1061)= 18 C. W. N. 785 = 23 I.C. 661 = 7 Bur. L. T. 167 = 131 4) M. W. N 506 = 1 L. W. 461 = 12 A. L. J. 1042 = 16 Bom. L. R. 544 = 4 Cr.L.R. 100 = 20 C. L. J. 161 = 16 M. L. T. 79 = 8 L. B. R. 16= 26 M. L. J. 621.

### PENAL CODE-(Contd.)

 Judge—Imputations upon public acts of—Liability to proceeding for.

No privilege or protection attaches to the public acts of a judge which exempts him in regard to these, from free and adverse comment. He is not above criticism. Freedom would be seriously impaired if the judicial tribunals were outside of the range of such comment. But when the criticism is converted into an attack upon the Judge, it is for the person who does so to justify his imputations, or, under the Penal Code, to establish affirmatively that he believed them to be true, and that on reasonable grounds. (Lord Shaw.) ARNOLD v. KING-EMPEROR.

(1914) 41 I. A. 149 = 41 C. 1023 (1063-4) =

18 C. W. N. 785 = 23 I. C. 661 = 7 Bur. L. T. 167 =

(1914) M. W. N. 506 = 1 L. W. 461 =

12 A. L. J. 1042 = 16 Bom. L. R. 544 =

4 Cr. L. R. 100 = 20 C. L. J. 161 = 16 M. L. T. 791 =

8 L. B. R. 16 = 26 M. L. J. 621.

----Press-Privilege of-Nature and limits of.

No kind of privilege attaches to the profession of the Press as distinguished from the members of the Public. The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the discrimination of printed matter may, and in the case of a conscientious journalist do, make him mere careful; but the range of his assertions, his criticisms or his comments, is as wide as, and no wider than, that of any other subject No privilege attaches to his position. (Lord Shaw). ARNOLD v. KING-EMPEROR. (1914) 41 I. A. 149 =

41 C. 1023 (1063) = 18 C. W. N. 785 = 23 I.C. 661 = 7 Bur. L. T. 167 = (1914) M. W. N. 506 = 1 L W. 461 = 12 A. L. J. 1042 = 16 Bom. L. R. 544 = 4 Cr. L. R. 100 = 16 M. L. T. 791 = 8 L. B. R. 16 = 26 M. L. J. 621.

-8.511-Preparation to commit offence-Acts done towards commission of offence-Distinction between.

The petitioner had obtained, with a fraudulent intent, letters of administration to be granted, which recited that a certain lost Government promissory note was the property of one A, and further he had with fraudulent intent sent those letters of administration to the Public Debt Office as the foundation for an application for payment of the money. On the petitioner being charged with offences under Ss. 511 and 420 of the Penal Code, the learned Judge who tried the case laid down in his charge to the jury that in order to convict the petitioner they must be satisfied, not only that he intended to cheat, but that he had done an act towards that cheating. The Jury found the petitioner guilty, whereupon he was convicted under the said sections.

Held, that the learned Judge clearly had in view the distinction between preparation to commit an offence and acts done towards the commission of the offence, that there was no misdirection on the part of the learned Judge, and that there had been no miscarriage of justice. (The Lord Chancellor). MACREA Ex parte. (1893) 20 I. A. 90 = (1893) A. C. 346=15 A. 310=6 Sat. 344.

#### PENSION.

Attachment and sale in execution of. See C. P. C. OF 1908—S. 60 (1) (G).

Grant in lieu of Estate conveyed under—Land itself or land-revenue only—Grant of taluka with lands as jagir. See Crown—Grant By—Estate Conveyed under—the whole of the assessment; and did so percentage upon the whole of the assessment; and did so upon the ground, inter alia, that by the change upon the ground, inter alia, that by the change system of assessment his interest might have been affected.

### PENSION-(Contd.)

—Jagir accompanying—Grant by Government of— Intention that two should be subject to same conditions. Sw JAGIR—GRANT OF—ESTATE CONVEYED UNDER—PEN-SION—JAGIR ACCOMPANYING.

(1878) 6 I A. 54 (62)=3 B. 186 (191-2).

—Manager of estate—Pension to, on resignation— Binding contract to pay—What amounts to. See HINDU LAW—IMPARTIBLE ESTATE—WIDOW IN POSSESSION OF. (1921) 15 L. W. 589.

Perpetuity—Pension in—Grant by treaty of—Isse-Heirs—Meaning of. See International agreement —Sovereign powers—Treaty between.

(1889) 16 I. A. 175 (181-2)=17 C. 234 (243-4).

Perpetuity—Pension in—Settlement by way of— Validity—Private individual—Contract or treaty between sovereign powers — Settlements by — Distinction. Set MAHOMEDAN LAW—PENSION IN PERPETUITY.

(1889) 16 I. A. 175 (182) = 17 C. 234 (245).

- Political pension—Meaning of. See C.P.C. OF 1908 -S. 60 (1) (G).

#### PENSIONS ACT XXIII OF 1871.

- Applicability-Grant in consideration of print rights vested in grantee-Suit in respect of.

The decisions of this Committee reported in L. R. 4 LA.

119 and L. R 8 I. A. 77 show that the language of the
Pensions Act applies to cases in which the grant has been
made in consideration of prior rights vested in the grantee

(161). (Lord Hobbouse). DEO KUAR v MAN KUAR.

(1894) 21 I. A. 148 = 17 A. 1 (17.8) = 4 M. L. J. 272 = 6 Sar. 489.

S. 3—Money payable by Government in respect of a right, privilege, perquisite, or office formerly enjoyed—Deshmukh—Allowance payable to—Nature of.

The plaintiff alleged that he was the hereditary debmukh of certain turufs or districts; that as such he and his ancestors had long been entitled to receive directly from the ryots a percentage equivalent to six pies in the rupee upon that part of the revenue which was assessed in cash; a smaller percentage upon that which was assessed in grain; and certain other dues.

Those rights of the deshmukhs were, as the plaintiff said, confirmed, or as the other side put it, regranted by the Sunnud of 1777. And the plaintiff alleged that up to the year 1842 he received his dues directly from the ryots, but that since 1842 the Government had received them on his behalf and become accountable to him for them. It was an undisputed fact that in the year 1868 there was a new revenue settlement, since which the whole of the revenue receivable by Government and assessed upon the ryots had been a money assessment, no part of the revenue being been a money assessment, no part of the revenue being afterwards assessed in grain. The question was whether the claim of the plaintiff, however it might have stood on the sunnud of 1777, had not been brought within the Persions Act of 1871 by the alterations in its character that subsequently took place.

A prior suit proceeded upon the alteration made under the revenue settlement of 1868. The plaintiff appeared to have claimed six pies in the rupee upon the total amount of the assessment, which then consisted wholly of morey. The Government met that claim by a contention that upon so much of the existing assessment as might be considered to represent the former grain assessment he was eatiled only to the smaller percentage. The judge decided that question in the plaintiff's favour, and allowed him the large question in the plaintiff's favour, and allowed him the large upon the whole of the assessment; and did upon the ground, inter alia, that by the change in the system of assessment his interest might have been affected.

## PENSIONS ACT XXIII OF 1871-(Contd.)

and therefore that it was equitable to allow him the larger percentage upon the whole of the then assessment. The plaintiff's claim in the suit out of which the appeal arose adopted that definition of his rights, and sought to enforce them accordingly.

Held that what was payable by the Government after the settlement of 1868 was so payable out of the general land revenue in respect of a right, privilege, perquisite, or office formerly enjoyed within the meaning of S. 3 of the Pensions Act of 1871, that the suit was therefore within that Act, and that the plaintiff must seek his remedy by the procedure thereby provided (126). (Sir James II'. Colvele.) VASUDEV SADASHIV MODAK v. COLLECTOR OF RATNA-(1877) 4 I. A. 119 = 2 B. 99 (109-110) = 3 Sar. 701 = 3 Suth. 391.

S. 4-Grant of money or land revenue-Meaning of. The expression "grant of money or land-revenue" in S. 4 of the Pensions Act is interpreted to include anything payable on the part of Government in respect of any right, privilege, perquisite, or office (160). (Lord Hobboute.) DEO KUAR v. MAN KUAR. (1894) 21 I. A. 148= (1894) 21 I. A. 148= 17 A. 1 (16-7) = 6 Sar. 489 = 4 M. L. J. 272.

-Grant of money or land revenue conferred by former Government-Deshmukh-Allowance payable by Peshing to -Nature of.

The plaintiff alleged that he was the hereditary deshmukh of certain turufs or districts; that as such he and his ancestors had long been entitled to receive directly from the ryots a percentage equivalent to six pies in the rupee upon that part of the revenue which was assessed in cush; a smaller percentage upon that which was assessed in grain; and certain other dues

Those rights of the deshmukhs were, as the plaintiff said, confirmed, or, as the other side put it, regranted by the sunnud of 1777. And the plaintiff alleged that up to the year 1842 he received his dues directly from the ryots, but that since 1842 the Government had received them on his behalf, and become accountable to him for them. It was an undisputed fact that in the year 1868 there was a new revenue settlement, since which the whole of the revenue receivable by Government and assessed upon the ryots had been a money assessment, no part of the revenue being afterwards assessed in grain. The question was whether in its inception and original character the deshmukh's right was not one within the scope and operation of the Pensions

The sunnud of 1777 recited the representation or petition of the plaintiff's ancestors, from which it appeared that whatever might have been the nature of the original right, the right of receiving those haks from the ryots had, at all events for a considerable number of years, been suspended: that as early as the time of Sivaji the haks were resumed by the Government of the day, and the value of them credited to the Government-that is, treated as part of the general revenue of the country-certain fixed salaries being paid to the deshmukhs; and that that system, with some variation as to the amount of the salary. continued during the time of Kanoji Angria, and was in force when the country again came under the Maharata rule. The petition of the then Deshmukhs to the Peshwa prayed to have the old and suppressed allowances restored to them; stating however, that there was a dispute between them and certain other parties as to who were the proper watandars. The result was that the Peishwa recognised the rights of the plaintiff's ancestors as between them and the rival claimants. and made an order upon the mahajans and the khots of the villages of the mehals or turufs in question, enjoining then

## PENSIONS ACT XXIII OF 1871-(Contd.)

bandi, whatever it might amount to, according to the established practice, to be paid by the rayyats to the petitioners, their sons and grandsons.

Held, affirming the High Court, that the restoration of the old allowances by the Peishwa was in substance a grant by him of part of his land revenue, and therefore fell within the terms of S. 4 of the Pensions Act without the aid of S. 3 thereof as a grant of money or land-revenue, conferred by a former Government (125).

Whatever the foundation of the deshmukh's rights originally was, the sunnud must now be treated as the foundation of those rights as they exist (125). (See James W. Colvile.) VASUDEV SADASHIV MODAK v. COLLECTOR OF RATNAGIRL (1877) 4 I. A. 119=2 B. 99 (108 9)= 3 Sar. 701 = 3 Suth. 391.

-Malikana-Suit to recover-Certificate under Act-

Mouzah P was taken into the hands of the Government and held A' has in or before the year 1880, and by a deed dated in September of that year the plaintiff and defendant formally made over to Government their proprietary rights on consideration of receiving Rs. 2,000 per annum as malikana in perpetuity. It did not appear under what circumstances the mouzah was taken into khas management, but it could not be doubted that the allowance stipulated for and granted was of the nature indicated by the term malikana, i.e., a grant of a portion of the revenue in lieu of pre existing proprietary rights.

Held that a suit for the recovery of the said allowance was not cognizable by the Civil Courts without the certificate required by the Pensions Act of 1871 (161-2).

It is at first somewhat surprising that a property which has been the subject of bargain and formal grant should be excluded from the cognizance of Civil Courts. But it cannot be denied that it falls within the literal construction of the words of the Pensions Act, i.e., it is something payable on the part of Government in respect of a right (161), (Lord Hobboure.) DEO KUAR v. MAN KUAR.

(1894) 21 I. A. 148=17 A. 1 (17)=6 Sar. 489= 4 M. L. J. 272.

-Toda-girashuk-Payment made by Government in lieu of - Suit for - Civil Court - Jurisdiction.

The ancestors of one M formerly levied a toda gira chuk upon certain villages in the Surat district. In 1862 the Government of Bombay passed a resolution, which described the position of the Garasias at that time, and which gave them the option of resuming the collection of the former hukks from the villages, or of receiving from the Government allowances of an equivalent amount, the Government in that case discontinuing the further receipt of the hukks. An arrangement of the kind described in that resolution was evidently made with M's family, though before the year 1862. Payments of money in lieu of the hukk were made before that year, the payments being divided into three parts to three different branches of M's family and M himself being paid one-third. The payments were continued by the Government down to the death of M in 1865, and thereafter they discontinued the payment to the plaintiff, M's adopted son, though the Government continued to pay the two other shares. Since 1862 the Government had ahandoned the collection of the hukk from the villages.

In a sait brought by the plaintiff against the Government of Bombay to recover the arrears of the payments from the time of his father's death, held that the suit related to a grant of money conferred by the British Government; that it fell directly and plainly within the language of S. 4 of the Pensions Act of 1871; and that the Civil Court to cause the amount of the haq on the Government jama- were prohibited from taking cognizance of the suit (86-7).

#### PENSIONS ACT XXIII OF 1871-(Cont.)

There is in this case of grant of manny by the Government, and a right for which it was substituted. It, therefore, tells within the language of S. 4. The right of the Government was on a peculiar and prevailans kind; and allow more in report of rights of this manne are clearly contemplated by the Art, and insended to be included in it. Even in the arrangement made by the Government was not strictly a grant, the said relates to money possible by the Government in respect of a right (So). (So: Mattager E. Smith.) Mattag WM. Morth SNRGH. It VSINGH. E. GOVERNMENT OF BOWER.

- Ss. 4 and 3-Great of money or land-reconne-Meaning of Figs lens general principle. Applicability.

By S. 3 of the Pensions Act the expression grant of money or hardoevenue in S. 4 thereof is made to include "anythire parable on the part of the Government in respect of any right, privilege, penjaisite, or office," It was argued that the construction should be limited to rights crassion general with pensions. But there is no sofficient ground for so limiting the language; and it is to be observed that the words of the Pensions Act of 1871, which include this case, are not found in the former regulations relating to pensions. There is no meason, therefore, either in the language of the Act itself or in the anteredent legislation, for constraining these words as amplicable only to right—of the nature of pensions (86.7), (Six Montague E. Smith.) MAHARAVAL MOHANSINGH INVSINGH; GOVERNMENT OF BOMBAY. (1881) 8 I. A. 77—5 B. 408 (421-2) = 4 Sax. 230.

Plaintiff brought the suit out of which the appeal arese against the Sceretary of State for a declaration that the resumption by the Government of a music grant admittedly subject to the provisions of the Pensions Act was invalid as against him. He was met with the objection that having regard to the provisions of Ss. 5 and 6 of the Pensions Act such a suit was not maintainable.

The Sub-Judge over-ruled the objection, and made a decree in favour of the plaintiff. The High Court, on the appeal of the defendant, reversed his order and dismissed the suit, holding that the Civil Court was incompetent to make a declaration directly or indirectly affecting the liability of the Government "to pay the revenue to the plaintiff."

Held that the High Court were clearly right in setting aside the decree of the Sub-Judge in so far as it affected the liability of Government in respect of the revenue of the much grant (314). (Mr. Amer Ali.) HAKIM SHIAM SUNDAR LALT. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1919) 12 L. W. 311-57 L. C. 156.

-S. 6-Certificate under-What am units to-Cellector's order referring plaintiff to certif suit if equal to.

An order made by the Collector referring the plaintiff to a suit in the Civil Court is equivalent to a certificate under S. 6 of the Pensions Act. (Lord Colling.) GANPAT R30 v. ANAND R40. (1909) 37 I. A. 39 (45)=

32 A. 148 (151 2) = 7 M. L. T. 53 = 7 A. L. J. 165 = 12 Bom. L. R. 267 = 11 C. L. J. 281 = 14 C. W.N. 310 = 5 I. C. 689 = 20 M. L. J. 164.

Certificate under—Omission to obtain—Dismissal of suit on ground of—Suit subsequent after obtaining certificate—Not barred. See C. P. C. OF 1908—OR. 2, R. 2—PENSIONS ACT. (1929) 57 M. L. J. 160.

- Certificate under-Production of, subsequent to suit
-Sufficiency of.

Some part of the property sought to be recovered in a suit consisted of land held under a grant from the Crown on terms which brought it within the Pensions Act TENANCY.)

## PENSIONS ACT XXIII OF 1871-(Contd.)

(23 of 1871). It appeared that after the judgment which disposed of the principal questions in the suit had been delivered final judgment was suspended upon an objection that no certificate had been obtained. Before the case was finally disposed of and the final decree passed, the certificate was obtained and delivered to the Court, and the Court the eupon held that the suit might proceed.

Held that the Court below came to a correct decision in

so helding (19).

It is contended that the suit ought to have been dismissed altogether as regards the property held under the grant, because no certificate was obtained from the commen ement of the suit; but their Lordships think that the Court, although up to a certain time they had proceeded apparently without objection with the suit without a certificare, was justified in going on with the suit when it was received. The Statute says (S. 6) that : "A Civil Court otherwise competent to try it"-this Court was competent to try it - "shall take cognizance of any such claim upon receiving a certificate from such collector." When the Court received the certificate it was bound to take cognizance of the claim; and it seems to their Lor/ships that finding an existing suit when it received the certificate it might take cognizance of the claim in that suit (19-20). (Sir Mentague E. Smith.) NAWAB MUHAMMAD AZMAT ALI KHAN D. MUSSUMAT (1881) 9 I. A. 8 - 8 C. 422 (434-5)= LALLI BEGUM. 4 Sar. 310 - 17 P. B. 1882 (Civil).

Certificate under-Production of, fending appeal-Sufficiency of.

In an appeal by the defendant in a suit for partition in which the point was raised that the want of a certificate under S. 6 of the Pensions Act XXIII of 1871 was a bar to the action in respect of each of the portions of land in which rights were claimed, the High Court allowed the hearing of the appeal to be adjourned in order to enable the plaintiff-respondent to procure a certificate, and on the respondent procuring such a certificate, dismissed the appeal.

The decision of the High Court was on appeal affirmed by their Lordsip. (Lord Collins.) GANPAT RAO 8. ANAND RAO. (1909) 37 I. A. 39 (44)=

32 A. 148 (150·1) = 7 M. L. T. 53 = 7 A. L. J. 165 = 12 Bom. L. R. 267 = 11 C. L. J. 281 = 14 C.W.N. 310 = 5 I. C. 689 = 20 M. L. J. 164.

-0 jet and effect of.

A competent Civil Court is authorized under S. 6 of the Pensions Act of 1871 to take cognizance of a claim in respect of "pensions and grants by Government of money or land-revenue" only on receiving a certificate from the authority mentioned in the section "that the case may be so tried." The object of this provision evidently is that in cases of conflicting titles, the Revenue authorities should grant to the unsuccessful applicant an opportunity for adjudication of his right by the regular Courts of Justice. But it expressly declares that "the Civil Court shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly (314)." (Mr. Ameer Ali.) HAKIM SHIAM SUNDAR LAL V. SECRETARY OF STATE FOR INDIA IN COUNCIL (1919) 12 L. W. 311 = 57 I. C. 156.

PERJURY.

Witness-Perjury-Summary proceeding for. See CONTEMPT OF COURT-WITNESS-PEJURY. (1909) 19 M. L. J. 324.

PERMANENT RIGHT OF OCCUPANCY.

(See also LANDLORD AND TENANT—PERMANENT

## PERMANENT RIGHT OF OCCUPANCY-(Contd.) PERMANENT RIGHT OF OCCUPANCY-(Contd.) Acquisition of-Modes of-Heritability and transferability of.

A permanent right of occupancy in land in India is a right, subject to certain conditions, of a tenant to hold the land permanently which he occupies. It is a heritable right, and in some places it possibly may be transferable by the tenant to a stranger. That permanent right of occupancy can only be obtained by a tenant by custom, or by a grant from an owner of the land who happens to have power to grant such a right, or under an Act of the Legislature. (Sir John Edgs.) NAINAPILLAI MARKAVAR r. RAMANATHAN CHEVTIAR. (1923) 51 I.A. 83 (89 90) 47 M. 337 = A. I. R. 1924 P. C. 65 = 22 A. L. J. 130 = 19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 869 - 82 I. C 226 = 46 M L J. 546.

## Adverse Possession—Acquisition of right by.

-Proof of-Quantum-Inam grant-Grantee under-Ejectment suit against cultivating tenants by-Claim by latter to occupancy rights in. Ser INAM-GRANT IN-MELWARAM ONLY OR KUDIWARAM ALSO CONVEYED UNDER (1) KUDIWARAM-GRANT ALSO OF. AND (2) MELWARAM. (1922) 49 I A. 286 = 45 M. 586. (2) MELWARAM.

-Tenant-Acquirition by-Possibility of See LAND LORD AND TENANT-PERMANENT TENANCY.

(1923) 51 I. A. 83 (89) - 47 M. 337.

### Chur land within Zemindary-Lessee of.

Right of-Leave-Construction. See BENGAL ACTS -RENT ACT X OF 1859-S. 6.

(1920) 48 I. A. 49 (56) -48 C. 460.

## Claim to-Land in respect of which, made-Identification of.

Onus on tenant-Ejectment suit by landford. The onus of pointing out that portion of the suit land in which defendant claims his right of occupancy is on him (35-6.) (Sir Richard Couch.) CHUNDRABATI KOERI =. HARRINGTON. (1891) 18 I. A. 27 = 18 C. 349 (359) = 5 Sar. 481.

## Finding as to.

Fact or Law. See C. P. C. OF 1908-S. 100-TENANCY-NATURE.

## Hindu Law Religious Endowment-Debutter property of-Creation of hight by Shebait in.

——Varidity of See HINDU LAW — RELIGIOUS ENDOWMENT—TEMPLE—SHERAIT OF—PROPERTY OF TEMPLE-ALIENATION OF, ETC.

(1923) 51 I. A. 83 (86-7) = 47 M. 337.

## Incidents of.

-Purchaser of tenure-Rights of. See LANDLORD AND TENANT-PERMANENT TENANCY-INCIDENTS OF. (1924) 52 I. A. 160 (163 4) = 52 C. 417.

## Middleman.

-Right of, to confer or acquire right. See PERMA-NENT OCCUPANCY RIGHT-RIGHT TO CONFER.

(1924) 51 I. A. 293 (298) = 51 C. 631.

#### Plea of-Onus of Proof of.

-See LANDLORD AND TENANT - PERMANENT (1923) 51 I.A. 83 (89) = TENANCY-PLEA OF. 47 M. 337.

### Presumption of.

-Kudimirat-Use of word, in tenant's receipts-Presumption from-Propriety. See LANDLORD AND TENANT -PERMANENT TENANCY-PRESUMPTION OF-KUDI-(1928) 51 L. A. 83 (99) = 47 M. 337. | GOUNDAN. MIRAS.

Presumption of -(Contd.)

-Religious Endowment-Debutter land of-Presumption in case of-Propriety. See LANDLORD AND TENANT -PERMANENT TENANCY-PRESUMPTION OF-KELI-GIOUS ENDOWMENT. (1923) 51 I. A. 83 (97-8) = 47 M. 337.

-Temple lands-Presumption in case of-Propriety-Use of word "Kucimiras" in tenants' receipts-Sales or mortgages by tenants to knowledge of temple officials-Presumption from, See LANDLORD AND TENANT-PER-MANENT TENANCY - PRESUMPTION OF TEMPLE (1923) 51 I. A. 83 (100) - 47 M. 337.

## Rent-Abatement of-Tenant's right to.

-Agreement excluding, under any circumstances-Validity of against auction purchaser of tenure, See LAND-LORD AND TENANT-PERMANENT TENANCY-RENT OF -ABATEMENT OF-TENANT'S RIGHT TO

(1924) 52 I. A. 160 (166) - 52 C. 417.

—Encroachment illegal by third persons—Abatement on ground of. See LANDLORD AND TENANT—PERMA-NENT TENANCY-RENT OF-ABATEMENT OF.

(1924) 52 I. A.160 (164-5) - 52 C. 417.

#### Right to confer.

-Co charge in Bengal-Middleman - Right of-Acquesition of right by latter.

In Bengal, a co-sharer has no more power to confer a right of eo upancy on a raiyat than a middleman would have and in Bengal a middleman cannot obtain as a middleman a right of o cupancy in himself, much less can he create in his tenant a right of occupancy in lands held by him as a middleman. (Sir John Edge). MIDNAPUR ZEMINDARY CO., LTD. ». NARESH NABAIN ROY.

(1924) 51 I. A. 293 (298) = 51 C. 631 = 26 Bom. L. R. 651 = A. I. R. 1924 P. C. 144 = 35 M L T. 169 = 20 L W. 770 = 23 A. L. J. 76= (1924) M. W. N. 723 = 80 I. C. 827 = 29 C. W. N. 34 = 47 M. L. J. 23.

## Ryotwari Pattadar-Under-ryot of-Claim by.

-Presumption-Onus of Proof.

In a suit by a Government pattadar of certain garden and dry cultivated lands in a ryotwari tract in Madras to eject the defendants, the persons in possession of the suit lands, as being yearly tenants who had received due notice to quit, plaintiff's title was conceded, and the notice by which he purported to terminate the defendant's tenancy was not disputed; it was also admitted that the defendants held under, if not from, the plaintiff; and to resist the plaintiff's claim the defendants set up a permanent tenancy or on occupancy right in themselves. Held that the burden lay on the defendants of proving the existence of their permanent tenancy or occupancy right (84-5).

If this (permanent tenancy or occupancy right) was not established then the defendants must fail, and, to adopt the language of S. 101 of the Evidence Act. as the defendants were bound to prove the existence of their permanent tenancy or occupancy right, the burden of proof as to it lay

on them (85.)

In such a case the plaintiff has only to establish his title and need not also negative the defendants' claim to permanency (85.)

Permanence is not a universal and integral incident of an under-ryot's holding; if claimed, it must be established. This may be done by proving a custom, a contract, or a title and possibly by other means (86.) (Sir Lawrence Joukins). SETURATNAM AIYAR v. VENKATACHALA (1919) 47 I. A. 76=43 M. 567 (576-7)=

PERMANENT RIGHT OF OCCUPANCY-(Contd.) | PERMANENT RIGHT OF OCCUPANCY-(Contd.) Ryotwari pattadar - Under-ryot of - Claim by-

18 A. L. J. 707 - 27 M. L. T. 102 - 11 L. W. 399 = 22 Bom. L. R. 578 = (1920) M. W. N. 61 = 56 I. C. 117 - 25 C. W. N. 485 - 38 M L. J. 476.

Plaintiff, a Government pattadar of certain garden and dry cultivated lands in a syotwari tract in Madras sued to eject the defendants, the persons in possession of the lands, on the ground that they were only yearly tenants and that their tenancy had been terminated by a doe notice to quit. The defendants resisted the suit claiming to have a permanent tenancy or right of occupancy in the suit lands.

The evidence showed that the defendants had been in possession for a very long period at uniform rents, that they had reclaimed the lands and made wells in the garden lands, alienating from time to time wells and lands attached to them, and that they had cultivated the lands with crops

of their own choice.

Held, that the defendants had discharged the ones of proving that they had permanent occupancy rights. (Sir Laterence Jenkins.) SETURATNAM AIVAR P. VENKATA-CHALA GOUNDAN. (1919) 47 I. A. 76 (84 5, 86) = 43 M. 567 (576 7) = 18 A. L. J. 707 - 27 M. L. T. 102 = 11 L. W. 399 = 22 Bom. L. R. 578 = 1920 M. W. N. 61 = 25 C. W. N. 485 = 56 I. C. 117 = 38 M. L. J. 476.

-Proof of-Onus-Quantum-Dispute as to one-half of an estate-Purchase of Kultivaram rights by underryots in lands in other half-Evidentiary value of.

Permanence is not a universal and integral incident of an under-ryot's holding. If claimed, it must be established, This may be done by proving custom, contract or a ti-le and

possibly by other means.

The first respondent was the owner of a one-half share of an estate called the Chinna Pannai estate, and was ryotwari pattadar of one-half undivided share of that estate. He brought the suit out of which the appeal arose to establish his right to have all the lands within his title partitioned on the footing that the appellants as a community of cultivators had not acquired the permanent rights of occupancy which they claimed. The appellants admitted that the respondents' predecessors-in-title had been regularly receiving trian samiblingum for his share of the They raised no objection to a division being effected in respect of the dry and rain-fed lands within the respondents' title. But they maintained that the wellirrigated lands and palmyras should be excluded from the partition on the ground that in respect to all of them they were permanent tenants who had acquired by long occupation the Kudiwaram of those tands, subject only to the payment of a fixed annual return at certain specified rates. The appellants succeeded in showing little else than that they had remained in undisturbed possession of some of the land in question for a long period at a more or less uniform rent. They did not attempt to prove any custom upon which they found, and their attempt to prove a contract completely failed. The alienations on which they found all turned out to be of comparatively recent date, and not of such a kind as would ordinarily be brought to the notice of the pattadar. as they did not in most cases involve any change of tenancy.

Held that the onus lay on the appellants of proving the existence of their permanent tenancy or occupancy right. and that the facts established in the case were insufficient

to discharge that onus.

Held also that the fact that in the half of the Chinna Annai which was not claimed by the respondents some of the appellants actually acquired the Kudituram of the land, while not conclusive, militated against their claim. (Lord | DARI-PERMANENT SETTLEMENT OF,

Byotwari pattadar-Under-ryot of-Claim by-(Contd.)

Salvesen.) SUBRAHMANYA CHETTIAR v. SUBRAHMANYA MUDALIAR. (1929) 56 I. A. 248 = 52 M. 549 = 33 C. W. N. 734 = 31 Bom. L. R. 830 = 30 L. W. 30 = 116 I. C. 601 = (1929) M. W. N. 561 = A. I. R. 1929 P. C. 156=57 M. L. J. 1. Transfer of.

-Validity.

A right of occupancy cannot be transferred (30). (Sir Richard Court.) CHUNDRABATI KOERI z. HARRING-TON. (1891) 18 I. A. 27 = 18 C. 349 (353) = 5 Sar 481.

## Undivided share of estate.

-Right if can be acquired in respect of.

A right of occupancy may be acquired in respect of an undivided share of an estate (168). (Sir Barnes Peacork.) JARDINE, SKINNER & CO. v. RANI SURUT SOONDARI DEBI. (1878) 5 I. A. 164 = 3 C. L. R. 140= 3 Sar. 847 = Bald. 168 = 3 Suth. 550.

## PERMANENT SETTLEMENT.

-Admission against - Statement that estate toss " settled for periods"-Net such admission.

The question was whether the plaintiff's estate in which the suit lands were situated, had been permanently settled as alleged by the plaintiff. As against the plaintiff's case, the Government relied upon the schedule to a partition deed to which the plaintiff, his co-sharer, and the Government were parties in which schedule it was stated that the plaintiff's share was "settled for periods".

Held that the words "settled for periods" could not be taken to be an admission that the settlement was de jurt. (Lohd Phillimore.) NARESH NARAYAN ROY v. SECRE-TARY OF STATE FOR INDIA. (1923) 50 I. A. 121 (132)=

50 C. 446 (458 9) = A. I. R. 1923 P. C. 1= (1923) M. W. N. 511 = 32 M. L T. 162= 28 C. W. N. 453 = 77 I. C. 1048 = 45 M. L. J. 444.

-Bengal. Behar, and Orissa-State of, before Permanent Settlement-Mode in which they were administered prior to the introduction of that settlement. (Mr. Pemberton Leigh.) RAJA LEELANUND SINGH BAHADOOR P. GOVERNMENT OF BENGAL

(1855) 6 M. I. A. 101 (107-117)=1 Suth. 248= 4 W. R. P. C. 77=1 Sar. 505.

-Grant by zemindar before-Validity against his Successors of. Ser MADRAS REGULATIONS-PERMANENT SETTLEMENT REGULATION OF 1802. (1875) 25 W. B. 3.

-Inheritance-Family usage of, applicable to estate-Effect on. See HINDU LAW-INHERITANCE- CUSTOM -FAMILY USAGE-PERPETUAL SETTLEMENT.

(1872) 19 W. R. 8=2 Suth. 744 (746).

-Land whether included in or not. (1) EVIDENCE (2) ONUS OF PROOF (3) QUESTION AS TO-FACT OR LAW.

-See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-PERMANENT SETTLEMENT OF 1793. (1902) 30 I. A. 44=30 C. 291.

-Service tenure-Nature and incidents of-Effect on. See SERVICE TENURE-NATURE AND INCIDENTS OF-PERMANENT SETTLEMENT. (1882) 9 I. A. 104 (121)= 9 C. 187 (204.5).

-Tenure created before and subsisting at time of. or created after-Evidence-Hereditary Jaghire tenure. See SALES OF LAND FOR REVENUE ARREARS ACT I OF 1845. -S. 26-DECENNIAL SETTLEMENT-TENURE CREATED (1870) 13 M. I. A 438 (455 6). BEFORE, ETC.

-Zemindari-Permanent Settlement of. See ZEMIN-

## PERMANENT TENANCY.

-Alienation if an. See WATAN-WATAN LANDS-ALIENATION OF-PERMANENT TENANCY IF AN.

(1923) 50 I. A. 255 (258) = 47 B. 798 (801).

## PERSONA DESIGNATA.

-Judge or-Test. See JUDGE- PERSONA DESIG-NATA OR.

## PERPETUITY.

-Agreement to give land free of rent whenever required-Validity of-Enforceability of. See LAND-AGREE-MENT TO GIVE, ETC. (1920) 48 I. A. 376 (380).

-Annuity-Charge on estate in respect of, for grantee and his heirs-Validity- Enforceability against grantor's successors. See COMPROMISE—CONSTRUCTION—ANNU-(1918) 46 I. A. 64 (68-9) = 42 M. 581 (585-6).

-English law of-Extension to India of.

Quare, whether upon the ground of public policy the English law of perpetuity ought to be extended to India. which the character of the law of gifts there seems to render unnecessary (76). (Mr. Justice Willes.) JULTEN DROMOHUN TAGORE P. GANENDRAMOHUN TAGORE.

(1872) Sup. I. A. 47-9 B. L. B. 377-18 W. R. 359 = 3 Sar. 82 - 2 Suth. 692

-Grant in, at rent varying with amount of Government revenue-Proof of.

In a case in which the defendant alleged that he held the suit village, which was included in an Oudh talook owned by the plaintiff, from 1826, or even from 1838, under a grant for ever at a rent varying only with the amount of the Government revenue, held that the evidence adduced by him was not sufficient to establish his allegation (59). (Lord FitzGerald.) THAKUR ROHUN SINGH 2. THAKUR SURAT SINGH. (1884) 12 I. A. 52 = 11 C. 318 =

-Land-Agreement to give, free of rent whenever required-Validity. See LAND-AGREEMENT TO GIVE, (1920) 48 I. A. 376 (380).

-Land-Grant of, in perpetuity-Agreement creating -What amounts to. See LAND-PRESENT ESTATE ETC. (1920) 48 L. A. 376.

-Pension in-Grant of, by treaty between sovereign powers-Issue-Heirs-Meaning of. See INTERNATIONAL AGREEMENT- SOVEREIGN POWERS - TREATY BET-(1889) 16 I. A. 175 (181-2) = 17 C. 234 (243-4).

-Pension in-Settlement by way of-Validity-Private individual-Contract or treaty between sovereign powers-Settlements by-Distinction. See MAHOMEDAN LAW-PENSION IN PERPETUITY.

(1889) 16 I. A. 175 (182) = 17 C. 234 (245).

#### PLEDGE.

 Accession to property pledged during period of pledge -Pledger's right to. See COMPANY-SHARES IN-PLEDGE OF-ACCESSION TO ETC.

(1924) 52 I. A. 137 (143-4) = 49 B. 233

Company's shares-Pledge of. See COMPANY-SHARES IN-PLEDGE OF.

Importer of goods-Advance to, for purposes of his trade-Goods of importer placed in godown of lender-Pledge of goods by virtue of-Presumption of-Proof of.

When monies are advanced to importers for the purpose of their trade and the goods are placed in the godown of the lenders, it would be an exceedingly likely course of business that the goods should be regarded as security for the advances and that the lenders should take charge of or at any rate keep control over the realization of the goods and should reduce the advances out of the proceeds when

## PLEDGE-(Contd.)

not difficult to prove under certain circumstances, still has to be proved. (Viscount Sumner.) TEJPAL-JAMNA DAS P. ERNEST V. DAVID. (1928) 28 L. W. 204=

32 C. W. N. 1146=111 I. C. 240=48 C. L. J. 415= A. I. B. 1928 P. C. 219.

-Redemption of-Decree for-Accession to shares during period of pledge-Recovery of fresh shares by pledger-Mode of-Execution or Fresh suit. See COM-PANY-SHARES OF-PLEDGE OF.

(1924) 52 B. 137 (142-3) = 49 B. 233.

-Sale of goods pledged - Notice to pledger of -Necessity-Sale of goods pledged on arrival unless then redeemed or agent of pledger sent to join in the tale-Provision in contract for -Default of Nedgor to do either-Notice not necessary in case of.

Where there is the mere circumstance of a pledge and nothing more, the person who holds the piedge must give notice before he sells. There is here, however, more than that mere circumstance, for, when the terms of the agreement in this case are looked to, it is quite plain that when the cotton had all arrived it was (unless then redeemed) to , be sold, and it was the duty of those whose cotton it was to have their agent in the way to redoem or attend to the sale, and, if they made default in having their agent in the way, or paying, which they did, then the persons who held the cotton had a right to sell.

The case is this: cotton is pledged to be sold on arrival, unless then redeemed. The parties who pledged it contract either to redeem or to have an agent there to join in the sale on arrival. In such a case, if their agent was not there, and they never had one there, it simply is as if you struck out everything about the sale being through the agent, and as if it was neither more nor less than a pledge with these parties to sell on arrival. That being so it being pledged to be sold on arrival, there was no necessity for any notice. (See Lawrence Peel.) POKUR-MULL KISHEN DYAL P. GOKOOLDASS GOPALDASS

(1870) 5 M. J. 271.

- Sale of goods pledged by pledgee to himself -- Wrongful conversion-Damages for-Liability of pledgee for-Measure of -Sale after determination of pledge,

Where a pledgee, having power to sell for default, takes over, as if upon a sale to himself, the property pledged, without the authority of the pledgor, but crediting it in account with him, the act, though an unauthorised conversion, does not put an end to the contract of the pledge, so as to entitle the pledgor to have the property back without payment of the amount thereby secured (67).

The pledgor is however bound by re-sales duly effected by the piedgee to third persons after such abortive sales to himself. But where the piedgee has erroneously represented to the pledgor before such sales that his securities have been sold they can no longer be regarded as pledged, and he becomes on such re-sales liable in damages for the value thereof including the interest thereon (68).

Accounts between pledgor and pledgee in that contingency. (Sir Richard Couch.) NEIKRAM DOBAY v. BANK OF BENGAL. (1891) 19 I. A. 60 = 19 C. 322 (333)=

6 Sar. 164. -Warehouseman-Pledge of goods entrusted to-Delivery of goods by pledgee to order of warehouseman-Conversion-Pledgee's liability for-Pledgee acting in good faith without netice.

A, the owner of certain bales of cotton, entrusted them to one L to be held by him as muqaddan or warehouseman. At the time of the said entrustment, L was also carrying on business as a cotton merchant, was financed by the Bank of Bombay, and in the habit of pledging cotton with the Bank received. It is, however, an arrangement which, though to secure his account for cash advances and cash credits,

## PLEDGE - (Contd.)

and in the habit of withdrawing parcels of cotton so pledged when and as he disposed of them in the course of his business, braving an amount sufficient to cover his fiability to the Eink or else substituting other cotton for the cotton so withdrawn. The Bank did not however, know that L was carrying on any business but that of a coston merchant. though a man in their employ, whose duty it was to obtain information for the Eank with regard to their customers, but who was found to have been in parinership with L or in collusion with him, knew that L was also carrying on the business of a warehouseman. Immediately after the entrustment to him. L pledged the goods with the Bank which were accordingly placed in the Bank's custody. Sometime after, L sold the hales predged with the Bank and they were accordingly delivered by the Rank to L or his order, without notice of any claim by any other person. It was found that no claim was made by A to the goods against the Bank before the goods passed out of its hands. In a suit by A brought against the Bank and L and claiming delivery of the bales entrusted, or, in the alternative, payment of the value of the said bales, and, in the event of its being held that he was not entitled to any such reiief, then asking that his rights should be ascertained and declared, that is, that the securities deposited by L with the Bank should be marshalled in his favour, held that the fact that the Bank parted with the cotton to or to the order of L without notice of any claim by any other person afforded a complete defence to the suit. (Lord Macnaghton.) BANK OF BOMBAY P. NANDLAL THACKERSAY DASS.

(1912) 40 I. A. 1 = 37 B. 122 = 17 C. L. J. 146 = 17 C. W. N. 358 = 15 Bom. L. R. 1 = 12 M. L. T. 646 = (1913) M. W. N. 29 = 24 M. L. J. 176.

## POONA CANTONMENT.

-See CANTONMENT.

## POSSESSION.

ACTUAL POSSESSION.

ADVERSE POSSESSION.

CONSTRUCTIVE PUSSESSION.

CR. P. C .- S. 145-PROCEEDING FOR POSSESSION UNDER.

DECLARATION OF TITLE AND CONFIRMATION OF-SUIT FOR.

DECREE FOR.

DECREE SUBSEQUENTLY REVERSED-POSSESSION UNDER.

EVIDENCE OF.

EXCLUSITE POSSESSION-WHAT AMOUNTS TO.

EXCLUSIVE POSSESSION OF PIECE OF WATER LYING BETWEEN TWO ESTATES-CROSS SUITS BETWEEN OWNERS OF ESTATES FOR.

FINDING AS TO-FACT OR LAW,

FOREST LAND.

FORMAL POSSESSION.

JOINT AND SEPARATE ESTATES-EXCLUSIVE POSSES-SION OF.

JUNGLE LAND.

LAWFUL POSSESSION-PROTECTION OF APPARENTLY. LESSEE-DISPOSSESSION WRONGFUL BY LESSOR-REMEDY IN CASE OF.

LONG POSSESSION.

MASTER AND SERVANT-SERVANT-HOUSE APPRO-PRIATED TO A-POSSESSION OF.

OCCUPANCY.

ORDER FOR, DECIDING NOTHING AS TO PROPRIETARY

PHYSICAL POSSESSION.

PORTION OF LAND-POSSESSION OF.

POSSESSORY TITLE.

## POSSESSION-(Contd.)

PRESUMPTION IN FAVOUR OF.

PRESUMPTION OF TITLE FROM.

PRIVATE OWNERS-DISPOSSESSION OF ONE OF, BY ANOTHER-SUIT FOR POSSESSION IN CASE OF.

PROPRIETARY POSSESSION.

REAL OWNER-POSSESSION OF, SUFFICIENT TO IN-TERRUPT ADVERSE POSSESSION.

RENT-RENT-PAYING LANDS.

REVENUE SETTLEMENT.

STATUTORY PERIOD-POSSESSION FOR LESS THAN. SUBMERGED LAND.

SUIT FOR.

SUMMARY SUIT TO ENFORCE CLAIM TO.

SURVEY PROCEEDINGS-OMISSION TO INTERVENE EARLY IN.

TITLE.

TRESPASSER.

UNCONDITIONAL DECREE FOR-CLAIM IN COURTS BELOW FOR.

WATER LYING BETWEEN TWO ESTATES-EXCLUSIVE POSSESSION OF-CROSS-SUITS BETWEEN OWNERS OF ESTATES FOR.

### Actual possession.

-- Change in-Absence of-Legal right-Change of-Possibility of. See LEGAL RIGHT-CHANGE IN. (1879) 6 I. A. 63.

-Formal possession-Physical possession - Meaning of. See LIMITATION ACT OF 1908-ART. 10-PHYSICAL PUSSESSION. (1901) 28 I. A 248 (255-6)=24 A. 17.

## Adverse Possession.

-See LIMIT-ADVERSE POSSESSION.

## Constructive possession.

-Portion of land-Possession of-Constructive possession of whole if and when. See Possession - Portion OF LAND.

-- Presumption of, in favour of trespasser-Propriety. See Possession—Trespasser—Constructive posses-SION IN FAVOUR OF.

## Cr. P. C .- S. 145-Proceeding for possession under.

-Prelude ordinary to regular suit for decision of disputed title. See CR. P. C. OF 1898-S. 145-PROCEED-INGS UNDER-ORDINARY PRELUDE, ETC.

(1861) 12 M. I. A. 1 (22).

## Declaration of title and confirmation of-Suit for.

-Evidence insufficient for declaration of title-Decree in case of-Form of. See TITLE-DECLARATION OF, AND (1872) 19 W. E. 1. CONFIRMATION OF POSSESSION.

Onus on plaintiff in. See TITLE-DECLARATION OF, AND CONFIRMATION OF POSSESSION.

(1872) 19 W. B. 1.

## Decree for.

ENCUMBRANCES CREATED BY JUTGMENT-DEBTOR-INDEMNITY TO DECREE-HOLDER AGAINST.

-Provision in decree for - Effect - Rights of parties on. See PARTITION-DECREE FOR-ENCUMBRANCES, (1926) 24 L W. 139. ETC.

IMMEDIATE POSSESSION OF SOME ITEMS AND POSSES SION OF OTHER ITEMS AFTER ASCERTAINMENT THEREOF.

-Decree granting -Execution of, as regards former before ascertainment of latter. See PRIVY COUNCIL-APPEAL-DECREE IN-EXECUTABILITY.

(1870) 13 M. I. A. 490 (495).

Decree for-(Contd.)

PAYMENT DIRECTED BY, AS CONDITION OF RECOVERY OF POSSESSION.

Deposit into court of-Necessity - Payment to decree holder in person-Sufficiency of. See DECREE-Pos-SESSION-DECREE FOR-PAYMENT DIRECTED BY ETC. (1924) 51 I. A. 236 (240) 48 B. 404.

-Mortgagee from plaintiff prior to decree-Deposit by -Effect of-Benefit of-Persons entitled to-Withdrawal fraudulent by him subsequently to defeat right of one of-Deposit subsequent by that person-Effect. See DECREE-POSSESSION-DECREE FOR-PAYMENT DIRECTED BY. (1924) 51 I. A. 236 (240-1) = 48 B. 404.

-Mortgagee prior to suit of suit property -- Payment by-Right of-Validity. See DECREE - POSSESSION-DECREE FOR-PAYMENT DIRECTED BY, ETC.

(1924) 51 I. A. 236 (240) = 48 B. 404.

RYOTS OR TENANTS-POSSESSION OF-RESERVATION IN DICKEE AS TO.

Scope of-Incumbrances And into lite-Patril granted pendente lite-Reservation if overs. See DECREE-POSSESSION-DECREE FOR-RYOTS OR TEXANTS.

(1876) 26 W. R. 93.

VALIDITY OF-PLAINTIFF WITHOUT TITLE-SUIT BY.

-Contesting defendant with possessory title - Noncontesting defendant with title-Agreement between plaintiff and, to divide suit property—Detree to plaintiff on strength of. See EJECTMENT SUIT—DECREE IN— PLAINTIFF WITHOUT TITLE

(1866) 10 M. I. A. 511 (528.9).

## Decree subsequently reversed - Possession under.

-Rightful or terongful.

The appellant obtained a decree from the High Coart establishing his title as against the respondents to a revenue-paying estate, and subsequently obtained possession of the estate in execution of the decree. That decree was subsequently reversed by the judgment of the Privy Council and the respondents were in pursuance thereof replaced in possession of the estate in dispute. In the interval, while the appellant was in possession, the appeilant was called upon to pay, and did in fact pay, large sums for Government revenue and other charges, assessed upon the estate and recoverable in the same manner as Government revenue. On a question arising as to whether the appellant was entitled to recover from the respondents the amount so paid by him, the Judges of the High Court held that the appellant, though in possession under the decree of the court was in " wrongful 'possession."

Held, that it was a some what strong thing to hold that the appellant when he paid the Government revenue was in

wrongful possession (163).

The appellant was in rightful possession at the time. He was in possession under the authority of the highest court in India (163). (Lord Macnaghten). DAKSHINA MOHUN ROY CHOWPHRY #. SARODA MOHUN ROY CHOWDHRY. (1893) 20 I. A. 160 = 21 C. 142 = 6 Sar. 366.

#### Evidence of.

Collector's award - Value of. See TITLE - EVI-DENCE OF-COLLECTOR.

(1866) 10 M. I. A. 511 (535).

Collector's books-Entry in - Value of. See TITLE-EVIDENCE OF—COLLECTOR'S ROOKS. (1862) 9 M.I.A. 303 (323) and (1919) 47 I.A. 57 (70) =

## POSSESSION-(Centd.)

Evidence of-(Contd.)

Kahaliyats - Chittas' - Accounts - Receipts - Ad. missibility of Value of Oral evidence regarding them-Nacrity.

Next as to possession. The plaintiff out in evidence a numler of Kaboliyats, Chittas, accounts, and receipts. The Sah Judge described them as mere paper transactions entitled to no weight. Such documents do not prove themselves, and are valueless without proper oral evidence respecting them.

And where, though as to many of them oral evidence respecting them was not forthcoming many of them were produced by the persons who made them and were put in without objection, their Lordships did not reject them as inadmissible for what they were worth, though they did not assach much importance to them. (Lord Lindley.) DINO. MONI CHOWDHRANI 2. BROJO MOHINI CHOWDHRANI.

(1901) 29 I. A. 24 (36-7) = 29 C. 187 (201) = 6 C. W. N. 386 - 4 Bom. L. R. 167 = 8 Sar. 224 = 12 M. L. J. 83.

-Patiah. See PATTA.

Police officer - Reports of -Value of.

A police officer has not authority to make a judicial inquity about possession, and his report, made in consequerie of a petition presented to him, is no evidence of procession (35). (See Richard Courk.) UNUNDRABATI KOURT P. HARRINGTON. (1891) 18 I. A. 27=

18 C. 349 (358) = 5 Sar. 482. - Pymash accounts-Value of . SocPy MASH ACCOUNTS -POSSESSING. (1881) 8 I. A 143 (150) =

3 M. 384 (392). -Pymash accounts and proceedings. See PYMASH ACCOUNTS AND PYMASH PROCEEDINGS.

Rent and revenue receipts. Say RENT RECEIPTS. (1869) 13 M I. A. 181 (197-8).

-Revenue Registry-Entry of name in - Payment of aucoment.

Where the name of a person or his ancestor has always been entered in the Government books, and it is found that he has always paid the Government assessment in res pect of certain villages, though that may not be evidence of title, it is very strong evidence of possession. DEVAJI GOVAJI 2. GODUBHAI GODBHAI.

(1869) 2 B. L. R. 85 P. C. (95) = 11 W. R. P. C. 35 = 2 Suth. 208.

-Revenue settlement. See REVENUE-SETTLEMENT. FOR. (1871) 14 M. I. A. 289 (305).

-Settlement records. See SETTLEMENT RECORDS. (1924) 88 I. C. 149.

-Survey - Survey award - Survey map - Survey Officer's reports-Survey proceeding. See UNDER EACH OF THESE HEADS.

-Thak Khasra-Thak map. See UNDER EACH OF THESE HEADS.

-Thakbust map-Thakbust proceeding. See UNDER EACH OF THESE HEADS.

## Exclusive possession-What amounts to.

- Joint and separate estates - Distinction,

In the case of the possession of joint property the phrase "exclusive possession" has an equivocal meaning; in the case of property separately held, it has not. If by exclusive possession of joint estate is meant that one member of the joint family alone occupies it, that by itself affords no evidence of exclusion of other interested members of the family. Uninterrupted sole possession of such property. 42 A. 368 (380-1). without more, must be referred to the lawful title possessed

Exclusive possession-What amounts to-(Contd.)

by the joint holder to use the joint estate, and cannot be regarded as an assertion of a right to hold it as separate, so as to assert an adverse claim against other interested members (123-4). (Lord Buckmaster.) HARDIT SINGH 2. GURMUKH SINGH. (1918) 9 L.W. 123 =

64 P. R. 1918 = 25 C. L. J. 437 = 58 P.W. R. 1917 = 24 M. L. T. 389 = 20 Bom. L. R. 1064 = 47 I. C. 626 = (1919) M. W. N. 1.

### Exclusive possession of piece of water lying between two estates—Cross-suits between owners of estates for.

Possession found to be between the two—Decree for possession of moiety to each in case of. See BOUNDARY DISPUTE

—CROSS SUITS, ETC. (1890) 17 I. A. 62 = 17 C. 814.

Finding as to-Fact or Law.

\_\_\_\_\_Sec. C. P. C. OF 1908, S. 100—POSSESSION OF TRACT OF LAND. (1891) 18 I. A. 149 (155) = 15 M. 101 (108).

#### Forest land.

——Possession of—Adverse possession of. See POSSES-SION—JUNGLE LAND.

## Formal possession.

Actual possession—Physical possession—Meaning.
See LIMITATION ACT OF 1908, ART. 10—PHYSICAL
POSSESSION (1901) 28 I. A. 248 (255 6) = 24 A. 17.

Gift.

——Donor out of possession —Gift by—Possession of property—Donce's right to, as against person claiming adversely to donor and donee. See HINDU LAW—GIFT— DONOR OUT OF POSSESSION—GIFT BY—VALIDITY.

(1884) 11 I. A. 218 (232) = 11 C. 121 (135).

—Maintenance allowance to donor—Payment of—
Condition of gift as to—Breach of—Possession to donor on
ground of—Decree for—Invalidity of gift in case of breach
of condition—Provision in deed for. See HINDU LAW—
GIFT—CONDITION—MAINTENANCE ALLOWANCE, ETC.

(1927) 26 L. W. 94.

Joint and separate estates—Exclusive possession of

Meaning of—Distinction. See Possession—ExCLUSIVE POSSESSION. (1918) 9 L. W. 123 (123-4).

#### Jungle land.

### ADVERSE POSSESSION OF.

-Land of considerable area-Possessien of portions of for portion of period by either party-Proof of-Effect.

The possession required to make out a claim of title to land by adverse possession must be adequate in continuity, and in extent to shew that it is possession adverse to the competitor.

Where, in a case in which plaintiff claimed title by adverse possession to jungle land of considerable area, the best evidence of possession by him did not cover the whole period, and applied only to small portions of the ground, while the defendant adduced tangible evidence of portions of the land far superior in quality to the evidence adduced by the plaintiff, held that the plaintiff failed to make out a title by adverse possession to the land in dispute.

The evidence of the defendant is not merely negative of the plaintiff's case so far as that portion of ground is concerned which has been so possessed by the defendant, but it is directly contradictory of the whole theory of the plaintiff's case of possession. (Lord Robertson.) RADHAMONI DEBI v. COLLECTOR OF KHULNA.

(1900) 27 I. A. 136 (140-1)=27 C. 943 (950-1)= 4 C. W. N. 597=2 Bom. L. B. 592=7 Sar. 714.

POSSESSION-(Contd.)

Jungle land-(Contd.)

ADVERSE POSSESSION OF-(Contd.)

-Land little capable of cultivation.

Forest land, very little of which is capable of, or at least up to the date of dispute subject to, cultivation, is far removed as a subject of definite possession from lands under continuous and permanent cultivation, compactly situated and capable of being remembered with identification as the lands held and occupied in articulate plots or underleases. Possession of such property has to be interpreted according to the fairest view of what the property itself was capable of in the way of possession and what upon a broad view would be considered an adequate assertion of title by sufficient occupation (398). (Lord Shaw.) KUTHALI MOOTHAVAR 2. PERINGATI KUNHARAN-KUTTV. (1921) 48 I. A. 395 = 44 M. 883 (886) = 14 L. W. 721 = (1921) M. W. N. 847 = 30 M. L. T. 42 = L. R. 3 P. C. 9 = 24 Bom. L. B. 669 = A. I. B. 1922 P. C. 181 = 66 I. C. 451 = 41 M. L. J. 650.

#### POSSESSION OF.

Presumption of, in favour of party with title. Sur
Possession—Title—Party with—Possession BY
—I'RESUMPTION OF (1) JUNGLE LAND

(1911) 15 C. W. N. 887 (894).

AND (2) SUBMERGED LAND.

-Proof of.

In a suit brought on 9-4-1881 for the recovery of possession of two plots of land, the question was whether the plaintiff proved his possession of the suit land within twelve years of suit.

The condition of the land was such as to offer great difficulty in the proof of possession. In 1857 the whole was under water, together with a contiguous larger tract. The only use or enjoyment consisted in fishing. There was subsequently a gradual, slow, and still incomplete conversion of that lake into swamp, and of swamp into habitable land, and during that process parts of the land might not have been used at all for any purpose of enjoyment. It appeared that the plaintiff's title to, and possession of, the suit land were affirmed in proceedings of the revenue survey in 1857. It was proved clearly that fishery leases were granted from 1861 onwards by the plaintiff or his predecessors at substantial tents.

Held that the plaintiff's evidence of possession was of a character which, having regard to the nature of the land, was as substantial as could be expected (152-3). (Lord Hobboust.) RAJCOOMAR ROY v. GOBIND CHUNDER ROY.

(1892) 19 I. A. 140 - 19 C. 660 (676.7) = 6 Sar. 140.

- Proprietary possession-Easement right-Exident of-Distinction.

The suit was brought by the Zemindar of Singampatti for cancellation of a decision of the Government Survey Officer, and for a declaration of his title to certain tracts of mountain land, covered with forest and jungle, as being

parts of his Zemindary.

The District Judge held it to be established by the evidence that, throughout what was called the third or western tract, the Zemindars of Singampatti had all along exercised the exclusive right of grazing cattle, cutting timber, and collecting mountain produce. With regard to what was called the first or eastern tract, he found that the Zemindars had exercised rights of precisely the same kind over the whole tract, but not to the exclusion of a certain amount of user by inhabitants of Government villages. Upon those findings the learned Judge came to the conclusion in law that the possession of the western tract by the respondent and his predecessors ought not to be ascribed to a title of property, but that it was sufficient to give him right to exclu-

Jungle land-(Gontd.)

POSSESSION OF-(Contd.)

sive easements of pasturage, cutting timber, and collecting mountain produce over its whole area.

As to the eastern tract, he held that the respondent was entitled to easements over it of the same character, but not

On appeal, the High Court adopted the findings of the District Judge with respect to the Zemindar's exclusive possession of the western tract, but rejected his legal inference that the right thereby constituted was in the nature of easement, and held that it amounted to a full right of ownership.

Held that the High Court was right in the view which it took (156).

Having regard to the character of the subjects in controversy, the exclusive possession which the Zemindars are, by concurrent judgments, found to have enjoyed, appears to their Lordships to have in no particular fallen short of proprietary possession. There is no ground for presuming that a proprietor whose title was clear, and who was desirous of turning his estate to the best account, would have occupied or used the subjects in any other way than they did. When that circumstance is taken in connection with the fact that the Zemindars had a title which will apply include these subjects, and that these acts of possession have invariably been ascribed to that title, the inference drawn by the High Court appears to be inevitable (156).

The learned Judges of the High Court also expressed their concurrence in the findings of the District Judge with respect to the Zemindar's possession of the eastern tract, but came to the conclusion that their possession alone was that of proprietors, and that the proved acts of user by ryots from neighbouring villages were not of that character.

Held that the possession of the Zemindars as found by both the courts below with reference to that tract also would, in the absence of conflicting possession sufficient to cut down or qualify their right, entitle the respondent to a declaration of his proprietorship. Held further that there was nothing to show that aught done by the stranger ryots was in the assertion of right, and that the acts of user by them were, in any event, neither in amount nor quality sufficient to displace the proprietary title of the Zemindar (157). Quarre whether the evidence of acts of user by them would per se be sufficient to raise rights of easement, and if so in whose favour (157). (Lord Watson.) SECRETARY OF STATE FOR INDIA IN COUNCIL D. NELLAKUTTI SIVA SUBRAMANYA TEVAR. (1891) 18 I. A. 149= 15 M. 101 (109)=6 Sar. 74.

## Lawful possession-Protection of apparently.

-Policy of law.

The policy which the courts always adopt is to secure as far as possible quiet possession to people who are in apparent lawful holding of an estate. (Lord Buckmaster.) BAWA MAGNIRAM SITARAM v. KASTURBHAI MANIBHAI. (1921) 49 I. A 54 (59)=46 B. 481 (488)=

28 C. W. N. 473 = 20 A. L. J. 371 = 35 C. L. J. 421 = 24 Bom. L. B. 584 = 30 M. L. T. 268 = (1922) M. W. N. 319 = A. I B. 1922 P. C. 163 = 66 I, C. 162=42 M. L. J. 50

## Lessee-Dispossession wrongful by lessor-Remedy in case of.

Possession-Injunction-Specific performance-Suits for-Lease not an executory contract. See LEASE-LESSEE -DISPOSSESSION WRONGFUL OF.

(1865) 10 M. I. A. 386 (395-6).

## POSSESSION-(Contd.)

### Long possession.

DISTURBANCE OF -PARTY ATTEMPTING. LAWFUL ORIGIN FOR-PRESUMPTION OF. PRESUMPTION OF CONVEYANCE TO DEFEAT, AND NOT TO SUPPORT.

PRESUMPTION OF PRIOR POSSESSION FROM.

SECURITY AFFORDED BY-WEAKENING OF, IN INDIA. STATUTORY PERIOD-POSSESSION FOR LESS THAN.

TITLE—EVIDENCE PRIMA FACIE OF.

TITLE-PRESUMPTION OF, FROM SUCH POSSESSION.

TITLE-PROOF SUFFICIENT OF, WHEN EVIDENCE OF TITLE ON EITHER SIDE UNSATISFACTORY.

TITLE BASIS OF, FOUND AGAINST.

TITLE IF ITSELF IS.

TITLE RESTING ON-DISTURBANCE OF.

## DISTURBANCE OF-PARTY ATTEMPTING.

Defects in proof of case of-Presumption from strengthened by such long possession.

The suit was to recover a hereditary office. Admittedly, for nearly 26 years before suit the suit office had been possessed by the defendant and his father, it having been then granted or confirmed by the then Supreme Power of the

Held that the long possession of the office by the defendant and his father would, apart from its operating as a bar, very much strengthen the presumption against the case of the plaintiff arising upon the defect of proof on his part (485 6). (Lord Brougham.) BABUN WULLAD RAJA KATIK p. DAVOOD WULLAD NUNDOO. (1841; 2 M. I.A. 480= 6 W. R. 10=1 Suth. 108=1 Sar. 221.

Onut ou.

It is of the utmost importance that those who have sanctioned a long possession should not be allowed lightly to disturb it, or to escape from those legitimate inferences and presumptions which on a conflict of evidence arise from their own acts and conduct (530). HURMUT OOL-NISSA BEGUN P. ALLABDIA KHAN AND HAJI HIDAYAT.

(1871) 2 Suth. 525 = 17 W. R. 108

-See ONUS OF PROOF-CHUR LAND.

-It would be most dangerous to allow Indian titles resting on long possession to be shaken by any except the most convincing evidence (424). (Sir Arthur Hobbouse.) THERKINIVETATH KIRANGALT MANAKKAL NARAYA-NAN NAMBUDRIPAD P. IRINGALLUR THARAKATH SAN-KUNNI THARAVANAR. (1881) Bald. 418.

-Onus of proof on-Benamidar-Purchaser from-Real owner's suit to recover property from-Possession long with purchaser. See BENAMI-BENAMIDAR-SALE BY-REAL OWNER. (1872) Sup. I.A. 40 (42).

Presumption against claim of.

The suit related to certain lands in Oudh which formerly belonged to M.K., the mother of the king who was deposed in the year 1856. She died on 12-2-1860, leaving three children-her eldest son the ex-king, the second son who was commonly called the General Sahib, and the respondent who was the defendant in the suit. The General Sahib died on 28 2-1858, leaving one son, the appellant, who was the plaintiff in the suit, and one daughter. The plaintiff commenced the suit on 11-3 1875, claiming four-fifteenths of the property, as being his share of the share which his father took as one of M. K's heirs. The defendant alleged that she was rightfully in possession under a deed of gift or exchange executed in her favour by M.K. sometime in the year 1856.

The defendant had for many years been in possession of the lands in question. No claim had been made by the ex-king or by the plaintiff's sister. The plaintiff himself did not allege ignorance or any other disadvantage which might

Long possession - (Contd.)

DISTURBANCE OF -PARTY ATTEMPTING-(Contd.) explain why he never preferred any claim till the filing of his plaint. He only said that he was a minor when his father died in February, 1858. He had certainly reached majority in 1865, perhaps earlier.

Held that in such a case every reasonable intendment must be made in Livour of long possession, and of the conclasion that a claim so long delayed was not a just one (127). (Sir Arthur Hobbons.) PRINCE MIRZA JEHAN KADR BAHADUR :: NAWAR BADSHOO BAHOO SAHIBA.

(1885) 12 I. A. 124 = 12 C. 1 (89) = 4 Sar. 630.

LAWFUL ORIGIN FOR-PRESUMPTION OF.

-Rule as to-Nature of- Conditions precedent to making of such presemption.

The presumption of an origin in some lawful title, which the courts have so often readily made in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming, is one which is not a mere branch of the law of evidence. It is resorted to because of the failure of actual evidence. Where the presumption of a lawful title depends upon the consent of the Kazi, the provisions of S. 114 of the Evidence Act do not prevent the inference of his consent in the absence of any evidence of an application to him for leave, or some other proved fact of that kind. The matter is one of a presumption, based on the policy of the law, but even considered as an interence from proved facts, the leave presumed is a thing, which may well be regarded as likely to have happened. At the same time it is not a presumption to be capriciously made, nor is it one which a certain class of possessor is entitled to de jure. In a case in which it is necessary to indicate what particular kind of lawful title is being presumed, the court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed, without doing violence to the probabilities of the case. The presumption is not an "open sesame", with which to unlock in favour of a particular kind of claimant a closed door, to which neither the law nor the proved facts would in themselves have afforded any key. It is the completion of a right, to which circumstances clearly point where time has obliterated any record of the original commencement. (Viscount Summer.) SYED MD. MAZAFFAR AL-MUSAVI v. BIBI JABEDA KHATUN (1930) 34 C. W. N. 462=

32 Bom. L.R. 633=51 C.L.J. 345=123 I.C. 722= 1930 A. L. J. 377 = A. I. R. 1930 P C. 103 = 58 M. L. J. 641.

Religious Endowment - Shehait of - Permanent lease by-Validity of-Presumption of. See HINDU LAW-RE-LIGIOUS ENDOWMENT-SHEBAIT OF-PROPERTY OF ENDOWMENT-PERMANENT LEASE OF-VALIDITY OF-PRESUMPTION. (1921) 49 I. A. 54 (59)= 46 B. 481 (489).

PRESUMPTION OF CONVEYANCE TO DEFEAT, AND NOT TO SUPPORT.

-Propriety of making.

The presumption of a conveyance is resorted to, when such presumption is made to support a long possession. It will not be applied to defeat a long possession. If possession be not consistent with a title which is to be supported by a presumption of a former conveyance, that very possession would furnish ground for building another presumption on the first, viz., of a subsequent re-transfer or reconveyance. (I ord Romilly.) GUNGA GOBIND MUNDAL v. THE COLLECTOR OF THE 24 PERGUNNAHS.

(1867) 11 M. I. A. 345(364-5)=7 W. B. 21=

POSSESSION-(Contd.)

Long possession-(Contd.)

PRESUMPTION OF PRIOR POSSESSION FROM.

Presumitur retro-Applicability of maxim of.

The theory upon which the learned Judges have proceeded appears to have been this : that evidence of possession is not receivable as evidence of the identity of a piece of ground; that, in other words, evidence of possession is not material or good evidence in a question of parcel or no parcel. They certainly go to the length of indicating their opinion that evidence of sub-equent possession is not good evidence upon the question of parcel or no parcel at a previous date. To countenance that proposition would be to introduce an entirely new rule into the law. When the state of possession for a long period of years has been satisfactorily proved, in the absence of evidence to the contrary, presumitur retra (110). (Lord Watson.) ANANGAMAN-JARI CHOWDHRANI 2. TRIPURA SOONDARI CHOW-DHRANI. (1887) 14 I. A. 101=14 C. 740 (748)= 5 Sar. 45.

SECURITY AFFORDED BY-WEAKENING OF, IN INDIA-

-Impropriety of.

It is of the utmost consequence in India that the security which long possession affords should not be weakened. Disputes are constantly arising about boundaries and about the identity of lands-configuous owners are apt to charge one another with encroachments. If twelve years' peaceable and uninterrupted possession of lands, alleged to have been enjoyed by encroachment on the adjoining lands, can be proved, a purchaser may take that title in safety. (Lord Rowilly.) GUNGA GOBIND MUNDAL 11. THE COLLEC-TOR OF THE 24 PERGUNNASH.

(1867) 11 M. I. A. 345 (362) = 7 W. R. 21 = 2 Sar. 284=1 Sath. 676.

STATUTORY PERIOD-POSSESSION FOR LESS THAN. -See POSSESSION -- STATUTORY PERIOD-POSSES-SION FOR LESS THAN.

TITLE-EVIDENCE PRIMA FACIE OF.

-Possession if.

Uninterrupted and undisputed possession for a long period of time constitutes sufficient prima facie evidence of title That is a recognised rule of our law, and upon general principles, for the sake of security of property, seems to be applicable to that of other countries, where the lawgiver has not specially established a different provision. (Mr. Justice Parke.) RAJAH HAIMUN CHULL SING P. KOOMAR GUNSHEAM SING. (1834) 5 W. R. 69-1 Suth. 4(5)= 2 Knapp 203=1 Sar. 37.

TITLE-PRESUMPTION OF, FROM SUCH POSSESSION.

-Propriety-Conditions. Sci CANTONMENT-POONA (1911) 38 I. A. 204 = 36 B. 1. CANTONMENT.

TITLE-PROOF SUFFICIENT OF, WHEN EVIDENCE OF TITLE ON EITHER SIDE UNSATISFACTORY.

The appellant was a zemindar. The respondents were persons who had respectively been Dewan and Tahsildar under the appellant. The question was whether a house within the appellant's zemindary in which the respondents had resided for a period of 20 years belonged to the appellant or the respondents. Both parties attempted to prove their title to the house, but neither was able to give satisfactory evidence of title. Under the circumstances the Court below held that the long possession of the respondent was sufficient proof of title, and must, in the absence of contrary proof by the appellant, must prevail.

Held that that principle was a perfectly just principle

The title of possession must prevail until a good title is 2 Sar. 284 = 1 Suth. 676. shown to the contrary (514). (Mr. Baron Parke.) RAJAH

Long possession-(Contd).

TITLE—PROOF SUFFICIENT OF, WHEN EVIDENCE OF TITLE ON EITHER SIDE UNSATISFACIORY-- (Contd.)

PEDDA VENCATAPPA NAIDOO v. AROOVALA ROODRAP. PA NAIDOO. (1841) 2 M. I. A. 504 = 6 W. R. 13 = 1 Suth. 112 = 1 Sar. 224.

## TITLE BASIS OF, FOUND AGMINST.

-Value of possession in case of.

Uninterrupted and undisputed possession for a long period of time avails nothing, when that possession is referable to an alleged title by adoption, and to that alone, and the title by adoption is found against. (Mr. Justice Park.) RAJAH HAIMUN CHULL SING v. KOOMAR GUNSHEAM SING.

(1834) 5 W. R. 69~1 Suth. 4 (5)=2 Knapp 203= 1 Sar. 37.

#### TITLE IF HISELF IS.

Recipient of annual payment out of land-Person in possession of land itself.

Long enjoyment is itself a title as well in favour of the recipient of an annual payment out of land, as of the possession of land itself (40). (Lord Kinguleen,) SUMBHOULALL GIRDHURLALL r. COLLECTOR OF SURAY.

(1859) 8 M. I. A. 1=4 W. R. 55=1 Suth. 387= 1 Sar 713.

TITLE RESTING ON-DISTURBANCE OF.

Party attempting. See Possession—Long possession—Disturbance of.

Master and Servant—Servant—House appropriated to a—Possession of.

Master's possession if—England and India—Distinction. See MASTER AND SERVANT—SERVANT—HOUSE APPROPRIATED TO A. (1841) 2 M. I. A. 504 (513-4).

Occupancy.

- Distinction. See MADRAS ACTS-FSTATES LAND

ACT-S. 6, SUB-S. (1)—OCCUPANCY.

(1921) 48 I A. 387 (394) = 44 M. 856 (863).

Order for, deciding nothing as to proprietary right.

Effect of, on proprietary right.

On the death of the elder of the two sons, a dispute arose between his widow and the widow of the predeceased younger son as to the possession. The widow of the elder son was placed or preserved in possession of the estate. This step decided nothing as to her proprietary right. As the widow of the surviving brother, apparently the sole proprietor, she was rightly placed in possession (511), (Lord Cairns.) SRI GAJAPATHI RADHIKA PAITTA MAHA DEVI GARU v. SRI GAJAPATHI NILAMANI PAITTA MAHA DEVI GARU. (1870) 13 M. I. A. 497 = 14 W. B. P. C. 33 = 6 B. L. B. 202 = 2 Suth. 365 = 2 Sar. 601.

#### Physical possession.

Actual possession—Formal possession—Meaning.

See LIMITATION ACT OF 1908, ART. 10—PHYSICAL

POSSESSION. (1901) 28 I. A. 248 (255-6) = 24 A. 17.

## Portion of land-Possession of.

STRUCTIVE POSSESSION IN FAVOUR OF.)

Possession of whole if amounts to—Finding as to— Fact or Law. See C. P. C. OF 1908, S. 100—POSSESSION OF TRACT OF LAND. (1891) 18 I. A. 149 (155) — 15 M. 101 (108).

Possession of whole when amounts to.

Possession of a part of a ground will amount constructively to a possession of the whole only when there are circumstances to link together various portions of the ground. POSSESSION-(Contd.,

Portion of land-Possession of-(Contd.)

(Lord Summer.) KUMAR BASANTA ROY v. SECRETARY OF STATE FOR INDIA. (1917) 44 I. A. 104 (114.5)= 44 C. 858 (873) = 22 M. L. T 310 = 21 C. W. N. 642 = 15 A. L. J. 398 = 25 C. L. J. 487 = 1 Pat. L. W. 593 = 19 Bom. L. R. 483 = 6 L. W. 117 = 40 I. C. 337 = 32 M. L. J. 505.

### Possessory title.

—Defendant with—Ejectment unit against, by person without title—Decree to plaintiff in—Validity—Agreement between him and real scener (also a defendant) to divide suit property—Effect.

The appellant, the contesting defendant—was in possession of the property of one T, deceased, claiming title to the same under a sale deed executed by the widow of T. The plaintiffs, claiming to be the heirs of T, sucd for recovery of possession of the property from the appellant. One R was added as a supplemental defendant to the suit, and it appeared that a deed of compromise had been entered into between the plaintiffs and R, whereby they agreed to divide the sait property between them. The Sudd x Court found that the plaintiffs had not proved their title to recover but decreed possession to the plaintiff on the ground that, if the plaintiffs were not entitled, R would be so entitled, and as they had agreed to divide the spoils, it mattered not on which title the property was recovered.

Held that the decision of the Court below was in violation of the substantial principles of justice which regulated the joinder of parties and union of titles to see in one suit (529).

The decision of the Sudder Court, in effect, sustains an union of titles indirectly, which could not have been directly advanced in union against the appellant's possession (529). (Sir Edward V. Williams.) JOWALA BUKSH v. DHARUM SINGH. (1866) 10 M. I. A. 511 = 2 Sar. 189.

Ejectment suit based on—Decree in—Grant of— Defendant also without title. See Ejectment Suit— MAINTAINABILITY OF—TITLE. (1864) 10 M. I. A. 47.

—Person only with—Declaration of title and injunction against trespasser—Suit for—Right of—Decree in —Form of. See Specific Relief Act., S. 42—CASES UNDER—TRESPASSER.

(1893) 20 I. A. 99 (106 7) = 20 C. 839 (842-3).

## Presumption in favour of-Condition.

- Opposite party with title-Opposite party without it - Distinction.

In a suit brought by the respondents to recover possession of certain property from the appellant on the ground that they were the heirs of the last male owner of the property and were as such entitled to possession of the same on the death of his widow, the appellant pleaded, inter alia, that his possession should not be disturbed, by reason that the respondents were not the right heirs.

The widow of the last male owner died on 26—10—1818. The appellant, who was her Mokhtar and who resided with her, on her death took possession of the suit property. The property was attached by Decree of the Judge of the City of Patna, on 26—12—1818, with permission to any of the rival claimants to institute soits in 3 months. In the month of September, 1821, that Decree was reversed by the Provincial Court and the appellant restored to the possession of the property. Several suits were then instituted, and on 14—6—1822, the Provincial Court took charge of the property, by the appointment of a Sarharakar. There was also a claim preferred, on behalf of the Government, for the property, as an escheat, but it did not appear that that claim was prosecuted.

## Presumption in favour of-Condition-(Contd.)

Held that the appellant's possession was not such a possession as could be regarded with any favourable eye (342.3).

It is not necessary to say how it should be dealt with if there was no title at all in the respondents. It is sufficient to observe that though doubts may exist as to the proportion in which the claimants should share, we think that the Decrees appealed from are right, to the extent that the res pondents, in some proportion or other, are entitled to the whole property. As against them collectively the appellant has no right at all (343). (Dr. Lushington.) KEERUT SING P. KOOLAHUL SING. (1840) 2 M. I. A. 331 = 5 W. R. 131=1 Suth. 96=1 Sar. 196.

## Presumption of title from.

-Propriety of - Conditions. See CANTONMENT-POONA CANTONMENT. (1911) 38 I. A. 204 (216)= 36 B. 1.

Private owners-Dispossession of one of, by another -Suit for possession in case of

-Government's right of-Government entitled only to Jama. See LIMITATION - ADVERSE POSSESSION-PRI-(1867) 11 M. I. A. 345 (360-1). VATE OWNERS.

### Proprietary Possession.

-Meaning of. See MADRAS REGULATIONS-PER-MANENT SETTLEMENT REGULATION XXV OF 1802 PREAMBLE-WORDS IN. (1874) 1 I. A. 282 (306).

Real owner-Possession of, sufficient to interrupt adverse possession.

-Nature of, necessary. See LIMITATION -ADVERSE POSSESSION-INTERRUPTION OF-REAL OWNER'S POS-SESSION SUFFICIENT FOR. (1921) 48 I. A. 395 (404)= 44 M. 883 (890-1).

#### Rent-Rent paying lands.

- Government's right in case of. See LANDLORD AND TENANT-RENT-POSSESSION

(1867) 11 M. I. A. 345 (359-60, 362).

## Revenue Settlement.

-Effect of, as regards right to possession and title to property. See REVENUE SETTLEMENT.

(1871) 14 M. I. A. 289 (305).

## Statutory period-Possession for less than.

-Ejectment suit against person in-Onus on plaintiff in case of. See EJECTMENT SUIT-POSSESSION LONG WITH DEFENDANT.

-Evidence by itself against title of Crown if. See CROWN-TITLE AGAINST-EVIDENCE OF.

(1908) 35 I. A. 195 (205) = 36 C. 1 (19.20).

-Prima facie proof of title of possession if.

It is not disputed that uninterrupted and undisputed possession, even for a less period than that which elapsed between 1778 or 1779 and 1805 or 1806, would have been sufficient to have thrown the burthen of disproving the title of the claimant on the opposite party. (Mr. Justice Parke.) RAJAH HAIMUN CHULL SING D. KOOMAR GHUNSHEAM (1834) 5 W. R. 69=1 Suth. 4 (5)= 2 Knapp 203 = 1 Sar. 37.

-Proof of-Effect of-Onus of proof of subsisting title if thrown on opposite party by. See LIMITATION ACT OF 1908-ART. 149-ADVERSE POSSESSION FOR LESS THAN STATUTORY PERIOD.

(1916) 43 I. A. 192 (203-4, 206) =

POSSESSION-(Could.)

### Submerged Land.

ADVERSE POSSESSION OF.

-Interruption of during period of submergence. In a case in which the possession of the trespasser was in fact determined by the submergence of the land which then became derelict, Sir R. Garth seems to have thought that, even while the land remained in that state, the possession of the trespasser would continue, until the true owner resumed possession. Their Lordships cannot agree in this view. On the contrary, they think that on the dispossession of

the trespasser by the vis major of the floods the constructive possession of the land was (if anywhere) in the true owners. For this purpose dispossession by vis major has the same effect as voluntary abandonment by the trespasser. (Lord Davry). SECRETARY OF STATE FOR INDIA IN COUNCIL D. KRISHNAMONI GUPTA.

> (1902) 29 I. A. 104 (115 6) = 29 C. 518 (535) = 6 C. W. N. 617 = 4 Bom. L. R. 537 = 8 Sar. 269.

In order to sustain a claim to land by limitation under the Indian Act, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. There must be both absence of possession by the person who has the right and actual possession by another to bring the case within the statute.

Where the possession of trespasser was in fact determined by the sub-mergence of the land which then became derelict, held that, so long as it remained in that estate, no title could be acquired against the true owner. (Lord Davey). SECTARY OF STATE FOR INDIA IN COUNCIL v. KRISH-NAMONI GUPTA. (1902) 29 I. A. 104 (115-6)=

29 C. 518 (535) = 6 C. W. N. 617 = 4 Bom. L. R. 537 = 8 Sar. 269.

-The Limitation Act of 1877 does not define the term " dispossession "; but its meaning is well-settled.

A man may cease to use his land because he cannot use it, since it is under water He does not thereby discontinue his possession; constructively it continues, until he is dispossessed; and, upon the cessation of the dispossession before the lapse of the statutory period, constructively it revives. There can be no discontinuance by absence of use and enjoyment, when the land is not capable of use and injoyment. It seems to follow that there can be no continuance of adverse possession, when the land is not capable of use and enjoyment, so long as such adverse possession must rest on de facto use and occupation. When sufficient time has elapsed to extinguish the old title and start a new one, the new owner's possession of course continues until there is fresh dispossession, and revives as it ceases. (Lord Sum-MCF). KUMAR BASANTA ROY D. SECRETARY OF STATE (1917) 44 I. A. 104 (113-4)= FOR INDIA.

44 C. 858 (871) = 22 M. L. T. 310 = 21 C. W. N. 642 = 15 A. L. J. 398=25 C. L. J. 487=1 Pat. L. W 593= 19 Bom. L. B. 483=6 L. W. 117=40 I. C. 337= 32 M. L. J. 505.

POSSESSION BY RIGHTFUL OWNER OF.

-Presumption of. See Possession-Title-Party WITH - POSSESSION BY - PRESUMPTION OF - LAND ORIGINALLY UNDER WATER, ETC.

(1892) 19 I. A. 140 (149 50)=19 C. 660 (673-4).

POSSESSION OF, CONSTRUCTIVELY IN RIGHTFUL OWNER.

-Actual possession-Proof by him of, unnecessary. In the case of land liable to submergence, proof by the owners thereof "actual possession" in the sense of or cupation after the submergence is not necessary, as their 39 M. 617 (631-2, 633). possession in law will continue until they are dispossessed

Submerged land-(Contd.)

Possession of, Constructively in RIGHTFUL OWNER—(Contd.)

(Sir John Wallis). SATISH CHANDRA JOARDAR v. KUMAR BIRENDRA NATH ROY BAHADUR.

(1929) 33 C. W. N. 1016 = A.I. R. 1929 P. C. 225 = 57 M. L. J. 602.

See ALSO POSSESSION—SUBMERGED LAND—AD-VERSE POSSESSION OF. (1902) 29 I. A. 104 (115 6) = 29 C. 518 (535) and (1917) 44 I. A. 104 (113 4) = 44 C. 858 (871).

#### Suit for.

(See also EJECTMENT SUIT.)

Dismissal of, on ground that plaintiff was not then entitled to possession—Subsequent suit for possession by him—Maintainability—Res Judicata. See C. P. C. OF 1908, S. 11—CASES UNDER—POSSESSION.

(1888) 15 I. A. 186 (193) = 16 C. 173 (183-4).

Maintainability—Plaintiff without title—Defendant with possessory title—Agreement between plaintiff and real owner (made defendant) to divide suit property—Effect, See POSSESSION—POSSESSORY TITLE—PERSON ONLY WITH. (1866) 10 M. I. A. 511 (529).

Onus on plaintiffs in. See (1) EJECTMENT SUIT AND (2) LIMITATION ACT OF 1908, ART. 142.

Plaintiff himself in possession—Declaration of his title—Grant of. See MORTGAGE—CONDITIONAL SALE—MORTGAGE BY—FORECLOSURE OF—POSSESSION UPON—SUIT BY MORTGAGEE FOR.

(1865) 10 M. I. A. 340 (365).

-Right of -Private owners - Dispossession of one of, by another -Suit in case of -Government's right of -Government entitled only to jama. So LIMITATION - ADVERSE POSSESSION -PRIVATE OWNERS.

(1867) 11 M. I. A. 345 (360-1).

## Summary suit to enforce claim to.

-Jurisdiction in-Procedure proper in.

If a summary suit to enforce a claim to possession, which cannot determine rights, be instituted where the actual possession is quiet, and where the question in dispute necessarily involves rights, the claimant should at once be directed to proceed in a regular suit; for if he proceeds under Acts XIX of 1841, XX of 1841, and X of 1851, an expensive and inconclusive litigation is the probable result (102). (Sir James W. Colvile). ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN.

(1866) 11 M. I. A. 94 = 7 W. E. P. C. 1 = 1 Suth. 659 = 2 Sar. 223 = R. & J's. No. 5 (Oudh).

Under Acts XIX of 1841, XX of 1841, and X of 1851, the Courts cannot determine right, but they place the prima facie heirs in possession, and leave the subject to litigation in the proper course of law (102). (Sir fames W. Colvile.) ASHRUFOOD DOWLAH AHMED HOSSEIN KHAN v. HYDER HOSSEIN KHAN. (1866) 11 M. I. A. 94

7 W. R.P. C. 1=1 Suth. 659=2 Sar. 223= R. & J's. No. 5 (Oudh.).

#### Survey Proceedings—Omission to intervene early in.

Presumption adverse from. See SURVEY PRO-CEEDINGS—OMISSION TO INTERVENE EARLY IN. (1869) 13 M. I. A. 57 (61).

Title.

LONG POSSESSION.

POSSESSION. POSSESSION - LONG

## POSSESSION-(Contd.)

Title-(Contd.)

MUTATION PROCEEDINGS.

PARTY WITH—POSSESSION OF, SUFFICIENT TO INTERRUPT ADVERSE POSSESSION.

— Nature of, necessary. See LIMITATION—ADVERSE POSSESSION—INTERRUPTION OF—REAL OWNER'S POSSESSION SUFFICIENT FOR.

(1921) 48 I. A. 395 (404) = 44 M. 883 (890-1).

PARTY WITH—POSSESSION WITH—PRESUMPTION OF.

The ordinary presumption would be that possession went with the title. That presumption cannot, of course, be of any avail in the presence of clear evidence to the contrary; but where there is strong evidence of possession, as there is here, on the part of the respondents opposed by evidence, apparently strong on the part of the appellant their Lordships think that, in estimating the weight due to the evidence on both sides, the, presumption may, under the peculiar circumstances of this case, be regarded (863). RUNJEET RAM PANDAY v. GOBURDHUN RAM PANDEY.

(1873) 2 Suth 857 = 20 W. R. 25.

\*\*Jungle land.\*\*

Having regard to the property as jungle land the courts below have held, in their Lordships' opinion correctly, that possession must be presumed to have been all long with the plaintiffs, who clearly had title to them until dispossession within the statutory period (543). (Mr. Ameer Ali.) MAHARAJAH JAGADINDRA NATH KOY BAHADUR P. HEMANTA KUMARI DEBI.

(1911) 11 L C. 542=15 C. W. N. 887 (894)... (1911) 2 M. W. N. 101=10 M.L. T. 157=

13 Bom. L. R. 806-14 C. L. J. 319-8 A. L. J. 1176.

Land originally under water but subsequently converted incompletely into mamp and then into habitable land.

The suit was for the recovery of two plots of land. The plaint in the suit was filed on 9.4-1881. The question for decision was whether the plaintiff's title was barred by the possession of the defendants, or by his own non-possession.

The condition of the land was such as to offer great difficulty in the proof of possession. In 1857, the whole land was under water, together with a contiguous larger tract. The only use or enjoyment consisted in fishing. There was subsequently a gradual, slow, and still incomplete conversion of that lake into swamp, and of swamp into habitable land and during that process parts of the land might not have been used at all for any purpose of enjoyment. The plaintiff's title to, and possession of, the suit land were affirmed in proceedings of the revenue survey in 1857. The plaintiff alleged that the defendants dispossessed him nearly 10 years before suit, and admitted that they continued to be in possession since the said date of dispossession. As regards the two years preceding the 10 years before suit during which the defendants were admittedly in possession, the plaintiff claimed, and the High Court held, that the presumption must be in favour of the title and former possession affirmed in 1857. The defendants, on the other hand, claimed that the presumption should be in favour of the state of things existing for 10 years. They contended that, though the plaintiff showed title and possession in 1857, he still must fail unless he could shew acts of possession and enjoyment later than the 9th of April, 1869, or that he must prove the act of dispossession by the defendants later than that date.

Their Lordships were not prepared to differ from the view of the High Court that the possession found in 1857 must be taken to have continued down to the time when the defendants entered upon possession (149-50). (Lord

Title - (Contd.)

PARTY WITH—POSSESSION WITH—PRESUMPTION OF—(Contd.)

Hobbinson RAJCOOMAR ROY v. GOBIND CHUNDER ROY. (1892) 19 I. A 140 = 19 C. 660 (673-4) = 6 Sat. 140.

——Submerged land, New Possession—Submerged LAND.

#### Trespasser.

CONSTRUCTIVE POSSESSION IN FAVOUR OF— PRESUMPTION OF.

(1891) 18 I. A. 149=15 M. 101 (109).

See Possession—Title—Party With—Possession With—Presumption of—Jungle Land

(1911) 15 C.W.N. 887 (894).

See Possession—Title—Party with—Posses-

SION WITH—PRESUMPTION OF — LAND ORIGINALLY UNDER WATER. (1892) 19 I.A. 140 (149-50) = 19 C. 660 (673-4).

-----See Possession-Jungle Land-Adverse possession of-Land of considerable area.

(1900) 27 I. A. 136 (140 1) = 27 C. 943 (950 1).

—It would be contrary both to principle and authority to imply constructive possession in favour of a wrongdoer, so as to enable him to obtain thereby a title by limitation. (Lord Davey.) SECRETARY OF STATE FOR INDIA IN COUNCIL v. KRISHNAMONI GUPTA.

(1902) 29 I. A. 104 (115-6) = 29 C. 518 (534-5) = 6 C. W. N. 617 = 4 Bom. L.R. 537 = 8 Sar. 269.

Sov. Possession—Portion of Land—Possession of Possession of Whole When amounts to. (1917) 44 I. A. 104 (114-5) = 44 C. 858 (873.)

Title against—Evidence of—Possession if, See Title—Evidence of—Trespasser.

(1893) 20 I. A. 99 (106) = 20 C. 834 (842.)

Unconditional decree for—Claim in Courts below for.

Privy Council appeal—Claim in, for decree conditional on payment of binding debts—Maintainability.

In a suit for possession, the plaintiffs did not either in their plaint or before the courts, below set up an alternative case that, if they were not entitled to an unconditional decree for possession, a decree for possession might be passed in their favour conditional upon the payment of the debts binding upon the suit property. When, however, the case for the plaintiffs to the Board was drawn, they submitted the alternative case. Their Lordships, while of opinion that the case was not either openly or fully set up before the Indian courts and that great embarrassment to the learned Judges therein and great delay and loss had ensued to the respondents by reason of the appellants' action in that regard, allowed the alternative case and disposed of the suit on that footing because there could be no prejudice to either of the parties by their doing so, and indeed, it was in the parties' own best interests to do so. (Lord Shaw.) SKINNER v. NAUNIHAL SINGH.

(1913) 40 I. A. 105 (111)=35 A. 211 (220-1)= (1913) M. W. N. 500=13 M. L. T. 488= 11 A. L. J. 494=17 C. L. J. 555=17 C. W. N. 853= 15 Bom. L. R. 502=19 I. C. 267=25 M. L. J. 111.

Water lying between two estates—Exclusive possession of piece of—Cross suits between owners of estates for.

Failure of either to prove exclusive possession—Possession found to be between the two—Possession of moiety to each owner—Decree for—Grant of. See BOUNDARY DISPUTE—CROSS-SUITS, ETC.

(1890) 17 I. A. 62=17 O. 814.

#### POST OFFICE REGULATION.

- Insured parcels—Parcels insured for Rs. 250 or over—Window delivery insisted on in case of—Regulation as to—Scope and effect of

The Post-Office Regulation in effect is that at the local post offices throughout India and Burma, but only at these offices (for the Regulation does not apply to large towns, as, for example, Calcutta or Rangoon), parcels insured for Rs. 250 or over are given window-delivery only; they must be called for by or on behalf of the recipient; they are not delivered in the ordinary way to him at his place of address. The Regulation is clearly one for the limitation of the Post Office's liability as insurers; it is not a regulation designed for the greater safety of the insured parcels, so that an assured, who ignored it, was, almost thereby confessedly, exposing his jewels to hazard. On the contrary, it would not seem to be natural that an insured person whose jewels were protected under his policy until delivered at his place of address, should effect when under no obligation to do so a Post Office insurance which would leave them at his charge between the Post Office and his place of business. The Regulation was only locally operative. (Lord Blancihurgh.) BHOGILAL BHIKACHAND v. ROYAL INSURANCE CO. LTD. (1927) 6 R. 142=26 A. L. J. 377=

> 32 C. W. N. 593=108 I. C. 1=47 C. L. J. 550= 30 Bom. L. R. 818=28 L. W. 276= A. I. R. 1928 P. C. 54=54 M. L. J. 545 (557).

## POWER

——Appointment—Power of—Fraudulent exercise of—
What amounts to—Effect of—Trustee—Appointment of,
by person having right—Validity—Appointment on foot of
property being absolute property of person appointing and
made with indirect motives. See TRUST—TRUSTEE—
APPOINTMENT OF, BY PERSON HAVING THE RIGHT.

Appointment to Office—Power of—Fraudulent exercise of—What amounts to—Invalidity of appointment in case of. See HINDU LAW—RELIGIOUS ENDOWMENT—MUTT—MOHUNT OF—OFFICE OF—APPOINTMENT TO POWER OF—FRAUDULENT EXERCISE OF.

Joint power—Death of one of donees of Exercise of power by the survivor—Validity—Personce designate—Holders of Office—Joint powers to — Distinction—Power to do act if and when donces think it desirable.

In the case of a gift of a joint power, the death of one of the donees puts an end to the joint power. This is not by virtue of any peculiar doctrine of English law or of any series of English decisions. It flows from the nature of a joint power. If power is given to A and B personne designatee to do an act if and when they think it desirable the occasion cannot arise nor can the power be exercised unless they are both living and in agreement as to the act. This cannot be the case after the death of one of them and the consequence is that the survivor cannot do the act because he has not the warrant of the agreement of his late colleague nor can he then do the act, seeing that the authority to do it is only given to the two acting jointly. The case is different when the power is vested not in personae designatoe but in the occupants for the time being of a specified office such as executors or trustees. (Lord Moulton.) VENKATA NARASIMHA APPA ROW D. PARTHASARATHY (1913) 41 I. A. 51=37 M. 199 (225)= APPA ROW. 18 C. W. N. 554 = (1914) M. W. N. 299 =

16 Bom. L R. 328 = 19 C. L. J. 369 = 15 M. L. T. 285 = 12 A. L. J. 315 = 23 I. C. 166 = 26 M. L. J. 411.

## POWER OF APPOINTMENT.

-See POWER-(1) APPOINTMENT AND (2) AP-

## POWER OF ATTORNEY.

AUTHORITY UNDER.

BORROWING-POWER OF, CONFERRED.

BORROWING, TAKING LOANS OF MONEY, AND GENE-RALLY ACTING FOR PRINCIPAL-POWER OF, CON-

CANCELLATION OF, BY TRUST DEED SUBSEQUENTLY EXECUTED BY PRINCIPAL-EFFECT OF.

CONSTRUCTION OF.

CONTENTS OF-EVIDENCE OF.

G. P. NOTES.

HINDU JOINT FAMILY - MEMBER OF - MORTGAGE FOR DEBTS BINDING ON FAMILY FOR ANY AMOUNT. LOANS-POWER OF GIVING, AND TAKING, CONFER-

MINOR-POWER OF ATTORNEY GRANTED WHILE A. NEGOTIABLE INSTRUMENT.

OBJECTS PROPER OF.

PERSONAL LIABILITY OF PRINCIPAL-ADMISSION OF SCOPE OF-NOTICE OF.

TRUST DEED-TRUSTEE UNDER. USE OF, FREQUENT IN INDIA.

## Authority under.

Onus of Proof of.

Where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication (54.5). (Mr. Ameer Ali). BANK OF BENGAL v. RAMA-NATHAN CHETTY. (1915) 43 I. A. 48=

43 C. 527 (540) = 14 A. L. J. 217 = 9 Bur. L. T. 1 = 20 C. W. N. 329 = 3 L. W. 210 = (1916) 1 M. W. N. 150-19 M. L. T. 176-

32 I. C. 419 = 23 C. L. J. 348 = 18 Bom. L. R. 387 = 30 M. L. J. 232.

## Borrowing-Power of, conferred.

Guaranteeing of loan to customors by pledging princital's credit-Power of, if included-Money-lending

The sole owner of a money-lending business carried on under a firm name appointed a person as his Attorney for the general management of his said business. The power of attorney executed in favour of that person stated the duties with which he was charged and the powers he was entrusted with as follows: "To transact, conduct and manage all and every or any of the affairs, concerns, mat-ters, and things in which I" (the owner of the business) now ant or hereafter may be in any wise interested and concerned, and for that purpose to use or sign my name to all and every or any documents or document, writings or writing whatsoever, To borrow money from any bank or banks, firm or firms, person or persons, either with or without pledge of securities for moneys advanced to various persons. To make, draw, sign accept, endorse, negotiate and transfer all and every or any bills of exchange, promissory notes, hundis, cheques, drafts, bills of lading and all and every other negotiable securiries whatsoever to which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make, draw, sign accept endorse, negotiate and transfer in my name and on my behalf."

On an application made by a customer of the firm to the agent for financial assistance, the agent entered into an arrangement with the customer to the effect that the agent should pledge the firm's credit with a bank to enable the customer to have a cash credit account opened in his

## POWER OF ATTORNEY—(Contd.)

Borrowing -Power of. Conferred-(Contd.)

certain sum in the aggregate, and that to secure the due repayment of that amount with interest thereon the customer should execute a promissory note in favour of the defendant's firm which the agent on his side should endorse over to the bank, with the result that both the customer and the firm became severally liable on the note, one as the drawer, the other as the indorser-

Held, that the transaction entered into by the agent with the customer was authorised by the power of attorney, and that the firm was bound by that transaction.

The business of the firm was a general money-lending business, in the course of which customers were financed. The agent's authority to borrow and to lend to others was an essential incident of the business. The authority to borrow implied an authority to pledge the credit of the firm for the purpose of obtaining or securing advances from others to customers. The authority to enter into transactions of the nature in question is to be found in the power of attorney itself by necessary implication from the nature of the business, with the general management of which the agent was entrusted (54-5). (Mr. Amice Ali). BANK OF BENGAL P. RAMANATHAN CHETTY. (1915) 43 I. A. 48= 43 C. 527 (539 40) = 14 A. L. J. 217 = 9 Bur. L. T. 1 = 20 C. W. N. 329 = 3 L. W. 210 = (1916) 1 M. W. N. 150 = 19 M. L. T. 176 =

23 C. L. J. 348=18 Bem. L. R. 387=32 I. C. 419=

30 M. L. J. 232. Borrowing, taking loans of money and generally

acting for principal-Power of, conferred.

Pronotes-Security for, in consideration of getting additional credit-Giving of Power of, if included.

Respondent executed a general power of attorney in favour of her son, the relevant portions of the power being: -" And also buy, sell, mortgage, let and lease as the case may be any houses or lands and to borrow and take loans of money in my name upon such terms and conditions as he shall think proper . . . . . and generally to act for me in all matters and things touching or concerning all or any of my affairs as fully and effectually to all intents and purposes as if I were acting therein in person." Subsequently, respondent's son borrowed money from the National Bank of India on two joint and several promissory notes executed by him on his own behalf and as agent of respondent, and, with her consent, deposited with the Bank the title deeds of her house as security. When the notes became due, res pondent's son wrote a letter to appellant to the effect that in consideration of the latter paying the Bank the sum due under the notes, he (respondent's son) agreed to keep the title-deeds deposited with the Bank with appellant as security. Appellant paid the Bank duly but was not given the title deeds which were given by the Bank to the respondent's son or his man. It appeared that respondent did not agree to the deeds being given to appellant as security. In a suit brought by appellant against respondent and her son for the recovery of the amount paid by him to the Bank with interest and for a declaration that he was entitled to a charge or lien upon the property covered by the title-deeds in question in respect of the suit amount, held, (1) that, when appellant paid the Bank, he became entitled, in equity, to the benefit of the deposit of the title-deeds without any further assent by respondent; and (2) that respondent was bound by her son's letter to appellant although she did not personally assent to appellant keeping the title-deeds as security,

When the notes became due, the Bank might have sued her (respondent) upon them, and have also taken proceedings to have the mortgaged property sold. The letter (by her son to appellant) was intended to prevent this, and the name and obtain from the bank advances not exceeding a arrangement for continuing the security in consideration of

#### POWER OF ATTORNEY—(Contd.)

Borrowing, taking loans of money, and generally acting for principal-Power of, Conferred-(Contd.)

getting three months' additional credit (given by appellant to respondent's son) was within the general authority given to respondent's son by the words of the power of attorney, " and generally to act for me etc." (Sir Richard Couch.) AGA AHMED ISPAHANY P. JUDITH EMMA CRISP.

(1891) 19 I. A. 24 = 19 C. 242 = 6 Sar. 109.

Cancellation of, by trust deed subsequently executed by principal-Effect of.

-Properties comprised in former not dealt with by latter. See TRUST-TRUST DEED-TRUSTEE UNDER-SALE ON, ETC. (1927) 6 R. 113.

#### Construction of.

-Maxim-Copulatio verborum indicat acceptationem in colem sensu-Applicability. See POWER OF ATTORNEY -CONSTRUCTION OF-OBJECTS OF POWER.

(1884) 11 I.A. 94 (107) - 10 C. 901 (911).

Objects of power-Words used to express-Disjunctite construction of-No rule as to-Maxim " Copulatio verborum indicat acceptationem in eodem sensu"-...lpplicability.

It seems to have been thought that it was faid down in the case of the Bank of Bengal v. Maclood, (5 M. I. A. 1). as a rule of construction, that words used in a power of attorney to express the objects of the power are always to be construed disjunctively. Their Lordships cannot agree in this view of the case. The words there may have been used disjunctively, but they do not see any reason why the rule laid down by Lord Bacon, copulatio verlorum indicat acceptationem in codem sensu, which is intended to aid in arriving at the meaning of the parties, should not be used in construing a power of attorney as much as any other instrument (107). (Sir Richard Couch.) JONMENJOY COONDOO P. WATSON. (1884) 11 I. A. 94=

10 C. 901 (911) - 4 Sar. 523.

Operative part-General language in early portion of-Control of , by subsequent particularisation.

The operative part of a mookhtarnamah executed by a lady in favour of her husband. A. was as follows: -" I, the declarant, therefore, of my own free will and accord, appoint my husband, A, my general mooktar, and declare to the effect that all acts done by the said mooktar such as giving and taking loans to and from others; executing on my behalf, getting executed in my favour, deeds of absolute sale," and so on, " shall be accepted by me."

Held, that the generality of the language, "appoint my husband my general mooktar," must be construed, and if necessary, controlled, by what came afterwards (44-5.) (Sir Montague E. Smith.) SUDISHT LAL P. MUSSUMAT SHEOBARAT KOER. (1881) 8 I. A. 39 = 7 C. 245 (251) =

#### Contents of-Evidence of.

-Will reciting prace-Admissibility of, in absence of proof of loss or destruction of power.

The recital of a power of attorney in a will, affecting to transmit the authority conferred by it, is not sufficient evidence of the contents of such an instrument in the absence of proof of its loss or destruction. (Lord Brougham.) BOMAN-JEE MUNCHER-JEE : SVED HOOSSAIN ABDOOL-LAH. (1837) 1 M. I. A. 494 = 5 W. B. 61 P. C. =

1 Suth. 77=1 Sar. 142.

### G. P. Notes.

-Sale of-Power of, conferred-Pledge thereof-Power of, if included.

Authority to sell a Government promissory note does not give an authority to pledge it (108.) (Sir Richard Couch.)

## POWER OF ATTORNEY-(Contd.)

G. P. Notes-(Contd.)

JONMENJOY COONDOO r. WATSON. (1884) 11 I.A. 94= 10 C. 901 (911-2) = 4 Sar. 523.

-Sale or purchase of-Power of, conferred-Pledge thereof-Power of, included -Words-Negotiate-Dispose of-Use of-Effect.

On or about 18-10-1878, the respondent deposited with his agents, Messes Nicholls & Co. (W. Nicholls and G. A. Thompson), promissory notes of the Government of India, amounting to Rs. 37,500, for which a receipt was given to him by Nicholis & Co, headed " Safe custody receipt." One of those notes was for Rs. 20 000.

On 18-10-1878, Watson (the respondent) executed and gave to Nicholls & Co, a power of attorney, in the follow-

ing terms :-

Know all men by these presents, that I, Watson, do make, constitute, appoint W. Nicholls & G. A. Thompson, of Messrs Nicholls & Co., jointly and severally to be my true and lawful attorneys and attorney, for me and in my name, and on my behalf, from time to time to negotiate, make sale, dispose of, assign and transfer, or cause to be procured and assigned and transferred, at their or his discretion, all or any of the Government promissory notes, or other Government paper, bank shares, or shares in any public company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in my name, or belonging to me, or any part or parts thereof respectively. And also for me, and in my name, and on my behalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into my name of any Government promissory notes or other Government paper, bank shares, or shares in any public company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in the name or names of, or belonging to any other person or persons. And also to receive all interest and dividends due, or to accrue due, on all or any of such stocks, funds, and securities. And for the purposes aforesaid, or any of them. to sign for me and in my name, and on my behalf, any and every contract or agreement, acceptance or other document. And to sign, seal, and deliver for me, and as my act and deed, and every deed which they or he may think expedient."

Held, that the agent had, under the power, no authority

to pledge the note (108).

The power of attorney in the present case is not in the same form as that in the Bank of Bengal v. Macleol (5 M. I. A. 1). It does not contain in express words a power to indorse." If it had, the question would have been whe ther there was anything to prevent it from being a power in the discretion of the done of it to indorse the note and so convert it into one payable to bearer whenever he thought fit to do so for any purpose. But in this power the indorsement is not anthorised in express words, but is authorised if it comes within the meaning of the words " And for the purposes aforesaid to sign for me, and in my name and on my behalf, any and every contract or agreement, acceptance, or other document." The "purposes aforesaid" are these. From time to time to negotiate, make sale, dispose of assign, and transfer or cause to be procured and assigned and transferred, at their or his discretion, all or any of the government promissory notes or other government paper, etc., and also for me and in my name, and on my hehalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into my name of any government promissory notes or other government paper,

The appellant's counsel relied mainly upon the word "negotiate," and also upon "dispose of." What was in-

## POWER OF ATTORNEY-(Centd.)

G. P. Notes-(Contd.)

tended by those words appears to have been to sell or purchase for the respondent government promissory notes and other securities, not to borrow or lend money upon them (108). (Sir Richard Couch.) JONMENJOY COONDOO :: (1884) 11 I. A. 94=

10 C. 901 (911-2) = 4 Sar. 523.

## Hindu joint family-Member of-Mortgage for debts binding on family for any amount.

Power to make, if included in power of attorney executed by other members in his favour-Mortgage for other purposes-Amount of-Limit on. See HINDU LAW-JOINT FAMILY-MEMBER OF-POWER OF ATTORNEY. (1927) 53 M. L. J. 592.

## Loans-Power of giving, and taking, conferred.

-Loan obtained by agent pursuant to-Binding nature of, on principal-Proof of borrowing on principal's account- Necessity.

The operative part of a mooktarnama executed by a lady in favour of her husband was as follows :-

I, the declarant, therefore, of my own free will and accord, appoint my husband my general mooktar, and declare to the effect that all acts done by the said mooktar, such as giving and taking loans to and from others; executing on my behalf, getting executed in my favour, deeds of absolute sale," and so on, "shall be accepted by me."

Semble, if it had been proved that the husband had contracted loans and obtained advances on behalf of his wife. it might be that under the above power of attorney the lady would be bound by his acts, as being within the scope of his authority. But it would have to be shown, not only that he borrowed the money, but that it was borrowed for her. If it had appeared that it was taken for his own purposes and the lender who advanced the money knew it, the wife could not be charged with it (45). (Sir Montague E. Smith.) SUDISHT LAL +. MUSSUMAT SHEOBARAT (1881) 8 I. A. 39=7 C. 245 (251-2)= KOER.

-Settlement of accounts, if included-Suit against principal based on such settlement and without independent proof of indebtedness-Maintainability.

The operative part of a mookhtamarnah executed by a lady in favour of her husband was as follows:-1, the declarant, therefore, of my own freewill and accord, appoint my husband my general mookhtar, and declare to the effect that all acts done by the said mooktar, such as giving and taking loans to and from others; executing on my behalf, getting executed in my favour, deeds of absolute sale," and

so on " shall be accepted by me."

The plaintiff-appellant brought the suit out of which the appeal arose against the wife to recover a sum of money and interest upon the footing of a stated and settled account. The account had admittedly been settled, not by the defendant herself, but by her husband under authority conferred by the above mooktarnama. Without any proof that money had been borrwed at all, and certainly with none that it had been borrowed on the wife's account, the plaintiff sought to fix the defendant with the large deld sued for by the mere statement of account of her husband.

Held, upon the construction of the mooktarnama, that the busband had no authority to bind his wife by such a statement, whatever authority he might have had to bind her by an actual borrowing of money on her account (45).

(Sir Montague E. Smith.) SUDHIST LAL v. MUSSUMAT
SHEOBARAT KOER. (1881) 8 I. A. 39=

7 O. 245 (251-2)=4 Bar. 222.

## POWER OF ATTORNEY-(Conld.)

Minor-Power of attorney granted while a.

-Ratification of, on attaining majority. See HINDU LAW-MINOR-POWER OF ATTORNEY.

(1915) 19 C. W. N. 787 (790).

## Negotiable Instrument.

-Sell, endorse, assign - Power of, conferred - Endersement without selling-Power of, if included.

The payee of promissory notes of the E. I. Co., by a power of attorney, authorised his agents at Calcutta to "sell endorse and assign " the notes. These notes were transferable by endorsement, payable to locarer. The agents, in their character of private bankers, borrowed money of the Bank of Bengal, offering, as security, these promissory notes. The Bank made the advance, and the agents endorsed the notes, such endorsement purporting to be as attorney for their principal, and deposited them with the Bank, by way of collateral security for their personal liability, at the same time authorising the Bank, in default of payment, to sell the notes in reimbursement of the advances. The agents afterwards became insolvent, and default having heen made in payment, the Bank sold the notes and realised the amount of their loan.

Hdd, that the endorsement of the notes by the agents of the payee to the Bank was within the scope of the authority given to them by the power of attorney, and that the payee could not recover in definue against the Bank.

It is said that the words " sell, endorse, and assign," used conjunctively, cannot be used in the disjunctive, but that the only power given to endorse is one ancillary to sale, and that we are to read it, as if it were, power to sell, and for the purposes of selling, to endorse. It appears to us that the rational and the natural construction is the one which represents a power "to sell, endorse, and assign", as a power to sell, a power to endorse, and a power to assign - so that these acts may be done apart or together, and that the powers are conveyed conjointly and severally (38, 40).

The circumstance that the endorsement is to be only made for the benefit of the principal, and not for the purposes of the agent only relates to the purpose of the execution, not to the limits of the power itself; and though the endorsee's title must depend upon the authority of the endorser, it cannot be made to depend upon the purposes for which the endorser performs his act under the power (40). (Lord Brougham.) RANK OF BENGAL .: MACLEOD.

(1849) 5 M. I A. 1=7 Mov. P. C. 35= 13 Jur. 945 = Taylor 434 (b) = 1 Sar. 391.

-BANK OF BENGAL a. FAGAN.

(1849) 5 M. I. A. 27=7 Mav. P. C. 61= Taylor 434 (b) = 1 Sar. 392.

-Words-Negotiate-Dispose of-Meaning when applied to bill of exchange or ordinary promissory note.

In order to see what was intended by the words "negoti-ate" and "dispose of " in a power of attorney, they must be looked at in connection with the context, as well as with the general object of the power. If the word "negotiate " had stood alone, its meaning might have been doubtful, though, when applied to a bill of exchange or ordinary promissory note, it would probably be generally understood to mean to sell or discount, and not to pledge it (108). (Sir Richard Couch.) JONMENJOY COONDOO 2. WATSON. (1884) 11 I. A. 94-10 C. 901 (912)-4 Bar. 523

## Object proper of.

-The proper object of a power of attorney is to give authority to the future acts of the attorney, and not to ratify prior acts of the attorney (200). (Lord Hobbonse.) LALA AMARANATH SAH 2. RANI ACHAN KUAR.

(1892) 19 I. A. 196=14 A. 420 (426)=6 Sar. 197.

### POWER OF ATTORNEY-(Contd.)

Personal liability of principal-Admission of.

-Power of

P. who succeeded as heir to the estate of L. was incompetent to manage his property, and his wife, A', was appointed by the Collector to be sarbarakar or manager. She never was his guardian. She executed a general power of attorney in favour of A the expressed objects of which had reference to the lands of her husband, of which she was the sarbarakar, and 'o other lands of which she was herself the proprietiess. "Therefore" she said, "as regards the entire property possessed by me and my husband for the present and future, in my present capacity, and in such capacity as 1 may possess hereafter" she appointed four persons, of whom A was one, to be general attorneys. Then she specified a number of things that they might do. Every one of them might be referred, and indeed most readity referred, to the lands of P and A'. There was a power to obtain the permission of the District Judge to contract fresh debts " on the security of any property " for the purpose of paying off old debts of L; and again a power to renew documents of hypothecation for the purpose of extending the period of repayment. Both those powers had reference to charges on land; and in both those cases the attorneys were to prepare documents for A's own signature prior to registration.

Held, that the power of astorney did not contemplate such an act as an acknowledgment of P's personal liability (39.40). (Lord Hobboute.) BETI MAHARANI T. COL-LECTOR OF ETAWAH. (1894) 22 I. A. 31=

17 A. 198 (207-8) = 6 Sar 551.

## Scope of-Notice of.

-Notice of indorsement being under power if .

A person having notice that the indorsement in his favour of a Government promissory note was under a power of attorney, is in the same position as if the power of attorney had been perused by him, and if that power did not authorise the endorsement he must fail (104-5). (Sir Richard Couch.) JONMENJOY COONDOO v. WATSON

(1884) 11 I. A. 94 = 10 C. 901 (909) = 4 Sar. 523.

#### Trust deed-Trustee under.

-Power of attorney by-Nature of, required-Special power of attorney or general power of attorney. See TRUST -TRUST DEED - TRUSTEE UNDER-POWER OF AT-TORNEY BY. (1921) 49 I.A. 46 (50-1) = 49 C. 325 (333).

----Power of sale only on consent of co-adjutor--Trustee with-Power of attorney by-Donee of-Sale by, without consent of co-adjutor - Validity. See TRUST - TRUST DEED-TRUSTEE UNDER. (1927) 6 R. 113.

## Use of, frequent in India.

-A power of attorney is a document frequently used in India. (Sir Ford North.) CHAUDHRI MEHDI HASAN D. MUHAMMAD HASAN. (1906) 33 I.A. 68=

28 A. 439 (446)=10 C.W.N. 706= 3 A. L. J. 405 = 8 Bom. L.R. 387 = 9 O.C. 196 = 1 M.L.T. 163=4 C.L.J. 295=9 Sar. 27.

## PRACTICE.

ACCOUNTS-BALANCE DUE ON-SUIT FOR.

ADMIRALTY.

APPEAL

APPEALABLE CASE-ISSUES IN.

CAUSE OF ACTION.

DECLARATION.

DEMURRER.

EJECTMENT SUIT.

EVENTS SUBSEQUENT TO SUIT.

EVIDENCE.

## PRACTICE-(Contd.)

FRAUD.

FUTURE RIGHTS-DECLARATION OF.

ISSUE.

JUDGE-PERSONAL KNOWLEDGE OF.

JURISDICTION-ABSENCE OF-PLEA OF.

LIMITATION-PLEA OF.

LITIGATION.

LOCAL INVESTIGATION.

LOCAL VISIT.

NEW POINT-RAISING OF, AFTER CLOSE OF EVI-DENCE.

NEW TRIAL

NON-SUIT-JUDGMENT OF.

ONUS OF PROOF.

OPPONENT.

ORIGINAL SIDE APPEAL.

PARTY.

PARTIES.

PARTIES NOT BEFORE COURT-DECISION AFFECT-ING-PROPRIETY.

PLAINT.

PLEA.

PLEADINGS.

POINTS UNNECESSARY-EXPRESSION OF OPINION ON.

PRINTING.

PROCEDURE.

RELIEF.

RULE OF.

RULE OF COURT-PRACTICE HAVING AUTHORITY OF.

STARE-DECISIS.

STATUTE.

SUIT-DISMISSAL WITH COSTS-PLAINTIFF'S RIGHT TO APPLY FOR.

TRIAL JUDGE-WITNESSES-CREDIBILITY OF.

WITNESSES-CREDIBILITY OF.

## PRACTICE -ACCOUNTS -BALANCE DUE ON -SUIT FOR.

-Objections by defendant in-Decree to plaintiff subject to-Validity. See PARTNERSHIP-DISSOLUTION (1834) 5 W.B. 76. -ACCOUNTS-BALANCE DUE ON.

-Statement of accounts filed with plaint-Statement filed in evidence-Conflict between-If fatal to plaintiff's Case. See ACCOUNTS-BALANCE DUE ON-SUIT FOR-(1870) 14 W.B. 24. MEMORANDUM, ETC.

## PRACTICE-ADMIRALTY.

(See also ADMIRALTY.)

-Facts-Finding of-Power and duty as to-Court -Assessors-Practice in High Court in England.

Upon appeal in Admiralty Courts governed by the practice in the High Court in England, facts are not found by the Assessors but by the Court itself, and the function of the Assessors as experts is advisory only. (Lord Merricale.) SINGLETON ABBEY 2. SARA. (1928) 30 Bom.L.R. 833= 108 I.C. 727 (2) = 29 Punj. L.R. 439=

A.I.R. 1928 P.C. 122

## PRACTICE-APPEAL

ACCOUNTS.

ACCOUNT BOOKS.

DECREE-DEVOLUTION OF INTEREST SUBSEQUENT

DECREE-EVENTS SUBSEQUENT 10.

EVIDENCE (INCLUDING WITNESSES).

FINDING OF FACT OF COURT BELOW-REVERSAL OF.

## PRACTICE-APPEAL-(Contd.)

JUDGMENT UNDER-CRITICISM OF.

NEW POINT IN.

ONUS OF PROOF-OBJECTION TO.

ORIGINAL SIDE APPEAL.

PARTY-EXAMINATION FOR FIRST TIME OF.

PLEADINGS.

REMAND IN.

### PRACTICE-APPEAL-ACCOUNTS.

-S& ACCOUNTS-APPEAL.

## PRACTICE-APPEAL-ACCOUNT BOOKS.

Rejection of, on suspicion formed on inspection of books—Propriety—Objection not taken in Court below—Decision in Court below based on books. See ACCOUNT BOOKS—REJECTION IN APPEAL OF, ETV.

(1877) 3 Suth. 414 - Bald. 125,

## PRACTICE-APPEAL-ADMIRALTY.

Appeal in proceedings in. See ADMIRALTY AND PRACTICE—ADMIRALTY.

## PRACTICE—APPEAL—DECREE—DEVOLUTION OF INTEREST SUBSEQUENT TO.

Reversal of decree on ground of Na Decree-EVENTS SUBSEQUENT TO-DEVOLUTION OF INTEREST, ETC. (1862) 9 M.I.A. 287 (299 300)

## PRACTICE—APPEAL—DECREE—EVENTS SUB-SEQUENT-TO.

Cognizance in appeal of. Say DECREE—EVENTS SURSEQUENT TO—COGNIZANCE IN APPEAL OF.

(1920) 25 C.W.N. 409

Reversal of decree on ground of. See DECREE— EVENTS SUBSEQUENT TO—DEVOLUTION OF, ETC. (1862) 9 M.I.A. 287 (299-300).

PRACTICE-APPEAL-EVIDENCE (INCLUDING

# WITNESSES). Admission by Court below of.

——Irregularity in—Waiver of—Objection in appeal— Maintainability. See C.P.C. OF 1908. O. 2. R. 3—LAND-LORD. (1919) 47 I.A. 76 (86-7)=43 M. 567 (578).

Opportunity to adduce.

Refusal by Court below of—Plea of. See EVIDENCE
-OPPORTUNITY TO ADDUCE.

# Witnesses—Credibility of—Trial Judge's finding of fact based on.

(See also APPEAL-EVIDENCE-WITNESSES-CRE-DIBILITY OF).

Acceptance of Necessity-Express statement by him of reliance upon demeanour of witnesses-Absence of-

In a case which had to be decided almost, if not entirely, on the credibility of the witnesses examined, the trial judge had not omitted any of the crucial points which ought to have been present to his mind in coming to a conclusion, and there was a very strong and logical case put forward against the probability of the truth of the opponent's story, held, that the case was one in which it could not be said that the trial judge had not had an advantage over an appellate court in seeing the various witnesses examined.

appellate court in seeing the various witnesses examined.

Where it was perfectly clear that the trial judge did not believe the story put forward by the opponent and his witnesses, and it was inevitable that he should have been influenced in his judgment by the view he formed of the credibility of the witnesses as they were examined before him, held further that it did not detract from the advantage which the trial judge had over an appellate court in seeing the various witnesses examined that he had not expressed

# PRACTICE—APPEAL—EVIDENCE (INCLUDING WITNESSES)—(Contd.)

Witnesses-Credibility of-Trial Judge's finding of fact based on-(Contd.)

his reliance upon the demeanour of the witnesses. (Lord Carson.) NETHERLANDS TRADING SOCIETY P. R. M.P. CHETTIAR FIRM. (1929) 7 R. 498 = 118 I. C. 257 = 30 L. W. 569 = A. I. R. 1929 P. C. 202.

--- Receival of -- Propriety-Condition.

Applying the well-established rules as to the amount of regard to be paid to the findings of a Judge who has decided matters of fact deposed to by witnesses at the trial before him, and having considered all the evidence admitted their Lordships are of opinion that the judgment of the Chief Justice (the Trial Judge) should stand, and that of the appellate Court should be set aside. (Lord Durling.) LIM YAW HONG E. LAW CHOON & CO.

(1927) 29 L.W. 520 = 47 C. L. J. 288 = 107 I. C. 457 = 30 Bem. L. R. 757 = A. I. R. 1928 P.C. 127 = 56 M. L. J. 88.

Where the issue is one of pure fact and its decision depends entirely on the credibility of conflicting witnesses, the Privy Council must of necessity be greatly influenced by the opinion of the trial judge who has seen and heard the witnesses. Except in rare cases which are suceptible of being dealt with wholly by agrument a Court of appeal will hesitate long before it disturbs the findings of a trial Judge based on verbal testimony.

By way of indicating the principles applicable to such cases, their Lordships quoted with approval the following passage in the judgment in Khoe Sit Hoh v. Lim Thean

Tong. (1912) A. C. 323, 325 :-

The case was tried before the Judge alone; it turned entirely on questions of fact; and there was plain perjury on one side or the other. Their Lordships' Board are, therefore, called upon, as were also the Court of appeal, to express an opinion on the credibility of conflicting witnesses whom they have not seen, or heard, or questioned. In coming to a conclusion on such an issue their Lordships must of necessity be greatly influenced by the opinion of the learned trial judge, whose judgment is itself under review. He sees the demeanour of the witnesses, and can estimate their intelligence, position and character in a way not open to the courts who deal with later stages of the case. Moreover, in cases like the present, where those courts have only his note of the evidence to work upon, there are many points which, owing to the brevity of the note, may appear to have been imperfectly or ambiguously dealt with in the evidence, and yet were elucidated to the Judge's satisfaction at the trial, either by his own questions or by the explanations of counsel given in presence of the parties. Of course, it may be that in deciding between witnesses he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or has given credence to testimony, perhaps plausibly put forward, which turns out on more critical analysis to be substantially inconsistent with itself, or with indisputable fact. but except in rare cases of that character, cases which are susceptible of being dealt with wholly by argument, a court of appeal will besitate long before it disturbs the findings of a Trial Judge based on verbal testimony."

Held that, in the case before their Lordships, the above principle did not receive sufficient attention from the learned Judges of the High Court, who reversed the trial judge, and that there was not in their judgments or the criticism of the findings and evidence below sufficient ground for discharging the onus which lay so heavily on the appellant before them. (Lord Atkin.) SITALAKSHMI AMMAL v. VENKATASUBRAMANIAN. (1930) 33 C. W. N. 539 = 123 I. O. 557 = A.I.B. 1930 P.O. 170 = 58 M. L. J. 629.

PRACTICE-APPEAL-EVIDENCE (INCLUDING | PRACTICE-APPEAL- ISSUES. WITNESSES)-(Cont.s.)

Witnesses-Credibility of-Trial Judge's finding of fact based on-(Contd)

-Reveral of - Propriety - Documents - Inference trem-Finding based only on-Distinction.

If the elecision of the trial judge on an issue of fact proceeds upon the impression which he had formed from the demeanour of the witnesses, as to which of them was telling the trath, his decision ought not to be interfered with in appeal. This rule is inapplicable to a case in which the judgment of the trial Judge was not based upon his impression of the value of the evidence given by the witnesses in the witness box, but rather from his inference from the documents which were put in evidence before him. (Lord Chancellor.) BHAGAT RAM r. KHETU RAM.

(1929) 116 I. C. 394 = A. I. R. 1929 P.C. 110. Witnesses—Credibility of—Trial judge's opinion

as to. -(See also APPEAL-EVIDENCE - WITNESSES-CREDIBILITY OF.)

-Rejection of - Propriety - Conditions.

Hild that the materials before the High Court did not render it permissible for that Court to reject the evidence of witnesses whom the trial Judge had seen and believed. (Lord Tomlin.) VIRAVYA P. ADENNA.

32 Bom L.R. 499 = 51 C.L.J. 136 = 31 L.W 176 = 1930 M.W.N. 60 = 121 I.C. 205 = A.I.R. 1930 P.C. 18 = (1929) 58 M. L. J. 245 (251).

## Witnesses-Evidence of-Rejection of.

Propriety. See EVIDENCE-WITNESSES- EVID-ENCE OF-REJECTION IN APPEAL OF.

## Witnesses - Examination in court below of.

Failure-Adverse inference from- Propriety. See EVIDENCE-WITNESSES-EXAMINATION OF-FAILURE (1918) 45 I.A. 284 (287-8) = 41 A. 63 (67)

-Refusal to allow-Interference with- Application for examination made in midst of hearing. See EVIDENCE -WITNESSES-EXAMINATION OF-REFUSAL BY COURT TO ALLOW. (1848) 4 M. I. A. 392 (402-3).

## Witnesses examined by court in.

-Cross-examination of-Opportunity for-Necessity. Sor EVIDENCE-WITNESSES-CROSS-EXAMINATION OF -OPPORTUNITY FOR. (1922) 17 L. W. 481 (493).

## PRACTICE-APPEAL- FINDING OF FACT OF COURT BELOW-REVERSAL OF.

-See also APPEAL-FACT - FINDING OF-RE-VERSAL OF).

-Trial judge tehs had seen and heard witnesses-Finding of.

Well-established principles limit the authority of Courts of Appeal to overrule findings of fact made by tribunals of first instance. A manifestly erroneous conclusion, which a reasonable judgment rejects, is not validated by the fact that it was arrived at after hearing and seeing witnesses. On the other hand, the veracity of witnesses is ordinarily to be finally determined by those before whom they give evidence. The value of corroborative or discreditive proof can best be judged by those who have before them all the persons involved. A conclusion of fact of one tribunal founded upon divers admissible facts of varying importance ought not to be overset because the balance of proof upon consideration of the matter by different minds in a new setting seems to incline against the conclusion originally drawn. (Lord Merrivale.) SINGLETON ABBEY P. SARA.

(1928) 30 Bom. L. R. 833=108 I. C. 727 (2)=

-See APPEAL-ISSUES.

-See also PRACTICE-ISSUES.

## PRACTICE- APPEAL-JUDGMENT UNDER -CRITICISM OF.

-Right and duty of appellate Court-Limits to-Grounds of criticism-Specification of-Necessity.

It is no doubt the right and duty of an appellate Judge to criticise fearlessly where necessity arises by pointing out judicial shortcomings in a lower Court, but respect for the judicial office and common fairness require both that the criticisms should be expressed temperately and that the grounds for the criticism should be stated.

Where one of the appellate Judges allowed himself to say of the judgment of the Court below that from beginning to end it was full of misstatements and special pleading, but he did not specify any of the alleged misstatements, and his criticism was found to be wholly unfounded, their Lordships expressed disapproval of judicial criticism expressed in such a form. (Lord Atkin.) SITALAKSHMI AMMAL v. VENKATASUBRAMANIAN. (1930) 33 C. W. N. 593= 123 I. C. 557 = A. I. R. 1930 P. C. 170 = 58 M.L.J. 629. PRACTICE-APPEAL-NEW POINT IN.

-Raising of-Permissibility. See APPEAL-NEW POINT IN AND PRIVY COUNCIL-APPEAL-NEW POINT

## PRACTICE-APPEAL-ONUS OF PROOF-OB-JECTION TO.

Maintainability. See ONUS OF PROOF-OBJEC-TION TO OR QUESTION AS TO.

## PRACTICE-APPEAL - ORIGINAL SIDE AP-PEAL.

-Difference of opinion equal between judges hearing Procedure on. See APPEAL—ORIGINAL SIDE APPEAL.

## PRACTICE-APPEAL-PARTY-EXAMINATION FOR FIRST TIME OF.

-Propriety. See EVIDENCE-PARTY-EXAMINA-(1872) 19 W. B. 118. TION OF-APPEAL.

#### PRACTICE-APPEAL-PLEADINGS.

-See APPEAL-PLEADINGS-AMENDMENT AND PLEADINGS. See also PRACTICE-PLEADINGS.

## PRACTICE-APPEAL-REMAND IN.

-See APPEAL-REMAND IN AND PRIVY COUNCIL APPEAL-REMAND IN.

## PRACTICE—APPEALABLE CASE—ISSUES IN.

-Findings on all-Recording of-Necessity. Su PRACTICE-ISSUE-APPEALABLE CASES.

#### PRACTICE-CAUSE OF ACTION.

-(See also CAUSE OF ACTION).

#### Misjoinder of.

-Hindu Law- Widow-Alienations several and separate by-Presumptive reversioner's suit single for declaration of invalidity of. See HINDU LAW-REVERSIONER -PRESUMPTIVE REVERSIONER-WIDOW-ALIENATION BY-DECLARATION OF INVALIDITY OF-SUIT FOR-SEVERAL AND, ETC.

## (1909) 36 I. A. 103 (113) 36 C. 780 (798).

-Hindu Law-Widow-Husband's share of movable and immovable properties of family-Suit for-Not bad for misjoinder. See HINDU LAW-WIDOW-INHERIT-ANCE TO HUSBAND-RIGHT OF-SUIT BY WIDOW, ETC. (1908) 31 I. A. 10 (16) = 31 C. 262 (272),

-Immovable and movable properties-Suit single for 29 Punj. L. R. 439 = A. I. R. 1928 P. C. 122. recovery of — Cause of action same in respect of both—No

## PRACTICE—CAUSE OF ACTION—(Contd.) Misjoinder of-(Contd.)

misjoinder in case of. See HINDU LAW-WIDOW-INHERITANCE TO HUSBAND-RIGHT OF - SUIT BY WIDOW AGAINST SURVIVING MEMBERS, ETC.

(1903) 31 I. A. 10 (16) = 31 C. 262 (272).

Interference in appeal on ground of-Putting plaintiff to his election to proceed against one of defendants-Propriety. See C. P. C. OF 1908, S. 99-MISJOINDER OF. (1909) 36 I. A. 103 (113) = 36 C. 780 (798).

-Irregularity or illegality.

The joinder in a civil case of several causes of action, if unwarranted by any enactment or rule, is much more than an irregularity. Such a joinder of plaintiffs is more than an irregularity; it is the constitution of a suit in a way not authorised by law and the rules applicable to procedure (263.4). (The Lord Chancellor.) N. A. SUBRAMANY AIYAR v. KING-EMPEROR. (1901) 28 I. A. 257 = 25 M. 61 (98) = 5 C. W. N. 866 = 3 Bom. L. R. 540 = 8 Sar. 160 = 11 M. L. J. 233.

-Mesne profits-Rent-Claims for-Joinder of, in one suit-Permissibility. See LANDLORD AND TENANT-RENT-MESNE PROFITS.

(1866) 10 M. I. A. 438 (451).

Mortgaged property-Purchase by mortgagee of, in execution of decree obtained by third parcy-Mortgagor's suit to set aside, and to redeem-Bad for misjoinder if. See MORTGAGE - MORTGAGED PROPERTY-MORTGA-GEE'S PURCHASE OF-DECKEE OBTAINED BY THIRD PARTY. (1900) 27 I.A. 216 (226-7) = 25 B. 337 (348-9).

-Rent-Arrears of-Establishment of title-Landlord's suit for both-When bad for misjoinder. See LAND-LORD AND TENANT-RENT-ARREARS OF-ESTAB-LISHMENT OF TITLE. (1866) 10 M. I. A. 438 (461).

Rent and mesne profits—Claims for—Joinder of, in one suit. See LANDLORD AND TENANT—RENT— MESNE PROFITS. (1866) 10 M. I. A. 438 (451).

-Properties different-Titles to various -- Joinder in one suit of-Inconvenience of-Titles having common foundation, but different in many particulars-Defendants having no common interest.

The suit is an example of the inconvenience of embracing in one suit titles to various parcels of land, which, although having a common foundation, are different in many particulars, and are to be asserted against defendants having no common interest (31). (Sir James W. Colvile.) MUSSUMAT PHOOLBAS KOONWAR P. LALLA JOGESHUR SAHOY. (1876) 3 J. A. 7=1 C. 226 (248)= 25 W. R. 285 = 3 Sar. 573 = 3 Suth. 236.

## Plaint if discloses-Question as to.

Points to be considered in case of. Sec C. P. C. OF 1908, O. 7, R. 11 (a'-CAUSE OF ACTION.

(1879) 6 I. A. 120 (121)=2 M. 62 (63).

## PRACTICE-DECLARATION.

Future rights-Declaration of. See HINDU LAW-WILL-FUTURE RIGHTS.

Parties not before Court -Declaration of rights of. See HINDU LAW - WILL - PARTIES NOT BEFORE

-Unnecessary but embarrassing declarations-Making of-Practice as to. See DECLARATION - UNNECESSARY BUT, ETC.

## PRACTICE-DEMURRER.

#### Defendant pleading.

-Laches when effectual in favour of. See LACHES-DEMURRER. (1857) 7 M. I. A. 4 (13). PRACTICE-DEMURRER-(Contd.)

Plea of-Plaint allegations-Truth of-Assumption of-Necessity.

-The decision having been made upon demurrer, it must, of course, depend upon the allegations of the will, whether it ought to be upheld or not (549). (Lord Justice Turner.) SREEMUTTY SOORJEEMONEY DOSSEE v. DENOBUNDOO MULLICK. (1857) 6 M. I. A. 526=

4 W. R. 114-1 Suth. 291-1 I. J. N. S. 37= 1 Bour. Rep. 228 = 1 Sar. 583.

-Limits-Written statement-Reference to-Purpost of.

When a plaintiff on certain alleged facts asks relief and is unable to obtain a trial of the facts by reason of the conclusions of law which the Judge forms on the case in its then condition, the Court is bound to proceed upon the facts as they are stated by the plaint and upon the assumption of the truth of those facts.

The case must be determined as if it had arisen on a demurrer to a pleading or to evidence where such procedure exists. Courts cannot be justified in refusing to allow cases to go to proof upon any other assumption than that the facts alleyed are those capable of proof, and are proved. This assumption of the truth of facts alleged must however be limited to the consideration of the legal effect of the facts alleged upon the bars raised against the trial of those facts. The answers put in by the defendants can, in such cases, only be looked at for the purpose of ascertaining whether they raise the legal hars insisted on. (Sir Edward Williams.) NAWAR SIDHEE NUZUR ALLY KHAN P. RAJAH OBJOOD HYARAM KHAN.

(1866) 10 M. I. A. 540 (552-3) - 5 W. R. (P. C.) 83 -1 Suth. 635-2 Sar. 198.

The plaintiffs, claiming to be heirs, after the death of his widow, who survived him, of one J. sued to recover certain moveable and immoveable estate, the property of the deceased at his death. The defendants were persons in possession of the suit estate under alleged alienations by the widow of the deceased.

The title of the plaintiffs as heirs was described generally in the plaint, but the course in which it was derived appeared by a pedigree exhibited by the plaintiffs, and filed with the plaint. It thus appeared that the plaintiffs claimed as kindred of the de eased, connected with him by descent from their common ancestor, C. The defendants denied the plaintiffs' title. Admitting the pedigree to be correct as far as it went, and assuming, for the purpose of raising their objection to the title, all that the pedigree stated to be true, they contended by their answer, that the plaintiffs were not within the line of heirs.

The first Court held against the plaintiffs on the question of title and dismissed the suit. Its decision was reversed on appeal by the Sudder Court which remanded the case to the Court below for trial. On appeal to their Lordships the question for decision was whether the plaintiffs were

too remote in degree to be heritable as gentiles.

Hold, that the decision in the Sudder Court, as well as that in the Court below, might be viewed as in the nature of a demorrer, on which any consideration of possible title on other assumed state of facts would have been irregular (389). (Sir Robert Phillimore.) BHYAH RAM SINGH v. BHYAH UGUR SINGH. (1870) 13 M. I. A. 373=

14 W. E. (P. C.) 1=5 B. L. R. 293=2 Suth. 330= 2 Sar. 566.

-The case was tried in India upon only the first and preliminary issue, viz., whether or not a good cause of action was disclosed in the plaint. It is, however, conceded that the statements in the plaint may be taken to be supplemented by, and to include any fact stated, or to be

## PRACTICE-DEMURRER-(Contd.)

Plea of-Plaint allegations-Truth of-Assumption of-Necessity-(Contd.)

inferred by necessary implication from the written statement of the plaintiff, or the documents annexed to and filed with either that or the plaint itself. For the trial of the issue, which is in the nature of a trial on demurser, the facts stated or to be implied as above mentioned must be taken to be true (121-2). (Sir James W. Coltule.) DORAB ALLY KHAN: ABBOOL AZEEZ. (1878) 5 I. A. 116 = 3 C. 806 (809) = 2 C. L. R. 529 = 3 Suth. 520 =

3 Sar. 818.

Where the plea is taken that the plaint discloses no cause of action and the court is asked to try that issue first (which is essentially a demorrer) the defendants must be taken to admit for the sake of argument that the allegations in the plaint are true mode of forma. In so doing they reserve to themselves the right to show that these allegations are wholly or partially false in the further stages of the action, should the preliminary point be over-ruled. (Lord Moulton.) SETH KANHAYA LAL v. NATIONAL BANK OF INDIA, LTD. (1913) 40 I. A. 56 (62-3)=

40 C. 598 - 17 C. W. N. 541 - (1913) M. W. N. 406 - 13 M. L. T. 406 - 11 A. L. J. 413 - 17 C. L. J. 478 - 15 Bom. L. R. 472 - 184 P. L. R. 1913 - 18 L. C. 949 - 25 M. L. J. 104.

#### PRACTICE-EJECTMENT SUIT.

——Decree unconditional in—Claim in courts below to— Privy Council appeal—Claim in, to decree conditional on payment of binding debts—Permissibility. See POSSESSION —UNCONDITIONAL DECREE FOR.

(1913) 40 I. A. 105 (111)=35 A. 211 (220-1).

——Dismissal of—Declaration of rights of parties in case of—Propriety. Sw EJECTMENT SUIT—DISMISSAL OF. (1898) 25 I. A. 195 (207) = 21 A. 53 (69).

Partition decree in—Grant in appeal of—Propriety—Rights of parties fully tried out—Limitation—Danger of fresh suit being barred by. See Ejectment Suit—Partition decree in. (1898) 25 I. A. 195 (208) = 21 A. 53 (69-70).

## PRACTICE-EVENTS SUBSEQUENT TO SUIT.

Cognizance of—Relief on foot of. See SUIT— EVENTS SUBSEQUENT TO.

#### PRACTICE-EVIDENCE

(See under EVIDENCE.)

Appeal-Evidence.

See PRACTICE—APPEAL—EVIDENCE.

## False evidence.

Production and use of. See EVIDENCE—FALSE EVIDENCE.

### Limitation.

— The Suider Dewanny Court having, upon the examination of the evidence of pedigree, and the opinion of the law officers of the Court, reversed the decision of the Provincial Court, in a claim, which was otherwise barred by the Bengal regulations of limitation, the Judicial Committee dismissed an appeal from the decision of the Sudder Court under such circumstances with costs. GHOLAM RUSSOOL v. MUSSUMAY MUGHLO.

(1837) 1 M. I. A. 446=1 Sar. 139.

## Litigation different—Evidence in.

---- Use of. See EVIDENCE-LITIGATION.

#### Party.

-See under PRACTICE-PARTY.

## PRACTICE-EVIDENCE-(Contd.)

Witness—Credibility of—False evidence of witness in regard to portion of case—Effect of, on his evidence in regard to other portion of case.

(See also EVIDENCE—WITNESSES—FALSE EVIDENCE IN PART KNOWINGLY GIVEN BY.)

In judging of the credibility of witnesses on one part of a case deposed to by them, the fact that another part of the case to which they also deposed has been found to be false is a circumstance entitled to weight, (Lord Shane.) MOHABBAT ALI KHAN v. MD. IBRAHIN KHAN.

(1929) 56 I. A. 201 = 10 Lah. 725 = 27 A. L. J. 465 = 33 C. W. N. 645 = 31 Bom. L. R. 846 = 6 O.W.N. 517 =

30 L. W. 97 = 117 I. C. 17 = 50 C. L. J. 89 = 1929 M.W.N. 676 = A.I.R. 1929 P.C.135 = 57 M.L.J. 366. PRACTICE—FRAUD.

### Allegation and proof of-Consistency between.

- Necessity-Plea of one kind of fraud-Relief on foot of fraud of different kind-Propriety.

It is a well-known rule that a charge of fraud must be substantially proved as laid, and that when one kind of fraud is charged another kind of fraud cannot, upon failure of proof, be substituted for it. Relief cannot be given upon circumstances which are not made a ground of relief upon the record (125). (Sir Barnes Peacock.) ABDOOL HOOSEIN ZENAIL ABADIN 2. TURNER.

(1887) 14 I. A. 111-11 B. 620 (643)=5 Sar. 25.

Decree obtained by-Plea of.

Allegations necessary for. See DECREE—FRAUD IN OBTAINING—PLEA OF. (1859) 8 M. I. A. 91 (102).

#### Plea of. DEFENCE PLEA.

Hearing of suit—Permissibility for first time at-Plaintiff and one of defendants—Fraud between—Plea of A plaintiff, however, ought not to have a defence of this

A plaintiff, however, ought not to have a defence of this sort (collusion between plaintiff and one of defendants) urged against him at the hearing without due notice by the pleadings and issues of a case of fraud. (Lord Justice Geffand.) IKBALOODOWLAH r. SAH BUNARSEE DOSS.

(1869) 12 M. I. A. 507 (520) = 2 Sar. 463 = R. & J.'s No. 8 (Oudh).

Particulars of, disclosed only after close of plaintiff's case and at examination of defence witnesses—Weight to be attached to plea in case of.

In a suit for the specific performance of a contract to sell land, the trial Judge held that the contract relied upon by the plaintiff was either a forgery or a fraud. The High Court, on the contrary, held that the plaintiff had made out his case for the actual execution of the contract. In affirming the High Court, their Lordships pointed out that the most striking observation made by the High Court was that the case of the defendants involving forgery or fraud was not pointedly put in the defendant's written statement. and, though perhaps open under the general words of the defence and on the third issue, it was put without detail or colour, was not raised in the cross-examination of the plaintiff or his witnesses, and, as far as could be seen, was only disclosed when defendant's witnesses after an interval of several months, came into the witness-box. (Lord Phillimore.) SHEIKH NASIRUDDIN v. AHMAD HUSAIN.

(1926) M.W.N. 812 = 3 O.W.N. 731 = 25 A. L. J. 20 = 38 M. L. T. (P. C.) 3 = 97 L. C. 543 = A. L. R. 1926 P.C. 109.

One kind of fraud—Plea of—Different kind of fraud—Relief on foot of - Propriety. See PRACTICE—FRAUD—ALLEGATION AND PROOF OF.

(1887) 14 I.A. 111 (125) = 11 B. 626 (648).

— Particulars—Necessity—General allegations—In-

## PRACTICE-FRAUD-(Contd.)

Plea of-(Contd.)

DEFENCE PLEA-(Contd.)

Where fraud is charged against the defendants it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges. General allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice (121).

There can be no objection to the use of such general words as " fraud," or " collusion, " but they are quite ineffectual to give a fraudulent colour to the particular statements of fact in the plaint, unless these statements, taken by themselves, are such as to imply that a fraud has actually been committed (121). (Lord Watson.) GANGA NARAIN GUPTA D. TILUCKRAM CHOWDHRY

(1888) 15 I. A 119 = 15 C. 533 (537) = 5 Sar. 168.

-There is a well-known rule of pleading expressed in the frequently quoted language of Lord Selborne that "with regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice." The law of India is in no way different from this (151-2). (Lord Shire.) BAL GANGA-DAR TILAK D. SHRINIVAS PANDIT.

(1915) 42 I. A. 135 = 39 B. 441 (467) = 17 Bom. L. R. 527 = 19 C. W. N. 729 - 22 C. L. J. 1 13 A. L. J. 570 = 18 M. L. T. 1= (1915) M. W. N. 554 = 2 L. W. 611 = 29 I. C. 639 =

29 M. L. J. 34.

-By whatever procedure it is sought to overthrow a judgment on the ground of fraud, the fraud must be definitely alleged and its particulars unequivocally stated. (Lord Buckmaster.) TOM BORVEY BARRETT P. AFRICAN PRODUCTS, LTD. (1928) 110 I. C. 299 = A. I. B. 1928 P. C. 261.

-Privy Council appeal-Maintainability for first

Appellant asked that fraud might be alleged here (Privy Council appeal) for the first time and that although the respondents did not appear. But no such application could be granted. (Lord Buckmaster.) TOM BOEVEY BARRETT p. AFRICAN PRODUCTS, LTD. (1928) 110 I. C. 299 = A. I. B. 1928 P. C. 261.

Before the Board it was suggested that the contract between the first respondent and the bank was induced by fraud, and was, therefore, voidable at his instance. It is sufficient for their Lordships to say that fraud was not pleaded in the Trial Court, nor was any issue directed to it, and it would be impossible for them to allow such a defence to be raised at this late stage of the proceedings. (Sir George I ownder.) NATIONAL BANK OF UPPER INDIA. LTD. v. BANSIDHAR. (1929) 57 I. A. 1 = LTD. v. BANSIDHAR.

34 C. W. N. 145 = 6 O. W. N. 1136 = A. I. B. 1929 P. C. 297 = 31 L. W. 1 = 51 C.L.J. 56= 1930 M.W.N. 1 = 32 Bom. L. B. 136 = 121 I.C. 193 = 5 Luck. 1.

#### Suit based on one kind of.

Amendment of plaint after close of case so as to set up new and distinct charge of fraud. See PRACTICE-PLEADINGS -AMENDMENT OF -FRAUD.

(1887) 14 I.A. 111 (121)=11 B. 620 (638).

Appeal-Decision in, based on different kind of-Reversal of, on that ground.

In a suit based on an allegation of fraud, the appellate Court ought to confine itself to the charge of fraud made in

## PRACTICE-FRAUD-(Contd.)

Suit based on one kind of-(Contd.)

upon a charge which was not made by the plaintiff in his original, nor even in his amended plaint, which was not made at the trial, and which was not particularised in the grounds of appeal. And, if the appellate court decides the case upon that new charge, its judgment ought to be reversed on that ground alone (124-5). (Sir Barnes Peacock.) ABDOOL HOSSEIN ZENIAL ABADIN P. TURNER.

(1887) 14 I. A. 111 = 11 B. 620 (643) = 5 Sar. 25. PRACTICE-FUTURE RIGHTS-DECLARATION

-Practice as to. So (1) HINDU LAW-WILL-RIGHTS UNDER, and (2) PRACTICE-PARTIES NOT BE-FORE COURT.

#### PRACTICE-ISSUE.

(CASES UNDER PRACTICE-PLEA-MAY ALSO BE RE-FERRED TO.)

ABANDONMENT OF.

ADDITIONAL ISSUE-FRAMING OF.

AMENDMENT OF.

APPEALABLE CASES-ISSUES IMPORTANT IN-FIND-INGS ON ALL.

BENAMI PURCHASE-SUIT BASED ON-DENIAL BY DEFENDANT.

CASE COVERED BY.

COLLATERAL ISSUE.

CONNECTED SUITS—ISSUES IN ONE OF -ABSENCE OF. IN OTHERS.

CONSTRUCTION OF.

DEED.

DEFECT IN

FACT-ISSUE OF-DECISION IN SECOND APPEAL OF FAILURE TO FRAME.

FEMALE-CHASTITY OF-ISSUE AS TO.

FINDING ADVERSE ON, THOUGH DECREE ITSELF FAVOURABLE.

FORM OF-DEFECT IN.

FRAMING OF.

IMPROPER ISSUE-FINDING ON-EFFECT OF.

INCIDENTAL ISSUE-DECISION ON.

INSOLVENT-TRANSFER BY-ASSIGNEE'S SUIT TO SET ASIDE-FRAUDULENT TRANSFER-ISSUE AS TO.

LEGITIMACY OF PLAINTIFF-INHERITANCE RIGHT BASED ON -ISSUE RAISING.

MARRIAGE-BREACH OF PROMISE OF-ACTION FOR. MINOR-GUARDIAN-MORTGAGE AS PROPRIETOR BY -SUIT TO ENFORCE-BINDING CHARACTER OF MORTGAGE ON MINOR'S ESTATE.

OBJECT OF.

PARTIES NOT BEFORE COURT-ISSUE AFFECTING-DECISION OF-PROPRIETY.

PLEADINGS.

POINT COVERED BY DECISION ON.

POINT NOT COVERED BY.

PURDANASHIN LADIES WITH DIFFERENT INTERESTS -DEED BY-VALIDITY-ISSUE SINGLE AS TO BOTH. SCOPE OF.

STATEMENT BY PARTIES SUBSEQUENT TO-ALTER-NATIVE CASE DISCLOSED IN-RAISING OF.

UNDUE INFLUENCE-ISSUE AS TO.

UNNECESSARY ISSUE-FINDING ON-EFFECT OF.

## Abandonment of.

Court below-Issue abandoned in-Proof of-Op. portunity for-Grant in appeal of.

Perfore the Privy Council the plaintiff applied to be permitted to withdraw his petition abandoning certain issues the plaint. It commits a serious error in deciding the case in the Courts below, and to be allowed an opportunity of

Abandonment of - (Could.)

proving those issues. IIdd that he could not be allowed to do so and that the appeal must be disposed of on the issues dealt with by the Court below. (Lord Summer.) ANANDA MOHAN ROY P. GOUR MOHAN MULLICK

(1923) 50 I. A. 239 (243-4)= 50 C. 929 (934-5)= 21 A. L. J. 718 - A. I. B. 1923 P. C. 189 = 4 Pat. L. T. 609 = (1923) M. W. N. 803 = 25 Bom. L. R. 1269 - 33 M. L. T. 365 -28 C. W. N. 713=40 C. L. J. 10-74 I. C. 499= 45 M. L. J. 617.

-Legal Practitioner-Abandenment by-Power of.

See LEGAL PRACTITIONER-ISSUE

(1902) 29 I. A. 76 (79 80) - 25 M. 367 (377).

## Additional Issue—Framing of.

-Appellate Court-Power and duty of. See APPEAL -ISSUES AND C. P. C. OF 1908, O. 41, R. 25.

-Close of case - Framing after - Jurisdiction - Duty of Court-Question going to reet of case and arising upon the evidence.

In a suit to enforce a mortgage, after the trial was over, arguments were heard, and judgment was reserved, the Subordinate Judge framed a supplemental issue as to whether the mortgage deed was valid under S. 59 of the Transfer of Property Act because it appeared from the evidence of the witnesses to the mortgage deed that they were not present at its execution but had put their names on the document on the acknowledgment of the moregagors and, holding that the document was invalid under that section, he dismissed the suit save as regards a personal decree against the mortgagors. His decree was affirmed in appeal by the High Court. On an appeal to the Privy Council from the decrees of the Courts below it was urged that the Subordinate Judge acted irregularly and without jurisdiction in framing an issue under the above circumstances. Held, that S. 149 of the Code of 1882 was conclusive. The first part of that section leaves it in the discretion of the Court to frame such additional issues as it thinks fit, whilst the latter makes it imperative on the Judge to frame such additional issues as may be necessary to determine the controversy between the parties. The Subordinate Judge was, therefore, fully empowered to frame the issue on which he decided the case (222-3). (Mr. Ameer Ali.) SHAMU PATTAR P. ABDUL KADIR RAYUTHAN.

(1912) 39 I. A. 218 = 35 M. 607 (612)= 14 Bom. L. R. 1034 = 16 C. W. N. 1009 = 12 M. L. T. 338 = (1912) M. W N. 935 = 10 A. L. J. 259 = 16 C. L. J. 596 = 16 I. C. 250 = 23 M. L. J. 321.

-Prity Council appeal-Framing and remitting of issue by-Grounds.

Issues actually raised too general-Parties' attention not specifically directed to question necessary to be tried. (Sir Barnes Peacock.) OOLAGAPPA CHETTY P. ARBUTHNOT. (1874) 1 L. A. 268 (316) = 14 B. L. R. 115 = 21 W. R. 358=3 Sar. 318.

#### Amendment of

-Duty of Court-Issue framed defective for decision of whole case. See PRACTICE—ISSUES—CONSTRUCTION -SUBSTANCE OF ISSUE. (1856) 6 M. I. A. 393 (411.)

-Settlement of issues-Statements of parties subsequent to, and before trial, modifying case raised by issues-Alteration in light of-Necessity.

The members of a co-partnership were adjudicated insolvents on 22-12-1875, and the appellant was appointed assignee of the estate of the co-partnership. He sued to recover from the defendant Rs. 9,000 and odd with interest, which he asserted had been collusively and fraudulently

## PRACTICE-ISSUE-(Contd.)

Ameadment of-(Contd.)

assigned to him by one of the insolvents. The issue relating to the transfer was "when did the transfer of the principal sum in suit take place? Is the transfer unlawful, and was it fraudulently made or not?"

On a subsequent day, and before the trial Judge proceeded to take evidence, he questioned the pleaders of both parties, and recorded that the plaintiff's pleader stated that the plaintiff claimed to have the transfer declared invalid, on the grounds.

1. That it was really made after 22-12-1875, and was made fraudulently.

2. Even granting that the transfer took place before 22-12-1875, it was voluntarily made, and was invalid under S. 24 of the Indian Insolvency Act.

The trial Judge did not make any alteration in the issues which he had recorded.

Held that an alteration in the issues raised was not necessary, and that the question whether the transfer was voluntary and fraudulent and void as against the assignee was sufficiently raised (105-6). (Sir Richard Couch.) MILLER P. SHEO PERSHAD. (1883) 10 I. A. 98=

6 A. 84 (90) = 13 C.L.R. 305 = 4 Sar. 430.

## Appealable cases—Issues important in—Findings on

-Recording of -Necasity.

The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points (488). (Lord Justice Turner.) TARAKANT BANNERJEE : PUDDOMONEY DOSSEE.

(1866) 10 M.I.A. 476=5 W. R. P. C. 63=1 Suth. 631= 2 Sar. 184

-In cases which are appealable to the Privy Council it would be more satisfactory if the High Court decides all the issues which were raised and determined by the Sub-Judge. (Sir Barnes Peacock.) REWA MAHTON P. RAM (1886) 13 I. A. 106 (112)= KISHEN SINGH. 14 C. 18 (25-6)=4 Sar. 746.

-In appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points (254-5). (Sir John Edge.) MAHOMED SOLAIMAN 7. BIRENDRA CHANDRA SINGH.

(1922) 50 I. A. 247 = 50 C. 243 (252) = 32 M.L.T. 115= 27 C. W. N. 749 = 37 C. L. J. 561=

A. I. R. 1922 P. C. 405=74 I. C. 906= 44 M. L. J. 388.

Benami purchase-Suit based upon-Denial by defendant.

-Issue in case of-Form proper of. See PRACTICE -PLEA-CONFESSION AND AVOIDANCE. (1870) 6 B. L. B. 303 (307-8).

#### Case raised by.

-Parties when confined to.

Their Lordships would not have held the parties strictly bound to the terms of the issue, if they had seen any trace that it had been understood in any other sense in the Court below. But they cannot find that that was the case, and parties must therefore be held bound to the terms of the issue (71). (Sir James Colvile.) RAJENDRA NATH HOLDAR P. JOGENDRO NATH BANERJEE.

(1871) 14 M. I. A. 67 = 15 W. B. P. C. 41= 7 B. L. R. 216=2 Suth. 422=2 Sar. 668.

### Collateral issue.

-Finding on-Effect of. See C. P. C. OF 1908, S. 11- CASES UNDER BOND-CONSIDERATION FOR. (1882) 9 I. A. 197 (204) = 9 C. 439 (445-6).

## Connected suits-Issues in one of-Absence of. in others.

-Material if and when-Evidence in one of them-Admissibility of, in others.

In a case in which, though a specific issue was not framed on a particular point, the matters was treated as being in issue and the parties let in evidence bearing upon the point, there was no question of surprise, and there was a specific issue on the point in another suit which, by consent of parties, was heard along with the case in question, held that the High Court was justified in treating the point as an issue upon which the parties went to trial and that for determining that issue the High Court was entitled to look at the evidence recorded in the other suit in which there was a specific issue and which was before the High Court. (Sir John Edge.) NATARAJA TAMBIRAN D. KAILASAM (1920) 48 I. A. 1 (9-10) = 44 M. 283 (291) = (1920) M. W.N. 371 = 13 L. W. 301 = PILLAL.

18 A. L. J. 1041 = 25 C. W. N. 145 = 57 I.C. 564 = 39 M. L. J. 98.

#### Construction of.

-Parties-Construction put in Courts below by-Privy Council appeal-Claim inconsistent with it in-Maintainability. See LEGITIMACY-INHERITANCE-RIGHT OF, BASED ON LEGITIMACY OF PLAINTIFF.

(1907) 35 L. A. 41 (47) = 35 C. 232 (242).

-Substance of issue-Literal wording of it-Regard for-Defect in issue-Amendment of-Duty of Court.

The substance and not the mere literal wording of the issues is to be regarded by the courts in India; and if. by inadvertence, or other cause, the recorded issues do not enable the court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment, for the decision of the real points in dispute (411). (Lord Justice Knight Bruce.) HANUMAN-PERSAUD PANDAY P. MUSSUMAT BABOOEE MUNRAJ KOONWAREE. (1856) 6 M. I. A. 393=18 W. B. 81= 2 Suth. 29 = 1 Sar. 552 = Sevestre. 253 N.

#### Deed.

#### EXECUTION OF.

-Capacity for-Absence of - Undue influence-Execution under-Issues as to, wholly different. See DEED-EXECUTANT OF-INCAPACITY OF.

(1894) 22 I. A. 4 (10) = 22 C. 324 (336).

-Issue as to-Finding proper on-Forgery-Finding of, neither necessary nor proper. See DEED-EXECUTION OF-ISSUE AS TO-FINDING PROPER ON.

-Undue influence-Execution under-Issue as to-Issue as to validity of deed if covers. See DEED— EXECUTION OF—UNDUE INFLUENCE—PLEA OF-ISSUE AS TO VALIDITY OF DEED IF COVERS.

(1875) 2 I. A. 87 (107).

-Undue influence-Execution under-Issue as to-Points to be considered in case of. See DEED-EXECU-TION OF-UNDUE INFLUENCE-ISSUE AS TO-POINTS TO BE CONSIDERED IN CASE OF.

(1888) 15 I. A. 81 (92-3)=15 C. 684 (698-700).

-Undos influence-Execution under - Validity of deed-Issues as to-Scope of-Distinction. See DEED-TO-VALIDITY OF DEED.

## PRACTICE-ISSUE-(Contd.) Deed-(Contd.)

#### FORGERY OF.

-Setting aside of deed on ground of-Suit for-Undue influence-Execution under-Validity in law of deed-Issues as to-Propriety of. See DEED-FORGERY OF-SETTING ASIDE OF DEED ON GROUND OF.

(1888) 15 I. A. 81 (86) = 15 C. 684 (692).

#### Defect in.

-Amendment of-Duty of court. See PRACTICE-ISSUES-CONSTRUCTION-SUBSTANCE OF ISSUE.

(1856) 6 M.I.A. 393 (411).

-Reversal of decree on ground of -Propriety-Parties and Court below treating issue as properly raised. See PRIVY COUNCIL - APPEAL-FACT - FINDING OF-ISSUE. (1872) 18 W. R. 230.

## Fact-Issue of-Decision in Second Appeal of.

-Jurisdiction. See C. P. C. of 1908, S. 103.

#### Failure to frame.

## DECISION ON MERITS NOTWITHSTANDING.

-Propriety -- Parties not misled. (Sir Montague E. Smith.) Mt. AMEEROONISSA KHANUM P. ASHRU-FOONISSA. (1872) 14 M. I. A. 433 (442)= 17 W. R. 259 = 2 Suth. 543 = 3 Sar. 58.

FINAL HEARING OF SUIT IN CASE OF.

-Irregularity.

Under C. P. C. of 1859 it is wholly irregular for the court to go into evidence without having first settled and recorded the points or issues in the suit. ((Lord Westbury.) BABOO REWAUN PERSHAD P. JANKEE PERSHAD.

(1866) 11 M. I. A. 25=2 Sar. 214.

-Hold, that there was great irregularity in the District Judge's proceeding to a final hearing without issues having been settled, so that the parties might before the trial know to what points they would have to address themselves (135). (Sir Barnet Peacock.) MUTTAYAN CHETTIAR P. SANGILI VIRA PANDIA CHINNATAMBIAR.

(1882) 9 I.A. 128 = 6 M. 1 (9) = 12 C. L. R. 169 = 4 Sar. 354.

## OBJECTION TO-APPEAL-MAINTAINABILITY IN.

-Waiver of objection in trial Court - Failure of justice by reason of omission.

Mere waiver, or rather the omission to taking the objection in the trial court to dealing with the case without the settlement of the issues, is not in all cases sufficient to purge the irregularity. If it appeared that, notwithstanding the absence of such objection, substantial justice had not been done, the objection might well be taken before the appellate court, and when taken ought to prevail (584), (Sir James W. Colvile.) MUSSUMAT MITNA v. SYUD FUZI. RUR. (1870) 13 M. I. A. 573 = 15 W. R. 15 = 6 B. L. B. 148 = 2 Suth. 387 = 2 Sar. 626.

## REMAND ON GROUND OF.

-Bengal Civil Procedure Regulation XXVI of 1814 -S. 10, cl. (13).

In a suit brought by the appellant, a decree-holder under a sale of a mortgagor's equity of redemption, to recover possession of lands held, as he contended, by the respondents, as usufructuary mortgagees, and who had repaid themselves the principal money and interest out of the perception of the mesne profits, the respondent's case was that by certain foreclosure proceedings taken by them under Bengal Regulation XVII of 1806, S. 8, the equity of redemption was barred. The respondents' contention was EXECUTION—UNDUE INFLUENCE—PLEA OF—ISSUE AS upheld by the Sudder Court on special appeal. On further (1875) 2 I. A. 87 (107). appeal to the Privy Council, the appellant contended that

Failure to frame - (Contd.)

REMAND ON GROUND OF-(Contd.)

the Sudder Court ought not to have decided the cause on the question of forcelosure, because that question, though raised upon the pleadings, had not been made one of the issues settled in the Court of first instance, where alone evidence could be taken.

Their Lordships gave effect to the objection, and remitted the cause for the trial of the question whether appellant's right, or equity of redemption, had become fore-

closed or barred (15).

It is clear that there has been no such trial of the question of foreclosure as the Regulation (Bengal Regulation XXVI of 1814, S. 10, cl. 3) which prescribes the statement of formal issues, and indeed substantial justice, require (13-4). (Lord Justice Knight Bruce.) MOHUN LALL SOOKOOL v. GOLUCK CHUNDER DUTT.

(1863) 10 M. I. A. 1=1 W. R. 19 (P.C.)= 1 Suth. 533=2 Sar. 49.

REVERSAL OF DECREE ON GROUND OF.

—A decree passed in a suit without settling and recording issues as required by C.P.C. of 1859 directed to be set aside and the suit directed to be remanded to be tried on issues to be settled and recorded after taking and hearing evidence on such issues. (Lord Wetbury.) BABOO REWUN PERSHAD v. JANKEE PERSHAD.

(1866) 11 M. I. A. 25=2 Sar. 214.

-No surprise to opposite party.

The plaintiff claimed to be the lawfully begotten son of P, and to have inherited from his father the property sought to be recovered in the action. The defendant alleged (amongst other things) that P was not the father of the plaintiff, and an issue was framed on that point. In the course of the litigation in the Court of the first instance, however the defendant at an early stage, without protest or objection on the part of the plaintiff, made the case that the plaintiff had been adopted by P's brother, A'. Deeds under the hands of the plaintiff and his father P containing express statements to that effect were given in evidence by the defendant. Questions directed more or less pointedly to the matter were addressed to the plaintiff's witnesses. Evidence was given by and on behalf of the plaintiff to explain away the admissions contained in those instruments and to account, if possible, for the fact that on the death of K the plaintiff had been put forward as his successor. No suggestion was made on behalf of the plain. tiff that he was taken by surprise. No application was made that the pleadings should be amended, a new issue framed, or the hearing adjourned. The Subordinate Judge considered the question of adoption and held against the plaintiff. The High Court on appeal, while being of opinion that " the question of adoption was never properly in issue between the parties," held on the assumption that it was, " that the defendant had wholly failed to satisfy the onus which lay upon her of proving the adoption."

While regretting that a definite issue was not framed upon the point of adoption, and the matter thus put beyond all controversy, their Lordships held that the question had been sufficiently raised between the parties, and refused to frame a specific issue on the question and to remit it for trial. (Lord Atkinson.) CHANDRA KUNWAR v. NARPAT SINGH. (1906) 34 I. A. 27 (30-2, 36)=

29 A. 184 (195) = 2 M. L. T. 109 = 5 C. L. J. 115 = 11 C. W. N. 321 = 9 Bom. L. B. 267 = 4 A. L. J. 102 = 17 M. L. J. 103.

Objection to failure not taken in trial Court-No prejudice by omission-Objection taken in trial Court-Distinction.

PRACTICE-ISSUE-(Contd.)

Failure to frame-(Contd.)

REVERSAL OF DECREE ON GROUND OF-(Contd.)

Concurrent findings of the Indian Courts on a question of fact were sought to be attacked before the Privy Council on the ground of the failure of the trial Court to frame and record the material issues. It appeared that no objection was taken in the Court of the first instance to the case being dealt with without the settlement of the issues, that the parties had gone to trial knowing what the real question between them was, and that the necessary evidence had been taken. The omission to raise the issues was brought before the notice of the appellate Court, which, while being of opinion that the Court below ought to have framed the necessary issues, affirmed its decision and declined to remand the case, because the parties had gone to trial knowing what the real question between them was, the evidence had been taken, and the conclusion had been in the opinion of the appellate Court correctly drawn from that evidence.

Held, that under S. 354 of C. P. C. of 1859 the appellate Court had power to do what it did (583).

At all events, it appears to their Lordships that there is nothing in the Code which made it imperative upon the appellate Court, or now makes it imperative upon their Lordships, to yield to that objection (the omission to frame the issues) and, therefore, fully concurring in the observations made by the appellate Court that it was the duty of the Judge to settle the issues, they still think that, under all the circumstances of the case, substantial justice having been done, there has not been that fatal mistrial of the cause which vitiates all the proceedings and renders a new trial necessary (583).

If objection had been taken in the trial Court to dealing with the case without the settlement of the issues, the appellant would have stood on higher grounds, and it would then have been very difficult to say that a trial proceeding in the face of the objection could be held to be regular for any purpose. (583.4). (Sir James W. Colvile.) MUSSUMAT MITNA 2. SYUD FUZL RUB.

(1870) 13 M. I. A. 573=15 W. R. 15= 6 B. L. R. 148=2 Suth. 387=2 Sar. 626.

-Remand order of High Court-Points at issue in dicated in.

A suit by a junior member against the holder of an impartible estate for maintenance was dismissed by the Courts below on the ground that the estate was the selfacquired estate of the holder and not ancestral property. In special appeal, the High Court reversed the decrees of the Courts below, declared that the estate was ancestral, and plaintiff entitled to maintenance from it, and remanded the suit to the Court below with instructions " to ascertain the means of the defendant and the other facts of the case, and to proceed to a decision in the manner indicated in S. 35 of the Code of Civil Procedure, 1859. That Court decided the case without framing issues and its decree was affirmed by the High Court. On objection taken on further appeal to the Privy Council to the failure to raise issues as directed by the Code of 1859, held that the remand order of the High Court removed any such objection, because that was, in substance, an order for inquiry, and an order for inquiry raising the very points upon which the defendant relied; for it was a direction to ascertain amount of the maintenance which might appear to be justly and properly payable with reference to the very point which it was urged ought to have been taken into consideration, viz., the means of the defendant, in connection with the other facts of the case. It is impossible to object to such an inquiry as that, upon the ground of its not being sufficient. It is, therefore, equivalent to issues, and rendered any further issues entirely

Failure to frame-(Contd.)

REVERSAL OF DECREE ON GROUND OF - (Confd.)

unnecessary. (Lord Justice Selwyn.) KATCHEKALEVANA RUNGAPPA KALAKKA TOLA OODIAR P. KACHIVIJAVA RUNGAPPA KALAKKA TOLA OODIAR.

(1869) 12 M. I. A. 495 (502-3)=2 B. L. R. P.C. 72= 2 Suth. 206 = 2 Sar. 461 = 11 W. R. 33.

VALIDITY OF TRIAL-EFFECT ON.

-C. P. C. of 1859-Effect under.

There is nothing in the Code of Civil Procedure which says positively that the omission to settle issues is fatal to the trial (582). (Sir James Colvile.) MUSSUMAT MITNA D. SYUD FUZL RUB. (1870) 13 M. I. A. 573 = 16 W. R. 15=6 B. L. R. 148=2 Suth. 387=2 Sar. 626.

-Regulations-Law under.

With respect to the decisions (as to the effect upon a trial of the omission to settle issues) upon the Regulations, it is to be observed that those Regulations contained words to the effect that no evidence should be given except upon points which had been recorded (582). (Sir James Colvile.) MUSSUMAT MITNA P. SYUD FUZL RUB.

(1870) 13 M. I. A. 573=15 W. R. P. C. 15= 6 B. L. R. 148 = 2 Suth. 387 = 2 Sar. 626.

Objection to omission taken in trial Court.

A trial conducted without the settlement of issues in the face of an objection to its being so conducted cannot be held to be regular for any purpose (583-4). (See James W. Colvile.) MUSSUMAT MITNA v. SYUD FUZL (1870) 13 M. I. A. 573 = 15 W. R. P. C. 15 = 6 B. L. R. 148=2 Suth. 387=2 Sar. 626.

## Female-Chastity of-Issue as to.

Unchastity found against-Conduct "suspicious"-Opinion as to-Propriety.

Where a lady's misconduct was in issue, the Subordinate Judge considered that it was not "legally proved," but expressed himself thus: "Although unchastity is not duly proved, yet I have no hesitation in holding that plaintiff's (lady's) "character is not free from suspicion".

Held, that an opinion of that kind was unsatisfactory. Either the allegation of unchastity was established or it was not; if the evidence was not sufficient or not reliable, there was an end of the charge so far as the particular matter in issue was concerned, and it was hardly proper to give expression to what the Judge calls "suspicion." (Mr. Ameer Ali.) KHWAJA MUHAMMAD KHAN v. HUSAINI

BEGAM. (1910) 37 I. A. 152 (158) = 32 A. 410 (412.3) = 8 M. L. T. 147 = 12 C. L. J. 205 = 14 C. W. N. 865 = 12 Bom. L. R. 638 = 7 A. L. J. 871 = 7 I. C. 237 = 20 M. L. J. 614.

Pinding adverse on, though decree itself favourable. Finding if res judicata. See C. P. C. OF 1908, S. 11 CASES UNDER FINDING-ADVERSE FINDING.

Form of-Defect in.

-Su Practice-Issue-Defect IN.

Framing of.

-Additional issue-Framing of. See PRACTICE-ISSUE-ADDITIONAL ISSUE.

-Defect in. See PRACTICE-ISSUE-DEFECT IN. -Earliest stage-Framing with precision at-Neces-

Their Lordships attempt once more to call the attention of parties in India to the importance of defining at the earliest moment and in the simplet terms the exact charac-ter and extent of the dispute which is going to be made the subject of litigation through the various courts and upon Necessity.

PRACTICE-ISSUE-(Contd.)

Framing of-(Contd.)

which this tribunal ultimately advises. (Lord Buckmaster.) BAWA MAGNIRAM SITARAM P. KASTURBHAI MANIBHAI.

(1921) 49 I. A. 54 (60) = 46 B. 481 (488-9) = 26 C. W. N. 473 = 20 A. L. J. 371 = 35 C. L. J. 421 = 24 Bom. L. R. 584 = 30 M. L. T. 268 =

(1922) M. W. N. 319 = A. I. R. 1922 P.C. 163 = 66 I. C. 162 = 42 M. L. J. 501.

-Failure, See PRACTICE -ISSUE-FAILURE TO FRAME.

-Inherent power as to-Condition.

Even had there been no such express provision in the Unde (as S. 149 of C. P. C. of 1882), their Lordships consider every Court trying civil causes has inherent jurisdiction to take cognizance of questions which cut at the root of the subject-matter of controversy between the parties (223). (Mr. Ameer Ali.) SHAMU PATTER v. ABDUL KADIR RAVUTHAN. (1912) 39 I. A. 218-35 M. 607 (612)=

14 Bom. L. R. 1034 = 16 C. W. N. 1009 = 12 M. L. T 338=(1912) M. W. N. 935= 10 A. L J. 259 = 16 C. L. J. 596 = 16 I. C. 250 = 23 M. L. J. 321.

-Necessity-Madras Regulation XV of 1816-Provitions of -Strict compliance with - Necessity.

Their Lordships entertain a very strong conviction of the absolute necessity of adhering to Madras Regulation XV of 1816, for it is, in their Lordships' judgment, of the utmost importance for preserving the regularity of the proceedings in that country and for preventing constant confusion and uncertainty as to what really are or are not the points in litigation, and to which the evidence is to be directed. They conceive that this Regulation has been most wisely framed first, in affirmatively directing that the points on which evidence is to be taken shall be distinctly set forth, and that it shall be a duty imposed on the court, if those points do not appear to be sufficient for the final termination of the litigation, that they should state distinctly, as a matter of record, the further points on which evidence is to be taken. Further, the Regulation, after having thus affirmatively stated what is to be done, goes on to state what shall not be done :- "In like manner, if proof shall be required on any other points in the course of the trial, such points shall be recorded on the proceedings, and the proper party shall be called upon for the requisite evidence, and no exhibit shall be filed or witnesses summoned, unless expressly declared to be in proof or refutation of some point upon which the Court may have directed that evidence should be taken." It is, in the opinion of their Lordships, therefore, indispensably necessary, for the purpose of supporting and securing the compliance with this most wholesome Regulation, that they should act in conformity with it. (292.4). (Dr. Lushing. 104.) MOOTTOO VIJAYA RAGANADHA GOWRY VALLA-BHA PERIA WOODIA TAVER # RANY ANGA MOOTTOO NATCHIAR. (1844) 3 M. I. A. 278=6 W. R. 50 (P C).= 1 Suth. 155=1 Sar. 280.

-Pleadings-Plea not embodied in-Issue as to-Exelution of.

It has not been the practice of their Lordships to exclude a plea, which was not embodied in the plaint, from being made an issue in the case (57). (Lord Salvesen.) SECRE-TARY OF STATE FOR INDIA IN COUNCIL P. LAXMIBAL.

(1922) 50 I. A. 49 = 47 B. 327 (334) = 17 L. W. 405 = 28 C.W. N. 49 = 32 M. L. T. 111 = 37 C. L. J. 464 = 25 Bom. L. B. 527 = A. I. R. 1923 P. C. 6= 72 I. C. 898=44 M. L. J. 471.

-Provisions of C. P. C. as to-Strict observance of-

Framing of-(Contd.)

Their Lordships are desirous to avoid saying anything which may have the effect of introducing any laxity in the Courts of India in regard to the observance of those provisions of the Code of Civil Procedure which direct the settlement of issues, provisions which their Lordships regard as most important (582). (Sir James W. Celvile.) MUSSUMAL MITNA P. SYUD FUZI. RUB.

(1870) 13 M. I. A. 573-15 W. R. P. C. 15= 6 B. L. R. 148 = 2 Suth. 387 = 2 Sar. 626.

Improper issue-Finding on-Effect of

-Acceptance and treatment of issue by parties as main issue. See C. P. C. OF 1908, S. 11-CASES UNDER IS-SUE-IMPROPER ISSUE. (1906) 33 I. A. 156 (164) = 28 A. 727 (740).

Incidental issue-Decision on

-Effect of. Sec C. P. C. OF 1908, S. 11-CASES UNDER KENT SUIT-TITLE IN.

Insolvent-Transfer by-Assignee's suit to set aside-Fraudulent transfer-Issue as to

-Voluntary transfer-Attack of transfer as a-Permissibility-Statement by assignee subsequent to issue of intention to attack transfer on that ground-Issus itself not recasted. See INSOLVENCY-ASSIGNEE IN-TRANSFER BY INSOLVENT-SUIT TO SET ASIDE-FRAUDULENT (1883) 10 I. A. 98 (105-6) = 6 A. 84 (90). TRANSFER.

## Legitimacy of plaintiff-Inheritance right based on-Issue raising.

-Illegitimacy of plaintiff-Right on foot of, if included. See PRACTICE—RELIEF—LEGITIMACY.

Marriage-Breach of promise of-Action for.

-Issue in-Form of. See MARRIAGE-BREACH OF PROMISE OF-ACTION FOR-ISSUE IN.

(1926) 50 M. L. J. 498 (500-1).

Minor-Guardian-Mortgage as proprietor by-Suit to enforce—Binding character of mortgage on minor's estate.

-Issue as to-Propriety of-Trial of-Necessity-Mortgagee insisting upon character of guardian as proprietor, See HINDU LAW-MINOR-GUARDIAN - MORT-GAGE BY-PROPRIETOR. (1856) 6 M. I. A. 393 (411).

#### Object of.

-See Practice-Issues-Pleadings-Object of. (1915) 42 I. A. 135 (152) = 39 B. 441 (468).

Parties not before Court-Issue affecting -Decision of-Propriety.

In a case in which the determination of a particular issue against the appellant would have been fatal, their Lordships, agreeing with the High Court, thought it better not to do so, because the same issue might thereafter arise for decision between different parties (195). (Lord Datey.) RAM NUNDUN SINGH P. MAHARANI JANKI KOER.

(1902) 29 I. A. 178=29 C. 828 (853)=7 C. W. N. 57= 4 Bom. L. R. 664 = 8 Sar. 351.

-See also HINDU LAW-WILL-FUTURE RIGHTS UNDER.

#### Pleadings.

-Case different from that made in-Appeal-Permissibility in-Minor-Personal liability of-Suit brought to establish-Estate of minor-Liability of-Attempt in appeal to establish. See HINDU LAW-MINOR-PERSONAL LIABILITY OF.

(1892) 19 I. A. 90 (93)=19 C. 507 (511-2).

PRACTICE-ISSUE-(Contd.)

Pleadings-(Contd.)

-Case inconsistent with, but covered by issue-Permissibility.

The respondents claiming to be the nearest relations and only heirs, according to the Mahomedan Law, of A, sued for the recovery from the appellant, his widow, of certain . properties on the ground that they were, in their entirety, the absolute self-acquired properties of A. The appellant, on the other hand, contended that A, though the ostensible purchaser and registered holder of the properties, was a mere manager and trustee for her and her family. One of the issues in the case was whether the disputed properties were the own properties of A. The trial Judge adopted the intermediate theory that the suit property was acquired from the proceeds of a trade carried on by the appellant and her husband in partnership, and that the shares of the profits in this joint concern, being undisclosed, must be assumed to have been equal.

Held that the trial Judge, in dealing with the issue set out above, might properly have adopted and acted upon that intermediate theory, though it was inconsistent with the appellant's case as it was first launched, but that there was no satisfactory evidence to establish that case (220-1). (Sir James Colvile.) MEETHUN BEBEE v. BUSHEER KHAN.

(1867) 11 M. I. A. 213=7 W. R. P. C. 27= 1 Suth. 683 = 2 Sar. 255.

Decision inconsistent with-Reversal in appeal of. It is always unsatisfactory to reverse a decree for the reason that the ground on which it rests was not that on which the parties came to issue. But it is obvious that great injustice may be done by shifting the issue in the Court of Appeal, and so deciding without due investigation. (Lord Hobhouse.) MAHOMED MEERA RAVUTHAR D. SAVVASI VIJAYA RAGHUNADHA GOPALAR.

(1899) 27 I. A. 17 (28·9)= 23 M. 227 (234-5)=4 C. W. N. 228= 2 Bom. L. R. 640 = 7 Sar 661 = 10 M. L. J. 1.

-Evidence-Decision inconsistent with-Propriety-Purdanashin-Deed by-Execution under undue influence -Finding as to. See PURDANASHIN-DEED BY-UNDUE INFLUENCE

(1898) 25 I. A. 137 (144) = 20 A. 447 (455-6) Object of -Matters in controversy-Narrowing and

making clear of.

The careful prescriptions of the Law and of the Legislature with regard to pleadings and issues are all intended to bring litigation within definite compass and to make articulate and clear the points of difference between the parties (152). (Lord Show.) BAL GANGADAR TILAK F. (1915) 42 I. A. 135= SHRINIVAS PANDIT.

39 B. 441 (468) = 17 Bom. L. B. 527= 19 C. W. N. 729 = 22 C. L. J. 1 = 13 A. L. J. 570=

18 M. L. T. 1=(1915) M. W. N. 554=2 L. W. 611= 29 I. C. 639=29 M. L. J. 34.

-Plea not raised in-Subsequent stage of suit-Main tainability in-Issues-Plea not also raised in-

Held that an objection to the plaintiff's title to the minerals in respect of the conversion of which the suit was brought which was not taken by the written statements or by the issues in the suit could not be raised at a subsequent stage of the suit. (Lord Thankerton.) ADJAI COAL CO. LTD. 2. PANNA LAL GHOSH. (1930) 34 C. W. N. 483

32 Bom. L. B. 654 = 31 L. W. 638 = 123 I. C. 726 = A. I. R. 1930 P. C. 113=58 M. L. J. 536

Point covered by-Decision on.

-Implication of. See C. P. C. OF 1908, S. 11-CASES UNDER ISSUE-POINT COVERED BY. (1866) 11 M. I. A. 50 (73)

### PRACTICE-ISSUE-(Contd.)

#### Point not covered by.

-Decision of, on evidence on record-Appellate Court -Jurisdiction. See C. P. C. OF 1908-O. 41, R. 24-ISSUES-POINT NOT COVERED BY.

(1885) 12 I. A. 166 (169-70) = 11 C. 239.

-Decision on-Effect of. See C. P. C. OF 1908-S. 11-CASES UNDER-ISSUE-(1) POINT NOT COVERED BY AND (2) PROPERTY COMPRISED, ETC.

-Declaration in decree as to-Power of Court-Beng. Regulation 26 of 1814-S. 10.

It is beyond the power of the Court to make a declaration in a decree upon a point not recorded in the issues, as required by Bengal Regulation XXVI of 1814, S. 10. (Lord Justice Turn-r.) RANEE COWULBAS KOONWAR v. BABOO LALL BAHADUR SINGH.

(1861) 9 M. I. A. 39=1 Sar. 831.

# Purdanashin ladies with different interests-Deed by-Validity-Issue single as to both

-Defences in fact separate but not kept separate-Irregularity in procedure. See PURDANASHIN-LADIES WITH DIFFERENT INTERESTS.

(1901) 28 I. A. 71 (76 7) = 28 C. 546 (553-4).

Scope of.

Wider than that of pleadings.

The issues cover a wider ground than the plaint (93). (Lord Hannen.) INDUR CHUNDER SINGH P. RADHA-KISHORE GHOSE.

(1892) 19 L. A. 90 = 19 C. 507 (512) = 6 Sar. 185. Statement by pleaders subsequent to-Alternative

case disclosed in-Raising of. -Permissibility--Issues themselves not recast so as to raise case—Effect. See INSOLVENCY-ASSIGNEE IN-TRANSFER BY INSOLVENT-SUIT TO SET ASIDE-

FRAUDULENT TRANSFER-ISSUE AS TO. (1883) 10 I. A. 98 (105-6) = 6 A. 84 (90).

# Undue influence-Issue as to.

-Appeal-Maintainability in-Forgery of deed-Plea in Court below of. See DEED-FORGERY OF-PLEA IN COURT BELOW OF. (1875) 2 I. A. 87 (107-8).

-Incapacity of executant-Issue as to-Mixing up of -Propriety. See DEED-EXECUTANT-INCAPACITY OF. (1894) 22 I. A. 4 (10) = 22 C. 324 (336).

-Points to be considered in case of. See DEED-EXECUTION OF-UNDUE INFLUENCE-ISSUE AS TO.

(1888) 15 I. A. 81 (92-3)=15 C. 684 (698-700). -Propriety-Forgery of deed-Setting aside of deed on ground of-Suit for. See DEED-FORGERY OF-SET-TING ASIDE OF DEED ON GROUND OF-SUIT FOR.

(1888) 15 I. A. 81 (86) = 15 C. 684 (692).

-Validity of deed-Issue as to, if covered. See DEED -EXECUTION OF-UNDUE INFLUENCE-PLEA OF-ISSUE AS TO, ETC. (1875) 2 L A. 87 (107).

# Unnecessary issue-Finding on .- Effect of.

Finding insisted on by parties and embodied in isone. See C. P. C. OF 1908 -S. 11-CASES UNDER-ISSUE-UNNECESSARY ISSUE.

(1924) 51 I. A. 293 (299, 303) = 51 C. 631.

PRACTICE—JUDGE—PERSONAL KNOWLEDGE

-Importing into judgment of. See JUDGE-PER-SONAL KNOWLEDGE OF.

PRACTICE - JURISDICTION - ABSENCE OF-PLEA OF.

-See JURISDICTION-PLEA OF ABSENCE OF.

PRACTICE-LIMITATION-PLEA OF.

-See LIMITATION-PLEA OF.

PRACTICE-LITIGATION.

See ALL CASES UNDER LITIGATION.

PRACTICE-LOCAL INVESTIGATION. See LOCAL INVESTIGATION.

PRACTICE-LOCAL VISIT.

Court's suggestion of Consent of counsel to Effect of-Decision based on impression formed by court from such visit and without considering evidence in the case-Legality of. See APPEAL-LOCAL VISIT.

(1907) 34 I. A. 115 (124) = 31 B. 381 (392).

# PRACTICE-NEW POINT-RAISING OF, AFTER CLOSE OF EVIDENCE

Permissibility-Point depending upon cridence.

Held that the District Judge was right in refusing to entertain, after all the evidence was closed, and when nothing but argument remained, a new question the solution of which depended upon evidence. (110-1). (Sir Arthur Wilson.) RUP NARAIN & GOPAL DEVI-

(1909) 36 L A. 103 = 36 C. 780 (795) = 10 C. L. J. 58 - 13 C. W. N. 920 = 5 M. L. T. 423 = 11 Bem. L. R. 833 = 6 A. L. J. 567 = 3 I. C. 382 = 93 P. R. 1909 = 146 P. W.R. 1909 - 68 P. L. R 1910 = 19 M. L. J. 548.

# PRACTICE-NEW TRIAL

-Exidence-Admission or rejection improper of-New trial on ground of.

The Common Law Courts in England have considered themselves compelled to grant a new trial, if any evidence had been improperly admitted or rejected at Nisi prius, however little it may weigh, because the objecting party might have tendered a bill of Exceptions, upon which the Court of Error would be bound to grant a tenire de neve; and, to save the delay and expense of such a proceeding, it has been thought more convenient that a new trial should be granted by the Court in whi h the action was originally prought. But it has been certified to us that a different rule prevails in the Supreme Court of Calcutta. The same individuals being Judges and jurymen in that Court, the proceeding would be preposterous, if, in their character of Judges, they were to grant a new trial before themselves as jurymen, by reason of the admission or rejection of evidence which they feel could not alter the verdict. They very properly follow the practice of equity Judges in England; where an issue has been granted, and an application is made for a new trial, on the ground of the improper rejection or admission of evidence, then no Bill of Exceptions lies; and although the objection is in strictness well-founded, a new trial is granted or refused, according to the importance of the evidence which has been admitted or rejected. (Lord Campbell.) EAST INDIA CO. p. ODITCHURN PAUL.

(1849) 5 M. I. A. 43 (67-8) = 7 Moo. P. C. 85 = 14 Jur. 253=1 Sar. 394.

# PRACTICE-NON SUIT-JUDGMENT OF.

-English chancery practice.

The objection to a judgment of non suit under the old chancery practice in England was this: It enabled a plaintiff, after he had dragged the defendant into court, if he found the case going against him or that he had not the requisite materials to support his claim, to elect to be nonsuited, With the result that he could bring a fresh action and so harass the defendant with further litigation. The judge at the trial was powerless; the plaintiff was dominus litis. The term "non-suit" was not known in chancery. There was no such thing as "a decree of nonsait". (Lord Macnaghten). PARSOTAM GIR v. NAR-BADA GIR. (1899) 26 I. A. 175 (182)=

21 A. 505 (513 4) = 3 C.W.N. 517 = 1 Bom. L. B. 700=7 Sar. 538.

#### PRACTICE-ONUS OF PROOF.

——Objection to. See ONUS OF PROOF—OBJECTION TO.

#### PRACTICE-OPPONENT.

-----See PRACTICE-PARTY-OPPONENT.

#### PRACTICE-ORIGINAL SIDE APPEAL

Difference of opinion equal between judges hearing
 Procedure on. See APPEAL—ORIGINAL SIDE APPEAL.

#### PRACTICE-PARTY.

#### Appearance in court of.

Indisposition in India as regards. See EVIDENCE— PARTY—APPEARANCE IN COURT OF.

#### Appearence of

What amounts to See C.P.C. of 1908—O. 17, R. 2. (1900) 28 I.A. 28 (32, 33-34) = 23 A. 220 (225-6).

#### Defendant—Examination of, before plaintiff or his witnesses.

#### Evidence adduced by—Unsatisfactory nature of-Adverse inference from.

Propriety—Onus of proof not on that party—Undertaking by him, nevertheless to adduce counter-evidence— Evidence adduced in case of. See ONUS OF PROOF— PARTY NOT SUBJECT TO, ETC.

(1838) 2 M.I.A. 113 (124-5).

# Evidence adduced on behalf of-Rejection of.

Propriety—Conditions. See EVIDENCE—PARTY— EVIDENCE ADDUCED ON BEHALF OF.

(1874) 1 I.A. 346 (360-1).

# Evidence material in possession of-Production of.

—Duty as to—Non-production trusting to abstract doctrine of onus of proof—Impropriety of. See EVIDENCE —PARTY—EVIDENCE MATERIAL IN POSSESSION OF.

## Evidence of, and of witnesses of, fatal to his case-Ignoring of.

Permissibility. See EVIDENCE - PARTY-EVI-DENCE GIVEN BY, ETC.

(1925) 53 I. A. 24 (34-5)=5 Pat. 312.

### Examination in appeal for first time of.

Propriety. See EVIDENCE—PARTY—EXAMINATION OF—APPEAL. (1872) 19 W.B. 118.

# Examination by opponent-Forcing of.

---Propriety. See EVIDENCE-PARTY-OPPONENT
--EXAMINATION BY.

#### Litigation.

----Conduct of-Delay in. See LITIGATION-DELAY IN CONDUCT OF.

Conduct bad of—Presumption adverse from—England and India—Distinction. See LITIGATION—INDIAN LITIGATION—TRUE CASE—MIXTURE OF, ETC.

(1868) 12 M.I.A. 81 (92-3).

——Disclosure of case, though honest one—Reluctance as to. Sac LITIGATION—INDIAN LITIGATION—DIS-CLOSURE OF CASE.

### (1891) 19 I.A. 9 (17)=14 A. 169 (173).

LITIGATION—INDIAN LITIGATION — EXAGGERATION AND. (1869) 12 M.I.A. 523 (544-5).

#### PRACTICE-PARTY-(Contd.)

Litigation-(Contd.)

False case—Setting up of. Su LITIGATION—

False evidence—Use of. See LITIGATION—FALSE EVIDENCE.

Inconsistency in case put forward in—Responsibility for—Presumption adverse from. See LITIGATION— INCONSISTENCY IN CASE PUT FORWARD IN.

(1929) 57 M.L.J. 565.

——Inconsistent positions in. See LITIGATION—IN-CONSISTENT POSITIONS IN.

 Irrelevant considerations—Importation of—Practice of. See LITIGATION — INDIAN LITIGATION—IRRELE-VANT CONSIDERATIONS.

(1918) 46 I.A. 97 (100) = 43 B. 778 (789).

——True case—False evidence to support—Use of— Practice—Decision of case not to be affected by. Sre EVI-DENCE—FALSE EVIDENCE—TRUE CASE.

——True case—Mixture of falsehood with—Adverse inference from—Propriety of. See LITIGATION—INDIAN LITIGATION—TRUE CASE—MIXTURE OF, ETC.

(1868) 12 M.I.A 81 (92-3)

True case—Placing of, on false grounds—Practice of—Relief on foot of real title—Grant of—Necessity. Sat LITIGATION — INDIAN LITIGATION — TRUE CASE—PLACING OF, ETC. (1867) 11 M.I.A. 517 (5456).

#### Non appearance of—Judgment for opponent on ground of.

-Propriety. See Practice-Procedure-Party
-Non-appearance of.

(1839) 2 M.I.A. 181 (222).

#### Non-examination as witness of.

Onus of proof on—Failure to discharge—Decision in his favour on strength of evidence of opponent.

Propriety. See ONUS OF PROOF. (1920) 25 C.W,N. 409 (414).

#### Opponent.

--- Case made by-Contradiction of-Witness called capable of-Examination in chief of-Duty to obtain contradiction in-Failure-Duty of opponent to rain question by cross-examination of witness-Omission to do to-Adverse inference from-Propriety.

Where a party desires to contradict the case set up by his opponent and calls a witness who is in a position to contradict it, he is under a duty to obtain the contradiction from the witness in his examination-in-chief. If he fails to do so, the advocate for his opponent cannot be expected to raise the question by cross-examination of the witness, and no adverse inference can legitimately be drawn from that advocate's omission to do so. (Lord Atkin). BHAI PANNA SINGH 7: FIRM BHAI ARJAN SINGH, ETC.

(1929) 27 A.L.J. 791 = 33 C.W.N. 940 = 31 Bom. L.R. 909 = 6 O.W.N. 617 =

(1929) M.W.N. 558=117 I.C. 485=30 L.W. 281= A.I.R. 1929 P.C. 179=57 M.L.J. 323.

Document put in by—Evidence against party himself if and when becomes—Cross-examination by him with reference to that document—Argument founded by him upon it—Effect. See EVIDENCE—DOCUMENT—PLAIN-TIFF—DOCUMENT PUT IN BY.

(1927) 52 I.A. 372 (376-7)

# PRACTICE-PARTY-(Contd.)

Opponent-(Contd.)

— Svidence of — Decree to party on foot of — Propriety — Party himself subject to onus of proof but failing to discharge same. See ONUS OF PROOF.

(1920) 25 C.W.N. 409 (414).

Evidence of Reliance on, in support of his own case. See EVIDENCE—DEFENDANT—EVIDENCE OF.

(1864) 10 M.I.A. 152 (161).

Examination by—Forcing of — Practice of—Propriety. See EVIDENCE—PARTY—OPPONENT—EXAMI-NATION BY.

Failure of opposing case of—Party's own case if can be held proved by reason of. See EVIDENCE—DEFENDANT —OPPOSING CASE OF, ETC.

(1864) 10 M. I. A. 151 (166).

——Failure of opposing case of—Presumption in favour of party's case from. See HINDU LAW—WILL—EXECU-TION OF—PROOF OF—FORGERY.

(1868) 12 M.I.A. 81 (105-6).

——Failure of opposing case of—Support to party's own case from. See LITIGATION—OPPONENT—OPPOSING CASE OF. (1868) 12 M.I.A. 81 (102).

Suit-Party to.

See SUIT-PARTY TO.

### PRACTICE-PARTIES.

(For Privy Council—Appeal—Parties See UNDER THAT HEAD).

Accounts—Suit for—Deceased Hindu—Liability of.
—Suit against his divided sons to enforce—Will by deceased—Residuary legatee and executor under, if necessary parties to suit. See Accounts—Suit For—Parties—Hindu deceased.

(1343) 3 M.I.A. 175 (197).

### Act of state-Validity of-Suit questioning.

Government if necessary party to. See ACT OF STATE—SUIT QUESTIONING VALIDITY OF.

(1867) 11 M.I.A. 517 (550).

### Addition or substitution of-Order for-Propriety.

- Defect in suit by reason of change or devolution of

interest pending in-Order proper in case of.

This proper remedy in cases in which a suit which was originally properly constituted as to parties has become defective because there has been a change or devolution of interest is by way of an order to carry on proceedings, and not of an order adding or substituting parties.

Where, therefore, in a case of change or devolution of interest in a suit-which was originally properly constituted as to parties, an order was made substituting the new party instead of one to carry on proceedings, held that the form of the order was wrong (121-2). (Lord Parker). MEYAP-PA CHETTY v. SUBRAHMANIAN CHETTY.

(1916) 43 I. A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N. 455 = 18 Bom. L. B. 642 = 35 I. C. 323.

### Benamidar.

Hypothecation of property held by—Suit on, against benamidar and real owner—Maintainability—Hypothecation induced by real owner. See BENAMI—BENAMIDAR—HYPOTHECATION OF PROPERTY HELD BY.

(1893) 20 I. A. 108 (110-1) = 15 A. 304.

Mortgage by real owner—Suit to enforce—Benamidar if a necessary party to. See MORTGAGE—SUIT TO ENFORCE—PARTIES—REAL OWNER ALLEGED.

(1852) 5 M. I. A. 271 (277).

### PRACTICE-PARTIES-(Contd.)

Benamidar -(Contd.)

—Suit by—Real owner if necessary party to. See BENAMI-BENAMIDAR—SUIT BY—RIGHT OF.

(1916) 46 I. A. 1 (9-10) = 46 C. 566 (574-5).

### Co-heirs-Transfer illegal by one of.

——Suit by other heir to recover property transferred— Transferor if necessary party to. See CO-HEIRS—TRANS-FER ILLEGAL BY ONE OF. (1869) 12 M.I. A. 507 (522).

# Company—Directors of—Amounts improperly received by.

——Suit by shareholders for recovery from them of— Parties—Company if necessary party. See COMPANY— DIRECTORS OF—AMOUNTS IMPROPERLY RECEIVED BY. (1922) 32 M. L. T. 196 (204.5) (P. C.)

### Co-plaintiff-Person who ought to be a.

— Joinder as defendant of—Sufficiency of, See PRACTICE—PARTIES—PLAINTIFF—PERSON WHO IS UNWILLING OR UNABLE TO JOIN AS A.

### Debt-Suit to recover.

Transferees of properties of debtor if proper parties
 fo. See DEBTOR—MONEY. BOND BY—SUIT UPON.

(1867) 11 M. I. A. 468 (472-3).

#### Defendant.

— Addition of — What amounts to. See LIMITATION ACT OF 1908—S. 22—DEFENDANT—NEW DEFENDANT. (1909) 37 L. A. 27 (37-8) = 37 C. 229 (234).

### Discovery only-Joinder for purposes of.

-Propriety.

Where a person was made a party-defendant to a suit, expressly, as the order termed it, for the purpose of discovery only, but he was not treated as a party, held that the proceeding was very irregular. (Lord Hobbour). RAHIMBOY HUBIBBOY P. TURNER. (1892) 20 I. A. 1 = 17 B. 341 (348) = 6 Sar. 256.

#### Disqualified proprietor—Debt of—Suit for—Party defendant in.

——Court of Wards—Guardian appointed for proprietor.

See OUDH ACTS—LAND REVENUE ACT, 17 OF 1876—
SS. 175, 176. (1895) 22 I. A. 90=22 C. 729.

# Guardian—Suit against—Capacity in—Individual capacity or capacity of guardian.

"' N. C. guardian. on behalf of her own minor son, S.C."—Suit against.—See HINDU LAW—MINOR—GUAR-DIAN OF—SUIT BY OR AGAINST.

(1888) 15 I. A. 195 (206-7) = 16 C. 40 (60).

against. See HINDU LAW-MINOR-GUARDIAN OF-SUIT BY OR AGAINST. (1892) 20 I. A. 25 (27.8) =

# Hindu deceased—Liability of—Suit against his divided sons to enforce.

Residuary legatee and executor under will of deceased if and when necessary parties to. See ACCOUNTS—SUIT FOR—PARTIES. (1843) 3 M. I. A. 175 (197).

# Hindu joint family-Manager of.

— Contract in sole name of — Suit in regard to — Junior members if necessary parties to. See HINDU LAW — JOINT FAMILY — BUSINESS OF — MANAGER OF FAMILY.

(1911) 38 I. A. 45 = 33 A. 272,

Suit against—Capacity in—Individual capacity or capacity of manager. See H1NDU LAW—JOINT FAMILY—MANAGER—SUIT AGAINST—CAPACITY IN.

(1879) 6 I. A. 233 (236-7).

#### PRACTICE-PARTIES-(Contd.)

### Hindu Law-Religious Endowment.

——Family endowment—Joint shehalts of—Suit by some of—Dismissal of, on ground of non-joinder—Propriety. See Hindu Law—Religious Endowment—Family Endowment—Joint Sheralts of.

(1881) 8 I. A. 135 (141) = 8 C. 42 (48-9).

Family Endowment—Joint Shebaits of—Suit by some of—Other Shebaits if also parties to—Suit not purporting to be on their behalf also. See HINDU LAW—RELIGIOUS ENDOWMENT—FAMILY ENDOWMENT—JOINT SHEBAITS OF. (1881) 8 I. A. 135 (140) = 8 C. 42 (47-8).

——Idol—Family idol—Suit on behalf of—Suit between members of family as shebaits—Test—Cause—Title in plaint—Insufficiency of. See C. P. C. OF 1908—S. 11— CASES UNDER—REAL PARTY—PLAINTIFF IN SUIT.

(1927) 54 I. A. 238 (245-6) = 54 C. 770.

Temple—Trustee—Suit brought on behalf of temple by—Compromise improper of—Addition of beneficiaries to protect interests of trust—Propriety. See HINDU LAW— RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF— SUIT BY—COMPROMISE IMPROPER OF.

(1908) 35 I. A. 176 - 31 M. 236

#### Hindu law-Reversioner.

Presumptive reversioner—Alienation or adoption by widow—Suit to set aside—Death of plaintiff pending—Next reversioner's right to continue suit. Sw. HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—NATURE OF. (1915) 42 I. A. 125 (129-30) = 38 M. 406 (411-2).

— Presumptive reversioner—Alienation or adption by widow—Suit to set aside—Remote reversioner's right to be impleaded in, or to obtain conduct of. See HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—REMOTE REVERSIONER. (1915) 42 I. A. 125 (132) = 38 M. 406 (4134).

Remote reversioner—Adoption by widow—Suit to set aside—Impleading of nearer reversioners in—Propriety.

See HINDU LAW—REVERSIONER—REMOTE REVERSIONER—WIDOW—ADOPTION BY—SUIT TO SET ASIDE—ALLOWING OF.

(1880) 8 I. A. 14 (23) = 6 C. 764 (773).

— Widow's death—Possession of last male owner's property on—Suit against alience from widow for—Sons undivided of alience if necessary parties to. See HINDU LAW—REVERSIONER — WIDOW — DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR—ALIENCE FROM WIDOW. (1914) 42 I. A. 64 (68) = 42 C. 876 (884)

—Widow's death—Possession of last male owner's property on—Suit for—Members of family not entitled as reversioners if proper plaintiffs in. See HINDU LAW—REVERSIONER—WIDOW—DEATH OF—POSSESSION OF LAST MALE OWNER'S PROPERTY ON—SUIT FOR—PARTIES—PLAINTIFFS IN. (1918) 9 L. W. 416 (418).

# Joinder of-Rule as to.

---The general rule is that all the parties interested in the subject-matter of a suit should be joined in it (142). (Sir Richard Couch). RAJENDRONATH DUTT 2. SHEIKH MAHOMMED LAL. (1881) 8 I. A. 135 = 8 C. 42 (50) = 4 Sar. 254. PRACTICE-PARTIES-(Contd.)

Lakhiraj lands—Resumption by Government of alleged—Proceedings for.

—Party to—Claimant to portion of lands by adverse title if a proper. See BENGAL REGULATIONS—LAND REVENUE ASSESSMENT (RESUMED LANDS) REGULATION III OF 1828—LAKHIRAJ LANDS.

(1859) 7 M. I. A. 283 (300).

# Lessee-Rights of-Challenge of-Proceedings for.

----Parties to-Lessor and lessee if necessary. Sur LEASE-LESSEE-RIGHTS OF-CHALLENCE OF.

(1922) 31 M. L. T. 289 (298-9).

—Madras Land Revenue Assessment Act I of 1876. Separate registration and sub-assessment—Collector's order for—Government's order cancelling—Suit for declaration of invalidity of—Parties to. See Madras Acts—Land Revenue Assessment Act of 1876—Separate registration and sub-assessment—Collector's order for—Government order cancelling.

(1898) 26 I. A. 16 (29)=22 M. 270 (283).

# Mesne Profits-Assessment of-Proceedings for.

----Parties to, See MESNE PROFITS—ASSESSMENT OF-PROCEEDINGS FOR-PARTIES TO.

#### Misjoinder of.

#### Money bond-Suit upon.

Parties to—Transferees of properties of debtor if proper. See DEBTOR AND CREDITOR—DEBTOR—MONEY BOND By. (1867) 11 M. I. A. 468 (472-3).

#### Mortgage.

—Mortgaged property—Purchase by mortgagee of, in execution of third party's decree—Mortgagor's suit to set aside—Third party decree-holder if necessary party to. Su MORTGAGE—MORTGAGED PROPERTY—MORTGAGEE'S PURCHASE AT—DECREE OBTAINED BY THIRD PARTY.

(1900) 27 I. A. 216 (227-8) = 25 B. 337 (351-2)

——Suit to enforce—Real owner—Mortgage by—Suit on —Benamidar if necessary party to. Sα MORTGAGE— SUIT TO ENFORCE—PARTIES—REAL OWNER ALLEGED. (1852) 5 M. I. A. 271 (277).

#### Non-joinder of.

#### DISMISSAL OF SUIT FOR-PROPRIETY.

Defendant—Non-joinder of a—Dismissal of suit against original defendant on ground of Joinder of that defendant in appeal and remand of case—Objection to remand order by original defendant—Maintainability,

The Court of First instance dismissed a suit on the ground of the non-joinder of N as a defendant. On appeal the High Court directed N to be added as a defendant, which was accordingly done, and remanded the suit for the trial of issues which had not been disposed of by the Court of First Instance. On further appeal by the original defendant to the Privy Council, held that the suit was not bad for non-joinder as against the original defendant (appellant before the Privy Council) and that the order of remand was not bad in law by reason of the fact that N was aided as a defendant when the suit was in appeal before the High Court.

N was not at any time a necessary party to the suit so far as the appellant is concerned, nor has he been prejudiced by the fact that N was added as a defendant when the suit was in appeal. (Sir John Edge.) ANANDA GOPAL v. NAFAR CHANDRA PAL. (1913) 18 C. W. N. 259 = 21 I. C. 928 = 26 M. L. J. 86.

### PRACTICE-PARTIES-(Contd.)

Non-joinder of-(Contd.)

DISMISSAL OF SUIT FOR-PROPRIETY-(Cont.)

Religious Endowment-Family Endowment-Joint Shebaits of-Suit by some only of-Dismissal of, for nonjoinder, See HINDU LAW-RELIGIOUS-ENDOWMENT-SHEBAIT OF-FAMILY ENDOWMENT-JOINT SHEBAITS (1881) 8 I. A. 135 (140) - 8 C. 42 (47-8.)

#### OBJECTION TO-APPEAL.

-Maintainability for first time in

No objection was made in either of the courts below that the proper parties were not before the Court; if such an objection had been made, it might have been removed. The objection cannot, therefore, be allowed to be taken now (242.) (Lord Campbell.) DHURM DAS PANDEY ... MUSSUMAT SHAMA SOONDARI DEBELAH.

> (1843) 3 M. I. A. 229 = 6 W. R. 43 P. C. 1 Suth. 147 = 1 Sar. 271.

# Party already on record-Addition of-Order for.

-Effect of-Party if becomes a newly added party by reason of. See LIMITATION ACT OF 1908-S. 22-PLAINTIFF. (1889) 17 C. 580.

#### Plaintiff.

ADDITION OF PERSON AS A-PERSON ALREADY A CO-PLMNTIFF.

-Order erroneous for addition of-Effect-Person if becomes a plaintiff only from date of such order. So LIMITATION ACT OF 1908-S. 22-PLAINTIFF.

(1889) 17 C. 580.

#### ORIGINAL OR ADDED PARTY.

-Person already a co-plaintiff-Order exponeous for addition of-Effect. See LIMITATION ACT OF 1908-S. 22-PLAINTIFF. (1889) 17 C. 580.

PERSON UNWILLING TO JOIN AS A-JOINDER AS DEFENDANT OF.

-Necessity.

A person who does not consent to become a co-plaintiff, may be made a defendant (139.) (Sir Richard Couch.) RAJENDRONATH DUTT v. SHAIK MAHOMED LAL.

(1881) 8 I. A. 135 - 8 C. 42 (47) - 4 Sar. 254.

Sufficiency of.

The only way in which a person who is unwilling or unable to be joined as plaintiff can be brought before the Court is by joining him as a defendant (267.) (Sir James W. Colvile.) MUSSUMAT PHOOLBAS KOONWAR P. LALLA JOGESHUR SAHOY. (1876) 3 I. A. 7=1 C. 226 (244)= 25 W. R. 285=3 Sar. 573=3 Suth. 236

The proposition is that if a person is made a defendant because he is unwilling to act together with the plaintiff he is to be deemed to be acting together with the plaintiff when once he is placed on the record as defendant. It is enough to state the proposition to dispose of it (5.) (Lord Macnaghten.) JATINDRA NATH CHOWDHRI P. PRASANNA KUMAR BANERJEE.

(1910) 38 I. A. 1 = 38 C. 270 (276-7) = 13 C. L. J. 51 = 16 C. W. N. 74=9 M.L.T. 1=(1911) 2 M. W. N. 119= 13 Bom. L. R. 1=8 A. L. J. 1=8 I. C. 842=

21 M. L. J. 92

REAL PLAINTIFF-MODE OF FINDING OUT.

Cause-title in plaint not enough-Allegations in plaint to be looked into. See C. P. C. OF 1908-S. 11-CASES UNDER-REAL PARTY-PLAINTIFF.

(1927) 54 I. A. 238 (245-6) = 54 C. 770.

### PRACTICE-PARTIES-(Contd.)

### Plaintiff-appellant-Death of-Substitution of defendant as his L. R.

-teregularity-Recersal of decree at instance of L. R. on ground of Substitution on his own application.

Suit No. 316 was instituted on behalf of B, a minor, by his natural father, as his next friend, for a declaration that he was the validly adopted son of one K, having been adopted by the appellant, A's widow, under an authority to adopt executed by him in her favour. The appellant was a defendant in the suit, and she was a substantial defendant, The first court found against the authority to adopt set up by B, decided against his title, and dismissed his suit. Against that decree B preferred an appeal and died pending the appeal. The appellant (being, on the assumption of B's adoption being valid, his heiress-at-law) was, on her own application, substituted for R as appellant, notwithstanding her character as defendant in the suit. The appellate court concurred in the findings of the lower court, and dismissed the appeal.

On appeal to the Privy Council from the decree of the appellate court, the appellant contended that her substitution for R made by the appellate court, which made her both plaintiff and defendant in the suit, was grossly irregular, and that its decree ought to be reversed on that ground.

Held that, assuming that the substitution of the appellant was grossly irregular, it was an irregularity of her own seeking, and, having sought to contest the correctness of the decree below unsuccessfully, she could not get rid of the decree in appeal on the ground of such irregularity (302.) (Lord Kingedown.) MUSSUMAT ANUNDMOYEE CHOW-THOORAVAN D. SHEER CHUNDER ROY.

(1862) 9 M. I. A. 287 = 2 W. R. P. C. 19 = Marsh. 455 = 1 Suth. 485 = 1 Sar. 854.

#### Principal and Agent.

-Agent-Contract in his own name by-Specific per formance of-Suit for-Defendant in-Agent if only a nominal. See PRINCIPAL AND AGENT-AGENT-CON-TRACT BY-OWN NAME-CONTRACTS IN AGENT'S.

(1907) 17 M. L. J. 454 (461-2).

-Principal-Money suit against-Agents of principal -luinder as defendants of-Propriety. See PRINCIPAL AND AGENT-PRINCIPAL-MONEY SUIT AGAINST

(1879) 7 I. A. 8 (9)

#### Real party-Mode of finding out.

Cause-title in plaint not enough. See C. P. C. OF 1908-S. II-CASES UNDER-REAL PARTY.

(1927) 54 I. A. 238 (245-6) = 54 C. 770.

#### Rent-Suit in respect of-Co-sharer landlords.

——Soit by one or some of, See LANDLORD AND TENANT—CO-SHARER LANDLORDS.

#### Representation in suit.

-Substantial, though not formal, representation-What amounts to-Effect. See C. P. C. OF 1908-S. 11 -PARTY TO SUIT-PERSON SUBSTANTIALLY, ETC.

#### Bevenue Sale under Bengal Act XI of 1859-Suit by defaulter to set aside-Parties to.

Secretary of State if one. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859-S. 33-SUIT BY DE-FAULTER TO SET ASIDE SALE-PARTIES.

(1898) 25 I. A. 151 (160, = 25 C. 833 (843.4.)

-Surplus proceeds of sale-Execution purchaser of defaulter's interest it-If necessary party. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859-S. 33-SUIT BY DEFAULTER TO SET ASIDE SALE-PARTIES.

(1875) 2 I. A. 131 (141)

#### PRACTICE PARTIES-(Contd.)

#### Specific Performance-Suit for.

- Parties to. See SPECIFIC PERFORMANCE-SUIT FOR-PARTIES TO.

#### Suit.

--- Change or devolution of interest pending-Procedure proper in case of-Substitution of parties-Order for-Propriety. See PRACTICE-PARTIES-ADDITION OR SUB-STITUTION OF. (1916) 43 I A 113 (121-2.)

-Party to. See SUIT-PARTY TO.

-Substitution at one stage of -Sufficiency of for all stages.

The introduction of a plaintiff or a defendant for one stage of a suit is an introduction for all stages.

Where in a case in which a suit in a District Court was delayed pending the disposal by the Chief Court of an appeal against an interhentory order passed in such suit, selectiontion of parties was effected only in the Chief Court in such appeal and not in the District Court, held that it was unnecessary to apply to substitute parties in the District Court. (Lord Dunedia.) Butt INDAR SINGH & KANSHI DAM, (1917) 44 I. A. 218 (228) = 45 C. 94 = 26 C. L. J. 579 = 22 C. W N. 169 = 19 Rom L. R. 846 =

126 P. W. R. 1917 = 104 P. R. 1917 = 3 Pat L. W. 313 - 92 M. L. T. 362 - 6 L. W. 392 -15 A. L. J. 777 - 42 I. C. 43 = 33 M. L. J. 486

Trustee-Suit by-Compromise improper of.

-Addition of beneficiaries to protect interests of trust -Propriety of. See HINDU LAW-RELIGIOUS ENDOW-MENT-TEMPLE-SHEBAIT-SUIT BY-COMPROMISE IMPRORER OF. (1908) 35 I. A. 176-31 M. 236.

Zemindar-Minerals-Right to-Suit to establish. -Parties to-Government if one. See MINERALS-ZEMINDAR-MINERALS-RIGHT TO-SUIT TO ESTAB-

# PRACTICE-PARTIES NOT BEFORE COURT-DECISION AFFECTING-PROPRIETY.

-See HINDU LAW-WILL (1) FUTURE RIGHTS AND (2) PARTIES NOT BEFORE COURT.

-See MAHOMEDAN LAW-RELIGIOUS ENDOW-MENT-DEDICATION-EXTENT OF.

(1887) 15 I. A. 1 (9)=15 C. 329 (340)

-See PRACTICE-ISSUES-PARTIFS NOT BEFORE COURT-ISSUE AFFECTING. (1902) 29 I. A. 178 (195)= 29 C. 828 (853).

#### PRACTICE-PLAINT.

# Allegations in

-Truth of-Assumption of-Necessity-Demurrer-Defence plea of. See PRACTICE-DEMURRER-PLEA OF. -Will-Trustee's under-Heir-at-law's suit against-Performance of trust by trustees-Allegations inconsistent with-What amount to. See DECEASED-WILL OF-TRUSTEES UNDER-HEIR AT-LAW'S SUIT AGAINST-TRUST. (1872) Sup. I. A. 47 (83).

### Amendment of.

-See PRACTICE-PLEADINGS-AMENDMENT OF. Cause of action if disclosed by—Question as to.

-Points to be considered in case of. See C. P. C. OF 1908-OR. 7, R. 11 (A). (1879) 6 I. A. 120 (121)= 2 M. 62 (63).

# Cause of action not disclosed by.

-Portion of claim-Cause of action not disclosed as to-Rejection of entire plaint in case of-Propriety. See C. P. C. OF 1908-OR. 7, R. 11 (A)-PLAINT NOT DISCLOS-

#### PRACTICE-PLAINT-(Contd.)

# Cause of action not disclosed by-(Contd.)

-Procedure on -- Dismissal of suit-Objection to, in Privy Council appeal-When not given effect to. See C. P. C. OF 1908-OR. 6, R. 17; OR. 7, R. 11.

(1888) 15 I. A. 119 (127)=15 C. 533 (538.)

-Procedure proper on -Amendment of plaint-Rejection of it-Dismissal of suit. See C. P. C. OF 1908-0. 6. R. 17; OR. 7, R. 11 (A). (1888) 15 I. A 119 (122)= 15 C. 533 (537-8).

-Rejection of plaint on ground of-Effect of. See C. P. C. OF 1908—OR. 7, R. 11 (A)—REJECTION OF (1879) 6 I. A. 120 (121) = 2 M. 62 (63) PLAINT, ETC.

-Rejection of plaint on ground of-Fresh suit in respect of same cause of action-Maintainability. See C. P. C. OF 1908-OR. 7, R. 11 (A) AND R. 13.

(1888) 15 I. A. 119 (122) = 15 C. 533 (537-8).

#### Cause-Title of.

-Conclusive as to real parties to suit if. See C. P. C. OF 1908-S. 11-CASES UNDER-REAL PARTY. (1927) 54 I. A. 238 (245.6) = 54 C. 770.

### Description of defendant in.

-See C. P. C. OF 1908-OR. 7, R. 1 (c); R. 11.

#### Description of property sued for.

-Body of plaint and schedule to it-Descriptions in-Conflict between-Decree for property in case of-Property passing under. See DECREE-PROPERTY SUED FOR. (1880) 7 C. L. B. 404.

### Document not filed with or mentioned in.

See C.P. C. OF 1908-OR. 7, R. 14 (1); R. 14 (2); R. 18,

# Information and belief—Averment upon.

-Sufficiency of, as to a fact. See C. P. C. OF 1908-OR. 6, R. 15. (1872) Sup. I. A. 47 (83).

### Limitation - Exemption from law of.

-Grounds of-Statement as to-Necessity. See C. P. C. OF 1908-OR. 7, R. 6 AND LIMITATION-EXEMP-TION FROM.

#### Presentation of-Date of.

Deficient court fee-Original presentation with-Deficiency subsequently made up-Effect. See C. P. C. OF 1908-S. 149.

### Real plaintiff-Mode of finding out.

Cause-title in plaint not enough. See C. P. C. OF 1908-S. 11-CASES UNDER-REAL PARTY. (1927) 54 I. A. 238 (245-6) = 54 C. 770.

### Relief prayed for in-Nature of.

-Decree passed in suit of affects. See MORTGAGE -INTEREST-ARREARS OF-SUIT FOR. (1922) 50 I. A. 115 (120)=4 Lah. 32

#### Signing and Verification of.

-See Pleadings-Signature of parties in. PRACTICE-PLEA.

Act of State-Plea of. -Maintainability-Plea not raised in first instance, but distinctly raised befor judgment and made subject of an issue. See ACT OF STATE-PLEA OF-MAINTAINABILI-(1874) 2 L. A. 38 (41). TY.

Necessity for specific. See CESSION OF TERRITORY -INHABITANTS OF-SUIT AGAINST NEW SOVEREIGN ING, ETC. ....(1879) 6 I. A. 120(124) = 2 M. 62 (66). By, ETC. ......(1924) 51 I. A. 357 (361) = 48 B. 613.

#### PRACTICE-PLEA-(Contd.)

#### Benami.

Benamidar-Purchaser from -Real owner's suit to recover property from-Title of benamidar-Inquity into-Necessity-Plea by real owner of-Nature of inquiry to be made-Allegation as to-Necessity. See BENAMI-BE-NAMIDAR-SALE BY- REAL OWNER.

(1872) Sup. I. A. 40 (445) on p. 158.

Benamidar-Purchaser from-Suit by real owner's heirs to recover property from-Estoppel by misrepresentations of real owner-Plea specific of, in defence-Necessity -Plea that benamidar was real owner--Proof of estoppel under-Permissibility. See EVIDENCE ACT-S. 115-PLEA OF ESTOPPEL UNDER-SPECIFIC PLEA.

(1873) 19 W. R. 292.

-Fraudulent transfer-Pleas of-Distinction-Test. See BENAMI-FRAUDULENT TRANSFER-DISTINCTION. (1916) 44 I. A. 72 (76-7) = 44 C. 662 (670-1).

-Plea of, against creditors of ostensible owner -- Proof of, necessary. See BENAMI-OSTENSIBLE OWNER.

(1870) 13 M. I. A. 395 (402-3).

#### Champerty and Maintenance.

-Plea of-Appeal-Maintainability for first time in-See CHAMPERTY AND MAINTENANCE-PLEA OF-APPEAL. (1860) 8 M. I. A. 170.

#### Confession and avoidance-Argumentative traverse -Pleas of.

-Distinction-Rename purchase-Suit based upon -Denial by defendant-Issue in case of Form proper of.

Plaintiff sued for the recovery of certain property on the allegation that though the property was purchased by A, his adoptive mother, benami in the name of B, yet that she purchased it out of her own separate income so as to make it her property and that plaintiff, as her heir, was on her death entitled to the property. The defendant denied that the purchase was made with the money of A, and averred that the property was purchased with the money of B. the

person in whose name the purchase stood."

The issue framed with reference to these contentions was "whether A was entitled to, and in possession of, all the contested properties by acquiring them benami in the name of B as alleged by the plaintiff, or whether they were purchased by B with his own money as alleged by the defendant. Held, that the issue was, in substance whether the plaintiff's story, stated in his plaint, was true, or whether the defendant's story, stated in his answer, true; and that, if neither of the stories was true, the really material alternative of the issue was its first part, whether the plaintiff's story was

It is not as if the defendant's defence was a plea in confersion and avoidance, a plea which admitted that the plaintiff's story was true, and then avoided it. If that had been the case, and the defendant had failed to prove his case, of course the defendant must have failed and the plaintiff ought to recover. But it is substantially what at Common Law is called an argumentative traverse of the truth of the plaintiff's story, for it does not admit that one word of it is true, but sets up certain things perfectly inconsistent with it. The real truth is that the second alternative of the issue ought to be rejected, and the real question is whether A was at the time of her death entitled to and in possession of all the contested properties by acquiring them benomi in the name of B as alleged by the plaintiff. If the plaintiff fails to prove the affirmative of this issue, plaintiff must fail, and it is perfectly immaterial whether defendant proves his case or not (307.8), RAJA CHANDRANATH ROY P. RAMAJAI MAZUMDAR . (1870) 6 B. L. B. 303 = 15 W. B. 7 = 2 Sar 613

### PRACTICE-PLEA-(Contd.)

### Contract -Setting aside of-Grounds.

-Coercion, Undue influence, Fraud, Misrepresentation -Mixing up of-Pern-issibility. See CONTRACT-SETTING ASIDE OF-GROUNDS-COERCION, ETC.

(1915) 42 I. A. 135 (151) = 39 B. 441 (467).

#### Deed.

Forgry of -Depoil probatio-Pleas of-Distinction -Sufficiency of latter plea. See DEED-FORGERY OF -DEFICIT PROBATIO-PLEAS OF.

(1858) 7 M. I. A. 148 (155)

-Forgery of-Plea in Court below of-Appeal-Plea in, of execution under undue influence-Permissibility of See DEED-FORGERY OF-PLEA IN COURT BELOW OF (1875) 2 I. A. 87 (107-8)

-Undue influence-Execution under-Plea of-Issue as to validity of deed if covers. See DEED-EXECUTION OF-UNDUE INFLUENCE-PLEA OF-ISSUE AS TO VALI-DITY OF DEED IF COVERS. (1875) 2 I. A. 87 (107).

#### Demurrer.

-Plea of. See PRACTICE-DEMURRER-PLEA OF.

#### Estoppel.

-Plea of. See EVIDENCE ACT-S, 115-PLEA OF ESTOPPEL UNDER.

### Forgery-Plea in defence of.

-Particulars of, disclosed only after close of plaintiff's case and at examination of defence witnesses-Weight to be attached to plea in case of. See PRACTICE-FRAUD-(1926) 97 I. C. 543. PLEA OF-DEFENCE PLEA.

#### Fraud.

-Plea of. See PRACTICE-FRAUD.

#### Fraudulent benami.

-Plea of-Maintainability. See BENAMI-FRAUDU-LENT BENAMI-PLEA OF.

# Hindu Law-Adoption-Shastras-Adoption if according to-Issue as to.

-Consent of particular person-Invalidity of adoption for want of-Plea of, if included. See HINDU LAW-ADOPTION-VALIDITY OF-ISSUE AS TO-SCOPE OF. (1877) 14 M. I. A. 67 (70-1).

#### Hindu joint family-Manager of-Mortgage by-Interest provided by-Rate of-Necessity for-Absence of-Plea of.

-What amounts to. See HINDU LAW-JOINT FAMILY-MANAGER-MORTGAGE BY-INTEREST PRO-VIDED BY-RATE OF-NECESSITY FOR-ABSENCE OF.

#### Hindu widow-Mortgage by-Interest provided by-Bate of-Necessity for-Absence of-Plea of.

What amounts to See HINDU LAW-JOINT FAMILY-MANAGER-MORTGAGE BY-INTEREST PRO-VIDED BY-RATE OF-NECESSITY FOR-ABSENCE OF.

#### Jurisdiction.

-Abatement to-Bar of-Pleas in-Distinction. See JURISDICTION-ABATEMENT TO.

(1849-50) 4 M. I. A. 353 (375).

-Absence of-Plea of-Appeal-Maintainability for first time in. See JURISDICTION-PLEA OF ABSENCE OF. -Plea of-Scope of-One reason assigned for plea-Other reasons in support of it-Consideration of-Propriety of-Duty of Court. See JURISDICTION-PLFA OF 2 Ear. 613. LABSENCE OF-SCOPE OF. (1856) 6 M. I. A. 348 (886). PRACTICE-PLEA-(Contd.)

Legal practitioner eminent-Plea not taken in number of cases by.

-Soundness of-Presumption as to. See LEGAL PRACTITIONER-EMINENT COUNSEL

(1923) 51 I. A. 129 (138) = 46 A. 95.

#### Limitation.

-Plea of. So LIMITATION.

### Minor - Guardian - Mortgage by.

Binding character against minor of-Issue raising question of-Issue whether minor is bound to pay off the debt if an. See HINDU LAW-MINOR-GUARDIAN OF-MORTGAGE BY-BINDING CHARACTER, ETC.

(1884) 12 I. A. 47 (50) = 11 C. 379 (384-5).

-Interest at rate provided for by-Necessity for-Plea of absence of, as distinguished from necessity for principal -- Absence of specific - When not material. See HINDU LAW-MINDE-GUARDIAN OF-MORTGAGE BY-INTE-REST AT RATE, ETC. (1884) 12 I. A. 47 (50-1)= 11 C. 379 (385).

# Onus of Proof-Error as to.

-Plea as to. See ONUS OF PROOF-QUESTION AS TO.

# Pleadings—Issues—Plea not raised in.

-Subsequent stage of suit-Maintainability in. See PRACTICE-ISSUES-PLEADINGS-PLEA NOT RAISED IN -SUBSEQUENT STAGE OF SUIT.

(1930) 58 M. L. J. 536.

# Purchase for Value without notice-Plea of.

-What amounts to. See LIMITATION ACT OF 1859-S. 5-PURCHASE FOR VALUE WITHOUT NOTICE-PLFA ŌF. (1871) 14 M. I. A. 1 (17).

# Res Extra Commercium-Plea in defence of.

-Maintainability-Religious Endowment - Idol-Jewels devoted to-Assignee from trustees of-Suit by, to recover jewels from third parties—Defence plea in Scr HINDU LAW RELIGIOUS ENDOWMENT - IDOL ENDOWMENT -- IDOL-JEWELS DEVOTED TO. (1876) 4 I. A. 76 (79)=

1 M. 235 (246).

Technical plea.

CAL PLEA. (1920) 47 I. A. 255 (261-2)= 48 C. 110 (116).

# Trespass-Action of -Plea of "Not guilty".

-Jurisdiction of Court-Objection to, if included in plea. See TRESPASS-ACTION OF- PLEA OF "NOT GUILTY".

(1849-50) 4 M. I. A. 353 (371-2, 375, 376, 378). Undue influence-Plea of.

-What amounts to.

In a suit to set aside a deed of gift executed by a mother in favour of her daughter, the plaint alleged that at the time of the execution of the deed, the mother was suffering from dementia and was not in a fit state of mind to execute contracts or to manage her affairs, and that the daughter was residing with the mother, who was entirely under her domination and control.

Held that the plaint raised a case of mental incapacity,

and not a case of undue influence.

The passage in the plaint in which it was said that the mother was entirely under the dominion and control of her daughter was introduced only incidentally in connection with the allegation of mental incapacity, which allegation formed the real case of the plaintiff. (Sir Arthur Wilson.) ISMAIL MUSSAJEE MOOKFFPUM : HAFIZ BOO.

(1906) 33 I. A, 86=33 C. 773 (782-3)=

PRACTICE-PLEA-(Contd)

Undue influence-plea of-(Contd.)

10 C. W. N. 570=3 A. L. J. 353=3 C. L. J. 484= 8 Bom. L.R. 379=1 M. L. T. 137=9 Sar. 94= 16 M. L. J. 166.

-Appeal-Maintainability in-Forgery of deed-Plea in Court below of. See DEED-FORGERY OF-PLEA IN COURT BELOW OF. (1875) 2 I. A. 87 (107-8).

-Incapacity of executant-Plea of-Mixing up of-Propriety. See DEED-EXECUTANT-INCAPACITY OF. (1894) 22 I. A. 4 (10) = 22 C. 324 (336).

-Points to be considered in case of. See DEED-EXECUTION OF-UNDUE INFLUENCE-ISSUE AS TO. (1888) 15 I. A. 81 (92-3) = 15 C. 684 (698-700).

-Validity of deed-Issue as to, if covered by plea. See DEED- EXECUTION OF-UNDUE INFLUENCE- PLEA (1875) 2 I. A. 87 (107).

### PRACTICE-PLEADINGS.

ACCOUNTS-BALANCE DUE ON-SUIT FOR.

ADMISSION IN.

AGREEMENT TO TRANSFER ON CONTINGENCIES -SPECIFIC PERFORMANCE OF, OR SUIT FOR DA-MAGES FOR BREACH OF.

ALLEGATIONS IN-PROOF OF.

ALTERNATIVE CASE CANNOT PUT FORWARD IN.

AMBIGUITY IN-PLEA OF-PRIVY COUNCIL APPEAL -MAINTAINABILITY IN.

AMENDMENT OF.

BENAMIDAR- PURCHASER FROM- REAL OWNER'S SUIT TO RECOVER PROPERTY FROM.

BURMA—DISTRICT COURTS OF—PLEADINGS IN. CASE LAID IN.

CASE OF BOTH PARTIES IN-FINDING INCONSISTENT WITH.

CAUSE OF ACTION-PLAINT DISCLOSING NO-PLEA

CONSTRUCTION OF.

CONTRACT-RESCISSION OF-GROUNDS.

DEED-FORGERY OF-PLEA IN COURT BELOW OF.

DEFECTS IN.

DEMURRER.

DESCRIPTION OF PARTY IN.

ERROR IN-OBJECTION BASED ON.

FORMS AND TECHNICAL RULES OF-REGULATION I OF 1821.

FRAUD.

FRAUDULENT BENAMI.

ISSUES.

LAXITY OF.

OBJECT OF.

PLAINT

PLAINTIFF'S CASE—ASCERTAINMENT OF.

PLAINTIFF'S TITLE-DENIAL IN WRITTEN STATE MENT OF-EFFECT.

PLEA IN.

RELIEF.

RIGHT ASSERTED IN.

SIGNATURE OF PARTY IN.

WRITTEN STATEMENT.

### Accounts-Balance due on-Suit for.

-Statement of accounts filed with plaint-Statement admittedly signed by defendant filed in cause of plaintiff's examination-Conflict between-Fatal to plaintiff's case if. S.: ACCOUNTS-BALANCE DUE ON.

(1870) 14 W. B. 24 (P. C.)

#### Admission in.

WHAT AMOUNTS TO-ENGLAND AND INDIA-DISTINCTION.

-Express admission-Omission to deny-Effect.

It is a mistake to assimilate (as was done at the hearing) the proceedings in the Indian Courts to the practice in the Court of Chancery in England. There the plaintiff has the means of compelling a distinct answer, "yes" or "no", to any allegation which he makes, and, therefore it is not sofficient for him to say such or such a fact is not denied by the answer, he must read an admission of it. The proceedings in the Indian Courts are of a totally different character (291). (Mr. Pemberton Leigh.) DOUGLAS v. COLLECTOR OF BENARES. (1852) 5 M. I. A. 271= 1 Suth. 231 = 1 Sar. 434.

#### CO-DEFENDANTS.

-Written statement filed by, in suit by third party-Admission in-Effect inter se-No cateppel.

A pleading by two defendants against the suit of another plaintiff can never amount to an estoppel as between them (559).

In a suit, two of the defendants, in their answer, made a statement in respect of an alleged mortgage transaction with the object of defeating the plaintiff's claim, which was false. In a foreclosure suit brought subsequently by one of the defendants against the other founded on such alleged mortgage, held that the admission in the answer in the prior suit did not preclude the defendant in the later suit from pleading that the statement in such answer was false and intended as a fraud on a third party (559). (Lord Juntice James.) RAM SURUN SINGH P. MUSSIPMAT PRAN PEARY. (1870) 13 M. I. A. 551 = 15 W. B. P. C. 14 = 2 Suth. 386 = 2 Sar. 620.

CONDITION-ADMISSION WITH-REJECTION OF CONDITION-PERMISSIBILITY.

-(See also PRACTICE-PLEADINGS-ADMISSION IN -MUST BE TAKEN AS A WHOLE).

-Having admitted that the plaintiff's ancestor did obtain possession by virtue of a decree, and that he remained in possession for a year, the defendants also, in the same written statement, alleged that the mortgage set up by the plaintiffs was collusive and a benami transaction. The written statement must be taken altogether (17). (Sir Barnet Peacock,) NARAIN SINGH P. SHIMBHOO SINGH.

(1876) 4 I. A. 15 = 1 A. 325 (327) = 3 Sar. 673 = 3 Suth. 357.

Deposition-Distinction in case of.

It is permissible for a tribunal to accept part and reject the rest of any witness's testimony. But an admission in pleading cannot be so dissected, and if it is made subject to a condition it must either be accepted subject to the condition or not accepted at all. It is permissible for a tribunal to accept part and reject the rest of any witness's testimony (109). (Lord Dunedin.) MOTABHOY MULLA ESSABHOY v. MULJI HARIDAS. HARIDAS. (1915) 42 I. A. 103 = 39 B. 399 (409) = 17 M. L. T. 402 =

(1915) M. W. N. 522=19 C. W. N 713= 21 C. L. J. 507 = 17 Bom. L. R. 460 = 2 L. W. 524 = 13 A. L. J. 529 = 29 I. C. 223 = 28 M. L. J. 589.

CUSTOM-APPLICABILITY OF.

Admission of. The plaintiffs, who were Sikh jats, brought the suit out of which the appeal arose to of tain possession of ancestral lands which had been conveyed in their lifetime by their father to the defendant. They alleged in their plaint, that, according to the custom of the agriculturists of the Punjab, their father was not competent to sell the ancestral lands

# PRACTICE-PLEADINGS-(Contd.)

Admission in-(Contd.)

CUSTOM-APPLICABILITY OF-(Contd.)

without necessity, and that there was no necessity for the sale to the defendant.

The defendant did not in his written statement deny that the plaintiffs and their father were agriculturists to whom the custom alleged by the plaintiffs would apply.

Held that it must be taken as admitted on the pleadings that the custom alleged by the plaintiffs applied (294). (Sir John Edge.) KIRPAL SINGH :: BALWANT SINGH.

(1912) 40 C. 288 = 13 M. L. T. 5 = 11 A. L. J. 1 = 9 P. W. R. 1913 = 17 C. L. J. 137 = 15 Bom. L. R. 79 = 17 C. W. N. 302 = 28 P. L. R. 1913 = (1913) M. W. N. 58 = 26 P. L. R. 1913 = 17 I. C. 666=24 M. L. J. 318.

DEED-EXECUTION OF-ADMISSION OF. What amounts to. See DEED-EXECUTION OF-ADMISSION IN PLEADINGS OF. (1889) 11 A. 396.

EFFECT OF-ENGLAND AND INDIA.

It scarcely needs to be remarked that the effect given in our Common Law Courts to admissions on the pleatings has always been greater than that given to admissions in the less technical pleadings in the Courts in India (125). (Sir Barnet Peacock.) AUMIRTOLALI, POSE 7. RAJONEE-KANT MITTER. (1875) 2 I.A. 113 - 15 B.L.R. 10 -23 W. R. 214 - 3 Sar. 430 - 3 Suth. 94.

#### FACT

Admission by implication of-Effect.

It has been repeatedly held that an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tant amount to proof of the fact (125). (Sir Barness Peaove.) AUMIRTOLALL BOSE T. RAJONEEKANT MITTER.

(1875) 2 I.A. 113=15 B.L.R. 10= 23 W.R. 214 = 3 Sar. 430 = 3 Suth. 94.

FACTS ALLEGED IN PLAINT.

-Admission by defendant of- Defence based on those facts-Filing of-Effect.

The defendant in his rejoinder is simply to deny the

truth of the reply of the plaintiff, or the parts of it which he means to dispute (291).

Where, so far from denying those facts, the defendant founds his defence upon them, they must be treated as admitted. It is a mistake to assimilate (as was done at the hearing) these proceedings to the practice in the Court of Chancery in England. There the plaintiff has the means of compelling a distinct answer, "yes" or "no," to any allegation which he makes, and therefore, it is not sufficient for him to say such or such a fact is not denied by the answer, he must read an admission of it. The proceedings in the Indian Courts are of a totally different character (291). (Mr. Pemberton Leigh.) DOUGLAS r. COLLEC-TOR OF BENARES.

(1852) 5 M.I.A 271-1 Suth. 231-1 Sar. 434.

-Legal effect imputed to-Denial in written statement of Effect-No admission tantamount to proof of fact alleged.

The suit was by the only son of a daughter of R to recover the properties of R from the defendants, who repre-Another daughter of R, N, was adsented R's brother. mittedly alive at the date of the suit, and the question was whether she had become a childless widow during the lifetime of plaintiff's mother and was therefore excluded from inheritance. There was no proof that N had become a childless widow at the time alleged, and the question was whether that fact was alleged in the plaint and admitted by the answer of the defendants.

Admission in-(Contd.)

FACTS ALLEGED IN PLAINT-(Contd.)

The plaint alleged: "That as my youngest maternal aunt" (N) "unfortunately became a childless widow in the averments not traversed must be taken to be admitted year 1244 (that is, April. 1837) so the right of succession (301). (Lord Kingsdeson.) MUSSUMAT ANANDMOYEE to all the properties accrued to my mother, according to CHOWDHOORAYAN P. SHEEB CHUNDER ROY. the Shasters.

The answer of the defendants was as follows:- "From the scatement in the plaint that, subsequent to the death of the maternal grandmother of the plaintiff, her three daughters lived some in a married state, some in a state of celibacy, and that all the properties left by his grandfather devolved upon his mother, it is evident that this suit has been instituted merely from a malicious and vindictive motive. For agreeably to the Dhurm Shasters, and Dayabhaga, though any weman after obtaining paternal properties becomes a widew or sterile, yet nothing can bar her right to enjoy the said property during her lifetime; therefore the statement that subsequent to his maternal aunts becoming wislows the right and interest to all the properties devolved upon his mother is utterly false and falla-

Held that there was no admission in the answer tantamount to proof of the fact that A' became a childless widow during the lifetime of the plaintiff's mother (124-5).

There is a denial that the plaintiff's mother took the whole of her father's estate in consequence of N's becoming a childless widow; but no admission that at the time of the plaintiff's mother's death A' was a childless widow, incapable of taking by descent from her father. There is merely an admission by implication in the denial of the legal effect imputed to the fact alleged; and it has been repeatedly held that an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact (125). (Sir Barnes Peaceck.) AUMIRTOLALL BOSE : RAJONEEKANT MITTER

(1875) 2 LA. 113=15 B.L.R. 10=23 W.R. 214= 3 Sar. 430 = 3 Suth. 94.

#### HINDU LAW-ADOPTION.

-Adoptive mother-Admission by-Effect of, against adopted son. Sa HINDU LAW-ADOPTION-ADOPTED SON-ADOPTIVE MOTHER-ADMISSION IN PLEADINGS (1862) 9 M.I.A. 287 (301).

-Authority to adopt-Plea in plaint of-Admission of, by non-traversal in written statement-What amounts to. Sa HINDU LAW-ADOPTION - AUTHORITY TO ADOPT-PLEA IN PLAINT OF

(1862) 9 M. I. A. 287 (301).

HINDU LAW-INHERITANCE-INSANITY AT OPENING OF.

-Exclusion from inheritance on ground of-Admission in plaint of -What amounts to. See HINDU LAW-INHERITANCE - EXCLUSION FROM-INSANITY-EX-CLUSION ON GROUND OF-ADMISSION IN PLAINT OF. (1890) 17 I.A. 173 (176) = 18 C. 111 (115).

INSOLVENCY-ASSIGNEE IN-TITLE OF.

Admission by defendant of-"Assignee a aforesaid"-Use in written statement of words-Effect. See INSOLVENCY—ENGLISH BANKRUPTCY—ASSIGNEE IN-SUIT BY, IN INDIA-TITLE OF ASSIGNEE.

(1839) 2 M.I.A. 263 (289.90).

PLAINT AVERMENTS NOT TRAVERSED IN ANSWER-EFFECT-ENGLISH RULE AS TO.

-Inapplicability in India of.

Their Lordships cannot apply to the pleadings in these

#### PRACTICE-PLEADINGS-(Contd.)

Admission in-(Contd.)

PLAINT AVERMENTS NOT TRAVERSED IN ANSWER EFFECT- ENGLISH RULE AS TO-(Contd.)

(1862) 9 M.I.A. 287=2 W.R. (P.C.) 19= Marsh 455=1 Suth. 485=1 Sar. 854.

MUST BE TAKEN AS A WHOLE.

-See (1) Admission - Deed-Admission in-MUST BE TAKEN AS A WHOLE. (2) PRACTICE-PLEAD-INGS-ADMISSION IN-CONDITION).

Agreement to transfer on contingencies—Specific performance of. or suit for damages for breach of.

-Allegations in plaint in. See SALE - CONTI-NGENSIES. (1872) 11 B.L.B. 36

### Allegations in-Proof of.

-Necessity. See EVIDENCE-PLEADINGS-ALLE-GATIONS IN. (1876) 4 I.A. 15 (17) = 1 A. 325 (327).

Alternative case not put forward in

-Appeal-Permissibility in. See HINDU LAW-ADOPTION - WIDOW - ADOPTION BY-ASSENT OF SAPINDAS-ADOPTION WITH - NEAREST SAPINDAS-ASSENT OF-OMISSION TO OBTAIN.

(1920) 47 I.A. 99 (107) = 43 M. 650 (659).

-Trial-Putting forward of case at-Effect. MAHOMEDAN LAW - INHERITANCE - SISTER'S (1926) 54 I A. 33 (36)= DAUGHTER OF 14 CEASED. 6 Pat. 359.

#### Ambiguity in-Plea of-Privy Council appeal-Maintainability in.

-Ambiguity, if any, removed even before trial July -No application in appeal for opportunity to adduce fresh exidence on ground of ambiguity.

In a case in which the defendants complained before the Privy Council of the ambiguity in the plaint as to the title in which the plaintiff claimed the suit lands, it appeared that all doubt as to the real meaning of the plaint was set at rest when the matter came before the trial judge, that before him the real title in which the plaintiff claimed was raised, that from that time onward that aspect of the case was kept well to the front, but that the defendants never applied for an opportunity of calling further evidence of the ground that they had been originally misled by the ambiguity in the plaint.

Held that it was too late for the defendants to rely upon any alleged ambiguity in the plaint in the appeal to the Privy Council. (Lord Tomlin.) GNANENDRA KUMAR ROY CHOWDHURY P. PRAFULLA NATH THAKUR

(1929) 33 C.W.N. 984 = 1929 M.W.N. 616= 50 C.L.J. 509 = 30 L.W 1024 = 120 LO. 51= A.I.B. 1929 P.C. 200 = 57 M.L.J. 776.

#### Amendment of.

AGENT-SUIT IN NAME OF-AMENDMENT BY SUBSTITUTING NAME OF PRINCIPAL FOR THAT OF AGENT.

-Order allowing-Effect-Authority of agent to see -Decision as to, if involved. See PRINCIPAL AND AGENT -AGENT-SUIT BY OWN NAME.

(1892) 19 I.A. 135 (137) = 19 C. 678 (681).

ALTERNATIVE CASE - AMENDMENT SO AS TO RAISE

-Privy Council appeal-Leave in-Grant of. Considering the length of litigation, and the fact that another appeal was pending the result of the one before Courts (Mofussil Courts of India), the strict rules that their Lordships, they thought that it would be wrong to

Amendment of - (Contd.)

ALTERNATIVE CASE-AMENDMENT SO AS TO RAISE -(Contd.)

give the plaintiff any includence by way of amending the record so as to raise an alternative case (184). (Lord Hob-Aouse.) GAJAPATHI RADHIKA P. VASUDEVA SANTA SINGARO. (1892) 19 I.A. 179=

15 M. 503 (511-2)= 6 Sar. 218.

### APPEAL-AMENDMENT IN.

-Hindu joint family - Manager - Contract for sale by--Specific performance or damages for breach of-Suit for - Earnest-money with interest-Claim against heirs of manager for recovery of-Amendment so as to permit-Permissibility. See HINDU LAW-JOINT FAMILY -MANAGER-CONTRACT FOR SALE BY.

(1926) 54 I. A. 55 (59-60) = 6 P. 323.

Hindu joint family-Manag r of-Mortgage by-Suit to enforce-Personal decree against manager in-Claim to-Amendment of plaint so as to allow, See MORT-GAGE—SUIT TO ENFORCE—PERSONAL DECREE IN-HINDU JOINT FAMILY. (1925) 47 A. 459 (1925) 47 A. 459.

-Judgment of trial Judge-Point sprung upon plaintiff by-Amenment of written statement to at to raise -Allowing of -Opportunity to plaintiff to meet can raised by amendment - Necessity.

The trial Judge, in the course of his consideration of his judgment, discovered a point until then unargued and unsuspected. It was in the course of his judgment sprung upon the plaintiffs, who had no chance of dealing with it. nor, from that moment, with the merits of the case. He gave judgment for the defendants. The plaintiffs, there upon, appealed; and the appellate Court, in the course of the hearing of that appeal, amended the record in favour of the defendants. No opportunity was thereafter given to the plaintiffs of dealing with the masters involved on the new basis which the amendment established.

Held that the plaintiffs should have been afforded such

an opportunity.

Their Lordships accordingly set aside the judgment below and ordered a new trial, (Lord Durling.) LUIGI AM-BROSINI v. BAKARA TUIKO. (1929) 31 L. W. 12 = 122 I.C. 30 = A. I R. 1929 P. C. 306.

Jurisdiction-Two suits one of which dismissed in appeal-Conversion by appellate Court of, into one suit of entirely different character.

The defendant-appellant executed on different dates two kut-kobalas in favour of one G. By the 1st she mortgaged 4 mouzahs, one of which was in Nuddea, and the other three were in the 24-Pergunnahs. By the 2nd, she mortgaged the said 4 mouzahs, together with three others, which were in Nuddea.

The plaintiff, the assignee from G of all his interest under the two kut-kobalas, instituted a suit in the court of the Sub-Judge of the 24-Pergunnahs. That suit related only to the 1st mortgage, and prayed for foreclosure. While that sult was pending, he instituted another suit in the court of the Sub-Judge of Nuddea against the defendant to recover the principal and interest under the second kut-kohale. The claim in the second suit was against the defendant person-

The two suits were dismissed by the two Sub-Judges.

On appeal from the two decrees, the High Court affirming the decree of the Nuddea Court, reversed the decree dismissing the suit in the Court of the 24-Pergunnahs. turned both suits into a contribution suit, and remanded it to the Court of the 24-Pergunnahs with directions as to the mode in which contribution should be affected.

# PRACTICE-PLEADINGS-(Contd.)

Amendment of-(Contd.)

PROSUNNO GHOSE.

ATPEAL-AMENDMENT IN-(Contd.)

suit, and that without consent. was beyond the power of the High Court (224-5).

Their Lordships, while fully recognising the advantages to the administration of justice of the wide powers of amendment and modification of decrees, and of framing new issues, conferred upon the High Court by Ss. 350-354 of C. P. C. of 1859, and being by no means disposed to narrow their plain meaning by judicial construction, are nevertheless of opinion that to change (as has been done in this case) two suits, one of which has been dismissed on appeal, into one suit of a totally different description from either of them, and this without consent, exceeds the power conferred by the Act (224-5). (Sir Rebert P. Cellier.) SRIMATI KAMINI SOONDARI CHOWPHRAN: v. KALI

# (1885) 12 I A. 215 = 12 C. 226 (237-8) = 4 Sar. 652.

-Mahomedan Law-Dower-Widow in possession of husband's estate in lieu of claim for-Suit by husband's heirs to recover possession from her-Marriage of widow-Denial false of-Suit on foot of-Amendment of plaint in. so as to make suit one for plaintiff's share and accounts-Permissibility-Discretion of Court. See MAHOMEDAN LAW-DOWER-WIDOW IN POSSESSION OF BUSRAND'S ESTATE IN LIEU OF CLAIM FOR-SUIT BY HUSBAND'S HEIR TO RECOVER POSSESSION FROM HER-WINOWS MARRIAGE. (1855) 6 M. I. A. 211 (230).

-Mortgage-Joint tenants-Tenants in common-Mortgage to two persons as-Suit by one of them to enforce his share of mortgage-Form of-Error in-Amend-ment of plaint to rectify-Permissibility-Duty of Court. See JOINT TENANTS-TENANTS IN COMMON-MORT-GAGE TO TWO PERSONS AS

(1919) 46 I. A. 272 (277-8) - 47 C. 175 (179-80).

Oudh Estate-Superior proprietary right-Settlement of-Suit for-Sub-proprietary right-Sub-settlement of-Claim for-Amendment so as to set up. See OUDH-OUDH ESTATE-SUB-PROPRIETARY RIGHT IN.

(1878) 6 I. A. 1 (8-9) = 4 C. 839 (848).

CAUSE OF ACTION.

-Alteration by amendment of-Effect-Abandonment of original cause of action. See LIMITATION ACT OF 1908, ART. 132-MORTGAGE FOR TERM-SUIT TO ENFORCE-LIMITATION

(1926) 53 I.A. 187 (195-6) = 48 A. 457.

-Subject-matter of suit-Change of, by omendment-

Full powers of amendment must be enjoyed and should always be liberally exercised, but none the less no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suits (217). (Lord Buckmaster.) Ma SHWE MVA 2. MAUNG MO HNAUNG.

(1921) 48 I. A. 214 - 48 C. 832 (835) = (1921) M. W. N. 396 = 30 M L. T. 28 = 24 Bom.L.R. 682 = 63 I.C. 914. = A.I.R. 1922 P. C. 249.

CONTRACT-SUIT BASED ON-FAILURE TO PROVE CONTRACT ALLEGED.

-Amendment of plaint so as to set up different and independent contract-Permissibility. See CONTRACT-SUIT BASED ON-AMENDMENT OF PLAINT IN.

(1921) 48 I. A. 214 (217) = 48 C. 832 (836).

DECLARATION-SUIT FOR-CONSEQUENTIAL PELIEF-ADDITION OF.

Amendment allowing-S. A.-Permissibility in-Hald that to change the two suits into one contribution - Limitation-Plea of-Avoidance of-Amendment having

Amendment of-(Contd.)

DECLARATION - SUIT FOR - CONSEQUENTIAL RELIEF-ADOPTION OF-(Contd.)

effect of. See PRE-EMPTION-RIGHT OF-DECLARATION OF-SUIT FOR

> (1920) 47 I. A. 265 (262) = 48 C. 110 (116-7). DISCRETION AS TO.

-Appeal-Interference in.

The power of a Court to amend the plaint in a suit is undoubtedly one within its discretion, and its discretion ought not to be reversed unless it was exercised upon a wrong principle (261). (Lord Buckmaster.) CHARAN DAS v. AMIR KHAN. (1920) 47 I. A. 255 = 48 C. 110 (115) = 3 P. W. R. 1921 = 25 C. W. N. 289 =

28 M. L. T. 149=18 A. L. J. 1095= 22 Bom. L. R. 1370 = 56 I. C. 606 = 39 M. L. J. 195.

FORM OF SUIT-ERROR IN-AMENDMENT IN UASE OF.

-Appellate Court-Power and duty of. See JOINT TENANT-TENANTS IN COMMON-MORTGAGE TO TWO PERSONS AS

(1919) 46 I. A. 272 (277-8) = 47 C. 175 (179-80).

FRAUD-SUIT BASED ON ONE KIND OF.

-Amendment of plaint after close of case so as to set up new and distinct charge of frand.

The assignee of an insolvent sued to recover a sum of money paid to one Z under a compromise consented to by the previous Official Assignce, on the ground that the payment of the said sum was fraudulently concealed by Z, from the Court, and from the then assignee. The trial Judge found that Z did not conceal from the then assignee the fact of such payment, and that the then assignee was fully aware of the fact of such payment and that he consented to the compromise will full knowledge of that fact. He also found that Z was under no duty to inform the Court and was not guilty of any improper concealment. Nevertheless, the trial judge, after the case had been closed. allowed the plaint to be amended by adding that, even if the then assignee was aware of the fact of the payment to Z, the said payment was a fraud upon the Court, which the then assignee had no power to consent to, and that such consent could not be binding upon his successor.

Held that the allowance of the amendment was contrary to every principle of justice and that it was wholly unprecedented (121). (Sir Baines Peacock.) ABDOOL HOSSEIN JENAIL ABUDIN P. TURNER.

(1887) 14 I. A. 111 = 11 B. 620 (638) = 5 Sar. 25.

HEARING OF SUIT-AMENDMENT AT-

-Discretion of Court.

To given leave to amend a plaint at the hearing may be in the discretion of the Court, but it will be very far from a matter of course to do so (227). (Lord Hobbouse.) MAL-KARJUN :: NARAHARI. (1900) 27 I. A. 216= 25 B. 337 (349)=5 C. W. N. 10=2 Bom. L. B. 927=

7 Sar. 739 = 10 M. L. J. 368.

HINDU LAW-JOINT FAMILY-MANAGER-CONTRACT FOR SALE BY.

-Specific performance or damages for breach of-Suit for-Earnest money with interest-Claim against heirs of manager for recovery of-Amendment of plaint in appeal so as to set up. Sac HINDU LAW-JOINT FAMILY -MANAGER-CONTRACT FOR SALE BY

(1926) 54 I. A. 55 (59-60) = 6 P. 323.

LIMITATION-PLEA OF-AMENDMENT SO AS TO AVOID.

The power of a Court to amend the plaint in a suit should not as a rule be exercised where its effect is to take IN-HINDU JOINT FAMILY.

### PRACTICE-PLEADINGS-(Contd.)

Amendment of-(Contd.)

LIMITATION PLEA GF-AMENDMENT SG AS TO AVOID-(Centd.)

away from a defendant a legal right which has accrued to him by lapse of time. There may however be cases where such considerations are outweighed by the special circumstances of the case (262). (Lerd Buckmaster.) CHARAN DAS r. AMIR KHAN. (1920) 47 I. A. 255=

48 C. 110 (116-7)=3 P. W. B. 1921=. 25 C. W. N. 289=18 A. L. J. 1095=28 M. L. T. 149= 22 Bom. L. R. 1370 = 56 I. C. 606 = 39 M. L. J. 195.

-Prity Council appeal-Permissibility in.

The appellant sued to recover the amount due under a simple money bond executed in his favour by R. To the suit he made others persons, besides R, defendants on the allegation that they had combined with R, and colorably procured her estate to be transferred to them in order to deprive the appellant of his remedy against it; and by his plaint, he prayed for a decree against the defendants and the said property. Their Lordships held that the suit was whol'y misconceived, as the appellant's only remedy was to sue R alone for the recovery of the money due on the bond-The question arose whether the proper course was not to dismiss the appeal altogether, without prejudice to the right of the appellant to bring a new suit against R, on the suit bond, treating it as a mere money bond.

Held that, in the circumstances of the case, the proper course was to remand the cause to the court below, with directions to allow the appellant to amend his plaint so as to make it a plaint against A' alone for the recovery of the money alleged to be due to him on the bond with liberty to R to make any defence to the suit which was not inconsis-

tent with the declaration aforesaid (4867).

Considering, however, that a new suit by the appellant on the bond against A' alone would probably be met by a plea of the Act of Limitations; that in the circumstances of this case such a defence would be inequitable; and that, R not having appeared, their Lordships are not in a condition to put her on terms as to her defence to a fresh suit; they have come to the conclusion that the fairer course is to do what the Judge of the Court of First Instance might under the Code of Procedure, have done at an earlier stage of the course, namely, allow the appellant to amend his plaint so as to make it a plaint against R alone for the recovery of money due on a bond (485 6). (Sir James W. Caleile.) MOHUMMAD ZAHOOR ALI KHAN P. MUSSUMAT THA-KOORANEE RUTTA KOER. (1867) 11 M. I. A. 468= 9 W. R. (P. C.) 9 = 2 Suth. 107 = 2 Sar. 320.

#### MORTGAGE.

- Redemption of - Suit for - Mortgaged property-Mortgagee's purchase of, in execution of third party's decree-Nullity of-Suit on foot of-Prive Council AP peal-Amendment in, by seeking to set aside purchase and adding decree-holder as a party. See MORTGAGE-MORT-GAGED PROPERTY - MORTGAGEE'S PURCHASE OF-DECREE OBTAINED BY THIRD PARTY—EXECUTION OF -PURCHASE AT-NULLITY OF.

(1900) 27 I. A. 216 (227.8) = 25 B. 837 (351-2).

Suit to enforce-Error in form of - Amendment in case of-Appellate Court-Power and duty of. Sat JOINT TENANTS-TENANTS IN COMMON-MORTGAGE TO TWO (1919) 46 I. A. 272 (277-8)= PERSONS AS. 47 O. 175 (179-80).

Suit to enforce—Personal decree—Claim to—Amendment in appeal so as to allow—Discretion as to. See MORTGAGE-SUIT 10 ENFORCE-PERSONAL DECREE (1925) 47 A. 459.

Amendment of-(Contd.)

OUDH ESTATE-SUPERIOR PROPRIETARY RIGHT-SETTLEMENT OF-SUIT FOR.

-Sub-proprietary right-Sub-settlement of-Claim for -Amendment in appeal so as to set up. See OUDH-OUDH ESTATE-SUB-PROPRIETARY RIGHT - SETTLE-MENT OF. (1878) 6 I. A. 1 (8-9) = 4 C. 839 (848).

PATENT-INFRINGEMENT OF-DAMAGES FOR-SUIT FOR.

-Non-compliance by plaintiff with provisions of S. 34 of Patent Act of 1859-Amendment of plaint so as to include particulars and presentation thereof to proper court-Order for-Validity. See PATENT ACT OF 1859, S. 34-PROVISIONS OF-NON-COMPLIANCE, ETC.

(1886) 13 I. A. 134 (141-2) = 9 A. 191 (200).

#### PLAINT.

-Amendment of - Order for - Refusal want on of plaintiff to comply with-Rejection of plaint on ground of Propriety. See C. P. C. OF 1908, O. 6, R. 18: O. 7. R. 11-AMENDMENT OF PLAINT.

(1872) 12 B. L. R. 443 (450).

 Amendment of — Relief awardable to plaintiff on-Grant of, without amendment. See Specific Relief ACT, S. 42-CASES UNDER-DEED-WRITTEN STATE-(1878) 6 I. A. 87 (113) = 1 A. 688 (707).

-Cause of action not disclosed by-Amendment of plaint in case of. See C. P. C. OF 1908, O. 6, R. 17; O. 7, R. 11 (A). (1888) 15 I. A. 119 (122)-15 C. 533 (537-8).

PRE-EMPTION-DECLARATION OF RIGHT OF-SUIT FOR

Possession on pre-emption-Claim for-Amendment of plaint so as to set up-S. A .- Permissibility in-Limitation-Plea of-Avoidance of-Amendment having effect of. See PRE-EMPTION-RIGHT OF-DECLARATION OF -SUIT FOR-POSSESSION ON PRE-EMPTION.

(1920) 47 I. A. 255 (262) = 48 C. 110 (116-7).

#### PRIVY COUNCIL APPEAL.

-Alternative case-Amendment so as to raise. See PRACTICE - PLEADINGS - AMENDMENT OF-ALTER-NATIVE CASE. (1892) 19 I. A. 179 (184) =

15 M. 503 (511-2).

-Execution sale-Setting aside of-Prayer for-Addition of-Amendment for purpose of - Nullity of sale-Suit brought on foot of, See LIMITATION ACT OF 1908, ART, 12 (A)-EXECUTION SALE-SETTING ASIDE OF-PRAYER FOR. (1900) 27 I. A. 216 (227-8)= 25 B. 337 (349-350).

-Last stage-Amendment at-Discretion as to

It is in their Lordships' discretion to allow an amendment of the plaint even at the last stage. (Mr. Ameer Ali.) GAJADAR MAHTON v. AMBIKA PRASAD TEWARI.

(1925) 47 A. 459 = 41 C. L. J. 450 = 27 Bom. L. B. 853 = 22 L. W. 306 = A. I. B. 1925 P. C. 169 = (1925) M. W. N. 532 =

87 I. C. 292 = 49 M. L. J. 238. -Limitation-Plea of - Amendment so as to avoid. See PRACTICE-PLEADINGS -- AMENDMENT OF-LIMI-TATION.

Mortgaged property-Purchase by mortgagee of, in execution of decree obtained by third party - Nullity of-Mortgagor's suit on foot of-Amendment by seeking to set aside decree and to add decree-holder as party. See MORT-GAGE-MORTGAGED PROPERTY - MORTGAGEE'S PUR-CHASE OF-DECREE OBTAINED BY THIRD PARTY.

(1900) 27 I. A. 216 (227-8) = 25 B. 337 (351-2).

# PRACTICE-PLEADINGS-(Contd.)

Amendment of-(Contd.)

PRIVY COUNCIL APPEAL-(Contd.)

-Suit as framed - Nature of - Alteration of by amendment-Fresh trial necessary to give opportunity to defendant to meet changed case.

It is not permissible by amendment to change the nature of the suit as framed; and, even if it were, the defendants affected by such amendment most have an opportunity to rebut such new cause of action. And where such a course would involve fresh written statements and a fresh trial, the Prive Council would not permit such a course at the stage of the hearing of the appeal to it (60). (Lord Sinha.) RAMASARAN MANDAR & MAHABIR SAHU

(1926) 54 I. A 55 = 6 P. 323 = 31 C. W. N. 469 = 25 L. W. 635 = (1927) M. W. N. 69 =

29 Bom. L. R. 796 = 25 A. L. J. 74 = 8 Pat. L. T. 98 = 100 I. C. 56=38 M.L.T. (P. C.) 74= A. I. R. 1927 P. C. 18=52 M. L. J. 402.

-Piece that might have been obviated by amendment-Decition in Privy Council appeal against party ou .- Parties allowed by courts below to go to proof.

Their Lordships have felt that it would not be satisfactory to decide against the defendant on a view which might have been obviated by a mere amendment of the pleadings, and that in a case where the parties had been allowed to go to proof (108), (Lord Duncdin), MOTABHOY MULLA ESSA-BHOY & MULJI HARIDAS. (1915) 42 I.A. 103=

39 B. 399 (408) = 17 M. L. T. 402= (1915) M. W. N. 522 = 19 C. W. N. 713 =

21 C. L. J. 507=17 Bom. L. R. 460=2 L. W. 524= 13 A. L. J. 529=29 I. C. 223=28 M. L. J. 589.

#### RELIEF AWARDABLE ON.

-Award of, without amendment. See SPECIFIC RELIEF ACT, S. 42-CASES UNDER-DEED-WRITTEN STATEMENT. (1878) 5 I. A. 87 (113) = 1 A. 688 (707).

# SECOND APPEAL-AMENDMENT IN.

-Pre-emption-Declaration of right of-Suit for-Possession on pre-emption-Claim for - Amendment of plaint so as to set up—Limitation—Plea of—Avoidance of
—Amendment having effect of, See PRE-EMPTION— RIGHT OF-DECLARATION OF-SUIT FOR.

(1920) 47 I. A. 255(262) = 48 C. 110 (116.7).

SPECIFIC PERFORMANCE—SUIT FOR—DAMAGES FOR BREACH OF CONTRACT SIMPLICITER IN.

-Amendment of plaint so as to make suit one for (1) What amounts to, and (2) Allowance at hearing of. See SPECIFIC PERFORMANCE -- SUIT FOR- DAMAGES FOR BREACH SIMPLICITER. (1928) 55 I. A. 360 = 52 B. 597.

SUBJECT-MATTER OF SUIT-CHANGE OF, BY AMENDMENT.

-Power of. See PRACTICE-PLEADINGS-AMEND-MENT OF-CAUSE OF ACTION.

(1921) 48 I. A. 214 (217) = 48 C. 832 (835).

SUIT AS FRAMED-NATURE OF-CHANGE OF, BY AMENDMENT.

-Not permissible. (Lord Sinha.) RAMSARAN MAN-HABIR SAHU. (1926) 54 I. A. 55 (60) = 6 P. 323 = 31 C. W. N. 469 = 25 L. W. 635 = DAR 7. MAHABIR SAHU.

(1927) M. W. N. 69 = 29 Bom. L. B. 796 =

25 A. L. J. 74=8 Pat. L. T. 98=100 I. C. 56= 38 M. L. T. (P. C.) 74=A. I. R. 1927 P. C. 18= 52 M. L. J. 402.

Amenament of- (Contd.)

WRITTEN STATEMENT-AMENDMENT OF, AFTER CLOSE OF PLAINTIFF'S CASE.

-Permissibility.

In a suit brought by the plaintiffs to assert their rights as the widow and daughter, respectively, of a deceased Cutchee Memon, the detenuants, after the plaintiff's case was closed, applied for leave formally to raise the issue whether, in the event of the 1st plaintiff being entitled to maintenance from the date of the deceased's death, she had not forfeited such right by unchastity; and, on that application being refused, the defendants applied for leave to file a supplemental written statement raising the question of unchastity.

Held that both applications were rightly refused by the courts below.

It was out of the question that, after the plaintiff's case was closed, this new averment should be made, necessitating as it did the opening up of the whole case, without any suggestion that the facts relied on had newly come to the knowledge of the defendants and had before been excusably unknown to them (129). (Lord Robertson.) HAJI SABOO (1930) 30 I. A. 127= SIDICK D. AYESHABAL.

27 B. 485=7 C. W. N. 665=5 Bom. L. R. 475= 8 Sar. 477.

#### Benamidar-Purchaser from-Real owner's suit to recover property from-Title of benamidar.

-Inquiry into-Necessity-Plea by real owner of-Nature of inquiry to be made-Allegation as to-Necessity. See BENAMI-BENAMIDAR-PURCHASER FROM-REAL OWNER'S SUIT TO RECOVER PROPERTY FROM-TITLE (1872) Sup. I. A. 40 (44-5). OF BENAMIDAR.

### Burma-District Courts of-Pleadings in.

-Inapplicability of strict rules to. See BURMA-DISTRICT COURTS OF. (1926) 4 R. 513.

#### Case laid in.

-[N. B. CASES UNDER PRACTICE-RELIEF MAY ALSO BE REFERRED TO.]

CASE INCONSISTENT WITH-APPEAL-MAINTAINABILI-TY IN.

-Alluvion and Diluvion-Gradual accretion-Land formed by-Claim on foot of land being-Defence in Court below denying that it was land so gained at all-Plea in appeal that entire land was not gained by gradual accretion. See ALLUVION AND DILUVION-ACCRETION -GRADUAL ACCRETION-LAND FORMED BY.

(1871) 16 W. R. S.

Alluvion and Diluvion-Gradual accretion-Suit on foot of-Sub-aqueous ownership-Claim in appeal of. Sce ALLUVION AND DILUVION-ACCRETION-GRADUAL ACCRETION-DRY LAND ETC.

(1899) 26 I. A. 107 (111) = 22 M. 464 (468-9).

-Deed-Forgery of-Plea in Court below of-Execution under undue influence-Plea in appeal of. See DEED -FORGERY OF-PLEA IN COURT BELOW OF.

(1875) 2 I. A. 87 (107-8).

-Fraud-One kind of-Suit based on-Fraud of different kind-Plea in appeal of. See PRACTICE-FRAUD -SUIT BASED ON ONE KIND OF.

(1887) 14 I. A. 111 (124-5) = 11 B. 620 (643).

-Gift-Completed gift-Case of, in pleadings and in courts below-Contract to make gift-Plea in Privy Council appeal of. See HINDU LAW-GIFT-COMPLETED GIFT-CASE OF, IN PLEADINGS AND IN INDIAN COURTS.

PRACTICE-PLEADINGS-(Contd.)

Case laid in-(Contd.)

CASE INCONSISTENT WITH-APPEAL-MAINTAIN-ABILITY IN-(Contd.)

-Gife-Immediate absolute conveyance-Plea in Court below of-Gift to take effect after lifetime of donor -Plea in appeal of. See HINDU LAW-GIFT-NATURE (1873) 12 B. L. B. 433.

-Minor-Personal liability of-Suit to establish-Estate of minor-Liability of-Case in appeal of. Sur HINDU LAW-MINOR-PERSONAL LIABILITY OF-SUIT (1892) 19 I. A. 90 (93)= BROUGHT TO ESTABLISH. 19 C. 507 (511-2).

—Mortgage—Consideration for—Substantive case of mortgagee as to—Failure to make out—Shifting of case in appeal - Permissibility. See MORTGAGE -CONSIDERA-TION FOR-SUBSTANTIVE CASE ETC.

(1927) 54 M. L. J. 208 (218) -Mortgage-Redemption suit-Decree on mortgage itself creating mortgage-Suit on foot of-Decree on foot of original mortgage itself-Case in appeal of. See MORT-GAGE-REDEMPTION OF-SUIT FOR-DECREE IN MORTGAGE-CREATED BY.

(1886) 13 I. A. 66 (69-70) = 10 B. 461 (467-8). -Vendor and purchaser-Vendor real owner-Pleadings and evidence raising question of-Vendor only benami-

dar for vendee-Case in appeal of. See VENDOR AND PURCHASER-VENDOR REAL OWNER.

(1876) 3 Suth. 333 (335, 337). CASE INCONSISTENT WITH-CASE RAISED IN, BUT NOT RAISED IN COURTS BELOW-PRIVY COUNCIL APPEAL

-Permissibility in. See PRIVY COUNCIL-APPEAL -PLEADINGS.

CASE INCONSISTENT WITH-INVENTING OF, WHEN JUDGMENT COMES TO BE DELIVERED.

-Propriety. See HINDU LAW-GIFT-COMPLETED GIFT-CASE OF-FINDING OF GIFT OF CORPUS WITH RESERVATION IN FAVOUR OF INTEREST.

(1896) 24 I. A. 1=19 A. 267 (276-7).

DECISION CONSISTENT WITH-NECESSITY

-It is absolutely necessary that the determinations in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made (20). The state of facts, and the equities and ground of relief originally alleged and pleaded by the plaintiff should not be departed from (24). (Lord Westbury.) ESHENCHUNDER SINGH v. SHAMACHURN BRUT-(1866) 11 M. I. A. 7=6 W. B. P. C. 57= 2 I. J. N. S. 87 = 1 Suth. 649 = 2 Sar. 209

-It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint, which constitute the case the defendant has to meet, but which are in reality contra dictory of the case made by the plaintiff. It will introduce the greatest amount of uncertainty into judicial proceeding. if the final determination of causes is to be founded upon interences at variance with the case that the plaintiff has pleaded, and, by joining issue in the cause, has undertaken to prove (23.) (Lord Westbury.) ESHENCHUNDER SINGS (1866) 11 M. L.A. 7= D. SHAMACHURN BHUTTO. 6 W. B. P. C. 57 = 2 I. J. N. S. 87 = 1 Suth. 649

2 Sar. 209 The Court will not, in the interests of justice, permit inconsistency and untruth of statement; will not permit plaintiff to say, " I promised to give the defendant fourteen o/o on his loan to me," and seek relief against him on the allegation; and permit him also the next instant to say the contract is expressed for 90/0, and I will tie my 099 (1920) 13 L. W. 256 (259). nent down to that term," that lower rate must be deemed

Case laid in-(Contd.)

DECISION CONSISTENT WITH-NECESSITY-(Contd.) to have been stipulated, and so to form the measure of his right to interest. The reply to this will be, "you have told us what the real bargain was, and on this statement you have made your application for relief, which you can obtain only on equitable groun is." (190). (Lord Chelmsford.) SHAH MUKHUN LALL P. BABOO SREE KISHEN SINGH.

(1868) 12 M. I. A. 157=11 W. B. P. C. 19= 2 B. L. P. C. 44 = 2 Suth. 190 = 2 Sar. 403.

-It is absolutely necessary that the determinations in a cause should be founded on a case either to be found in the pleadings, or involved in or consistent with the case thereby made. The present suit is one for redemption, not for declaring a forfeiture and must be decided according to the rules applicable to the former suit. (Lord Chelmsford.) SHAH MUKHUN LALL P. BABOO SREE KISHEN SINGH.

(1868) 12 M. I. A. 157 (189) = 11 W. R. P. C. 19 = 2 B. L. R. P. C. 44 -2 Sath. 190 -2 Sar. 403.

-See SALE DEED-SETTING ASIDE OF.

(1871) 14 M. I. A. 53 (65-6).

-Title to immoveable property-Suit relating to. This case is one relating to title to immoveable property. and their Lordships think the parties should present their case with some degree of substantial accuracy, and prove it as alleged; in other words, that their Lordships should deal with the case on the allegation and the proof (55). (Lord Fits Gerald.) THAKUR ROHAN SINGH P. THAKUR SURAT SINGH. (1384) 12 I. A. 52=11 C. 318 (326-7)= 4 Sar. 590.

- It is absolutely necessary that the determination in a cause should be founded upon a case, either to be found in the pleadings, or involved in, or consistent with, the case thereby made (170).

Held, therefore, that where the case made by the plaint was expressly or impliedly an absolute title under a will, the plaintiff could not inconsistently therewith set up a title paramount to that which the defendant had derived from the testator in his lifetime and by adverse possession (170). (Sir Barnes Peacock.) MYLAPORE P. YEO KAY. (1887) 14 I. A. 168=14 C. 801 (806)=5 Sar. 50.

Their Lordships fully affirm the rule that the determinations in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made, and that the equities and ground of relief originally alleged and pleaded by the plaintiff should not be departed from. (Sir Richard Couch.) SYED NURUL HOSSEIN v. SHEOSAHAI.

(1892) 19 I. A. 221 = 20 C. 1 (5-6) = 6 Sar. 205.

-Rule as to-Application of, in abstract very without reference to merits of controversy-Propriety.

In applying the principle that it would introduce the greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded on inferences at variance with the case that the plaintiff has pleaded, and, by joining issue in the cause, has undertaken to prove," the whole of the circumstances must be taken into account and carefully scrutinised. The question is in ultimate analysis one of circumstances and not of law. (Viscount Haldane.) HAJI UMAR ABDUL RAHIMAN P. MUNCHERJI COOPER. (1915) 3 L. W. 308 = 20 O.W.N. 297 = (1916) 1 M.W.N. 137 = 34 I. C. 268 =

DECISIONS INCONSISTENT WITH,

Propriety. See ALL CASES UNDER PRACTICE-RELIEF.

# PRACTICE-PLEADINGS-(Contd.)

Case laid in-(Contd.)

DEFINITENESS AS TO.

-Necessity.

While a liberal construction should be given to pleadings, so as to give effect to their meaning to be collected from their whole tenor, they ought to be expresed with sufficient definiteness to enable the opposite party to understand the case he is called upon to meet (93). (Lord Hannen.) IN-DUR CHUNDER SINGH 2. RADHAKISHORE GHOSE.

(1892) 19 I. A. 90 = 19 C. 507 (512) = 6 Sar. 185.

#### EVIDENCE.

-Case made in-Decision inconsistent with-Propriety-Sale deed-Case of-Gift intended-Finding of. See SALE DEED-GIFT INTENDED BY.

-Inconsistency between-Accounts-Balance due on -Suit for-Memorandum of accounts filed with plaint-Memorandum admittedly signed by defendant filed in course of plaintiff's examination-Inconsistency between-Not necessarily fatal to plaintiff's case. See ACCOUNTS-RM. ANCE DUE ON-SUIT FOR. (1870) 14 W. R. 24 P.C.

 Inconsistency between—Interest—Compound interest -Agreement to pay-Case in plaint as to-Evidence of course of dealings between parties disclosing agreement different from-Decree on foot of latter agreement-Plaintiff's right to. Sor INTEREST-COMPOUND INTEREST-AGREEMENT TO PAY. (1929) 57 M. L. J. 319.

-Inconsistency between-Promissory note-Suit upon -Date of note given in plaint-Mistake as to-When not fatal. See NEGOTIABLE INSTRUMENT- PROMISSORY NOTE-SUIT UPON. (1915) 30 M. L. J. 444.

-Plea not vaised in both-Merits of-Inference ad-

The fact that a particular contention was not put forward by the plaintiff in his pleint or on the evidence which he adduced has a bearing on the question as to the proper in ference to be drawn in fact from that evidence (57). (Lord Safreson.) SECRETARY OF STATE FOR INDIA IN UNCIL :: LAXMIBAL (1922) 50 I. A. 49 = 47 B. 327 (334 5) = 17 L. W. 405 = 28 C. W. N. 49 = COUNCIL P. LAXMIBAL

32 M. L. T. 111=37 C. L. J. 464=25 Bom.L.R. 527= A. I. R. 1923 P. C. 6 = 72 I. C. 898 = 44 M. L. J. 471

#### ISSUES,

-Case made in-Case inconsistent with both-Appeal -Permissibility in. See HINDU LAW -MINOR-PER SONAL LIABILITY OF. (1892) 19 I. A. 90 (93) = 19 C. 507 (511-2).

-Case inconsistent with former but covered by-Permissibility. See PRACTICE—ISSUES—PLEADINGS—CASE INCONSISTENT WITH, ETC.

(1867) 11 M. I. A. 213 (220-1)

-Decision inconsistent with-Reversal in appeal of See PRACTICE-ISSUES-PLEADINGS-DECISION INCON-SISTENT WITH. (1899) 27 I. A. 17 (28-9) = 23 M. 227 (234-5).

-Evidence-Decision inconsistent with -Propriety, See PURDANASHIN-DEED BY-UNDUE INFLUENCE.

(1898) 25 I. A. 137 (144) = 20 A. 447 (455-6). ——Plea not raised in both—Permissibility of, at subsequent stage of suit. See PRACTICE—ISSUES—PLEADINGS -PTEA NOT RAISED IN BOTH. (1930) 58 M. L. J. 536.

STRICT ADHERENCE TO.

Necessity.

30 M. L. J. 444.

If it were necessary or usual in these Indian cases to hold the parties very strictly to their original pleadings, the case would, no doubt, be fairly open to many of the observations

Case laid in-(Contd.)

STRICT ADHERENCE TO-(Contd.)

which have been made upon it. It seems, however, to their Lordships, that, in determining this appeal, they ought to look to the issues settled and tried in the cause. (523). SYUD FUSZUL HOSSEIN P. AMJUD ALI KHAN.

(1872) 17 W. R. 523 = 2 Suth. 585.

Case of both parties in-Finding inconsistent with -Propriety. See Sale-Real Nature OF.

(1873) 19 W. R. 149.

Cause of action-Plaint disclosing no-Plea of.

-Plaint allegations- Truth of- Assumption of-Necessity. Say PRACTICE-DEMURRER-PLEA OF.

### Construction of.

BENAMI TRANSACTION-FRAUDULENT TRANSFER.

-Pleas of - Tests. See BENAMI - FRAUDULENT TRANSFER. (1916) 44 I.A. 72 (76-7) = 44 C. 662 (670-1).

BURMA-DISTRICT COURTS OF-CASE FROM.

-Liberal construction of pleadings in. See BURMA-DISTRICT COURTS OF-CASE FROM. (1926) 4 R. 513.

PLAINT-BODY OF, AND SCHEDULE TO-CLAIMS AS DESCRIBED IN-CONFLICT BETWEEN.

-Effect-Mesne profits-Claim for, in general manner in body of plaint-Claim for shorter period in schedule-Effect. See MESNE PROFITS-PAST PROFITS-PERIOD FOR WHICH, RECOVERABLE.

(1881) 8 I. A. 197 (202, 206) = 8 C. 178 (185, 189).

LIBERAL CONSTRUCTION.

-Sar Practice-Pleadings-Construction of -PRIVY COUNCIL.

MINOR-GUARDIAN-SUIT BY OR AGAINST.

Capacity in. See HINDU LAW-MINOR-GUAR-DIAN-SUIT BY OR AGAINST-CAPACITY IN.

MORTGAGE-INTEREST UNDER-ARREAR OF-SUIT FOR.

-Relief prayed for in-Sale or personal decree. See MORTGAGE- INTEREST UNDER-ARREAR OF -SUIT FOR. (1922) 50 I. A. 115 (120) = 4 Lah. 32.

PARTITION-SUIT FOR-PARTNER-JOINT FAMILY MEMBER.

Suit on basis of—Distinction—Test. See HINDU LAW—JOINT FAMILY—PARTITION—SUIT FOR—PART-NER. (1866) 10 M. I. A. 490 (504-5).

# JUSTICE OF CASE-MATTERS OF FORM.

-Consideration of - Duty as to.

In reviewing the proceedings of the Courts in India, where the Hindu and Mahomedan laws are the rule, and where the forms of pleading are wholly different from those in use in Courts where the law of England prevails, the Privy Council must look to the essential justice of the case, without considering whether matters of form have been stric.ly attended to (349.50). (Dr. Lustington.) GHIR-DHAREE SING v. KOOLAHUL SING.

(1841) 2 M. I. A. 344=1 Suth. 98=6 W. B. 1 P. C.= 1 Sar. 200

PRIVY COUNCIL-LIBERAL CONSTRUCTION BY.

with any extreme strictness or technicality (134). (Sir Robert P. Collier.) GOPEE LALL D. MUSSAMAT SREE CHUNDRAOLEE BUHOOJEE. (1872) Sup. I. A. 131= 11 B. L. R. 391 = 19 W. R. 12=3 Sar. 217=

2 Suth. 752.

#### PRACTICE-PLEADINGS-(Contd.)

Construction of-(Centd.)

PRIVY COUNCIL-LIBERAL CONSTRUCTION -(Contd.)

-The general principle of their Lordships is that of not dealing very strictly with the form of the pleadings if they find that a material point was substantially raised (216). (Sir James W. Colvile) CHOWDHRI MURTAZA HOSSEIN v. MUSSUMAT BIBI BECHUNNISSA.

(1876) 3 I A. 209 = 26 W. B. P. C 10 = 3 Sar. 663 = 3 Suth. 342 = Bald. 86 = B. & J's No. 43 (Oudh).

-Pleadings in India are not usually construed strictly (192). (Sir Robert P. Cellier.) MADHO PERSHADO. GAJADHAR. (1884) 11 L. A. 186=11 C. 111(118)= 4 Sar. 574 = R. & J's. No. 85.

 A liberal construction should be given to pleadings, so as to give effect to their meaning to be collected from their whole tenor (93), (Lord Hannen,) INDUR CHUNDER SINGH D. RADHAKISHORE GHOSE,

(1892) 19 I. A. 90 = 19 C. 507 (512) = 6 Sar. 185. -It has not been the practice of their Lordships to construe the pleadings too strictly (57). (Lord Salveien.) SECRETARY OF STATE FOR INDIA IN COUNCIL P. LAXMIBAL (1922) 50 I. A. 49 = 47 B. 327 (334) =

17 L. W. 405=28 C. W. N. 49=32 M. L. T. 111= 37 C. L. J. 464 = 25 Bom. L. B. 527 =

A. I. R. 1923 P. C. 6=72 I. C. 898=44 M. L. J. 471.

-Limit to. Though this committee is always disposed to give a liberal

construction to pleadings in the Indian Courts, so 28 to allow every question fairly arising on the case made by the pleadings to be raised and discussed in the suit, yet this liberality of construction must have some limit (4734). (Sir James W. Cobrele.) MOHUMMUD ZAHOOR ALI KHAN D. MUSSUMMAT THAKOORANEE RUTT KOER.

(1867) 11 M. I. A. 468 = 9 W. B. P. C. 9= 2 Suth. 107 = 2 3ar. 320.

PROMISSORY NOTE FOR SIMULTANEOUS ADVANCE

-Suit on note only or alternatively for original coasideration also. See NEGOTIABLE INSTRUMENT-PROMIS-SORY NOTE-SIMULTANEOUS ADVANCE.

(1918) 46 I. A. 33 (35) = 46 C. 663 (667).

#### Contract—Rescission of—Grounds

-Fraud-Undue influence-Misrepresentation-Mixing up of -Permissibility. See CONTRACT- SETTING ASIDE OF-GROUNDS-FRAUD.

(1915) 42 I. A. 135 (151) = 39 B. 441 (467) Deed-Forgery of-Plea in Courts below of.

-Appeal-Plea in, of execution under undue influence -Permissibility. See DEED-FORGERY OF-PLEA IN (1875) 2 I. A. 87 (107-8). COURTS BELOW OF.

#### Defects in.

-Reversal of decree on ground of-Ne prejudice to

appellant-Decree right on merits. It would be a lamentable thing if an appeal in which their Lordships are clearly of opinion that the High Court were right on the merits of the case were to be determined the other way on the ground that there was some imperfection

in the pleadings. It would be lamentable in any case, and especially in India, where we know the pleadings are prepared with a considerable amount of looseness. If it could be suggested on the , art of the appellant that practical in Their Lordships do not desire to construe plaints justice had been done him by the want of particularity in the pleadings, however much their Lordships might lament it, they might be compelled to allow the appeal. But no such suggestion can be made (51). (Sir Arthur Hob

house.) GUNGAPERSHAD SAHU v. MAHARANI BIBI. (1884) 12 I. A. 47=11 C. 379 (385)=4 Sar. 621

#### Demurrer.

-Plea of. See PRACTICE-DEMURRER.

#### Description of party in.

See C. P. C. OF 1908-O. 7, R. (1), (1).

### Error in—Objection based upon.

-Privy Council appeal - Maintainability in - Parties not misled.

But this mispleading (on the part of the plaintiff) has in no decree prevented the ettlement of proper issues, or prejudiced the fair trial of the real question of right between the parties; and that being the case, it would be contrary to the practice of their Lordships to give effect to nice and critical objections founded on the inaccuracy of an Indian pleading (497). (Sir James Colvile.) BHUGWANDEEN DOOBEY D. MYNA BAEE. (1867) 11 M. I. A. 487=

9 W. R. P. C. 23 = 2 Suth. 124 = 2 Sar. 327.

# Porms and technical rules of—Regulation I of 1821.

-Proceedings before Commissioners constituted under -Inapplicability to.

The pleadings are, in our opinion, sufficient for the purpose, even independently of the enlargement from form and technical rules which is conceded to proceedings under the Commissions, perhaps by the Regulation of January 1821. but certainly by the Resolution or Order of the 27th of February in that year (113). (Vice-Chancellor Knight-Bruce). MAHARAJAH ISHUREE PERSAD NARAIN SINGH D. LALL CHUTTERPUT SINGH. (1842) 3 M. I. A. 100 =

6 W. R. 27 P. C. =1 Suth. 129-1 Sar. 245.

#### Fraud.

-Plea of. See PRACTICE-FRAUD.

#### Fraudulent benami.

Plea of. See BENAMI-FRAUDULENT BENAMI.

-See PRACTICE-ISSUE.

### Laxity of.

-Permissibility of.

It is most desirable that laxity of pleading should be discountenanced in cases in which the utmost precision and accuracy are necessary in order to bring the parties to distinct issues, because such laxity of pleading imposes additional difficulties in the decision of such cases (396). (Lord Chelmsford). Kamala Naicken D. PITCHAKUTTY (1865) 10 M. I. A. 386=2 Sar. 147.

Practice in India.

Pleadings in India are prepared with a considerable amount of looseness (51). (Sir Arthur Hobbouse). GANGA PERSHAD SAHU D. MAHARANI BIBI.

(1884) 12 I. A. 47=11 C. 379 (385)=4 Sar. 621.

## Object of.

Whatever system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued, in order that they may have an opportunity of bringing forward such evidence as may be appropriate to the issues (5). (Lord Halibury). SAYAD MUHAMMAD. FATTEH MUHAMMAD.

1894) 22 L. A. 4 = 22 C. 324 (331) = 6 Sar. 515. -See Practice—Issues—Pleadings—Object of. (1915) 42 I. A. 135 (152) = 39 B. 441 (468).

### Plaint.

SM PRACTICE-PLAINT.

# Plaintiff's case-Ascertainment of.

Plaint language - Issues - Treatment of case in Courte below-Reference to-Necessity.

# PRACTICE-PLEADINGS-(Contd.)

# Plaintiff's case—Ascertainment of—(Contd.)

In the argument before their Lordships some importance was attached by the learned Counsel for the respondents (defendants) to the manner in which the plaintiff's case was stated in the plaint, but their Lordships are of opinion that in dealing with the case they must look not to the mere wording of the plaint, but to the issue which was settled for trial, and to the manner in which the case was treated by the lower courts (155). (Sir Barnes Peaceck). RAJAH RUP SINGH & RANT BAISNI. (1884) 11 I. A. 149=

7 A. 1 (11) = 4 A. W. N. 246 = 4 Sar. 533.

# Plaintiff's title-Denial in Written Statement of-Effect.

-Proof of title-Plaintiff's duty. See PRACTICE-PLEADINGS - WRITTEN STATEMENT - PLAINTIFF'S (1908) 13 C. W. N. 82 (87).

#### Plea in.

-See PRACTICE-PLEA.

#### Relief.

-See PRACTICE-RELIEF.

# Right asserted in-

-Individual right or right as Shebait-Temple-Shebait of-Suit for recovery of property by. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE - SHEBAIT OF-SUIT BY-RIGHT ASSERTED IN.

(1922) 49 I. A. 237 (250) = 45 M. 565 (580).

# Signature of party in

Necessity-Rule as to, in 1817 and 1819.

In a suit brought in 1893, for redemption of a usufructuary mortgage of the year 1788, the plaint in a suit of 1817 and the written statement in a suit of 1819, which asserted the title of the mortgagees as such, were relied upon as acknowledgments of the title of the plaintiff or of his right of redemption. The records of those suits had been destroyed in the Mutiny, but the mortgagor produced copies of the decrees which recited the pleadings. The Subordinate Judge considered that he was bound to presume that those pleadings were signed by the mortgagees because the law required them to do it. The High Court, however, pointed out that there was no such law then existing, that plaints might be, and were signed by the Vakils and written statements did not require any signature at all, and that there could therefore he no presumption that any such acknowledgment as the Limitation Acts of 1859 and 1871. required was given by the mortgagees. Their Lordships affirmed the decision of the High Court on this point (107). (Lord Hobbourg.) FATIMATULNISSA BEGAM v. SOONDER DAS. (1900) 27 I. A. 103 = 27 C. 1004 (1011) = 4 C. W. N. 565=7 Sar. 718.

-Verification of. See C. P. C. OF 1908-O. 6, RR 14, 15.

### Written Statement.

-Case in - Case at trial - Inconsistency between-Real facts within defendant's knowledge-Evidence in case purely oral-Effect of inconsistency on effect of such evidence. See MAHOMMEDAN LAW-INHERITANCE-SIS-TER'S DAUGHTER OF DECEASED.

(1926) 54 I. A. 33 (36)=6 Pat. 359.

-Deed set up in-Relief to plaintiff as against-Grant of. See Specific Relief ACT-S. 42-CASES UNDER -DEED-WRITTEN STATEMENT.

(1878) 5 I. A. 87 (113)= 1 A. 688 (707).

-Plaintiff's title-Denial of-Effect-Proof of title -Plaintiff's duty.

It was argued that the trial had been so conducted that this point of title was not now open to the appellants. But

Written statement -(Contd.)

on the pleadings, the appellants expressly stated that they did not a limit the averments of title and then lay by. In such a situation a plaintiff, if he ignores the question, does so at his peril, for the defence puts him to prove his title (87). (Lord Robertson.) ULLMAN & CO. t. CESAR (1908) 13 C. W. N. 82=4 I. C. 318. LEUBA.

#### PRACTICE-POINTS UNNECESSARY-EXPRES SION OF OPINION ON.

-Propriety. See PRIVY COUNCIL - APPEAL -POINTS UNNECESSARY.

#### PRACTICE-PRINTING.

-See Privy Council.-Appeal.-Printing.

#### PRACTICE-PROCEDURE

#### Abuse of.

-Evils of. See COMMUNITY-WELL-BEING OF-(1917) 34 M. L. J. 361 (369). DANGER TO.

#### Accounts.

-Balance due on-Suit for-Objections by defendant in-Decree to plaintiff subject to-Validity. See PART-NFRSHIP-DISSOLUTION- ACCOUNTS - SUIT FOR-(1834) 5 W. R. 76. MEMBER OF DISSOLVED, ETC.

-Suit for-Limitation plea in-Order directing taking of accounts irrespective of—Propriety. See ACCOUNTS SUIT FOR—LIMITATION—PLEA OF.

(1901) 28 L. A. 227 (236) = 24 A. 27 (41).

#### Agency Courts.

-Proceedings before—Technical rules—Inapplicability of - Substantial justice - Sufficiency of. See AGENCY (1864) 10 M. I. A. 60 (62-3). COURTS.

#### Appeal - Right of-Costs - Terms as to-Imposition of.

-Power of-Rule limiting exercise of-If a rule of procedure. See APPEAL-RIGHT OF-COSTS - TERMS AS (1921) 48 I. A. 76 = 48 C. 481 (486).

#### Burma-District Courts of-Procedure in.

-Strict rules as to-Inapplicability of. See BURMAH -DISTRICT COURTS OF. (1926) 4 R. 513.

#### Cross suits-Trial of-Order of.

-Hindu Law - Reversioner presumptive-Will of last male owner in favour of defendants-Forgery of-Suit for declaration of-Counter-suit by defendants denying relationship of plaintiff and seeking to establish will. See HINDU LAW-REVERSIONER-PRESUMPTIVE RE-VERSIONER-WILL OF LAST MALE, ETC.

(1922) 17 L. W. 1 (2).

#### Debt-Claim for just.

-Defeating of, by intricacies of legal procedure-Propriety. See-DEBT-CLAIM FOR JUST. (1922) 50 I.A. 115 (120) = 4 Lah. 32.

### Defence-Shutting out of, by forms or procedure. -Permissibility.

No forms or procedure should ever be permitted to exclude the presentation of a litigant's defence. (Lord Buckmaster). TOM BOEVEY BANKTT & AFRICAN PRODUCTS (1928) 110 I C. 299 = A.I.B. 1928 P.C. 261.

### Defendant-Examination of, before plaintiff opens his case or examines his witnesses

-Irregularity. See EVIDENCE-PARTY-EXAMINA. TION OF-DEFENDANT. (1923) 45 M.L.J. 363 (368-9).

#### PRACTICE-PROCEDURE-(Contd.)

Document treated only as a piece of evidence-Decree on foot of.

-Validity. See C.P.C. OF 1908-O. 7, R. 14 (1). (1916) 32 M.L J. 137 (143).

Evidence-Matters turning on-Decision based on, without opportunity to aggrieved party to adduce rebutting evidence.

-Prepridy.

It is not easy to formulate a rule which will fit every case, but the principle is clear enough. that a party shall not be condemned in Court on allegations which turn on evidence, and which he has not been led to rebut by evidence. Whether fresh issues may be introduced, and how, without injustice, is a question of detail in each case (25). (Lord Habbouse). MAHOMED MEERA ROWTHER P. SAVVASI VIJAVA RAGHUNADHA GOPALAR.

(1899) 27 I.A.17 = 23 M. 227 (234-5)= 4 C.W.N. 228 = 2 Bom. L.R. 640 = 7 Sar. 661 = 10 M. L. J. 1.

#### Fact-Issue of.

-- Opinion ebiter in judgment as to-Reliance upon, in subsequent suit between parties-Propriety. See Jung-MENT-FACT-ISSUE OF-OPINION obiter AS TO.

(1929) 58 M.L.J. 245 (250).

-Decision on, behind back of party affected-Pro priety-Reversal of decree on ground of. See PRIVY COUNCIL - APPEAL - DECREE UNDER-REVERSAL-(1835) 5 W.R. 100 (P.C.)= GROUNDS-FACT. 1 Suth. 25 (27).

#### Indian Courts-Proceedings in.

Technical form and precision not to be expected. Their Lordships do not expect to see proceedings in the native courts in India conducted with technical form and precision, but the suitors ought to have the benefit of the exercise of industry, caution, and intelligence on the part of the Judges. (Lord Campbell.) SRI SUNKER BHARATI SWAMI P. SIPHA LINGAYAH CHARANTI.

(1843) 3 M.I.A. 198 (211) = 6 W.B. 39 P.C.= 1 Suth. 142=1 Sar. 266

# Intricacies of - Defeating of just claims by.

-Permissibility. See DEBT-CLAIM FOR JUST. (1922) 50 I.A. 115 (120)=4 Lah. 32

# Judge-Personal knowledge.

-Importation into judgment of-Propriety of. So JUDGE-PERSONAL KNOWLEDGE.

#### Landlord and Tenant.

-Landlord-Tenants different of different holdings Ejectment suit single against—Evidence applicable to case of one tenant—Use against landlord of, as regards different tenant—Objection to—Waiver of. See C. P. C. of 1908-O. 2, R. 3-Landlord.

(1919) 47 I.A. 76 (86-7) = 43 M. 567 (578)

-Rival landlords-Tenant in possession under Mago trate's order—Suit by one landlord against—Decision in of title of rival landlord—Propriety—Latter party to suit and question of title fully fought out. See LANDLORD AND TENANT-LANDLORD-RIVAL LANDLORDS-SUIT BY (1867) 11 M.I.A. 223 (2401) ONE OF, ETC.

### Legal Procedure.

-Abuse of-Evils of-Danger to well-being of conmunity. See COMMUNITY-WELL-BEING OF-DANGER (1917) 34 M.L.J. 361 (369) TO. -Intricacies of-Defeating of just claims by-Per

missibility. See DEBT-CLAIM FOR JUST. (1922) 50 I.A. 115 (120)=4 Lal.

# PRACTICE-PROCEDURE-(Contd.)

#### Local Visit.

-Impression of court formed on-Decision on basis | of, and without considering evidence in the case-Legality | PROCEDURE. -Counsel's consent to such visit-Effect. See APPEAL-LOCAL VISIT. (1907) 34 I.A. 115 (124)= 31 B. 381 (392).

### Onus of proof-Party subject to, but failing to discharge.

-Decision in favour of, on strength of opponent's evidence-Propriety. See ONUS OF PROOF.

(1920) 25 C.W.N. 409 (414).

# Opponent—Examination of party by.

-Forcing of-Practice of-Propriety. See EVIDENCE -PARTY-OPPONENT-EXAMINATION BY.

## Original Side Appeal.

Procedure on. See APPEAL—ORIGINAL SIDE APPEAL.

# Partnership — Dissolved partnership.

Member of-Suit for balance due on partnership accounts against widow of deceased partner by-Objections by defendant in-Decree to plaintiff subject to-Procedure proper in case of. See PARTNERSHIP-ACCOUNTS -SUIT FOR-MEMBER OF DISSOLVED, ETC.

(1834) 5 W.R. 76.

#### Party.

-Evidence given by, and on behalf of, fatal to his case-Decision in his favour ignoring - Propriety. See EVIDENCE-PARTY-EVIDENCE GIVEN BY, ETC.

1925) 53 I.A. 24 (35) = 5 Pat. 312.

-Examination by opponent-Forcing of-Propriety. See EVIDENCE - PARTY-OPPONENT-EXAMINATION BY.

-Non-appearance of -- Judgment for opponent on ground of-Propriety.

In no case can judgment be pronounced as of course for the party appearing, merely on the ground of the other party's absence (222). (Lord Brougham.) RAJUNDER NARAIN RAE v. BIJAI GOVIND SING

(1839) 2 M.I.A. 181=1 Moo. P. C. 117=1 Sar. 175. Patent-Infringement of-Damages for-Suit for.

-Non-compliance by plaintiff with provisions of S.34 of Patent Act of 1859-Procedure upon. See PATENT ACT OF 1859—S. 34—PROVISIONS OF—NON-COMPLIANCE (1886) 13 I.A. 134 (141-2)=9 A. 191 (200).

Pending suit-Procedure of-Right in reference to.

-Arbitration-Compulsory reference to-Right of, if such a right vested in opposite party. See STATUTE-INTERPRETATION—PENDING SUIT. (1865) 10 M.I.A. 413 (424-5).

# Possession and Mesne Profits-Suit for

-Title-Decision of question of, first-Reservation of decision of question of profits-Propriety. See MESNE PROFITS-POSSESSION AND-SUIT FOR TITLE.

(1896) 24 I. A. 22 (32) = 19 A. 155 (160-1, 164).

# Proper procedure—Failure to observe.

Irregularity or illegality. See C. P. C. OF 1908-O. 41, R. 22-CROSS-APPEAL NOT FILED.

(1919) 47 I. A. 33 (40-1) = 43 M. 550 (562-3).

Purdanashin ladies with different interests— Deed by-Validity-Issue single as to both.

Defences in fact separate but not kept separate-Irregularity in proceedure. See PURDANASHIN-LADIES WITH DIFFERENT INTERESTS.

(1901) 28 I. A. 71 (76-7) = 28 C. 546 (553-4).

# PRACTICE-PROCEDURE-(Contd.)

### Question of-Stare decisis.

-Applicability. See MAXIM-STARE DECISIS-(1875) 2 I. A. 219 (228).

#### Revivor.

-Bill of -Bill of Receiver and Supplement-Suit in nature of-Maintainability.

Quare whether the procedure of the Courts of the East India Company admitted of a suit in the nature of a Bill of Revivor, or a Isill of Revivor and Supplement (602-3). (Lord Justice Turner.) KATAMA NATCHIAR 2. THE RAJAH OF SHIVAGUNGA. (1863) 9 M. I. A. 539=

2 W. R. P. C. 31-1 Sath. 520-2 Sar. 25.

# Rules of-Object proper of.

All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is, therefore, essential that they should be made to serve and be subordinate to that purpose. (Lord Buckmaster.) MA SHWE MYA P. MAUNG MO HNAUNG,

(1921) 48 I. A. 214 (216-7)=48 C. 832 (835)= (1921) M. W. N. 396 = 30 M. L. T. 28 = 24 Bom. L. R. 682 = A. I. R. 1922 P. C. 249 = 63 I. C. 914.

Rules of procedure are not made for the purpose of hindering justice. (Mr. Amace Ali.) INDRAJIT PRATAP SAHI P. AMAR SINGH. (1923) 50 I. A. 183 (191)= 2 P. 676-21 A. L. J. 554-A. I. R. 1923 P. C. 128-4 Pat. L. T. 447 = 1 Pat. L. R. 345 = 33 M. L. T. 233 == 18 L. W. 728 = 25 Bom. L. R. 1259 = 28 C. W. N. 277 = 39 C. L. J. 318 = 74 I. C. 747 = 45 M. L. J. 578.

# Settlement Court-Proceedings in.

-Latitude allowed to litigants in-Substance of case -Proof of-Necessity. See SETTLEMENT COURT-PRO-CEEDINGS IN. (1871) 6 M. J. 231.

# Substantive right-Statute-Right dealt with by.

Nature of. See STATUTE-INTERPRETATION-RIGHT SUBSTANTIVE DEALT WITH.

(1927) 54 I. A. 421 (425).

### Suit.

-Change or devolution of interest pending-Procedure proper in case of-Continuance of suit-Addition or substitution of parties-Order for. See PRACTICE-PAR-TIES-ADDITION OF-SUBSTITUTION OR.

(1916) 43 I. A. 113 (121-2).

-Litigation prior-Judgment inter parter in-Decision on basis of-Irregularity. See SUIT-LITIGATION PRIOR. (1897) 24 I. A. 50 (57-8) = 24 C. 616 (626).

### PRACTICE-RELIEF.

(N. B.-CASE UNDER PRACTICE-PLEADINGS-CASE LAID IN AND PRIVY COUNCIL-APPEAL-PLEADINGS MAY ALSO BE REFERRED TO).

CONTRIBUTION-DECREE FOR, ON FOOT OF PLAIN-TIFF BEING ONLY A CO-DEBTOR.

DECEASED.

DECLARATION OF TITLE-DECREE FOR.

DECLARATION UNNECESSARY BUT EMBARRASSING.

DECREE-EVENTS OR DEVOLUTION OF INTEREST SUBSEQUENT TO.

DEED.

DEED NOT BASIS OF SUIT BUT TENDERED IN OR TREATED AS EVIDENCE.

EJECTMENT SUIT.

FORM OF, PRAYED FOR-ERROR IN.

FRAUD-PLEA OF ONE KIND OF.

FURTHER RELIEF-PRAYER FOR-RELIEF THAT CAN BE GRANTED UNDER.

HINDU LAW-JOINT FAMILY PROPERTY.

HINDU LAW-REVERSIONER.

HINDU WIDOW.

INTEREST-COMPOUND INTEREST.

LANDLORD AND TENANT.

LARGER RELIEF-SUIT FOR-LESSER RELIEF.

LITIGATION-PROPERTY SUBJECT OF, OR TO BE RE-COVERED BY-AGREEMENT TO SHARE.

MAHOMEDAN LAW-DOWER.

MONEY-SUIT FOR A LARGER SUM-DECREE FOR SMALLER SUM.

MORTGAGE.

ONUS OF PROOF.

OUDH ESTATE.

PARTITION.

PLAINT.

PLEADINGS-RELIEF NOT PRAYED FOR IN-GRANT OF.

POSSESSION.

PRIVATE PROPERTY-SUIT ON FOOT OF-DEBUTTER

PROMISSORY NOTE-SUIT ON.

SALE-DEED.

SUIT-EVENTS SUBSEQUENT TO.

SURETY-DEBT ENTIRE-RECOVERY OF.

TRUE CASE PLACED ON FALSE GROUNDS.

TURNING OUT OF DEFENDANT-DECLARATION OF RIGHT OF.

WILL.

WRITTEN STATEMENT-DEED SET UP IN-RELIEF TO PLAINTIFF AS AGAINST.

WRONG RELIEF-PRAYER FOR, TOGETHER WITH RIGHT ONE.

## Contribution-Decree for, on foot of plaintiff being a co-debtor.

-Grant of, in suit for recovery of entire debt on foot of plaintiff being only a surety. See MORTGAGE-MORT-GAGOR-CO-MORTGAGOR.

(1906) 33 I. A. 81 = 28 A. 482 (487).

#### Deceased.

-Deed by-Heir-at-law's suit to set aside, and to confirm plaintiff's possession of property covered by deed-Deed found to be invalid-Relief proper in case of-Setting aside of deed-Decree for-Propriety. See DECEASED -HEIR-AT-LAW-DEED BY DECEASED.

(1874) 1 I. A. 192 (205).

-Property of-Heir-at-law's suit for recovery of, as such-Decree for possession of portion of property as provision for food and maintenance-Grant of. See DECEAS-ED-HEIR-AT-LAW-PROPERTY OF DECEASED.

(1870) 5 B. L. R. 312.

# Declaration of title-Decree for.

Grant of-Possession-Prayer for-Addition erroneously of-Effect. See MORTGAGE-CONDITIONAL SALE -MORTGAGE BY - FORECLOSURE OF - POSSESSION UPON-SUIT BY MORTGAGEE FOR.

(1865) 10 M. I. A. 340 (355).

# Declaration unnecessary but embarrassing.

-Grant of. See MORTGAGE-PRIOR AND SUBSE-QUENT MORTGAGES. (1882) 9 I. A. 21 (26).

#### Decree-Events, or devolution of interest subsequent to.

-EVENTS SUBSEQUENT TO.

# PRACTICE-RELIEF-(Conid.)

Deed.

-False deed-Setting up of - Deed undoubtedly genuine-Relief on foot of-No bar to grant of. See LITI-GATION-DEED FALSE. (1870) 13 M. I. A. 560 (571).

-Forgery of-Setting aside of deed on ground of, and consequential reliefs-Suit for-Genuineness of deed-Relief on foot of-Grant of. See DEED-FORGERY OF-SETTING ASIDE OF DEED ON GROUND OF, ETC. (1875) 2 I. A. 87 (111-2).

-Insanity of executant-Suit to set aside on ground of-Helplessness and weakness of executant-Relief on foot of. See DEED-EXECUTANT OF-INSANITY OF.

(1904) 31 I. A. 235 = 27 A. 1. - Insanity of executant-Suit to set aside on ground of

-Undue influence-Relief on foot of. See DEED-EXECU-TANT OF-INSANITY OF.

(1906) 33 I. A. 86=33 C. 773 (782-3).

-Setting aside of-Declaration that it does not affect plaintiff's rights-Distinction. See DEED-SETTING ASIDE OF-DECLARATION, ETC.

-Setting aside of-Suit for-Declaration that it does not affect plaintiff's rights-Grant of-Consent of parties -Effect. See HINDU LAW-WILL-SETTING ASIDE OF -SUIT FOR. (1873) Sup. I. A. 212 (218). -Written statement-Deed set up in-Relief to plaintiff against-Grant of. See Specific Relief ACT-S 42 -CASES UNDER-DEED-WRITTEN STATEMENT.

(1878) 5 I. A. 87 (113)=1 A. 688 (707).

### Deed not basis of suit but tendered in or treated as evidence.

-Relief on foot of -Grant of-Propriety. See C.P.C. OF 1908-O. 7, R. 14 (1)

(1916) 32 M. L. J. 137 (143).

-See MORTGAGE-PLAINT IN ETC. (1867) 11 M. I. A. 468 (4734).

#### Ejectment suit.

-Declaration of title in, on plaintiff being found to be in possession himself-Grant of. See MORTGAGE-CONDI-TIONAL SALE-MORTGAGE BY-FORECLOSURE OF-POS (1865) 10 M. I. A. 340 (355). SESSION UPON. -Dismissal of-Declaration of rights of parties-Grant of. See EJECTMENT SUIT-DISSMISSAL OF-RIGHTS OF PARTIES.

(1898) 25 I. A. 195 (207) = 21 A. 53 (69) -Joint possession in-Decree for. See EJECTMENT

SUIT-PARTITION IN-DECREE FOR.

(1898) 25 I. A. 195 (207-8)=21 A. 63 (69.70). Unconditional decree in-Claim in Courts below to-Privy Council Appeal-Decree conditional on payment of binding debts-Claim to-Relief on foot of. See Possis-SION-UNCONDITIONAL DECREE FOR.

(1913) 40 I. A. 105 (111)=35 A. 211 (2201)

Form of, prayed for-Error in-

Right relief-Grant of, See MORTGAGE-CONDI-TIONAL SALE-MORTGAGE BY-FORECLOSURE OF-POSSESSION UPON-SUIT BY MORTGAGER FOR-(1865) 10 M. I. 340 (355)

Fraud-Plea of one kind of.

-Relief on foot of different kind of-Propriety. See PRACTICE-FRAUD-SUIT BASED ON ONE KIND OF.

### Further relief-Prayer for- Relief that can be granted under.

Where the plaint contains a statement of all the material circumstances, but the prayer of it is inartification Rellef on foot of—Grant in appeal of. See DECREE framed, it is sufficient, with the aid of the prayer for further relief, to enable the Court to give the plaintiff the

Further relief-Prayer for-Relief that can be granted under-(Contd.)

appropriate relief if he is otherwise entitled to it. (Lord Datey). GOPI NARAIN KHANNA :. BABU BANSIDHAR.

(1905) 32 I. A. 123 (132) = 27 A. 325 (331) = 2 C. L. J. 173 = 9 C. W. N. 577 = 7 Bom. L. R. 427 = 2 A. L. J. 336 = 8 Sar. 779 = 15 M. L. J. 191.

-Declaration-Grant of.

It is not legitimate to give a plaintiff, under cover of a request for "further relief", after all the substantial heads of a claim have failed, greater right to obtain a declaration than he would have had if such a declaration had been asked directly and the claim had been unarcompanied by other claims which proved unfounded (211). (Lord Shair.) JANAKI AMMAL P. NARAYANASWAMI IVER.

(1916) 43 I. A. 207 - 39 M. 634 (639) -20 C. W. N. 1323 = 24 C. L. J. 309 = 14 A. L. J. 927 20 M. L. T. 168 = 18 Bom. L. R. 856 (1916) 2 M. W. N. 188 = 4 L. W. 530 37 I. C. 161 = 31 M. L. J. 225.

·Heir-at-law-Possession of property as-Suit for-Possession of portion thereof by way of provision for food and maintenance—Decree for. No DECEASED—HEIRAT ·LAW-PROPERTY OF DECEASED-SUIT FOR ETC.

(1870) 5 B. L. R. 312 (314 5).

—Hindu Law—Reversioner presumptive—Widow— Waste by—Suit to restrain—Reversionary character of plaintiff in-Declaration of, under prayer for "further relief"-Propriety-Substantive case of waste not proved. So-HINDU LAW-REVERSIONER-PRESUMPTIVE REVER-SIONER-WIDOW-WASTE BY-SUIT TO RESTRAIN-REVERSIONARY CHARACTER, ETC.

(1916) 43 I. A. 207 (210-1) = 39 M. 634 (638-9).

-Litigation-Property subject of, or to be recovered by-Agreement to share-Suit to enforce-Agreement held to be invalid-Money advanced under agreement with interest-Decree for-Grant of, under head of general relief. See LITIGATION-PROPERTY SUBJECT OF, OR TO BE RECOVERED BY-AGREEMENT TO SHARE-SUIT TO (1893) 20 I. A. 112 - 20 C. 843.

Mortgage-Equitable mortgage-Suit to enforce-Prayer in. See MORTGAGE-EQUITABLE MORTGAGE-SUIT TO ENFORCE-GENERAL RELIEF

(1852) 5 M. I. A. 271 (276).

Mortgage—Suit to enforce—Personal decree not claimed in plaint or in Courts below—Privy Council Appeal Grant of such decree under head of further reitef. See MORTGACE-SUIT TO ENFORCE-PERSONAL DECREE. (1921) 48 I.A. 127 (134) -48 C. 509 (517-8).

Specific Performance—Purchaser's suit for—Damages or refund of deposit-Decree for. See SPECIFIC PER-FORMANCE-VENDOR AND PURCHASER-PURCHASER -SUIT BY. (1916) 38 I. C. 123 (125-6).

If a bill contains charges, putting facts in issue that are material, the plaintiff is entitled to the relief which those facts will sustain under the general prayer, but he cannot desert the specific relief prayed, and under the general prayer ask specific relief of another description, unless the facts and circumstances charged by the bill will, consistently with the rules of the Court, maintain that relief (389).

(Mr. Baron Parke.) COCKERELL 2. DICKENS. (1840) 2 M. I. A. 353 = 3 Moo. P. C. 98 = 1 Mont. B. & D. 45 = Morton 407 = 1 Sar. 203.

# PRACTICE -RELIEF-(Contd.)

Gift-(Contd.)

HINDU LAW-GIFT-COMPLETED GIFT-CASE OF-FINDING OF FIC.

(1896) 24 I. A. 1 (10)=19 A. 267 (276-7).

-Deed of-Setting aside of, for fraud and misrepresentation-Donor's suit for, and for profits received by donee-Deed found to be valid-Deed of even date by which denor was to remain in possession of portion of property gifted for her life-Accounts of that portion of property on foot of-Decree for-Grant in appeal of. See HINDU LAW-GIFT-SETTING ASIDE OF DEED OF-FRAUD AND EDG. (1912) 23 I. C. 332.

### Hindu Law-Joint Family Property.

-Declaration of property being, of plaintiff and defendant-Suit for-Decree for partition and possession of plaintiff's share in-Propriety-No prayer in plaint for such relief. See HINDU LAW-JOINT FAMILY-JOINT FA-MILY PROPERTY-DECLARATION OF PROPERTY BEING, (1879) 6 I. A. 161 (168).

### Hindu Law-Reversioner.

-Heir of-Widow-Sale by-Suit to set aside, on foot of plaintiff being reversioner's heir-Relief on foot of plaintiff being purchaser from such heir-Grant of. Sec HINDU LAW - WIDOW - SALE BY-REVERSIONER'S HEIR-SUIT TO SET ASIDE, ETC.

(1892) 19 I. A. 221 (225-6) = 20 C. I (5-6).

-Presumptive reversioner-Widow-Alienation by-Possession of property subject of Suit for Failure to establish right to immediate possession—Declaration of invalidity of alienation in case of Propriety. See HINDU LAW-REVERSIONER- PRESUMPTIVE REVERSIONER-WIDOW-ALJENATION BY-POSSESSION OF PROPERTY SUBJECT OF-SUIT FOR, ETC. (1914) 37 A. 45.

-Presamptive reversioner-Widow - Possession of last male owner's property from, on foot of joint status-Finding against joint status-Decree proper in case of-Dissmissal of suit-Declaration of reversionary character of plaintiff - Propriety. See HINDU LAW - WIDOW-JOINT STATUS OF HUSBAND. (1880) 6 C. L. R. 528.

-Remote reversioner-Alienation by widow-Possession of property subject of-Suit for, alleging death of nearer reversioner-Allegation false-Decree proper in case of-Dismissal of suit-Declaration of plaintiff's title and of invalidity of alienation—Propriety. See HINDU I-AW— REVERSIONER — REMOTE REVERSIONER — WIDOW— ALIENATION BY-POSSESSION OF, ETC.

(1907) 35 I. A. 38 = 35 C. 189.

-Widow's death-Possession of last male owner's property on-Suit for-Adoption of defendant to last male owner-Declaration of invalidity of-Prayer for-Necessity, See HINDU LAW-REVERSIONER-WIDOW-DEATH OF -POSSESSION OF LAST MALE OWNER'S PROPERTY ON -SUIT FOR-ADOPTION, ETC.

(1924) 51 I. A. 220 (225, 235) = 48 B. 411.

— Widow's death—Possession of last male owner's property on—Suit for—Defendant mortgagee under valid mortgage by widow-Decree proper in case of-Dismissal of suit without prejudice to plaintiff's right to redeem mortgage. See HINDU LAW - REVERSIONER-WIDOW-DEATH OF—POSSESSION OF LAST MALE OWNER'S PRO-PERTY ON—SUIT FOR—MORTGAGE VALID BY WIDOW. (1867) 11 M. I. A. 619 (636, 638).

-Widow's death-Possession of last male owner's property on-Suit for-Setting aside, or declaration of invali-Completed gift—Case of—Gift of corpus with re-dity of alienation nor—Prayer for—Necessity. See HINDU Servation in favour of interest—Relief on foot of. See Law—Reversioner—Widow—Death Of—Posses. dity of alienation for-Prayer for-Necessity. See HINDU

Hindu Law - Reversioner - (Contd.)

SION OF LAST MALE OWNER'S PROPERTY ON-SUIT FOR-SETTING ASIDE OF, ETC.

(1907) 34 I. A. 87 (92) = 34 C. 329 (334).

#### Hindu Widow.

-Husband-Private property of-Suit for recovery of -Refief in. on foot of property being debutter property-Grant of. See H'NDU LAW-WIDOW-INHERITANCE TO HUSBAND-RIGHT OF RECOVERY OF PROPERTY, ETC. (1875) 23 W.R. 369.

-Husband's estate-Suit to be maintained in possession of-Adopted son added as co-plaintiff in-Decree in favour of widow in case of-Declaration of her right as proprietor or as guardian of adopted son. See DECREE-HINDU LAW-WIDOW-ADOPTED SON (MINOR).

(1878) 5 I.A. 87 (115) = 1 A. 688 (708-9).

-Husband's share - Partition suit in respect of-Adoption pending-Suit prosecuted in widow's name notwithstanding-Decree in-Form proper of. See HINDU LAW-ADOPTION-WIDOW-ADOPTION BY-APOPTED SON UNDER-WIDOW'S SUIT FOR PARTITION. FTC.

(1843) 3 M.I.A. 229 (243.4).

-Mortgage by - Suit to enforce, against widow-Failure to prove execution of deed by her after full comprehension-Money decree against widow in case of-Pro priety of. See HINDU LAW-WIDOW-MORTGAGE BY-SUIT TO ENFORCE, AGAINST WIDOW-MONEY DECREE. (1880) 8 I.A. 8 (10) = 6 C. 843 (846).

-Mortgage by-Suit to enferce, against her-Mortgage invalid-Husband's personal liability under unregistered rukkas executed by him-Decree against estate on foot of-Propriety. See HINDU LAW-WIDOW-MORT-GAGE BY-SUIT TO ENFORCE. AGAINST WIDOW-MORTGAGE, ETC. (1899) 26 I.A. 97 (100)=

26 C. 707 (711 2).

-Sale by-Setting aside of-Suit for-Reversioner's heir-Plaintiff being-Suit on foot of-Purchaser from such heir-Relief on foot of plaintiff being-Grant of. See HINDU LAW-WIDOW-SALE BY-SETTING ASIDE OF -REVERSIONER'S HEIR. (1892) 19 I.A. 221 (225-6) =

20 C. 1 (5 6).

# Interest-Compound interest.

-Agreement to pay -- Course of dealing between parties showing-Decree on foot of-Right to-Plaint setting up specific case of agreement inconsistent with agree ment disclosed by course of dealing-Effect. See INTE-REST-COMPOUND INTEREST-AGREFMENT TO PAY.

(1929) 57 M.L.J. 319.

# Landlord and Tenant.

-Rent-Arrears of-Decree in appeal for-Grant of -Propriety - Enhancement of rent-Suit for-Right to enhance found against. See LANDLORD AND TENANT-RENT-ENHANCEMENT OF-SUIT FOR-RIGHT TO EN-HANCE, ETC. (1873) 19 W.B. 141 (145).

-Rent-Enhancement of-Liability of tenure for-Declaration of-Propriety-Arrears at enhanced rate-Suit for-Notice to enhance not proved. See LANDLORD AND TENANT-RENT-ARREARS OF-ENHANCED RATE

(1873) 19 W.B. 175. -Rent-Kabuliyat unenforceable - Suit for rent on foot of-Kabuliyat different not referred to in plaint and not intended to be final agreement-Decree on foot of-Propriety. See LANDLORD AND TENANT-RENT-SUIT FOR-KABULIYAT UNENFORCEABLE.

### PRACTICE-RELIEF-(Contd.)

Larger relief-Suit for-Lesser relief.

-(See also PRACTICE - RELIEF-MONEY-SUIT FOR LARGER SUM).

-Grant in appeal of-Propriety-Conditions.

The plaintiffs, who claimed through the original grantors of the suit property to a wakf sued for possession of the same on the ground that the wakf was void and that the property reverted back to the grantors, through whom they claimed. The High Court found that the parties through whom the plaintiffs claimed had, by contracts for valuable consideration of the year 1881, relinquished all rights that would arise to them if the wakf was declared for any reason to be invalid, and that in the place of such rights they obtained the benefit of an annuity fixed in a certain manner and secured by an agreement. Court accordingly held that the plaintiff's claim for posression based on the invalidity of the wakf was unsustainable. but declared that they were entitled to a charge in respect of the annuity secured to them by the agreement of 1881.

On appeal to the Privy Council the defendants contended that the High Court erred in giving the plaintiffs the benefit of the charge upon the ground that their suit was merely for possession of the land and that they did not defnitely claim the benefit of the charge declared by the High

Held. affirming the High Court, that the right allowed by the High Court was a lesser right, and that it would be both unwise and unfair to exclude the plaintiffs from that lesser right, merely because they asked for the larger one

The real question is: Do they possess that (the lesser) right? It appears to their Lordships it is the necessary corollary of the fact that they do not possess the wider right which they claimed. The reason why they do not possess that is because they relinquished it by virtue of the agreement of 1881; and the reason why they do possess the other is because the agreement in consideration of that release granted them the charge which they now seek to have declared. (Lord Buckmaster.) NAWAB KHAJAH HABIBULLAH SAHFB D. RAJA JANKI NATH ROY.

(1929) 51 C. L. J. 131 = 34 C. W. N. 313= 31 L. W. 317 = 121 I. C. 236 = A. I. R. 1930 P. C. 38

58 M.L.J. 252

### Litigation-Property subject of, or to be recovered by-Agreement to share.

-Suit to enforce—Money advanced under agreement with interest-Decree for-Grant o', on agreement being found to be unenforceable. See LITIGATION-PROPERTY SUBJECT OF, OR TO BE RECOVERED BY-AGREEMENT TO SHARE-ENFORCEABILITY OF.

(1870) 1 I.A. 241 (265-6)

#### Mahomedan Law-Dower.

-Widow's suit against husband's heirs for-Agree ment for dower held not proved-Declaration of marriage of widow with alleged husband in case of-Propriety. See MAHOMEDAN LAW - DOWER-SUIT FOR-WIDOW-SUIT BY, AGAINST HUSBAND'S HEIRS-DECLARATION (1872) 8 M.J. 185 IN, ETC.

Money-Suit for a larger sum of-Decree for smaller sum.

(See PRACTICE-RELIEF-LARGER RELIEF).

Grant of-Propriety.

It is a common and ordinary course that an action is brought for a certain sum, and judgment is given for smaller amount. (Mr. Justice Becarquet.) EDILIE FRAMJEF v. ABI (CLA HAJEF (HIFFK.

(1837) 1 M.I.A. 461 (469) = 5 W.B. [8(P.C.) 1 Euth. 74 = 1 Ear. 160.

Money-Suit for a larger sum of-Decree for smaller sum-(Contd.)

4.0

In a case in which the plaintiff's claim was for Rs.25,000 on a particular footing, but their Lordships allowed only Rs.16,000 cn another hasis, they observed:-"There is nothing in the contention that the claim was not specifically made by the plaint in this suit. The plaint clearly states the circumstances under which the claim of the plaintiff arises. He cannot sustain his suit for the whole amount claimed, but there is nothing in his claim for the larger amount which deprives him of his right to recover the smaller amount, which, as the result of the facts pleated and proved, their Lordships are of opinion is equitably due to him. It can only affect costs" (353-4). SYAD LULF AU KHAN P. MUSSAMAT AFZALUNISSA BEGUM. (1871) 9 B.L.R. 348 - 16 W.R. P.C. 20 -2 Sar. 701 - 2 Suth. 459.

A plaintiff ought not, by reason of his having claimed too much, to be precluded from recovering a portion of the amount claimed, to which he is undoubtedly entitled, where the pleadings are wide enough to cover the lesser claim. (Sir Arthur Wilson.) MALIK AHMAD WALI KHAN v. MUSSAMMAT SHAMSH-UL-JAHAN.

(1906) 33 I.A. 81 - 28 A. 482 (487) -10 C.W.N. 626 = 3 A.L.J. 360 = 3 C.L.J. 481 -1 M.L.T. 143 = 8 Bom. L.R. 397 = 8 Sar. 918 = 16 M.L.J. 269.

#### Mortgage.

-Deed of, not referred to in plaint but tendered in evidence-Relief on foot of, in suit on money-bond. See MORTGAGE-PLAINT IN SUIT ON.

(1867) 11 M.I.A. 468 (473 4).

-Mortgagor - Co-mortgagor - Surety for-Suit on foot of plaintiff being a mere-Relief for contribution in. on foot of plaintiff being a co-mortgagor. See MORTGAGE -MORTGAGOR-CO-MORTGAGOR.

(1906) 33 I.A. 81-28 A.482 (487).

#### Onus of proof.

-Party subject to-Failure by him to discharge onus -Decision in favour of, on strength of opponent's evidence -Propriety. See ONUS OF PROOF-PARTY SUBJECT TO, (1920) 25 C.W.N. 409 (414).

#### Oudh Estate.

-Settlement direct of-Right of-Suit to establish-Subordinate right to which plaintiff entitled-Relief on foot of. See OUDH - OUDH ESTATE - SETTLEMENT DIRECT OF. (1873) Sup. I.A. 220.

-Villages comprised in-Proprietary right in-Suit based on — Sub-proprietary right — Relief on foot of—
Grant of. See OUDH—OUDH ESTATE—SUB-PROPRIE
TARY RIGHT. (1889) 17 I.A. 54 (56-7)=17 C. 444.

#### Partition.

-Possession of plaintiff's share and-Decree for-Grant of, in suit for declaration of property being joint family property of plaintiff and defendant-Propriety-Plaint not praying for such relief. See HINDU LAW-JOINT FAMILY-JOINT FAMILY PROPERTY-DECLARA-TION OF, ETC. (1879) 6 L.A. 161 (168).

Suit for-Declaration in, of plaintiff's right to share of annual income of estate during his life, with liberty to apply in suit for ascertainment of each year's income-Propriety-Right to partition found against. PARTITION-SUIT FOR-DECLARATION IN, ETC.

(1925) 52 I.A. 294 (304) = 52 C. 971.

#### PRACTICE-RELIEF-(Contd.)

-Amendment of - Relief awardable on-Grant of, though amendment not in fact made. See SPECIFIC RELIEF ACT, S. 42-CASES UNDER-DEED-WRITTEN STATEMENT. (1878) 5 I. A. 87 (113) = 1 A. 688 (707).

-Documents or facts not stated or referred to in-Relief on feet of.

A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings (474). (Sir James W. Colvile.) MOHUMMAD ZAHOOR ALI KHAN P. MUSSUMAT THAKOORANEE RUTT KOER.

(1867) 11 M. I. A. 468=9 W. R. (P. C.) 9= 2 Suth. 107 = 2 Sar. 320.

Over-statement or mis-statement of case in-Effect -Real title-Relief on basis of-Grant of. See PRACTICE -PLEADINS-CASE IN-OVER-STATEMENT OR, ETC.

(1867) 11 M. I. A. 517 (545-6). -Relief prayed for in-Nature of - Decree passed in suit if affects. See MORTGAGE.

(1922) 50 I. A. 115 (120) = 4 Lab. 32.

# Pleadings-Relief not prayed for in-Grant of.

N.R.: - REFERENCE MAY ALSO BE MADE TO (1) PRACTICE-PLEADINGS-CASE LAID IN; (2) CASES COLLECTED IN ALPHABETICAL ORDER UNDER PRAC-TICE-RELIEF AND (3) PRIVY COUNCIL-APPEAL-IS-SUES, PLEADINGS.]

-Ejectment suit-Partition in-Decree for-Grant of, in appeal. See EJECTMENT SUIT-PARTITION IN-(1898) 25 I. A. 195 (207-8) = DECREE FOR. 21 A. 53 (69.70).

-Hindu Law-Joint family property-Declaration of property being, of plaintiff and defendant-Suit for-Partition and possession of plaintiff's share in-Decree for. So: HINDU LAW-JOINT FAMILY-JOINT FAMILY PRO-PERTY-DECLARATION OF, ETC. 1879) 6 I.A. 161 (168). -See HINDU LAW-WILL-PROPERTY BEQUEATH-ED BY-PARTITION AND SEPARATE POSSESSION OF.

(1888) 15 I. A. 127 (148) = 15 C. 725 (750). -As a rule no doubt a relief not founded on the pleadings should not be granted (207). (Lord Hobbouse.) SRI MAHANT GOVIND RAO P. SITA RAM KESHO.

(1898) 25 I. A. 195 = 21 A. 53 (69) = 2 C. W. N. 681 = 7 Sar. 370.

SW EJECTMENT SUIT-DISMISSAL OF-RIGHTS OF PARTIES IN-DECLARATION OF.

(1898) 25 I. A. 195 (207) = 21 A. 53 (69). -Mortgage- Mortgagor under - Suit against other mortgagors on foot of his being mere surety for them-Relief in, on foot of his being mere co-mortgagor and entitled to contribution against them-Grant of. See MORT-

GAGE—MORTGAGOR — CO-MORTGAGOR—SURETY FOR OTHER MORTGAGORS—SUIT AGAINST THEM, ETC. (1906) 33 I. A. 81 = 28 A. 482 (487).

# Possession.

(1915) 30 M. L. J. 444.

See UDER THIS VERY SUB-HEAD-Suit for. EJECTMENT SUIT.

#### Private property-Suit on foot of- Debutter property.

-Relief on foot of-Grant of. See HINDU LAW-WIDOW - INHERITANCE TO HUSBAND-RIGHT OF-RECOVERY OF PROPERTY, ETC. (1875) 23 W. R. 369.

#### Promissory note-Suit on.

-Date of note given by plaintiff-Mistake as to-Relief on foot of note of correct date-Grant of. See NEGOTIABLE INSTRUMENT-PROMISSORY NOTE-SUIT ON-DATE OF NOTE GIVEN BY PLAINTIFF.

#### Sale deed

-Gift intended by-Finding of -Propriety. See SALE-DEED-GIFT INTENDED BY-FINDING OF.

-Setting aside of, on ground of execution under pressure and duress-Vendor's suit for, treating deed as a nullity-Equitable relief from deed on terms of restoring purchase-money with interest-Grant of. See SALE-DEED-SETTING ASIDE OF.

(1871) 14 M. I. A. 53 (65-6).

### Suit-Events subsequent to.

-Cognizance of-Relief on feot of-Grant of. See ALL CASES COLLECTED UNDER SUIT-EVENTS SUBSE-QUENT TO.

### Surety-Debt entire-Recovery of.

-Suit for, on foot of plaintiff being only a surety-Contribution on foot of plaintiff being really a co-delstor-Relief for See MORTGAGE-MORTGAGOR-CO-MORT GAGORS. (1906) 33 I. A. 81 = 28 A. 482 (487).

# True case placed on false grounds.

-Relief on foot of real title-Grant of. See LITI-GATION-TRUE CASE-PLACING OF, FTC.

(1867) 11 M. I. A. 517 (545-6).

Turning out of defendants-Declaration of light of. -Grant of -Propriety. See DECLARATION-TURNING OUT OF DEFENDANTS. (1891) 18 I. A. 59 (72)= 18 C. 448 (462).

#### Will.

-Property disnosed of by-Partition and separate possession of-Suit for, on one construction of will-Maintenance out of that property-Decree for, on right construction of will-Grant of. See HINDU LAW-WILL-PRO-PERTY DISPOSED OF BY-PARTITION, FIC.

(1888) 15 I. A. 127 (144)=15 C 725 (750).

-Setting aside of-Suit for-Peclaration that it does not affect plaintiffs' rights-Grant of-Consent of parties-Effect, See HINDU LAW-WILL-SETTING ASIDE OF-SUIT FOR. (1873) Sup. I. A. 212 (218).

# Written statement- Deed set up in-Relief to plaintiff as against.

-Grant of-Amendment of plaint-Plaintiff entitled to relief on-Amendment not in fact made. See SPECIFIC RFLIEF ACT, S. 42-CASES UNDER-DEED-WRITTEN STATEMENT. (1878) 5 I. A. 87 (113)=

1 A. 688 (707). Wrong relief-Prayer for, together with right one.

-Grant of right relief in case of. See MORTGAGE-CONDITIONAL SALE-MORTGAGE BY - FORECLOSURE OF-POSSESSION UPON-SUIT BY MORTGAGEE FOR.

(1865) 10 M. I. A. 340 (355).

# PRACTICE-RULE OF

-Certainty in-Necessity-Uncertainty-Evils of.

On a question of practice certainty is more important than anything else, Uncertainty in such a matter is at best an embarrassment and may at the worst be a source of injustice which, in some cases, may be beyond judicial remedy. (Lord Blanesburgh.) ARDESHIR H. MAMA v. FLORA SASSOON. (1928) 55 I. A. 360 = 52 B. 597 =

32 C. W. N. 953 = 30 Bom. L. R. 1242 = 28 L. W. 257 = I L. T. 40 B. 125 = 111 I C. 413 = 26 A L J. 1220 = 1928 M. W. N. 893 = 48 C. L J. 451 =

A. I. R. 1928 P. C. 208 = 55 M. L. J. 523.

-Stare decisis - Applicability of ... maxim of. See MAXIM-STARE DECISIS-PRACTICE.

... (1907) 35 I. A. 22 (26) = 35 C. 202 (207).

### PRACTICE-RULE OF-(Contd.)

-Statutory rule-Alteration of, when inconvenient-Power of.

A rule of practice, even if it be statutory, can, when found to be inconvenient, be altered by competent authority. (Lord Blanesburgh.) ARDESHIR H. MAMA v. FLORA (1928 · 55 I. A. 360 = 52 B. 597 = 32 C. W. N. 953 = 30 Bom. L. R. 1242 = 28 L. W. 257 =

I L. T. 40 B. 125=111 I. C. 413=26 A. L. J. 1220= 1928 M. W. N. 893 = 48 C L J. 451=

A. I. R 1928 P. C. 208 = 55 M. L. J. 523.

#### PRACTICE - RULE OF COURT - PRACTICE HAVING AUTHORITY OF.

Condition.

Their Lordships have been referred to a well-known book on prartice which, it is said, shows that that is the practice, notwithstanding the limited character of the judgment; but even there it is impossible to find this practice laid down in terms so plain and so unhesitating that their Lordships could rely upon that authority for the purpose of saying that it has become established as the equivalent of a role of court. (311). (Lord Buckmaster.) PRAMATHA NATH ROY at LFF. (1922) 49 I.A. 307 = 49 C. 999 (1004)=

18 L. W 56=21 A. L. J. 118=37 C. L. J. 86= 27 C. W. N. 156=(1923) M W. N. 526= 31 M. L. T. 193 (P. C.) = A. I. R. 1922 P. C. 352= 4 U. P. L. R. (P. C.) 103=68 I. C. 900= 43 M. L. J. 765.

# PRACTICE-STARE DECISIS.

-Applicability of rule of-Statute-Practice to be determined by. See MAXIM-STARF PYCISIS-PRACTICE. (1907) 35 I. A. 22 (26) = 35 C. 202 (207).

### PRACTICE-STATUTE.

-Practice to be determined by-Stare decisis-Applicability of rule of. See MAXIN-STARE PECISIS-PRAC (1907) 35 I. A. 22 (26) = 35 C. 202 (207).

-Rule of practice created by-Alteration of, when inconvenient-Permissibility. See PRACTICE -RULE OF-(1928) 55 I. A. 360= STATUTORY RULE.

### PRACTICE-SUIT-DISMISSAL WITH COSTS-PLAINTIFF'S RIGHT TO APPLY FOR.

-India and England See SUIT-DISMISSAL WITH (1869) 2 B. L. R. 85 (P. C.) (86)= 11 W. B. 35 (P. C.).

## PRACTICE - TRIAL JUDGE - WITNESSES-CREDIBILITY OF.

[See also PRACTICE-APPEAL (1) EVIDENCE-WIT-NESSES-CREDIBILITY OF AND (2) FACT.]

Finding of fact based on-Interference in appeal with. See APPEAL-EVIDENCE - WITNESSES-CREDI-BILITY OF - TRIAL JUDGE'S FINDING OF FACT BASED

Opinion as to-Weight due to. See APPEAL-EVIDENCE - WITNESSES - CREDIBILITY OF-TRIAL JUDGE'S OPINION AS TO.

# PRACTICE-WITNESSES-CREDIBILITY OF.

-Trial Judge's finding of fact based on-Trial Judge opinion as to—Interference in appeal with. See (1) APPTAL -EVIDENCE-WITNESSES - CREPIBILITY OF AND (2) PRACTICE—APPEAL—EVIDENCE—WITNESSES—CREDI-BILITY OF.

#### PRECEDENTS.

-Sa (1) DECISIONS AND (2) LEGAL PRECEDENTS

#### PRE-EMPTION.

(See also OUDH ACTS-LAWS ACT XVIII of 1876 AND PUNJAB ACTS-PRE-EMPTION ACT OF 1905

CLAIM TO.

CONTRACT OF.

CUSTOM OF.

HINDU WIDOW-SALE BY-REVERSIONER'S SUIT DURING WIDOW'S LIFETIME TO ESTABLISH PRE-EMPIION RIGHT IN RESPECT OF.

MAHAL-VILLAGES COMPRISED IN-UNDIVIDED SHARES IN-COPARCENARY IN, CONFERRING RIGHT OF PRE-EMPTION.

MESNE PROFITS OF PROPERTY SUBJECT OF.

PARTIAL PRE-EMPTION.

RIGHT OF.

SUIT TO ENFORCE RIGHT OF.

UNPARTITIONED MAUZA-CUSTOM OR CONTRACT OF PRE-EMPTION IN FORCE IN.

VILLAGES DIVIDED INTO THOKES-SALE BY OWNER OF A THOKE-PRE-EMPTION RIGHT IN RESPECT OF, OF OTHER OWNERS OF THOKE.

WAJIB-UL-ARZ-ENTRY IN. RELATING TO PRE-EMP-.TION.

#### Claim to.

-Evidence of-Memory and tradition-Value of. among tribes among whom formal records not common,

Their Lordships are much impressed with the importance of showing that claims of this character (a claim to preempt) which disturb a long fide purchaser in the quiet peasession of his property should not be based on untrestworthy evidence; but it must be remembered that the Legislature has conferred these rights, and that if they are to be enjoyed by people where formal records cannot be expected to exist, reliance can only be placed upon memory and tradition. (Lord Buckmaster.) SABZ ALI KHAN P. KHAIR MUHAMMAD KHAN. (1922) 49 I. A. 74 (80) = 3 L. 48 (54) = 30 M. L. T. 237 = 20 A. L. J. 427 = 35 C. L. J. 514 = 7 P. W. B. 1922 = 1 P. L. B. 1922 =

A. I. R. 1922 P. C. 139-67 I. C. 264-

43 M. L. J. 49.

Village communat land-Occupancy right in-Sale of-Claim to pre-empt by some of village landlords - Maintainability-Suit prior by them and other joint landlords -Compromise in, signed by representative landfords-Sale

of proprietary rights to vender under-Effect of. Defendants 6 to 10, being five occupancy tenants in a village, sold their occupancy rights to the first appellant, who really purchased on behalf of himself and others and subsequently formally conveyed a one-half share of his occupancy rights in the lands to those others. Subsequent to the sale, the landlords of the village (the land being communal land) objected to the same and prayed for its cancellation by reason of disconformity to the requirements of S. 53 of the Punjab Tenancy Act. Then a suit was filed on behalf of all the landlords of the village in the Court of the Assistant Collector against the appellant and his co-sharers. The plaintiffs-respondents were also parties to that suit. That suit was decreed by the Assistant Collector but was on appeal dismissed by the Collector who held the sale to be valid. A further appeal was then made to the Commissioner, and then a compromise among all the parties was effected. By virtue of that compromise, the appeal was withdrawn, and, in consideration of a sum which was applied to purposes of the community, the proprietary right in the land was sold to the defendants. The sale was sanctioned by the revenue officer, a decree made in terms of the compromise and mutation of names effected. The plaintiffs-respondents personally did not sign the compromise. They subsequently in-

# PRE-EMPTION-(Contd.)

Claim to-(Contd.)

stituted the suit out of which the appeal to the Privy Council arose against the first appellant and his co-purchasers, claiming to pre-empt the sale of the occupancy rights in the lands on the ground that the co-purchasers were not sharers in the village.

Held that, whether the case was viewed under the heading of res judicata or of estoppel, or of no title and interest to sue, the result was the same, and that the plaintiffs were precluded from claiming to pre-empt the occupancy rights,

The occupancy rights have been consolidated, or rather, merged in the ownership rights; these belong to the appellants, and the respondents were themselves parties to the suit in the course of which this compromise arrangement was come to followed by the decree and mutation proceedings. The compromise is not challenged; it has neither been disclaimed nor impeached; it stands. Nor is any challenge made of the judgment which followed it; that also stands. This being so, it is beyond argument that the respondents can in this suit have no right or title to prefer a claim for pre-emption to the lands upon which the buildings were erected, a claim which, if sustained, might destroy the entire value and validity of the settlement and decree. Valuable consideration has been paid for the transaction under which the respondents' rights, including, of course, any claim of pre-emption, have disappeared,

The only argement that appears possible in these circumstances is that the respondents personally did not sign the compromise. But they were parties to the suit, and a number of apparently representative landlords did sign. Any plea founded upon that circumstance would be sufficiently answered by the authorities such as Idris v. Skinner, (54 P. R. No. 82). (Lord Share.) RIKHI RAM v. DHAN-(1928) 55 I. A. 266 = 110 I. C. 1= 48 C. L. J. 158 - 33 C. W. N. 90 =

A. I. R. 1928 P. C. 190.

#### Contract of.

- Proof of - Onus. See PRE-EMPTION - CUSTOM OF -PROOF OF-ONES. (1914) 42 I. A. 10 (18) = 37 A. 129 (141).

#### Custom of.

EVIDENCE OF.

-Wajib-ul-arz-Statement in-Proof sufficient of custom.

Where an entry in the waiiliul-arz of a village was as follows :- " Wajib-ul-arz, of mouzah P. G., pargana koil, district Aligarh, prepared in 1280 Fasli Paragraph 18 .- As to the transfer of property and the right of pre-emption: Each co-sharer is entitled to transfer his property, but he should transfer it first to a co-sharer the descendant of a common ancestor, and, in case of refusal on his part, to other co-sharers in the village, and if they also do not take it, then to any one he may like. If there be any dispute between the transferor and the person having a right of pre-emption as to the amount of price, then it will be decided with reference to the rate at which property is sold in the neighbouring villages."

Held that the entry in the wajib-ul-arz was a record of a custom of pre-emption among co-sharers in the village, and that it was by itself sufficient proof of the custom (209). (Viscount Duncdin.) SHFOBARAN SINGH v. KUISUM-UN-NISSA. (1927) 54 I. A. 204 = 49 A. 367 =

29 Bom. L. B. 877 = 101 I. C. 368 = A. I. R. 1927 P. C. 113 = 4 O. W. N. 543 = (1927) M. W. N. 444 = 25 A. L. J. 617 = 31 C. W. N. 853=39 M. L. T. 166=26 L. W. 326=

. 52 M. L. J. 658.

PRE EMPTION- Cont.

Custom of-(Contd.)

EVIDENCE OF-(Contd.)

- Wajibul arz - Statement in - Value of - Correboration of, by coidence of instances - Necessity.

The learned Chief Justice also apparently suggested doubts as to the value of a wajib-ul-arz as evidence of a custom of pre emption when unsupported by evidence that the custom had been enforced (20). Their Lordships fail to see on what principle statements in a wajib-ul-arz as to rights of pre-emption, which are not in contravention of Mahomedan, Hindu, or other law, should not be considered as reliable evidence of a custom of pre-emption. To hold that a wajib ul-arz is not by itself good prima facir evidence of a custom of pre-emption which is stated in it and that the wajib-ul-arz requires to be corroborated by evidence of instances in which the custom has been enforced would be to increase the costs of litigation in pre-emption cases, and in many cases might practically deprive a sharer of his right. Of coarse the evidence as to a custom of pre-emption afforded by a wajib ul are may be rebutted by other evidence (21). (Sir John Edgs.) DIGAMBAR SINGH, P. AHMED SAID KHAN. (1914) 42 I. A. 10 =

37 A. 129 (142 3) = 13 A. L. J. 236 = 17 Bom. L. R. 393 = 19 C. W. N. 393 = 21 C. L. J. 237 = 17 M. L. T. 193 = 2 L. W. 303 = (1915) M. W. N. 581 = 28 L. C. 34 = 28 M. L. J. 556.

A statement in the wajib-ul-arz of a village that there is a custom of pre-emption, which is not in contravention of law, is good prima facie evidence of the custom, without corroborative evidence of instances in which it has been exercised. Upon the entry in the wajib-ul-arz alone the custom may be held proved (208). (Viscount Dangolin.) SHEOBARAN SINGH: KULSUM-UN-NISSA.

(1927) 54 I. A. 204 = 49 A. 367 = 29 Bom. L. R. 877 = 101 I. C. 368 = A. I. R. 1927 P. C. 113 = 4 O. W. N. 543 = (1927) M. W. N. 444 = 25 A. L. J. 617 = 31 C. W. N. 853 = 39 M. L. T. 166 = 26 L. W. 326 = 52 M. L. J. 658,

INSOLVENCY-SALE BY OFFICIAL ASSIGNEE IN.

- Custom if avails in case of.

Where the High Court held that a village custom which referred only to a voluntary sale by one eo-sharer of his property was inapplicable to the case of an involuntary sale by the official assignee in whom the property had vested under S. 16 of the Provincial Insolvency Act of 1907, Actd that the High Court was wrong, because its view overlooked one of the fundamental principles of all arrangements for the realization and distribution of a bankrupt's property (210).

The property the official assignee takes is the property of the bankrupt exactly as it stood in his person, with all its advantages and all its burdens. After all, in a custom of pre-emption there is, so to speak, a debtor and creditor side; the debtor side is the obligation of the holder of the share to offer it to a co-sharer; the creditor side is the right of the co-sharer to buy. The property, if fettered. would be presumably somewhat less valuable than if it were free. But if the view of the learned judges were right, the bankruptcy of A would have the double effect of forfeiting something belonging to B, and of rendering the property of A more valuable in the hands of his official assignee than it was in his own. Just as if the conveyance had been made to an individual, that individual would have had at once the disadvantage and the privilege of the custom of pre-emption so the official assignee was in the same position and could only sell what he got (210). (Viscount Dunedin.) SHEOBARAN SINGH D. KULSUM-UN-NISSA.

(1927) 54 I. A. 204 = 49 A. 367 = 29 Bom. L. B. 877 =

PRE-EMPTION-(Contd.)

Custom of-(Contd.)

 INSOLVENCY—SALE BY OFFICIAL ASSIGNEE IN— (Contd.)

101 I. C. 368 - A. I. R. 1927 P. C. 113 -4 O. W. N. 543 - (1927) M. W. N. 444 -25 A. L. J. 617 - 31 C. W. N. 853 - 39 M. L. T. 166 -26 L. W. 326 - 52 M. L. J. 658.

PROOF OF.

Onus.

Rights of pre-emption when they exist are valuable rights, and when they depend upon a custom or upon a contract, the custom or the contract, as the case may be, must, if disputed, he proved (18). (Sir John Edge.) DI-GAMBAR SINGH 2: AHMAD SAID KHAN.

(1914) 42 I. A 10=37 A. 129 (141)=17 M. L. T. 193= 19 C. W. N. 393=13 A. L. J. 236=21 C. L. J. 237=

(1915; M. W. N. 581 = 2 L. W. 303 = 17 Bom. L. R. 393 = 28 I. C. 34 = 28 M. L. J. 556.

——Quantum—Ordinary law—Custom a well-recognized adjunct to—Custom having effect of altering—Distinction between cases of. See CUSTOM—PROOF OF—QUANTUM—ORDINARY LAW. (1927) 54 I. A. 204 (209) = 49 A. 367.

#### UNPARTITIONED MAUZA-CUSTOM IN

Survival of, after partition of manta into uparate mahats—Proof of Necessity.

Mauza Pala Kher, which was an unpartitioned mauza in which the appellant and one B were sharers, was, in 1905, on the application of certain of the then sharers in the mauza, partitioned into five mahals. On the partition each of the five newly formed mahals became separately responsible for the revenue assessed upon it, but did not become responsible for the revenue assessed upon any other of the five mahals. No separate record of rights was framed for any of the five new mahals. In 1863 all the sharers in the mauza were apparently Mahomedans.

B, who was a sharer in one of the newly formed mahals, sold part of the share to the respondent, who, at the date of the sale, was not a sharer in any of the five new mahals, but was the mortgagee in possession of part of the share of B. The appellant was not, at the date of the said sale, a sharer in the mahal in which B was a sharer, but was, however, at that date a sharer in another of the five new mahals, in which mahal neither the respondent nor B was a sharer. The appellant and B were not related to each other. The respondent, who was a Mahomedan, was not related to the appellant or to B.

The appellant brought a suit to enforce a right of preemption in respect of the sale by B to the respondent,
claiming to be entitled under a custom which he alleged to
be prevailing in mauza Pala Kher. The only evidence to
prove that the custom, which was relied upon by the appellant, existed in the said mauza was afforded by the clauses
relating to pre-emption which were contained in the wajbul-arz of 1863 and 1870. Those clauses did prove that
prior to the partition of the mauza the custom of pre-emption existed and was in force in the mauza.

Held that proof of a custom of pre-emption existing and in force in the mauza prior to the partition thereof would not be sufficient to entitle the appellant to a decree; but that it was necessary for him to show, either on the construction of the wajib-ul-arz or by other evidence, that the custom of pre-emption which obtained in the unpartitioned mauza would survive a partition of that mauza into separate mahals so as to give a sharer in one of the new mahals a right to pre-empt property in another of those mahals in which he was not a sharer at the date of the sale (19).

### PRE EMPTION - (Contd.)

Custom of-(Contd.)

UNPARTITIONED MAUZA-CUSTOM IN-(Contd.)

Held further that the appellant had failed to prove a custom which would entitle him to pre-empt in respect of the sale in question. (Sir John Edge.) DIGAMBAR SINGH v. AHMAD SAID KHAN. (1914) 42 I. A. 10= 34 A. 129 (142-3) = 17 M. L. T. 193 = 19 C. W. N. 393 = 13 A. L. J. 236 = 21 C. L. J. 237 =

(1915) M. W. N. 581 = 2 L. W. 303 =

17 Bom. L. R. 393 = 28 I. C. 34 = 28 M. L. J. 556. -Survival of after partition of manas-Wajibal-ar: fresh-Preparation of, at partition-Necessity.

Their Lordships are not prepared to dissent from the view that "where a fresh wajib ul-arz has not been prepared at partition, it does not fellow, as a matter of law or principle, that the custom or contract in force before partition is no longer to have effect or operation." The question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence (19). (Sir John Edge.) DIGAMBAR SINGH :. AH-

MAD SAID KHAN. (1914) 42 L.A. 10= 37 A. 129 (142) = 17 M. L. T. 193 = 19 C. W. N. 393 = 13 A. L. J. 236 - 21 C. L. J. 237 -

(1915) M. W. N. 581 - 2 L. W. 303 = 17 Bom. L. R. 393 28 I. C. 34 = 28 M. L. J. 556.

Hindu widow-Sale by-Reversioner's suit during widow's lifetime to establish pre emption right in respect of.

Dismissal of, on ground of want of proof of pre-emption right-Suit by him after her death to set aside sale for want of necessity and to recover property sold-Maintainability-Res indicata. See HINDU LAW-WIDOW-SALE BY-REVERSIONER-PRE-EMPTION RIGHT IN RESPECT OF SALE. (1906) 34 I. A. 72 (77-8) = 29 A. 331 (338 9).

#### Law of.

-Basis of—Custom — Contract — Legislation. See PRE-EMPTION-LAW QF-ORIGIN OF-BASIS OF.

(1914) 42 I. A. 10 (18) = 37 A. 129 (140 1). Behar Hindoos-Applicability to. See PRE-EMP-TION-LAW OF-INTRODUCTION INTO INDIA OF

(1912) 39 I. A. 101 (106-7) - 39 C. 915.

Introduction into India of Behar Hindus-Ap plicability to.

The Mussulman law of pre-emotion is in force among the Hindus of the district of Champaran in the province of

Behar (106-7).

The law of pre-emption was introduced into India with the Mahomedan government. The province of Behar was an integral part of the Mahomedan Empire, and consequently it would not be surprising to find that in Behar the right of pre-emption is enforceable irrespective of the persuasion of the parties concerned. In the case of Fakir Rascet v. Shrikk Emambakih (B. I., R. F. B., 35), a Full Bench of the High Court of Bengal gave judicial recognition to the existence of the right of pre-emption among the Hindus of Balance (106.7). Hindus of Behar (106-7). (Mr. Ameer Ali.) JADU LAL

SAHU D. JANKI KOER. (1912) 39 I. A. 191-39 C. 915 = 9 A. L. J. 525 = 16 C. W. N. 553 = 15 C. L. J. 483 = 15 I C. 659 = 11 M. L. T. 361 = (1912) M. W. N. 486 = 14 Bom. L. B. 436 =

23 M. L. J. 28. Origin of-Basis of-Custom-Contract-Legislation.

Pre-emption in village communities in British India had its origin in the Mahomedan law as to pre-emption, and was apparently unknown in India before the time of the Moghul rulers. In the course of time customs of pre-emption grew up or were adopted among village communities. In some

# PRE EMPTION-(Contd.)

Law of-(Contd.)

of the Mahomedan law of pre-emption, and in such cases the custom of the village follows the rules of the Maliomedan law of pre-emption. In other cases, where a custom of preemption exists, each village community has a custom of pre-emption which varies from the Mahomedan law of preemption and is peculiar to the village in its provisions and its incidents. A custom of pre-emption was doubtless in all cases the result of agreement among the shareholders of the particular village, and may have been adopted in modern times and in villages which were first constituted in modern times. Rights of pre-emption have in some provinces been given by Acts of the Indian Legislature. Rights of preemption have also been created by contract between the sharers in a village. But in all cases the object is as far as is possible to prevent strangers to a village from becoming sharers in the village (18). (Sir John Edge.) DIGAMBAR SINGH : AHMAD SAID KHAN. (1914) 42 I. A. 10= 37 A 129 (140 1) - 17 M. L. T. 193 - 19 C. W. N 393 -

13 A. L. J. 236 = 21 C L J. 237 = (1915) M W. N. 581 = 2 L. W. 303 = 17 Bem. L. R. 393 - 28 I. C. 34 = 28 M. L. J. 556. Mahal-Villages comprised in-Undivided Shares in-Co parcenary in conferring right of

pre-emption.

- Joint liability for recome arrested on tillage if constitutos

In a suit by the plaintiff to establish her right of preconction in respect of certain undivided shares in a number of villages comprised in a mahal, it was urged that the claim to coparcenary, on which the plaintiffs' right of pre-emption was based arose out of the fact that the vendor and precomptor were jointly liable for the payment of the Government revenue assessed on the villages comprised in the mahal and that that joint liability did not constitute the co-parcenary contemplated by the Mahomedan law. Held, that the argument proceeded on a misconception of the land system of India and that the said joint liability was sufficient evidence of co-parcenary to found a claim to pre-empt (108.9),

(Mr. Ameer Alt.) JADU LAL SAHU : JANKI KOER. (1912) 39 I. A. 101 - 39 C. 915 - 9 A. L. J. 525 -16 C. W. N. 553 = 15 I. C. 659 = 15 C. L. J. 483 = 11 M.L.T. 361 - (1912) M.W N. 486= 14 Bom. LR. 436 = 23 M.L.J. 28.

Mesne profits of property subject of See MESNE PROFITS-PRE-EMPTION SUIT.

#### Partial pre emption

-Right of against stranger-purchaser.

A stranger purchaser cannot be required to submit to a partial pre-emption. (Sir John Wallis.) MUHAMMAD WAJID ALI KHAN D. PURAN SINGH.

(1928) 56 I. A 80 = 51 A. 267 = 33 C. W. N. 318 = 49 C. L. J. 141 = 27 A. L. J. 85 = 29 L. W. 423 = 1929 M. W. N. 220 = 114 I. C. 601 = A. I. B. 1929 P. C. 58 - 56 M. L. J. 304.

-Stranger-purchaser not entitled to demand. (Sir John Wallis.) MUHANMAD WAJID ALI KHAN D. RAN SINGH. (1928) 56 I. A. 80 = 51 A. 267 = 33 C. W. N. 318 = 49 C. L. J. 141 = 27 A. L. J. 85 = 29 L. W. 423 = 1929 M. W. N. 220 = 114 I. C. 601 = PURAN SINGH.

A. I. R. 1929 P. C. 58 = 56 M. L. J. 304.

Bight of.

(See also PRE-EMPTION-CLAIM TO.) ADMINISTRATOR OF ESTATE OF PERSON HAVING -VESTING OF RIGHT IN.

Conditions.

In this case the right of pre-emption which a deceased person had was treated by the Courts below as having cases the sharers in a village adopted or followed the rules | vested in an administrator of the deceased's estate on the

PRE EMPTION-(Conf.s.)

Right ot-(Contd.)

ADMINISTRATOR OF ESTATE OF PERSON HAVING— VESTING OF RIGHT IN—(Contd.)

ground that it was not a case of an unexercised option, but an option which the deceased had in his lifetime actually exercised. Their Lordships proceeded on the footing that the Courts were right in so treating the matter (479), (Viscount Haldow.) SITARAM BHAURAO : JIAUL HASAN SIRAJUL. (1921) 48 I. A. 475 =

45 B. 1056 (1061) = 14 L. W. 604 = 26 C. W. N. 221 = (1922) M. W. N. 63 = 4 U. P. L. R. P. C. 10 = 3 Pat. L. T. 86 = 24 Bom. L. R. 595 = 64 I. C. 826 — A. I. R. 1923 P. C. 41.

BAR OF.

— Recognition of purchaser's title operating as - Mortgage on property in pre-emptor's favour—Deposit of money due under, by purchaser with a view to redeem—With drawal of money by pre-emptor—Effect.

The suit was to enforce a right of pre-emption in respect of a four-annas share in certain property. The plaintiff had obtained a transfer of a zurpeshgi mortgage binding the four annas share. After the sale of the said share the purchaser paid the mortgage money into Court, in accordance with the provisions of the Transfer of Property Act, for the purpose of redeeming the mortgage, and the plaintiff took out that money.

Held that the plaintiff had not, by doing so, recognised the title of the purchaser, and was not precluded from

claiming pre-emption.

Until a decree for pre-emption was made the purchaser owned the land as purchaser, and had a right to redeem. The taking out of the money by the plaintiff, as mortgages, was no recognition of anything more than that and was quite consistent with the claim to pre-empt. (Sir Jethur Wilson.) BAIJNATH RAM GOENKA: RAMDHARI CHOWDHRY. (1908) 35 I.A. 60 (66) = 35 C. 402(412) = 3 M.L.T. 349 =

7 C. L. J. 318 = 12 C. W. N. 419 = 10 Bom. L. R. 253 = 18 M.L.J. 116.

DECLARATION OF -SUIT FOR.

--- Base declaration —Suit for—Maintainability— Specific Relief Art. S. 42.

A mere claim to a right of pre-emption is not a claim to any right to proper y within the meaning of S. 42 of the Specific Relief Act; and a claim for a bare declaration of right to pre-empt is not the right way of asserting the right to pre-emption (260-1).

The claim for a declaration would necessarily require to be followed by further consequential relief, if the order were to be effectual (200-1). (Lord Buckmaster.) CHARAN DAS v. AMIR KHAN. (1920) 47 L A. 255=48 C. 110 (114-5)=3 P. W. R. 1921=25 C. W. N. 289=28 M. L. T. 149=18 A. L. J. 1095=

22 Bom. L. R. 1370 = 56 I. C. 606 = 39 M L. J. 195.

—Possession on pre-emption—Claim for—Amendment of plaint so as to set up—Second appeal—Permissibility—Limitation—Plat of—Avoidance of—Amendment having effect of.

A suit by the respondents for a declaration of their right of pre-emption over certain land was dismissed by the Court of first instance and by the first appellate Court on the ground that such a suit would not lie having regard to the proviso to S. 42 of the Specific Relief Act; and applications made by them for leave to amend the plaint by claiming possession on pre-emption were also rejected by those Courts on the ground that the amendment would deprive the defendant of the plea of limitation. On second appeal the Judicial Commissioner, however, allowed the amendment to be made, because "however defective the frame of the suit may be, the plaintiff's object was to pre-

PRE-EMPTION-(Contd.)

Right of-(Contd.)

DECLARATION OF-SUIT FOR-(Conid.)

empt the land; their cause of action was one and the same

whether they sued for possession or not."

Held that the case was one in which the plaint ought to be allowed to be amended, though the amendment deprived the defendant of the plea of limitation (262). (Lord Buckmaster.) CHARAN DAS v. AMIR KHAN.

(1920) 47 I. A. 255=48 C. 110 (116-7)= 3 P. W. R. 1921=25 C. W. N. 289=28 M. L. T. 149= 18 A. L. J. 1095=22 Bom. L. B. 1370= 56 I. C. 606=39 M. L. J. 195.

#### DELAY IN EXERCISING.

——Inference from, of election not to exercise right— Propriety—Conditions. See PRE-EMPTION—RIGHT OF— ELECTION NOT TO EXERCISE.

(1908) 35 I. A. 60 = 35 C. 402 (411).

-Reasonableness of -Question as to-Fact or law.

Whether or not there has been unreasonable or unnecessary delay in exercising the right of pre-emption is a question to be determined upon the facts of each particular case. (Sir Arthur Wilson.) BAIJNATH RAM GOENKA v. RAMDHARY CHOWDHRY. (1908) 35 I. A. 60=

35 C. 402 (411) = 3 M. L. T. 349 = 7 C. L. J. 318 = 12 C. W. N. 419 = 10 Bom. L. R. 253 = 18 M. L. J. 116.

Reasonableness or otherwise of —Trial Judget

finding as to-Reversal of-Grounds.

In a case in which the question was whether the delay in exercising the right of pre-emption was so unreasonable or unnecessary as to be fatal to the claim, the first court held that it was not, while the High Court held that it was.

Held that the grounds stated by the High Court for overruling the decision of the first court on that pure question of fact were insufficient. (Sir Arthur Wilson.) BAIJNATH RAM GOENKA P. RAMPHARI CHOWDHRY.

(1908) 35 I. A. 60 = 35 C. 402 (411) = 3 M. L. T. 349 = 7 C. L. J. 318 = 12 C. W. N. 419 = 10 Bom. L. B. 253 = 18 M. L. J. 116.

#### ELECTION NOT TO EXERCISE.

- Inference of, from delay in exercising it-Propriety
- Conditions.

The right of pre-emption must be exercised, and the claims necessary to give effect to it must be made, with the utmost promptitude, and any unreasonable or unnecessary delay is to be construed as an election not to pre-empt. (Sir Arthur Wilson.) BAIJNATH RAM GOENKA v. RAMDHARI CHOWDHRY. (1908) 35 I. A. 60 = 35 C. 402 (411)=

3 M. L. T. 349=7 C. L. J. 318=12 C. W. N. 419= 10 Bom. L. R. 253=18 M. L. J. 116.

#### FORMALITIES FOR EXERCISE OF.

Of the formalities insisted upon by the Mussalman law as essential preliminaries to the assertion of the right of pre-emption, the first, technically called "the immediate demand," should be observed by the pre-emptor or some one on his behalf immediately on receipt of the news of the sale; otherwise the right of pre-emption falls to the ground. The second formality consists in the repetition of the "demand" with as little delay as possible under the circumstances, in the presence of witnesses either before the vendor or the vendee or on the premises (108). (Mr. Ameer Ali.) JADU LAL SAHU v. JANKI KOER.

JADU LAL SAHU v. JANKI KOER. (1912) 39 I. A. 101 = 39 C. 915 = 9 A. L. J. 595= 16 C. W. N. 553 = 15 C. L. J. 483 = 15 I O. 659= 11 M.L.T. 361 = (1912) M.W.N. 486=

14 Bom. L. B. 36=23 M.I.J. 28.

Date of sale with reference to—Agreement of sale by
Mahomedan to Hindu—Date of, treated as date of sale by

PRE-EMPTION-(Contd.) Right of-(Contd.)

FORMALITIES FOR EXERCISE OF -(Cont.1.)

A and B were co-sharers in two villages. On 14-10-1908 B executed in favour of the appellants, who were Hindus, a Actual sale of property pure and simple by private salethe appellants had agreed to purchase B's share in the two villages, that they had paid a portion of the consideration for the sale, and undertook to pay the remainder in two instalments, and that there was to be a "pukka" registered deed of sale. The deed further recited that, if A was willing to purchase the said share, B should immediately return to the appellants the amount received by him. Contemporaneoasly with that deed B wrote a letter to A stating that he had that day sold his share to the appellants for the sum of Rs. 29,999, and that, if he (A) was destrous of purchasing the said share for the said sum, he should send B a cheque for the said sum, within 2 days of his receipt of that letter. On receipt of that letter, A taking the view that there had been a sale, went through the ceremonies necessary for asserting his right.

Held, affirming the High Court, that, as the parties represented a full sale as having taken place on 14-10-1908. the date of the agreement, A was justified in proceeding at once to the ceremonies, and in treating that as the crucial time. (Viscount Haldane.) SITARAM BHANRAO P. JIAUL. HASAN SIRAJUL. (1921) 48 I. A. 475-45 B. 1056= 26 C. W. N. 221 = 14 L. W. 604 = (1922) M. W. N. 63 = 4 U. P. L. R. (P. C.) 10 = 3 Pat. L. T. 86 = 24 Bom. L. R. 595 = 64 I. C. 826 =

-Date of sale with reference to-Law determining-Intention of parties-Transfer of Property Act-Effect of.

A. I. R. 1923 P. C. 41.

It is with regard to the date of sale that the question of whether the religious and other formalities necessary for the exercise of the right of pre-emption had been performed at the proper time must be determined. The Transfer of Property Act, which requires registration, has not altered directly or indirectly the principle of the Mahomeslan law, which determined what was a sale for the purposes of the date in reference to which the ceremonies should be performed. The intention of the parties must be looked at in determining what system of law was to be taken to be the date of the sale with reference to which the ceremonies were performed (480-1). (Viscount Haldane.) SITARAM BHANRAO P. JIAUL HASAN SIRAJUL.

(1921) 48 I. A. 475 = 45 B. 1056 (1062-3) = 14 L. W. 604 = 26 C. W. N. 221 = (1922) M. W. N. 63 = 4 U. P. L. B. (P. C.) 10 = 3 Pat. L. T. 86=24 Bom. L. B. 595= 64 I. C. 826 = A. I. B. 1923 P. C. 41.

 Observance of—Court of Wards—Manager under— Observance by, on behalf of Ward-Right of. See BENGAL ACTS-COURT OF WARDS ACT OF 1879, S. 40. (1912) 39 I. A. 101 (107-8) = 39 C. 915.

PUBLIC SALE.

Property exposed to-Right in case of-Bidding at sale-Pre-emptor's duty as to.

Quaere whether the right of pre-emption is always open antil a sale by public auction is concluded, or whether the person in right of pre-emption, if he finds the property is Sing to be exposed to public sale, is bound to go there and bid (207). (Viscount Dunedin.) SHEUBARAN SINGH P. KULSUM-UN-NISSA. . (1927) 54 I. A. 204 = 49 A. 367 = 29 Bom. L. B. 877 = 101 I. C. 368 =

A. I. B. 1927 P. C. 113 = 4 O. W. N. 543 = (1927) M. W. N. 444 = 25 A. L. J. 617 = 81 O. W. N. 863=39 M. L. T. 166=26 L. W. 326= PRE-EMPTION-(Contd.)

Right of-(Contd.)

PUBLIC SALE-(Contd.)

Property and arrears of rent put up for sale at-Sale in respect of which pro-emption right claimable.

Pre-emption in a share in a village was claimed by a cosharer as against the buyer from the assignee in bankruptcy of another co-sharer. The Official Assignee put up the property for sale by public auction on 8-11-1914. A bid was made but was not accepted by the Official Assignee, and the sale was re-advertised for 6 12-1914. A bid of Rs. 40,000 was made by one S, and he was declared purchaser, subject to confirmation by the Official Assignee. On the next day the auctioneer received a private offer of a greater amount. The property was thereupon sold privately for Rs. 41,000 to a person against whose representatives the right of pre-emption was claimed. It appeared that what was put up at the auction was not the property pure and simple, but the property plus arrears of rent all in one lot, so that the only sole of the property pure and simple was the private sale for Rs. 41,000, of which, admittedly the plaintiff, the person claiming the right of pre-emption had

Held that the sale in respect of which the right could be claimed was the private sale and not any sale by public auction (207). (Viscount Dunctin.) SHEOBARAN SINGH KULSUM-UN-NISSA. (1927) 54 I. A. 204 =

49 A. 367 = 29 Bom. L. R. 877 = 101 I. C. 368 = A. I. R. 1927 P. C. 113-4 O. W. N. 543= (1927) M. W. N. 444 = 25 A. L. J. 617 = 31 C. W. N. 853 = 39 M. L. T. 166 = 26 L. W. 326 = 52 M. L. J. 658.

STRANGER PURCHASING LAND IN VILLAGE.

-Co-sharer in village-Right of every to pre-empt stranger. (Sir John Wallis.) MD. WAJID AM KHAN v. PURAN SINGH. (1928) 56 I. A. 80 = 51 A. 267 =

33 C. W. N. 318 = 49 C. L. J. 141 = 27 A. L. J. 85 = 29 L. W. 423 = (1929) M. W. N. 220 = 114 I. C. 601 = A. I. R. 1929 P. C. 58 = 56 M. L. J. 304.

Suit to enforce right of.

LIMITATION.

-See LIMITTATION ACT OF 1908, ART. 10.

NATURE OF.

-Object primary of. See LIMITTION ACT OF 1908 ARTS. 10, 144. (1901) 28 I. A. 248 = 24 A. 17

STRANGER-PURCHASER-CO-SHARERS SUIT AGAINST.

Decree for plaintiffs in- Appeal by defendant against-Abatement of, as against one of plaintiffs-Whole appeal if abates by reason of. See C. P. C. OF 1908 O 22, RR. 4 (3) AND 11-PRE-EMPTION.

(1928) 56 I. A. 80 = 51 A. 267.

-Decree for plaintiffs in-Form and effect of-Plaintiffs' rival claimants seeking adjudication on their rival claims—Plaintiffs not such and not seeking such adjudica-tion—Distinction. See C. P. C. OF 1908, O. 20, R. 14. (1928) 56 I. A. 80=51 A. 267.

-Frame of-Plaintiffs setting up rival claims and seeking for adjudication thereon-Plaintiffs suing stranger -Purchaser without setting up such claims and without seeking for adjudication therein-Decree in two cases-Effect of-Distinction.

When several co-sharers in a village desire to exercise the right of pre-emption against a stranger purchasing land in the village, and there are differences between them as to 52 M. L. J. 658. their shares or priorities, they may join as plaintiffs in a PRE EMPTION-(Contd.)

Suit to enforce right of -(Contd.)

STRANGER —PURCHASER —CO-SHARERS' SUIT AGMNS1—(Contd.)

suit for pre-emption against the stranger-purchaser, and may obtain in that suit a decision, not only as to their right to pre-empt, but also as to their rival claims and a decree, as provided in O. 20, R. 14 (2) in accordance with which each pre-empting plaintiff will be entitled in default of the others to ore-empt alone. On the other hand, two or more co-sharers may simply sue the stranger-purchaser for preemption without asking the Court to adjudicate on their rival claims, and may obtain a decree for possession on depositing the pre-emption money in Court. The effect of that decree is to establish, as against the defendant the right of each of the co-sharers to pre-empt him and to entitle them to possession on depositing the pre-emption money, leaving them to adjust their shares and priorities among themselves, these being matters in which the defendant has no concern as long as the pre-emption money is secured to him. (Sir John Wallis.) MAHOMED WAJID ALI KHAN 2. PURAN SINGH. (1928) 56 I. A. 80 = 51 A. 267 =

33 C. W. N. 318 = 49 C. L. J. 141 = 27 A. L. J. 85 = 29 L. W. 423 = (1929) M. W. N. 220 = 114 I. C. 601 = A. I. R. 1929 P. C. 58 = 56 M. L. J. 304.

Plaintiffs not seeking for adjudication on their rival claims—Decree for plaintiffs in—Appeal from—Abatement of, against one of plaintiffs—Right of his representatives in case of—Effect of appellate decree on them.

Where, in a case in which two or more co-sharers simply sue the stranger-purchaser for pre-emption, without asking the Court to adjudicate on their rival claims, a decree for possession conditional on their depositing the pre-emption money in Court is passed in their favour, and an appeal preferred by the defendant from such decree is allowed to ahate against one of the plaintiffs-respondents by reason of his death pending the appeal and his legal representatives not being brought on record within the time allowed for the purpose, the legal representatives of the deceased respondent against whom the appeal has abated cannot be bound by the appellate decree and are entitled to exercise the right of pre-emption which the decree of the first Court established in his favour against the defendant, that is, a right to pre-empt the whole. (Sir John Wallis.) MAHOMED WAJID ALI KHAN ©, PURAN SINGH.

(1928) 56 I. A. 80 = 51 A. 267 = 33 C. W. N. 318 = 49 C. L J. 141 = 27 A. L. J. 85 = 29 L. W. 423 = (1929) M. W. N. 220 = 114 I. C. 601 = A. I. B. 1929 P. C. 58 = 56 M. L. J. 304.

Unpartitioned mauza—Custom or contract of pre-emption in force in-

Survival of, after partition of mouza. See PRE-EMPTION—CUSTOM OF—UNPARTITIONED MAUZA— CUSTOM IN. (1914) 42 I. A. 10=37 A. 129.

Villages divided into thoke—Sale by owner of a thoke—Pre-emption right in respect of, of other owners of thoke.

Wajib-ul-arz conferring-Effect of-Joint tenant-Tenant in common-Right of.

The question was whether, upon the construction of a wajib-ul-arz, the plaintiff-appellant was entitled to a right of pre-emption in the defendant's thoke. The words of the wajib-ul-arz were:—"Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews, who may be sharers, and, in case of their refusal, in favour of the other owners of the thoke."

Mauza T was divided into three thokes, one of which belonged to I, one of the defendants, a second to the

PRE-EMPTION-(Contd.)

Villages divided into thoke—Sale by owner of a thoke—Pre-emption right in respect of, of other owners of thoke—(Centd.)

appellant, and the third to a peuson not interested in the suit. Besides the land in the thokes, there were the undivided lands of the mauza, held in common by the sharers of the different thokes, proportionately to their shares in the mauza. The record-of-rights showed the divided land comprising each thoke, and the common land as outside the thokes.

I sold all his interest in the divided as well as the undivided lands of mauza T to the predecessor-in-interest of the respondents, whereupon the appellant sued to establish her right to pre-emption with regard to the third share of mauza T sold by I.

Held, on a construction of the wajib-ul-arz, that the appellant was not entitled to the right of pre-emption.

The wajib-ul-arz confers a right of pre-emption not up. on "the other owners or shareholders of the village," but upon 'the other owners of the thoke." Now whether the thok comprised the divided lands which were recorded as belonging to I alone, or included the undivided lands which were appurtenant to those divided lands, the plaintiff was no co-owner with 1. She was not a joint tenant, nor a tenant-in-common with him as to the divided portion of the lands; if she were a tenant-in-common of the undivided lands, that did not make her an owner of I's share in those lands. The plaintiff was not therefore an owner of the thoke which was sold. The right of pre-emption is in favour of the tenant's own brothers and nephews. If they and the owner of the share were a joint undivided family, the brothers or nephews would be co-owners and sharers; there might also be other owners of the share with them. In such case, if the sharer wished to sell his share, his own brothers or nephews, in the first instance, and in case of their refusal the other co-owners, would be entitled to the right of pre-emption. In this case the plaintiff was not an owner or shareholder in the share sold, nor had she any interest in it. (Sir Barnes Peacock.) MUSSAMUT LACHHO (1882) 10 I.A. 1=5 A. 158= P. MAVA RAM. 4 Sar. 407.

Wajib-ul-arz-Entry in. relating to pre-emption.

Construction of Mortgagees Pre-emption right
of, as sharers in mouzah.

A wajib-ul-arz of 1863 provided as follows:—"In future every co-sharer mortgagor or mortgagee shall as such be at liberty to make transfers. But he shall make transfers first in favour of his own and ekjaddi brothers and after them in favour of the proprietors of the village. If none of them take he shall be competent to make transfers in favour of strangers. If there is a dispute regarding difference in consideration it shall be decided by arbitration. This wajib-ul-arz was signed by all the sharers and by some, if not all, of the mortgagees.

The corresponding clause in the wajib-ul-arz of 1870 was as follows:—" In future co-sharer mortgagor or mortgagoe has as such power. He shall have power to make transfers first to his own and ekjaddi brothers and next to co-sharers in the khata and patti as well as to proprietors. If none of the aforesaid persons takes he shall have power to transfer it to a stranger. If there arises any dispute as regards the price being more or less it shall be decided by arbitration."

Held that it was not meant by the clauses above set out to treat mortgagees as such as sharers in the mauza and to confer on them a right to pre-empt (16-7).

The references in the clauses above mentioned to mortgagors and mortgagees are obscure. The sharers in the

# PRE-EMPTION-(Contd.)

Wajib-ul-arz-Entry in, relating to pre-emption -(Contd.)

manza may have intended that if a mortgagor should assign his interest as a mortgagor he should offer it in the first instance to his own or his ekjaddi brother and them to a sharer in the khata and patti, or to a proprietor in the manzah, and if they should refuse to porchase it he might assign it to a stranger, and in the same way if a mortgagee should wish to assign his mortgagee's interest his right to assign it should be similarly limited (16). (Six John Edgy.) DIGAMBAR SINGH v. AHMAD SAID KHAN.

(1914) 42 I.A. 10 = 37 A. 129 (138 9) = 17 M.L.T. 193 = 19 C. W. N. 393 = 13 A.L.J. 236 = 21 C. L. J. 237 = (1915) M. W. N. 581 = 2 L. W. 303 = 17 Bom. L. R. 393 = 28 I. C. 34 = 28 M. L. J. 556.

-Record of custom or contract-Presumption.

Where the contrary is not shown, a provision in a wajibul-arz relating to pre-emption should be presumed to be the record of a custom (209). (Viscount Duncdin.) SHEO-BARAN SINGH v. KULSUM UN-NISSA.

(1927) 54 I. A. 204 = 49 A. 367 = 29 Bom. L.R. 877 = 101 I. C. 368 = A. I. R. 1927 P.C. 113 = 4 O.W.N. 543 = (1927) M.W.N. 444 = 25 A.L.J. 617 = 31 C. W. N. 853 = 39 M.L.T. 166 = 26 L.W. 326 = 52 M.L.J. 658.

Record of custom or contract coming to an end with previous settlement.

In a suit brought to establish a right of pre-emption, plaintiff's claim was based on the wajib-ul-arz of the mahals within which the suit lands were situated. The meterial part of the document was to be found in paragraph 14. Chapter II which was headed thus:—"Mutual rights of the co-sharers, based on custom or particular contracts." Paragraph 14 was headed "custom relating to the right of pre-emption;" and the clause gave a right of pre-emption first to a near co-sharer, then to a co-sharer in the patti, after that to a co-sharer in the thoke, and lastly to a co-sharer in the mahal. Held that the terms of the wajib-ul-arz were absolutely clear regarding the existence of the custom of pre-emption in the mahals to which it related.

The words "particular contracts" in the heading of Chapter II of the wajib-ul-arz seem to have suggested the ingenious plea that paragraph 14 gave expression to a "contract" between the co-sharers which came to an end with the last settlement. The Subordinate Judge upheld that plea, but the High Court overruied it, and the objection has not been seriously pressed before this Board. (Mr. Amer Ali') MATHURA PRASAD 2. SHEIKH MUHAMMAD, (1912) 17 I.C. 844 = 17 C.W.N. 981.

# PREROGATIVE.

See CROWN-PREROGATIVE.

# PRESIDENCY BANKS ACT XI OF 1876.

Share-holder of Bank—Inspection of register of thare-holders and taking of copies and extracts therefrom—Suit against Bank to enforce right of -Nature of-Princi-Hes regulating grant of relief in.

The respondent was a holder of one share in the Bank of Bombay, one of the Banks incorporated in 1876 by the Indian Statute of that year entitled the Presidency Banks Act, 1876. He sued the Bank for a declaration that he was entitled at all reasonable times to inspect the register of share-holders of the Bank and copy and take extracts from the said register and for an order that the Bank do give him such inspection and allow such copies and extracts.

Hald, that the suit was in truth in its nature, though not in form, somewhat of the character of an application for

# PRESIDENCY BANKS ACT XI OF 1876-(Contd.)

a writ of mandamus, and that the principles regulating the issue of that prerogative writ should apply to a great extent to the granting of the relief prayed for in such a suit. (Lord Atkinson.) BANK OF BOMBAY: SULEMAN SOMJI. (1908) 35 I. A. 130 = 32 B. 466 (476) =

4 M. L. T. 16 = 8 C. L. J. 103 - 12 C. W. N. 825 = 10 Bom. L. R. 636 = 5 A. L. J. 463 = 18 M. L. J. 355.

Share-holder of Bank—Inspection of register of share-holders and taking of copies and extracts therefrom— Kight of, absolute or qualified—Suit to establish absolute reght—Decree in, establishing qualified right—Propriety.

The respondent was a holder of one share in the Bank of Bombay, one of the Banks incorporated in 1876 by the Presidency Banks Act, 1870. He sued the Bank for a declaration that he was entitled at all reasonable times to inspect the register of share-holders of the Bank and copy and take extracts from the said register and for an order that the Bank do give him such inspection and allow such copies and extracts.

The High Court, by its decree, declared expressly that the respondent, as long as he was a share-holder of the Bank, was entitled at all reasonable times to inspect the register of share-holders of the Bank, and to copy and take extracts from the said register, and then proceeded to order that the Bank do give such inspection and do allow the respondent, as long as he was a share-holder of the Bank, to take copies and extracts from the register, and then restrained the Bank from preventing the respondent, as long as he was a share-holder of the Bank, from having access at all reasonable times to the register for the purpose of inspection and perusal, and from preventing the respondent, as long as he was a share-holder of the Bank, from taking copies of and extracts from the register.

There was no statute conferring on the members of the Bank, a right to inspect, copy, or take extracts from, the register of its share-holders or any other document belonging to it. The only right the respondent could have, therefore, against the Bank in reference to such matters, was that which at common law belonged to every member of a Corporation. On the evidence in the case it was clear that the respondent had no special interest in any of the matters he complained of, or any interest other than, or different from, that of each member of the corporation, and that he had no definite right or object of his own to aid or serve in asking for inspection of the register, or right or object which the register would illustrate; but that, on the contrary, his object was to obtain the inspection in order to communicate with the share-holders with the view of securing their help in bringing about an improvement in the administration of the Corporation's affairs.

Held that the respondent was not in law entitled to the extended right to which the decree of the High Court declared him to be entitled, and that he was not also entitled to a limited and qualified right, as it was never put forward or insisted on, before action brought, or any claim based on it ever refused. (Lord Atkinson.) BANK OF BOMBAY v. SULEMAN SOMJI. (1908) 35 I. A. 130=

S2 B. 466 (478) = 4 M. L. T. 16 = 8 C. L. J. 103 = 12 C. W. N. 825 = 10 Bom. L. B. 636 = 5 A. L. J. 463 = 18 M. L. J. 355.

#### PRESIDENCY TOWNS INSOLVENCY ACT III OF 1909.

Ss. 17, 2, 52 -Hindu joint family.

Father-Adjudication of-Joint family property if vests in assignce by reason of.

It was not the intention of the Presidency Towns Insolvency Act III of 1909 that on the insolvency of a father the joint property of his family should at once vest in the Official

#### PRESIDENCY TOWNS INSOLVENCY ACT III OF | PRESIDENCY TOWNS INSOLVENCY ACT III OF 1909-(Contd.)

Ss. 17. 2. 52-Hindu joint family -(Contd.)

Assignce. It may be that under the provisions of S. 52 of | lender for the purposes of immorality. Their Lordships do that Act or in some other way that property may in a proper case be made available for payment of the father's just debts; but it is quite a different thing to say that by virtue of his insolvency alone it vests in the Assignee, and no such provision should be read into the Act (39).

It is true that S. 17 of the Act of 1909 provides that on the making of an order of adjudication "the property of the insolvent "shall vest in the Official Assignee and shall become divisible among his creditors, and that by S. 2 "property" is defined as including any property over which any person has a disposing power which he may exercise for his own benefit; and it may be said that a Hindu father's power to sell the joint property and apply the proceeds to the payment of his debts is such a power. But the definitions in S. 2 are only to apply "unless there is something repugnant in the subject or context; and it is therefore necessary to consider the effect of the definition of "property" contained in that section in relation to the subject matter which is being dealt with and the other sections of the Act. Now, as to the subject-matter-namely, the joint property of an undivided Hindu family-it is certainly a startling proposition that the insolvency of one member of the family should of itself and immediately take from the other male members of the family their interests in the joint property and from the female members their right to maintenance and transfer the whole estate to an assignee of the insolvent for the benefit of his creditors. The father's power to dispose of the joint property is not absolute, but conditional on his having debts which are liable to be satisfied out of that property; and S. 2 seems to contemplate an absolute and unconditional power of disposal. And if the later sections of the Act (Ss. 52, 23, 76) are examined, it becomes apparent that this cannot have been the intention of the statute (37-8). (Sir John Edge.) SAT NARAIN v. BEHARI LAL. (1924) 52 I. A. 22 = 6 Lah. 1= (1925) M. W. N. 1 = 23 A. L. J. 85 = 6 L. R. P. C. 1 = 21 L. W. 375 = 27 Bom. L R. 135 = 29 C. W. N. 797 = 26 P. L. R. 81 = A.I.R. 1925 P. C. 18 =

84 I. C. 883 = 47 M. L. J. 857. -Father-Adjudication of-Property vesting in Assignce by reason of-Question as to-Decisions under S. 266 of Code of 1882 and S. 60 of Code of 1908-Inapplicability of.

The question what is the right or interest which an Official Assignee acquires under the Presidency Towns Insolvency Act III of 1909 in the joint and unpartitioned immovable property of a Hindu joint family governed by the law of the Mittakshara on, and solely by virtue of, an adjudication by a High Court that one of the co-parceners of the joint property is insolvent must be decided on the wording of that Act, and on that Act alone. Cases which have arisen under S. 266 of C. P. C. of 1882, or under S. 60 of C.P.C. of 1908, depended on different considerations, and decisions in cases under those sections are likely to mislead a court which has to construe the Presidency Towns Insolvency Act, 1909. A sale under S. 266 of C. P. C. of 1882, or under S. 60 of C. P. C. of 1908, is a sale by a Court in execution of a decree which until the contrary is shown can be executed against the property which has been attached. When the decree which was executed was made in a suit to which the sons were not parties and the property sold was the joint property of the father and the son, the sale was good on the principle of Hindu Law that it is the pious duty of a Hindu son to pay his father's debts unless it is shown that the debt in respect of which the decree was made was contracted by the father to the knowledge of the

# 1909-(Contd.)

Ss. 17, 2, 52-Hindu joint family-(Contd.)

not intend to say one word which might have the effect of disturbing and raising doubts as to decisions under S. 266 of C. P. C. of 1882, or under S. 60 of C.P.C. of 1908 (30). (Sir John Edge.) SAT NARAIN v. BEHARI LAL

(1924) 52 I.A. 22 = 6 Lah. 1=(1925) M. W. N. 1= 23 A. L. J. 85 = 6 L. R. P. C. 1 = 21 L. W. 375 = 27 Bom. L. R. 135 = 29 C. W. N. 797 = 26 P. L. R. 81 = A. I. R. 1925 P. C. 18=84 I. C. 883= 47 M L. J. 857.

-Firm of-Adjudication of, or of father manager of firm-Effect of, on minor sons partners of firm.

If a joint Hindu family governed by the law of the Mithakshara could be treated as a firm carrying on its business in partnership an order adjudicating the father who managed the business or even an order adjudging the firm insolvent could not be made under the Presidency Towns Insolvency Act III of 1909 even if the firm consisted solely of a Hindu father and his two minor sons, which would affect the interests of a minor who happened to be a partner in the firm (27). (Sir John Edge.) SAT NARAIN v. BEHARI LAL. (1924) 52 I.A. 22=6 Lah 1=

(1925) M.W.N. 1 = 23 A.L.J. 85 = 6 L.R. P.C. 1= 21 L.W. 375=27 Bom. L.R. 135=29 C.W.N. 797= 26 P.L.R. 81 = A.I.R. 1925 P.C. 18 = 84 I.C. 883 = 47 M.L.J. 857.

S. 22.

-Stay of proceedings under-Discretion as to-P. C. interference with.

Under S. 22 of the Presidency Towns Insolvency Act, the High Court has power to stop insolvency proceedings in that Court, and to say it is more convenient that insolvency proceedings against the same debtor commenced previously in a District Court should go on there. Where owing to some suspicion that the proceedings in the District Court were not proceedings which were in the best interest of the creditors, and acting on the view that it was better that the jurisdiction should be exercised by the High Court, the learned Judge exercising the Insolvency Jurisdiction in the High Court, however, held that the proceedings before him should go on unhampered by the proceedings in the District Court and his decision was confirmed on appeal. held that the matter was one entirely in the discretion of the Courts below, and that under the circumstances of the case, that discretion ought not to be interfered with. (Vircount Haldane.) SASTI KINKAP BANERJEE v. HURSOOK-(1927) 29 Bom. L. B. 1179= DAS CHOGENMULL.

46 C. L. J. 57=31 C. W. N. 1002=39 M. L. T. 50= (1927) M. W. N. 517=26 L. W. 717=104 I. C.1= A. I. B. 1927 P. C. 162 = 53 M. L. J. 114.

S. 56.

-Fraudulent Preference. See SINGAPORE BANK-RUPTCY ORDINANCE -S. 51 (1). PRESS

-Privilege of-Nature and limits of, See PENAL CODE-S. 499-PRESS.

(1914) 41 I. A. 149=41 C. 1023 (1063)

PRESS ACT I OF 1910.

Ultra vires or Intra vires of Indian Legislature.

-See UNDER THIS ACT-S. 22. (1919) 46 I. A. 176=43 M. 146 (160) S. 3 (1), Proviso - Security-Dispensation of-

Cancellation of. -Judicial or administrative act.

The act of the Magistrate in cancelling the dispensation of security is not a judicial act, but one done in the exercise of PRESS ACT I of 1910-(Contd.)

S. 3 (1) Proviso - Security - Dispensation of - Cancellation of-(Contd.)

of administrative functions. It is only the withdrawal of a privilege which need never have been made. (Lord Phillimore.) BESANT v ADVOCATE GENERAL OF MADRAS. (1919) 46 I.A. 176=43 M. 146(158)-23 C.W.N. 586-17 A. L. J. 925 = 26 M. L. T. 408 - 10 L.W. 451 =

21 Bom. L. R. 867 = (1919) M. W. N. 555 = 20 Cr. L. J. 593 = 52 I. C. 209 - 37 M. L. J. 139.

-Jurisdiction of Magistrate-Effect.

Under the proviso to sub-S. (1) of S. 3 of Act 1 of 1910, the Magistrate has power to cancel an order dispensing with security, the necessary consequence of which will be that security will have to be deposited according to the amount thereupon fixed by him within the limits prescribed as would be done in normal course on the first making of a declaration. (Lord Phillimore). BESANT o. ADVOCATE-GENERAL OF MADRAS. (1919) 46 I. A. 176 (187-8)= 43 M. 146 (166)=23 C. W. N. 986 = 17 A. L. J. 925= 26 M. L. T. 408 = 10 L. W. 451 = 21 Bom. L. B. 867 = (1919) M. W. N. 555=20 Cr. L. J. 593-52 I. C. 209-37 M. L. J. 139.

-Notice prior to party aggricoed-Absence of-Validity of order-Effect on.

The cancellation of the dispensation of the security under sub-S. (1) Proviso of S. 3 of Act I of 1910, is not like a condemnation, in which case justice requires that the person to be condemned should be heard first. The order of the Magistrate cancelling the dispensation is therefore not bad on the ground that no opportunity was given to the party affected before it was made, though the Magistrate would be acting more discreetly if he gave that opportunity. (Lord Phillimore). BESANT v. ADVOCATE-GENERAL OF MAD-(1919) 46 I. A. 176 = 43 M. 146 (158) =

23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 408 = 10 L. W. 451 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 = 20 Cr. L. J. 593 = 52 I. C. 209 = 37 M. L. J. 139.

Order of - Revision under Cr. P. C. against-Maintainability.

A revi-ion does not lie under the Code of Criminal Procedure against the order of a Magistrate under the proviso to sab-S. (1) of S. 3. Act I of 1910, cancelling the dispensation of security not being in any event a Criminal pro-ceeding within that Code. (Lord Phillimore). BESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 = 43 M. 146 159) = 23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 438 = 10 L. W. 451 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 - 20 Cr. L. J. 593 - 52 I. C. 209 -

37 M. L J. 139. -Order of - Writ of certiorari against-Power of-S. 22-Effect.

If the order of the Magistrate, under S. 3, sub-S. (1) Proviso of the Indian Press Act of 1910, cancelling the dispensation of security were a judicial order, it would have been made in the exercise of his Civil or of his Criminal Jurisdiction and procedure by way of revision would have been open. Even were it to be said that the order was of that quasi-judicial kind to which certiorari has sometimes been applied in England or in India, S. 22 of the Press Act may quite reasonably have intended to take it away and there is no reason why full effect should not be given to its language. (Lord Phillimore) BESANT D ADVOCATE GENERAL OF MADRAS. (1919) 46 I. A. 176 =

43 M. 146 (159-60) = 23 C. W. N. 986 = 17 A L. J 925 = 26 M. L. T. 408 = 10 L. W 451 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 = PRESS ACT I OF 1910-Contd.)

S. 3 (1) Provise-Security-Dispensation of-Cancellation of-(Could.)

-Validity of - Questioning of - Procedure under S. 17. if available for.

The procedure under S, 17 of Act I of 1910, is not available for questioning the act of the Magistrate cancelling the dispensation of security under the provi o to sub- S. (1) of S. 3 of that A-t. (Lord Phillimore). BESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176-43 M. 146(161)= 23 C. W. N. 986 - 17 A. L. J. 925 - 26 M. L. T. 408 -10 L. W. 451 21 Bom. L. R. 867= (1919) M. W. N. 555 - 20 Cr. L. J. 593 - 52 I. C. 209 = 37 M. L. J. 139.

-Construction-Penal Code-S. 124 A-Decisions on construction of -Use of.

Judgments on the construction of S. 124-A of the Penal Code are of considerable assistance towards the construction of S. 4 of the Press Act. (Lord Phillimore). Be-SANT P. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 (194 5) - 43 M. 146 (163) = 23 C. W. N. 986 - 17 A. L. J. 925 - 26 M. L. T. 408 = 10 L. W. 451 - 21 Bom. L. R. 867 = (1919) M. W. N. 555 - 52 I. C. 209 - 20 Cr. L. J. 593 -

37 M. L. J. 139. -System or School of opinion - Attack upon - Condemostion for-Liability to.

Semble there may be reference to a class or section of His Majesty's subjects so couched as to show that the attack is merely upon a school of opinion and unless the language is such as to excite hatred or contempt of persons it may escape condemnation. But, even where the primary object was a legitimate attack upon a system, unless care is taken it becomes difficult to make a fierce attack upon a system without conveying some imputation upon the class which the system makes or which carries the system into practice. Further the words in Cl. C). of . 4, which refer to the hatred or contempt of a class or section are not limited by Expl. is and there has been in this respect some departure from the policy of the Penal Code, which superadded a qualifying explanation which has not found place in the Press Act. (Lord Phillimore.) BESANT P. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 (194-5) = 43 M. 146 (164) = 23 C. W. N. 986 - 17 A. L. J. 925 - 26 M. L. T. 408 = 10 L. W. 451 - 21 Bom. L. R. 867 = (1919) M. W. N. 555 = 52 I. C. 209 = 20 Cr. L. J. 593 = 37 M. L. J. 139.

# S. 4(1)-Articles whether offending against.

-Decision of Indian Court as to-Privy Council's interference with.

Where the High Court held that certain articles in a newspaper offended against the provisions of S. 4, sub-S. (1) of the Indian Press Act, 1910, and, on appeal, their Lordships were satisfied that the judgment of the High Court gave proper weight to the several portions of the section and that the section had been properly construed, held that the question of application in detail of the principles of the law to the language of the various articles was so much of the nature of a question of fact that it would be difficult for their Lordships, even f they were inclined to con true the natural tendency of the words differently, to interfere with the conclusions arrived at by the court in India,

Their Lordships added that, for the purpose of considering, not the intention to excite, but the fact whether the articles were such as to excite, the judges in India with a far 20 Or. L. J. 598 = 52 I. O. 209 = 37 M. L. J. 139. closer knowledge of the character of the people likely to

### PRESS ACT I OF 1910 -(Contd.)

S. 4 (1) Articles whether offending against—(Ctd.) read the articles, had better means of judging them than their Lordships in England. (Lord Phillemore). BESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 (196) = 43 M. 146 (165) — 23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 408 = 10 L. W. 451 = 21 Bom. L. B. 867 = (1919) M. W. N. 555 = 52 I. C. 209 = 20 Cr. L. J. 593 = 37 M. L. J. 139.

### S. 4 (1) (c).

Questions to be considered under.

In substance the question under Cl. (e) of S. 4, sub-S. 1, of the Press Act. 1910, comes to this: are the passages such as in fact to excite, or do they disclose an attempt (which implies intention) to excite hatred, contempt, or disaffection towards the Government or of any class or section of His Majesty's subjects in India? And in judging the question of intent the publisher must be deemed to intend that which is the natural result of the words used having regard, among other things, to the character and de-cription of that part of the public who are to be expected to read the articles. (Lord Phillimore.) BESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 (194-5) = 43 M. 146 (163-4) = 23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 408 = 10 L. W. 451 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 = 52 I. C. 209 = 20 Cr. L. J. 593 = 37 M. L. J. 139.

# S. 4 (1) (c) and Expl. II—Penal Code—Ss. 124-A & 153-A.

Scope and effect of-Comparison and contrast.

The balancing of important political considerations which is effected by adding Explanation II to the enacting words tound in the earlier part of S. 4, sub-S. (1) of the Indian Press Act, 1910, has its analogy in Ss, 124-A and 153-A of the Penal Code. The language is not precisely the same but there is the same delicate balancing of two important public considerations; the undesirability of anything tending to excite sedition or to excite strife between classes and the undesirability of preventing any bona fide argument for reform. In applying these balancing principles it is inevitable that different minds may come to different results, one mind attaching more weight to the consideration of freedom of argument, and the other to the preservation of law and order or of harmony. (Lord Phillimere). RESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 (194.5) = 43 M. 146 (163) = 23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 408 = 10 L. W. 451 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 = 20 Cr. L. J. 593 = 52 I. C. 209 = 37 M. L. J. 139.

#### S. 22.

Ultra vires or Intra vires of Indian Legislature.

S. 22 of the Indian Press Act, and the Act itself are not ultra vires of the Indian legislature. (Lord Phillimore).

BESANT v. ADVOCATE-GENERAL OF MADRAS.

(1919) 46 I. A. 176 = 43 M. 146 (160) = 23 C. W. N. 986 = 17 A. L. J. 925 = 26 M. L. T. 408 = 10 L. W. 451 = 21 Bcm. L. B. 867 = (1919) M. W. N. 555 = 20 Cr. L. J. 593 = 52 I. C. 209 = 37 M. L. J. 139.

#### PRESUMPTION.

Acting in one of two ways-Right of-Party with-Acting by, according to his interest-Presumption of.

The ordinary rule is that a man, having a right to act in either of two ways, shall be assumed to have acted accord-

# PRESUMPTION-(Contd.)

ing to his interest (134). (Sir Richard Couch.) GOKUL-DASS GOPALDOSS v. RAMBUX SEOCHAND

(1884) 11 I. A. 126 = 10 C. 1035 (1046) = 5 Sar. 543.

Agent—Duty of —Faithful discharge of—Presumption of. See PRINCIPAL AND AGENT—AGENT—DUTY OF. (1919) 46 I. A. 279 (284) = 47 C. 280 (288).

Fact-Presumption of-Force of, as evidence.

The force of presumptions of fact as evidence will vary with varying circumstances, and cannot well be fixed by decision (Sir James Colvile). ASHRUFOOD DOWLAH AHMED HOSSEIN v. HYDER HUSSEIN KHAN.

(1866) 11 M. I. A. 94 (116)=7 W. R. P. C. 1= 1 Suth. 659=2 Sar 223=R & J's No. 5 (Outh).

Falsehood—Introduction into case of—Presumption adverse from. See LITIGATION—FALSEHOOD

Giri member of class following profession of public native songstress—Immorality of—Presumption of—Property.

Though the profession of a public native songstress is not a profession in India which is followed by women of character, it is by no means a reasonable presumption that a very young girl, a member of such a company, should be in her early years grossly profligate (184). (Sir Rishard Kindersley.) WISE 2. SUNDULOONISSA CHOWDRANEE.

(1867) 11 M. I. A. 177=7 W. R. P. C. 13= 1 Suth. 667=2 Sar. 249.

—Grant—Validity of—Presumption of, from lapse of time and apparent lawful possession under grant—Propriety—Death of original parties to transaction—Absence of endence of circumstances under which original grant made. See HINDU LAW—RELIGIOUS ENDOWMENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PERMANENT LEASE OF—VALIDITY—PRESUMPTION.

(1921) 49 I. A. 54 (59)=46 B. 481 (488)

Judicial order—Ambiguity in—Validity of—Presunption in favour of. See COURT—ORDER OF—AMBIGUI-TY IN. (1900) 28 I. A. 28 (33)=23 A. 220 (226)

Legal origin—Presumption of. Stt (1) GRANT— LOST GRANT—PRESUMPTION OF AND (2) POSSESSION— LONG POSSESSION—LAWFUL ORIGIN.

Lost grant—Presumption of. See (1) GRANT-LOST GRANT—PRESUMPTION OF AND (2) POSSESSION— LONG POSSESSION—LAWFUL ORIGIN.

Obligations old and perfected—Discharge of Obligations new and imperfect—Perfecting of Act equivocal at 10—Presumption in case of. See EXECUTOR—LEGATES—GIFTS INCHOATE BY EXECUTOR TO.

(1928) 33 C. W. N. 493.

Presumptions, even in odium spoliatoris, have reasonable limits. They must not be conjectures, nor grounded of data which the evidence itself shows to be inexact. (Lord Chelmsford.) SHAH MUKHUN LALL v. BABOO SREE KISHEN SINGH. (1868) 12 M. I. A. 157 (198): 11 W. B. P. C. 19 = 2 B. L. B. P. C. 44:

2 Suth. 190 = 2 Sar. 403.

Official Acts—Regularity of—Presumption as to Sar.
BENGAL REGULATIONS—RESISTING PROCESS RESISTING PROCESS RESISTING RESISTING RESISTING RESISTING RESISTING RESISTING RESISTING RESISTING RES

TION XI OF 1796—ATTACHMENT, ETC. (1847) 4 M. I. A. 246 (254)

-See C.P. C. OF 1908—O. 21, R. 6 (A). (1872) 14 M. I. A. 529 (647).

See Burma Registration Regulation (H of. 1897—Upper Burma)—Rr. 4 and 7. (1923) 51 I. A. 18 (21-2) = 51 C. 354

See MAXIMS—OMNIA PROESUMENTUR ETC.
See EVIDENCE ACT—S. 114, ILL(E).

## PRESUMPTION—(Contd.)

-Opposing case-Failure of-Presumption from, in lease (137). (Sir Robert Collier.) BOMBAY BURMAH

-Possession- Constructive possession-Presumption of. in favour of trespasser. See POSSESSION-TRESPASSER -CONSTRUCTIVE POSSESSION IN FAVOUR OF.

·Possession—Long possession—Presumption in favour of. See Possession-Long possession.

-Precedent-Absence of, in case of common occurrence-Presumption from. See RIGHT OF SUIT-PRE-SUMPTION AS TO. (1876) 4 I. A. 23 (50)= 2 C. 233 (260-1).

-Right-Presumption of based upon conduct-Propriety-Facts disproving right-Effect.

If the facts are once ascertained, presumptions arising from conduct cannot establish a right which the facts themselves disprove (433). (Lord Chelmsford.) TAYAMMAL D. SASHACHALLA NAIKER. (1865) 10 M. I. A. 429 = 2 Sar. 139.

Right of suit-Presumption as to-Presedent-Absence of-Presumption from-Case of common occurrence. See RIGHT OF SUIT-PRESUMPTION AS TO.

(1876) 4 I. A. 23 (50) = 2 C. 233 (260 1).

-Title-Documents of -Possession proceeding -Nonproduction in-Presumption against their geauineness from. See TITLE-DOCUMENTS OF-GENUINENESS OF.

(1865) 10 M. I. A 165 (175 6)

-Title-Old titles supported by authentic records-Presumptions to explain records and g ve them validity-Raising of-Propriety. See TITLE-ANCIENT TITLES ETC. (1923) 51 I. A. 37 (56) = 3 Pat. 183.

-Title-Party having-Possession with-Presumption of. See TITLE-PARTY HAVING-POSSESSION WITH.

Trespasser—Constructive possession in favour of— Presumption of. See POSSESSION—TRESPASSER—CON-STRUCTIVE POSSESSION IN FAVOUR OF.

Zemindary-Property within ambit of-Zemindar's right to-Presumption in favour of. See ZEMINDAR-ZEMINDARY-PROPERTY WITHIN AMBIT OF.

### PRIMOGENITURE.

-Classes of-Lineal primogeniture- Proximity of

degree-Primogeniture by. That the estate descended by custom to a single heir is the common case of both parties. The District Judge is of opinion that it descended by primogeniture not lineal. The only alternative to lineal primogeniture is primogeniture by proximity of degree (167). (Lord Hobboure.) MUHAM-MAD IMAM ALI KHAN D. SARDAR HUSAIN KHAN.

(1898) 25 I. A. 161 = 26 C. 81 (90) = 2 C. W. N. 737 = 7 Sar. 432.

-Meaning of, in Crown grant. See CROWN-GRANT BY-PRIMOGENITURE IN.

(1910) 37 I. A. 168 (178, 181) = 32 A. 599 (607, 610)

Proximity of degree-Primogeniture by-Equality in proximity-Elder in line in case of-Preference of.

Where primogeniture by proximity of degree is the custom of descent among those who are equal in proximity, the elder in line is to be preferred (167). (Lord Hobbeute.)
MUHAMMAD IMAM ALI KHAN v. SARDAR HUSAIN (1898) 25 I. A. 161 = 26 C. 81 (90) = 2 C. W. N. 737 = 7 Sar. 432.

# PRINCIPAL AND AGENT -AGENCY.

-Lease of forest land-Agency to procure-Working of forest under lease-Agency for-Distinction.

An agency to procure a lease of a forest is a totally different thing from an agency to work the forest under the

# PRINCIPAL AND AGENT-AGENCY-(Contd.)

favour of case i np-ached. See PRACTICE-PARTY-OP- TRADING CORPORATION, LTD. v. MIRZA MAHOMED (1878) 5 I. A. 130 = 4 C. 116 (123) = 3 Sar. 622 - 3 Suth. 525.

> - Meaning of, in modern business-Motor-car trade-Meaning in.

Modern business has given an extension to the terms "agent" and "agency". In many trades—particularly, for instance, in the motor-car trade,-the so-called agent is merely a favoured and favouring buyer, one who under an overriding contract undertakes to do his best to find a market for the manufacturer's stock, who is given some special a Ivantages, such as a special discount or preference in complying with his orders; but who in each particular contract acts as a boyer from the manufacturer and sells at whatever price he can get, unless, as is sometimes the case-he is by a special provision in the over-riding contract forbidden to sell too cheaply or required not to spoil the contract by asking too much. (Lord Phillimore.) H IPE PRUDHOMME & CO. 2. HAMEL AND HORLEY, (1925) 49 M. 1 = 88 I. C. 307 = A. I. R. 1925 P.C. 161 (163 = L. R. 6 A. P.C. 129.

# PRINCIPAL AND AGENT-AGENT.

ACCOUNT.

ADVERSE INTEREST IN SUBJECT-MATTER OF AGENCY -ASSERTION OF.

AUTHORITY OF.

BORROWING BY, IN COURSE OF PRUDENT MANAGE-MENT OF PRINCIPAL'S ESTATE.

BUSINESS CONDUCTED BY-ACCOUNTS OF.

BUYER-DISTINCTION.

COMMISSION AGENT.

COMMISSION PAYABLE TO-PROFITS AS SHOWN IN EMPLOYER'S BOOKS-PERCENTAGE ON-PROVISION FOR.

COMPROMISE BY.

CONTRACT BY.

DEL CREDERE AGENT.

DUTY OF-FAITHFUL DISCHARGE OF.

GOVERNMENT.

INDIGO SEEDS-PURCHASE OF-AGENT FOR.

LOAN TO.

MARALDAR-INVESTMENT BY.

MORTGAGE UNAUTHORIZED BY.

MOTOR-CAR TRADE-AGENT IN.

NATTUKOTTAI CHETTIES.

NEGOTIABLE INSTRUMENT BY.

NOTICE TO.

PAYMENT TO, OR TO PRINCIPAL—EVIDENCE.

PRINCIPAL-SUIT FOR MONEY DUE ON ACCOUNT AGAINST-JOINDER OF AGENT AS DEFENDANT IN.

PROPERTY ENTRUSTED TO.

PURCHASE BY.

PURDANASHIN-DEED SECURED BY AGENT FROM.

RAILWAY PASSENGER-AGENT OF.

REMUNERATION OF-PRINCIPAL'S LIABILITY FOR-REPUDIATION OF.

SALE OF GOODS MANUFACTURED BY THIRD PARTY-CONTRACT FOR.

SALE DEED BY-COVENANTS IN.

SET-OFF.

SUB-AGENT.

TRUST DEED-TRUSTEE UNDER, WITH POWER OF SALE ON CONSENT IN WRITING OF CO-ADJUTOR. UNDISCLOSED PRINCIPAL.

WRONGFUL ACTS OF.

### PRINCIPAL AND AGENT-AGENT-(Contd.) Account.

LIABILITY ON-DISPROOF OF.

-Items claimed against agent appearing in accounts of another agent -Disproof by -Condition.

In a suit for an account by a principal against his dewan or agent, held that the fact that some of the items appearing in the accounts of the defendant also appeared in the accounts between the plaintiff and another agent of his did not show that the plaintiff was claiming those sums against both. To show that, it would be necessary to go deeper into the accounts, and to find that the plaintiff is trying to get the benefit of the same charge twice over by writing it off against a different set of discharges in each case (131). (Lord Hobbonic.) HURRONATH ROY BAHA-DOOR v. KRISHNA COOMAR BUKSHL

(1886) 13 I.A. 123 = 14 C. 147 (156-7) = 4 Sar. 751.

### LIABILITY TO RENDER-PROOF OF.

-Drawing and expending plaintiff's money-Confinued agency in defendant for purpose of - Case of.

In a suit for an account by a principal against his dewan or agent, in which the plaint alleged a continued agency in the defendant for the purpose of drawing and expending the plaintiff's money, and prayed relief on the ground that the agent had drawn from his principal more than he had expended for him, held, that on proof that the defendant was the plaintiff's agenf and had drawn from his treasury substantial sums of money to be applied in the plaintiff's business on the defendant's responsibility, there was a clear case for an account, in which the defendant must discharge himself in some way from the money he had drawn (133).

In taking that account any relevant papers in the plaintiff's treasury may be called for, evidence may be given as to particular items, and it may be ascertained whether, as to any item, the plaintiff has already got the benefit of it in his account with another agent of his (133). (Lord 114house.) HURRONATH ROY BAHADUR F. KRISHNA COO-MAR BUKSHI. (1886) 13 I A 123=

14 C. 147 (158) = 4 Sar. 751.

# PRINCIPAL'S SUIT AGAINST AGENT FOR

Costs of -Agent's liability for-Condition.

In a suit for an account by a principal against his dewan or agent, in which the plaint alleged a continued agency in the defendant for the purpose of drawing and expending the plaintiff's money and prayed relief on the ground that the agent had drawn from his principal more than he had expended for him, the defendant took the course of denying his receipts, his fiduciary position, and his accountability in toto. That defence the High Court thought was shewn to be false by a mass of evidence adduced by the plaintiff.

Held that the defendant should have been ordered to pay the whole costs of the suit up to and including the appeal to the High Court (133). (Lord Hobbonst.) HURRO-NATH ROY BAHADOOR P. KRISHNA COOMAR BUKSHI

(1886) 13 I.A. 123=14 C. 147 (159)=4 Sar. 751.

-Defences open in - Balance found due to agent-Decree for-Grant of-Propriety.

In a suit for an account by a principal against his agent in which the plaint alleges a continued agency in the defendant for the purpose of drawing and expending the plaintiff's money, and prays relief on the ground that the agent had drawn from his principal more than he had expended for him, the agent may plead that accounts have been sectled between him and his principal, or that, though none have been settled, he has in the course of his agency applied for the principal's benefit as much as he has received or more. In a suit framed like that nothing can prevent

# PRINCIPAL AND AGENT-AGENT-(Contd.)

Account-(Contd )

PRINCIPAL'S SUIT AGAINST AGENT FOR-(Contd). his favour (127). Lord Hobbouse.) HURRONATH ROY BAHADOOR :: KRISHNA COOMAR BUKSHI.

(1886) 13 I.A. 123 = 14 C. 147 (152-3) = 4 Sar. 751,

-Limitation - Starting point-Continued agency for drawing and expending plaintiff's money-Plaintiff alleging, and praying for relief on ground that defendant had overdraten.

In a suit for an account by a principal against his de an or agent, the plaint alleged a continued agency in the defendant for the purpose of drawing and excending the plaintiff's money, and prayed relief on the ground that the agent had drawn from his principal more than he had expended for him.

Held. affirming the Courts below, that in deciding whether the suit was barred by limitation, time must be counted from the date on which the defendant ceased to discharge the duties of dewan by departing from the plaintiff's service, and that, as the suit was brought within three years of that date, it was not barred whether the limit was 3 years on 6 years (129). (Lord Hobboust.) HURRONATH ROY BAHADOOR x. KRISHNA COOMAR BUKSHI.

(1886) 13 I A. 123 = 14 C. 147 (154) = 4 Sar. 751

- Mode of taking accounts in - Plaint alleging continucl agency in defendant for drawing and expending plaintiff's money and praying for relief on ground that defendant had overdrasen.

Where, in a sait for an account by a principal against his dewan or agent, the plaint alleging a continued agency in the defendant for the purpose of drawing and expending the plaintiff's money, and praying relief on the ground that the agent had drawn from his principal more than he had expended for him, an account is ordered to be taken of the defendant's dealings with the plaintiff's money as his dewan or agent, either party might, in taking the account. waive inquiry as to particular periods of time or particular departments of expenditure, and that is often done. But neither could shut out the other from inquiry into any part of the defendant's transactions as dewan. In such an \*. count the agent is prima facic liable for what he has received, and is bound to discharge himself; but the evidence which is considered sufficient to discharge him may vary as to different items, and he certainly would be entitled to all such intendments and presumptions as are made in favour of one who is called upon to render an account of transactions which have taken place long ago, though under dr cumstances which prevent any absolute bar by lapse of time (128). (Lord Hobbouse.) HURRONATH ROY BAHA-DOOR P. KRISHNA COOMAR BUKSHI.

(1886) 13 I.A. 123 = 14 C. 147 (153-4) = 4 Sar. 75L

Onus of proof in-Release of agent from liability to account - Principal's deed of, in agent's favour - Deel subsequent by agent in principal's favour undertaking to account - Effect.

The respondent acted as the mookhtar and cashier of the appellant from 23-6-1877, until 10-5-1885, when he resigned

In March, 1886, the appellant sued for a general at counting from the date of the respondent's appointment in 1877, until 10.5-1885. The respondent pleaded that the appellant's demand for an accounting for the period antecedent to 10-4 1884, was excluded by a release of that date executed by the appellant in favour of the respondent whereby the respondent was exonerated from all liability in respect of all that he had done, and all matters connected with moneys realised and expended from the date of his the defendant from claiming the benefit of an account if in appointment as mokhtar and cashier until 10.4-1884. The

Account-(Contd.)

PRINCIPAL'S SUIT AGAINST AGENT FOR-(Contd.)

appellant, on the other hand, relied upon an ikrar executed on 8-5-1885 by the respondent in his favour in which the respondent stated that there had been no examination or adjustment of his accounts, and professed his willingness to render an account from the day of appointment up to date.

The Courts below concurrently found that the release of 22-4-1884 was a genuine document, that it had been preceded by a detailed examination of the respondent's accounts; and that the respondent had used no unfair means to obtain it.

On appeal it was contended for the appell-ut that as matter of law, the cours was upon the respondent of explaining the circumstances in which he executed the intar of 8-5-1885, and that he had failed to discharge it.

Hdd that that question of ours became very immuterial when it was found that the release of 22-4 1884 was valid (989).

In that case, the onus is as much upon the appellant so show why he accepted a document which he knew, or ought to have known, to be a tissue of falsehoods, as upon the respondent to explain what induced him to sign it (99). (Lord Watson.) RAJAH NILMONY SINGH C. KIKH CHUNDER CHOWDERY.

(1893) 20 I A. 95 20 C. 847 (853) 6 Sar. 321.

Suit amounting to a Sait alleging continued agency in defendant for descring and expending plaintel's money and praying for relief on the ground that defendant had overdrawn if a.

Plaintiff appellant was the owner of a large estate, and the defendant acted as his dewan for some twenty years or so. Some months before the institution of the suit out of which the appeal arose, the plaintiff demanded an account of the defendant's dealings, but the defendant left the place without rendering any. Therespon the plaintiff filed the suit. After stating the defendant's position and duties as dewan, the plaintiff alleged that he had taken money out of the treasury in the year 1866, and at other times, and had misappropriated it. He then specified certain sums taken, and certain allowances to which the defendant waentitled, and concluded thus: - "There is a holance against him of Re. 19,925-14 for the recovery of which I institute this suit. If by the decision of the Court a orger sure should be proved to be payable to me by him under proofand papers, the prayer is also for recovery of the same.

Held that the suit was virtually one for an account (127). Their Lordship: think that, though the pleading may not be quite precise or technical, it is impossible to assign any other character to a plaint afleging a continued agency in the defendant for the purpose of drawing and expending the plaintiff's money, and praying relief on the ground that the agent had drawn from his principal more than he had expended for him (127). (Lord Hebberget.) HURRONATH ROY BAHADOOR v. KRISHNA COOMAR BURSHI.

(1886) 13 I.A. 123 - 14 C. 147 (152 3) - 4 Sar. 751.

### Adverse interest in subject matter of agency - Assertion of,

Permissibility of—Condition precedent to.

On the death of M, an East Indian, his wislow executed a power of attorney, appointing the brother of the deceased her attorney to collect all the money, debts, goods, and effects due, owing, payable, or belonging to her as the wislow of M. Under the authority of the said power of attorney, the deceased's brother took possession of all his property but refused to deliver the same to the wislow or the children of M, claiming a half-share therein on the footing that he

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Adverse interest in subject-matter of agency— Assertion of—(Centd.)

and the deceased were undivided. Hindu brothers, labouring for their joint interest and were entitled to the property in equal shares. In a suit for the recovery of the said property brought by the widow and sons of M against his brother, held that, by accepting a power of attorney from the widow, the defendant had, in effect, attorned to her, and that he should renounce that character, and the acquisitions under it, before he asserted an interest, adverse to that of his constituent (252.)

An assertion of an adverse interest in one acting as agent is not probibited on grounds of public policy alone. It is in itself an unconscientions breach of duty to a principal (252-3). (Lord Kingadown.) ABRAHAM v. ABRAHAM.

(1863) 9 M. I. A. 195 = 1 W. R. 1 P. C. = 1 Suth. 501 = 2 Sar. 10.

#### Authority of.

#### ACTS IN EXCESS OF

-Principal if bound by.

A person who deals with an agent, whose authority he knows to be limited, does so at his peril, in this sense, that should the agent be found to have exceeded his authority, his principal cannot be made responsible (387). (Lord Phinam.) RUSSO-CHENESE BANK 2: LI VAN SAM.

(1909) 14 C. W. N. 381 = (1910) A. C. 174 = 79 L. J. P. C. 60 = 5 L. C. 789.

--- Ratification by principal of-Effect of.

If there had been any doubt upon the original intention of the Government, it has clearly ratified and adopted the acts of its agent which, according to the principle of the decision in Buron v. Denman, is equivalent to a previous authority (539-40). (Lord Kingulowa.) SFCKETARY OF STATE IN COUNCIL OF INDIA z. KAMACHEE BOVE SAHABA. (1859) 7 M. I. A. 476-13 Moo. P. C. 22-7 W. R. (Eng.) 722-4 W. R. 42-1 Suth. 373-1 Sar. 684.

### ACIS WITHIN SCOPE OF.

- Binding nature on principal of-Renefit to him from act-Absence of, immaterial.

In a case in which the principal was sought to be made liable for a transaction entered into by his agent within the scope of his authority, the principal contended that it was not shown that he had received any benefit from the transaction in question.

Held that if authority was established the mere fact that the principal did not receive any benefit did not rid him of his fiability (55). (Mr. Ameer Ali.) BANK OF BENGAL P. RAMANATHAN CHETTY. (1915) 43 I. A. 48 =

43 C. 527 (541) = 14 A. L. J. 217 = 9 Bur. L. T. 1 = 20 C. W. N. 329 = 3 L. W. 210 = (1916) 1 M.W.N. 150 = 19 M. L. T. 176 = 32 I. C. 419 = 23 C. L. J. 348 = 18 Bom. L. R. 387 = 30 M. L. J. 232.

AUCTION SALE—BIDDING AND PURCHASING AT-AUTHORITY FOR.

——Collateral contract to pay money to third party for comething done or forborne by him—Authority to enter into, if included.

If a man sends an agent with direct authority and positive directions to bid at an auction and to purchase an estate, and the agent accordingly goes to the auction, and in the execution of that authority, he does bid, and the estate is knocked down to him; but collaterally, and in a

Authority of - (Contd.)

AUCTION SALE-BIDDING AND PURCHASING AT-AUTHORITY FOR-(C. ntd.)

bye manner, he enters into a distinct and separate contract with an individual, that, in consequence of something to be done or forborne, he will pledge his principal to pay to that individual a certain sum; it is quite plain that, upon every consideration of justice, the principal cannot be bound by this bye-transaction on the part of the agent. The act of the agent, if effect were given to it, would subject the principal not only to the contract which he authorized, and which he may be required by the vendor or lesson to fulfil, but also to an additional liability which he never contemplated (23.4.) (Lord Westbury.) ESHENCHUNDER SINGH D. SHAMACHURN BHUTTO. (1866) 11 M. I. A. 7= 6 W. R. P. C. 57 = 2 I. J. N. S. 87 = 1 Suth. 649 =

2 Sar. 209. BANKING BUSINESS-MANAGEMENT OF-AUTHORITY

-Settlement of accounts in regular and ordinary way of business-Authority for, if included.

Their Lordships must not be supposed to lay down that, when an agent is appointed to manage a hanking business, and is invested with the powers of a manager of that business, a statement of account made by him in the regular and ordinary way of business would not be evidence against his principal (45). (Sie Montague E. Smith.) SUDISHT LAL D. MUSSUMMAT SHEOBARAT KOER,

(1881) 8 I. A. 39=7 C. 245 (252) - 4 Sar. 222.

BILLS-SIGNING OF, SO AS TO BIND PRINCIPAL-AUTHORITY FOR.

-Proof of-Concurrent findings as to-Privy Council's interference with.

(Viscount Dunedin ) BHAGWAN SINGH P. ALLAHA-BAD BANK, LTD. (1926) 53 I. A. 268 = 48 A. 7£3 = 31 C. W. N. 154 - 38 M. L T. P. C. 15 -24 L W. 908 = (1926) M. W. N. 942 = 3 O. W. N. 907 = A. I. R. 1926 P. C. 125 =

98 I. C. 901.

BILL OF EXCHANGE—ENDORSEMENT OF—AUTHORITY

-PROOF of. See NEGOTIABLE INSTRUMENT-BILL OF EXCHANGE-AGENT-ENDORSEMENT OF

(1837) 1 M. I. A. 351.

### HOLDING OUT OF.

-Principal's liability on ground of.

In order that the principle of "holding out " should, in any given case of agency apply, the act done by the agent, and relied upon to bind the principal, must be an act of that particular class of acts, which the agent is held out as having a general authority on behalf of the principal to do; and, of course, the party prejudiced must have believed in the existence of that general authority and been thereby misled. In other words, if the agent he held out as having only a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an eet done outside that authority even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorised (387.8). The doctrine of "hel ing out" is quite inapplicable to a case in which the agent's authority is to the knowledge of the person dealing with him, limited (389). (Lord Atkinson.) RUSSO CHINESE BANK D. I.I VAN SAM.

(1909) 14 C. W. N. 381 = (1910) A. C. 174= 79 L. J. P. C. 60 = 5 I. C. 789. PRINCIPAL AND AGENT-AGENT-(Contd.)

Authority of-(Contd.)

LIMITED OR GENERAL AUTHORITY-ACT CONSISTENT WITH-PRINCIPAL'S RIGHT TO DISPUTE.

-Estoppel-Limited nature of authority-Knowledge of, on part of person dealing with agent-Effect.

Where the appellant Bank had not, by any negligent or improper act on their part, allowed their agent to be apparently invested with an authority beyond, or greater than, the limited authority which the plaintiff knew him to possess, and where everything which he was by them permitted to do from the beginning to the end of the transaction in question was as consistent with the exercise of that limited authority as it was with the exercise of a wider or more general authority. held that there could not be any estoppel as against the Bank in respect of any of the steps in the transaction, since they had not done, or permitted, anything by which the plaintiff was deceived. (Lord Atkin-1011.) RUSSO-CHINISE BANK 11 LI YAN SAM.

(1909) 14 C. W. N. 381 = (1910) A. C. 174= 79 L. J. P. C. 60 = 5 I. C. 789.

MILL COMPANY-MANAGER OF.

-Liability of stranger or manager or managers partner in private transaction-Purchase of-Implied authority for.

The Manager or Managing Director of a Mill Company has no implied authority to purchase on behalf of his mill the liability of a stranger and still less of their own Manager or Manager's partner in a private transaction of his own. (Sir George Farwell.) RAJA BAHADUR MOTILAL SHIO-LAL D. BOMBAY COTTON MANUFACTURING CO. LTD.

(1915) 19 C. W. N. 621 = 17 M. L T. 443= 21 C. L. J. 524 = 17 Bom. L. R. 484 = 2 L. W. 560 = (1915) M. W. N. 790 = 30 I. C. 59 = 28 M, L. J. 56 &

POWER OF ATTORNEY.

-Authority under. See UNDER POWER OF AT-TORNEY.

SALE OF GOODS OR SHARES-AUTHORITY FOR.

-Pledge thereof-Authority as to.

An agent under an authority for se'ling has no power to pledge goods of his principal. This principle applies to shares as well as goods (41). (Lord Brougham.) BANK (1849) 5 M. I. A. 1= OF BENGAL P. MACLEOD.

7 Moo. P. C. 35 = 13 Jur. 945 = Taylor. 434 (b)= 1 Sar. 391.

BANK OF BENGAL r. FAGAN. (1849) 5 M. I. A. 27= 7 Moo. P. C. 61 = Taylor 434 (b) = 1 Sar. 392

TERMINATION OF.

Death of principal-Termination by. An agent's power generally terminates upon the death of

his principal (66.) (Sir Barnes Peaceck.) MOHESH LAL (1883) 10 I. A. 62= P. MOHUNT RAWAN DAS. 9 C. 961 (972) = 13 C. L. B. 221 = 4 Sar. 424

Notice of Principal's omission to give-Liability of principal in case of, to third party dealing with agent.

BANKER AND CUSTOMER-FACTORY CUSTOMER. (1898) 26 C. 701.

-Netice of-Principal's omission to give-Plea of-Party dealing with agent as principal-Availability to.

A person who deals with an agent whose authority has terminated cannot rely upon the omission of the principal to give him notice of the termination of the authority, unless he has been thereby induced to deal with the agent as such. He cannot rely upon the absence of such notice when he has dealt with the agent as a principal and not werely as an agent (66.) (Sir Barnes Peacork, MCHESH LALE, (1883) 10 I. A. 62= MOHUNT BAWAN DAS. 9 O. 961 (972)=13 O. L. B. 221=4 Bar. 494

Authority of-(Contd.)

TERMINATION OF - (Contd.)

-Notice formal by principal of-Necessity-Knowledge of such termination of party dealing with agent-Sufficiency of .

It is not necessary that a principal should give formal notice of the termination of his agent's authority to act on his behalf. It will be enough if the person dealing with the agent knew of his authority having ceased. Knowledge that the agent had quitted the principal's service, and that his authority was in that way revoked, would thus be eaough. It is sufficient if the party dealing with the agent or his manager had such knowledge (13.4). (Sir Montague Smith.) DINOMOYI DEBI v. ROY LUCHMIPUT SINGH.

(1878) 7 I. A. 8-6 C. L. R. 101 = 4 Sar. 112 = 3 Suth. 710 - Bald. 342.

Borrowing by, in course of prudent management of principal's estate.

-Concurrent findings as to-Privy Council's interference with.

In a case in which a debtor was held liable for such sums advanced or paid to his manager as the latter would have been justified in borrowing in course of a prudent management of the debtor's estate, the question was whether a sum of Rs. 2120 borrowed by the manager on a promissory note signed by himself had been borrowed in the interest of the debtor's estate, or in the course of a reasonable management thereof. The Courts below concurrently found that there was no proof that the money was required for the purposes of a prudent management of the estate,

Held that that was a concurrent finding of fact which their Lordships would not disturb (37). (Lend Shand.) RAJAH PARTAB BAHADUR SINGH P. RAJAH CHITPAL (1891) 19 I. A. 33 = 19 C. 174 (179-80) =

6 Sar 93. -Principal's liability for-Decree declaring-Claim under, in respect of money advanced to agent and applied by him in payment of Government revenue-Onus of proof on creditor.

In a suit by A, a creditor, against B, his debtor, for payment of certain sums which were stated to be vouched by a number of different securities, their Lordships found that, though there was no direct evidence in the record of a conspiracy between A & W, B's manager, they (A & W) acted together against the interest of B. They observed: "His"  $(A^{r}i)$ " agent induced him" (W)" to sign a number of bonds for sums of money which have been found not to be necessary for the purposes of the estate; and A, whose duty as a relative, a friend, and a neighbour of B, a man of weak intellect, was to have warned B against the proceedings which were going on to his own ruin, so far from doing this, acts in concert with the unfaithful steward, and not only does he act in concert with him. but he profits principally by their joint transactions."

Taking that view of the relation between the parties, their Lordships made a remit to the court below to take, inter alia, the following account :- " An account of such sums advanced or paid by A by way of consideration for the deed of 26th of May, 1879, as W would have been justified in borrowing in course of a prudent management of B's estate."

The Section of the remait was

The first item claimed under this branch of the remit was a sum of Rs. 6,000, borrowed on 22-1877. The facts stated about it were that a registered bond was executed by Win favour of the servants of d, and that the consideration for it was received by W before the Sub-Registrar. Out of the sum of Rs. 6,000, a sum of Rs. 4221-7-9 was applied in payment of Government revenue in connection with the estate of B. The question was whether, upon the facts admittedly proved, the plaintiff was entitled to credit for between their firm and the defendant, as commission agents,

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Borrowing by, in course of prudent management of principal's estate-(Contd )

that item. The facts proved were: the money was not paid to B himself, but was paid to IV; it was shewn that to the extent of Rs. 4,221 that money was applied in payment of Government resenue in connection with the estate. There was, however, no evidence whatever as to the necessity for resorting to borrowing money for payment of revenue, or as to any state of facts that could justify that, so as to make it a loan obtained in the course of a prudent management of the estate. So far from there being evidence of that kind, there was a great deal to show the contrary, It was shown that II' was an imprudent and dishonest manager, and that he had been wasting the money of the estate in supporting a horde of relations, friends, and dependants, from the income of his master's property.

Held, upon the item of account in question, that the mere circumstance that the money in part found its way in payment of Government sevenue was no proof that there was a necessity for its so being used, or that that was done in the course of a prudent management (36-7).

It must be assumed that a manager having the whole rents of an estate to deal with would have the means of at least meeting the necessary payments of Government revenue, and if that presumption is to be met the creditor must bring proof to overcome it (36). (Lerd Shand.) RAJAH PARTAB BAHADUR SINGH P. RAJAH CHITPAL SINGH.

(1891) 19 I. A. 33=19 C. 174 (178 9)=6 Sar. 93

## Business conducted by-Accounts of.

-Submission regularly to principal of-Ordinary course as to.

The action was brought by the appellant against the respondent to recover the alleged balance of an account. The appellant and respondent were both bankers in extensive business in India. The appellant had one house of business in Benares, and another in Calcutta. The respondent had a house of business in Benares, and none at Calcutta. He had other houses of business, at Patna, Chuprah, and varions other places in India. The Benares firm of the respondent employed the Calcutta firm of the appellant as their agents, and that agency continued for a great number of years. The transactions were extremely extensive,

Held that it would be in the ordinary course of such business that the account should be regularly transacted in each year by the agents of the house to the principal, showing the transactions which had taken place, and the balance which resulted upon those accounts, and that it was reasonable to presume that that which was the ordinary course was pursued in the case (90). (Mr. Pemberton Leigh.) DWARKA DOSS 2. BABOO JANKEE DOSS.

(1855) 6 M. I. A. 88.

### Buyer-Distinction.

Tot.

The question was whether in the transaction in question the respondents were entitled to treat themselves as buyers and sell for whatever profit they could get, or whether they

were the agents of the appellants.

Held, affirming the Courts below, that the respondents were agents of the appellants in the legal sense of the term. (Lord Phillimore.) HOPE PRUDHOMME & CO. v. HAMEL (1925) 49 M. 1 = 88 I. C. 307 = AND HORLEY, LTD.

A. I. R. 1925 P.O. 161 (165) = L. R. 6 A. (P.O.) 129.

#### Commission agent.

-Damages sustained as-Balance due on account in respect of-Suit for-Onus on plaintiff in.

Commission a jent (Cont.)

in respect of certain transactions of trading in indigo, grain etc., boween January 1878 and Man h 1879. The refence of Wwas that as regards the transactions which followed the contract for indige seed, they were not entered into be the plaintiffs as commission agents for him.

Held that upon the case of the plaintiffs it would be necessary for them to show that a balance was eve to them. which they chinsed in respect of damages which they had sustained as commission agents, and that they had not made out their raw, (Sir Richard Con k.) JUGAI KI-SHORE 2. GIRDHAR LAG. (1888) Bald. 502-5 Sar. 687. -Duries of - Agent for both parties to transaction-Agent for on, aly-Distinction.

A person who works for and receives a commission owes a duty. If he arts as agent for both parties to a transaction of exchange or sale, airl is known to be so arting by one of the parties to the transaction, he cannot be expected to attempt to get the best bargain possible for that party ain the case of an agent acting for that party only. But he can be expected to give information as to value, and in giving that information he is bound to be straightforward and not be negligent in making himself accurately acquaint ed with the facts before he gives it (100). (Lord Danidin.) THORNES P. BROWN. (1922) 31 M. L. T. 104 P.C.

## Commission payable to—Profits as shown in employer's books - Percentage on -Provision for.

Statement as to profits and losses in employer's books-Binding nature of.

The appellant sued to recover a balance of commission alleged to be due to him under an agreement between him elf and the respondents, his former employers. The question was one of construction of the agreement, and the words thereof which were chiefly material were as follows:-

"1918.9 Accounts :- You will receive a sam equivalent to 5 per cent, of the net profits (as shown in the books) of the Bombay Branch of the Bombay Co. Ltd. as accruing from the sales of all goods for which you were salesman, whether on purchase or Joint account.

In addition to this . . . you will be credited with a further sum equivalent to 5 p. c. of the net profits as shown in the books of the Bombay Branch . . . as having accrued from the sale of all goods sold on joint account and for which you were salesman during the years 1916-7, 1917-8.

1019-20 Accounts : - As regards other goods sold by you prior to 7-2 1920, the results of which have not been inclu ded in our closed accounts up to 31.7 1919, you will be given renuneration on the same basis detailed above. total sum due to you will be priel to you as soon as the ner profit is ascertained, and you will be asked to give as a final receipt in full settlement of all claims whatever against us."

Held that, on the true construction of the agreement, the books of the defendants were the arbiter of the plaintiff's rights, that he was bound by the statement of profits and losses therein, and that the profits "shown" meaning of the agreement were only profits, which from time to time were, or, in the ordinary course of basiness would be, shown.

What are "the books" within the meaning of the agree ment? A firm's books come into existence and are kept not for the purposes of a mere statistical record of transactions and payments or of prices and rates. They are essentially a statement in figures of the firm's business as a whole, so shaped as to bring out the precise results of all transactionin rights and obligations and in profits and losses, and the pr neiples, on which they set off one set of figures against another and attribute and distribute the results, are as

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Con mission payable to-Profits as shown in emp loyer's books-Percentage on-Provision for-(Contd.)

no written statement of them is anywhere set out. A plaintiff, who accepts the defendant's books as deciding his rights to some extent, accepts them to that extent (unless he guard's himself by apt words) as statements of the right mode of distributing the results of the recorded transactions, and not as a mere repository of figures like a calendar or a price list The main object of the bookkeeping was to determine and show the trading position and results of the company, though a minor and incidental object served was to show what it owed the appellant for commission. On the terms of the agreement the books cannot be divorced from the system of bookkeeping of which they are the expression, and it cannot be said that nothing is intended to be decisive except figures picked out here and there from particular folios. The thing on which the percentage is to be recketed is the profit of the branch as shown, and in showing a profit the mode of getting at it is as relevant as the final figure. The circumstance that the appell int's ledger account had not been made cannot alter the rights of the parties. To lay stress on the word "shown" as meaning "now shown" or "shown when the respondents' servants have been told to show them", is to defeat the efficacy of the contract. The agreement refers to profits "shown as accruing" in the book, not to profits which the books do not and never will show as accruing though by a combination of selected book entries and of argument upon them they may be represented as profits, which ought to have been shown as accruire (Viscount Sumner.) KAIKHUSHROO RUSTOMJI WALIACE P. POMRAY CO, LTD. (1927) 104 I. C. 139 (2)=

46 C. L. J. 214 = 32 C. W. N. 145 = 39 M. L. T. 294 = (1927) M. W. N. 600 = A. I. R. 1927 P.C. 210= 29 Bom. L. R. 1367 = 53 M. L. J. 278.

#### Compromise by.

-Principal's property parted with under-Principal's right to recover-Civil claim-Criminal charge against agent-Compremise of-Distinction.

D being in custody upon a criminal charge had clearly to authority to part with his employer's property, or to make an agreement to part with it, to relieve himself from such A harge. If there had been any question of a civil nature, it might have been within the scope of his authority as a general agent to compromise such a claim, but when charged with personal misconduct and a crime, which it cannot be assumed that his principal had authorized, no authority from the employer can be implied that his most and his elephants should be handed over to the man making the charge, in order to relieve his agent from it (67). (Sir Montague F. Smith.) MOUNG SHOAY ATT : KO BYAN.

(1876) 3 I. A. 61 = 1 C. 330 (336) = 3 Sar. 597.

#### Contract by.

AUTHORITY TO ENTER INTO-ONUS OF PROOF OF.

-Suit for damages for breach of contract.

The suit was to recover damages, resulting from the resile of goods, alleged to have been sold by the plaintiff to the defendant, and the delivery of which had been, as #25 alleged, improperly refused by the defendants.

The plaintiffs' case was that the defendants, through broker, named R. agreed to purchase from him 20 cases of saries for a stated sum, and subsequently refused to accept delivery of, or pay for, such goods and entirely repudiated the alleged contract. There was no dispute that, or the date alleged, the said broker did purport to purchase those goods from the plaintiff, on behalf of the defendant and much part of the books as the figures themselves, though broker, as being on behalf of the defendant, in the plaintiff.

Contract by-(Conta).

AUTHORITY TO ENTER INTO-ONUS OF PROOF OF -(Contd.)

broker had any authority from him to enter into such a contract, and the question to be determined was purely one of fact, viz., "had he or had he not such authority?"

Held, reversing the appellate Court, that it was the duty of the plaintiff to prove the contract, which necessitated proof of authority given to the broker, and that even if the evidence upon that point of the defendant and the broker were eliminated, there was still an utter absence of evidence of any authority, on the part of the broker, to enter into the contract (312). (Lord Carson.) PALANIAPPA CHET-TIAR v. KATHIRESAN CHETTIAR. (1925) 22 L. W. 309 = 88 I. C. 351 - A. I. R. 1925 P.C. 172

## CAPACITY IN WHICH FINTERED INTO.

-Evidence-Initial letters between alleged principal and agent by which business constituted-Value of.

The question was whether in respect of a particular contract the respondents were really the agents of the appellants in the legal sense of the term. Hold that in deciding that question attention must not be limited to the four or five documents which constituted the contract in question, but that the initial letters by which the business between the appellants and respondents was originally started must also be considered. (Lord Phillimore.) HOPE PRUDHOMME & CO. P. HAMPI, AND HORLEY, LTD.

(1925) 49 M. 1 = 88 I. C. 307 = A. I. R. 1925 P.C. 161 (163) = L. R. 6 A. (P.C.) 129.

DURESS-CONTRACT WHEN UNDER.

Property of principal parted with under-Recovery of-Principal's right of-Restoration of property got by him under contract-Duty as to.

The suit was to recover damages alleged to have been sustained by the plaintiff by reason of the wrongful act of the defendant in causing his (plaintiff's) agent, D, while under illegal duress and restraint, to enter into a rertain agreement, whereby he gave up, in return for 152 logs of timber, which the defendant purported thereby to sell to D, four elephants and their harness together with a certain sum belonging to the plaintiff.

Held that the plaintiff was entitled to recover as damages the money paid, and the value of the elephants delivered, under the agreement, lees the value of the defendant's timber, of which the plaintiff obtained or might have obtained possession (67-8). (Sir Montagne E. Smith). MOUNG SHOAY ATT v. KO BYAW.

(1876) 3 LA. 61=1 C. 330 (336-7)=3 Ear. 597.

-Ratification by principal of-Effect.

A question was raised whether the contract made by D. as the plaintiff's agent when under duress had not been confirmed and ratified by the subsequent acts of the plaintiff. No doubt, if there had been a clear ratification, it being in the power of the plaintiff to ratify or reject it. if there were circumstances from which a ratification might properly be presumed, he would be bound by it (66). Montague E. Smith). MOUNG SHOAY ATT v. KO BYAW (1876) 3 I.A. 61=1 C. 330 (335)=3 Sar. 597

-Ratification of, by principal or by agent as such-

Evidence of.

D, the plaintiff's agent, when under duress, entered into a contract with the defendant whereby he gave up, in return for 152 logs of timber, which the defendant pur-parted thereby to sell to D four elephants and their harress. together with a sum of merey belonging to the plaintiff.

# PRINCIPAL AND AGENT-AGENT-(Contd.)

Contract by-(Contd.)

DURESS-CONTRACT WHEN UNDER-(Contd.)

The question was whether the contract had not been concontract book. The defendant, however, denied that the firmed and ratified by the subsequent acts of the plaintiff, or D as his agent.

Held that there was no evidence of such a ratification

The delivery of the elephants was in effect made before the constraint or the apprehension of constraint had disappeared; for simultaneously with entering into this agreement, it appears that D gave an order to the man who had the custody of the elephants to give them up to the defendant, and although the actual delivery did not take place immediately, it was made in consequence of that order, and D says he was in such a state of apprehension that he could do nothing afterwards, and as soon as he recovered from his beating, went down to Moulmein, point is that the timber was accepted by the plaintiff. But their Lordships think that it was not accepted under such incumstances as constitute a ratification, because, all the way through, D was protesting against this agreement, and so was the plaintiff, claiming the finiter as his own property (66.7). (Sir Montague E. Smith.) MOUNG SHOAV ATT z. KO BYAW. (1876) 3 I.A. 61 1 C. 330 (335-6) 3 Sar. 597.

-Repudiation of - Principal's right of

Where an agent employed by the plaintiff to purchase timber for him in the Siamese territory was imprisoned by an officer of the Siamese Government on a charge brought against him by the defendant of stealing timber, and he, while in custody upon that criminal charge and with a view to obtain his release, contracted to purchase from the defendent for the plaintiff the timber which he was charged with stealing, held that the plaintiff might repudiate the contract, as having been made by his agent when under duress (65-6). (Sir Mintague E. Smith). MOUNG SHOAY ATT P. KO BYAW, (1876) 3 I.A. 61 = 1 C. 330 (334.5) = 3 Sar. 597.

NEGLIGENCE IN ENTERING INTO. -Principal if affected by, Sir RAILWAY CO .- PAS-SENCER.

(1915) 19 C.W.N. 905 (910).

OWN NAME-CONTRACT IN AGENT'S.

-Non-disclosure of fact that he is only acting as agent-Principal's liability under centract.

Where a party contracts with another in his own name, without disclosing at any time that he is only acting as agent for another, the burthen of the contract as between the contracting parties rests with the person actually contracting, and the other party has nothing to do with the undisclosed intentions. (Lord Macnaghten.)
L. HUQ v. WILKIE. (1907) 11 C.W.N. 946= IKRAMULL HUQ v. WILKIE.

4 A. L. J. 740 = 2 M.L.T. 448 = 6 C.L.J. 682 = 17 M.L.J. 454 (461-2).

-Specific performance of -Suit for-Defendant in-Agent if only a nominal.

In a suit for specific performance of a contract, held that persons who actually signed the contract in writing drawn up by themselves, binding them to carry out certain terms which they had allowed or directed a man coming from their office and professing to act for them to negotiate on their behalf were the real and only defendants in the suit, and that it was a mistake to call them "nominal defend-

It may or may not be true that they intended to act on behalf of a firm not yet formed, or en behalf of a firm whose business they were financing. But the other party was not concerned with their undirefted intentions. As

Contract by-(Contd.)

OWN NAME-CONTRACT IN AGENT'S-(Con'd.)

between the parties so signing the contract and the other party, the burthen of the contract rested with the former, and no one else. (Lord Macanghten). IKRAMULL HUQ v. WILKIE. (1907) 11 C.W N 946 = 4 A.L.J. 740 = 2 M.L.T. 448 - 6 C.L.J. 682 = 17 M.L.J. 454 (461-2).

#### PRINCIPAL.

Their Lordships cannot accept the view that when the actual principal is made directly liable on the contract he can also be held to incemnify an ostensible principal as though the latter were in fact the party by whom the contract had to be fulfilled. (Lord Mkin). MacDONALD v. FRED LATIMER. (1928) 29 L.W. 155=

112 I C. 375 (2) = A.I R. 1929 P.C. 15.

If the respondents were really agents of the appellants, the repudiation of the transaction by the appellants, was, no doubt, right, for, if they were agents, they were making an undisclosed profit and had no authority to sell as principals and therefore could not claim indemnity as agents from the appellants, their principals; neither could they claim as a link in a chain of buyers and sellers for the damages recovered by the ultimate buyer, because there was no contract of sale between the appellants and themselves. (Lord Phillimore.) HOPE PRUDHOMME & CO. P. HAMEL AND HORLEY, LTD. (1925) 49 M. 1 = 88 LC. 307 =

A.I.R. 1925 P.C. 161 (162) = L.R. 6 A. (P.C.) 129.

Contract on behalf of Damages for breach of Principal's right to sue for Assignment by agent of his interest under contract to principal—If had for champerty and maintenance. See CHAMPERTY AND MAINTENANCE—AGENT'S CONTRACT ON BEHALF OF PRINCIPAL.

(1860) 8 M.I.A. 170 (187-8).

Contract on behalf of—Damages for breach of—Principal's right to sue for—Assignment to him by agent of his interest under contract—Necessity. See CHAMPERTY AND MAINTENANCE—AGENT'S CONTRACT ON BEHALF OF PRINCIPAL. (1860) 8 M.I.A. 170 (188).

### RATIFICATION BY PRINCIPAL OF

--- Proof of.

The question was whether the appellants ratified the suit contract entere | into by the respondents as their agents.

Held reversing the Appellate Court, that they did not ratify the contract. (Lord Phillimore). HOPE PRU-DHOMME & CO. S. HAMEL AND HORLEY, LTD.

A.I.R. 1925 P.C. 161 (167) = L R. 6 A. (P.C.) 129.

## SALE-CONTRACT FOR.

- Specific performance of Suit for Authority to enter into contract - Proof of Onus on purchaser.

In a suit by a purchaser for the specific performance of a contract alleged to have been entered into by a third party on behalf of the defendant, the onus is on the plaintiff to prove that the contract sued on is binding on the defendant and that its terms were authorised by the defendant. (Lord Blanesburgh.) ARDESHIR H. MAMA v. FLORA SASSOON.

(1928) 55 I.A. 360 = 52 B. 597 = 32 C.W.N. 953 = 30 Bom L.R. 1242 = 28 L.W. 257 = I.L. T. 40 B. 125 = 111 I.C. 413 = 26 A.L.J. 1220 = 1928 M.W.N. 893 = 48 C.L.J. 451 = A.I.R. 1928 P.C. 208 = 55 M.L.J. 523.

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Contract by-(Contd.)

UNAUTHORISED TERM-CONTRACT WITH.

Enforcement of, without that term-Principal's right of.

If an agent makes a contract on the part of the principal, having a definite authority, and he exceeds that authority by inserting a term in the contract itself, it would not be competent to the principal to say, "I will repudiate the inserted term in the contract, as being ultra vires and unauthorised, but I will obtain performance of the rest of the contract." In such a case, although the agent had no authority for the additional term, yet, as it is an integral part of the contract itself, and the party selling was not aware of the want of authority, the principal could not enforce that contract without giving effect to the additional term (24). (Lord Westbury.) ESHENCHUNDER SINGH 2. SHAMACHARN BHUTTO. (1866) 11 M.I.A. 7=

6 W. B. (P.C.) 57=2 I.J.N.S. 87=1 Suth. 649= 2 Sar. 209

#### UNDISCLOSED PRINCIPAL.

Contract for—Contractor's right under. See PRINCIPAL. AND AGENT—AGENT—UNDISCLOSED PRINCIPAL—CONTRACT FOR. (1865) 10 M.I.A. 229 (246).

Contract in agent's own name for—Rights of other party in case of—Judgment unsatisfied obtained by him against agent—Bar to suit against principal if. See PRINCIPAL AND AGENT—AGENT—UNDISCLOSED PRINCIPAL—CONERACT FOR, IN AGENT'S OWN NAME.

(1926) 25 L.W. 163 (172).

#### Del credere agent.

-Liability of.

An agent receiving a puckak or del credere commission is liable to his principal for the price of all goods of the principal sold which are paid for by the purchasers (141-2). (Lord Instice Mellish.) ONKER PERSHAD BUSTOOREE: MUSSUMAT FOOLCOOMAREE BEBEF.

(1871) 14 M.I.A. 134 = 16 W.B. (P.C.) 35 = 10 B.L.R. 15 = 2 Suth. 482 = 2 Sar. 703.

—Suit against, for balance of accounts of dealings not covered by express contract—Limitation. See LIMITA-TION ACT OF 1908, ART. 115. (1871) 14 M.I.A. 134.

#### Duty of-Faithful discharge of-

-Presumption of.

There is a presumption that an agent must have faithfully carried out his duties and kept the principal informed of his dealings with the principal's property. (Mr. Amer. Ali.) PORT CANNING AND LAND IMPROVEMENT CO.

2. KATYANI DEBI. (1919) 46 I.A. 279 (284)

47 C. 280 (288) = 17 A.L.J. 1061 = (1920) M.W.N. 160 = 53 I.C. 522 = 11 L.W. 296 = 24 C.W.N. 369 = 22 Bom. L.R. 437 = 32 C.L.J. 1 = 37 M.L.J. 578.

#### Government.

Officials of See GOVERNMENT-OFFICIALS OF AND CROWN-OFFICERS OF.

### Indigo seeds-Purchase of-Agent for.

-Duty and care required of.

An agent who is authorised to purchase indigo seeds in a rising market, under an order to purchase good freshindigo seeds on the most favourable terms, cannot be expected to experiment by sowing a sample of the seed and waiting for eight or ten days to see whether it would germinate. He is only bound to act to the best of his judgment and to use proper care and skill in purchasing what he has been ordered to purchase. Before the principal can repudiate a purchase made by the agent and refuse to take the indigo

Indigo seeds-Purchase of-Agent for-(Contd.)

purchased and to pay for it, he must show affirmatively that the agent had been guilty of negligence in executing the order which the principal had given him, BEITS r. ARBUTHNOT & CO. (1872) 19 W.R. 65-4 Sar. 783-2 Suth. 756.

#### Loan to.

—Bond given by him for—Principal's liability under— Loan given on principal's behalf but band executed without disclosing his name.

Where money was borrowed to pay the revenue due from a zemindari and paid to the Government on that account, held that the fact that the bond was given by the vakeel and the manager of the zemindary to the trustee of the lenders in the English firm for the purpose of enabling them to enforce the personal engagen ents of the vakeel and the manager in the Supreme Court would not deprive the lenders of their right, under the law prevailing among the natives in matters of contract, to sue the zemindar in the Courts of the Mofussil. (Mr. Justice Beranguet.) GOPEE MOHUN THAKOOR v. RAJA RADHANAT.

(1834) 5 W.R. 72 = 1 Suth. 8 (11) = 1 Sar. 42.

Government rewrite due for principal's estate—Lean for payment of —Principal's liability for—Entire rest of estate at disposal of agent.

It must be assumed that a manager having the whole rents of an estate to deal with would have the means of at least meeting the necessary payments of Government revenue, and if that presumption is to be met the creditor must bring proof to overcome it (36). (Lord Shand.) RAJAH PARTAB BAHADUR SINGH P. RAJAH CHITPAL SINGH. (1891) 19 I.A. 33=19 C. 174 (179)=6 Sar. 93.

## Maraldar-Investment by.

Entrustment of fund for purpose of—Change of investment—Power of Maraldar as to—Payment to Maraldar by firm with which money invested—Good discharge to owner of fund if a. See NATTUKOTTAI CHETTI—BANK-ING FIRM OF. (1929) 57 M.L.J. 628.

## Mortgage unauthorised by.

Mortgagee under—Money spent by agent on principal's behalf—Reimbursement of Agent's right of Mortgage if can avail himself of Enforcement of right by him against principal—Conditions.

The suit was to recover the amount due under a mortgage executed by M by sale of the mortgaged properties.

The suit was instituted against M and the then mohunt of
an asthal. It was found that the mortgaged properties belonged to the asthal, and not to M. that M had no right to
mortgage them, and that the mortgage was not binding on
them. A portion of the amount of the suit mortgage was
applied to discharge a prior mortgage by M in favour of L.

The mortgage to L was executed by M under circumstances
which would make it binding upon the asthal and the
mohunts thereof. A portion of the amount raised by L's
mortgage was applied in purchasing four small properties
which were, in a suit between the mohunt and M, held to
be the property of the asthal, because they were purchased
with money raised by the mortgage to L. The plaintiff
contended that he was entitled to recover at least the
amount of L's mortgage applied in the purchase of the four
properties.

Those four properties were not included in the mortgage to the plaintiff, nor were they included in the plaintiffs suit. L's mortgage was not kept alive and transferred to the plaintiff as a security for his loan under the suit mortgage.

Held that the plaintiff could not recover the amount

# PRINCIPAL AND AGENT—AGENT—(Contd.) Mortgage unauthorised by—(Contd.)

The right of M, if he had any, against the asthal in consequence of the application of the portion of the money raised by D's mortgage in the purchase of the four properties, cannot, in the absence of an express intention to that effect, be presumed to have been included in the plaintiff's mortgage as an additional security for the loan advanced thereunder. The asthal may be liable to Al, but that must depend upon the state of accounts between them. Unless M's claim against the asthal was included in the plaintiff's mortgage, and can be held to have been assigned to the plaintiff as a security for the loan, there is no privity betucen the plaintiff and the succeeding mobunt in respect of the amount utilised in the purchase of the four properties. At all events the plaintiff cannot be entitled to any greater or other rights than those of M in respect of the said amount (72-3). (Sir Barnet Peacock.) MOHESH LAL r. MORUNT RAWAN DAS. (1883) 10 I A. 62=

9 C. 961 (978 9) = 13 C.L.R. 221 = 4 Sar. 424.

## Motor car trade-Agent in.

-AGENCY. PRINCIPAL AND AGENT-AGENT
(1925) 49 M. 1.

### Nattukottai Chetties.

- Agents of. See Under NATTUKOTTAI CHETTIES.

## Negotiable Instrument by.

Principal's liability on. See NEGOTIABLE INSTRU-MENTS ACT. S. 28—AGENT.

(1918) 46 I. A. 33 (36-7) = 46 C. 663 (667-9).

#### Notice to.

-- Effect against principal of. See NOTICE—AGENT.
-- Principal if has notice by reason of—Finding as to—
Fact or Law. See C. P. C. OF 1908, S. 100—AGENT.

(1902) 29 I. A. 203 (211-2) = 25 A. 1 (16-7).

## Payment to, or to Principal-Evidence.

Concurrent findings on question - Interference with by Privy Council.

The question was whether a certain sum of money advanced by a creditor of B was paid to B personally or to W, his manager. What was relied upon as evidence of its having been paid to B personally was simply a narrative in one of the deeds, together with a statement by the Registrar that the correctness of what was stated in the deed had been affirmed by B. The question whether the money really was ever paid to B personally was made the subject of very careful investigation in the Courts below, and those Courts concurrently found that it was paid to W.

Held, that the finding was a concurrent finding of fact which was binding upon their Lordships (38-9). (Lord Shand.) RAJAH PARTAB BAHADUR SINGH 2. RAJAH (1891) 19 I A. 33=19 C. 174 (181) = 6 Sar. 93.

## Principal—Suit for money due on account against— Joinder of agent as defendant in.

Propriety-Agent not personally liable.

To a suit brought to recover from a lady a sum of money alleged to be due upon the balance of a banking account, the plaintiff joined as defendants two others who had acted as agents only in the transactions which formed the subject of the action and were in no way personally liable to the plaintiff.

Held, there was no ground whatever for joining those two persons, and they must be considered as being out of the suit (9). (Sir Montague E. Smith.) DINOMOVI DEBI v. ROY LUCHMIPUT S'NGH. (1879) 7 I. A. 8 = 6 O. L. B. 101 = 4 Bar. 112 = 3 Buth. 710 = Bald. 342

Property entrusted to.

-Parking with-Assunt of-Duty to renter-Proparty proved to belong to third party-Effect.

As between principal and agent, there is a contractual position fortified by riduciary relations, and one of the contractual terms is that the agent should render an account to the principal of his dealings with the property entrusted to him in the course of the mandate. This obligation cannot in any way disappear except by transfer of the contractual right by notation or operation of law; and it may well subsist, notwithstanding that the property proces to belong to someone other than the principal. (Lord Atkin). RAJA BHAWANI SINGH & MAULYI MISBAH-UD-DIX.

(1929) 56 I. A. 170 - 10 Lah. 352 = 27 A. L. J. 471 = 33 C. W N. 609 = 115 I. C. 729 = 31 Bom. L. R. 762 = 49 C L. J. 576 - 30 L. W. 21 = 1929 M. W. N. 449 -30 Punj L. R. 484 = A. I. R. 1929 P. C. 119 = 56 M. L. J. 799

-Principal's title to-Right to dispute -Title of third

party-Right to set up-Estoppel.

An agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute the principal's title unless be proves a better title in a third person and that he is defending on behalf of and with the authority of the third person. The same principle controls the relation of bailor and bailee, which may come into existence without the added relation, of principal and agent, The agent is certainly in no better position than the hare bailee. (Lord Atkin.) RAJA BHAWANI SINGH S. MAULVI MISBAH-UD-DIN. (1929) 56 I. A. 170 - 10 Lah. 352 -

27 A. L. J. 471 = 33 C. W. N. 609 = 115 I. C. 729 = 31 Bom. L. R. 762 = 49 C. L. J. 576 = 30 L. W. 21 = 1929 M. W. N. 449 - 30 Punj. L. R. 484 -A. I. R. 1929 P. C. 119 = 56 M. L. J. 799.

#### Purchase by.

 Ownership of property subject of—Personal security -Money borrowed on agent's-Execution purchase with, SW HINDU LAW-RELIGIOUS ENDOWMENT-ASTHAL -MOHUNT OF-AGENT OF-PURCHASE IN EXECUTION BY, ETC. (1877) Bald. 140 (144-5).

-Principal - Purchase on behalf of - Benefit of Claim subsequent to-Maintainability-Estoppel.

It would be contrary to equity to allow a man who steps in and assumes the character of a principal agent, and deposes another who was really acting as agent, afterwards to turn round and say, I purchased the estate, not for the principal, but for myself, and to obtain a profit out of the estate he had so purchased (161-2).

The question was whether an execution purchase made by C, the predecessor in interest of the plaintiffs, was made by him on his own account, or as benameedar for the appel-

lant, his principal.

It appeared that C had been the manager of the appellant for sometime before the sale in question; that at the sale the highest bid was made by R, who was an agent of the app-llant and who in making the bid acted as u + a yent; that, though C had no express instructions previous to the sale from the appellant to purchase for him. C took the bidding out of R's hands and raised the bidding by the paltry sum of Rs. 2, professing to act for the appellant; that R would not have desisted from raising the bid but for C's representation that he acted on behalf of the appellant; and that the purchase would not have been allowed to be made by C, but for such representation.

Held, that C and the plaintiffs were, under the circumstances, therefore precluded from pleading that the purchase

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Purchase by-(Contd.)

appellant (161-2). (Sir Mentague E. Smith.) LOKHU NARAIN ROY CHOWITHRY D. KALYPUDDO BANDO-(1875) 2 I. A. 154 = 23 W. R. 358= PADHYA. 3 Suth. 122=3 Sar. 472.

-Principal s claim to-Maintainability-Conditions. Where property purchased by an agent is claimed by the principal on the ground that it was purchased with his funds, an account must be taken of the principal's money in the hands of the agent in order to see whether the principal's money in whole or in part has been utilised for the purchase. If in whole or in part the purchase-money belonged to the principal, the property also should be declared wholly or in proportionate part to belong to the principal (120). (Lerd Lindley.) JAFRI BEGUM v. SYED ALI RAZA.

(1901) 28 I. A. 111 = 23 A. 383 (392-3)= 5 C. W. N. 585=3 Bom. L. R. 311=8 Sar. 27= 11 M. L. J. 149.

#### Purdanashin-Deed secured by agent from.

Pressure and absence of independent advice in regard to-Principal if affected by. See PURDANASHIN-DEED BY-AGENT. (1902) 6 C. W. N. 809 (815).

#### Railway Passenger-Agent of.

Contract with company depriving passenger of benefit of duty of care which passenger is prima facie entitled to expect from company-Binding nature on passenger of. See RAILWAY COMPANY-PASSENGER.

(1915) 19 C. W. N. 905 (909-10)

#### Remuneration of-Principal's liability for-Repudiation of.

-Estoppel-Services rendered in expectation of rems neration-Acceptance thereof with knowledge of such expetation -Effect.

On the death of M, who had carried on an Abkarry business during his lifetime and had been assisted therein by his brother, who had been paid a monthly salary for the purpose, the latter declared to a common friend that he had worked like a slave in the business, and had been merely paid for his labour, but that for the future he would not do so unless he received an equal share with the widow and children, two sons of the deceased. The common fried soon afterwards mentioned this conversation to the widow The widow did not dissent from this view, but permitted her brother-in-law to carry on the business for over ten year-Held that, after having so long availed herself of her brother-in-law's services, which she knew to be rendered on the faith of his receiving one-half the profits as a remuneration for those services, she and the other parties interested in the estate could not justly dispute the right of the de ceased's brother to be remunerated to that extent. Hald therefore that the deceased's brother was entitled to a equal share of the profits of the contract accrued after the death of M as a remuneration for his services in the execution of that contract (254.5). (Lord Kingsdown.) ABRA-HAM S. ABRAHAM. (1863) 9 M. I. A. 195=1 W. R. 1 2 Sar. 10=1 Suth 501

## Sale of goods manufactured by third party-Contract for.

-Contractor himself seller or only agent of mass facturer-Liability of, for damages for non-delivery

The mere mention of commission in a contract of sale B signed where the seller imports the commodity from the manufacturer and sells to the buyer is not inconsistent with the relation between the seller and the buyer being on between principal and principal.

Where A and B entered into a contract whereby B va by C was on his own account and not on behalf of the to supply A with a certain quantity of sugar at a certain

Sale of goods manufactured by third party-Contract for-(Contd.)

rate, but B himself not being a grower of sugar got from J. a sugar-grower, with the approval of A the sugar at the price stipulated and for himself stipulated under the contract of sale for a certain commission, held (1) that the relation between A and B was one of principal and principal, and (2) that B was not a mere agent of f and was liable for damages for non-delivery. (Lord Dancdin.) BALTHAZAR & SON D. ABOWATH.

(1919) 13 L. W. 537 (540) - 63 I. C. 521.

### Sale-deed by-Covenants in.

Binding character of, against principal.

Where an authority is given to an agent to sell, and the agent exceeds his authority by entering into a particular stipulation, that stipulation is, no doubt, not binding on the principal. But where it appears that the principal authorised not only the sale itself, but a sale in the very terms of the deed executed by the agent, the stipulations in the deed are binding on the principal (199). (See Montague E. Smith.) BISHESWARI DEBVA P. GOVIND PERSAD TEWARI. (1876) 3 I. A. 194 - 26 W. R. 32-3 Suth. 284 = 3 Sar. 626 = Bald. 7.

#### Set-off.

-Security deposited by agent with principal-Set-off or counter claim in respect of Agent's right of, as against party taking over from principal benefit of sums due by agent in respect of which security given.

Arbuthnot & Co., who carried on a large business of a miscellaneous character as sugar manufacturers, etc., had, in the year 1901, made a factory for the production of sugar at a place in Mysore and employed the respondents as agents to represent them and sell the sugar which they produced. The respondents were del credere agents in respect of those transactions and were also required to make deposits of money with Arbuthnot & Co. The course of business between 1901 and 1906, when Arbuthnot & Co. became insolvent was this: that the respondents sold the sugar and received the proceeds, for which they were answerable, and Arbuthnot & Co. had deposits of considerable sums from the respondents, which were security for such amounts as were due from them.

In 1905 Arbuthnot & Co. incorporated a company called the Mysore Sugar Co. for their own purposes. It consisted entirely of representatives of Arbuthnot & Co. or persons under their control; the whole of its capital came from Arbuthnot & Co. it was directed and handled by Arbuthnot & Co. and it was completely under their control. The purpose of the Mysore Sugar Co., was to take over the factory of Arbuthnot & Co. at the place in Mysore referred to above, and it did take the factory over technically, but the factory continued to be run and maintained in exactly the same way as before. The respondents knew nothing whatever of the existence of the Mysore Sugar Co. much less of the factory, or of the consignen's having passed out of the hands of Arbuthnot & Co. into the hands of that

In an action brought by the liquidator of the Mysore Sugar Co. for the purpose of recovering the proceeds of sugar in the respondent's hands, held that the Mysore Sugar Co., could not recover the said proceeds without reference to the cross-claim or alleged set off on the part of the respondents in respect of the deposits they had made with Arbuth-

If the Mysore Sugar Co. could bring actions for sums due from the respondents in respect of sales of sugar, they could bring them only as principals in this sense, that they

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Set-off-(Could.)

affects these sums in the hands of Arbuthnot & Co. themselves. If that is so, then we are face to face with a situation in which there was an ordinary personal contract with rights on both sides which could not be altered without the consent of both parties. (Viscount Haldane.) OFFICIAL TRUSTEE MADRAS P. SUNDARAMURTHI MUDALIAR.

(1920) 15 L. W. 201 = 76 I. C. 944 = 24 C. W. N. 1004.

Sub agent.

-Missenduct of Loss arising from - Liability for-Agreement providing for-Forgery by such agent-Loss due to -Liability for.

The basis of the suit out of which the appeal arose was an agreement which was entered into on 11-t-1869, between A and the Government of India on the occasion of A being appointed sudder treasurer in the district of Lucknow. The material words on which the claim was founded were:-Should any loss or deficiency arise from non-production of accounts, or by misconduct, or negligence of myself, of my temporary substitute, or of agents appointed by me, or on my nomination. I hold myself responsible to make good such loss,"

There were extensive forgeries of stamps by subordinate officers of the treasury of Lucknow. A himself was perfeetly innocent. But it was sought to make him hable by reason of the misconduct of his subordinates, and particularly of H, who was first the accountant, and then the darogals of stamps in the treasury of Lucknow. The course of proceeding by those who committed the forgeries was as follows: H received out of the treasury stamps for sale, according as he indented upon the treasury for them. He did not sell them himself, or ought not to have sold them himself, direct to the purchasers, but distributed them to certain persons who were licensed vendors of stamps, who dealt directly with the public, received the money from the public, and whose duty it was to pay that money over to the treasury. In some cases the purchasers paid direct to the treasuary, but either from the purchasers or from the vendors the treasury ought to get the whole value of the stamps issued by it to H. There were daily accounts stated between the treasury and the vendors, but between the creasury and II, the accounts were stated monthly, and, at the end of every month it was necessary to show that the money received by the treasury was the exact value of the stamps which had hen issued, excepting such as were not then sold and were accounted for as not sold. H colluded with the licensed vendors. They caused stamps to be forged either by making entirely new ones, or by altering some genuine stamps to larger amounts. The vendors sold those forged stamps, and they paid the whole of the proceeds into the treasury. Then # having got real stamps from the treasury, took for himself and his accomplices so many as were exactly equivalent to the payments made into the treasury. He accounted every month, so adjusting his accounts as to make the proceeds paid into the treasury for the forged stamps by the licensed vendors exactly square with the value of the stamps issued by the treasury to him, excepting so far as the same remained unsold. This process went on for more than five years. Then it was discovered, and the forgers were convicted and punished.

The suit claim against M was for the value of the stamps thus misappropriated, and it was based on the two grounds (1) of the misappropriation of the stamps by //, and (2) of the misconduct of H by falsifying his accounts and so causing loss to the Government.

If was employed in the treasury from the year 1859 onwards, and was up to the year 1873 admittedly the agent of M. But in the year 1873 the Government appointed take the benefit of these sums subject to every equity which | H to a definite office, that of accountant in the treasury,

Sub agent-(Contd.)

and instead of .V paying him as before, thenceforward the Government paid him. It was, however, proved that J nominated II, and that the change which took place in 1873 was not such as practically to after the relations between M and H, considering them as principal and subordinate.

Held, athroning the Courts below, that H was the agent of M that, although the forgery committed by H would not be misconduct on his part within the agreement so as to make M liable for it, in two respects there was misconduct which was directly connected with the agency of H within the agreement, that is to say, the misappropriation of the stamps which he represented to have been sold, and the false accounts which he rendered month by month, and in which he represented those stamps to have been sold by the vendors, that the loss caused to the Government arose in consequence of that misconduct of H within the meaning of the agreement, and that M was liable for the same. (Sir Arthur Hobbouse.) SRI KISHEN v. SECRETARY OF STATE FOR INDIA. (1885) 12 I. A. 142=12 C. 143=4 Sar. 659.

Period of agent's own employment-Appointment of sub-agent depending upon-Termination of agent's employment before period fixed-Effect of, on sub-agent's employment-Damages for wrongful termination of his employment—Sub-agent's suit for— Kight of. See BROKER— UNDEK-BAOKER. (1919) 46 I. A. 314=47 C. 290. -Unauthorized appointment of- Relation between

principal and sub-agent in case of.

Appellants appointed V as their exclusive agent for the sale of kerosine oil on the terms, amongst others, that he should deposit with them a certain amount as a guarantee of good faith and should deposit securities for the price of the oil to be supplied to him. Appellants did not expressly or impliedly authorise V to name any person to act for them. V, however, entered into a number of sub-agency agreements with appellants. The agreements were entitled sub-agency agreement; but, except so far as V was referred to as being the sole agent for the appellants, no reference whatever was made to them in the agreements, and no privity whatever was established between the appellants and the sub-agents. The course of business between V and the appellants did not also necessarily imply that the parties must be assumed to contemplate the employment of such sub-agents. V did not appoint them to act on behalf of the appellants but on behalf of himself and the guarantee and deposited moneys were to secure him as against the sub-agents, and not for the security of the appellants. V. who was indebted to the respondent Bank, paid to it a sum of Rs. 52,000 from out of moneys provided by the sub-agents. Soon after the Bank suspended payment, and appellants instituted proceedings out of which the appeal before their Lordships arose claiming repayment of the sum paid by V in priority to other creditors of the bank on the ground that such sum represented their money in V's hands. Held, overruling their plea, that the amount was never the appellant's money at all and that, in the circumstance of the case, S. 194 of the Contract Act did not avail them. (Lord Buckmaster.) TEXAS COMPANY 2. BOMBAY BANKING CO., (1919) 46 I. A. 250 (255) = 44 B. 139 (145) = (1920) M. W. N. 40 = 11 L. W. 320 = 24 C.W.N. 469 = 22 Bom. L. R. 429 = 54 I. C. 121 = 26 M. L. T. 370 =

Suit by.

30 C. L. J. 446.

OWN NAME--SUIT IN AGENT'S-AUTHORITY TO INSTITUTE, ON PRINCIPAL'S BEHALF.

Decision in favour of-Amendment of plaint by sub. stituting principal's name not equivalent to.

S brought a suit in his own name, but professing to act

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Suit by-(Contd.)

OWN NAME-SUIT IN AGENTS-AUTHORITY TO INSTITUTE, ON PRINCIPAL'S BEHALF-(Contd.) property to recover arrears of rent alleged to be due from the defendant as occupier of a portion of that property. The defendant pleaded that the suit was not brought in the name of N and on his behalf, and that S had no authority in his sannud to sue for arrears. S then applied to amend his plaint by substituting therein for his own name that of N as plaintiff. That application was granted and N's name was substituted for that of S. When the case came on for hearing, a preliminary objection was taken by the defendant that S had not shown that he was the agent of N, and authorized to use his name as plaintiff. The Courts below

On appeal to the Privy Council it was contended that the order amending the plaint was conclusive between the parties as to the right to maintain the suit in the name of

Ν,

Held that the contention was untenable (137).

upheld the objection and dismissed the suit.

The position of the parties is not different after the order for the amendment of the plaint from what it would have been if the suit had been originally commenced by S in the name of N. All that the Court did by allowing the amendment was to correct a supposed mistake made by S in the institution of the suit. After that correction the suit would proceed as though it had been originally brought as correct. The Deputy Collector did not, by allowing the amendment, decide that S had authority to institute a suit in N's name. That, if questioned, would remain to be proved (137). (Lord Hannen.) NAM NARAIN SINGH v. RAGHUNAUTH (1892) 19 I. A. 135=19 C. 678 (681)= SAHAL. 6 Sar. 202

#### PRINCIPAL'S NAME-SUIT IN-AUTHORITY TO INSTITUTE.

-Failure to prose-Dismissal of suit.

A suit to recover arrears of rent brought by an agent is the name of his principal was dismissed by the Courts below on the ground that the agent had not proved that he was the agent of the alleged principal, and authorized to use his name as plaintiff.

Their Lordships concurred in finding that the agent had not proved his authority to sue in the name of the principal and held that the Courts below were justified in dismissing the suit on that ground (138-9), (Lord Hannen.) NAM NARAIN SINGH P. RAGHUNAUTH SAHAI.

(1892) 19 I. A. 135=19 C. 678 (682)=6 Sar. 202

Failure to prove-Dismissal of suit on ground of-Appeal by principal against-Costs of-Liability of prin cipal for, on dismissal of appeal.

A suit instituted by an agent in the name of his principal was dismissed with costs on the ground that the agent had not proved his authority to sue in the name of the principal That decree was affirmed by the High Court on appeal. On appeal to the Privy Council from the decrees below it argued that the judgment appealed from was inconsistent in a smuch as it condemned the plaintiff, the principal is costs, while holding that the suit was rightly dismission on the ground of want of proof of the agent's authority to bring it.

Held that the appeal being brought by the principal, be was properly condemned in costs for appealing against a judgment which, upon the materials before the Court, was

rightly pronounced (139).

The proper course for the principal would have been to prove that he had, in fact, given authority to the agent to bring the suit in his name, but he made no application to be as the tehsildar and general agent of N in respect of certain | allowed to supply this proof, but simply appealed. But a

Suit by-(Contd.)

PRINCIPAL'S NAME—SUIT IN—AUTHORITY TO INSTITUTE—(Contd.)

doing he subjected himself to the jurisdiction of the Court to condemn him in costs (139). (Lord Hannen.) NAM NARAIN SINGH v. RAGHUNAUTH SAHAI.

(1892) 19 I. A. 135 = 19 C. 678 (683) = 6 Sar. 202.

-Proof of-Necessity.

A Court whose aid is invoked on behalf of one person through the agency of another is entitled in some form or other to inquire whether the alleged agent really had authority to bring the suit. It may be necessary to do so for the protection of the person sued. He would at least be exposed to the danger of being sued again by the principal if the agency did not exist (137-8). (Lord Hanner.) NAM NARAIN SINGH v. RAGHUNAUTH SAHAI.

(1892) 19 I. A. 135 = 19 C. 678 (681) = 6 Sar. 202.

# Trust deed—Trustee under, with power of sale on consent in writing of co-adjutor.

—Agent appointed by—Sale by, without such consent —Validity. See TRUST DEED—TRUSTEE UNDER—SALE ON, ETC. (1927) 6 B. 113

#### Undisclosed principal.

-Act for-Principal's rights in case of.

Where an agent acts for an undisclosed principal, the latter must either go against his agent and repudiate the transaction altogether, or if he does not repudiate the transaction, he must take it with all its consequences (493). (Lord futtice Giffard.) WISE P. JUGGOBUNDHOO BASE. (1869) 12 M. I. A. 477 = 2 B. L. B. (P.C.) 69 =

2 Sar. 459.

Contract for-Contracted's right under.

This is not the ordinary case of a contract made by an agent for an undisclosed principal, on which the contractee on discovering the principal may at his election sue either principal or agent. (246). (Lord Justice Turner.) MURTUNJOY CHUCKERBUTTY v. COCKRANE.

(1865) 10 M. I. A. 229 = 4 W. R. (P. C.) 1 = 1 Suth. 592 = 2 Sar. 124.

Contract for, in agent's own name—Rights of other party in case of—Judgment unsatisfied obtained by him against agent—Bar to suit against principal if.

Where an agent contracts in his own name for an undisclosed principal the person with whom be contracts may sue the agent or he may sue the principal, but if he sues the agent and recovers judgment he connot afterwards sue the principal, even although the judgment does not result in satisfaction of the debt (172). Two judgments which are both based on the same cause of action and one of which is directed against the agent of a firm and the other against the firm itself cannot in law co-exist in valid and effective force (172). (Lord Atkinsen.) SOMASUNDARAM CHETTY 5. SUBRAMANIAM CHETTY. (1926) 25 L. W. 163

(1926) M. W. N. 832 = 4 O. W. N. 1 = 99 I. C. 742 = A. I. B. 1926 P. C. 136.

#### Wrongful acts of.

Principal's liability for.

The suit was to recover damages in respect of the injury which the plaintiff had sustained by being prevented by D, the agent of the defendants, in August or September, 1865, from removing certain logs of timber to which the plaintiff was entitled. The evidence showed that at the time when D was alleged to have so prevented the plaintiff no relation other than that of vendor and purchaser existed between D and the defendants, except that of agent to procure a lease of the timber forest (from which the plaintiff was prevented from removing the logs of timber) in the previous July.

## PRINCIPAL AND AGENT-AGENT-(Contd.)

Wrongful acts of-(Contd.)

Held, that the acts of D could not be treated as the wrongful acts of a servant or agent committed in the course of his service, for the plain reason that at that time it was not shown that D was a servant or an agent for the purpose of working in the forest on behalf of the defendants, or of doing any class of acts analogous to those complained of, and that in the absence of proof that the defendants knowingly adopted or ratified those acts, or indeed of the acts having been committed for their benefit, the defendants could not be held fiable (136-7).

An agency to procure a lease of a timber forest is a totally different thing from an agency to work the forest under the lease (137).

With respect to the question, whether a principal is answerable for the act of his agent in the course of his master's business and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is, that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit. It is not necessary that the master should have authorized the particular act of the agent. If he has put the agent in his place to do that class of acts, he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of the master to place him in (135-6). (Sir Robert Collier.) BOMBAY-BURMAH TRADING CORPORATION, LTD. D. MIRZA MAHOMED ALLY.

(1878) 5 L. A. 130-4 C. 116 (121-2, 123)= 3 Sar. 622-3 Suth. 525.

## PRINCIPAL AND BANIAN-BANIAN.

-Lien-Right to-Basis of-Late-Custom.

There is no rule of law giving a lien to a banian, neither is there any custom to that effect. If he claims one, he must prove it either by shewing some express agreement, written or verbal, that he shall have a lien, or some course of dealing from which it must be implied (92). (Lord Mobilings.) PEACOCK P. BYJNAUTH.

(1891) 18 I A. 78=18 C. 573 (597-8)=5 Sar 551.

- Den claimed by-Agreement or course of dealing supporting-Proof of-Quantum.

The question in the appeals was whether Byjnauth, or, as he was usually called. "the banian," was entitled to the lien which he claimed against merchandise in the godowns of T, and against other merchandise which at the time of T's suspension of payment was on boardship, consigned by P to T, and which P claimed the right to stop in transitu. Byjnauth relied upon an express agreement that he should have such a lien, and also a course of dealing from which it must be implied. He did not, however, allege that there was any written agreement.

Held, on the evidence, that no express agreement or course of dealing was established entitling hyjnauth to the lied claimed by him. (Lord Hobboute.) PEACOCK v. BYJ-NAUTH. (1891) 18 I. A. 78=18 C. 573=5 Sar 551.

Sale of goods consigned — Banyan entrusted with— Liability to consignor of —Circumstances excluding.

Where sales of goods consigned have been in good faith effected by a banian, and the proceeds have been duly brought into account between him and his employers, the consignors of such goods cannot afterwards hold the banian accountable to them in respect thereof (108-9). (Lord Hobbouse.) PEACOCK D. BYJNAUTH. (1891) 18 I. A. 78 = 18 C. 573 (613) = 5 Sar. 551.

## PRINCIPAL AND FACTOR-PACTOR.

Factor—Shipment of goods of principal in his own name by—Bill drawn by, in his own name against goods—

#### PRINCIPAL AND FACTOR-FACTOR-(Contd.)

Nature of transaction-Plotge of goods by factor-Loss on shipments-Principal's landley in case of.

Factors entrusted with possession of their principal's goods, and having advanced opon them, shipped the goods to London drawing bills against them in their own names, and selling the bills with the shipping documents in the market. The acceptance of the factor's bills by the consignees, and the delivery of the shipping documents to them. made them the ple leave but did not after the character of the transaction, which was one whereby the factors had pledged the goods for the payment of bills on which they (and not the principal) were liable as drawers, for an amount exceeding the value of goods.

In such a case no privity exists between the consignees and the undisclosed principal. Held, therefore, that a loss having occurred on the shipments, the principal was liable to the factor's estate for the full amount of re-drafts representing that loss, although the factors had become insolvents, and had, in fact, paid only a small dividend on the re-drafts (245-6). (Lord Justice Turner.) MURTUNJOY CHUCKER-(1865) 10 M. I. A. 229 = BUTTY P. COCKRANE. 4 W. R. (P. C.) 1-1 Suth. 592-2 Sar. 124.

-Factor-Shipping goods for sale on account of princiful or on his ocon account - Authority as regards-Interest in goods-Factor having, by reason of his advances.

Factors having an interest, by reason of their advances, in their principal's goods, are justified in shipping those goods for sale, either "on account of those concerned," or on account of themselves" unless their general authority was controlled by instructions from their principal or by contract (243-4). (Lord Justice Furner.) MURTUNJOY CHUCKERBUTTY P. COCKRANE.

(1865) 10 M. I. A. 229 - 4 W. R. (P. C.) 1 = 1 Suth 592 - 2 Sar. 124.

-Law applicable to, at Calentta-English Mercantile Law-Custom or usage qualifying -Proof of-Quantum.

Held, that the evidence altogether failed to establish that any particular usage or castom qualifying the Mercantile Law of England, as between principal and factor, prevailed at Calcutta. Consequently the powers and duties of factors at Calcutta fell to be decided by the general Mercantile law. (Lord Justice Turner.) MURTONJOV CHUCKERBUTTY 2. (1865) 10 M. I. A. 229 (242 3) = COCKRANE.

4 W. R. (P. C.) 1-1 Suth. 592 = 2 Sar. 124.

### PRINCIPAL AND GOMASTA-GOMASTA

-Act of insolvency of - Adjudication of principal on ground of. Sa: INSOLVENCY-GOMASTA.

-Partnership contract by-Principal if bound by. A gomasta has no power in that character alone to bind his master to any partnership agreement (306). (Lord Chelmsford.) LUCKMEE CHUND r. ZORAWUR MULL.

(1860) 8 M I. A. 291-1 W. R. 35-1 Suth. 425= 1 Sar. 763.

-Partnership contract entered into without authority by-Ratification by principal of-Effect.

A principal may ratify a partnership contract entered into by his gomasta without authority, and, if he does so, he becomes bound by such contract (306). (Lord Chelmsford.) LUCKMEE CHUND v. ZORAWUR MULL

(1860) 8 M. I. A. 291=1 W. R. 35=1 Suth. 425= 1 Sar. 763.

-Positions of -Difference in.

The position of a gomasta differs in different cases. In some cases he may be little more or no more, than an ordinary manager. In others he may represent the business so entirely that the beneficial owners have no practical control over it and are quite unknown to the customers. It is a

#### PRINCIPAL AND GOMASTA - GOMASTA -(Contd.)

question in each case whether the gomashta occupies such a position that the owner must stand or fail by his acts (169-70). (Lord Hobbouse.) KUSTOOR CHAND RAI BAHADUR T. RAI DHUNPUT SINGH BAHADUR.

(1895) 22 I. A. 162 = 23 C. 26 (35-6) = 6 Sar. 617 = 5 M. L. J. 269.

### PRINCIPAL AND SURETY.

-See SURETY.

#### PRINTING.

-See PRIVY COUNCIL-APPEAL-PRINTING.

#### PRIVY COUNCIL.

AMERICAN DECISIONS.

APPEAL.

COURTS OF JUSTICE-PROCEEDINGS BEFORE. CRIMINAL APPEAL.

JUDICIAL FUNCTIONS OF, IN REGARD TO PROCEED-

INGS BEFORE COURTS OF JUSTICE. PRACTICE - QUESTION OF FACT - CONCURRENT FINDINGS.

SPECIAL LEAVE FOR APPEAL TO.

#### PRIVY COUNCIL-AMERICAN DECISIONS.

-Binding nature of. (Lord Atkinson.) MACMILLAN & CO. v. COUPER (1921) 51 I. A. 109 (121)= 48 B. 308 = 19 L. W. 299 = 26 Bom. L. R. 292 =

(1924) M. W. N. 308 = 28 C. W. N. 613 = 22 A. L. J. 471 = 2 P. L. B. 137 =

A. I. R. 1924 P. C. 75=83 I. C. 101=46 M. L. J. 637.

### PRIVY COUNCIL-APPEAL.

ABANDONMENT OF.

ABATEMENT OF.

ADMIRALTY.

APPEALABLE CASES-ISSUES IN.

APPEALABLE VALUE.

APPELLANT.

APPLICABILITY TO, OF S. 104 OF C. P. C. OF 1908. BENAMI.

BOUNDARY DISPUTE.

CERTIFICATE OF LEAVE FOR.

CO-DEFENDANTS-QUESTION BETWEEN.

COLONIAL APPEAL.

COMPETENCY OF.

COMPROXISE OF.

CONSOLIDATED APPEAL.

COSTS.

COSTS OF.

COSTS OF, AND OF CROSS-APPEAL.

COSTS OF, AND IN COURTS BELOW.

COSTS OF, AND IN HIGH COURT.

CRIMINAL APPEAL.

CROSS-APPEAL.

DAMAGES-ASSESSMENT OF.

DECLARATION IN-NATURE AND EFFECT OF-DUTY

OF COURT BELOW TO GIVE EFFECT TO. DECLARATION UNNECESSARY - MAKING OF.

DECREE IN (OR ORDER IN COUNCIL).

DECRFE UNDER.

DEED.

DEFAULT TO PROSECUTE-DISMISSAL OF APPEAL

DEFENDANTS WITH DIFFERENT DEFENCES AND SEPARATE CASES.

DELAY IN PROSECUTION OF.

DISCRETION OF COURT BELOW - INTERFERENCE

EVENTS SUBSEQUENT TO DECREE UNDER.

EVENTS SUBSEQUENT TO SUIT.

EVIDENCE.

EXECUTION OF DECREE UNDER.

Ex parte DECISION IN.

Ex parte HEARING OF.

FACT-FINDING OF.

FINAL DECREE-APPEAL FROM.

FINDING OF FACT.

FULL BENCH OF HIGH COURT-ANSWERS ADVERSE OF-QUESTIONING OF, IN APPEAL FROM FAVOURA-BLE DECREE OF DIVISION BENCH PURSUANT TO FULL BENCH OPINION.

FUTURE RIGHTS-DECLARATION OF.

HEARING OF.

HYPOTHETICAL RIGHTS-DETERMINATION OF-PRO-PRIETY.

INCOME-TAX ACT - DECISION OF HIGH COURT

INTERLOCUTORY APPLICATION IN.

INTERLOCUTORY ORDER.

JUDGES HEARING-DEATH OF ONE OF, REFORE JUDGMENT.

JUDGMENT IN.

JUDGMENT UNDER.

JURISDICTION-ABSENCE OF-PLEA OF.

LAND ACQUISITION ACT.

LAND TENURE-NATURE AND INCIDENTS OF-DE-CISION OF INDIAN COURTS ON.

LAW IN INDIA-NOTICE OF.

LEAVE FOR.

LEGAL PRACTITIONER.

LIMITATION-PLEA OF.

LORDS COMMISSIONERS OF THE TREASURY-DECI-

MAHOMEDAN LAW-QUESTION OF.

MERITS SUBSTANTIAL OF.

MINOR.

MORTGAGE.

NAWAB OF SURAT ACT XVIII OF 1848,

NEW POINT IN-PERMISSIBILITY.

OBITER DICTUM.

OBJECTIONS IN.

ONUS OF PROOF-OBJECTION TO.

ORDER IN COUNCIL IN.

PARTIES TO-ADDITION OR SUBSTITUTION OF.

PARTIES NOT BEFORE COURT—DECISION AFFECTING. PAUPER.

PETITION OF.

PLEADINGS.

POINTS UNNECESSARY-OPINION ON-EXPRESSION OF-PROPRIETY.

PRE-EMPTION OF-DOCTRINE OF-ECCLESIASTICAL COURTS' RULES IN DOCTORS' COMMONS AS TO. PRINTING OF DOCUMENTS.

PROCEEDINGS IN-RECTIFICATION OF-RIGHT TO APPLY FOR.

PROCEDURE—QUESTION OF—INDIAN DECISIONS ON. PROPERTY-RULES REGARDING, LONG AND CONSIS-TENTLY ACTED UPON BY INDIAN COURTS.

PROSECUTION OF.

PROTECTION OF PROPERTY IN DISPUTE IN.

QUESTION OF FACT.

RECEIVER.

RE-HEARING OF.

REMAND IN.

REMAND ORDER OF HIGH COURT.

RESPONDENT.

## PRIVY COUNCIL-APPEAL-(Contd.)

REVIEW TO COURT BELOW.

REVIVOR OF.

RIDDLES IN-PROPOUNDING OF.

SINGLE APPEAL BY DIFFERENT DEFENDANTS WITH DIFFERENT DEFENCES AND DIFFERENT GROUNDS

STATUTE.

STAY OF EXECUTION OF DECREE PENDING.

STAY OF PROCEEDINGS PENDING.

SUBJECT-MATTER OF-VALUE OF.

SUIT-EVENTS SUBSEQUENT TO.

SUPREME COURT-DECISION OF.

TRANSLATION OF DOCUMENT.

TRANSMISSION OF RECORD.

VALUATION OF PROPERTY.

VERNACULAR DEED-TRANSLATION OF, ADOPTED BY PRIVY COUNCIL.

VERNACULAR WORDS-MEANING OF.

#### Abandonment of.

-Effect of-Security furnished to abide determination of appeal-Release of. REED v. SREEMUTTY GOUR-MONEE DABEE. (1857) 6 M.I.A. 490= 11 Moo. P.C. 151.

-Restoration after-Discretion to allow - New appeal-Leave to file-Jurisdiction to grant-8 and 9 Vict., c. 30, s. 2-Abandonment under. (Dr. Lushington.) RANEE HURROSOONDREE DEBIA P. RAJAH PRAN KISHEN SINGH. (1857) 6 M.I.A. 491 (492)=

11 Moo. P.C. 152. -Restoration after-Circumstances justifying-Terms -Payment of costs of application by petitioner, and giving of security in England. (Dr. Luskington.) RANEE HUR-RUSOUNDREE DEBIA T. RAJAH PRAN KISHEN SINGH.

(1857) 6 M.I.A. 491=11 Moo. P.C. 152.

#### Abatement of.

-Revivor against personal representative of deceased respondent. (Lord Justice Knight Bruce.) GOBIND CHUNDER SEIN P. RYAN.

(1861) 9 M.I.A. 140 (156-7)=1 W.B. 43= 15 Moo. P. C. 230 = 8 Jur. (N. S.) 343 = 5 L.T. 559 = 10 W.R. (Eng.) 105=1 Sar. 831=1 Suth. 471.

Admiralty. -See Admiralty and Practice-Admiralty,

#### Appealable cases-Issues in.

-Findings on all-Recording of-Necessity. See PRACTICE-ISSUES-APPEALABLE CASES.

#### Appealable Value.

-See C. P. C. OF 1908, S. 110, PARA. 1-SUBJECT-MATTER OF APPEAL.

#### Appellant.

-Different defences and separate cases-Appellants with-Single appeal by. See PRIVY COUNCIL-APPEAL -SINGLE APPEAL. (1900) 27 I. A. 168 (172)= 23 A. 137 (142).

Judgment under appeal—Incorrectness of—Duty to show. See APPEAL—APPELLANT—JUDGMENT UNDER

-Judgment under appeal-Incorrectness of-Onus of showing-Riddles-Propounding of-Permissibility. See BOUNDARY DISPUTE-PRIVY COUNCIL APPEAL IN-

-Security furnished by, to abide determination of appeal-Release of, on abandonment of appeal. REED v. SREEMUTTY GOURMONER DABEE.

(1857) 6 M. I. A. 490 = 11 Moo. P. C. 151.

Appellant-(Centd.)

-Separate appellants-Counsel two for each set of-Arguments by-Keplies separate-Allowance of, owing to conflict of interest. See LEGAL PRACTITIONER-PRIVY (1842) 3 M. I. A. 138 (152). COUNCIL APPEAL.

Applicability to, of S. 104 of C. P. C. of 1908.

-Siz C. P. C. OF 1908, S. 104,

#### Benami.

-Concurrent findings as to-Interference with. See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-INTERFERENCE WITH-CASES UNDER-BENAMI.

Trial Judge's decision on question of-Reversal by High Court of-Points to be considered in case of.

In this case the plaintiffs sued for the recovery of certain property purchased in the name of a female member of the family (the wife of one of the coparceners) as guardian of her minor son on the ground that the property was joint family property and that, on the death of the minor, they became entitled to it by survivorship. The defendant, the son-in-law of the female member, claimed to be entitled to the property on the ground that the purchase was benami for his deceased wife, and, that, on her death, he was entitled to it. The first Court held with the defendant and dismissed the suit. On appeal, the High Court reversed its decree. On further appeal, their Lordships, while fully alive to the fact that there was much to be said against the case which the defendant made, and that persons in his position who made such claims as he made must expect their stories to be narrowly, and even sceptically, scrutinised, held that the question was not whether their Lordships would have believed his story, had they tried the case, but whether there was sufficient in the evidence to show that the High Court was right in holding that the trial Judge had misdirected himself as to the onus of proof, or had misjudged the weight of the evidence, or wrongly accredited certain of the witnesses called before him.

The judgment of the High Court was set aside, and that of the trial Judge restored. (Lord Sumner.) MOTI LAL p. KUNDAN LAL. (1917) 22 M. L. T. 10 = 6 L. W. 92 = 15 A. L. J. 329 = 1 Pat. L. W. 490 = 19 Bom. L. R. 471 = 21 C. W. N. 929 =

25 C. L. J. 581 = 39 I. C. 964 = (1917) M. W. N. 464 = 32 M. L. J. 468 (476).

#### Boundary dispute.

-See under BOUNDARY DISPUTE-PRIVY COUN-CIL APPEAL IN.

#### Certificate of leave for.

-See C. P. C. OF 1908, S. 109 (c) AND S. 110.

#### Co-defendants-Question between.

-Decision of-Not proper. See EJECTMENT SUIT-(1870) 13 M. I. A. 519 (522-3). -(Lord Macnaghten.) FAKIR CHUNDER DUTT :. RAM KUMAR CHATTERJEE. (1904) 31 L. A. 175 = 31 C. 901 (908) = 8 C. W. N. 721 = 6 Bom. L. R. 741= 1 A. L. J. 420.

#### Colonial appeal.

Concurrent findings of fact-Privy Council rule as to -Applicability. See PRIVY COUNCIL - PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-INTER-FERENCE WITH-RULE AS TO-APPLICABILITY OF COLONIAL APPEALS. (1927) 101 I. C. 903.

-First consideration in-Substantial justice.

In cases coming before the Privy Council from the Domi-

#### PRIVY COUNCIL-APPEAL-(Contd.)

Colonial appeal-(Contd.)

Council always is to secure, if possible, that substantial justice is done. (Viscount Haldane.) KOJO PON v. ATTA (1927) 47 C. L. J. 328 = 107 I. C. 349 (2)= A. I. R. 1927 P. C. 264.

#### Competency of.

-See PRIVY COUNCIL-APPEAL-RIGHT OF.

#### Compromise of.

HIGH COURT'S JURISDICTION TO ACCEPT.

-Compromise between admission of appeal and transmission of printed record altering terms of decree.

Held that the High Court had such jurisdiction, where one of the terms of the compromise was that the infant appellant's appeal should be withdrawn, and that thereupon the appeal should be struck off the file so as to shut out the infant from prosecuting it. NARAINASWAMI PILLAI P. CUPPUSWAMI PILLAI. (1894) 4 M. L. J. 112.

#### MINOR-COMPROMISE AFFECTING.

-High Court's certificate as to beneficial nature of-

In all cases where it is desired to bind persons under disability by a compromise, it is of the utmost importance that there should be a clear expression of opinion by the proper Court in India that such a compromise is a beneficial one for those persons. In rare cases the Judicial Committee may accept the burden of considering the question of the beneficial nature of the proposed compromise as regards the persons under disability, but this is not the regular and usual course.

The petition for leave to withdraw the appeal upon the terms of an agreement by way of compromise was accordingly allowed to stand over until the proper certificate had been obtained from the High Court. (Lord Buckmaster.) GOBINDA CHANDRA PAL v. KAILASH CHANDRA (1921) 48 I. A. 241 = 48 C. 994 = PAL.

30 M. L. T. 181 .: L. R. P. C. 7 = 14 L. W. 396 .. 26 C. W. N. 105 - 66 I.C. 154 - A. I. R. 1922 P. C. 188.

-Withdrascal of appeal pursuant to-Permission [a - Grant of-Conditions.

-Applications to allow an appeal to be withdrawn on terms when there are parties concerned who are not ref juris are not granted without grave consideration.

Their Lordships sanctioned a compromise of an appeal affecting a minor party and granted leave to withdraw the appeal in terms of that compromise on an assurance given by his Counsel before the Privy Council that the compromise was for the benefit of the minor, on a certificate to the same effect of the minor's Counsel in the Courts below, and on their Lordships being themselves satisfied that the compromise was for the minor's benefit. (Lord Shaw.) SAKIN-(1919) 47 I. A. 88=11 L. W. 486= BAI D. SHRINIBAL (1920) M. W. N. 311=18 A. L. J. 499=

22 Bom. L. R. 552 = 55 I. C. 943 = 38 M. L. J. 451.

WITHDRAWAL OF APPEAL PURSUANT TO.

-Leave for-Directions to Court below to carry cal compromise-Grant of.

Petition stating that the parties had entered into razinamah regarding the subject-matter of the appeal, and praying for the withdrawal of the appeal. The petition also prayed that directions might be given to the court below to carry into effect the terms of the deed of rap

Their Lordships granted leave to withdraw the appeal but refused to make an order directing the Court below to carry into execution the terms of the deed of ramamah nions of the Crown, the first consideration of the Privy Leave was, however, reserved to the parties to a pply to the

Compromise of-(Contd.)

WITHDRAWAL OF APPEAL PURSUANT TO-(Contd.) court below, to take further proceedings under such agreement. RAJA SUTTI CHURN GOSHAL P. SRI MUDDEN KISHORE INDOO. (1850) 5 M. I. A. 107= 7 Moo. P. C. 140 = 1 Sar. 403.

### Consolidated appeal.

Costs before and after consolidation-Separate sets before and only set after. (Lord Buckmaster.) HASADAS ACHARJYA CHOWDHURI P. SECRETARY OF STATE FOR (1917) 43 I. C. 361 (370)-

26 C. L. J. 590 = (1918) M. W. N. 28= 20 Bom. L. R. 49 = 22 M. L. J. 438.

-Respondent's costs in-One set only. (Lord Macnaghten.) SUKH DEI P. KEDAR NATH.

(1901) 28 I. A. 186 (189) = 23 A. 405 (414) = 5 C. W. N. 895 = 3 Bom. L. R. 704 = 8 Sar. 109. Costs.

APPEAL AS REGARDS MERE.

-See COSTS-APPEAL.

CONSOLIDATED APPEAL.

SOLIDATED APPEAL.

DISCRETION OF COURT BELOW AS TO-INTERFERENCE WITH.

-High Court-Costs of Court below-Discretion as to -Not interfered with. (Sir James W. Colvide.) BABOO BEER PERTAB SAHEE D. MAHARAJAH RAJUNDER PER-TAB SAHEE. (1867) 12 M. I. A. 1 (40)=

9 W. R. (P. C.) 15 = 2 Suth. 114 = 2 Sar. 348.

-Rule general, though not universal, as to-Noninterference when no substantial alteration of decree under appeal. (Sir Arthur Hobbouse.) PARMANUNDASS JEE-VUNDASS v. VENAYAK RAO. (1882) 9 I. A. 86 (97) = 7 B. 19 (33) = 12 C. L. R. 92 = 4 Sar. 366.

Costs of.

APPELLANT.

CONSOLIDATED APPEAL.

EACH PARTY TO BEAR HIS OWN COSTS-ORDER FOR. ESTATE SNBJECT OF DISPUTE—COSTS TO COME OUT OF-ORDER FOR.

EX PARTE APPEAL HEARD, AND DISMISSED.

INTEREST ON.

ORDER AS TO.

PRINTING UNNECESSARY—COSTS OCCASIONED BY.

PROPORTIONATE COSTS.

REMAND-COSTS IN CASE OF.

RESPONDENT.

SPECIAL LEAVE TO APPEAL.

TAXATION BY REGISTRAR OF.

### Costs of-Appellant.

ADJOURNMENT OF HEARING OF APPEAL—COSTS OCCASIONED BY.

-Liability for, in any event. (Sir Ford North.) CHAUDRI MEHDI HASAN D. MAHOMAD HASSAN.

(1906) 33 I. A. 68 = 28 A. 439 (463-4) = 10 O. W. N. 706 = 3 A. L. J. 405 = 8 Bom. L. R. 387 = 9 O. C. 196 = 1 M. L. T. 163 = 4 C. L. J. 295 =

AMOUNT TO BE ALLOWED TO-C. P. C. OF 1908, 0. 41, R. 10-DISMISSAL OF APPEAL UNDER.

-Appeal from.

Amount to be allowed for costs of perusal of the record is only so much as is applicable to the question argued

## PRIVY COUNCIL-APPEAL-(Contd.)

Costs of -Appellant-(Contd.)

AMOUNT TO BE ALLOWED TO-C. P. C. OF 1908, O. 41. R. 10-DISMISSAL OF APPEAL UNDER-(Contd.)

before and decided by the Privy Council. (Sir Richard Conch. BUDRI NARAIN r. SHEO KOER.

(1889) 17 I. A. 1 (4, 5) = 17 C. 512 = 5 Sar. 493

APPEALABLE VALUE-MAGNIFYING OF CLAIM FOR REACHING-DECREE FOR FAR SHORTER AMOUNT.

-Costs in case of-Proportionate costs. (Sir James H. Cazale.) MUDHUN MOHUN DOSS r. GOKUL DOSS. (1866) 10 M. I. A. 563 (576) - 5 W. R. (P. C.) 91 -1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

APPELLANTS WITH COMMON INTEREST-SEPARATE APPEALS BY.

-thily one set allowed in case of. (Lord Chelmsford.) SHAH MUKHUN LALL & BABOO SREE KISHEN SINGH. (1868) 12 M. I. A. 157 (201) = 11 W. R. (P. C.) 19 = 2 B. L. R. (P. C.) 44 = 2 Suth. 190 = 2 Sar. 403.

CLAIMS UNSUSTAINABLE ABANDONED ONLY AT HEARING OF APPEAL-COSTS OF.

-Bisallowance of. (Lord Sinha.) PANAGANTI RA--Costs of. See PRIVY COUNCIL-APPEAL - CON- MARAYANIMGAR P. MAHARAJA OF VENKATAGIRI.

(1926) 54 I. A. 68 (78) = 50 M. 180 = 100 I. C. 86= 25 L. W. 621 - 8 P. L. T. 307 - 29 Bom. L. R. 805 = 45 C. L. J. 395 - 31 C. W. N. 170 = A. I. R. 1927 P. C. 32 - 52 M. L. J. 338.

DISMISSAL OF APPEAL-LIABILITY FOR COSTS IN CASE OF.

-Doubts on facts in case-False evidence adduced by appellant - Litigation caused by. (Lord Campbell.) DHURM DAS PANDEY P. MT. SHAMA SOONDARI DEBIA. (1843) 3 M. I. A. 229 (244) = 6 W. R. 43=1 Suth. 147= 1 Sar. 271.

-Law points giving appellant a right of appeal-Failure in entirety of, (Sir Richard Conch.) AHMED HOOSAN KHAN P. NIHALUDDIN KHAN.

(1883) 10 I. A. 45 (50) = 9 C. 945 (951.2) = 13 C. L. R. 330 = 4 Sar. 442 = R. & J.'s No. 72 (Oudh).

DISMISSAL OF APPEAL SUBSTANTIAL-ALTERATION OF DECKEE BELOW IN APPELLANT'S FAVOUR IMMA-TERIAL-LIABILITY FOR COSTS OF APPEAL IN CASE OF.

-(Lord Justice Knight Bruce.) SREEMUTTY SOORJUMONEY DOSSEE #. DENOBUNDOO MULLICK.

(1862) 9 M. I. A. 123 (139) = 1 Suth. 291 = 1 Sar. 837. (Sir James W. Colvile.) LALLA BUNSEEDHUR P. KOONWAR BINDESEREE DUTT SINGH.

(1866) 10 M. I. A. 454 (475-6) = 2 Suth. 39 = 2 Sar. 167.

(Sir James W. Colvile.) RAMPERSHAD TEWARRY 5. SHEOCHURN DOSS. (1866) 10 M. I. A. 490 (510) = 2 Sar. 177.

-(Ser James W. Colvile.) MT. THAKOOR DEVHEE P. RAI BALUK RAM. (1866) 11 M. I. A. 139 (176-7) = 10 W. B. (P. C.) 3=21 L J. N. S. 106=2 Suth. 49= 2 Sar. 231.

-(Lord Cairns.) TARANY CHURN BONNERJEE 2. (1867) 11 M. I. A. 317 (344)= MAIT LAND. 2 Suth. 98-2 Sar. 299.

----- RAJAH MAHENDRA SINGH 2. JOKHA SINGH. (1873) 3 Suth. 802 = 19 W. R. 211

(Sir James W. Celvile.) FORESTER v. SECRETARY (1877) 4 I. A. 137 (146-7)= OF STATE FOR INDIA. 3 C. 161 (173) = 3 Sar. 717 = 3 Suth: 405 = 1 P. R. 1877.

Costs of Appellant-(Contd.)

DISMISSAL OF APPEAL SUBSTANTIAL-ALTERATION OF DECREE BELOW IN APPELLANT'S FAVOUR IMMATERIAL-LIABILITY FOR COSTS OF APPEAL IN CASE OF- (Centd.)

-(Sir Barnes Peacock.) RM KISHORI DASI 7. (1887) 15 I. A. 37 (50)= DEBENDRANATH SIRCAR. 15 C. 409 (421) = 5 Sar. 100.

-(Lerd Hobboure.) RAHIMBHOV HUBIBHOV P. TUR-(1892) 20 I. A. 1 (8·9) = 17 B. 341 (350·1) = NER. 6 Sar. 256

-(Lord Manughten.) RANI HEMANTA KUMARI DEBI P. MAHARAJAH JAGADINDRA NATH KOY BAHA-DUR. (1894) 21 I. A. 131 (134) = 22 C. 214 = 6 Sar. 473. -(Lerd Hobbense.) HODGES 2. DELHI AND LON-DON BANK, LTD. (1900) 27 I. A. 168 (182)= 23 A. 137 (151.2) - 5 C. W. N. 1 - 2 Bom. L. R. 967 = 7 Sar. 167-10 M. L. J. 279

-(Sir John Edge.) PERRAJU v. SUBBARAVADU. (1921) 48 I. A. 280 (301) = 44 M. 656 (676-7)= 19 A. L. J. 621 = 34 C. L. J. 56 = 61 I. C. 690 = (1921) M. W. N. 541-3 U. P. L. R. (P. C.) 46-23 Bom. L. R. 920 = 14 L. W. 270 = 26 C. W. N. 1 = 3 Pat. L. T. 1=30 M. L. T. 1= A. I. R. 1922 P. C. 71=41 M. L. J. 33.

EVIDENCE ADDITIONAL—ADMISSION OF—APPLICATION FOR.

-Taxed costs of-Disallowed to appellant. (1878) 5 I. A. 61 (77)=1 M. 312 (332).

#### RIGHT OF.

-- Decree under appeal-Portion of, unnecessary but embarrassing to appellant's title-Alteration of - Respondent's opposition to-Right in case of. (Lord Blackburn.) CHOORAMUN SINGH P. SHEIKH MAHOMMED ALL.

(1882) 9 I. A. 21 (26-7)=11 C. L. R. 1=Bald. 426= 4 Sar. 329.

-Minor point not affecting costs of appeal - Failure on-Right in case of. (Lord Hobbouse.) DEO KUAR P. MAN KUAR. (1894) 21 I. A. 148 (162) = 17 A. 1 (18) = 6 Sar. 489 = 4 M. L. J. 272.

#### SUCCESSFUL APPELLANT-DISALLOWANCE TO-GROUNDS.

-Declaratory relief unnecessary-Appellant's suit for rightly liable to be dismissed by first Court on that ground -Grant in Privy Council appeal of such relief refused by Courts below, (Sir Robert P. Collier.) ANANT BAHADUR SINGH P. THAKURAIN RAGHUNATH KOER.

(1882) 9 I. A 41 (57) = 8 C. 769 (788) = 11 C. L. R. 149=4 Sar. 316=R. & J.'s No. 67 & 68.

-Decree below right under law as then understood. (Sir Montague E. Smith.) SHEO SOONDARY v. PIRTHU (1877) 4 I. A. 147 (153) = 3 Suth. 411= SINGH. 3 Sar. 724 = Bald. 119.

-Decrees below in favour of respondent. (Lord Chelmsford.) LUCKMEE CHUND v. ZORAWUR MULL (1860) 8 M. I. A. 291 (308) = 1 W. B. (P. C.) 35 =

1 Suth. 425=1 Sar. 763. -Delay in prosecuting appeal. (Lord Chelmsford.) PATTABHIRAMIER :. VENCATA ROW NAICKEN.

(1870) 13 M. I. A. 560 (572) = 15 W. R. (P. C.) 35 = 7 B. L. R. 136=2 Suth, 410=2 Sar. 623.

-(Sir Arthur Wilson.) GHARIB-UL-LAH D. KHA-LAK SINGH. (1903) 30 I. A. 165 (171) = 25 A. 407 (417)=7 C. W. N. 681=5 Bom. L. R. 478=

#### PRIVY COUNCIL-APPEAL-(Contd.)

Costs of-Appellant-(Contd.)

SUCCESSFUL APPELLANT - DISALLOWANCE TO-GROUNDS-(Contd.)

(Lord Macnaghten.) KEDAR LAL MARWARI v. BISHEN PERSHAD. (1903) 31 I. A. 57 (634)= 31 C. 332 (339) = 8 C. W. N. 609 = 8 Sar. 599.

-(Lord Collins.) ATAR SINGH v. THAKUR SINGH. (1908) 35 I. A. 206=35 C. 1039 (1046)= 4 M. L. T. 207 = 8 C. L. J. 359 = 12 C. W. N. 1049=

10 Bom. L. R. 790 = 128 P. W. B. 1908= 42 P. R. 1910 = 6 I. C. 721 = 18 M. L. J. 379.

-(Lord Buckmaster.) BANGA CHANDRA DHUR v. JAGAT KISHORE CHOWDHURL

(1916) 43 I. A. 249 (255-6)=44 C. 186 (200)= 20 M. L. T. 335 = (1916) 2 M. W. N. 336= 4 L. W. 448 = 18 Bom. L. R. 868 = 24 C. L. J. 487 = 14 A. L. J. 1103 = 21 C. W. N. 225 = 1 P. L. W. 1= 36 I. C. 420 = 31 M. L. J. 563.

-(Sir Laterence Jenkins.) MAHOMED IBRAHIN ROWTHER P. SHEIKH IBRAHIM ROWTHER

(1922) 49 I. A 119 (128) = 45 M, 308 (320) = 30 M L. T. 85=15 L. W. 354-26 C. W. N. 793-(1922) M. W. N. 470 = 36 C. L. J. 64= 24 Bom. L. R. 944 = A. I. R. 1922 P. C. 59= 67 I. C. 115=43 M. L. J. 69

-(Lord Phillimore.) BEHARI LAL BULAKI RAM v. (1922) 27 C. W. N. 509 (513)= KUNDAN LAL. A. I. R. 1922 P. C. 361 = 32 M. L. T. (P. C.) 15= 1922 M. W. N. 388 = 69 I. C. 356 = 47 M. L. J. 322

-For over three years the record of the appeal has been in the Privy Council office, and no adequate reason is offered as to why that time has elapsed before this matter has been set down for trial. Their Lordships think it is of the utmost importance that the people in India should realise that the statements their Lordships have made, as to the essential duty on the part of litigants to use all reasonable speed to bring their cases to trial, are not mere empty phrases; and their Lordships mean to enforce and make them effectual by the only instrument in their hands, by dealing with the question of the costs on the appeal where the delay arises. On the ground of such delay their Lordships disallowed the costs of the successful appellant. (Lord Buckmaster.) VIRABHADRAYYA GARU F. MAHALAKSE (1929) 32 Bom. L. R. 492= MAMMA GARU.

34 C. W. N. 512 = 31 L. W. 326 = 122 I. C. 305 = A. I. R. 1930 P. C. 42 = 58 M. L. J. 285 (292).

Difficulty caused in part by appellant himself and by mistake of Court below. (Lord Cairns.) RAJAH LEELA NUND SINGH P. MAHARAJAH LUCKMISSUR SINGH (1870) 13 M. I. A. 490 (4967)= BAHADOOR. 14 W. R. (P. C.) 23=5 B. L. R. 605=2 Suth. 353 2 Sar. 599.

Documents improperly introduced by him.

Costs not disallowed on ground of, because, though documents appeared to Privy Council to be unnecessary, they formed part of the proceedings in the Courts lelow, and Privy Council were not in a position to say that they were wantonly or unjustifiably introduced into the Courts below. (Dr. Lushington.) BUNWAREE LAL v. MAHARAJAH HEI-NARAIN SINGH. (1858) 7 M. I. A. 148=4 W. R. 128= 1 Suth. 307=1 Sar. 610

--- Doubts upon parts of case—Judgment below entitled to great weight. (Mr. Pemberton Leigh.) DWARKA DOS (1855) 6 M. I. A. 88 P. BABOO JANKEE DOSS. -Forged documents-Use of. (Lord Watson.) COO

MARI RODESHWAR v. MANROOP KOER. (1885) 13 L. A. 20 (31)=4 Sar. 684

8 Sar. 483.

Costs of-Appellant -(Contd.)

SUCCESSFUL APPELLANT-DISALLOWANCE TO-GROUNDS-(Contd.)

Negligence in conduct of case in Courts below-Omission to place relevant statutory provisions before them. (Lord Buckmaster.) NATHU KHAN P. THAKUR BURTO-MATI SINGH. (1921) 15 L. W. 635 = 20 A. L. J. 301 =

26 C. W. N. 514 = L. R. 3 P. C. 82= 24 Bom. L. R. 571 = (1922) M. W. N. 323 = 35 C. L. J. 417 = 66 I. C. 107 =

A. I. R. 1922 P. C. 176=42 M. L. J. 444 (448). Respondents supporting judgment below. (Lord Brougham.) MADHO ROW CHINTO PUNT GOLAY :-BHOOKUN DAS. (1837) 1 M. I. A. 351 = 5 W. R. 33-1 Suth. 54 1 Sar. 128.

(Lord Brengham.) KIRT CHUNDER ROY & GOV. ERNMENT AND OTHERS. (1837) 1 M. I.A. 383 = 5 W. R. 41 (P. C.) = 1 Suth. 63 (69) = 1 Sar. 131

-Special leave to appeal-Disallowance of costs in cases of-Grounds. See PRIVY COUNCIL-APPEAL -COSTS OF-SPECIAL LEAVE TO APPEAL.

Untenable grounds-Joinder of, with tenable ground to gain locus standi to appeal-Costs of appeal largely increased by. (Sir Barnes Proceed.) HURRO DOORGA CHOWDHRANI & MAHARANI SURUT SOONDARI DEBI.

(1881) 9 I. A. 1 (6-7) = 8 C. 332 (336) - 4 Sar. 304.

-Untenable rights insisted on by appellant-fulgment below supported by form of appellant's action-Relief granted by Privy Council as an indulgence.

While reversing the High Court which had dismissed the appellant's suit their Lordships declined to interfere with the order of the High Court as to costs, because the appellant had throughout sought rights that he was not entitled to, the judgment of the High Court was supported by the form of appellant's action, and the Privy Council granted to the appellant the relief they did as an indulgence. (Lord Buckmarter.) VIRABHADRAYVA GARU P. MAHALAKSH-MAMMA GARU. (1929) 32 Bom. L.R 492 =

34 C.W.N. 512 - 31 L. W. 326 - 122 I. C. 305 -A. I. R. 1930 C. P. 42 58 M. L. J. 285 (292).

-Will by deceased-Respondent heir-at-law questioning-Judgment below setting aside will really in his favour. (Sir James W. Colvile.) RAJENDRONATH HOLDAR 2. JOGENDRO NATH BANERJEE.

(1871) 14 M. I. A. 67 (85) = 15 W. B. (P. C.) 41 = 7 B. L. R. 216 = 2 Suth. 422 = 2 Sar. 666.

SUCCESSFUL APPELLANT-REVIEW PETITION UNNECESSARY TO COURT BELOW BY-COSTS OF.

Payment by him of-Order for.

Their Lordships directed the successful appellant, who had not taken the right point at the original hearing of the appeal to the High Court, and who thereby brought about an application for review, to pay the costs of that application by way of deduction from the costs awarded to him. (Lord Phillimore.) JIJIBOY N. SURTY P. T. S. CHETT-YAR. (1928) 55 I. A. 161=6 B. 302=5 O. W. N. 479= 47 C. L. J. 510 = 30 Bom. L. B. 842 = 26 A. L. J. 657 = 32 C. W. N. 845 = 109 I. C. 1 = 28 L. W. 207 =

A. I. B. 1928 P. C. 103-54 M. L. J. 696.

Costs of-Consolidated appeal.

See PRIVY COUNCIL-APPEAL - CONSOLIDATED APPEAL.

#### Costs of -Each party to bear his own costs-Order for.

Decree under appeal—Interest awarded by—Reduc-tion of amount of, and other circumstances of case—Order made by reason of. (Lord Justice Turner.) MURTUNJOY PRIVY COUNCIL-APPEAL-(Contd.)

Costs of-Each party to bear his own costs-Order for-(Could.)

CHUCKERBUTTY 2. COCKRANE.

(1865) 10 M.I.A. 229 (251) = 4 W. R. (P. C.) 10 = 1 Suth. 592 = 2 Sar. 124.

Overstatement of claim by each party throughout. (Lord Watson.) RAM COOMAR GHOSE v. KALI KRISHNA TAGORE. (1886) 13 I. A. 116 (122) = 14 C. 99 (108) = 4 Sar. 737.

-(Lord Hobbouse.) SRI MAHANT GOBIND RAO :. SITA RAM KESHO. (1898) 25 I. A. 195 (208)= 21 A. 53 (70) = 2 C. W. N. 681 = 7 Sar. 370.

Costs of-Estate subject of dispute-Costs to come out of-Order for.

-Acts of last owner of suit property-Litigation and appeal arising from. (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN P. MT. MOHUNDER BEGUM.

(1867) 11 M. I. A. 517 (551)=10 W. R. (P.C.) 25= 2 Suth. 98 = 2 Sar. 315 = R. & J.'s No. 7 (Oudh). -Deed-Construction and effect of Question as to-

Obscurity created by executant.

Such an order made in an appeal in which the questions which arose were obviously the result of the obscure and unosual procedure of the husband and wife in relation to a deed, (Fiscount Haldane.) HELEN AND GRAY P. PER-PETUAL TRUSTEE COMPANY.

(1928) 28 L. W. 747 (753) - 111 I. C. 283= 26 A. L. J. 1239 - A. I. R. 1928 P.C. 284. -Hindu Law-Will-Construction-Suit for-Costs of. See also HINDU LAW- WILL-CONSTRUCTION-SUIT FOR-COSTS OF.

-Point raised new. (Lord Phillimore.) NILCOLLE r. NILCOLLE. (1922) 31 M. L. T. 90.

Costs of-Ex parte appeal heard, and dismissed.

Re-pondent's costs in case of. (Lord Morris.)
SUMBHU NATH SANTIA MAHAPATRA :: SRIMATI SUR-IAMONI DEL (1897) 24 I. A. 191-25 C. 187= 1 C. W. N. 649 - 7 Sar. 247.

-(Viscount Cary.) BASAR KHAN P. MOULVI SYED (1919) 23 C. W. N. 841 = 50 I. C. 678=11 L. W. 241 (246). LEAKAT HOSSAIN.

-(Mr. Ameer Ali.) GAJADHUR MAHTON v. AMBI-KA PRASAD TEWARI. (1925) 47 A. 459 = 41 C. L. J. 450 - 27 Bom. L. R. 853 - 22 L. W. 306 = A. I. B. 1925 P. C. 169=(1925) M. W. N. 532= 6 L. R. P.C. 196 = 87 I. C. 292 = 49 M. L. J. 238.

Interest on.

Right to-None unless contrary is expressed in the order of Privy Council. (Sir James W. Colvile.) GOPEE KISEN GOSSAMEE P. BRINDABUN CHUNDER SIRCAR.

(1872) 19 W. R. 41=2 Suth. 754=4 Sar. 809.

Costs of-Order as to.

Construction of. See PRIVY COUNCIL-APPEAL-DECREE IN-COSTS.

Costs of-Printing unnecessary-Costs occasioned by.

-Liability for. (Lord Lindley.) RAJA CHELIKANI VENKAYAMMA GARU P. RAJA CHELIKANI VENKATA-(1902) 29 I. A. 156 (167-8)= RAMANAYAMMA GARU. 25 M. 678 (689) = 7 C. W. N. 1 = 4 Bom. L. B. 657 = 6 Sar. 286=12 M. L. J. 299.

-Successful appellant.

Allowance to, because respondent did not object to printing. (Lord Datey.) BIJOY GOPAL MUKERJI v. KRISH NA MAHISHI DEBL.

(1907) 34 I.A. 87 - 34 C. 329 (334-5) = 2 M.L.T. 133 -5 C.L.J. 334=11 C.W.N. 424=9 Bom. L.B. 602= 4 A.L.J. 329 = 9 Sar. 216 = 17 M.L.J. 154.

Costs of - Printing unnecessary-Costs occasioned by-(Contd.)

-Successful appellant-Disallowance to. (Lord Justice Turner.) TARAKANI BANERJEE 2. PUDDOMONEY DOSSEE.

> (1866) 10 M.I.A. 476 (489) = 5 W.R. (P.C.) 63= 1 Suth. 631 - 2 Sar. 184.

-(Sir Arthur Hobbary.) BISHUMAN SINGH P. LAND MORTGAGE BANK OF INDIA.

(1884) 12 I.A. 7 (12)=11 C. 244 (249-50)=4 Sar. 588.

Sir Barnes Poscock.) RAJAH OF PITTAPUR P. SRI RAJAH ROW BUTCHI SITAYYA GARU.

(1884) 12 I.A. 16 (22) = 8 M. 219 = 4 Sar. 598.

-(Lord Hobbouse.) NILAKANT BANERJI 2. SURESH CHUNDER MULLICK. (1885) 12 I.A. 171 (182)= 12 C. 414 (424) = 4 Sar. 685.

(Lord Lindley.) RAJA CHELIKANI VENKAYAMMA GARU P. RAJA CHELIKANI VENKATARAMANAYAMMA GARU. (1902) 29 I.A. 156 (168) = 25 M. 678 (689-90) 7 C.W.N. 1=4 Bom. L.R. 657=8 Sar. 286= 12 M.L.J. 299.

-(Lord Phillimore.) GOPAL CHANDRA DHURI D. RAJANI KANTA GHOSH.

(1919) 47 C. 415 (417) = 24 C.W.N. 553.

-(Sir Robert Stout.) KESHO PRASAD SINGH :: SIV SARAN LAL (1921) 48 I.A. 329 (334-5)= 15 L. W. 589 - L. R. 3 P. C. 115 - 26 C. W. N. 689 - 30 M. L. T. 50 -77 I. C. 44 = A. I. R. 1922 P. C. 226.

-(Sir John Edge.) RANI BIJAI RAJ KUNWAR P. JAI INDAR BAHADUR SINGH.

(1922) 49 I.A. 262 (275-6) -44 A. 435 (448) = 25 O.C. 260 = 31 M.L.T. (P.C.) 69 = 9 O.L.J. 385 4 U.P.L.R. (P.C.) 76 - A.I.R. 1925 P.C. 318 -36 C.L.J. 511 = 21 A.L.J. 125 = 27 C.W.N. 221 = 68 I.C. 876=43 M.L.J. 682

-(Viscount Care.) SHEO DARSHAN SINGH P. DV. COMMISSIONER, PARTABGARH.

(1922) 35 C.L.J. 593 = A.I.R. 1923 P.C. 44 = 43 M.L.J. 167.

-(Lord Shaw.) NABI BAKSH r. AHMAD KHAN, (1924) 51 I.A. 199 (207) = 5 L. 278= A.I.R. 1924 P.C. 117 = 29 C.W.N. 510 = 20 L.W. 999 = 1924 M.W.N. 425 = 80 I.C. 158 = 34 M.L.J. 106

-(Lord Phillimore.) SONATAN PAL r. GALSTAUN. (1927) 54 I.A. 118 (121)=54 C. 414 = 26 L.W. 40= 39 M.L.T. 221 = 31 C.W.N. 744 = 45 C.L.J. 454 = 29 Bom. L.R. 844 = 101 I.C. 50 = A.I.R. 1927 P.C. 60 = 52 M.L.J. 463

-Successful party-Disallowance to. (Sir John Edge.) RANI BIJAI RAJ KUNWAR r. JAI INDAR BAHADUR SINGH. (1922) 49 I. A. 262 (275-6)= 44 A. 435 (448) = 25 O.C. 260 = 31 M.L.T. 69 (P.C.) = 9 O. L. J 385 = 4 U. P. L. R. (P.C.) 76 = A.I.R. 1922 P.C. 318 = 36 C.L.J. 511 = 21 A.L.J. 125 = 27 C.W.N. 221 = 68 I. C. 876 = 43 M. L. J. 682.

## Costs of-Proportionate costs.

-Rule in India as to-Inapplicable to Privy Council appeal. (Lord Hobbouse.) GIRISH CHUNDER LAHIRI P. SHOSHI SHIKHRESWAR ROY.

(1900) 27 I.A. 110 (127)=27 C. 951 (970)= 4 C.W.N. 631.

## PRIVY COUNCIL-APPEAL-(Contd.)

#### Costs of-Remand-Costs in case of.

Costs of Privy Council appeal to be costs in cause to be dealt with by High Court-Order as to, where miscarriage was found to be that of the Judge. (Sir James W. Celvile.) RAJAH SAHEB PERHLAD SEIN v. RUN BAHA-DUR SINGH. (1869) 12 M.I.A. 289 (324)=

12 W.R. (P. C.) 6=2 B.L.R. 111-2 Suth. 225= 2 Sar. 430.

Refund of costs already paid by appellant-Those and all other costs, including those of the appeal, directed to be dealt with by the court below according to result of inquiry. (Lord Justice Turner.) RAJAH LEELANUND SINGH P. MAHARAJAH MOHESHUR SINGH.

(1864) 10 M. I. A. 81 (113)= 3 W. R. 19 (P.C.) = 2 Sar. 74.

-Respondent's appeal to High Court-Remand of, for disposal on merits-Direction that, in event of respondent not appearing in support of his appeal in High Court, or failing on the merits in the High Court, appellant's costs of Privy Council appeal should be paid by him and the costs (if any) paid under the decreee of the High Court under appeal should be repaid. (Sir James W. Colvile.) KALEE PERSHAD TEWAREE P. LALLA BINDA LALL.

(1869) 12 M.I.A. 343 = 2 Sar. 476

-Technical point of procedure-Appeal succeeding on -Merits undertaken to be decided by Privy Council-Remand insisted on by appellant in case of-Costs of Privy Council appeal and costs subsequent to mistake in procedure by court below-Reservation of, to be dealt with by Privy Council when case should ultimately come back to it. (Lord Buckmatter.) BHAIDAS SHIVDAS v. BAI GULAR

(1921) 48 I.A. 181 (186)=45 B. 718 (7245)= 19 A.L.J. 409 = 33 C.L.J. 488 = (1921) M.W.N. 408 = 23 Bom. L.R. 623=14 L.W. 7=29 M.L.T. 351=

3 U.P.L.R. (P.C.) 22 = 25 C.W.N. 605 = 60 I.C. 822= 40 M.L.J. 519. -Trial on additional evidence-Remand for-Costs of Privy Council appeal directed to be taxed and to be costs in

cause to be dealt by High Court. (Sir James W. Cdvile.) RAJAH SAHEB PERHLAD SEIN P. DOORGA PERSHAD (1869) 12 M.I.A. 286 (332)= TEWARI.

12 W.R. (P.C.) 6=2 B.L.R. 111=2 Snth 225= 2 Sar. 430.

#### Costs of-Respondent.

EX PARTE HEARING-DISMISSAL OF APPEAL ON. Costs in case of. See PRIVY COUNCIL APPEAL-COSTS OF-Ex parte.

MAINTAINABILITY OF APPEAL-OBJECTION TO -DISMISSAL OF APPEAL ON GROUND OF-COSTS IN CASE OF.

Hearing of appeal-Objection taken only at. While dismissing an appeal with costs on the ground that it was not competent, their Lordships directed that the costs of preparing and lodging the respondent's case must be borne by the respondents themselves, as the objection to the competency of the appeal was taken by them only at the hearing. (Sir John Wallis.) UDIT NARAYAN SINGHA (1928) 56 I.A. 86 (93)= MUPARAK ALL

27 A.L.J. 81 = 13 R.D. 159 = 49 C.L.J. 406= 114 I.C. 577 = A.I.B. 1929 P.C. 75

-Hearing of appeal-Objection taken only at, when it could have been taken before incurring of expense in preparing cases or in delivering briefs for hearing Namine expensarum only allowed. (Lord Justice James.) MOON-SHEE AMEER ALI O. MAHARANEE INDERJIT SINGH. (1871) 14 M.I.A. 203 (208)= 9 B.L.B. 460=

2 Suth. 479 = 2 Sar. 731.

Costs of-Respondent-(Contd.)

MAINTAINABILITY OF APPEAL-OBJECTION TO-DISMISSAL OF APPEAL ON GROUND OF-COSTS IN CASE OF-(Contd.)

Hearing on merits-Objection taken only when appeal called on for-Disallowance of costs on ground of. (Sir Montague E. Smith.) GAJADHUR PERSHAD P. TWO WIDOWS OF EMAM ALI REG. (1875) 2 I.A. 208 (210)

15 B. L. R. 221 - 3 Sar. 495 = 3 Suth. 148 -R. & J.'s No. 36 (Oudh).

PAUPER-RESPONDENT ALLOWED TO DEFEND AS A.

Costs of -Scale of. (Viscount Dunctin.) SKIPP v. KELLY. (1926) 24 L.W. 18 = (1926) M.W.N. 382 = 3 O.W.N. 453 = 43 C.L.J. 430 = 94 I.C. 331 28 Bom. L.R. 873 = 30 C.W.N. 841

A. I. R. 1926 P.C. 27 = 50 M. L. J. 498 (503)

PRO FORMA RESPONDENT MAINTAINING ATTITUDE OF NEUTRALITY.

Right of-To escape payment of his costs appellant must make arrangements with him to dispense with his appearance. (Lord Hobboure.) IMMUDIFATTAM THIRUG-NANA v. PERIA DORASAMI. (1900) 28 L A. 46 (55-6) = 24 M. 377 (386) = 5 C. W.N. 217 = 7 Sar. 811.

#### RESPONDENTS IN SAME INTEREST.

Only one set allowed to, as a rule. WOOMATARA DEBIA v. UNNOPOORNA DASEE.

(1872) 11 B.L.R. 158 (170) = 18 W.R. 163 = 2 Suth. 653 - 3 Sar. 144.

#### SPECIAL LEAVE TO APPEAL.

Costs in case of, See PRIVY COUNCIL-APPEAL-COSTS OF-SPECIAL LEAVE TO APPEAL.

#### SUCCESS OF, MINUTE.

No right to any costs but liable for costs of appeal. (Lord Hobbouse.) GIRISH CHUNDER LAHIRI F. SHOSHI SHIKHARESWAR ROY. (1900) 27 LA. 110 (127)= 27 C. 951 (970)=4 C.W.N. 631

SUCCESSFUL RESPONDENT-DISALLOWANCE OF COSTS TO-GROUNDS.

Affirmance of decree on wholly different grounds from those relied upon by Court below. (Sir John Coleridge.) FISCHER P. KAMALA NAICKER.

(1860) 8 M.I.A. 170 (192) = 3 W.R. 33 = 1 Suth. 395 = 1 Sar. 733.

Constitutional issue of far-reaching public interest-Appeal involving. (Viscount Haldane.) SOEHUZA II v. (1926) 30 C.W.N. 961 = 99 I.C. 265 = MILLER. A.I.R. 1926 P.C. 131 (136).

-Doubt considerable upon the case-Difference of opinion among judges below. (Mr. Pemberton Leigh.) BABOO KASI PEKSAD NARAIN P. MT. KAWALBASI KOFR. (1851) 5 M.I.A. 146 (168) = 1 Suth. 225 = 1 Sar. 412.

material-Admission of-Irregularity serious at trial in regard to-Affirmance of decree on ground that other evidence was sufficient. (Sir William H. Manle.) RAJAH BOMMARAWZE BAHADUR P. RANGASWAMY MUDALY. (1855) 6 M.I.A. 232 (250)=1 Sar. 536,

Fraud and forgery brought home to respondent in matter of suit out of which appeal arose. (Sir Barnes Peacock.) BHUBANESWARI DEBI P. NILKOMUL LAHIRI.

(1885) 12 I. A. 137 (141)=12 C. 18 (24)=4 Sar. 651 CHOWBEY v. RUGHOO NATH GOBIND ROY.

(1872) 18 W. R. 230=2 Bar. 666=5 Sar. 691 (694).

## PRIVY COUNCIL -APPEAL-(Contd.)

Costs of - Respondent-(Contd.)

SUCCESSFUL RESPONDENT-DISALLOWANCE OF COSTS TO-GROUNDS-(Contd.)

-Long possession with appellant-Decisions several pronounced in his favour. (Lord Langdale.) ANUND LAL SINGH DEO : MAHARAJAH DHERAJ GURROOD NARA YAN DEO BAHADOOR, (1850) 5 M.I.A. 82 (106)= 1 Suth 221 = 1 Sar. 399.

-Records sent for at instance and costs of respondent but not used in appeal-Costs due to-Disallowance of-(Sir Andrew Scotle.) RAJAH BOMMADEVARA VENKATA NARASIMBA NAIBU :: RAJA DOMMADI VARA RHASHVA-KARLU NAIDU. (1902) 29 I.A. 76 (82)=

25 M. 367 (379) = 6 C.W.N. 141 = 4 Bom. L.R. 543 = 8 Sar. 258.

UNSUCCESSFUL RESPONDENT SUPPORTING DECREE BELOW

-Costs to-Award of-Privy Council has a right to. but rarely does, award. (Lord Brangham.) NAMBOORY SPETAPATY F. KANI COLAMOO PULLIA

(1845) 3 M.I.A. 359 (382) = 7 W.R. 7 (P.C.) - 1 Suth. 163 = 1 Sar. 290.

## Costs of-Special leave to appeal.

-Application for-Preparation of, negligent and very faulty-Disallowance of costs to successful appellant on ground of, (Sir Jethur Hobbarte.) MUSSOORIE BANK \*. RAYNOR. (1882) 9 I.A. 70-4 A. 500 (511)= 4 Sar. 346.

-Order granting-Costs-Terms imposed by order as to. See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL TO-ORDER GRANTING-COSTS.

#### Costs of-Taxation by Registrar of.

-Appeal to Board from-Right of-Points not taken before Registrar-Roising of hefere Privy Council-Permissibility.

The Board is not a taxation tribunal. It only deals with such matters by way of appeal from the judgment of the Registers upon items to which objection was taken before him. With regard to such items, he exercises his discretion and he gives effect to the authorized scale of fees and to modern practice. If he errs in any particular an appeal may he to the Board-a rare occurrence; but apart from such an appeal the Board will not interpose, If fresh points of objection to the crets are stated before the Board, they cannot be entertained. (Lord Shaw.) PARA-SHURAM DETARAM SHAMDASANI P. TATA INDUSTRIAL (1928) 29 L.W. 203 = 111 I. C. 356 = A.I.B. 1928 P. C. 238 = 55 M.L.J. 711. BANK, LTD.

## Costs of, and of cross-appeal.

-Dismissal of both appeals -Expenses incurred in greater part on principal appeal-Appellant in principal appeal directed to pay cross-appellants one-half of their costs of consolidated appeals-No further order as to costs, (Lord Devey.) SUNDAR KOER P. SHAM KRISHEN.

(1906) 34 I.A. 9 (22) = 34 C. 150 (162) = 2 M.L.T. 75 = 5 C.L.J. 106 = 11 C.W.N. 249 = 9 Bom. L.R. 304 = 4 A.L.J. 109 = 17 M.L.J. 43.

Costs of, and in Courts below.

EACH PARTY TO BEAR HIS OWN COSTS-ORDER FOR-GROUNDS.

-Appeal to Privy Council not as of right-Respondent's resistance to appellant's demand not unreasonable. (Sir Lawrence Jenkins.) SECRETARY OF STATE FOR INDIA v. SRINIVASA CHARIAR.

(1920) 48 I.A. 56 (68) = 44 M. 421 (432) =

Costs of and in Courts below-(Contd.)

EACH PARTY TO BEAR HIS OWN COSTS—ORDER FOR—GROUNDS—(Contd.)

(1921) M.W.N. 111 = 29 M.L.T. 181 = 19 A.L.J. 201 = 3 U. P. L. R. (P.C.) 43 = 26 C.W.N. 818 = 13 L.W. 592 = 33 C.L.J. 380 = 60 I.C. 230 = 40 M.L.J. 262

Difficulty occasioned by the instruments on which the litigation turned. (Lord Cairns.) SRI GAJAPATI RADHIKA PATTA MAHA DEVI GARU v. SRI GAJAPATI NILAMANI PATTA MAHA DEVI GARU.

(1870) 13 M. I. A. 497 (518 9) = 14 W.R. (P.C.) 33 = 6 B.L.R. 202 = 2 Suth. 365 = 2 Sar. 601.

False case set up by both—Appeal to Privy Council allowed. (Sir Arthur Wilson.) MALIK AHMAD WALI KHAN P. SHAMSH-UL-JAHAN BEGAM.

(1906) 33 I.A. 81 = 28 A. 482 (488) = 10 C.W.N. 626 = 3 A.L.J. 360 = 3 C.L.J. 481 = 1 M. L. T. 113 = 8 Bom. L.R. 397 = 8 Sar. 918 = 16 M.L.J. 269.

Overstatement of claim throughout by each party.

(Lord Hobboure.) Maharajah Sir Luchmeswar
Singh Bahadoor D. Sheikh Monwar Singh.

(1891) 19 I. A. 48 (59-60) = 19 C. 253 (266) = 6 Sar. 133.

ESTATE IN DISPUTE—COSTS OF BOTH PARTIES TO COME OUT OF.

Order for. (Sir James IV. Colvile.) MAHARAJAH
PERTAB NARAIN SINGH v. MAHARANEE SUBHAO
KOER. (1877) 4 I.A. 228 (246) = 3 C. 626 (644) =
1 C.L.R. 113 = 3 Sar. 740 = 3 Suth. 458 =
R. and J.'s No. 46.

FINAL DECREE-APPEAL FROM.

Allowance with costs of, on ground of interlocutory order not appealed from being wrong—Costs of proceedings in Courts below subsequent to interlocutory order—Disallowance to appellant of—Grounds, See PRIVY COUNCIL—APPEAL—FINAL DECREE—APPEAL FROM—ALLOWANCE WITH COSTS OF, ETC.

(1865) 10 M. I. A. 340 (361).

SUCCESSFUL APPELLANT—DISALLOWANCE TO—GROUNDS.

Defence of appellant devoid of merit and his conduct throughout improper. (Lord Summer.) Graham P. Krishna Chandra Dev. (1924) 52 I.A. 90 (945) = 52 C. 335 = 6 L.B. P.C. 38 = 21 L.W. 390 = (1925) M. W. N. 138 = 3 P.L.R. 93 = 27 Bom. L. R. 740 = 23 A. L. J. 709 = 29 C. W. N. 919 = A.I. R. 1925 P.C. 45 = 86 I.C. 232 = 48 M.L.J. 172.

False case set up and unjust opposition made by appellant—Expense of appeal mainly caused by. (Lord Kingsdown.) MUSSAMAT BHOOBUN MOVEE DEBIA 2.

(1865) 10 M.I.A. 279 (313) = 3 W.R. (P.C.) 15 = 1 Suth. 574 = 2 Sar. 111.

proceedings of, and of officers of—Respondent's objection justified. (Lord Justice Turner.) BENGAL GOVERN-MENT v. NAWAB JAFUR HOOSEIN KHAN.

(1854) 5 M. LA. 1677 (1900.) 1. See 186.

(1854) 5 M.I.A. 467 (478-9)=1 Sar. 472.

Inconsistent views presented by appellant in Courts as to character of these states.

below as to character of deed the construction of which was in question—Case depending upon its construction.

(Lord Macnaghten.) UMRAO SINGH P. LACHHMAN (1911) 38 I.A. 104 (111-2)=

PRIVY COUNCIL-APPEAL-(Contd.)

Costs of, and in Courts below-(Contd.)

SUCCESSFUL APPELLANT—DISALLOWANCE TO— GROUNDS—(Contd.)

33 A. 344 (356) = 8 A.L.J. 465 = 15 C.W.N. 497 = 13 C.L.J. 519 = 9 M.L.T. 507 = 13 Bom. L.R. 404 = (1911) 2 M.W.N. 242 = 14 O.C. 133 = 10 I.C. 285 = 21 M.L.J. 637.

Legitimacy—Respondent whether legitimate son of last male owner of suit property—Question as to—Uncertainty of his status mainly caused by acts of last male owner himself. (Sir James W. Colvile.) ASHRUFOOD DOWLAH AHMED HOOSEIN 7. HYDER HOOSEIN KHAN.

(1866) 11 M.I.A. 94 (119)=7 W.B. (P.C.) 1= 1 Suth. 659=2 Sar. 223=R. and J.'s No. 5 (Oudh).

New point—Appeal to Privy Council allowed on.
(Lord Marris.) RAJA HAR NARAIN SINGH r. CHAUDHRAIN BHAGWANT KUAR.

(1891) 18 I.A. 55 (58-9) = 13 A. 300 = 6 Sar. 14.

New point not presented to Courts below—Appeal allowed on. (Lord Atkinson.) SACHINDRA NATH ROY ... MAHARAJ BAHADUR SINGH.

(1921) 48 I.A. 335 (348 9) = 49 C. 203 (219) = L. R. 3 P.C. 174 = 30 M.L.T. 96 = 24 Bom. L.B. 659 = (1922) M.W.N. 338 = 26 C.W.N. 859 = 4 U.P.L.R. (P.C.) 57 = 74 I.C. 660 = A.I.R. 1922 P.C. 187.

New point not properly insisted upon in coards below or in appellant's printed case to Privy Council—Appeal allowed on. (Lord Phillimore.) RAMLAL HARGOPAL F. KISHANCHAND. (1923) 51 I.A. 72 (82)= 51 C. 361 = A.I.R. 1924 P.C. 95 = (1924) M.W.N. 79= 7 N.L.J. 62 = 19 L.W. 549 = 34 M.L.T. 62 = 20 N.L.R. 33 = 22 A.L.J. 386 = 26 Bom. L.B. 586 = 28 C.W.N. 977 = 83 I.C. 531 = 46 M.L.J. 628.

SUCCESSFUL RESPONDENT—DISALLOWANCE TO
—GROUNDS.

Appellant's claim excusable though untenable.
(Lord Justice Knight Bruce.) MAHOMED BANKER
HOSSEIN KHAN 2. SHURFOON NISSA BEGAM.

(1861) 8 M.I.A. 136 (159)=3 W.B. 37= 1 Suth. 400=1 Sar. 728.

#### Costs of, and in High Court.

Appellant's right to entire—Partial success only of Privy Council appeal—Respondent's opposition to entire claim of appellant wrong and unjustified — Appellant's right in case of. (Sir Arthur Hobboute.) RADHA PERSHAD SINGH: RAM PARMESWAR SINGH.

(1882) 10 I.A. 113 (117-8)=9 C. 797 (802)= 13 C.L.R. 22=4 Sar. 42L

Decree under appeal—Variation of, in appellant's favour—Costs of Privy Council appeal and of High Court nevertheless disallowed to him—Grounds—Sale-deed by deceased purdanashin in appellant's favour—Suit by her heirs to set aside deed, or in the alternative, for recovery of purchase-money due thereunder—Sale-deed set aside by High Court—Privy Council upholding sale and varying decree below to that extent but directing appellant to pay purchase money to respondents—False claim of appellant to property as a gift—Costs of Privy Council appeal and of High Court disallowed to appellant in case of. (Lord Davey.) HAKIM MUHAMMAD v. IKRAM-UD-DIN NAJIBAN. (1898) 25 IA 137 (145)=

20 A. 447 (456-7) = 2 C.W.N. 545=7 Sar. 58.

Costs of, and in High Court-(Contd.)

-Each party to bear his own costs-Order for-Complications in case arising from dealings of last owner of suit property. (Sir Robert P. Collier). SOORJMONEE DAYEE v. SUDDANUND MOHAPATTER.

(1873) Sup. I.A. 212 (219) = 12 B.L.R. 304 = 20 W. B. 377 = 3 Sar. 285 = 2 Suth. 899.

Each party to bear his own costs-Order for-Overstatement of claim by each party-Order on ground of. (Sir Lancelot Sanderson). NARAYAN DAS KHETTRY P. JATINDRA NATH ROY CHOWDHURY.

(1927) 54 I. A. 218 (227) = 54 Cal. 669 = (1927) M. W. N. 461 = 102 I. C. 198 (2) =

29 Bom. L. R. 1143 = 46 C. L. J. 1 - 31 C.W.N. 965 8 Pat. L. T. 663 = 26 L. W. 848 =

A I. R. 1927 P.C. 135 = 53 M. L. J. 158 (P.C.) -Legal representative of deceased defendant-Pay-

ment of costs directed to be made by-Decree for money to be recovered out of defendant's estate.

In reversing the High Court and decreeing a suit upon a bond, the amount being made recoverable from the estate of the original defendant, their Lordships made his legal representative, who appeared to the appeal to England, but lodged no printed case. personally liable for the costs incurred in the Privy Council appeal and in the High and directed him to refund any costs which might have been paid to him, or on his account by the appellants under the decree of the High Court. RUGHOORE'R DUTT CHOWDRY P. FUTTER NARAIN CHOWDRY.

(1972) 2 Suth. 648-7 M. J. 311. -Successful appellant allowed only half of his-Grounds-Misleading of courts by him by advancing unsound theory as to court-fees. (Lord Robertson). PHUL KUMARI D. GHANSHYAN MISRA. (1907) 35 I.A. 22. 27 = 35 C. 202 (208) = 2 M.L.T. 506 = 7 C.L.J. 36 =

12 C.W.N. 169 = 10 Bom. L. B. 1 = 17 M.L.J. 618. Successful respondent—Disallowance to—Grounds Laches on his part in suing-Suspicion considerable attaching to his case. (Mr. Justice Bosanquet). BABOG ULRUCK SINGH v. BENY PERSHAD. (1834) 5 W.B. 77 =

1 Suth. 13 (16)=1 Sar. 53=2 Knapp 265.

Criminal appeal.

-See PRIVY COUNCIL-CRIMINAL APPEAL.

#### Cross appeal.

COMPETENCY OF-OBJECTION TO.

Objection not taken by appellant-Objection not taken by Privy Council itself, because the appeals being consolidated, practically the inquiry would have taken the same course, and the costs would have been nearly the same, whether the respondent had appealed or not. Robert P. Collier). RUN BAHADOOR SINGH : LACHOO (1884) 12 I.A. 23 (34)=11 C. 301 (306)=

COSTS OF. AND OF APPEAL.

-Dismissal of both-Expences incurred in greater part on principal appeal. See PRIVY COUNCIL-APPEAL -COSTS OF, AND OF CROSS APPEAL.

(1906) 34 I. A. 9 (22) = 34 C. 150 (162).

DISMISSAL OF-COSTS ON.

-Appellant's right to. (Lord Blackburn). CHOO-RAMUN SINGH v. SHEIKH MAHOMMED ALL

(1882) 9 I. A. 21 (26)=11 C. L. B. 1=Bald. 426= 4 Sar. 329.

#### NECESSITY.

-Pull Bench of High Court-Answers adverse of-Questioning of, in appeal against favourable decree of Division Bench on appeal going back to it after Full Bench opinion - Respondent's right of - Cross-appeal - Necessity.

## PRIVY COUNCIL-APPEAL-(Contd.)

Cross-Appeal-(Centd.)

NECESSITY-(Contd.)

Held, that, even without a cross-appeal, respondent was entitled to attack answers of Full Bench, because the answers were not in the form of a decree or even of an interlocutory order. (Sir James W Colvile). MUSST PHOOLBAS KOONWAR r. LALLA JOGESHUR SAHOY.

(1876) 3 I. A. 7 (27)=1 C. 226 (245)=25 W. R. 285= 3 Sar. 573 = 3 Suth. 236.

-Interest subsequent to suit-Omission of court below to award, though prayed for in plaint-Award of, by Privy Council-Amendment of decree below - Cross-appeal-Necessity. See C. P. C. of 1908 - S. 152 - DECREE-AMENDMENT OF-INTEREST SUBSEQUENT TO SUIT.

(1910) 37 C. 623 - 37 I. A. 133.

-Variation of decree under appeal in favour of respondent--Cross-Appeal by him - Absence of - Effect. Sec (1) PRIVY COUNCIL-APPEAL - DECREE UNDER-VARIATION OF, IN FAVOUR OF RESPONDENT (1896) 23 C. 922 (929) (2) PRIVY COUNCIL-APPEAL-DECREE UNDER-AMENDMENT OF, ON APPLICATION BY RES-PONDENTS, ETC. (1910) 37 I. A. 133 = 37 C. 623.

## PRESENTATION OF.

-Delay in Admission of appeal in spite of Condi-Lione.

The conditions imposed were (1) the prosecution of the principal appeal and (2) the consolidation of the principal and cross-appeals and their being heard on one printed case. OMANATH CHOWDRY P. SHEIKH NUJEEB CHOWDRY.

(1861) 8 M. I. A. 498=1 Sar. 812.

-Leave for-Grant of, at hearing of appeal. Leave granted in the peculiar circumstances of the case. (Lord Kingadocen). MYNA BOYER v. OOTARAM.

(1861) 8 M.I.A. 400 (421) = 2 W. R. (P.C.) 4= 2 M. H. C. R. 196=1 Suth. 452=1 Sar. 797.

Necessity of formal.

Dispensed with, because appellants abstained from insisting upon the formality and agreed to treat the whole decree as open to the reepondents. (Lord Kingsdown). MYNA BOYEE r. OUTAKAM. (1861) 8 M. I. A. 400 (421) = 2 W. R. (P. C.) 4 = 2 M. H. C. R. 196=1 Suth. 452= 1 Sar. 797.

## SPECIAL LEAVE TO FILE.

-Grant of.

In this case their Lordships granted special leave to crossappeal to a person who was joined as a respondent on his own application, though (1) he had not appealed to the High Court from the decree of the first court as against him, (2) he had not previously applied to the High Court for leave to appeal to His Majesty in Council and (3) his application for special leave was made nearly 4 years after the appeal by the plaintiff had been admitted (140-1). (Lord Shate). MALRAJU LAKSHMI VENKAYAMMA t. VENKATA NARASIMHA APPA RAO.

(1916) 43 L A. 138=39 M. 509 (517)= 20 M. L. T. 137=(1916) 2 M. W. N. 23=4 L. W. 58= 20 C. W. N. 1054=24 C. L. J. 279=14 A. L. J. 797= 18 Bom. L. R. 651 = 35 I. C. 921 = 31 M. L. J. 58.

-Portion of decree under appeal-Appeal against-Leave for-Grant of, when leave not asked for in Court below owing to mistaken notion of Privy Council practice as to cross appeal.

Leave granted on condition that, in event of principal appeal being proceeded with, cross-appeal should be prosecuted and heard upon one printed case, while, in case of principal appeal being dismissed for default of prosecution, liberty should be reserved to respondents to prosecute cross-

Cross-Appeal-(Contd.)

SPECIAL LEAVE TO FILE-(Contd.)

appeal as a separate appeal. NANA NARAIN RAO P. HURREE PUNT BHAO. (1856) 6 M. I A. 464 = 12 Moo. P. C. 36.

#### Damages-Assessment of.

-Discretion of Court below as to-Interference with, See INTEREST ACT OF 1839 - INTEREST UNDER -ALLOWANCE OR REFUSAL OF

(1859) 7 M. I. A. 263 (281-2).

Decision of Court helico at to-Interference with-Court below itself interfering with the decision of the court

In an action for divorce brought by a husbond against his wife and a co-defendant on the ground of adultery, the Supreme Court reduced the amount directed by the court below to be paid by the co-defendant as damages.

Their Lordships affirmed the decree below, observing :-It is impossible for this Board to re-assess the amount of damages. The real question is whether there is enough to induce the Board to disturb the decision at which the Supreme Court arrived. The Supreme court clearly had jurisdiction to review the amount of damages awarded; they had all the facts before them; they knew the value of money in the island; and they were in a position to form an opinion as to what was a reasonable sum to be awarded in such a case. (Lord Chancellor). DE SILVA P. DE SILVA.

(1927) 109 I. C. 800 - A. I. R. 1927 P. C. 263.

-Discretion of Indian Courts as to-Interference with, See MARRIAGE-BREACH OF PROMISE OF-DAMAGES (1926) 50 M. L. J. 498 (502-3).

-Privy Council itself-Assessment by-Conditions-Suit for special damage - Special damage found against and plaintiff's claim to ordinary dumoges not considered by courts below.

Assessment of such damages by Privy Council itself, where no case was made for fresh evidence and the materials necessary for the decision of the question were the same before Privy Council as before courts below. (Sir James IV. Celvile). MUDHAN MOHUN DOSS P. GOKUL (1866) 10 M. I. A. 563 (575) =

5 W. R. P. C. 91 = 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

## Declaration in-Nature and effect of-Duty of Court below to give effect to.

Failure to do so-Prity Council's duty in case of. A declaration of Her Majesty in Council is not equivalent to an order. It is the duty of an appellate court frequently, and all that it can do, to make a declaration, and then the form in which that declaration is conceived, and the words in which the order is framed, amount to a direction to the court below to clothe that declaration in the proper form of a mandatory order, and to give effect to the mandatory order so expressed. If any difficulty arises in that form, or any difficulty is sought to be produced from having recourse to that non-existent ground of objection, the Privy Council would not fail in recommending. Her Majesty to deal with such obstructiveness in the most serious and stringent manner (677). BARLOW P. ORDE. (1872) 2 Suth. 668=

18 W. R. 175=3 P. R. 1872. Declaration unnecessary—Making of—Propriety. -See DECLARATION - UNNECESSARY DECLARA-TION.

## Decree in (or Order in Council).

AMENDMENT OF.

CONSTRUCTION OF-PETITION FOR PURPOSE MERE-LY OF.

#### PRIVY COUNCIL-APPEAL-(Contd.)

Decree in (or Order in Council)-(Contd.)

COSTS AWARDED BY.

EFFECT OF-DISMISSAL OF APPEAL MERELY FOR DEFAULT.

EVIDENCE OF.

EXECUTION OF.

ISSUE OF.

JUDGMENT IN.

LAND DEMARCATED BY THAKBUST MAP AND PRO-CEEDING OF 1839-DECREE FOR.

LODGING IN HIGH COURT OF-DUTY OF SUCCESS-FUL PARTY AS TO.

ORDER IN COUNCIL IF OF NATURE OF A.

POSSESSION IMMEDIATE OF SOME ITEMS, AND POSSES-OF OTHERS AFTER ASCERTAINMENT OF SAME-DECREE FOR.

QUESTIONS CONCLUDED BY-RE-OPENING OF.

REMAND FOR TAKING ADDITIONAL EVIDENCE, WITH DIRECTION TO DECIDE THEREON-ORDER OF-ORDER IN COUNCIL CONFIRMING-VARIATION OF. SUBSEQUENT ORDER-PASSING OF.

#### AMENDMENT OF.

-Misconstruction by Court below-Amendment to areid.

The Privy Council cannot advise Her Majesty, when a Judge in a court below miscarries as to his understanding of her order, to make the order more explanatory and clear simply for the purpose of giving that Judge a better understanding of the subject (676). BARLOW 1. (1872) 2 Suth. 668=18 W. R 175= ORDE. 3 P. B. 1872

-Res judicata against respondent-Decree operating os-Amendment to avoid.

A respondent in an appeal to the Privy Council against whom an Order in Council had been passed put in a petition to the Privy Council complaining that he was not properly made a party to the suit in the courts below, and that the proceedings in India, so far as he was concerned, were coram non indice, and praying that the Order in Council might be varied so as to prevent its being used against him as a bar to any proceedings which he might otherwise be entitled to take in the courts of India.

Held that, assuming the facts alleged to be true, the issue involved therein could only be properly tried in 2 new suit in India, especially as the petitioner desired a re-trial of the cause on fresh evidence, and that the order in Council could not be varied on that account (176-7).

Scruble: If the facts alleged were established, it might be that the final decree in the suit, considered independently of the Order in Council, and merely as a decree of the Indian Courts, would not be res judicata against applicant (1767)

Semble: applicant might, if he succeeded in shewing that the decree appealed against was not binding on him, contend that the Order of His Majesty in Council would not operate as a har to the trial of the new suit (177.) (Sir James W. Colvile). MAHARAJAH PERTAB NARAIN SINGH MAHARANEE SUBRAO KOFR Er Arte TRILORIA (1878) 5 I. A. 171=4 C. 184 (189)= NATH. 3 Sar. 840=3 Suth. 553.

CONSTRUCTION OF-PETITION FOR PURPOSE MERELY OF.

-Maintainability-Rule-Exception.

Generally speaking it is no part of the functions of the Judicial Committee of the Privy Council to interpret Order in Council which have been already made unless they are brought before them in the ordinary way upon appeal. But under special circumstances, such as when the Board rentted an appeal to the courts in India for the ascertainment

Decree in (or order in Council)-(Contd.)

CONSTRUCTION OF-PETITION FOR PURPOSE MERELY OF-(Contd.)

of damages, without specifying whether fresh evidence was to be let in and the Indian Court feeling a doubt on the matter directed the parties to ascertain the intention of the Board, the Judicial Committee would entertain a petition for that purpose and give its opinion. (Lord Summer.) PRAGDAS BUDHSEN, In re. (1924) 52 I. A. 118=

49 B. 241 = 29 C. W. N. 515 = 27 Bom. L. R. 781 = (1925) M. W. N. 402 = A. I. R. 1925 P. C. 111 = 88 I. C. 174 = 48 M. L. J. 610.

#### COSTS AWARDED BY.

-First Court's costs if included in -Prever awarding costs of all courts in India.

The decrees of the Zillah Court and of the Sudder Court (on appeal) dismissing a suit on the ground of limitation were reversed by the Privy Council, which remanded the case for trial on the merits, and directed that the costs of the sait, occasioned by the plea of limitation, should be paid to the plaintiffs by the defendant. That order as to costs was only partially carried out; the costs of the appellate Court were paid, but not the costs incurred in the Court of first instance. The case again came up before the Privy Council, after the trial on the merits, when the Privy Council, by its order, directed " that the costs of the appellants " (plaintiffs) " in the three courts below " (which did not include the Zillah Court)" be taxed and ascertained by the proper officers of those courts respectively, and that the costs of the appellants in all the Courts in India be paid to the appellants in India by the respondents."

Held that the appellants (plaintiffs) were entitled in execution to their costs of the Zillah Court. (Sir James III Colvile.) FORESTER v. SECRETARY OF STATE FOR INDIA. (1877) 4 I. A 137 (144-5) = 3 C. 161 (171-2) = 3 Sar. 717 = 3 Suth. 405 = 1 P. R. 1877.

Interest on-Each Court's costs-Interest on, as from date of its decree-Right to-Jurisdiction of executing Court to award-Decree awarding costs of all Courts

not expressly providing for such interest.

An Order of His Majesty in Council directed that the costs of the appellants in all the Courts in India should be paid by the respondents, but was silent as to interest upon the costs decreed. In execution of that Order, appellants claimed interest upon the costs awarded and that the interest on the sum incurred for costs in each court should be computed from the date of the decree of that court. Held that, even assuming that the appellants were entitled to interest upon the costs decreed, they were not entitled to have the interest computed in the way they asked for (142.)

So far as their Lordships are aware, there is no instance of such a course having been adopted. The Committee that made the report to His Majesty upon which the Order in Council was made, if it had intended to place, by means of some such direction, the parties in the situation in which it considered they would have stood if everything had been done rightly in the lower courts, would of course have been competent to do so; but that a subordinate court executing an Order in Council which is silent upon interest, is at liberty to interpolate such a very special direction into that order is a proposition which seems to their Lordships to be wholly untenable. (142) (Sir James W. Celvile.) FORESTER v. SECRETARY OF STATE FOR INDIA.

(1877) 4 I. A. 137=3 C. 161(169)=3 Sar. 717= 3 Suth. 405=1 P. B. 1877.

Interest on-Right to-None unless contrary is expressed in the decree. (1872) 19 W. B. 41= 2 Suth. 754 = 4 Sar, 809.

## PRIVY COUNCIL-APPEAL-(Contd.)

Decree in (or order in Council)-(Contd.)

EFFECT OF -DISMISSAL OF APPEAL MERELY FOR DEFAULT.

-Affirmance of decree below or. See PRIVY COUNCIL -APPEAL-DEFAULT TO PROSECUTE-DISMISSAL OF APPEAL MERELY FOR. (1839) 2 M. I. A. 181 (222-3).

#### EVIDENCE OF.

Certified copy-Other evidence-Admissibility of latter-Condition.

An application to execute a decree of Her Majesty in Council by one of two plaintiffs was met with the objection that under S. 610 of C. P. C. of 1882 the application could not be granted because it was not accompanied by a certified copy of the decree of Her Majesty in Council. The defendant, who opposed the application, had himself bought the interest of the other plaintiff. He had the certified copy of the decree of Her Majesty in Council with him, but he neglected to file it, as he ought to have done, in the court, Under those circumstances the Courts below held that the defendant's objection could not be sustained, and that a copy of the Orsler in Council, though perhaps not a certified copy, might be properly admitted.

Hold that the Couris below were right in so holding (15), The provisions of S. 610 of C. P. C. of 1882 cannot be construed as restricting the only possible evidence to the certified copy, but as directory words with the object of ecuring that proper information upon the subject of any Order in Council should be supplied to the Courts in India (15-6). (Sir Robert P. Collier.) HURRISH CHUNDER CHOWDHRY P. KALI SUNDARI DEBIA. (1882) 10 I.A. 4 = 9 C. 482 (492-3) = 12 C. L. R. 511 = 4 Sar. 407.

#### EXECUTION OF.

-Application for-Rejection of by Judge of High Court-Order of-Judgment if a. under el. 15 of Letters Patent-Appeal from that order under that section-Right

An application made to execute a decree of Her Majesty in Council was refused by the Judge of the High Court empowered to deal with such applications. On an appeal preferred to the High Court under S. 15 of the Letters Patent from that order, the majority of the judges held that the order of the learned Judge below was a judgment within the meaning of S. 15 of the Letters Patent and that an appeal lay from it.

Held that the view of the majority of the Judges in appeal was right (16-7).

The majority of the learned Judges held (and their Lordships think rightly) that whether the transmission of an order under S. 610 of C. P. C. of 1882 would or would not be a merely ministerial proceeding, the learned Judge below had in fact exercised a Judicial discretion and had come to a decision of great importance, which, if it remained, would entirely conclude any rights of the applicant to an execution in the suit. They held, therefore, that it was a judgment within the meaning of S. 15 (16-7). (Sir Robert P. Collier.) HURRISH CHUNDER CHOWDHRY P. KALI SUNDA (1882) 10 I. A. 4=9 C. 482 (493)= RY DIBIA. 12 C. L. R. 511 = 4 Sar. 407.

-Function of High Court on-Ministerial or Judicial-Right to execute-Decision on-Jurisdiction.

An application for execution of an Order in Council of Her Majesty was refused by a learned Judge of the High Court on the ground that the applicant was only one of the two plaintiffs in whose favour the decree was passed and that the decree could not be executed partly by one of the plaintiffs. On appeal from his order, the Chief Justice, who dissented from the majority, held that the learned

Decree in (or order in Council)-(Contd.)

EXECUTION OF-(Contd.)

Judge below had no jurisdiction to inquire at all whether or not the applicant had a right to execution; that his function was purely ministerial; that all he could do, or ought to have done, was to transmit the decree of Her Majesty in Council to the Lower Court for execution; and that he usurped a jurisdiction which did not belong to him.

Held that the learned Judge could not be properly treated as having usurped jurisdiction (17). (Sir Robert P. Cellier). HURRISH CHUNDER CHOWDHRY v. KALI SUNDARI DEBLA. (1882) 10 I. A. 4-9 C. 482 (493-4)-12 C. L. R. 511-4 Sar. 407.

DUTETION ACT OF 1008 ACT

- Limitation. No. LIMITATION ACT OF 1908-ART, 183-PRIVY COUNCIL APPEAL.

(1872) 14 M. I. A. 465 (492 3)\*

Peremptory order to Court below for—Application to Privy Council for—Hearing of—Notice of petition to parties affected—Condition precedent to—Adjournment of hearing for service of such notice. RAJAH VASSAREDDY LUCHMEPATHY NAIDOO, In 11.

(1852) 5 M.I.A. 300 (314) = 8 Moo. P. C. 115 = 1 Sar. 446

Peremptory order to Court below for - Grant of, on petition - Conditions.

The petition to their Lordships was for a peremptory order addressed to the Judges of the Sudder Dewanny Adawlut at Madras, commanding them to carry into execution an order of Her Majesty in Council, confirming a Report of the Judicial Committee of the Privy Council, made in an appeal to Her Majesty in Council, and praying that the petitioner might be put into possession of the lands and other property, the subject of the appeal, which were awarded to him by such report and order.

The Sudder Court decided certain suits in favour of A; and, pending appeals from its decrees to England by the petitioner and others, put A into possession of the disputed estates, which were of great value, without taking from him the security required by Madras Reg. VIII of 1818, S. 4. The Privy Council reversed the decree of the Sudder Court and directed that Court to put the petitioner into possession of the estates. Pending the appeal to the Privy Council the Board of Revenue took possession, sold a portion of the estates for satisfaction of arrears of revenue, and became themselves purchasers. After the decision of the Judicial Committee in his favour the petitioner applied to the Sudder Court to be put into possession of the properties decreed to him in execution of the decree of the Privy Council. The Sudder Court declined to interfere or carry into execution the decree of the Privy Council. being evidently of opinion that the property in question having been seized by the Board of Revenue, and being in possession of that Board, they had alone a rightful title, with which the Sudder Court could not interfere. court consequently conceived that, having ascertained that fact, they had discharged their duty, and no more depended upon them. Thereupon, the petitioner presented the petition aforementioned to the Judicial Committee.

Their Lordships advised Her Majesty that the Sudder Court should be directed forthwith to carry into execution the order of Her Majesty in the original appeal, and to direct the Collector to put the petitioner into possession of the property, according to such order made in the decree, reserving to the Madras Government, and all persons except the respondents in the original appeal, the right to appear for their interest if any. (Dr. Luthington). RAJAH VASSAKEDDY LUTCHMEPUTTY NAIDU, In re.

(1852) 5 M.I.A. 300 = 8 Moo. P.C. 115=1 Sar. 446.

PRIVY COUNCIL-APPEAL-(Contd.)

Decree in (or order in Council)-(Contd.)

EXECUTION OF-(Contd.)

-Procedure for.

A party desirous of executing an order or judgment of Her Majesty in Council must apply, in conformity with S. 14 of Act II of 1863, to the Court from which the appeal was finally brought to the Queen in Council, to enforce and execute the decree of Her Majesty in Council; and it is the duty of that Court to give directions to execute the decree to the court of first instance by which the suit was originally tried (675). BARLOW v. ORDE.

(1872) 2 Suth. 668=18 W R. 175=3 P.B. 1872.

Proceedings for—Appeal in—Effect of Order in
Council involved in—Petition to Privy Council pending
appeal for giving directions, making declarations, or anending Order in Council so as to give it the effect intended.

Adjournment of petition generally, but opinion given as to effect of Order in Council. (Lord Macnaghten). RAJA VARLAGADDA DURGA, Expartc.

(1903) 31 I.A. 64=27 M. 153=8 Sar. 621.

Transmission for Ministerial proceeding if

merely a.

Quarry whether the transmission of an Order in Council under S. 610 of C.P.C. of 1877 would or would not be a merely ministerial proceeding (16). (Sir Robert P. Collier).

HURRISH CHUNDER CHOWDHRY v. KALI SUNDARI IDEBIA. (1882) 10 I.A. 4=9 C. 482 (493)=
12 C.L.R. 511=4 Sar. 407.

ISSUE OF.

Original and certified copies-Practice as to.

The original decree is given to the successful party, or to one of the successful parties, to the appeal. That is taken to India, and it is the duty of the person to whom it is given to file that original decree in the High Court. That being done, the proper officer of the High Court would give a certified copy or the Registrar of the Privy Council would be able to do the same (15). (Sir Robert P. Calier). HURRISH CHUNDER CHOWDHRY 2. KALI SUNDARI DEMA. (1882) 10 I.A. 4=9 C. 482 (492)=

See also Privy Council—Appeal—Decree in
—Lobging in High Court of. (1926) 53 L A. 89=
5 Pat 461.

JUDGMENT IN.

-Conflict between-Which prevails.

If there be any inconsistency between the expressions in the judgment of the Committee and the terms of Her Majesty's Order in Council, the latter, which is in the nature of a decree, ought to prevail (227-8). COURT OF WARDS 2. RAJA LEELANUND SINGH.

(1875) 3 Suth. 225 = 25 W.R. 157 = 5 Sar. 722.

Conformity between — Necessity—Petition to make order in Council conform to judgment—Grant of

It is the duty of their Lordships to see that the order, which His Majesty makes in Council, faithfully represents the advice, which in the judgment they have said they would humbly tender to him (305).

In a case in which their Lordships allowed an appeal and pronounced judgment in favour of the plaintiff, the formal order of His Majesty in Council used the word "appellants" in the plural. The plaintiff and appellant presented a petition to have the order made rescinded and an order pronounced in tayour of herself alone. It was clear from the judgment that by the expression "plaintiff" their Lordships designated the plaintiff-appellant alone.

Held that the prayer of the petition must be granted, in so far as it prayed to have the order in Council made to conform to the judgment pronounced (213). (Lord Dunidin). LAJWANTI 2: SAFA CHAND.

Decree in (or order in Council)-(Contd.)

JUDGMENT IN-(Contd.)

(1925) 52 I. A. 211 = 6 Lah. 388 = 22 L. W. 304 = 30 C. W. N. 56 = 22 A.L.J. 643 = A. I.R. 1925 P. C. 168 = 1925 M. W. N. 534 =

6 Pat. L.T. 1=26 P.L.R. 524=6 L.R. P.C. 125 88 I.C. 198 = 50 M. L. J. 118.

LAND DEMARCATED BY THAKBUST MAP AND PROCEEDING OF 1839.

-Survey map of same year inconsistent with Thakbust map-Lands included in if pass under decree-Proceedings of 1839-Meaning of .

A judgment of His Majesty in Council declared that the appellant was entitled to recover "so much, if any, of the land claimed by him in this suit as was demarcated by the thakbust map and proceedings of 1839, as then bying to the north of the northern bank of the river Ganges." And the Order of Her Majesty in Council was made in the same terms.

In execution of the said order in Council the appellant contended that the professional survey made in the same year as the thakbust, 1839, differed materially from the latter, and would give him a much larger area as lying to the north of the northern bank of the Ganges, and that the Thakbust map was unscientific and untrustworthy. He contended that the intention of the above-mentioned judgment and report of their Lordships was to give him all the land which in fact lay to the north of the true river-hed of 1839, and that such true river-bed was that shown by the survey map of 1839. He said that, on a due construction of the said judgment and decree of the Judicial Committee, he was entitled to whatever lands should by the survey proceedings of 1839, i.e. the Thakbust map as corrected by the subsequent proceedings, and scientific survey map, appeared to have lain to the north of the northern bank of the true bed of the river Gangas in 1839." So that in fact what the appellant contended for was that the survey map was to be taken as the map showing the demarcation of the land, correcting the Thakbust map, where it differed from it; in fact that the survey map should be substituted

for the Thakbust map. Their Lordships, affirming the courts below, overruled the appellant's contention.

Now, whatever may be the merits of the one map or the other, the words of the judgment and of the order in Council are not in any way ambiguous. There is no difficulty in interpreting them. They say distinctly that the appellant is to recover what was demarcated by the Thakbest map and proceedings of 1839, and it appears from the judgment to be obvious that the proceedings in 1839 meant the proceedings relating to the Thakbust maphardly be that their Lordships, when they gave that judgment intended by the words "proceedings of 1839" to include a survey map which it is now said differs from the Thakbust map and is sought to be used to correct it. (Sir Richard Couch). RADHA PERSHAD SINGH D. TORAB ALL.

(1890) 18 C. 108 = 5 Sar. 582.

LODGING IN HIGH COURT OF-DUTY OF SUCCESSFUL PARTY AS TO.

-Failure to discharge-Remedy of opponent in case of. The order in Council will in accordance with the ordihary practice be issued to the party who is substantially successful in the appeal to the Privy Council, and that party ought in ordinary course to lodge the same in the High Court. If he delays or refuses to do so, and the opposite party cannot therefore get execution, the latter should apply to the High Court with a certified copy of the order and ask for a summary order on the party in default to PRIVY COUNCIL-APPEAL-(Contd.)

Decree in (or order in Council-(Contd.)

LODGING IN HIGH COURT OF-DUTY OF SUCCESS-FUL PARTY AS TO-(Contd.)

ledge the order entrusted to him so that execution might follow in terms of the judgment of the Board, O. 45, R. 15 (1) of C. P. C. of 1908 provides for this contingency. (Viscount Dunedia). SOURENDRA MOHAN SINHA v. PRASAD SINHA. (1926) 53 I. A. 89 = 5 Pat. 461 = 1926 M. W. N. 492 = 24 L. W. 84 = HARI PRASAD SINHA.

30 C. W. N. 938-28 Bom. L. R. 1260-94 I. C. 813-A. I. R. 1926 P. C. 31 = 51 M. L. J. 586.

See also P. C .- APPEAL - DECREE IN-ISSUE OF.

ORDER IN COUNCIL IF OF NATURE OF A.

The order of Her Majesty in Council is not, properly speaking, the decree of a court, but an order of Her Myjesty made on the recommendation of a Committee of Her Privy Council. It does no more than prescribe what shall be the final decree in the cause, leaving it to be executed by the ordinary process of the courts in India (493). (Sir James W. Colesle). KRISTO KINKUR ROY P. RAJAH BURRODACAUNT ROY. (1872) 14 M.I.A. 465=

17 W.R. 292-10 B.L.R. 101-2 Suth. 564. -Sor Privy Council - Appeal - Decree in-QUESTIONS CONCLUDED BY. (1875) 25 W.R. 157.

POSSESSION IMMEDIATE OF SOME ITEMS, AND POSSESSION OF OTHERS AFTER ASCERTAINMENT OF SAME-DECREE FOR.

-Enforceability of, as regards former before ascertainment of latter.

An order in Council declared the plaintiff absolutely entitled to two named villages, and to all the rest of the land in dispute which was not comprised in the settlement of Havakee. By the declaration in the order in Council it limited Havalee to 123, 207 beegahs, including 129 beegahs and 19 beegahs, part of Beadon settlement, and so much of the land in dispute as belonged to or was attributable to the Bunker and Boondee Mehals. It then directed the High Court to make the inquiry necessary to understand what this last-mentioned land was and to proceed in the suit as upon the result of such inquiry might seem just,-dealing with the whole question of costs including the taxed costs of the appeal.

Held, on a construction of the order, that the plaintiff might well wait the result of those inquiries and accounts before applying for the execution of the earlier part of the decree with reference to the named villages to which he was declared entitled; and that the High Court might well decline to execute the earlier part of the decree until they had completed the whole of the inquiries and accounts (495). (Lord Cairns.) RAJAH LEELANUND SINGH v.

MAHARAJAH LUCKMISSUR SINGH BAHADOOR.

(1870) 13 M. I. A. 490 = 14 W. R. P. C. 23 == 5 B. L. R. 605 = 2 Suth. 353 = 2 Sar. 599.

QUESTIONS CONCLUDED BY-RE-OPENING OF. Permissibility.

Her Majesty's order in Council is in the nature of a decree, and if that has concluded a question, neither the Courts in India, nor their Lordships sitting here, can go behind it (228), COURT OF WARDS P. RAJA LEELANUND (1875) 3 Suth. 225 = 25 W. R. 157 = SINGH.

REMAND FOR TAKING ADDITIONAL EVIDENCE, WITH DIRECTION TO DECIDE THEREON-ORDER OF-ORDER IN COUNCIL CONFIRMING-VARIATION OF.

-Variation so as to make order one directing taking of fresh evidence merely-Jurisdiction of Privy Council as to-Effect of. See PRIVY COUNCIL- APPEAL-REMAND IN-EVIDENCE FRESH. (1844) 3 M. I. A. 245 (254-5).

Decree in (or order in Council)--(Contd.)

SUBSEQUENT ORDER-PASSING OF.

Conditions.

Where an order in Council had been already passed, it could duly be under exceptional circumstances that their Lordships could advise that another order should be passed, (Viscount Dunclin.) SOURENDRA MOHAN SINHA E. HARI PRASAD SINHA. (1926) 53 I. A. 89 =

5 Pat. 461 – (1926) M. W. N. 492 – 24 L. W. 84 = 30 C. W. N. 938 – 28 Bom. L. R. 1260 = 94 I. C. 813 = A. I. R. 1926 P. C. 31 = 51 M. L. J. 586.

#### Decree under.

#### AMENDMENT OF.

Amount to which appellant entitled-Amendment so as to allow.

Modification refused, because. (1) appeal failed otherwise. (2) point not raised before Courts below and (3) amount in question was so small that even if Court below had refused to allow it appellant would have had no right of appeal on that ground. (Lord Kingadosen.) RAM GOPAL MOOKERJEA v. MASSEYK.

(1866) 3 M. I. A. 239 (261-2)=2 W R. P. C. 43= 1 Suth. 409=1 Sar. 760.

Modification refused, because (1) appeal unsuccessful otherwise, and mi-take as to calculation by Court below resulting in disallowance of amount in question might have been set right by Court below itself but no application was made to it for the purpose. (Sir Barnes Powerk) RAJA HURRO NATH ROY BAHADOOR P. RANDHIR SINGH. (1890) 18 I. A. 1 (5) = 18 C. 311 (315) = 5 Sar. 642.

Interest subsequent to suit-Amendment so as to include, on respondent's application.

Cross—Appeal—Special leave to enter—Petition for, after filing printed case—Consent order that respondents should have leave on hearing of appeal to appeal on question of future interest—No cross-appeal filed, but yet decree below amended so as to include future interest. (Lord Macnaghten.) CASSIM AHMAD JEWA P. NARAIN CHETTY. (1910) 37 I A. 133=37 C. 623=8 M. L. T. 229=12 C. L. J. 231=12 Bom. L. B. 646=7 I. C. 814=20 M. L. J. 630.

—Making its effect clear—Alteration for purpose of— Not made. (Sir Barnes Peaceck.) MUSSAMUT ADIT KOER :: GUNGA PERSHAD SINGH.

(1879) 3 Suth. 600 = Bald. 207 = 3 I. J. 290.

Kespondent—Amendment in favour of—Cross-appeal by him necessary. (Lord Hobbanse.) CASPERZ 7. KISHORI LAL ROY. (1896) 23 C. 922 (929)=1 C. W. N. 12= 7 Sar. 31.

## EVENTS SUBSEQUENT TO.

Cognizance of. See DECREE-EVENTS SUBSE-QUENT TO.

#### EXECUTION OF.

APPEAL—EXECUTION OF DECREE UNDER.

## FORM OF-GENERAL FORM.

Objection to, on ground that it is not sufficient to found proper execution, must be raised in Court below and Court below must be asked to condescend upon details. (Sir Montague E. Smith.) LALA SHAM SOONDUR LAL v. SOORAJ LAL. (1876) 3 Suth. 298 (299)=Bald. 20. SEIN.

## PRIVY COUNCIL-APPEAL-(Contd.)

Decree Under-(Contd.)

OBJECTION TO, NOT URGED BEFORE.

Urging of, shortly before hearing of Privy Council
2ppeal not permitted. (Mr. Ameer Ali.) DHANRAJ
JOHARMAL v. SONI BAI. (1925) 52 I. A. 231 (244)=
52 C. 482=23 A. L. J. 273=2 O. W. N. 335=

21 N. L. R. 50 = 6 L. R. P. C. 97 = 27 Rom. L. R. 837 = (1925) M. W. N. 692 = A. I. R. 1925 P. C. 118 = 87 I. C. 357 = 49 M. L. J. 173.

#### REVERSAL OF-GROUNDS.

——Evidence—Admissibility of—Objection to—Reversal on ground of. See PRIVY COUNCIL—APPEAL—EVI-DENCE—ADMISSIBILITY—OBJECTION TO.

—Evidence—Admission of inadmissible—Other evidence sufficient to support finding—No reversal in case of.

(1) (Sir James W. Colvile.) MUSSAMUT CHEETHA P.

BABOO MIKUN LALL. (1867) 11 M. I. A. 369 (385)=
2 Sar. 363.

-(2) MOHUR SINGH 2. GHURIBA. (1870) 6 B. L. R. 495 (498-9)=15 W. B. 8= 2 Sar. 616=2 Suth. 379.

—Evidence—Admission of inadmissible—No reversal by reason of, where substantial justice did not require such reversal. (Sir James W. Colvile.) GOSHAIN TOTA RAM P. RAJAH RICKMUNEE BULLUB.

(1869) 13 M. I. A. 77 (83)=3 B. L. R. (P. C.) 34= 2 Suth. 253=2 Sar. 487=12 W. R. P. C. 32

—Evidence—Misappreciation of piece of, by High Court—Effect of, on value of its judgment. (Sir James W. Colvile.) BABOO BODHNARAIN SINGH P. BABOO OMRAO SINGH. (1870) 13 M. I. A. 519 (520)=

15 W. B. (P. C.) 1=6 B. L. B. 509=2 Suth. 371= 2 Sar. 607.

—Evidence—Production of—Time for—Sufficiency of

—Objection to—Interference on ground of. Su PRIVY

COUNCIL—APPEAL—DECREE UNDER—REVERSAL OF—

GROUNDS—PRACTICE. (1871) 16 W. R. (P. C.) 22 (24).

Evidence—Witnesses—Examination of—Refusal of

—Reversal on grounds of. See EVIDENCE—WITNESSES—
EXAMINATION OF—APPLICATION FOR, IN MIDST OF
HEARING. (1848) 4 M. I. A. 392 (4023).

-Fact-Finding of. See PRIVY COUNCIL-APPEAL
FACT-FINDING OF.

High Court—Judges of, hearing appeal—Difference
of opinion between—Procedure on—Error as to—No
reversal on ground of, when judgment, as entered, is right
on merits. See PRIVY COUNCIL—APPEAL—JUDGMENT
UNDER—HIGH COURT—JUDGMENT OF.

(1871) 14 M. I. A. 209 (229).

Law—Evidence on points of—Refusal of Courts below to receive—No reversal on ground of, because law is a matter upon which evidence ought not to be received. (Mr. Baron Parke.) SUMBHOOCHUNDER CHOWDHRY P. NARAINI DEBIA. (1835) 5 W. R. (P. C.) 100=

1 Suth. 25 (26-7)=3 Knapp. 55=1 Bar. 65.

——Onus of Proof—Error as to—Reversal on ground of.
See ONUS OF PROOF.

Practice—Matters of—Objection to—Evidence—Production of—Time sufficient for, not allowed—No reversal on ground of, except on clear proof that justice has not been done. MOULVI ABDOOL ALI v. MOZUFFAR HOOS-SEIN. (1871) 16 W. R. (P. C.) 22 (24)=2 Suth. 482

Decree Under-(Contd.)

REVERSAL OF-GROUNDS-(Contd.)

-Review to Court below-Matter which might have been set right by—No reversal on ground of. See PRIVY COUNCIL — APPEAL—REVIEW TO COURT BELOW— MATTER WHICH MIGHT HAVE BEEN SET RIGHT BY.

(1884) 12 I. A. 47 (51) = 11 C. 379 (385 6).

#### Deed.

Original deed-Transmission to Privy Council of. See PRIVY COUNCIL-APPEAL - TRANSMISSION OF RECORD IN.

-Vernacular deed-Translation of-Official translation-Translation by court below-Conflict between-Which accepted by Privy Council. See DEED - CONSTRUC-TION-VERNACULAR DEED.

## Default to prosecute—Dismissal of appeal for. EFFECT OF-ORDER IN COUNCIL.

Construction.

An order was made calling upon the appellant in a Privy Council appeal to deliver printed cases in a fortnight and intimating to him that otherwise the cause would be heard ex parte. No cases were delivered, and the cause coming on accordingly, and the appellant not appearing, an order was made that, after hearing the counsel for the respondents, and no one appearing for the appellant, the decree appealed from be affirmed, and the appeal dismissed with costs. That order was confirmed, that is to say, the report of their Lordships was adopted, and made an order of the King in Council,

Held that a simple dismissal was what was intended by, and what was the effect of, the order finally made by the Privy Council, although the objectionable form, importing affirmance, was followed, and that the Privy Council had therefore jurisdiction to rescind the order of dismissal and restore the appeal on a proper case being made out for such restoration. (Lord Brougham.) RAJUNDER NARAIN RAE P. BIJAI GOVIND SINGH.

(1839) 2 M. I. A. 181 (222-3) - 1 Moo. P.C. 117= 1 Sar. 175.

## JURISDICTION AS TO.

-Jurisdiction where no petition of appeal had been presented, and there was no reference of the appeal to the Privy Council-Doubt as to-Petition filed by respondent for dismissal of appeal for want of prosecution referred to Privy Coancil-Order of dismissal for default made in case of. (Dr. Lushington.) SREEMUTTY KABUTTY DOSSEE RADANATH SEIN. (1856) 6 M. I. A. 346 - 1 Sat. 547.

#### NATURE AND EFFECT OF.

An order of His Majesty in Council dismissing an appeal for want of prosecution does not deal judicially with the matter of the suit and can in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognises authoritatively that the appellant had not complied with the conditions under which the appeal was open to him, and that therefore the appellant is in the same position as if he had not appealed at all. (Lord Moulton.) ABDUL MAJID v. JAWAHIR LAI.

(1914) 36 A. 350 (353-4)=16 Bom. L. R. 395 (1914) M. W. N. 485 = 18 C. W. N. 992 = 16 M. L. T. 44 - 12 A. L. J. 624 = 1 L. W. 483 = 19 C. L. J. 626 = 23 I. C. 649 = 27 M. L. J. 17.

Execution of decree below-Limitation for-Fresh starting point for, not afforded by such dismissal. See LIMIT. ACT OF 1908-ART. 182-APPEAL FROM DECREE -LIMITATION FOR EXECUTION IN CASE OF -STARTING POINT OF-PRIVY COUNCIL APPEAL DISMISSED, ETC.

(1914) 41 I. A. 104 = 36 A. 284.

## PRIVY COUNCIL-APPEAL-(Contd.)

Default to prosecute-Dismissal of appeal for -(Contd.)

#### RESTORATION AFTER.

-Leave given to restore an appeal dismissed for want of prosecution, the Court below having consolidated it with another appeal in the same cause, which was still pending. (Mr. Baron Parke.) CHOWDRY v. MULLICK. (1837) 1 M. I. A. 358 = 1 Moo. P. C. 404 = 1 Sar. 128.

-Conditions-Order in council of 1853, R. 5-Dismissal under. RABIABAI :- MAHOMED ISMAIL.

(1897) 24 I. A. 128 - 21 B. 723 - 7 Sar. 217.

-Grownas.

Agest of appellants instructed to prevent dismissal of appeal not receiving the transcript until after a year and a day from the time of the allowance of the appeal.

Respondent in consequence obtaining an order of dismisal-Restoration sought on ground of, allowed upon terms of appellants (1) paying costs incurred by respondents in India as well as in England, consequent on the order of dismissal and (2) giving security for £ 500 for contingent costs in England. (Lord Brougham.) SREE MUTTY BIS-SNOSOONDERY DABLE D. RAJAH BURRODACAUNT ROY.

(1839) 2 M. I. A. 127 - 3 Moo. P. C. 11= Morton 372 = 1 Sar. 160.

-Minors, under Court of Wards-Guardian ad Iitem appearing on their behalf a public functionary appointed by Court-Abscording of, with funds entrusted to him for the expenses of the suit-Failure to prosecute appeal due to-Restoration sought on ground of, allowed on condition of (1) the appellance paying the respondents the costs occasioned to them by the detault which led to the dismissal of the appeal, and by the application for re-hearing; (2) the appellants lodging cases within 5 months; and (3) the appellants permitting the respondent to take copies of any part of the proceedings in his possession, at the charge of the respondent, and undertaking to disturb nothing done from the date of judgment until notice was received of the order restoring the appeal (215, 222-3). (Lord Brongham.) RAJUNDER NARAIN RAI P. BIJAI GOVIND SING.

## (1839) 2 M.I.A. 181 = 1 Moo. P. C. 117 = 1 Sar. 175.

-An appeal to the Privy Council, which had been dismissed for want of prosecution, on the ground that no step had been taken in it for 10 years, was upon petition to the King in Council restored on condition of the appellant paying the costs of dismissal and restoration.

The grounds alleged in support of the petition for restoration were that the appellant was ignorant of the form of proceeding in England and took no steps in it for some years, that he then entered into an agreement with a firm at Calcutta, for the appointment of an agent in England for the purpose of prosecuting the appeal, and that as the agent to the Calcutta house in England became insolvent nothing was done on the part of the appellant in the matter of his appeal (467-8). (Mr. Baron Parke.) RAJAH DEEDAR HOSSEIN v. KANEE ZUHOOR-OON-NISSA.

(1841) 2 M. I. A. 441 = 2 Sutb. 993 = 1 Sar. 217. Order in Council of 13th June, 1853-Dismissal pursuant to-Ignorance of the rules under the said order in Council, they being only recently adopted in the court below, and taking of steps to prosecute the appeal within the time and according to the practice previously existing. Restoration sought on grounds of, allowed. (Lord Justice Knight Bruce.) GUDADHUR PERSHAD TEWARI v. MUS-SUMAT SOONDERKOOMAREE.

(1854) 6 M.I.A. 201 = 1 Sar. 530. -(Dr. Luishington.) SETO LUCHMEECHUND D. SETO ZORAWUR MULL

(1854) 6 M.I.A. 204=1 Sar. 531.

Default to prosecute-Dismissal of appeal for -(Contd.)

RESTORATION AFTER-(Contd.)

Their Lordships do not mean to go the length of saying, that where infants are concerned any degree of delay may be considered justifiable, or excusable, or such as may be passed over; as there may be circumstances so strong as even to prevent infancy from being an apology or an extre.

Under the special circumstances of the case their Lordships restored an appeal which had been dismissed for want of prosecution, under Kule V of the Order in Council of the 13th of June 1853, on condition that the appeal should be prosecuted within a given time (161-2). (Lord Justice Knight Bruce.) KANEE BIRJOBUTIEE v. PER-TAUB SINGH. (1860) 8 M. I. A. 160 =

13 Moo. P.C. 465-3 W. R. 36-1 Suth. 408= 1 Sar. 740.

-Order of, (confirmed by Order in Council) requiring security fresh to be given in England-Application to vary, by treating amount deposited as security in India as suffi. cient-Grant of on condition that the money deposited in India remained in deposit to abide the appeal in England. (Mr. Pemberton Logh.) SETO LUCHMEECHAND P. SETO ZORAWUR MULL. (1854) 6 M. I. A. 204 = 1 Sar. 531

-Security for costs required by order of-Extension of time for furnishing. on application made by respondent for dismissal of appeal on ground of failure to furnish within time allowed-Conditions of (1) appellant paying costs of respondent's application and (2) his expediting the Proceedings. (Lord Justice Knight Bruce.) RANEE HURROSOUNDREE DIBIAH T. RAJAH PRAN KISHEN SINGH. (1857) 7 M. I. A. 16-11 Moo. P.C. 305-

1 Sar. 590. -Security fresh-Deposit in England of -Necessity. RANEE BIRJOBUTTEE & PERTAUB SINGH.

(1860) 8 M. I. A. 160 (162-3) = 13 Moo. P. C. 465= 3 W. R. (P. C.) 36=1 Suth. 408=1 Sar. 740.

SECURITY FURNISHED IN COURT BELOW VACATED BY. RANEE BIRJOBUTTE P. PERTAUB SINGH

(1860) 8 M. I. A.160 (162) = 13 Moo. P. C. 465 = 3 W. R. 36=1 Suth. 408=1 Sar. 740.

### Defendants with different defences and separate cases.

-Single appeal by -Irregularity. See PRIVY COUN-CIL-APPEAL-SINGLE APPEAL

(1900) 27 I. A. 168 (172) = 23 A. 137 (142.) Delay in prosecution of.

-Costs of successful appellant-Effect on. See PRIVY COUNCIL-APPEAL-COSTS OF-SUCCESSFUL APPELLANT - DISALLOWANCE OF COSTS TO-GROUNDS -DELAY IN, ETC.

-Disapproval by Privy Council of. See LITIGATION -DELAY IN CONDUCT OF.

## Discretion of Court below-Interference with.

-Appeal-Abatement of-Setting aside of-Discretion as to. See C. P. C. OF 1908-O. 22, RR. 9 & 11. (1919) 12 L. W. 311 (313-4).

-Appeal-Security for costs of-Time for furnishing -Extension of-Discretion as to. See C. P. C. OF 1908 -O. 41, R. 10-SECURITY FOR COSTS-TIME FOR FUR-NISHING-EXTENSION OF.

-Appeal time-barred-Admission of-Discretion as to. See LIMITATION ACT OF 1908-S. 5-TIME-BARRED APPEAL-ADMISSION OF-')RDER REFUSING

## PRIVY COUNCIL-APPEAL-(Contd.)

Discretion of Court below-Interference with -(Contd.)

-C. P. C. of 1908-S. 92-Scheme under-Framing of-Discretion as to. See C. P. C. OF 1908-S. 92-SUIT UNDER-SCHEME IN-FRAMING OF-DISCRETION AS

-C. P. C. of 1908-O. 23, R. 1-Liberty to bring fresh suit-Withdrawal with-Costs on-Discretion as to See C. P. C. OF 1908-O. 23, R. 1-LIBERTY TO BRING FRESH SUIT-WITHDRAWAL WITH-COSTS ON.

(1909) 37 I. A. 39 (45) = 32 A. 148 (151).

-Company-Liquidator-Compromise with contribetories or alleged contributories-Sanction of-Discretion as to. See COMPANY-LIQUIDATOR-COMPROMISE WITH CONTRIBUTORIES OR ALLEGED CONTRIBUTORIES, ETC (1869) 13 M. I. A. 15 (34).

-Costs-Discretion as to. See PRIVY COUNCIL-APPEAL—COSTS—DISCRETION OF COURT BELOW AS TO -Cy-pre's scheme-Discretion as to. See CHARITY-CY-PRE'S SCHEME-DISCRETION OF COURT BELOW.

(1876) 3 I.A. 32 (59)=1 C. 303 (323-4). -Damages-Amount of-Discretion as to. Sa PRIVY COUNCIL-APPEAL - DAMAGES-ASSESSMENT OF-DISCRETION OF COURT BELOW AS TO.

 Decree reversed on appeal—Amount recovered under -Interest on-Rate of, to be allowed-Discretion as to See C. P. C. OF 1908-S. 144-DECREE REVERSED ON (1921) 48 I. A. 150 (154) = 44 M. 570 (574).

DENCE ACT—S. 90—Discretion under. See EVI-DENCE ACT—S. 90—DISCRETION UNDER.

(1904) 31 I. A. 217 (219, 221) = 26 A. 581 (587)

-First Court's discretion-Appellate Court interfering with-Interference with appellate Court's discretion in case of. See (1) DISCRETION-APPEAL-TRIAL JUDGE'S DIS-CRETION. (1893) 20 I. A. 144 (148) = 21 C. 135 and (1917) 45 I. A. 61 (66)=42 B. 380 (389)

-AND (2) PRIVY COUNCIL-APPEAL-DAMAGES-ASSESSMENT OF-DISCRETION OF COURT BELOW AS TO (1927) A. I. B. 1927 P. C. 263.

-Hindu joint family-Manager of-Borrowing by-Rate of interest and other terms of borrowing-Reasonable ness and propriety of-Decision as to-Decision reducing terms—Decision maintaining them—No distinction between See HINDU LAW-JOINT FAMILY-MANAGER-MORT GAGE BY-INTEREST PROVIDED BY -RATE OF, AND (1927) 55 I. A. 85=7 Pat. 294 OTHER, ETC.

-Hindu joint family-Manager-Gift of family property to daughter by—Validity of—Decision as to Sr HINDU LAW—JOINT FAMILY MANAGER—GIFT BY— DAUGHTER (1997) 61 DAUGHTER. (1907) 34 I. A. 107 (114)=31 B. 373 (384)

-Hindu joint family-Manager of - Misappropriation by-Interest on amount subject of-Rate of, to be about against manager—Discretion as to. See HINDU LAWJOINT FAMILY—MANAGER—MISAPPROPRIATION NYINTEREST ON AGAINST (1921) 48 L A. 280 (286) 44 M. 656 (669). INTEREST ON, ETC.

-Hindu joint family-Manager of-Mortgage by Interest provided by -Rate of-Reduction of, on ground of absence of necessity for same—Discretion as to. See HINDU LAW—JOINT FANILY—MANAGER—MORTGAGE BY—INTEREST AND AN AGER—MORTGAGE BY—INTEREST AND AGENT AND AGER—MORTGAGE BY—INTEREST AND AGENT AGENT AND AGENT AND AGENT AND AGENT AGENT AND AGENT AGEN BY-INTEREST PROVIDED BY-RATE OF-REDUCTION (1919) 46 I.A. 145 (149 50) OF, ETC. 41 A. 571 (575-7)

-Hindu Law-Maintenance-Rate of Discretion to. See (1) HINDU LAW-MAINTENANCE & (2) HINDU LAW-WIDOW- MAINTENANCE-RATE OF-DISCRI-(1902) 30 I. A. 20 (26-7) = 30 C. 309 (315-6). TION OF INDIAN COURTS AS TO.

Discretion of Court below-Interference with -(Contd.)

-Interest-Future interest-Award of-Discretion as to. See INTEREST-FUTURE INTEREST-AWARD OF-DISCRETION OF INDIAN COURTS AS TO.

-Interest Act of 1839-Interest under-Allowance or refusal of -Discretion as to. See INTEREST ACT OF 1839 -INTEREST UNDER-ALLOWANCE OR REFUSAL OF.

(1859) 7 M. I. A. 263 (281-2).

-Maintenance-Amount of, to be allowed-Discretion as to. See UNDER THIS SUB-HEAD-HINDU LAW-MAINTENANCE.

-Mesne Profits-Interest on-Award of-Discretion as to. See MESNE PROFITS-INTEREST ON-AWARD OF-JURISDICTION. (1884) 11 I. A. 88 (93) = 10 C. 785 (791-2).

-Minor-Guardianship of-Scheme of-Discretion as to. See HINDU LAW-MINOR-GUARDIANSHIP OF-SCHEME OF. (1871) 14 M. I. A. 309 (329).

-Minor-Mortgage deed executed by-Cancellation of, in suit of minor-Money advanced under mortgage-Restoration to mortgagee of-Provision for-Discretion as to. See CONTRACT-MINOR-MORTGAGE DEED EXE-CUTED BY. (1903) 30 I. A. 114 (125) = 30 C. 539 (549).

-Mortgage-Foreclosure-Notice of-Service of-Sufficiency of -Objection to-Permissibility of, for first time in appeal-Discretion as to. See BENGAL REGU-LATIONS-LAND MORTGAGE REDEMPTION AND FORE-CLOSURE REGULATION 17 OF 1806—S. 8—NOTICE OF FORECLOSURE—SERVICE OF—SUFFICIENCY OF—OB-JECTION TO. (1884) 11 L. A. 186 (1923)= 11 C. 111 (118.)

-Partner deceased-Representatives of-Accounts-Suit against surviving partner for-Assets in hands of latter -Deposit into Court of-Order for-Discretion as to. See PARTNERSHIP - ACCOUNTS-SUIT FOR - DECEASED (1915) 42 I. A. 91 (96) - 42 C. 914 (925). -Restitution-Decree reversed on appeal-Amount recovered under-Interest on-Rate of, to be allowed-Discretion as to. See C. P. C. OF 1908-S. 144-DECREE REVERSED ON APPEAL. (1921) 48 I. A. 150 (154)=

#### Divorce.

Grounds of, alleged in Courts below-Failure to prove Fresh ground of divorce in Privy Council Apppeal
—Permissibility of. See BURMESE BUDDHIST LAW— DIVORCE-GROUNDS OF, ALLEGED ETC.

(1927) 55 L. A. 38 = 6 B. 79.

44 M. 570 (574).

-Suit for-Finding as to adultery in-Concurrent findings-Privy Council rule as to-Applicability. See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS—INTERFERENCE WITH— CASES UNDER—DIVORCE. (1872) Sup. I. A. 106 (118.)

### Events subsequent to decree under.

Cognizance of. See DECREE-EVENTS SURSE-QUENT TO.

#### Events subsequent to suit.

Cognizance of. See SUIT-EVENTS SUBSEQUENT TO. (1879) 6 I. A. 161 (169)

#### Evidence.

ALL OTHER CASES WILL BE FOUND COLLECTED UNDER EVIDENCE-P. C. APPEAL) AND P. C .- APPEAL -FACT-FINDING OF.

"Additional evidence-Admission of-Discretion of Court below as to-Interference with.

## PRIVY COUNCIL-APPEAL-(Contd.)

Evidence-(Contd.)

An application for the admission of new evidence made to the appellate Court in India was rejected by it. On a petition lodged in the P. C. for the admission of such evidence, held that the P. C. would be slow indeed to interfere with the decision of the local court on what was really a question of discretion and procedure (906.) (Viscount Dundin). WILLIAM ROBINS F. NATIONAL TRUST CO., LTD.

(1927) 4 O. W. N. 463-101 I. C. 903= A. I. R. 1927 P.C. 66 (P.C.).

-Document admitted in-Endorsement of Judge on, as required by O. 13, R. 4 of C. P. C. of 1908-Absence of -Rejection of document on ground of, See C. P. C. OF 1908-0. 13, R. 4. (1916) 43 I. A. 212 (236-7) 38 A. 627 (663 4).

-Opportunity to adduce-Grant of-Execution sale-Judgment-debtor's application to set aside-Injury by reason of irregularity-Proof of-Opportunity for. See C. P. C. OF 1908-O. 21, R. 90-INJURY BY REASON OF IRREGULARITY. (1923) 45 M. L. J. 403 (405-6).

WITNESSES-CREDIBILITY OF AND PRACTICE-APPEAL -EVIDENCE-WITNESSES CREDIBILITY OF.

#### Execution of decree under.

APPLICATION FOR-SECURITY I RGM APPLICANT FOR.

-Necessity-Subject-matter of suit consisting of large property. See MADRAS REGULATIONS-APPEALS TO PRIVY COUNCIL REGULATION VIII OF 1818-S. 14.

(1852) 5 M. I. A. 300 (319-20).

#### STAY OF-APPLICATION FOR.

-Ex parte application-Rejection of, with liberty to apply again after serving respondent. (Lord Justice Knight Bruce.) RAJAH PERLADH SEIN v. BABOO (1864) 10 M. I. A. 78 = 2 Sar. 73. BHOODOO SINGH

-Rejection of, on ground of delay in applying. (Lord Chelmiford). NAWAB SIDHEE NUZUR ALLY KHAN D. RAJAH OOJOODHYARAM KHAN.

(1865) 10 M. I. A. 322 = 6 W. R. (P.C.) 83 = 2 Sar. 133.

-Rejection of, on the ground that the order of the Court below directing execution had most probably been acted upon, and that it was too late to make the application (Lord Cranworth). RAJAH BOMMARAUJEE BAHADOOR. In re. (1852) 5 M. I. A. 298.

#### STAY OF-CONDITIONS.

(1) Serious injury must result to the applicant if stay is not granted and (2) application for stay must have been made promptly. (Lord Chelmsford). NAWAB SIDHEE NUZUR ALLY KHAN D. RAJAH OOJOODHYARAM KHAN.

(1865) 10 M. I. A. 322 (327) = 6 W. R. P.C. 83 =

STAY OF-HIGH COURT'S JURISDICTION AS TO.

Appeal admitted by High Court.

An application for stay of proceedings in execution of a decree of the High Court, pending an appeal from it to the Privy Council, ought always to be made in the first instance, at any rate, to the Court in India, which has ample power to deal with the matter according to the circumstances of the particular case, and has knowledge of details which this Board cannot possess on an interlocutory application.

In a case in which such an application was presented in the first instance to the Privy Council, but there was an indication in the judgment of the High Court showing that in their opinion an extension of the stay of proceedings ought to be granted, their Lordships, acting upon that suggestion, granted a stay of proceedings on the appellants

Execution of decree under-(Contd.)

STAY OF-HIGH COURTS JURISDICTION AS TO-(Cutit.)

giving an undertaking by their counsel to lodge the petition | Council against a decree dismissing a soit to recover proof appeal and their case within a fortnight from the time the record arrived in England, and also at the same time to give the respondent leave to apoly to the High Court either for the appointment of a receiver, or for payment of a reasonable amount into Court, or any other relief which he might be advised to apply for. (Lord Macnaughten). VASUDEVA MODELIAR 2. SHADAGOPA MODELIAR.

(1906) 33 I.A. 132 = 29 M. 379 = 4 C L. J. 101 = 8 Bom. L. R. 497 = 10 C. W. N. 945 = 1 M.L.T. 204 = 16 M. L. J. 299.

Appeal admitted by special leave.

The High Court has power to stay execution, notwithstanding that the appeal as in this case has been admitted

by special leave of His Majesty in Council.

The learned Judges of the High Court are in a much receiver. better position than the members of this Board to determine whether execution ought to be stayed and if so upon what terms and conditions and to what extent stay of execution ought to be granted. (Lord Macnaghten). NITYA-MONI DASI v. MADHU SUDAN SEN.

1911) 38 I. A. 74 = 38 C 335 = 13 C. L. J. 529 = 8 A. L. J. 449 - 13 Bom L. R. 419 = 10 M. L. T. 25 = (1911) 2 M. W. N. 121 = 4 Bur. L. T. 123 = 11 I. C. 384.

STAY OF-HIGH COURT'S ORDER REFUSING.

-Special leave to appeal from. Not granted, though stay, also prayed for, granted. CHUTRAPUT SINGH DOORGA : DWARKANATH GHOSE.

(1894) 21 I. A. 170 = 22 C. 1-6 Sar. 514.

STAY OF-HIGH COURT'S ORDER RELATING TO.

-Appeal from. See P. C .- APPEAL-RIGHT OF-INTERLOCUTORY ORDER-APPEAL FROM-INTER-FERENCE IN. (1922) 27 C. W. N. 1004.

STAY OF-P. C.-GRANT BY.

-Jurisdiction as to-Court below refusing stay-Special lense to appeal from order of-Grant of-Stay of execution pending appeal.

Pending an appeal by petitioner a senior widow, to the P. C. against a decree directing her to pay large sums of money to the re-pondent, her co-widow, petitioner applied to the court below for an order under S. 608 of C. P. C. of 1882, either staying execution of the decree appealed from, or directing execution to issue only on condition of the respondent furnishing security. The court below rejected petitioner's application, and directed execution to issue in default of payment. It also rejected an application by the petitioner for leave to appeal to the Privy Council from its order rejecting petitioner's application.

On an application by the petitioner, their Lordships granted special leave to appeal from the order rejecting petitioner's application and from all orders passed subsequently thereto and in consequence thereof, but declined to stay execution on the ground that it was not competent to them to do so.

Their Lordships, however, intimated their opinion that the case was a fit one for stay on terms, and reserved liberty to the petitioner to apply to the proper court in India for the due safeguarding of the money paid by her pursuant to the order of the Court below. (Lord Hobkouse). MAHARANI INDAR KUMARI P. MAHARANI JAIPAL KUMARI. (1886) 14 I. A. 1=14 C. 290=4 Sar. 757

-Special leave-Appeal admitted by-Direction by P. C. to High Court if and when will be given.

## PRIVY COUNCIL-APPEAL-(Contd.)

Execution of decree under-(Contd)

STAY OF-P. C. - GRANT BY-(Contd.)

In a case in which special leave to appeal to the Privy perty as beir of its last owner was granted, plaintiff applied to the High Court under S. 608, C. P. C. of 1882 for an order that the manager who was then in possession of the property, should remain in possession thereof until the disposal of the appeal to the Privy Council. The High Court dismissed the application on the ground that they had no jurisdiction to grant it. On a petition presented to the Privy Council praying for a reversal of the order of the High 'ourt dismissing the application and for a direction to the High Court to deal with the application made to it on the merits. Held that their Lordships could not direct the High Court to act where they had no jurisdiction, and that it was quite impracticable that the Privy Council should directly interfere to continue the manager, or to appoint a

Their Lordships, however, granted an order staying proceedings, petitioner being answerable in damages, and any aggrieved respondent being given leave to move for

discharge of the order.

Interference has been effected here in case where the Courts below had jurisdiction over the subject-matter, and an intimation to them would be effective; or, where the appellant being in possession, a stay of proceedings would keep the position of things in fact. The petitioner asked for a stay of proceedings in the case; and their Lordships are disposed to accede to this suggestion, because it is highly inconvenient that there should not be any interim protection at all pending such an appeal as this, (Lad. Hobbouse.). MOHESH CHANDRA DHAL v. SATRUGHAN (1899) 26 I. A. 281 (2834)=27 C. 1(4)= DRAL. 4 A. W. N. 34 = 7 Sar. 507.

## Ex-parte decision in.

-See PRIVY COUNCIL APPEAL-JUDGMENT IN-Er parte DECISION.

#### Ex-parte hearing of.

-See PRIVY COUNCIL-APPEAL-HEARING OF-Ex parte HEARING.

#### Fact-Finding of.

-(For concurrent findings. See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT).

ACCOUNTS-CASE INVOLVING NUMEROUS ITEMS OF

Prolonged investigation of-No interference in case of, unless attention is drawn to the material evidence mis-(Sir John Edgt) understood or failed to be appreciated. (1925) 52 I.A. 418 (435-6)=5 P. 135=

42 C.L.J. 592 = 24 A.L.J. 33 = (1926) M.W.N. 49 7 P. L. T. 97=91 I.C. 1033=A.I.B. 1925 P. C. 280 50 M.L.J. 1.

APPEAL INVOLVING-ONUS ON APPELLANT IN CASE OF.

Their Lordships, while recognising to the full, the appellant's legal and constitutional right to appeal in this case, think that it should be observed that, on a question of fact, which has been already carefully examined by judges fully conversant with the habits and practices of the country, an appellant must realise that be takes a very heavy burden on himself by bringing such a case before this Board. (Lord Sumner). JURAWAN LAL v. BALDEO SINGH. (1918) 48 I. O. 225=21 O.O. 104= SINGH. 50. L. J. 40.

Fact-Finding of-(Contd.)

APPELLATE FINDING.

Disturbance of — Reluctance of Privy Council as regards — Rule—Exception — Grounds. HURMUT-OOL-NISSA BEGAM v. ALLABDIN KHAN.

(1871) 2 Suth. 525 (531)=17 W.R. 108.

Reversal of, and restoration of decision of trial

Evidence—Consideration of, carefully by Privy Council

—Reversal only after. (Lord fustice Turner). WISE 7.

BHOOBUN MOVEE DEBIA CHOWDRAINEE.

(1865) 10 M. I. A. 165 (182) = 3 W.B. (P.C.) 5 = 2 Sar. 91 = 1 Suth. 563.

BILL OF EXCHANGE—PRESENTMENT FOR ACCEPTANCE—TIME OF.

Reasonableness of—Decision as to. See Negotia-BLE INSTRUMENT — BILL OF EXCHANGE—PRESENT-MENT FOR ACCEPTANCE—TIME OF—REASONABLENESS OF. (1854) 9 Moo. P.C. 46 (67).

CONCURRENT FINDINGS OF COURTS BELOW.

Interference with. See PRIVY COUNCIL—PRAC-TICE—QUESTION OF FACT—CONCURRENT FINDINGS.

CONFLICT BETWEEN COURTS BELOW AS TO.

Trial Judge's finding—Appellate finding—Acceptance of—Conditions. See UNDER APPEAL—EVIDENCE—
WITNESSES—CREDIBILITY OF—TRIAL JUDGE'S FINDING OF FACT BASED ON AND PRACTICE—APPEAL—
EVIDENCE—WITNESSES.

#### EVIDENCE.

Inadmissibility in part of—Other evidence sufficient to support finding—No interference in case of. (1) (Sir James W. Colvile). MT. CHEETHA v. RABOO MIHEEN LALL. (1867) 11 M.I.A. 369 (385) = 2 Sat. 303. (2) (Mr. Ameer Ali) AHMAD KHAN v. CHANNI BIBI.

(2) (Mr. Ameer Ali), AHMAD KHAN 2. CHANNI BIBI. (1925) 52 I. A. 379 (384) = 6 Lab. 502 = 6 L. R. (P. C.) 190 = 3 O.W.N. 93 = 30 C.W.N. 506 = 91 I.C. 455 = A. I. B. 1925 P. C. 267 = 50 M.L.J. 637.

Misconstruction of piece of—Other evidence sufficient to support finding. (Sir Barnes Peacock). ISSUR CHANDER SAHA v. DOYAMOYI DASIAH. (1876) Bald 24. Sufficiency of — Consideration of—Propriety.

With respect to the evidence in support of this finding of fact, it is not for their Lordships to deal with the case as a court of first instance. It is enough for them to say that they are unable to declare that the courts below were not justified by the evidence in coming to the conclusion at which they arrived (693-4). BHOOP NARAIN CHOWBEY D. RUGHOO NATH GOBIND ROY.

(1872) 18 W.B. 230 = 2 Suth. 666 = 5 Sar. 691. INCORRECTNESS OF—PROOF CLEAR OF.

No interference except on. (Mr. Erskine). SREE
RAJA ROW VENCATA NILADRY ROW. D. VUTCHAVOY
VENCATAPATHY RUZ. (1834) 5 W.B. 80 =

1 Suth. 17 (20) = 3 Knapp 23 = 1 Sar. 59.

ISSUE-FORM OF-UNSATISFACTORY.

No revertal of finding on ground of—Condition.

Although their Lordships undoubtedly cannot regard as satisfactory the form of the issue in this case, they are not disposed to take upon themselves to reverse the findings of the two courts below upon a question of fact, which both appear to have supposed to be before them, and which neither party seems to have denied to be before them. BHOOP NARAIN CHOWBEY v. RUGHOO NATH GOBIND ROY,

(1872) 18 W. B. 230=2 Suth. 866=5 Bar. 691.

PRIVY COUNCIL-APPEAL-(Contd.)

Fact-Finding cf-(Contd.)

JUDGES BELOW MORE COMPETENT TO ADJUDICATE UPON QUESTION—UNANIMITY AMONG.

No interference in case of, unless their conclusion is shown to be clearly not maintainable. (Lord Justice Turner). RAI SRI KISHEN v. RAI HAVI KISHEN.

(1853) 5 M.I.A. 432 (442)=1 Suth. 245=1 Sar. 466.

MORTGAGE-EQUITABLE MORTGAGE.

Proof of Finding as to. See MORTGAGE—EQUI-TABLE MORTGAGE.

NON-REGULATION PROVINCES—LOCAL CUSTOMS AND LOCAL INQUIRY—DECISION OF REVENUE OFFICERS DEPENDING MUCH UPON.

No interterence with, unless decision substantially wrong. (Sir James W. Colvile). Hyder Hossain v. Mahomed Hossain. (1872) 14 M.I.A. 401 (410-1) = 17 W.R. 185 = 2 Suth. 539 = 3 Sar. 46 = R. & J's No. 12.

PERSON NOT PARTY TO CAUSE—FINDING GIVEN BEHIND BACK OF.

Reversal on sole ground of, unless d cision could be upheld on other grounds. (Mr. Baron Parke). SUM-BHGO CHUNDER CHOWDHRY 2: NARAINI DEBIA.

(1835) 5 W.R. 100 (P. C.) = 1 Suth. 25 (27) = 3 Knapp 55 = 1 Sar. 65.

RATIFICATION WITH KNOWLEDGE OF FACTS-FINDING AS TO.

No interference with, because question in a great measure one of fact. (Sir Robert P. Collier). GULABDAS JUGJIWANDAS D. COLLECTOR OF SURAT.

(1878) 6 I.A. 54 (62) = 3 B. 186 (193) = 3 Sar. 889.

SECOND APPEAL—APPEAL FROM DECREE IN—
FINDING OF FACT OF FIRST APPELLATE COURT IN.

Interference with — Jurisdiction. (Sir James W. Colvile). MUTHUSAWMY JAGAVEERA YETTAPPA
NAYAKER, ZEMINDAR OF YETTIAPOORAM v. VENCATESWARA YETTAVA. (1869) 12 M.I.A. 203 (215) =

11 W. B. 6 = 2 B. L. R. (P. C.) 15 = 2 Suth. 175 =

(Lord Chelmiford). PATTABHIRAMIER v. VEN-CATAROW NAICKEN. (1870) 13 M.I.A. 560 (566) = 15 W.B. 35 = 7 B.L.B. 136 = 2 Suth. 410 = 2 Sat. 623.

RAJAH NILMONEY SINGH DEO D. GOVERNMENT (1872) 2 Suth. 713 = 18 W. R. 321 = 12 B. L. B. 321

(Sir James W. Colvile). THAKUR DURRIAO SINGH v. THAKUR DAVI SINGH. (1873) 1 I. A. 1 (8) = 13 B. L. B. 165 = 3 Sar. 301 = B. & J's. No. 25 (Oudh).

ALI 2. RANEE SADHA BEBEE. (1875) 3 Suth. 82 (84).

——— (Sir James W. Colvile). DEENDVAL LAL v. JUG-DEEP NARAIN SINGH. (1877) 4 I. A. 247 (251) = 3 C. 198 (204) = 1 C. L. B. 49 = 3 Sat. 730 = 3 Suth. 468.

——(Sir Montague E. Smith). MAHARANI RAJROOP KOER v. SVED ABUL HOSSEIN.

(1880) 7 I. A. 240 (248) = 6 C. 394 (405) = 7 C. L. B. 529 = 4 Sar. 199 = 3 Suth. 816.

——(Lord Hobbouse). LACHMAN SINGH v. MUSSAMUT PUNA. (1889) 16 I. A. 125 (126)=16 C. 753 (755)= 5 8ar. 370.

| Haji Mowla (1891) 16 I. A. 59 (67 8) = 18 C. 448 (457) = 6 Sar. 19.

Fact-Finding of-(Contd.)

SECOND APPEAL-APPEAL FROM DECREE IN-FINDING OF FACT OF FIRST APPELLATE COURT IN-(Contd.)

-(Lord Hobbouse). MAHARAJAH SIR LUCHMESWAR SINGH BAHADUR P. SHEIKH MANOWAR HOSSAIN.

(1891) 19 I. A. 48 (53) = 19 C. 253 (259-60) = 6 Sar. 133.

-(Lord Shind,) SARAT CHUNDER DEY v. GOPAL CHUNDER LAHA. (1892) 19 I. A. 203 (206-7)= 20 C. 296 (302) = 6 Sar. 224.

-(Lord Hobbouse.) SRI MAHANT GOVIND RAO P. SITA RAM KESHO. (1898) 25 I. A. 195 (200) = 21 A. 53 (62) = 2 C. W. N. 681 = 7 Sar. 370.

-(Lord Watson.) LALA BENI RAM v. KUNDAN (1899) 26 L. A. 58 (63) = 21 A. 496 (502) = LALL 3 C. W. N. 502=1 Bom. L. R. 400=7 Sar. 523.

One of the objections to the view taken by the High Court is based on the ground that the learned Judges in entertaining the Second Appeals had no jurisdiction to set aside the decision of the District Judge on questions of fact, in respect of which he concurred with the court of first instance. This objection is not without force, but, in view of the fact that the learned Judges of the High Court have differed from the lower courts, not only in the estimate of the evidence, but also with regard to the inferences derivable from documents produced in the case, and other circomstances, their Lordships deem it expedient to deal with the appeals on their merits. (Mr. Amar Ali.) JAGDEO NARAIN SINGH D. BALDEO SINGH.

(1922) 49 I. A. 399 (402) = 2 P. 38 (41-2) = 32 M. L. T. 1=(1923) M. W. N. 361= 27 C. W. N. 925 = 36 C. L. J. 499 = 3 Pat. L. T. 605 = A. I. R. 1922 P. C. 272=71 I. C. 384= 45 M. L. J. 460.

-See C. P. C. of 1908-S. 100-PARTITION OF ESTATE PRIOR TO, ETC. (1927) 54 I. A. 196 (201) =

-(Fiscount Sumner.) TEJPAL JAMNA DAS F. EAR-NEST V. DAVID. (1928) 28 L. W. 204 = 32 C. W. N. 1146 = 111 I. C. 240 = 48 C. L. J. 415 =

A. I. R. 1928 P. C. 219 -In an appeal from the decree in a Second Appeal, the Privy Council has no jurisdiction to review or modify the findings of fact arrived at by the first appellate court. (Lord Tomlin.) RAJAH OF PITTAPUR P. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1929) 56 I.A. 223 = 52 Mad. 538 = 33 C.W.N. 725 = 27 A.L.J. 702=31 Bom. L. R. 866=6 O.W.N. 503= 30 L.W. 9=(1929) W.W.N. 442=50 C.L.J. 30= 117 I.C. 481 = A.I.R. 1929 P. C. 152 = 57 M.L.J. 64.

-Interference with-Onus of Proof-Error as to Finding based on.

In an appeal to the Privy Council from the decree in a Second Appeal, held that as all the Courts below had wrongly thrown the onus of proof upon the appellant instead of upon the respondent the finding of the first appellate court upon the question of fact involved in the case was not such a finding as could be binding upon an appellate court on a Second Appeal, and that it was therefore necessary for their Lordships to consider what was the true position. (Lord Atkin.) PEDDI REDDI JOGI REDDI D. CHINNABBI REDDI. (1928) 56 I. A. 6=52 Mad. 33=

49 C. L. J. 98 = 31 Bom. L. R. 264 = 114 I. C. 5= 33 C. W. N. 233=29 L. W. 86=(1929) M. W. N. 43= PRIVY COUNCIL-APPEAL-(Contd.)

Fact-Finding of-(Contd.)

SECOND APPEAL-APPEAL FROM DECREE IN-FINDING OF FACT OF FIRST APPELLATE COURT IN-(Contd.)

-Leave to appeal from-Application for-Time for making-Hearing of appeal-Application made at-Grant of-Conditions.

Where, on appeal to the Privy Council in a case heard by the High Court on special appeal it is desired to include in the appeal the decisions of the lower Courts on the facts, an application for special leave to do so should be made in due time; and though, where the justice of the case required it, special leave might be granted at the hearing of the appeal itself nunc pro tune, nothing but very special drcumstances ought to justify the granting of leave to appeal at so late a stage. GOLAM ALI v. KALLYKISHEN THA-KOOR. (1872) 12 B. L. R. 107 = 18 W. R. 299 = 2 Suth. 686=3 Sar. 164

-(Sir James W. Colvile.) THAKUR DURRIAO SINGH r. THAKUR DAVI SINGH.

(1873) 1 I. A. 1 (8.9) = 13 B. L. R. 165 = 3 Sar. 301 = R. & J's. No. 25 (Oudh).

-(Sir James W. Colvile.) SYUD MEER WAHID ALI P. RANEE SADHA BEBEE. (1875) 3 Suth. 82 (84).

-Leave to appeal from-Grant of, to do complete justice between parties. (Sir James W. Colvile.) RAJAH SAHIB PERHLAD SEIN P. BABOO BUDHOO SINGH.

(1869) 12 M.I.A. 275 (308) = 12 W. R. (P. C.) 16 = 2 B. L. R. (P. C.) 111 = 2 Suth. 225 = 2 Sar. 430.

SUBJECT-MATTER BELOW APPEALABLE VALUE

-No interference in case of, where dispute is as to ordinary matters of fact. (Lord Hobbouse.) THAKUR SHANKAR BUKSH D. BALWANT SINGH.

(1899) 27 I. A. 79=27 C. 333=4 C. W N. 208= 2 Bom. L. B. 596=7 Sar. 686.

TRIAL JUDGE-FINDING OF-CORRECTNESS OF-OBJECTION TO.

-Jurisdiction to entertain-Objection not taken in appeal to High Court. (Lord Robertson.) DHANUKDHARI SINGH P. MAHABIR PERSHAD SINGH.

(1907) 34 I. A. 164 = 34 C. 709 = 2 M.L.T. 193 = 6 C. L. J. 11 = 11 C. W. N. 739 = 9 Rom. L. B. 651 14 Bom. L. R. 1=9 Sar. 259=17 M. L. J. 353.

TRIAL JUDGE-FINDING OF-WEIGHT DUE TO.

-Sec APPEAL-EVIDENCE-WITNESSES-CREDI-BILITY OF-TRIAL JUDGE'S FINDING OF FACT BASED ON; AND PRACTICE-APPEAL-EVIDENCE-WITNESSES

The question is purely one of fact (viz., whether the will propounded by the appellant was genuine or a forger). and the appellant has to face the difficulty of inviting Judges who have not heard or seen the witnesses to overrule the decision of Judges who, after a prolonged and elaborate inquiry have arrived at the conclusion that they could not believe the evidence of the principal witnesses called in sup port of the will. (Lord Collins.) NOGENDRA NATH (1909) 13 C. W. N. 782= MITTER D. KUMIDINI DASI. 5 M. L. T. 384 = 3 I.C. 997

### Final decree-Appeal from.

-Interlocutory order-Error as to-Allowing appeal from final decree on ground of-Cotts in case of-Terms as to.

Appellant allowed costs of appeal from final decree, but disallowed costs of proceedings in Court below subsequent to interlocutory order on the grounds of (1) his not having A. I. B. 1929 P. C. 13=56 M. L. J. 165 (170). appealed from interlocutory order and (2) his conduct in

Final decree-Appeal from-(Contd.)

the subsequent proceedings not being satisfactory. (Sir James W. Colvile.) FORBES v. AMEEROONNISSA BEGUM. (1865) 10 M.A. 340 (361) = 5 W.R. (P.C.) 47

1 Suth. 621 - 2 Sar. 153.

——Interlectory order not appealed from—Questioning in appeal of—Permissibility. See APPEAL—INTERLOCU-TORY ORDER.

Review-Final decree in respondent's factor onAppeal from-Objection to decree in, on ground that it
went beyond review application-When not permitted.

On appeal to the Privy Council from the final decree made in favour of the respondent on review, the original decree being wholly against her, it was contended that the court below had been wrong in its procedure, because while the application for review related only to the immoveable properties, the decree made on review related to them and to the moveables also.

Held, that the objection was purely technical, and orghi

not to be yielded to (499).

There has been no surprise. The question was fully argued before the court below on ample notice to both parties. It has been fully argued here. The result of yielding to the objection might be to place the respondent at a very unfair disadvantage. She had a right to appeal to Her Majesty against the whole or any past of the original decree. She would not have lost that right of appeal even if she had limited her application for a review to the immoveable property. She was relieved from the necessity of appealing by obtaining a final decree in her favour as to the whole of the property, whether moveable or immoveable. If this objection were to prevail, there could be no final determination of the question as to the former or its merits (499-50). (Sir James W. Colvile.) BHUGWANDEEN DOORY P. MYNA BAEE. (1867) 11 M. I. A. 487=

#### 9 W. R. (P.C.) 23 = 2 Suth. 124 - 2 Sar. 327.

#### Finding of fact.

See Privy Council (1) Appril—Fact—Finding of and (2) Practice—Question of fact— Concurrent findings.

Full Bench of High Court—Answers adverse of— Questioning of. in appeal from favourable decree of Division Bench pursuant to Full Bench opinion.

Respondent's right of—Cross-appeal—Omission to file—Effect. See PRIVY COUNCIL.—APPEAL—CROSS-APPEAL—NECESSITY—FULL HENCH OF HIGH COURT.

(1876) 3 L A. 7 (27) = 1 C. 226 (245).

#### Puture rights-Declaration of.

Propriety. See HINDU LAW-WILL-FUTURE

#### Hearing of.

## EX PARTE HEARING.

- Appellant's duty in case of Onus on him.

Neither more nor less than at hearing where respondents appear. (Sir Richard Kindersley.) WISE 2. SUNDU-LOONISSA CHOWDRANEE. (1867) 11 M.I.A. 177 (181) =

7 W. B. (P. C.) 13=1 Suth. 667=2 Sar. 249.

Citation of authorities in—Duty of legal practitioner as to. See LEGAL PRACTITIONER.

JUDGMENT IN-Ex parte DECISION.

Disadvantage of Religious community - Rules regulating - Appeal involving question as to-Disadvantage peculiar in case of.

The ex parte hearing of an appeal is a disadvantage, and it is peculiarly so where questions are raised the determin. NECESSARY.

## PRIVY COUNCIL-APPEAL -(Contd.)

Hearing of-(Contd.)

EX PARTE HEARING -- (Contd.)

ation whereof depends, not so much upon the general law of property, as upon the rules—whether defined by writing, or to be inferred from evidence of long usage—that regulate a particular religious community (886). KASHI BASHI RAMLING SWAMI 7. CHITUMBERNATH KOOMAR SWAMEE. (1873) 2 Suth. 886 = 20 W.R. 217.

Daty of Privy Council in case of—Examination of case more closely and in greater detail. (1) (Local Romilly.) NUGENDER CHUNDER GHOSE 2. SRIMUTIV KANINEE DOSSEE. (1867) 11 M. I. A. 241 (2567) =

8 W. R. (P. C.) 17 - 2 Suth. 77 - 2 Sar. 275.

(2) (Lord Atkinton.) RAO KISHORE SINGH (MUSAMMAT GMIENABAL (1919) 12 L. W. 730 (731) = 15 N. L. R. 176-17 A. L. J. 1077=26 M. L. T. 494=24 C. W. N. 601=22 Bom. L. R. 507-53 I. C. 630-37 M. L. J. 562.

New point in—Permissibility—Facts and law applicable to them—Investigation of, necessary, Sic PRIVY COUNCIL—APPEAL—NEW POINT IN—PERMISSIBILITY —FACTS AND LAW, ETC. (1913) 40 I. A. 74 (85.6) 4 35 A. 227 (237-8).

Notice to respondent of—Service of—Mode of. See PRIVY COUNCIL—APPEAL—RESPONDENT—NOTICE TO. (1847) 4 M. J. A. 201 (214-5).

Notice to respondent of—Service in person of— Evidence as to—Absence of—Refusal of hearing on ground of. KONADRY VALABHA v. VALIA TAMBURATI.

Party not appearing at—Re-hearing of appeal at instance of. See PRIVY COUNCIL—APPEAL—RE-HEAR-ING OF—EX PARTE HEARING OF APPEAL.

Points not necessary for decision of case—Decision of—Impropriety of. (1) (Sir John Coloridge.) MUSSAMUT CHUNDRABULLEE DEBIA z. LUCKHEA DEBIA CHOWDRAIN. (1865) 10 M. I. A. 214 (216.7)—

5 W. B. P. C. 1=1 Suth. 602=2 Sar. 119.

(2) (Lord Chelmsford.) MAHARANEE SHIBESSOURFE DEBIA: MOTHODRANATH ACHARJO.

(1869) 13 M. I. A. 270 (274-5)= 13 W. R. (P.C.) 18= 2 Suth. 300 = 2 Sar. 528 = 15 B. L. R. 176 (Note).

NOTICE TO RESPONDENT OF-NECESSITY.

Service prior on him of notice of pending appeal— Effect. See PRIVY COUNCIL—APPEAL—RESPONDENT— NOTICE TO. (1896) 24 I. A, 49-19 A. 209.

#### Hypothetical rights-Determination of-Propriety.

Were this matter ordinary English litigation, of course no tibunal here would consider hypothetical rights, the exact character and extent of which could only be ascertained after the hearing of other pending litigation; but unwillingness to let litigants, who have entrusted their disputes to the Board for determination, from a place so far distant as India, be disappointed in receiving judgment, has led their Lordships to disregard the ordinary rules that are followed in these matters, and to hear the present appeals, notwithstanding the fact that is impossible to know the exact amount upon which they will operate (99). (Lord Buckmaster.) VENKATA ROW v. TULJARAM ROW. (1921) 49 I. A. 91=45 M. 928 (307):

(1921) 49 I. A. 91 = 45 M. 298 (307) = 26 C. W. N. 646 = 30 M. L. T. 272 = (1922) M. W. N. 392 = 20 A. L. J. 833 = 24 Bom. L. B. 1191 = 36 C. L. J. 319 =

4 U. P. L. B. (P. O.) 33 = A. I. B. 1922 P. O. 69 = 74 I. C. 765 = 43 M. L. J. 298.

- See also PRIVY COUNCIL-APPEAL-POINTS UN-NECESSARY.

Income Tax Act-Decision of High Court under.

-Appeal from - Right of. See PRIVY COUNCIL -APPEAL-RIGHT OF-INCOME-TAX ACT.

## Interlocatory application in.

-Maintainability-Application raising same question as that involved in appeal See PRIVY COUNCIL-APPEAL -DECREE IN-EXECUTION OF-PROCEEDINGS FOR.

(1903) 31 I. A. 64 = 27 M. 153.

### Interlocutory order.

-Appeal from-Right of. See PRIVY COUNCIL-APPEAL-RIGHT OF -INTERLOCUTORY ORDER.

-Error in--Keversal of final decree on ground of-Costs on-Terms as to. See PRIVY COUNCIL-APPEAL-FINAL DECREE - APPEAL FROM - INTERLOCUTORY ORDER.

-Questioning of, in appeal from final decree-Permissibility-Omission to appeal from interlocutory order. See APPEAL-INTERLOCUTORY GRDER.

#### Issues.

Construction put by parties in Courts below on-Claim inconsistent with-Privy Council appeal-Maintainability in. See LEGITIMACY-INHERITANCE.

(1907) 35 L. A. 41 (47) = 35 C. 232 (242).

-Court below-Issues abandoned in-Proof of-Opportunity for -- Grant of. See PRACTICE-ISSUES-ABANDONMENT OF. (1923) 50 I. A. 239 (243 4)= 50 C. 929 (934-5).

-Defect in-Reversal of decree on ground of-Prop riety-Parties and Court below treating issue as properly raised. See PRIVY COUNCIL-APPEAL-FACT FINDING OF-ISSUE. (1872) 18 W. B. 230.

-Failure to frame-Remand on ground of. See PRACTICE- ISSUES-FAILURE TO FRAME-REMAND ON GROUND OF. (1863) 10 M. I. A. 1 (135).

-Failure to frame-Reversal of decree on ground of-No surprise to aggrieved party. See PRACTICE-ISSUE-FAILURE TO FRAME - REVERSAL OF DECREE ON GROUND OF-NO SURPRISE, FTC.

(1906) 34 I. A. 27 (30-2, 36)=29 A. 184 (195).

-Parties not before Court-Issues affecting-Decision of-Propriety. See PRACTICE-ISSUE - PARTIES NOT BEFORE COURT.

-Pleadings-Court below-Point not raised in-Privy Council appeal-Maintainability for first time in-See PRIVY COUNCIL-APPEAL- PLEADINGS-ISSUE-COURT BELOW. (1875) 23 W. R. 412.

-Pleadings-Plea not embodied in-Issue as to- Exclusion of-Practice of Privy Council as to. See PRACTICE -ISSUE-FRAMING OF-PLEADINGS.

(1922) 50 I.A. 49 (57) = 47 B. 327 (334).

-Point which could have been raised under-Permissability for first time in Privy Council appeal of-Appellant's case in Privy Council-Point raised in, but not presented to courts below. See PRIVY COUNCIL -- APPEAL -- NEW POINT IN-PERMISSIBILITY-ESTOPPEL

(1920) 47 I. A. 239=48 C. 1 (21).

# Judges hearing - Death of one of, before judgment.

-Procedure in case of.

In this case Sir James W. Colvile died between the dates of the hearing of the appeal and of the delivery of the judgment, and the judgment was delivered by Sir Barnes DUNINDRONATH SANNVAL D. RAM-COOMAR GHOSE, (1881) 8 I. A. 65=7 C. 107 (113)= 10 C. L. B. 281 = 4 Sar. 213. PRIVY COUNCIL-APPEAL-(Contd.)

Judgment in.

ALTERATION OF.

-Jurisdiction. See PRIVY COUNCIL-APPEAL-RE-HEARING OF-ALTERATION OF JUDGMENT ON.

(1839) 2 M. I. A. 181 (215-6).

AUTHORITY OF.

-Colonies -- Authority in. See COLONIAL COURTS-ENGLISH DECISIONS.

(1927) A.I.R. 1927 P. C. 66 (69).

-Indian Courts-Authority as regards.

It is not open to the Courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see whether and how far the principle on which stress is laid applies to the facts of the particular care. Nor is it open to them, whether on account of "judicial dignity" or otherwise, to question its decision on any particular issue of fact. Any application for review of judgment on grounds permissible by law only lies to the Judicial Committee. (Mr. Ameer Ali.) MATA PRASAD v. NAGESHAR SAHAI.

(1925) 52 I. A. 398 (417) = 47 A. 883= 6 L. R. P. C. 195 = 3 O. W. N. 1 = 28 O. C. 352= 24 A. L. J. 1 = (1926) M. W. N. 83 = 43 C. L J. 51 = 13 O. L. J. 19 = A. I. R. 1925 P. C. 271 = 91 I.C. 370 = 50 M. L. J. 18.

-Privy Council - Authority as regards.

Actual decision binding on Privy Council but not reasons given for it. (Lord Dunedin.) BAIJNATH PRASHAD SINGH 2. TEJ BALI SINGH. (1921) 48 I. A. 195 (213)= 43 A. 228 (245) = 23 Bom. L. B. 654=

3 U. P. L. B. (P. C.) 35 = 29 M. L. T. 388 = (1921) M. W. N. 300 = 19 A. L. J. 317 =

2 P. L. T. 257 = 33 C. L. J. 388 = 60 I. C. 534 = 40 M. L J. 387.

-Authority only for what was necessary for the judgment. (Lord Dunedin.) RAJA BRIJ NARAIN RAI F. MANGLA PRASAD RAL. (1923) 51 I. A. 129 (137)= 46 A. 95=21 A. L. J. 934=

19 L. W. 72 - 33 M. L. T. (P. C.) 457= 28 C. W. N. 253 = A. I. R. 1924 P. C. 50= (1924) M. W. N. 68=1 P. L. R. 1924=

10 O. & A. L. R. 82 = 26 Bom. L. B. 500 = 5 Pat. L. T. 1=41 C. L. J. 232=2 Pat. L. R. 41= 10 O. L. J. 107 = 77 I. C. 689 = 46 M.L.J. 23.

CONFORMITY BETWEEN DECREE AND. -Necessity. See PRIVY COUNCIL ... APPEAL - DECREE IN-JUDGMENT.

ERRORS IN-RECTIFICATION OF. -Jurisdiction.

If by misprision in embodying the Judgments, error have been introduced, these Courts (the P. C. and the House of Lords) possess, by common law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in (216.) (Lord Broughtm.) RAJUNDER NARAIN RAE v. BIJAI GOVIND SINGH.

(1839) 3 M. I. A. 181=1 Moo. P. C. 117=1 Sar. 175.

#### EX PARTE DECISION.

-Scope and effect of-Re-opening of points decided expressly or by implication by-Permissibility.

The decision of their Lordsoips in an appeal heard of parte must stand as if all the arguments which the respondents, if present, could have raised upon the case had been addressed to them. The absent parties must bear the consequences of their own laches. It is impossible to allow the respondents to take advantage of their absence at the hearing in order to re-open any question which either was expressly decided, or might have been raised and determined on that appeal.

Juigment in -(Contd.)

EX PARTE DECISION-(Contd.)

It having been decided or parts by Her Majesty in Council on appeal that the plaintiff was entitled to maintain the suit, and the cause remanded to the Court of First Instance, their Lordships at the hearing of an appeal from the final decree in that suit, did not allow the responding in the prior appeal to take advantage of her absence at the hearing thereof, in order to re-open any question which was expressly decided, or might have been raised and determined on that appeal. (Sir James W. Colvile.) JUGGODUMBA DASSEE P. TARAKANT BANNERJEE.

(1879) 3 Suth. 604 = Bald- 212 - 6 C. L. R. 121.

Setting aside of Grounds - Azart Frond of Non-representation due to.

Where it appeared that by the fixed of his agent the respondent was not represented by counsel at the learing of an appeal to His Majesty in Council and in consequence of such non-appearance the appeal was heard at further and an order passed against the respondent, their Lordships discharged the as facts order and directed the appeal to be reheard. (Lord Parker.) RAM NARAYAN SINGH 2: ADHINDRA NATH MUKERJI. (1916) 44 I. A. 87

44 C. 388 = 21 M. L. T. 12 = 25 C. L. J. 121 = 15 A. L. J. 107 = (1917) M. W. N. 94 = 21 C. W. N. 383 = 19 Bom. L. R. 194 = 38 J. C. 932 = 32 M. L. J. 39.

#### REASONS GIVEN FOR.

Not binding on Privy Council. So: UNDER THIS SUB-HEAD—AUTHORITY OF—PRIVY COUNCIL—AUTHORITY AS REGARDS. (1921) 48 I. A. 195 (213)—43 A. 228 (245).

RECONSIDERATION OF - JURISDICTION - PRACTICE.

Party to decision—Stranger to it—Application by—Judicial Committee Act of 1833, S. 4—Reference under—Cases of—Distinction. Sw All cases collected under PRIVY COUNCIL—APPEAL—RE-HEARING OF.

RP-CONSIDERATION OF, ON EX PARTE APPLICATION.

Full argument—Judgment delivered after.

(Lord Macnaghten.) ISHWAR SHYAM CHAND JIN

2. RAM KANAI GHOSE. (1911) 38 L. A. 76 (79) =

38 C. 526 (536) = 15 C. W. N. 417 = 9 M. L. T. 448 
8 A. L. J. 528 = 13 Bom. L. R. 421 = 14 C. L. J. 238 =

(1911) 2 M. W. N. 281 = 10 I.C. 683 = 21 M. L. J. 1145 RESERVING OF—WRITTEN JUDGMENT—PRONOUNCING

Practice of—Law point involved in appeal. (Let d. Campbell.) Wise v. Kishen Koomar Bous.

(1847) 4 M. I. A. 201 (217).

WRITTEN JUDGMENT-PRONOUNCING OF.

Practice of Law point involved in appeal. (Lord Campbell.) WISE v. KISHEN KOOMAR BOUS. (1847) 4 M. I. A. 201 (217).

### Judgment under.

APPEAL—JUDGMENT UNDER—CONSENT TO.

(1925) 88 I. C. 54.

Onus on appellant to show. See APPEAL—APPELLANT—
JUDGMENT UNDER APPEAL.

Agreement of parties as to—Effect. See APPEAL—FACT
—JUEGMENT BELOW ON QUESTION OF.

(1928) 55 M. L. J. 248 (249).

## PRIVY COUNCIL -APPEAL-(Contd.)

Judgment under-(Contd.)

——Fact in—Statement of—Binding nature of. See APPEAL—FACT—STATEMENT AS TO, ETC.

(1837) 1 M. I. A. 420 and (1926) 4 R. 513.

Grounds several - Judgment based on Reversal of, on one of grounds, without expressing any opinion on other grounds - P. C. not deemed to assent to soundness of indement below on those grounds.

Where, having come to the conclusion that the decision appealed from must be reversed on one of the grounds on which it was rested, their Lordships abstain from expressing any opinion on the other grounds of that decision, they must not be held, in so doing, to give any authority thereby to that part of the decision below which they do not touch (122). (Lord Phillimere.) SECRETARY OF STAIL FOR INDIA 2. RAJA JVOTI PRASHAD SINGH DEO BARLADUR.

(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = A. I. B. 1926 P. C. 41 = 94 I. C. 974.

—High Court judgment—Reversal of—Grounds — Difference of opinion among Judges consituting Bench— Procedure on—Error as to—Reversal on ground of, not allowed, when judgment, as entered, is right on merits, (Level Justice Mellish.) MILLER v. BARLOW.

(1871) 14 M. I. A. 209 (229) = 2 Sar. 227 = L. R. 3 P. C. 733 = 8 Moo. P. C. (N.S.) 127.

 Incorrectness of Ones on appellant to show—Ridides - Proposinding of — Permissibility. No. BOUNDARY DISPUTE—PRIVY COUNCIL APPEAL IN—RIDDLES.

Meagreness of — Regretted, as a faller judgment would have prevented an idle appeal. (Lard Macnaughten.)
MUSSUMMAT DURGA CHOWDHRAIN 7. JAWAHIR
SINGH CHOWDHRI. (1890) 17 I.A. 122 (127)=
18 C. 23 (30) = 5 Sar. 560.

Merits—Judgment based upon though sustainable on technical ground not taken in Court below—Respondent's right to support judgment upon merits in case of.

In a suit for breach of an alleged contract for sea insurance, the defendants in the courts below tought out the case on the merits and did not rely upon the ground that the contract being in breach of the provisions of S. 7 of the Indian Stamp Act II of 1899 was unenforceable. On appeal to the Privy Council by the plaintiff, the objection based on S. 7 was taken and was sustained. The plaintiff asked that, in the event of the respondents succeeding upon that ground, they should not be allowed any costs.

Held that the respondents were entitled to have the judgment of the Board on the merits, and to have the appeal dismissed with costs, if they could support the judgment of the High Court upon the grounds on which it was given, viz., or the merits (129-30). (Lord Summer.) SURAJMULL NAGOREMULL 2. THE TRITON INSURANCE CO., LTD. (1924) 52 I.A. 126 = 52 C. 408 = 23 A. L. J. 105 = (1925) M.W.N. 257 = 6 L B. P.C. 66 =

27 Bom. L.R. 770=29 C.W.N. 893-A.I.R. 1925 P.C. 83=86 I.C. 545=49 M.L.J. 136.

——Mistakes in — Correction of—Duty of aggrieved party as to—Omission to have slip corrected—Plea of mistake in appeal in case of—Maintainability. Scr. JUDG-MENT—MISTAKE IN. (1926) 4 R 513 and (1927) 54 M.L.J. 651 (654).

——Point dealt with by—Raising in court below of— Presumption as to. See EVIDENCE ACT—S. 114, ILL. (e) —JUDGMENT. (1876) 4 I.A. 66 (72)= 2 C. 327 (332 3).

— Point of importance net mentioned in, though decided by first Court—Explanation for omission—Appellant's duty to furnish.

Judgment under-(Contd.)

Inference in case of, in absence of such explanation, is that appellate court agreed with court below. Propriety of. (Sir Montague E. Smith.) NARAVAN RAO RAMA-CHANDRRA PANT P. RAMABAI.

(1879) 6 J.A. 114 (119) = 3 B. 415 (420-1) = 6 C.L R. 162 = 4 Sar. 24 = 3 Suth. 617.

Reasons for-Record of-Necessity.

Instead of stating the grounds upon which the Zillah Judge arrived at that conclusion, he confines himself to alleging that as his opinion, and that he has no don't about it. He has not afforded to the court that assistance which it is entitled to expect, and which by the Regolations he is bound to offerd (503). (Lord Kingsdeson.) KHAJAH MOHAMED GOUNUR ALI KHAN P. ASHPUPOONISSA,

(1863) 9 M.I.A. 492 = 2 W R P.C. 13 = 1 Suth 519 = 2 Sar. 45. 46.

Statement in-Incorrectness of Plea of-Evidence necessary to support-Counsel-Abandonment of point by -Statement as to.

It appears that on the appeal to the High Court this point was mentioned in the notice of appeal, and the judgments say of it that the appellent's advocate "stated that he did not desire to press it," and so no more is said about it. Their Lordships think that they must accept this statement. It is true that the same learned gentleman included this point again in the present appellant's petition for leave to appeal to His Majesty in Council, which is dated on the very day on which the judgment of the High Court was given, but in the absence of any evidence that the judgment was erroneous on this point the appellant must accept it, and cannot raise here, by way of exception to the High Court's decree, a point which he elected not to advance for the High Court's determination. (Lord Sumuer.) KALYAN DAS D. MAORIUL ABMAD

(1918) 40 I. A. 497 (F02 3) = 22 C.W.N. 8F6 = 16 A.L.J. 693 = 5 P.L.W. 159 = 28 C.L.J. 181 = 8 L. W. 179=(1918) M.W.N. 535=24 M.L.T. 110= 20 Bom. L. R. 864 = 46 I.C. 548 = 35 M.L.J. 169

Reasons for-Record of and transmission to Privy Council of - Necessity for, under Letters Patent (Madras)

Necessity all the greater in an appeal coming before Privy Council ex farte. (Lord Justice Selwys). KATCHE KALYANA RUNGAPPA KALAKKA TOLA OPIAR P. KACHIVIJAYA RUNGAPPA KALAKKA TOLA ODIAR

(1869) 12 M I.A. 495 (502) = 11 W R. (PC) 33 = 2 B.L.R. (P.C.) 72 = 2 Suth. 206 = 2 Sar. 641.

-Reasons for-Transmission to Privy Council of-Necessity-Omission to do so at variance with role. Barnes Peacock). SHEIKH MUHAMMAD MUMTAZ AH. MAD v. ZUBAIDA JAN. (1889) 16 I.A. 205 (210)= 11 A. 460 (470) = 5 Sar. 433.

Jurisdiction-Absence of-Plea of.

-Maintainability of. See JURISDICTION-PLEA OF ABSENCE OF.

-Decision of High Court reversing court below and restoring Collector-Interference with -Conditions.

In an appeal under the Land Acquisition Act from the decision of the High Court which reversed the judgment of the Special Land Acquisition Judge and affirmed the award of the Collector, the appellant was unable to make out that there was any wrong application of principle by the High Court in rejecting the evidence of any expert on which the Special Judge chose to act, or that any important point in the evidence was overlooked or misapplied. Following the principles enunciated in L.R. 52 I A, 133 as governing their Lordships' Board in dealing with questions

## PRIVY COUNCIL-APPEAL-(Centd.)

Land Acquisition Act.

of that kind their Lordships declined to disturb the conclusion of the High Court. (Lord Temlin. AHIDHAR GHOSH D. SECRETARY OF STATE FOR INDIA IN COUN-(1930) 34 C. W. N. 877=59 M. L. J. 70.

-Appeal under-Compensation payable to owner of property acquired-Assessment by courts below of-Interference with. See (1) LAND ACQUISITION ACT OF 1894-S. 23—MARKET VALUE AND

-(2) Decision of High Court under-Appeal to Privy Council from-Right of-Scope of. See LAND ACQUISI-TION ACT OF 1894-S. 54.

### Land tenure-Nature and incidents of-Decision of Indian Courts on

-Disturbance of See TENURE-LAND TENURES-NATURE AND INCIDENTS OF.

(1871) 14 M.I.A. 247 (258).

#### Law in India-Notice of.

Duty to take.

No proposition is more clear than that this court is bound to take notice of what the law is in that country Their Lordships are bound to take rotice of it. and de ide it as well as they can, (Mr. Bacon Park.) SUMBHOOCHUNISER CHOWDERY 2. NARAINI DEBIA.

(1835) 5 W.R. (P.C.) 100=1 Suth. 25(28)= 3 Knapp. 55=1 Sar. 65.

#### Leave for.

#### APPLICATION FOR.

Filing of-Effect of-No stay of execution by reason of See Limitation Act of 1908-Art. 182-AP-PEAL FROM DECREE-LIMITATION FOR EXECUTION IN CASE OF-STARTING POINT OF-PRIVY COUNCIL AP-(1900) 27 I A. 197 (207)= PEAL FROM DECREE. 24 M. 1(12).

See LIMITATION ACT -Not equivalent to appeal. OF 1908-ART. 182-APPEAL FROM DECREE-LIMITA TION FOR EXECUTION IN CASE OF-STARTING POINT OF-PRIVY COUNCIL APPEAL FROM DECREF.

(1900) 27 I.A. 197 (207) = 24 M. 1 (12)

CERTIFICATE GRANTING-AMENDMENT OF, AT HEAR-

ING OF APPEAL. Permissibility-Certificate proceeding on erroreous view of judgment not being an affirming judgment-Objection taken at hearing of appeal to its competency on ground of invalidity of-Amendment of certificate to the effect that appeal involved a substantial question of law not permitted -Procedure proper for appellant was to have obtained certificate to that effect from court below. (Lord Date) RAJAH TASADDUQ RASUL KHAN P. MANIK CHAND

(1902) 30 I. A. 35 (40)=25 A. 109 (114)= 7 C. W. N. 177=5 Bom. L. B. 100=8 Sar. 337.

GRANT OF.

value, (Lord Chelmsford.) MUTHUSAWMY JAGAVERA YETTAPA NAVAKER D. VENCATESWARA YETTIA

(1865) 10 M. I. A. 313 (320)=1 I. J. N. S. 2065

-High Court-Grant by under S. 39 of Letters Patent -Second Appeal - Appeal from decree in-Subject-matter far below appealable value—Leave granted, on grounds of (1) importance of question raised, and (2) case being a representative ore—Propriety of grant of leave assured by Privy Correil. (Sir James W. Celvile.) HURRYHUR MOCKHOPCDHYA D. MATUB CHUNDER BARCO.

(1871) 14 M I A 152 (163)= 20 W. B. (P. C.) 450=715 8 B. L. R. 566=2 Suth, 484=3 Sar. 718 352

Leave for-(Contd.)

GRANT OF-(Contd.)

Privy Conneil - Jurisdiction-3rd and 4th Wm. IV.
c. 41-Powers under-Matter not an appealable griciance
under charter of Supreme Court.

In this case the appellants obtained leave from the Supreme Court of Bombay to appeal against an order of that court relating to the admission of Solicitors and Attorneys and against the admission of the Respondent as an Attorney or solicitor of that court. On the appeal coming on to be heard, the Privy Council were of epinion that it not being in the nature of a judgment or determination, it was not an appealable grievance within the Charter, but that under the general powers of the 3rd and 4th Wm. IV, c. 41, and the terms of the reference, it was competent to them to advise Her Majesty to grant the appellants leave to appeal, which was accordingly done (434.) (Dr. Lukington.) MORGAN v. LFECH. (1841) 2 M. I. A. 428 and MORGAN v. LFECH. (1841) 2 M. I. A. 428 and Moo. P. C. 368 = 2 Suth. 428 = 1 Sar. 215.

Sudder Adawlut—Application to, for leave to appeal from its decretal order—Rejection by that court of, on ground of its having been presented out of time—Application to Privy Council for leave in case of—Grant of leave on terms—Quare whether the case was one in which an appeal could be regularly brought before Privy Council. (Vice-Chancellor Knight Bruce.) KIEKLAND v. MODEE PESTONJEE. (1843) 3 M. I. A. 220 (228) = 1 Sar. 270.

in Council of 10th of April, 1838-Effect.

By the Order in Council of the 10th of April. 1838, the Sudder Courts are not to give leave to appeal unless the petition be presented within the time limited by the Order, and unless the value of the matter in dispute in such appeal shall amount to the sum of Rs. 10.000, at least; importing, therefore, that leave to appeal is to be given in cases where the petition is presented within the prescribed period, and the value of the matter in dispute in the appeal amounts to the specified sum of Rs. 10.000 (167-8). (Lord Juntice Turner.) MAHARAJAH SUTFFSCHUNDER ROY 2. GUNESHCHUNDER. (1860) 8 M. I. A. 164

13 Moo. P. C. 469 = 3 W. R. 14 = 1 Suth. 399 -- 1 Sar. 741.

Supreme Court of Madras—Jurisdiction under Charter of 1800 of—6 months from date of decree—Admission of appeal after. (Lord Giffard.) EAST INDIA COMPANY p. SYED ALLY. (1827) 7 M. I. A. 555 (565-6) = 1 Sat. 867.

Time allowed for applying—Expiry of—Application made after—Decree of Court below perfectly acted on —Grant of leave in case of.

Leave to appeal to Privy Council given under circumstances, though the time limited by the Bombay Charter had expired, and the decree of the court below sanctioning the sale of real estate, the subject of the suit, had been partially acted on; the petitioner undestaking not to disturb the possession or title of the purchasers of any part of the property actually sold, to give security for costs, and to abide by any order the Privy Council might think fit to make, touching the matters in dispute. (Lord Cranworth.)

MUSADEE MAHOMFD CAZUM SHERAZFE. In re.

(1852) 5 M. I. A. 196=8 Moo. P. C. 90=1 Sar. 416.

LETTERS PATENT (BOMBAY)-CL. 40.

Court. See PRIVY COUNCIL—APPEAL—RIGHT OF—
INTERLOCUTORY ORDER—APPEAL FROM—IFITERS
PATENT (BOMBAY.) (1923) 50 I. A. 212 (218.9) =

# PRIVY COUNCIL—APPEAL—(Contd.) Legal Practitioner.

Appellants separate—Counsel two for each set of—
Arguments by—Replies separate—Allowance of, owing to
conflict of interest. See LEGAL PRACTITIONER—PRIVY
COUNCIL APPEAL. (1842) 3 M. I. A. 138 (152).

Criminal Offence—Conviction of—Removal from roll on ground of—Order of—Appeal from—Right of. See LEGAL PRACTITIONER — MISCONDUCT — CRIMINAL OFFENCE—CONVICTION OF—REMOVAL FROM ROLL ON GROUND OF—PROCEEDINGS FOR.

(1899) 26 I. A. 242 = 22 A. 49.

Eminent practitioners—Plea not raised by—Soundness of—Presamption as to. See LEGAL PRACTITIONER.

(1923) 51 I. A. 129 (138) = 46 A. 95.

Ex parte hearing of appeal—Citation of authorities in—Duty as to. See LEGAL PRACTITIONER—APPEAL—EX PARTE HEARING OF. (1916) 44 1. A. 30 (34) =

Misconduct—Punishment for—Discretion of Courts below as to—Interference with. See Legal Practitioner—Misconduct—Punishment for—Discretion of etc.

—Misconduct of—Repression of—Indian Court's power of—Weakening of—Reluctance as to. See LEGAL PRACTITIONER—MISCONDUCT—REPRESSION OF.

(1871) 14 M. I. A. 267 (288).

— Misconduct—Suspension—Order of Appeal from
—Special leave for—Grant of—Application made after expery of period of suspension. See LEGAL PRACTITIONER
—MISCONDUCT—SUSPENSION—ORDER OF.

(1879) 7 I. A. 6-2 A. 511.

—Respondents in same interest—Appearance for, and engagement by—Procedure in case of. See LEGAL PRAC-TITIONER—PRIVY COUNCIL APPEAL.

(1872) 18 W. R. 163.

—Suspension of—Order of—Appeal from—Special leave for—Order based on pure finding of fact and within jurisdiction of court below—Doubt as to correctness of court below—Grant of leave on ground of. See LEGAL PRACTITIONER—MISCONDUCT—SUSPENSION—ORDER FOR. (1879) 7 I. A. 6=2 A. 511.

Vakil—Admission to practise as agent of. See LEGAL PRACTITIONER—VAKIL.

(1888) 16 I. A. 163-16 C. 636.

### Limitation-Plea of.

Lords Commissioners of the Treasury-Decisions of.

- Jurisdiction as a Court of Appeal from.

Memorials to the King in Council complaining of, and appealing against, a scheme for the distribution of part of the booty taken in the war in the Deccan, which had been approved of by the Lords Commissioners of the Treasury, having been referred to a Committee of Council, they, without hearing the Memorialists upon the merits of their cases, advised His Majesty to refer the consideration of them to the Lords Commissioners of the Treasury.

Semble, that the Privy Council will not exercise jurisdiction as a Court of Appeal from the decisions of the Lords Commissioners of the Treasury, as to grants by the Crown of property accruing to it by virtue of its prerogative.

ARMY OF THE DECCAN. (1883) 2 Knapp. 103=

1 Sar. 21.

### Mahomedan Law-Question of.

A. 212 (218 9) = Concurrent decisions of Indian Courts on-Interfer-

Mahomedan Law-Question of-(Contd.)

Decision not to be interfered with on any light grounds. (Lord Kingsdown.) MOONSHEE BUZUL-UL-RAHEEM v. LUTEEFUT-OON-NISSA.

> (1861) 8 M. I. A. 378 (395) = 1 W. B. 57 = 1 Suth. 445 = 1 Sar. 794.

### Merits substantial of.

-Technical objections not allowed to shut out. See PRIVY COUNCIL-APPEAL-OBJECTION IN-TECHNI-CAL OBJECTION. (1836) 1 M. I. A. 175 (288-9).

#### Minor.

-Compromise of appeal affecting. See PRIVY COUN-CIL--APPEAL-COMPROMISE OF-MINOR.

-Guardianship of-Scheme of-Decision of Indian Courts as to-Interference with Ser HINDU LAW-MINOR-GUARDIANSHIP OF-SCHEME OF.

(1871) 14 M I. A. 309 (329).

-Mortgage deed executed by-Cancellation of, in suit of minor-Money advanced under mortgage-Restoration to mortgagee of-Provision for-Discretion of Courts below as to-Interference with. See CONTRACT-MINOR-MORTGAGE DEED EXECUTED BY.

(1903) 30 I. A. 114 (125) - 30 C. 539 (549).

-Next friend's authority to sue on behalf of-Objection to-Maintainability for first time of. See C. P. C. OF 1908, S. 99-MINOR. (1883) 11 I. A. 26 (27-8)= 10 C. 626 (634).

### Mortgage.

-Conditional sale-Mortgage not being a mortgage by-Plea of. See MORTGAGE-CONDITIONAL SALE-MORTGAGE BY-PLEA OF MORTGAGE NOT BEING A

(1928) 55 M. L. J. 292 (295).

- Equitable mortgage-Proof of-Decision of Indian Courts as to-Interference with. See MORIGAGE-EQUI-TABLE MORTGAGE-PROOF OF.

### Nawab of Surat Act XVIII of 1848.

-Distribution of Nawab's property by Governor of Bombay in Council pursuant to-Petition to Privy Council against-Maintainability. See BOMBAY ACTS - NAWAB OF SURAT ACT XVIII OF 1848-DISTRIBUTION, ETC.

(1854) 5 M. I. A. 499 (509).

### New point in - Permissibility.

ACCOUNTS-COMMISSIONER FOR TAKING.

-Report of-Objection to. See ACCOUNTS-COM-MISSIONER FOR TAKING-REPORT OF.

(1874) 2 I. A. 34.

ACCRETION -GRADUAL ACCRETION.

-Question as to. See ALLUVION AND DILLUVION-ACCRETION-GRADUAL ACCRETION-QUESTION AS TO. (1921) 49 I. A. 67 (73-4) = 45 M. 207 (214).

ALTERNATIVE CASE WHICH MIGHT HAVE BEEN, BUT WAS NOT, RAISED IN COURTS BELOW.

- (Sir James W. Celvile.) SREEMUTTY DOSSEE D. RANEE LALUNMONEE. (1869) 12 M. I. A. 470 (475-6) = 11 W. R. P. C. 27 = 2 B. L. R. P. C. 64 = 2 Suth. 199 = 2 Sar. 433.

-See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY-MORTGAGE-MORTGAGEE NAMED IN. (1870) 13 M. I. A. 346 (351-2).

-See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY-LEGITIMACY OF PLAINTIFF.

-See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY--POSSESSION-DECREE UNCONDITION-AL FOR. (1913) 40 I. A. 105 (111) = 35 A. 211 (220-1).

### PRIVY COUNCIL-APPEAL-(Contd.)

New point in-Permissibility-(Contd.)

APPELLATE COURT-POINT DECIDED ADVERSELY BY FIRST COURT AND NOT RAISED BEFORE

-See JURISDICTION PLEA OF ABSENCE OF-PRIVY COUNCIL APPEAL. (1869) 13 M. I. A. 104 (108-9)

-See SUCCESSION CERTIFICATE ACT OF 1860, S. 3—CERTIFICATE UNDER—ABSENCE OF.

(1873) 19 W. B. 315.

-Vendor-Suit for balance of purchase money and for damages for huyer's refusal to take delivery of balance under contract-Purchaser alleging breach by vendor and claiming damages for failure to deliver balance of goods under contract-Admissibility of purchaser's claim for damages as counter-claim or set-off-Point as to. (Sir Walter Phillimore.) PIERCE LESLIE P. GIRIAH CHETTIAR. (1917) 46 I. C. 576=22 C. W. N. 282 -(Lord Sumner.) KALYAN DAS r. MAQBUL

(1918) 40 A. 497 (502)= AHMAD. 22 C. W. N 866=16 A. L. J. 693=5 P. L. W. 159= 28 C. L. J. 181 - 8 L. W. 179 - (1918) M. W. N. 535 -24 M. L. T. 110 = 20 Bom. L.R. 864 = 46 I.C. 548 = 35 M. L. J. 169.

AWARD UNDER PUNCHAYAT REGULATION VII OF 1827-FINALITY OF.

Objection to want of. See BOMBAY REGULATIONS -PUNCHAYAT REGULATION VII OF 1827-AWARD (1855) 6 M. I. A. 134 (163). UNDER.

BOMBAY PUNCHAYAT REGULATION VII OF 1827-AWARD UNDER-FINALITY OF.

Objection to want of. See BOMBAY REGULATIONS -PUNCHAYAT REGULATION VII OF 1827- AWARD (1855) 6 M. I. A. 134 (163). UNDER.

BURMESE BUDDHIST LAW-WIFE-MAINTENANCE

-Suit against husband for-Divorce by Conduct-Plea by husband of. See BURMESE BUDDHIST LAW-(1884) 14 I. A. 109 (120) = WIFE-MAINTENANCE, 10 C. 777 (785).

C. P. C. OF 1908, O. 21, R. 32-EXECUTION OF DECREE UNDER.

-Application for-Objection to, on ground of failure to give opportunity to obey decree. See C. P. C. of 1908 O. 21, R. 32-EXECUTION OF DECREE UNDER-APPLI-CATION FOR-OBJECTION TO, ETC.

(1894) 21 I. A. 89 (92)=21 C. 784

COMPANIES ACT VIII OF 1913, S. 153-SCHEME UNDER.

-Plea that a scheme is not a -Courts below proceed ing on footing that scheme was one under S. 153. See COMPANIES ACT OF 1913, S. 153-SCHEME UNDER A. I. R. 1929 P. C. 256. PLEA, FTC.

### CUSTOM.

-Ghatwali lands—Alienability of—Local custom of See PRIVY COUNCIL—APPEAL—NEW POINT—PERMISSI-BILITY-GHATWALI LANDS. (1923) 51 I.A. 37 (59-60)=

-Plea of-Averment and proof of precise custom set up-Absence of-Plea not permitted. (Lord Dunedin.) LAJWANTI P. SAFA CHAND.

(1924) 51 I. A. 171 (176) = 5 Lah. 198= 22 A. L. J. 304 = 34 M. L. T. 87=

(1924) M. W. N. 442=20 L. W. 10=2 P. L. B. 245= 26 Bom. L. R. 1117=28 C. W. N. 960=6 P. L. 7.1= 80 I. O. 788 = A. I. R. 1924 P. O. 191 47 M. L. J. 885.

New point in-Permissibility-(Contd.)

DEED-NATURE AND EFFECT OF.

-Plea as to-Investigation of tarts necessary. See HINDU LAW - RELIGIOUS ENDOWMENT-MUTT-MOHUNT OF-OFFICE OF - DEED BY REIGNING MOHUNT, ETC. (1929) 57 M. L. J. 771.

DEFENCE-FALSE DEFENCE SET UP IN COURTS BELOW.

-Defence true likely to be barred by rec judicata not raised-Raising of. in Privy Council appeal. (Sir James W. Coltrile.) SREEMUTTY DOSSEF P. RANFE LALUNMONEE. (1869) 12 M. I. A. 470 (476) = 11 W. R. P. C. 27 =

2 B. L. R. P. C. 64 = 2 Sath. 199 = 2 Sar. 453.

DOCUMENT-CONSTRUCTION.

Question of, See Privy Council—Appeal—New POINT IN-PERMISSIBILITY-LAW-POINT OF-DOCU-MENT. (1922) 32 M. L. T. 25 (P. C).

EJECTMENT SUIT-DECREE CONDITIONAL ON PAYMENT OF BINDING DEETS.

-Claim to-Allowance of. See Possession-Un-CONDITIONAL DECREE FOR. (1913: 40 I. A. 105 (111) = 35 A. 211 (220-1)

ESTOPPEL-FEEDING GRANT BY-DOCTRINE OF-APPLICABILITY.

Point which was not presented to courts below but which could have been raised under the issues framed and which was raised in appellants' case-Point allowed to be raised but not decided by Privy Council—Remit of case for trial on that point alone. (Lord Buckmaster.) THAKDHARI LAL v. KHEDAN LAL. (1920) 47 I.A. 239 - 48 C. 1 (21) --25 C. W. N. 49 - 32 C. L. J. 479 - 13 L. W. 161 -

(1920) M. W. N. 591 = 28 M. L. T. 224 =

18 A L J 1074-2 P. L T. 101-22 Bom. L. R. 1319-57 I. C 465-39 M. L. J. 243.

EXECUTION PROCEEDING—ORDER IN—APPEAL FROM. Right of-Objection to. See C. P. C OF 1908 S. 47-EXECUTION PROCFEDING-ORDER IN-APPEAL FROM-RIGHT OF-OBJECTION TO.

(1894) 21 I. A. 71 (80) = 17 M. 343 (354 5).

FACIS-INVESTIGATION OF, NECESSARY.

-See BENGAL REGULATIONS-REGULATION XIV OF 1793—REVENUE—ARREAR OF—SALE FOR.

(1837) 1 M. I.A. 383 (409).

-(Sir James W. Celvile.) KOOFR GOOLAB SINGH v. RAO KURUN SINGH.

(1871) 14 M. I. A. 176 (194 5) = 10 B. L. R. 1=

2 Suth. 474 = 2 Sar. 722. -See T. P. ACT. S. 53-FRAUDULENT TRANSFIR-

PLEA OF-P. C. APPEAL. (1917) 34 M. L. J. 97 (100). -See HINDU LAW-WIDOW-ACCUMULATIONS OF -ACCRETION TO HUSBAND'S ESTATE OR ABSOLUTE

PROPERTY OF WIDOW-QUESTION AS TO. (1918) 46 I.A. 64 (70-1) = 42 M. 581 (588 0).

(Lord Atkinson.) SACHINDRA NATH ROY P. MAHARAJ BAHADUR. (1921) 48 I.A. 335 (347-8) = 49 C. 203 (217-8) = L B. 3 P. C. 174 =

A.I.B 1922 P.C. 187 = 30 M.L.T. 96 = 28 C. W. N. 859 = 4 U. P. L. B. P. C. 57 = 74 I. C. 360.

-See HINDU LAW-INHERITANCE-LIGITIMACY OF BROTHERS. (1892) 19 I. A. 179 (183)=

15 M. 503 (510-1), -See PRIVY COUNCIL-APPEAL-NEW POINT

PERMISSIBILITY-FACTS AND LAW, ETC.

PRIVY COUNCIL-APPEAL-(Contd.)

New point in-Permissibility-(Contd.)

FACTS-INVESTIGATION OF, NECESSARY-(Contd.)

-See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY—GHATWALI LANDS.

(1923) 51 I. A. 37 (59 60) - 3 Pat. 183.

-See HINDU LAW-RELIGIOUS ENDOWMENT-MUTT-MOHUNT OF-OFFICE OF-DEED BY REIGNING. EIC. (1929) 57 M L J, 771.

-See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY-LAW-POINT OF-PURE POINT OF LAW.

-See Limitation-Plea of Prive Council APPEAL.

> FACTS AND LAW APPLICABLE TO THEAL-INVESTIGATION OF, NECESSARY.

-Exparte hearing of appeal. (Six John Edge.) LALA SONI RAM r. KANHAIYA LAL.

(1913) 40 I. A. 74 (85-6) = 35 A. 227 (237 8) = 17 C. W. N. 605 = 11 A. L. J. 359 = 13 M. L. T. 437= (1913) M. W. N. 470 = 17 C. L. J. 488 =: 13 Bom. L. R. 489 = 19 I. C. 291 = 25 M. L. J. 131.

FRAUD.

-Plea of. See PRACTICE-FRAUD-PILLA OF-PRIVY COUNCIL APPEAL.

FRAUDULENT TRANSPER.

-Plea of. See TRANSFER OF PROPERTY ACT, S. 53 -FRAUDULENT TRANSFER-PLEA OF-PRIVY COUNCIL APPEAL. (1917) 34 M. L. J. 97 (100).

GHATWALI LANDS-ALIENABILITY OF.

-Local custom of-Question as to.

At the last stage of the argument the respondent's counsel raised the contention that Handwa is in any case locally ia Kharakpur, and that, by a well-established local custom now always recognised. Kharakpur ghatwali lands are alienable. The point was put solely as one of local custom. Their Lordships might well have refused to entertain this contention, for it involves important considerations of fact as well as of law, and it had not been determined or even discussed in the Courts in India. It was, however, said to rest on a series of decisions of long standing, and their Lord ships, loth to appear to cast any doubt upon such authori-ties by refusing to take account of them on the ground of a rule of procedure, have determined, under the circumstances, to deal shortly with this contention. (Lord Sumner.) NARAYAN SINGH D. NIRANJAN CHAKRAVARTHI

(1923) 51 I. A. 37 (59 60) = 3 Pat. 183 = A. I. B. 1924 P. C. 5 = 28 C. W. N. 351 = 34 M. L. T. 27=5 Pat L. T.171=79 I. C. 825.

HEIRSHIP OF PLAINTIFF-PROOF OF-DEFICIENCY IN.

-Objection to.

Not allowed. (Mr. Justice Bosanquet.) COLLECTOR OF KAIRA D. MODEE PESTON-JFE

(1838) 2 M. I. A. 37 (51-2) = 3 Moo. P. C. 68 = 1 Sar. 215.

HINDU JOINT FAMILY.

-Father-Decree against-Sale in execution of-Interest passing under-Question as to. See HINDU LAW -JOINT FAMILY-FATHER-DECREE AGAINST-EXE-CUTION OF-SALE IN-INTEREST PASSING UNDER-QUESTION AS TO-PRIVY COUNCIL APPEAL.

(1917) 34 M. L. J. 97 (101-2)

-Manager of-Decree against-Binding nature of, on (1818) 40 I. A. 74 (85.6) = 35 A. 227 (238.9). other members—Question as to. See HINDU LAW-JOINT

New point in-Permissibility-(Centd.)

HINDU JOINT FAMILY-(Contd.)

FAMILY - MANAGER -- DECREE AGAINST -- BINDING NATURE OF, ETC.

(1927) 54 I. A. 122 (125) = 51 B. 450.

-Manager-Mortgage by-Suit to enforce-Personal decree against manager in-Claim to. See HINDU LAW-JOINT FAMILY-MANAGER-MORTGAGE BY-SUIT TO ENFORCE-PERSONAL DECREE, ETC.

(1925) 47 A. 459.

HINDU LAW-INHERITANCE-LAW OF.

-Point on, peculiar and unfamiliar and varying with the caste of the persons concerned. See HINDU LAW-INHERITANCE-LAW OF-POINT ON PECULIAR AND (1892) 19 I. A. 179 (183) = 15 M. 503 (511).

HINDU LAW-REVERSIONER REMOTE-WIDOW.

-Adoption by-Suit to set aside-Maintainability of, on ground of conduct of neater reversioners precluding them from suing-Plea of. See HINDU LAW-REVERSIONER -REMOTE REVERSIONER-WIDOW-ADOPTION BY SUIT TO SET ASIDE-NEARER REVERSIONERS.

(1880) 8 I. A. 14 (23) = 6 C. 764 (773).

HINDU WIDOW-ACCUMULATIONS OF.

-Accretion to husband's estate or absolute property of widow-Question as to. See HINDU LAW-WIDOW-ACCUMULATIONS OF-ACCRETION TO HUSBAND'S ESTATE OR ABSOLUTE PROPERTY OF WIDOW-(1918) 46 I. A. 64 (70-1) = QUESTION AS TO. 42 M. 581 (588-9).

INHERITANCE--LEGITIMACY OF PLAINTIFF.

-Claim to inheritance based in courts below on-Illegitimacy of plaintiff-Claim in Privy Council appeal on basis of. See Under this sub-head LEGITIMACY OF PLAINTIFF.

ISSUES FRAMED-POINT WHICH COULD HAVE BEEN RAISED UNDER.

Point not presented to courts below, though raised in appellant's case in Privy Council. See PRIVY COUNCIL-APPEAL-NEW POINT IN-PERMISSIBILITY-ESTOPPEL. (1920) 47 I. A. 239 = 48 C. 1 (21).

JAINS-INHERITANCE-CUSTOM OF.

-Applicability of-Plea of-Applicability of Mitakshara-Admission in courts below of. See JAINS-LAW APPLICABLE TO-HINDU LAW - CUSTOM-INHERIT-ANCE. (1878) 6 L A. 15 (30) = 4 C. 744 (751-2).

JURISDICTION.

-Irregular exercise of-Plea of. See JURISDICTION. -Plea of absence of. See JURISDICTION-PLEA OF ABSENCE OF-PRIVY COUNCIL APPEAL.

LAKHIRAJ LANDS-REVENUE-ASSESSMENT TO.

-Government's right to-Limitation-Bar of-Plea of. See LAKHIRAJ LANDS-REVENUE-ASSESSMENT TO -GOVERNMENT'S RIGHT OF

(1849-50) 4 M. I. A. 466 (509-10).

LAND TENURE-INDIAN LAND TENURE.

-Complicated question of.

Courts of Final Appeal-whether it be the House of Lords or this Board-have long established it for themselves as a principle of wisdom and prudence that they should be very chary of entertaining an argument which has not been sifted in the courts below; and if this be true as a general rule, it is especially true when the question to be decided concerns the diversified and complicated Indian law as to PRIVY COUNCIL-APPEAL-(Contd.)

New point in-Permissibility-(Contd.)

LAND TENURE-INDIAN LAND TENURE-(Contd.) tenure of land (107). (Lord Phillimore.) SECRETARY OF STATE FOR INDIA 2. RAJA JYOTI PRASHAD SINGH DEO BAHADUR. (1926) 53 I. A. 100=53 C. 533= 30 C. W. N. 745 = 24 A. L. J. 761 = A. I. R. 1926 P. C. 41=94 L C. 974

LAST MOMENT-POINT NOT SUGGESTED TILL

-Not entertained. (Lord Sinha.) SECRETARY OF STATE FOR INDIA :. GIRIJABAI.

(1927) 54 I.A. 359 (367-8)=51 B. 957= 39 M.L.T. 463 = 29 Bcm. L. B. 1503 = 46 C.L.J. 429 = A I.R. 1927 P.C. 238=53 M.L.J. 431.

LAW-POINT OF.

-Document-Construction of-Facts admitted or

proced-Point upon.

When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient, in the interests of justice, to entertain the plea. This is based upon the general principle upon which a tribunal of last resort exercises in the public interest the jurisdiction conferred upon it (35-6). (Lord Atkinson.) YORKSHIRE INSURANCE CO., LTD. P. THOMAS BRAINE.

(1922) 32 M.L.T. 25 (P.C.)

-Facts-Point depending upon. See PRIVY COUN-CIL-APPEAL-NEW POINT IN-PERMISSIBILITY-LAW -POINT OF-PURE POINT OF LAW-FACTS.

(1927) 54 I. A. 122 (125)=51 B. 450.

-Issues framed-Important point which could have been raised under, but which was not presented to courts below. See PRIVY COUNCIL-APPEAL-NEW POINT-PERMISSIBILITY-ESTOPPEL-FEEDING GRANT BY.

(1920) 47 I. A. 239=48 C.1(21)

-Mistake in.

When parties before their Lordships allege that a mistake has been made in point of law, if they have not raised that question in the court below, although it is certainly open to them to raise it before the Privy Council, yet their Lordships ought to be very certain, indeed, that the Judge really has made the mistake imputed to him, and that the decision in fact is attributable to such mistake (164). Ph HALWAN SINGH P. MAHARAJAH MOHFSHUR BUKBSE.

(1871) 9 B.L.R. P.C. 150=16 W.B. P.O. 5= 2 Sar. 683=2 Suth. 442

-Pleadings-Facts stated in-Point raised by, but not argued below-Raising of, permissible in certain case -Rule precise for such cases cannot be laid down. (Led Hobbouse.) GAJAPATI RADHIKA P. VASUDEVA SANTA (1892) 19 I.A. 179 (182-3)= SINGARO. 15 M. 503 (510·1)=6 Sar. 218

-Pure point of late-Point depending upon facts distinction.

Nobody is ever precluded from raising a point of law, except where there are some other considerations which would make it unfair that he should raise it. Where the point is not a pure point of law and depends very largely upon the facts, it cannot be permitted to be raise for the first time in an appeal to the Privy Council (12) (Lord Phillimore., LINGANGOWDA v. RASANGOWDA

(1927) 54 I.A. 122=51 B. 450=25 A L.J. 519= 4 O.W.N. 424 = 101 I.C. 44 = 31 O.W.N. 570= 25 L.W. 789=29 Bom. L. B. 848=45 O.L.J. 504= 8 Pat. L.T. 462=A. I. B. 1997 P. 0. 56

58 M. L. J. 478

New point in-Permissibility-(Contd.)

LAW-POINT OF-(Contd.)

-Pure point of law-Permissibility of-Rule-Exception.

There may have been occasions when the Board have entertained an argument on a pure question of law, although it has not been presented in the lower Courts, when all the facts on which the contention depended had been definitely ascertained, but the objection to doing so in the present

case goes very deep.

The appellant, the plaintiff in the suit, raise! for the first time before the Privy Council the contention that an assessment under the Madras Encroachment Act of 1905 was leviable only on the actual occupant of the land encroached upon, and could not be levied upon a person in the position of the appellant, viz., a lessor who had granted leases of the land under the bona fide belief that it formed an accretion to his estate. That contention was not put forward in the Courts below. On the other hand, the whole controversy between the appellant and his predecessor-in-interest on the one hand and the Government on the other which had preceded the actual imposition of the penal assessment proceeded upon the admission or tacit assertion, of the appellant that he was in occupation of the lands, or, at all events that he took upon himself the burden of vindicating the action of his own lessees or sub-lessees in cultivating it. The result of the position so taken up by the appellant was that the Government had no opportunity of considering upon whom the notice of assessment which they ultimately sent to the appellant should have been given, and upon whom the penal assessment should have been levied.

Held, that it was too late for the Board to entertain the contention put forward (68-9). (Lord Salvesen.) MAHA-RAJA OF VIZIANAGRAM P. SECRETARY OF STATE FOR INDIA IN COUNCIL-(1926) 53 I. A. 64 = 49 M. 249 =

43 C. L. J. 378 = 94 I. C. 501 = 28 Bom. L. R. 865 = 24 L. W. 9 = (1926) M. W. N. 589 = A. I. R. 1926 P. C. 18 = 50 M. L. J. 391 (395).

### LEASE-RENT DUE UNDER.

-Apportionment of, on ground of deficiency in extent -Lessee's right of-Bar of, by reason of lessee's knowledge of defect in title at time of taking lease-Plea of. See LEASE—RENT DUE UNDER—APPORTIONMENT OF, ETC. -LESSEE'S KNOWLEDGE OF, ETC.

(1894) 21 I. A. 118 (127) = 21 C. 1005 (1017).

LEAVE TO APPEAL GRANTED BY COURT BELOW-ORDER OF.

Point not included in.

In a suit to enforce a mortgage made by the manager of a joint Hindu family, the High Court, on appeal, held that the mortgagee had proved necessity for Rs. 1,698-5 0 out of the sum of Rs. 3,000 secured by the mortgage, and allowed the mortgage to stand only for the said sum of Rs. 1,698-5-0. The order of the High Court, under which the appeal to the Privy Council from the decree of the High Court was brought, did not include the question of considering whether, in point of fact, more than the amount allowed by the High Court had in fact been raised by way of necessity. Nevertheless their Lordships permitted that point to be argued. (Lord Buckmaster.) ANANT RAM v. COLLECTOR OF ETAH. (1917) 40 A. 171 (175)=7 L. W. 323=

4 P. L. W. 226 = 16 A. L. J. 245 = 23 M. L. T. 228 = 22 O. W. N. 484 = 27 O. L. J. 363 = 20 Bom. L. B. 524 = (1918) M. W. N. 448-44 I. O. 290-34 M. L. J. 291. MINOR.

### PRIVY COUNCIL-APPEAL-(Contd.)

New point in-Permissibility-(Contd )

LEGAL REPRESENTATIVE-PERSONAL DECREE AGAINST.

-Objection to. See LEGAL REPRESENTATIVE-DECREE AGAINST-PERSONAL DECREE.

(1835) 5 W. R. P. C. 98.

LEGAL THEORY NOT PRESENTED TO COURTS BELOW.

-Facts on which appellant had previously rested his case-State of facts inconsistent with-Theory resting on. (Lord Hobbanic.) GAJAPATI RADHIKA r. VASUDEVA SANTA SINGARO. (1892) 19 I. A. 179 (183)= 15 M. 503 (510-1) = 6 Sar. 218.

LEGITIMACY OF PLAINTIFF—CLAIM IN COURTS BELOW

-Illegitimacy of plaintiff-Plea in Privy Council appeal of. HINDU LAW-LEGITIMACY-BROTHERS-LEGITIMACY OF. (1892) 19 I. A. 179 (182)= 15 M. 503 (510-1).

--- See LEGITIMACY -- INHERITANCE-RIGHT OF. (1907) 35 L. A. 41 (47) = 35 C. 232 (242).

### LIMITATION.

-Plea of Sor LIMITATION-PLEA OF-PRIVE COUNCIL APPEAL.

LIMITATION ACT OF 1859, S. 5-PURCHASER FOR VALUE WITHOUT NOTICE.

-Piez of. See LIMITATION ACT OF 1859, S. 5-PURCHASER FOR VALUE WITHOUT NOTICE-PLEA OF. (1874) 2 I. A. 48 (55-6).

MAHOMEDAN LAW-ILLEGITIMATE SON NOT ACKNOW-LEDGED BY FATHER-PLEA OF.

-Paternity itself disputed in pleadings and in courts below. See MAHOMEDAN LAW-LEGITIMACY-ILLEGI-TIMATE SON NOT ACKNOWLEDGED BY FATHER-PLEA IN PRIVY COUNCIL APPEAL OF. (1872) 18 W. R. 523.

MAINTENANCE-SUIT FOR.

-Agreement prior between parties fixing amount-Suit apart from-Maintainability-Objection to. See MAHOMEDAN LAW - MAINTENANCE - SUIT FOR -AGREEMENT, ETC. (1883) 10 I. A. 45 (47)= 9 C. 945 (949-51.)

### MALIKANA IF NOT IMMOVEABLE PROPERTY.

-Point as to.

The point as to the malikana not being immoveable property was not taken in either of the courts below, and each of the courts below treated the malikana as immoveable. In these circumstances, the defendant (who took the objection that the malikana was not immoveable property) not being willing that there should be any remand of the case for further evidence, their Lordships are of opinion that the point is not open. (Lord Tomlin.) MT. JAGGO BAI P. UTSAVA LAL. (1929) 30 L. W. 60 (66-7)= 27 A.L. J. 716 = 33 C. W. N. 809 = 56 I. A. 267 =

10 Pat. L. T. 527 = 31 Bom. L. R. 891 = 6 O. W. N. 589 = 50 C. L. J. 52 = 117 I. C. 498 = 51 A. 439 = 1929 M. W. N. 762 = A.I.B. 1929 P.C. 166 = 57 M. L. J. 160.

MESNE PROFITS-ASSESSMENT OF.

-Mode of, directed by decree-Non-observance of-Objection to. See MESNE PROFITS-ASSESSMENT OF-LOCAL INQUIRY. (1881) 8 I. A. 197(208-9)= 8 C. 178 (191-2.)

MINOR-NEXT FRIEND OF-AUTHORITY TO SUE OF.

-Objection to. See C. P. C. OF 1908, S. 99-(1883) 11 I. A. 26 (27-8)=10 C. 626 (634).

### PRIVY COUNCIL -- APPEAL -(Contd.) New point in - Permissibility-(Coutd.)

#### MURIGAGE.

-Mortgaged property—Execution sale of—Reservation of mortgagee's claim under prior decree obtained on same mortgage -Sale with-Objection by mortgagor to. (Lord Hobboute.) DOSIBAL 2. ISHWARDAS JAGJIVANDAS.

(1891) 18 I. A. 22 (26) - 15 B. 222 = 6 Sar. 10.

-Mortgagee named in deed of-Real mortgagee because he himself advanced money-Plea in courts below of -Privy Council appeal-Plea in, that, though money was advanced by another, transaction was by way of gift or provision for mortgagee named in deed. See MORTGAGE -MORTGAGEE NAMED IN DEED OF-REAL MORT-GAGEE ETC. (1870) 13 M. I. A. 346 (351-2).

--- Redemption decree in-Mortgage created by--Redemption on foot of-Suit for-Redemption of original mortgage itself-Claim in Privy Council appeal of. See MORTGAGE-REDEMPTION-SUIT FOR-DECREE IN-MORTGAGE CREATED BY.

(1886) 13 I. A. 66 (69 70) = 10 B. 461 (467-8).

-Subsequent mortgagee-Suit to enforce his mortgage by-Bar of, by omission to enforce his right in suit on prior mortgage-Plea of. See MORTGAGE-PRIOR AND SUBSE-QUENT MORTGAGES-SUBSEQUENT MORTGAGEE-SUIT TO ENFORCE HIS MORTGAGE BY-BAR OF, ETC.

(1903) 31 I. A. 57 = 31 C. 332 (338).

-Subsequent mortgagee-Suit to enforce his mortgage by-Prior mortgagee impleaded in-Redemption of prior mortgage-No prayer in plaint for-Decree directing sale of mortgaged property and adjustment of purchase-money-Propriety of -Objection to. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES-SUBSEQUENT MORTGAGEE -SUIT TO ENFORCE HIS MORTGAGE BY-PRIOR MORT-GAGEE, ETC. (1890) 17 I. A. 201 (212-3) = 18 C. 164 (179-80).

-Suit to enforce-Personal decree in-Claim to. See MORTGAGE-SUIT TO ENFORCE-PERSONAL DECREE (1921) 48 I. A. 127 (134) 48 C. 509 (517-8).

MORTGAGE BY - SUIT TO ENFORCE - PERSONAL DECREE, ETC. (1925) 47 A. 459.

### OBJECTION WHICH MIGHT HAVE BEEN CURED IN COURTS BELOW.

—It is a safe maxim for a Court of appeal to be governed by that an objection which, if taken, might have been cured and which has not been taken in the court below, shall not be taken in the court of appeal (242). (Lord Campbell,) DHURM DAS PANDEY v. MUSSUMAT SHAMA SOONDARI DEBIAH. (1843) 3 M. I. A. 229 = 6 W. R. P.C. 43=1 Suth. 147=1 Sar. 271.

### PLEADINGS.

-Appellant's case lodged in Privy Council-Point raised in, but not presented to courts below. See PRIVY COUNCIL-APPEAL- PLEADINGS-APPELLANT'S CASE, ETC. (1917) 32 M. L. J. 559 (564).

-Courts below - Point not raised in, or inconsistent with that raised in. See PRIVY COUNCIL-APPEAL-PLEADINGS-COURTS BELOW.

-Facts stated in-Law point raised by, but not argued below. See PRIVY COUNCIL -APPEAL-NEW POINT IN-PERMISSIBILITY-LAW-POINT OF-PLEADINGS.

(1892) 19 I. A. 179 (182 3) = 15 M. 103 (110-1).

### PRIVY COUNCIL-APPEAL-(Contd.)

PLEADINGS-(Contd.)

New point in-Permissibility-(Contd.)

-Issues-Courts below-Point not raised in. See PRIVY COUNCIL - PLEADINGS - ISSUES - COURTS BELOW. (1875) 23 W. B. 412.

-Issues-Evidence-Point not raised in. See PRIVY COUNCIL-APPEAL-PLEADINGS-ISSUES-EVIDENCE. (1898) 3 C. W. N. 249.

-Issues-Point not raised in. See PRIVY COUNCIL -APPEAL-PLEADINGS-ISSUES- POINT NOT RAISED (1905) 32 I. A. 203 212) = 27 A. 634 (650).

#### POINT OF FAR-REACHING IMPORTANCE.

 A point which suggested considerations of far-reaching importance was not allowed to be raised before the Privy Council for the first time on the ground that on such a point the Board would desire to have the benefit of the opinion of the Courts in India. (Lord Blanchurgh.) JOYDURGA DASI v. SAROJI RANJAN SINHA.

(1929) 33 C. W. N 1117 = 30 L. W. 494 = 50 C. L. J. 481 = A. I. R. 1929 P. C. 214 =

120 I. C. 53 = 32 Bom. L. R. 12 = 57 M. L. J. 794 (800)

POINT NOT TAKEN OR DISCUSSED IN COURTS BELOW.

-AGA HUSSAIN KHAN BAHADOOR D. MT. JANEE BEGUM. (1872) 8 M. J. 149 = R. & J's. No. 16 (Oudh). -(Sir Robert P. Collier.) GOPEE LALL v. MT. SREE CHUNDRAOLLEE BULOJEE.

(1872) Sup. I A. 131/134) = 11 B. L. B. 391= 19 W. R. 12=3 Sar. 217-3 Suth. 752

- (Lord Collins.) MAHOMED NASEEM P. MAROMED ABBAS. (1907) 10 Bom. L. R. 126=12 C. W. N. 345= 7 C. L. J. 215=11 O. C. 126=3 M. L. T. 182= 18 M. L. J. 133 (149).

-(Lord Macnaghten.) JIT SINGH r. MAHARAJ (1911) 34 A. 57=10 M. L. T. 551= SINGH. 16 C. W. N. 122 = (1912) M. W. N. 29 =

15 C. L. J. 78 = 14 Bom L. R. 30 = 13 L C. 257. -(Lord Show.) SAHU RAM KUNWAR :. MAHOMED

(1924) 20 L. W. 82 = 29 C.W. N. 461= YAQUB. A. I. R. 1924 P.C. 123 = 26 Bom. L. R. 631 =

(1924) M. W. N. 431 = 34 M. L. T. 102 = 80 I.C. 203 = 47 M. L. J. 180 (188).

-Prity Council appeal-Case presented on-Point not raised in.

It is not consonant with their Lordships' practice to estertain upon the hearing before them a point which was not raised in either of the courts below or in the case presented upon the appeal. (Lord Buckmaner.) IDRIS v. MRS. JANE SKINNER. (1918) 56 I. C. 723= 82 P. R. 1919 = 45 P. W. B. 1919.

See also UNDER PRIVY COUNCIL-APPEAL-NEW POINT IN-PERMISSIBILITY-PLEADINGS.

### POSSESSION-UNCONDITIONAL DECREE FOR-

-Claim in Courts below to-Decree conditional of payment of binding debts-Claim in Privy Council appear to. See POSSESSION-UNCONDITIONAL DECREE FOR (1913) 40 I. A. 105 (111) = 35 A. 211 (2201)

#### PURDANASHIN.

-Plea of. See PURDANASHIN-PLEA OF-PRITT (1916) 41 I. O. 957. COUNCIL APPEAL.

#### REGISTRATION-VALIDITY OF.

Question as to. See REGISTRATION-VALIDITY OF-QUESTION AS TO-PRIVY COUNCIL APPEAL (1923) 50 I. A. 162 (172)=4 Lah. 294.

New point in-Permissibility-(Contd.)

RELIGIOUS ENDOWMENT-SHEBAIT OF-OFFICE OF-DEED RELATING TO-NATURE AND EFFECT OF.

-Plea as to-Investigation of facts necessary. See HINDU LAW - RELIGIOUS ENDOWMENT - MUTT-MOHUNT OF-OFFICE OF-DEED BY REIGNING, ETC. (1929) 57 M. L. J. 771,

### ROOT OF CASE.

-Point going to, and apparent on face of record. See BENGAL REGULATIONS-PUTNI TALUQS REGULATION VIII OF 1819-NOTICE OF SALE UNDER-DEFECT IN. (1892) 19 I. A. 191 (195) - 20 C. 86 (92)

#### SET-OFF.

-Ouestion of-Issue not raised or even applied for on. See C. P. C. OF 1908-O. 8, R. 6-SET-OFF-QUESTION OF. (1886) 13 I. A. 48-13 C. 124 (135).

### STAMP ACT II OF 1899-S. 7.

Provisions of-Contravention of-Objection to: See STATUTE—PROVISIONS OF—VIOLATION OF—OBJECTION TO. (1924) 52 I. A. 126 (128-9)= 52 C. 408.

STATUTE-PROVISIONS OF-VIOLATION OF.

Objection to. See STATUTE-PROVISIONS OF-VIOLATION OF-OBJECTION TO-PRIVY COUNCIL. AND APPEAL. (1891) 18 I. A. 55 (58) = 13 A. 300 = (1924) 52 I. A. 126 (128-9) = 52 C. 408.

SUCCESSION CERTIFICATE-ABSENCE OF.

Objection to. See SUCCESSION CERTIFICATE ACT OF 1860-S, 3-CERTIFICATE UNDER-ABSENCE OF. (1873) 19 W. R. 315.

### SUIT.

-Maintainability of-Objection to-Tender before suit-Absence of-Objection on ground of. See SUIT-MAINTAINABILITY OF-OBJECTION TO.

(1870) 5 B. L. R. 570 (576-7.)

Right of-Objection to See SUIT-RIGHT OF-OBJECTION TO-PRIVY COUNCIL APPEAL.

SURETY-BOND BY-PERSONAL LIABILITY UNDER.

-Existence of-Question as to. See SURETY-BOND BY-PERSONAL LIABILITY UNDER-EXISTENCE OF-QUESTION AS TO-PRIVY COUNCIL APPEAL.

(1919) 46 I. A. 228 = 42 A. 158 (164).

#### TECHNICAL OBJECTION.

-See SUIT-RIGHT OF-OBJECTION TO-PRIVY COUNCIL APPEAL.

-Decision of trial Court over-ruling-Objection not taken in appellate Court. See SUCCESSION CERTIFICATE ACT OF 1860-S. 3-CERTIFICATE UNDER-ABSENCE (1873) 19 W. R. 315.

TITLE INCONSISTENT WITH THAT ASSERTED IN COURTS BELOW.

-See MORTGAGE-MORTGAGEE NAMED IN DEED OF-REAL MORTGAGEE, ETC.

(1870) 13 M. I. A. 346 (351-2)

TRUST-EXISTENCE AND PUBLIC CHARACTER OF. ADMITTED IN COURTS BELOW.

-Denial in Privy Council of.

Where, in a suit for the removal from office of a guddi nashin or trustee of a wakf, the trustee conducted his case in the Courts below on the footing that a wakf existed and that it was a public wakf, held that he could not for the first time in his appeal to the Privy Council be allowed to raise the defence that there was no wakf at all, or, that, if a wakf existed at all, it was not public but private. (Lord | been prejudiced by that order, should have moved Court

## PRIVY COUNCIL-APPEAL-(Contd.)

New point in-Permissibility-(Contd.)

EXISTENCE AND PUBLIC CHARACTER OF, ADMIT-TED IN COURTS BELOW-(Could.)

Share,) MUSSAMAT HUSSAIN BIBL 2, SAVAD NUR HUS-SAIN RIBI. (1928) 47 C. L. J. 542 - 30 Bom. L. R. 849 - 26 A. L. J. 471 - 32 C.W. N. 769 - 29 Punj. L. R. 392 -28 L. W. 30=109 I. C. 52=A. I. R. 1928 P. C. 106= 54 M. L. J. 692.

### VALUATION OF PROPERTY.

-Principle adopted by Courts below as to-Objection to-Character of valuation of preperty as a valuation-Objection in Courts below and in case lodged in Privy Courcil only to. (Lerd Buckmarter.) CHARAN DAS v. AMIR KHAN. (1920) 47 I. A. 255 (264) = 48 C. 110 (118 9) = 3 P. W. R. 1921 = 25 C. W. N. 289 = 28 M.L.T. 149=18 A.L.J. 1085=22 Bom. L. R. 1370= 56 I. C. 606 = 39 M. L. J. 195.

### Obiter dictum.

-Giving of. See PRIVY COUNCIL-APPEAL-(1) POINTS UNNECESSARY & (2) HYPOTHETICAL RIGHTS.

### Objections in.

-Form - Objection merely of-Maintainability-Tendency of Privy Council not to give way unnecessarily to such objections. (Vice Chanceller Knight Bruce.) THE MOKUDDUMS OF KANKUNWADA P. THE ENAMDAR OF BRAHMINS OF SOORPAL (1845) 3 M. I. A. 383 (392) = 7 W. R. P. C. 8=1 Suth. 164=1 Sar 292.

-Technical objection-Merits substantial not allowed to be shut out by. (Lord Brougham.) MAYOR OF THE CITY OF LYONS P. HON, EAST INDIA CO.

(1836) 1 M. I. A. 175 (288 9) = 1 Moo. P. C. 175 = 3 State. Tr. (N. S.) 647=1 Sar. 107.

-Technical objection-Permissibility for first time of. See PRIVY COUNCIL-APPEAL-NEW POINT IN-PER-MISSIBILITY-TECHNICAL OBJECTION.

### Onus of Proof-Objection to.

-Maintainability of. See ONUS OF PROOF.

### Order in Council in.

-See PRIVY COUNCIL-APPEAL-DECREE IN.

### Parties to-Addition or substitution of. APPELLANT.

-Death of, after appeal, and before lodging of petition of appeal-Abatement of appeal by reason of-Revivor of appeal by Legal representative allowed. (Lord fustice Knight Bruce). TROUP v. EAST INDIA COM-PANY. (1857) 7 M. I. A. 104 (1179) = 4 W. B. 111 = 1 Suth. 287-1 Sar. 600.

-Insolvency of-Revivor of appeal on-Failure of Official Assignee of High Court to take steps for, notwithstanding opportunity afforded. Appeal dismissed in consequence of. (Lord Justice Knight Bruce.) GOOROO-CHURN SEIN P. RADANATH SEIN.

### (1857) 7 M. I. A. 1 (4) = 11 Moo. P. C. 76 = 1 Sar. 586.

-Insolvency of, appearing when appeal called on-Adjournment of appeal to enable Official Assignee of Court below to take steps if so advised-Respondent directed to serve Official Assignee with notice of his being allowed liberty to take steps to revive appeal. (Lord Justice Knight Bruce.) GOOROOCHURN SEIN P. RADANATH SEIN.

(1857) 7 M. I. A. 1 (2-3)=11 Moo. P. C. 76=

-Legal representative of -Order of Court below substituting-Objection to, at hearing of Privy Council appeal. Objection not entertained, because objector, if he had

Parties - Allition or substitution of-(Contd.)

APPELLANT - Contd.)

below to discharge it. (Lord Langdale.) BABOO KALI PERSAD NARAIN & MUSSAMAT KAWALBASI KOER. (1851) 5 M. I. A. 146 (162 3) -1 Suth. 225-1 Sar. 412

-Substitution of -- Transmission of record to England -Substitution after-Withdrawal of appeal-Petition by original appellant for-Substitution in case of-Conditions.

After the transmission to England of the record of a Privy Council appeal, the appellant, G, applied to the High Court for leave to withdraw the appeal. Thereupon B, the widow of D, who died in January 1886, leaving also another widow, the respondent, applied to the High Court asking to have her name, or that of her adopted son, A. through her as guardian, substituted in the said appeal for

The appeal raised the question whether D had, by his will, given to the petitioner. B, the power which she had purported to exercise in adopting N. The execution of the will was denied by the re-pondent by whom D had a son who survived him, but that son had since deceased. Probate of the will, having been granted, was afterwards revoked. The petitioner represented that injury would be caused to the minor should the appeal be discontinued.

Held, that the petitioner ought to be substituted for the withdrawing appellant on the terms that she gave security to the satisfaction of the High Court for the costs already incurred, and undertook to abide by such order as might be made as to the general costs. GAUR MOHUN CHAKER-BATTI T. TARASUNDERI DEBL. (1889) 17 C. 693 = 5 Sar. 504

#### RESPONDENT.

-Addition of -Defendants sought to be made alternatively liable-De:ree against one of-Appeal by him against plaintiff only seeking to make other defendant liable-Application by latter for leave to appear separately-Leave given to him to appear and lodge a separate case. EAST INDIA COMPANY D. ROBERTSON.

(1859) 7 M. I. A. 361 (363-4) = 12 Moo. P. C. 400 = 4 W. R. 10 = 1 Suth. 332 = 1 Sar. 652.

-Addition of, on his own application with a vice to enabling him to file a cross-appeal.

In an ejectment suit brought against three defendants, the 1st Court decreed the suit against all the defendants. Each of the defendants was entitled to a third of the suit village. The second defendant alone preferred an appeal to the High Court and his appeal was valued at a third of the value of the suit village. The other defendants were joined as re-pondents to the appeal, but they did not prefer any appeal against the decree of the Court below as regards their shares in the suit village. The High Court, by its decree, directed the plaintiff's suit as against the second defendant, to be dismissed. An application by the third defendant that he might have the benefit of that decree so far as concerned his share in the suit village was rejected by the High Court. The plaintiff preferred an appeal to His Majesty in Council against the decree of the High Court dismissing his suit as against the 2nd defendant. Nearly 4 years after the appeal was preferred, the third defendant applied to His Majesty in Council praying that he should be added as a respondent.

Their Lordships ordered that he should be added as a respondent (140.) (Lord Shaw.) MALRAJU LAKSHMI VENKAYAMMA ?. VENKATA NARASIMHA APPA ROW.

(1916) 43 L. A. 138 = 39 M. 509 = 20 M. L.T. 137 = (1916) 2 M. W. N. 23 = 4 L. W. 58 = 20 C. W. N. 1054= 24 C. L. J. 229 = 14 A. L. J. 797 = 18 Bom. L. R. 651 = 35 I. O. 921 = 31 M. L. J. 58.

### PRIVY COUNCIL-APPEAL-(Contd.)

Parties - Addition or substitution of-(Contd.)

RESPONDENT-(Contd.)

-Death of, between hearing and judgment-Procedure on-Passing of decree with liberty to apply to Court below to add necessary parties-Propriety of.

In an appeal to the Privy Council in a suit in effect for the administration of the will of a deceased Hindu, their Lordships directed certain accounts to be taken against the surviving widow of the testator. She died after the argument in the appeal but before judgment was delivered. That death made the suit defective in two respects; first, by the death of the then heir the inheritance ceased to be represented; secondly, there was no person in whose presence the account directed against the widow could properly be taken. The proceedings were suspended in order that those defects might be cured; but though the testator's heir had been brought into the suit, there was no representative of the widow.

Held, that the decree of their Lordships ought not to be delayed any longer on account of that defect and that the plaintiff should apply to the Court below for all necessary parties being brought upon the record (134.) (Lord Hobboure.) SURENDRA KESHAV ROY v. DOORGASUN-DARI DASSEE. (1892) 19 I. A. 108 = 19 C. 513 (538)= 6 Sar. 150

### SUBSTITUTION OF.

-Jurisdiction of Court below as to-Transmission of record to England-Substitution after.

After the transmission to England of the record of Privy Council appeal, the appellant applied to the High Count for leave to withdraw the appeal Thereupon the petitioner applied to the High Court to have her name, or that of her adopted son, through her as his guardian, substituted in the appeal for that of the appellant.

The High Court rejected the application on the ground that it was for their Lordships, and not for the High Court

to dispose of the matter.

The petitioner then applied to the Privy Council for the same purpose, and their Lordships granted the prayer of the petition on terms. GAUR MOHUN CHAKERBATH r. (1889) 17 C. 693 = 5 Sar. 504. TARASUNDARI DEBI.

-Procedure as to-Duty of Court below in cast of. Where a party to a Privy Council appeal dies pending the appeal, and an application is made to the Court from which the appeal has been preferred for bringing on record his legal representatives, that Court must make the necessary inquiries, and order the petition and proofs to be transmitted to England for such orders as the Judicial Committee may think fit to make, with a certificate or statement as to who, in its opinion, are the parties proper to be subsituted on the record. (Lord Hobbonse). HAIDAR AU TASSADUK RASUL. (1888) 15 I. A. 209=16 C. 184= 5 Sar. 270.

### Parties not before Court-Decision affecting.

See PRACTICE - PARTIES NOT Propriety of. BEFORE COURT.

Pauper.

-Appeal as a-Leave to prefer-Special application to P. C. for-Necestity.

Such application necessary through Courts in India admitted party to appeal to England in forma parterit (Lord Langdale.) MUNNI RAM AWASTY D. SHEO CHURN (1846) 4 M. I. A. 114 (186) =

7 W. B. (P. C.) 29=1 Suth. 166=1 Sar. 33.

Respondent allowed to defend as a-Costs of, on dismissal of appeal. See PRIVY COUNCIL-APPEAL COSTS OF-RESPONDENT-PAUPER.

### Petition of

Proceeding to keep in force decree within meaning of S. 20 of Li nitation Act of 1859 if a. See LIMITATION ACT OF 1859-S. 20-PRIVY COUNCIL APPEAL

(1872) 11 M. I. A. 485 (493-4).

### Pleadings.

### ALTERNATIVE CASE NOT PUT FORWARD IN.

-Permissibility of. See HINDU LAW-ADOPTION -WIDOW-ADOPTION BY-ASSENT OF SAPINDAS-ADOPTION WITH-NEAREST SAPINDA-ASSENT OF-OMISSION TO OBTAIN. (1920) 47 I. A. 99 (107) -43 M. 650 (659).

### AMBIGUITY IN.

Plea of -- Maintainability. See PRACTICE--PLEAD INGS-AMBIGUITY IN. (1929) 57 M. L. J. 776.

### AMENDMENT OF.

-Alternative case-Amendment so as to raise. See PRACTICE-PLEADINGS-AMENDMENT OF-ALTERNA-TIVE CASE. (1892) 19 I. A. 179 (184 .-15 M. 503 (511-2).

-Permissibility in. See PRACTICE PLEADINGS-AMANDMENT OF-PRIVY COUNCIL APPEAL.

APPELLANT'S CASE LODGED IN PRIVY CHONCIL-POINT RAISED IN.

-Raising for first time of -Point not presented to Courts velow.

In the absence of any exceptional conditions, it is not open to a party to raise a fresh point, which, though raised in the pleadings and in the reasons attached to the appellant's case louged in the Privy Council, was not raised at the hearing eitner in the original Court or in the appeal to the High Court, and which might then have been raised in a convenient form and at an opportune time (Lord Parmour.) MAHARAJAH MANINDRA CHANDRA NANDI v. Raja Sri Ski Durga Prashad Singh.

(1917) 22 M. L. T. 202=(1917) M. W. N. 448= 6 L. W. 110=21 C. W. N. 707=25 C. L. J. 567= 19 dom. L. B. 493-15 A. L. J. 432-1 Pat. L. W. 627=38 I. C. 929=10 Bur. L. T. 229= 32 M. L. J. 559 (564).

#### CONSTRUCTION OF.

\*Liberal Construction. See PRACTICE—PLEADINGS -CONSTRUCTION OF - PRIVY COUNCIL- LIBERAL CONSTRUCTION BY.

COURTS BELOW-CASE NOT RAISED IN, OR INCONSISTENT WITH THAT RAISED IN-KAISING FOR FIRST TIME OF.

Adopted son of a person-Claim in Courts below ou ground of plaintiff being heir of-Adopted son alleged being a trespasser-Claim in appeal on foot of-Not permitted. (Sir Robert P. Collier.) GOPEE LALL v. MT. SREE CHUNDROLEE BUHOOJEE.

(1872) Sup. f.A. 131 (134)=11 B. L. B. 391= 13 W. R. 12=3 dar. 217=2 Suth. 752.

Burmese Buddhist Law-Divorce-Grounds of. alleged in Courts below -Failure to prove-Fresh grounds of divorce—Setting up of, in Privy Council appeal. See BURMESE BUDDHIST LAW—DIVORCE—GROUNDS OF, ALLEGED IN COURTS BELOW.

(1927) 55 L.A. 38=6 R. 79. Deed—Forgery—Plea in Courts below of—Forfei-ture of property—Execution of deed to escape consequences of—Plea in Privy Council appeal of. (Sir Montague E. Sm th.) GOSSAIN LUCHMI NARAIN POORI v. POKHRAJ SINGH SINGH, (1879) 3 Suth. 581 (583) = Bald. 189 = 3 L.J. 220.

### PRIVY COUNCIL-APPEAL-(Contd.)

### Pleadings-(Contd.)

CONSTRUCTION OF-(Contd.)

-Ejectment suit-Partition or redemption decree in-Grant of. See PRACTICE-EJECTMENT SUIT.

-Gift-Completed gift-Case of, in pleadings and in Counts below—Contract to make gift—Case in Privy Council appeal of. See HINDU LAW—GIFT—COMPLETED GIFT-CASE OF, IN PLEADINGS AND IN INDIAN COURTS. (1920) 13 L. W. 256 (259).

-Suit-Frame of-Error in, caused by defendant.

It has been argued that the plaintiff has been misled, by various repr. sentations made by the defendant, into framing his suit as it is now framed. If that were so it would not empower their Lordships to depart from the rule which has always prevailed, that a man must recover according to his allegations and his proofs. It would not enable their Lordships to ailow (as the appellant asks them to allow) an entirely new case to be now brought forward before them, which is not even set up or hinted at in the plaint (134.) (Sir Robert P. Collier.) GOPEE LALL D. MUSSAMAT REE CHUNDRAOLEE BUHOOJEE.

(1872) Sup. I. A. 131=11 B. L. R. 391= 19 W. R. 12-3 Sar. 217-3 Suth. 752.

DEFECTS IN-REVERSAL OF DECREE ON GROUND OF.

-No prejudice to appellant-Decree right on merits. See PRACTICE-PLEADINGS-DEFECTS IN.

(1884) 12 I. A. 47 (51) = 11 C. 379 (385).

ERROR IN-OBJECTION BASED UPON.

-Maintainability of -- Parties not misled. See PRAC-TICE-PLEADINGS-ERROR IN.

(1867) 11 M. I. A. 487 (497).

FACTS STATED IN-LAW POINT RAISED BY, BUT NOT ARGUED BELOW.

-Raising of, for first time. See PRIVY COUNCIL-APPEAL-NEW POINT IN-PERMISSIBILITY - LAW-POINT OF-PLEADINGS.

(1892) 19 I. A. 179 (182-3) = 15 M. 503 (510-1).

### FORMS OF - JUSTICE OF CASE.

Consideration of-Duty as to. See PRACTICE-PLEADINGS-CONSTRUCTION OF-PRIVY COUNCIL-JUSTICE OF CASE. (1841) 2 M.I.A. 344 (349-50).

#### ISSUES.

-Courts below-Point not raised in-Raising for hest time of-Evidence in support of it neither clear nor uncontradicted.

The suit was by the maternal grandson of R to recover his properties as his heir. The defendants, the grandsons of a prother of R, opposed the plaintiff's claim, setting up a Jeed of gift or will by R in favour of one or some of them. The courts below concurrently found that the execution of the said deed had not been established, and that finding was admitted to be conclusive against the defendants. Before their Lordships the defendants, however, attempted to show that, independently of the particular instrument, the evidence was sufficient to warrant the conclusion either that a previous disposition of the property had been made by R to the effect of that contained in the will, or that he had so acted as to estop him and his representatives from denying that such a disposition existed. That was a new case, set ap for the first time at their Lordships' bar, the defendants having throughout the suit in all its previous stages, propounded a particular will executed by R. The defence suggested before their Lordships was raised neither by the sefendants' answer, the issues, nor the grounds of appeal.

Held that it would be improper to give effect to the new defence, unless the evidence to support it was so clear and

Pleadings-(Contd.)

ISSUES-(Contd.)

uncontradiated that it could not, without manifest injustice, be disregarded (154). (See Montague E. Smith). MAHARAJAH RAM KISSEN SINGH P. RAJAH SHEONUNDUN SINGH. (1875) 3 Seth. 151 = 23 W.R. 412 = 3 Sec. 498.

---- Evidence-Point not raised in-Raising for first time of.

The case against two of the defendants is sought to be distinguished on the ground that there are special circumstances connected with their holdings. But then it turns out that those circumstances were never relied upon in the pleadings. They form no part of the plaintiffs' case; no issue was directed as to them; there has been no proper examination of the case with respect to them. Therefore the High Court very justly, when these circumstances were brought before its attention on appeal, said that the plain tiff had no right to raise the point. It would be exceedingly unjust to the respondents if the plaintiffs were allowed to raise the point now. The case must be held to be closed. (Lord Hobboure). NAM NARAIN SINGH v. BHIM GANJHU (1898) 3 C.W.N. 249.

Point not raised in-Raising for first time of.

Allowed to because (1) parties and courts below proceeded on footing that point had been raised and was in issue between the parties; (2) there was no surprise to respondent by its being allowed to be raised; and (3) there was no danger of doing injustice by disposing of the appeal on the footing of that point. (Sir Arthur Wilson). THAKUR SHEO SINGH & RANT RAGHUBANS KUAR.

(1905: 32 I.A. 203 (212)=27 A. 634 (650)= 9 C.W.N. 1009=2 C.L.J. 194=8 O C. 317= 8 Sar. 791=15 M.L.J. 352.

PLAINTIFF'S CASE IN-ASCERTAINMENT OF.

——Plaint language—Issues — Treatment of case in courts below—Reference to—Necessity. See PRACTICE— PLEADINGS—PLAINTIFF'S CASE.

(1884) 11 I.A. 149 (155) - 7 A. 1 (11).

Points unnecessery—Opinion on—Expression of— Propriety.

(See also PRIVY COUNCIL-APPEAL-HYPOTHE-

——(Mr. Justice Bosanquet). HOMABEE v. PUNJEA-BHAEE DOSABHAEE. (1835) 5 W.B. 102 (P.C.) = 1 Suth. 28 (29) = 1 Sar. 68.

BRODIE. (Lord Langdale). ATTORNEY-GENERAL r. (1846) 4 M.I.A. 190 (198) = 6 Moo. P.C. 12 = 11 Jur. 137 = 1 Sar. 335.

Ex parte hearing of appeal — Decision in. See PRIVY COUNCIL—APPEAL — HEARING OF—Ex parte HEARING—POINTS NOT NECESSARY.

Expression of opinion abstained from because such opinion would be a mere biter dictum. (Sir Barnes Petrock). RAJAH NILMONI SINGH 2. BAKRANATH SINGH. (1882) 9 I.A. 104 (124) = 9 C. 187 (208) =

Law—Abstract question of. (Sir James W. Cel. Paleo Dool Chand r. Baboo Brij Bhookun Lal Awasti. (1880) 3 8 th. 734 (737)=

Pre-emption of-Doctrine of-Ecclesiastical Court's rules in Doctors' Commons as to.

—Calcutta Supreme Court—Ecclesiastical cause in— —Charter right of appeal in—Applicability of doctrine to.

### PRIVY COUNCIL-APPEAL-(Contd.)

Pre emption of - Doctrine of - Ecclesiastical Court's rules in Doctors' Commons as to-(Contd.)

When the appeal before their Lordships came on for hearing, the re pondent's counsel took a preliminary objection to its competency, contending that by the true construction of the Charter of Justice, which gave the Supreme Court exclesiastical jurisdiction in Bengal, and directed that the court should be governed by the same rules as the Ecclesiastical Courts in the Diocese of London, and the general principles and practice of the Exclesiastical Coarts which prevailed in India, at the time when the appellant filed her petition for leave to appeal namely, on 12-12-1844, her right of appeal was lost and pre-emptel, no appeal having been asserted within 6 days. The respondents contended that the latter part of the Charter giving six months time to appeal from all original judgments, decrees, or decretal or other rules or orders of the court, did not take away the general Exclesiastical law, which required that an appeal must be asserted within ,6 days, and that, therefore, the Supreme Court could not legally grant leave to appeal after that time.

Their Lordships, having decided against the appellant on the merits, left open the question whether the rules of the Ecclesiastical Courts in Doctors' Commons relating to the doctrine of pre-emption of appeal, applied to an ecclesiastical cause in the Supreme Court at Calcutta, so as to deprive a party of the Charter right to appeal within six months from the decree (407). (Lord Broughem). CASEMENT 2: FOULTON. (1845) 3 M.I.A. 395=

5 Moo P.C. 130=1 Sar. 238.

Printing of documents in.

PORTION OF MATERIAL DOCUMENT-PRINTING ONLY OF.

-Prepridy.

Their Lordships commented upon the fact that only a portion of an important document was printed, though the whole of it was necessary for arriving at a satisfectory cocclusion on the questions raised in the case. (Lord Athinam).

MUSSAMMAT ATKIA BEGUM P. MUHAMMAD IBRABIN RASHID NAWAB. (1916) 6 L.W. 26 (31)

(1917) M.W.N. 261 = 21 C.W.N. 345 = 36 I.C. 20 = 10 Bur. L.T. 79.

UNNECESSARY PRINTING—CHECKING OF— COURT AND PRACTITIONERS IN INDIA—DUTY OF.

PUDDOMONEY DOSSEY. (1866) 10 M.I.A. 476 (489) = 5 W.R. P.C. 63 = 1 Suth. 631 = 2 Sar. 184.

——MUSSAMAT HUMEEDA 2. MUSSAMAT AMATON. MEHDEE BEGUM. (1871) 17 W.R. 105 (108) = 2 Suth 519.

SRI RAJAH ROW BUCHI SITAYYA GARU.

(1884) 12 I.A. 16(22)=8 M. 219=4 SAT. 598. ——(Lord Hobbouse). WACHELA RAJSANJI v. SHEIKH 289 (101)=

MASLUDIN. (1887 | 14 I. A. 89 (101)= 11 B. 551 (566) = 5 Sar. 16

GHOSE v. TROYLOKHONAUTH GHOSE.

GHOSE P. TROYLOKHONAUTH GHOSE. (1892) 21 I.A. 35 (38) = 20 C. 373 (378) = 6 Sat. 267.

(1902) 29 I.A. 132 (138) = 29 O. 664 (673) = 6 C.W.N. 657 = 4 Bom. L.B. 547 = 8 Sar. 280.

(Lord Datey.) (1905) 9 C. W. N. 745 (748)-(Lord Atkinson.) MUSSUMAT ATKIA BEGUN R. MAHOME: IBRAHIM RASHID NAWAB.

(1916) 6 L. W. 26 (31) = (1917) M. W. N. 261 = 21 C. W. N. 345 = 36 I. C. 20 = 10 Bom. L. B. 779

Printing of documents in-(Contd.

UNN\_CESSARY PR.NTING-CHECKING OF-COURT AND PRACTITIONERS IN INDIA-DUTY OF-(Contd.)

-Practitioners in India -- Duty of. (Lord Phillimore.) GOPAL CHANDRA CHAUDHURI P. RAJANIKANTA (1313) 47 C. 415 (417)=24 C. W. N. 553.

UNNECESSARY PRINTING-COSTS OCCASIONED BY.

-Order as to. See PRIVY COUNCIL-APPEAL-COSTS OF-PRINTING UNNECESSARY.

UNNECESSARY PRINTING DONE IN INDIA-SOLICITOR PREPARING RECORD IN I-NGLAND.

Duty of, in such a case.

It does not follow that because unnecessary documents have been prin ed in India, they should be included in the books boun I up for their Lordships. It is the duty of the solicitor in this country to make a relection of the necessary documents. The other papers should be ready at hand in case they should be required. In cases of doubt, the solicitor should take the advice of counsel on this point, for which purpose, on application being made, a fee will be allowed. (Lord Phillim re.) SONATON PAL v. GALSTAUN. (1)27) 54 I. A. 118 (121 2) = 54 C. 414 = 26 L. W. 40 = 39 M. L. T 221 = 31 C. W. N. 744 = 45 C. L. J. 454 =

29 Bom L. R. 844 = 101 I. C. 50 = A. I. B. 1927 P. C. 60 - 52 M. L. J. 463.

UNNECESSARY PRINTING INSISTED ON BY ONE PARTY. -Duty of other party in case of to apply to High Court Registrar for directions.

In an appeal to the Privy Council documents not material to the appeal should not be included in the record. If one party thinks a document should be printed and the other party thinks it unnecessary, the latter should not rest content and allow the document to be printed, but should go to the registrar of the High Court for directions in respect of that matter (121.) (Lord Phillimore.) SONATON PAL D. GALSTAUN. (1927 54 I. A. 118=54 C. 414=

26 L. W. 40 = 39 M. L. T. 221 = 31 C. W. N. 744 = 45 C. L. J. 454 = 29 Bom L. R. 844 - 101 I. C. 50 = A. I. R. 1927 P. C. 60 - 52 M L. J. 463.

### Proceedings in—Rectification of—Right to apply for.

-Party not appearing at hearing-Right of.

Quaere as to the rights of a person not appearing as a party before the Board to ask for leave to rectify those proceedings by a subsequent application. (Lord Shaw.) NEK1 v. CHHALJU RAM. ALJU RAM. (1925) 89 I. C. 185= A. I. R. 1925 P. C. 174 (2)=6 L. R. P. C. 128=

26 P. L. R. 526.

### Procedure—Question of \_Indian decisions on.

-Long course of-Disturbance of. See MAXIM-STARE DECISIS-PROCEDURE.

(1866) 2 I. A. 219 (228.) Property-Rule regarding long and consistently acted upon by Indian Courts.

STARE DECISIS—PROPERTY.

(1866) 11 M. I. A. 75 (90-1).

### Prosecution of.

DEFAULT IN.

-PRIVY COUNCIL-APPEAL-DEFAULT TO PROSE-CUTE.

DELAY IN.

-Privy Council's adverse comment on. See LITIGA-TION-DELAY IN CONDUCT OF.

Successful appellant—Costs of—Disallowance of, on that ground. See PRIVYCOUNCIL—APPEAL—COSTS OF

### PRIVY COUNCIL-APPEAL-(Contd.)

Prosecution of (Contd.)

DELAY IN-(Contd.)

-APPELLANT-SUCCESSFUL APPELLANT-DISALLOW-ANCE TU-GROUNDS-DELAY IN PROSECUTING APPEAL.

EXTENSION OF TIME FOR.

-Jurisdiction.

The appellant applied for an extension of the time prescribed by Rule V of the Order in Council of the 13th of June 1853, by which the appeal stood dismissed unless steps for prosecuting the same were taken within 6 months from the arrival of the transcript and the registration thereof. At the time of the hearing of the application the transcript had arrived and was regi tered in the Council office, but no petition of appeal had been lodged.

Hdd that the application could not be entertained, as the Board had no jurisdiction until the petition of appeal was lodged. (Mr. Pemberton Leigh.) GUNGADHUR SEAL

P. SREEMUTHY RADAMONEY DOSES.

(1855) 6 M. I. A. 209 = 1 Sar. 532. SUSPENSION OF.

Grounds.

The appellant applied for an extension of the time prescribed by Rule V of the Order in Council of 13th June 1853 by which the appeal stood dismissed unless steps for prosecuting the same were taken within 6 months from the arrival of the transcript and the registration thereof.

Tre affidavit filed in support of the application stated that an inquiry was then pending before the Master of the Supreme Court at Calcutta, arising out of the decree appealed from, and that it was anticipated that the findings of the Master would render the prosecution of the appeal unnecessary, and that the appellant was desirous of awaiting the event of the proceedings in the Master's Office in India, before prosecuting his appeal, as he might be saved the expense attendant upon the prosecution thereof.

Held that enough had been shown to induce their Lordships to retain the appeal notwithstanding the new rules, and to direct that the petitioner be at liberty to suspend proceedings thereon until further order. (Lord Justice Turner.) GUNGADHUR SEAL v. SREEMUTHY RADA-(1855) 6 M. I. A. 209 = 1 Sar. 532. MONEY DOSSEE.

### Protection of property in dispute in.

INJUNCTION RESTRAINING DAMAGE BY RESPONDENT RECEIVER-APPOINTMENT OF.

-Jurisdi tion of Privy Council and of Court below as to-Exercise of-Conditions.

Court below has authority to grant injunction or to appoint receiver. A special case must, however, be made out for such an unusual interference with the right and interest of the re-pondent who was in possession by his own title as well as by the decree of the Court below. (Lord Chelms. ford.) NEELKISTO DEB BURMONO v. BEERCHUNDER (1869) 12 M. I. A. 523 (532) = THAKOOK.

12 W. B. P. C. 21 = 3 S. L. R. P. C. 13 = 2 Suth. 243= 2 Sar. 523.

ORDER FOR-HIGH COURT'S JURISDICTION TO PASS.

Special leave-Appeal admitted by. Semble the High Court has no jurisdiction, under S, 608 of C. P. C. of 1882, to grant an application by the plaintiff for the protection of the suit property pending an appeal to

the Privy Council by him granted by special leave. Though it may be very anomalous that property should be left without the possibility of interim protection, pending an appeal granted by special leave, the case is one of great rarity, and not unlikely to have escaped the notice of the framers of the Code. (Lord Hobbouse.) MOHESH CHAND. RA DHAL D. SATRUGHAN DHAL.

(1899) 26 I A. 281 (283) = 27 C. 1(4) = 4 A. W. N. 34=7 Bar. 567.

Protection of property in dispute in - (Contd.)

RECEIVER-APPOINTMENT OF-JURISDICTION OF HIGH COURT AS TO.

-Appeal admitted by special leave after refusal of High Court to grant leave-High Court has no jurisdiction -Law in this respect same under C. P. C. of 1908 as under TV. Code of 1882. TEGA SINGH P. BICHITRU SINGH.

10 C. L. J. 326 = 4 I. C. 452.

SECURITY FROM APPELLANT APPLYING FOR EXECU-TION OF DECREE PENDING APPEAL.

-Necessity -Subject-matter of suit large property, See - Finding on. See PRIVY COUNCIL (1) APPEAL-MADRAS REGULATIONS-APPEAL TO PRIVY COUNCIL FACT AND (2) PRACTICE-QUESTION OF FACT. REGULATION OF 1818-S. 14.

(1852) 5 M. I. A. 300 (319-20.)

### SECURITY FROM RESPONDENT FOR.

Application to Privy Conseil for, on refusal of Court below to take-Order proper on, when Privy Conneil thinks case fit one.

It will not itself take the ne essary steps, but will grant liberty to the petitioner to apply to the Court below for such steps being taken, with an intimation of its opinion as to the necessity for taking such steps. (Lard Justice Turner.) MUSSUMAT JARINT-OOL-1-UTOOL P. MUSSUMAT HOSEINEE BAGUM. (1865) 10 M. I. A. 196=

10 W. R P. C. 10 = 2 Sar. 116.

-Ex parte application for-Maintainability.

This was an ex parte application for security pending an appeal. The respondent was put in possession by the High Court ; but when he applied for mesne profits it turned out that he was a pauper. The appellant applied for security to the High Court, but the application was refused. He applied to the Privy Council for an order simillar to that made in 10 M. I. A. 196.

Their Lordships observed that if the application could be entertained at all, it could only be entertained on notice to the other side; but that, if the facts stated were correct, the High Court might have taken an erroneous view as to security. They therefore directed the appellant to renew his application to the High Court for security, observing that, if it was refused, he could appeal against therefusal on notice to the other side. SRI RAJAH VYRICHERIA RAZ BAHADOOR 2. NADMINTI BAGAVENT.

(1872) 7 M. J. 190.

- Jurisdiction of Court below to take-Execution of decree completed before admission of appeal.

It is competent to the Court which made the decree under appeal to the Privy Council to require security to be given, or otherwise to provide for the protection and security of the suit property pending the appeal to the Privy Council, notwithstanding that execution had issued before the appeal was allowed. (Lord Justice Turner.) MUSSU-MAT JARIUT-COL-BUTOOL 2. MUSSUMAT HOSEINEE BEGUM. (1865) 10 M. I. A. 196=

10 W. R. P. C. 10 = 2 Sar. 116.

Mesne profits-Security for.

Order for, not made where it was not even alleged that he had committed, or was committing, waste, and where all that was alleged was a rumour of a mortgage by him of part of the estate. (Lord Justice Knight Bruce.) NAGA-LUTCHMEE UMMAL P. GOPOO NADARAJA CHETTY.

(1856) 6 M. I. A. 309 (329)=1 Sar. 543.

Order for-Discretion as to-Madras Regulation VIII of 1818-S. 4-Case not covered by.

Quare whether even in a case to which S. 4 of Madras Regulation VIII of 1818 does not apply, the Judicial Com-

### PRIVY COUNCIL-APPEAL-(Contd.)

Protection of property in dispute in-(Contd.)

SECURITY FROM RESPONDENT FOR-(Contd.)

mittee have a discretion of directing securities to be furnished by the respondents (329). (Lord Justice Knight Bruce.) NAGALUTCHNEE UMMAL 7. GOPOO NADARAJA CHET-(1856) 6 M. I. A. 309=1 Sar. 543.

STAY OF EXECUTION OF DECREE UNDER APPEAL

-See PRIVY COUNCIL-APPEAL-STAY OF EXE-CUTION OF DECREE UNDER.

### Question of Fact.

### Receiver

-Interim application for-Order on-Appeal from - Right of. See RECEIVER-INTERIM APPLICATION FOR. (1927) 55 I. A. 131 = 55 C. 720.

-Removal of-Discretion of Court below-Interferen ie with. See RECEIVER-HINDU WIDOW.

(1890) 13 M. 390.

### Re-hearing of.

ALTERATION OF JUDGMENT ON.

Jurisaiction.

It is unquestionably the strict rule, and ought to be distinctly understood as such, that no cause in this Court (Privy Council) can be re-heard, and that an order once made, that is, a report submitted to His Majesty and adopted, by being made an Order in Council, is final, and cannot be altered. Whatever, therefore, has been really determined in these Courts must stand, there being no power of re-hearing for the purpose of changing the judgment pro nounced. There cannot be a re-hearing upon the whole cause, and an entire alteration of the judgment once pronounced (215-6). (Lord Brougham.) RAJEENDER NARAIN RAE & BIJAI GOVIND SINGH.

(1839) 2 M. I. A. 181 = 1 Moo. P. C. 117=1 Sar. 175.

EX PARTE HEARING OF APPEAL-PARTY NOT APPEARING AT-RE-HEARING AT INSTANCE OF.

Such an unusual indulgence will never be granted except under very special circumstances, and only where the tr farte hearing has not been occasioned by any default in the party applying for a re-hearing.

Re hearing refused because it could not be truly alleged that the ex parte hearing took place without any default on the part of the petitioner or his agents (258.9). (Lord Chelmsford.) KISTO NAUTH ROY Ex parte.

(1869) 12 M. I. A. 254 = L. R. 2 P. C. 274 = 5 Moo. P. C.(N. S.) 378 = 2 B.L. B. 60 = 38 L. J. P. C. 21 = 20 L. T. 333 = 17 W. B. 521.

A judgment of the Privy Council, particularly after its confirmation by an order in council, will not be allowed to be re-opened or varied unless by some accident, without any blame, and without any default on the part of the party himself, he has not been heard, and an order has been it advertently made as if he had been heard (173).

The application for re-hearing was made on the mere ground that the petitioner had not been properly represent ed upon the appeal, or cited to appear to it. Petitioner's title was almost identical with that of another respondent who had admittedly been properly represented. By virtee of a deed executed by that respondent in petitioner's farour during the pendency of the Privy Council appeal, petitioner had obtained possession of the suit property and had be come solely interested therein. He had corresponded directly with the solicitor, who purported to act on behalf of both respondents, touching the appeal, and had furnished

Re-hearing of-(Contd.)

EX PARTE HEARING OF APPEAL-PARTY NOT AP-PEARING AT-RE-HEARING AT INSTANCE OF-

the funds for definding it, at all events in the name of the other respondent.

Held that there were no sufficient grounds for re-opening or varying the order of Her Majesty in Council (176).

The petitioner must evidently have been content to defense the appeal in the name of the other respondent (176), (Sir James W. Colvile.) MAHARAJAH PERTAB NARAIN SINGH D. MAHARANEE SUBRAO KOER, Export: TRILOKIA-(1878) 5 L. A. 171-4 C. 184 (188 9) =

3 Sar. 840 = 3 Suth 553.

-Respondent-Frand of agent entracted with conduct of appeal-Non-appearance due to-Re hearing on ground of -Terms.

Ex parte judgment against respondents set asole and rehearing of appeal at their instance ordered on the ground that the person with whom they entered into an agreement to defend the appeal on their behalf, and to whom they advan.ed funds to pay the expenses of entering appearence and taking other steps in the conduct of the appeal, defrauded them, misappropriated the funds without doing anything in the matter of the appeal, and left them in complete ignorance of its progress. Re-hearing ordered on payment by respondents of costs of first hearing. RAM NARAYAN SINGH P. ADHINDRA NATH MUKERJI.

(1916) 44 I.A. 87 = 44 C. 388 = 21 M.L.T. 12 15 A. L J. 107 = (1917) M.W.N. 94 - 25 C.L.J. 121 = 21 C.W.N. 383 = 19 Bom. L. R. 194 - 38 I.C. 932 -32 M. L. J. 39.

-Respondent-Notice of admission of appeal-Nonservice of, if a ground for re-hearing at his instance-Knowledge on his part of admission of appeal-Effect.

The respondents in an appeal to the Privy Council, which had been heard ex parte and disposed of in favour of the appellant, applied for re-hearing on the ground that notice of the admission of the appeal had not been given to them as required by O. 45, R. 8 (6) of C. P. C. of 1908. It appeared, however, that the respondents had been aware of the admission of the appeal, though they had not been served with notice of it. Their Lordships rejected the application. HARDIT SINGH P. GURMUKH SINGH

(1919) 59 I. C. 7=22 Bom. L. R. 550-4 P. W. R. 1921.

GRANT OF.

-Jurisdiction. (Lord Chelmsford.) KISTO NAUTH ROY, Exparte. (1869) 12 M. I. A. 254 (258-9) L. R. 2 P. C. 174 = 5 Moo. P. C. (N. S.) 373=2 B. L. B. 60= 38 L. J. P. C. 21 = 20 L. T. 333 = 17 W. R. 521.

JURISDICTION-PRACTICE.

-Application by party or stranger to discission-Reference under-S. 4 of Judicial Committee Act of 1833-Rehearing on-Distinction.

There is no inherent incompetency in ordering a re-hearing of a case already decided by the Board, even when a question of a right of property is involved, but such an indulgence will be granted in very exceptional circumstances only. It is of the nature of an extra ordinarium remedium.

Cases in which one of the parties to a suit which had been decided against him, or a person who was not a party to the suit. applies for a re-hearing of it, have no direct application to the question of the competency of the Board to reconsider a solemn decision by a previous Board on a reference under 8. 4 of the Indicial Committee Act of 1833.

Court necessary for doing complete justice between parties --
Remand for decision of Materials on record not enough

### PRIVY COUNCIL-APPEAL-(Contd.)

Re-hearing of-(Coutd.)

JURISDICTION-PRACTICE-(Contd.)

CIVIL SERVANTS. (1928) 27 A. L. J. 129 = 114 I.C. 25 = 29 L. W. 512 = 1929 A. C. 242 = A. I. R. 1929 P. C. 84 = 56 M. L. J. 363.

PARTIES - RE-HEARING AT INSTANCE OF ONE OF.

-Exceptional circumstances-Permissibility under. There may be exceptional circumstances which will warrant this Board, even after their advice had been acted upon by Her Majesty in Council, in allowing a case to be re-heard at the instance of one of the parties. The cases in which that may be competently done are explained by Lord Brougham in 2 M. I. A. 181. (Lord Watson.) VEN-KATA NARASIMHA APPA ROW P. COURT OF WARDS. (1886) 13 I. A. 155 (158) = 10 M. 73 (77) = 4 Sar. 755. -Grounds-New matter likely to have led to a differ-

ent conclusion if one.

Where there was no informality in the conduct of the saits from their inception to their close, both parties appeared before the committee and were fully heard upon the merits of the appeals the petitioner being at that time represented by the Court of Wards, it was not said that there was any error in framing the judgment of the Board or that it did not fully and accuratly express what the Board intended to decise, and the judgment of the Board was confirmed by regular orders in council, 4/d that, assuming that a relevant case of even weiter was set forth in the petition for hearing, new matter which would, if it had been submitted to the consideration of this Board, possibly have led to a different decision from that which had been formerly arrived at, the grant of a re-hearing would not be warranted in the circumstances of the case. (Lord Watson.) VENKATA NARA-SIMHA AFPA ROW 2. COURT OF WARDS.

(1886) 13 I. A. 155(158) = 10 M. 73 (77) = 4 Sar. 755. REPORT TO HIS MAJESTY IN COUNCIL-RE-HEARING BEFORE.

-Cautien in fermitting.

Even before report, whilst the decision of the Board is not yet ret indicata great caution has been observed in permitting the rehearing of appeals. In a case in which a litigant alleged, before report and approval, that he had been disabled by want of means from appearing and main-taining his case, the Lord Chancellor said: "Having carefully weighed the arguments, and considering the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee, their Lordships are of opinion that expediency requires that the prayer of the petitions should not be acceded to, and that they should be refused". (Lord Watson.)
VENKATA NARASIMHA AFPA ROW P. COURT OF WARDS. (1886) 13 I.A. 155 = 10 M. 73 (78) = 4 Sar. 755.

### Remand in.

ACCOUNTS-RE-OPENING OF-REMAND FOR.

-Investigation thereof fully by Commissioners and their opinion concurred in by Court below. See ACCOUNTS -APPEAL-RE-OPENING OF-REMAND FOR. (1866) 10 M. I. A. 490 (508).

APPELLATE COURT-REMAND TO. -Documents filed in trial Court-Suppression thereof

by that Court from appellate Court-Appellate decision without considering those documents-Discovery of those documents subsequently and before hearing of Privy Council appeal-Remand of case to appellate Court for its decision of case after considering those documents. (Lord Laugdale.) JUVEER-BHAEE P. VURUJ RHAEE.

(1844) 3 M. I. A 324=1 Sar. 286.

Remand in-(Contd.)

APPELLATE COURT-REMAND TO-(Contd.)

to enable Privy Council to decide point-Materials enough for that purpose-Distinction between cases of. (Sir Edward Williams.) NAWAB UMJAD ALLY KHAN v. MUSST, MOHUNDER BEGUM,

(1867) 11 M. I. A. 517 (£49) = 10 W. R. P.C. 25= 2 Suth. 98 = 2 Sar. 315 = R. & J's. No. 7 (Oudh)

### EVIDENCE.

-Additional evidence-Admission of-Remand for with direction to decide on such evidence-Order of confirmed by order in Council-Variation of, so as to make it an order only for admission of such evidence-Jurisdiction as to after receipt of additional condence without decision thereon-Effect of such variation,

In a case in which the Privy Council made an order in an appeal which came on for hearing remitting the case to the appellate Court on the ground of the improper refusal by the trial Court to hear certain witnesses on behalf of the appellants, and directing the appellate Court to proceed therein accordingly, the appellate Court did not decide the case upon the additional evidence so taken but merely transmitted the case to the Privy Council for its consideration, On the appeal coming on before their Lordships with the additional evidence. held that they had no jurisdiction to hear it without a fresh reference by the Queen in Council, but that, by consent of all parties, the original order of their Lordships remitting the case might be varied, for the purpose of making it an order merely to take fresh evidence and to remit the evidence to the Privy Council, and that, on that order being varied, the irregularity would be entirely cured, and the appeal could be heard upon the additional evidence (254 5). (Lord Campbell.) IFSWINT SING IFF v. JET SING I'E. (1844) 3 M. I. A. 245

6 W. R. P. C 46-1 Suth. 150-1 Sar. 574 -Additional evidence-Decision or-Remand for, Sec PURDANASHIN-MOPTGAGE-ATTESTATION OF DEED (1918) 45 I. A. 94 (267) = 45 C. 748. -Additional evidence-Production of-Remand for-Remand not allowed where party had opportunities of adducing such evidence but did not avail himself thereof. RAJA ROW VENCATA NILADRY ROW P. FYOGGENTY 1 Suth. 16=1 Sar. 51=2 Krapp. 259. -Rejection improper of-Admission of-Remord for. though such evidence may be slight. See EVIDENCE-PRIVY COUNCIL APPEAL-EVIDENCE-REJECTION IM. (1856) 6 M. I. A. 448 (459).

Rejection improper of-Remand on ground of with direction to proceed in case accordingly-Procedure on-Decision of case on additional evi 'erce-Duty of Court below- Transmission of additional evidence to Prive Council-Propriety of mere-Jurisdiction of Privy Council to hear appeal with additional evidence-Reference fresh by Queen in Council-Necessity-Consent of parties-Effect. See EVIDENCE - PRIVY COUNCIL APPEAL-EVIDENCE-REJECTION IMPROPER OF.

(1844) 3 M. L. A. 245 (252 3). FACT-ISSUE OF-REMAND TO L.A.C. FOR TRIAL OF. -Issue necessary to be tried for disposal of case-Failure of L.A.C. to try and decide-Failure of High Court to direct trial of-Remand in case of. (Sir Barnes Pea cock.) SREFNARAIN MITTER P. SREFMUTTY KICHEN SOUNDARY DOSSEE. (1873) Sup J. A. 149 (159)= 11 B. L. R. 171 = 19 W. R. 133 = 3 Sar. 203 =

2 Suth. 774.

FRESH DISPOSAL.

Remand for. Decision in case based on Court's decision in prior sort subsequently reversed by Privy Council on appeal-

### PRIVY COUNCIL-APPEAL-(Contd.)

Remand in-(Contd.)

FRESH DISPOSAL-(Contd.)

Remand on groud of. (Si- James W. Colvile.) KALEE PERSHAD TEWARER P. TAILA PINDER LAIL.

(1869) 12 M. I. A. 343 = 2 Sar. 476.

### FURTHER TRIAL-REMAND FOR.

-Evidence additional-Trial on-Remand for. Remand ordered. (.Sir James W. Colvile.) RAJAH SAHEB PERSHAD SFIN P. DOOFGA PERSHAD TEWARFF.

(1869) 12 M. I. A. 286 (331)= 12 W. R. P.C. 6= 2 B. L. R. P. C. 111 = 2 Suth. 225 = 2 Sar. 430.

-Fact -- Question purely one of.

It would require a very strong case to induce their Lordships to send such a matter upon a mere question of fact, for further trial, especially when, in the opinion of their Lordships, the appellants have had abundant opportunities of producing evidence, and when the material onestices of fact are few and simple (92). DEVAIL GAVAILD, GADA-BHAI GODBHAI. (1869) 2 B. L. R. 85 (P.C.)= 11 W. R. 35= 2 Suth. 208.

-Refusal of-Grounds.

Litination already 21 years old; appellants had already had full opportunity of proving their case and had failed to do so; and there was nothing to show that they world have any better proof than they had before, (Sir James W. C. Isile.) SETH LUKHMET CHUND PAGE, SITP INDRA MULL. (1870) 12 M. J. A. 265 (372)=

13 W. R. P. C. 36=4 B. L. R. 31=2 Suth. 290= 2 Sar. 564.

#### NEW TRIAL-REMAND FOR.

-Decumentary evidence-Discovery of after trial-Remand on ground of-Conditions,

A new trial ought never to be lightly granted (816). In a case in which the only ground in support of an application for a new trial was that after the trial an importent decument had been discovered no care of frard of susprise was made out. The applicant could not be said to have been unable to obtain knowledge of the document

before the trial became the enposite party or her solicitor had it or a copy of it and no application for discovery was made. The document might have been useful to the applicant on the trial for the cross-examination of the opposite

Held that the Court below was right in refreing a new trial (816). (Lord Lindley.) TUP BUIL & Co. z. PU-(1902) 6 C. W. N. 809.

-Law point of great importance which could have been, but was not, presented to Courts below and which was raised in appellant's case-Remand for trial of. See PRITY COUNCIL-APPEAL-NEW POINT IN-PERMISSIRI'ITY (1920 · 47 I. A. 239 = 48 C. 1 (21) -ESTOPPEL.

Party having ample opportunity of proving his rate but omitting to do so-Remand at instance of (1). (Sir James W. Celtile, ) RAI MANICK CHAND to MADHORAN.

(1869) 13 M. I. A. 1 (134)=11 W. R. P. C. 42= 3 B L B 5= 2 S-th. 217= 2 Sar. 473.

-(2) (Sir James W. Celvile.) BAROO DOOLI CHAND D. BABOO BRIJ BHOCKI'N LAL AVASTI. (1880) 3 Suth. 734 (737)=6 C L. B. 529 = Bald. 357.

ORDER OF-ADJUSTIONAL EVIDENCE TO BE ADDUCED ON REMAND IF INTENDED BY.

In a suit for damages for failure to deliver 504 hales of dhoties, one wi'ness was called on b-half of the plaintiffs and, after examining him, the trial judge decreed the suit only in respect of 24 bales, and awarded Rs. 2875 by way of damages An appeal and a cross-appeal against his decree were dismissed. On appeal by the plaintiff, the Por

Remand in-(Contd.)

ORDER OF-ADDITIONAL EVIDENCE TO BE ADDUC-ED ON REMAND IF INTENDED BY-(Contd.)

Council set aside the decrees below and remitted the case that .

Held that it was not intended by the Privy Council that the parties should be allowed to adduce additional evidence.

The question was essentially one merely of calculating the amount of damages, and it could not have been contemplated that either party would have proposed to call evidence long afterwards to contradict evidence which had been allowed to passs at the trial, when the facts were comparatively recent. A remit was necessary because their Lordships were not the proper tribunal to make calculation. (Lord Sumner.) PRAGDAS BUDHSEN, In re

(1924) 52 I. A. 118-49 B. 241-29 C. W. N. 515-27 Bom. L. R. 781 = (1925) M. W. N. 402 -A. I. R. 1925 P.C. 111 - 88 I. C. 174 - 48 M. L. J. 610.

RE-TRIAL-REMAND FOR.

Evidence-Failure to adduc . mixed by judge sattitude-Remand on ground of.

A re-trial ought, no could, not to be directed solely to enable a party to mend his case, and to do so in India would be especially objectionable. Nevertheless, considering in this particular case the doubt that exists as to what really took place in the subordinate judge's court, and as to what is implied in his statement that the documents of which he speaks were identified and verified by the witnesses; considering also how much the conduct of a trial in India depends upon the judge, and that the defendants may leave been misled by his giving undue weight to the books, and to what was said concerning the entries in the books, and so prevented from going more fully into their case; and further considering that in this case the question is not merely one of money but one of character, and that the evidence on this record fails to establish satisfactorily on which side the truth lies, their Lordships are disposed, if the defendants should be so advised, to send back the case for re-trial BAROO GUNGA PERSHAD P. BAROO INDERJIT SINGH.

(1875) 3 Suth. 132 (135) = 23 W. R. 390 = 3 Sar. 486.

#### Remand order of High Court.

-Dismissal of suit on preliminary point—Reversal by High Court of, and remand of case by it—Order of— Appeal to Privy Council from-Directions to trial Court in. in regard to further trial of suit-Giving of, contrary to practice of Privy Conneil. (Sir James W. Colvile.) 10-GENDRO DEB ROYKUT P. FUNINDRO DER ROYKUT.

(1871) 14 M. I A 367 (372) = 11 B. L. B. 244 = 17 W. R. 104-2 Suth. 517 = 3 Sar. 32.

Reversal of its decree by Privy Council-Remand by High Court on-Final judgment of High Court affirming decree below made after remand-Appeal from-Allowance of, on ground of remand order of High Court being wrong -Omission to appeal formally from remand order not a bar to. (Sir Montague E. Smith.) HURSUHAI SINGH P. SYED LOOTE ALI KHAN. (1874) 2 I A. 28 (33)= 14 B. L. B. 268 = 3 Sar. 411 = 23 W. R. 8 = 3 Suth. 56.

### Respondent.

### NOTICE TO.

Ex parte hearing of appeal-Notice of service of-Mode of-Appearance not entered by respondent.

Appellant's case being ready to lodge, and no appearance to the appeal having been entered by the respondents, their Lordships, on an application made by the appellant, ordered "that the said appellant he at liberty to serve due action upon the respective respondents in person, or their

### PRIVY COUNCIL-APPEAL-(Contd.)

Respondent-(Contd.)

NOTICE TO-(Contd.)

representatives, in India, should either of them be dead, , in the event of the respondents not appearfor ascertainment of the damages payable to the plaintiff in sing, and bringing in their case without delay, their Lord-excess of the sum already awarded. They also directed that the said appellant should be at liberty to take such proceedings in the Court below, as might be requisite to render such notice or notices effectual, and that the Court of Sudder Dewanny Adawlut should certify to the Judicial Committee what should be done with respect to the same (214.5). WISE r. KISHEN KOOMAR BOUS.

(1847) 4 M. I. A. 201.

----Transmission of record-Appeal being set down for hearing-Notice of-Necessity-Notice of pending appeal served upon him-Effect, LALL PERSHAD & SHAIKH AZZIZ-UD-DIN AHMED. (1896) 24 I. A 49= 19 A. 209 = 7 Sar. 123 = Bald. 529.

PAUPER.

Re-pondent allowed to defend as a-Costs of. See PRIVE COUNCIL -- APPEAL -- COSTS OF -- RESPONDENT --PAUPER.

### PRINTED CASE-LODGING OF.

-Extension of time for-Grant of upon motion mode ofter appeal was set down for hearing car parte and before the bearing thereof, upon terms of (1) r spondent undertaking not to do anything in the interval to the prejudice of the apoellant or to the fund, in the Court below and (2) paying the costs of the application. (Dr. Luthingtow.) WATSON & SREEMUNT LALKHAN

(1854) 5 M. I.A. 447 (458) = 1 Sar. 468. -Failure-Counsel for respondent not heard on ground

of-Adjournment of hearing to enable respondent to ludge printed case. GOVERNMENT OF BENGAL v. MUSSAMAT SHURRUFFUTOONNISSA

(1860) 8 M. I. A. 225 (230 1) = 3 W. B. 31 = 1 Suth. 405-1 Sar. 749.

SAME INTEREST-RESPONDENTS IN.

-Appearance for, and arguments by-Procedure in case of. Sa: LEGAL PRACTITIONER-PRIVY COUNCIL (1872) 18 W. R. 163. APPEAL.

SECURITY FROM, FOR PROTECTION OF PROPERTY IN DISPUTE IN APPEAL.

-Say PRIVY COUNCIL-APPEAL-PROTECTION OF PROPERTY IN DISPUTE IN-SECURITY FROM RESPON-DENT FOR.

### Review to Court below.

-Appeal to Privy Council-Review to Court below subsequent to-Right under review judgment-Saving of.

by indgment in appeal.

In a case in which, after an appeal was filed to the Privy Council, the Court below passed a judgment in review in the same case, and that judgment was sent up and notified to Her Majesty in Council, and put on record in the appeal, their Lordships passed judgment on the appeal, without prejudice to the subsequent judgment passed on review (345-6) (Sir Barnes Peaco.k.) TOONDUN SINGH v. POKHNARAIN SINGH. (1874) 1 I. A. 342= 22 W. B. 199=3 Sar. 390.

-Decision decreeing suit in-Appeal to Privy Council from-Reversal of review judgment and restoration of original judgment dismissing suit-Effect-Suit if pend.

In a case in which a suit was decreed by the trial Court, the High Court on appeal dismiss d the suit. A review of the decree of the High Court was granted, and, on review, the High Court reversed its prior flecree and decreed the

Review to Court below-(Contd.)

suit. On appeal to His Majesty in Council, their Lordships by their judgment allowed the appeal, set aside the decree of the High Court passed on review, restored the original decree of the High Court, and dismissed the suit with costs throughout. Their Lordships' judgment was also embodied in His Majesty's Order in Council.

The Court below construed the order of the Privy Council as merely dealing with the competency of the review application and the legality of the orders passed. It accord-

ingly treated the suit as subsisting.

Held, over-mling the Court below, that the suit had by their Lordships' previous judgment and the Order in Council passed thereon been finally dismissed with costs.

It is quite impossible that any Court in this country or in India can consider such a suit as an existing suit in which any order whatever can be made. (Lord Share.) NEKI v. CHHALJU RAM. (1925) 89 I. C. 185=

(1925) A. I.R. 1925 P. C. 174 (2) = 26 P. L. B. 526=

6 L. R. P.C. 128.

-Decree in respondent's favour made on-Appeal from -- Obje tion to decree on the ground that it covered properties not covered by review application-Whea not maintainable. See PRIVY COUNCIL-APPAI.-FINAL DECREE. (1867) 11 M. I. A. 487 (499-500).

-Matter which might have been set right by-Appeal in re-pert of-Maintainability. See PRIVY COUNCIL-APPEAL-RIGHT OF-REVIEW TO COURT BELOW.

(1874) 3 Suth. 58 (60).

-Matter which might have been set right by-Reversal of decree in regard to-Not allowed. (Sir Arthur Hob-Acuse.) GUNGAPERSHAD SAHU P. MAHARANI BIBI.

(1884) 12 I.A. 47 (51)=11 C. 379 (385 6)=4 Sar. 621

Order rejecting-Reference to. in argument open hearing of appeal from original judgment-Permissibility-No appeal from order rejecting review, though it formed part of transcript. (Mr. Justice Erskine.) SHEIKH INDAD ALI P. MUSSAMAT KOOTBY BEGUM. 6 W. R. P. C. 24= (1842) 3 M. I. A. 1 (12 3)= 1 Suth. 124=1 Sar. 227.

### Revivor of.

-Legal representative-Failure of, to take steps for revival notwithstanding opportunity afforded—Dismissal of appeal in consequence of. See Privy Council—Appeal— PARTY-SUBSTITUTION OF. (1857) 7 M. I. A. 1 (4).

-Legal representative-Revivor by special leave a instance of-Scope of revived appeal-Claims which can be put forward by legal representative-Claims of necesses only and not personal claims of legal aepresentative. (Lead Hobbouse.) UMRAO BEGUM P. IRSHAD HUSAIN.

(1894) 21 I. A. 163 (169) = 21 C. 997 (1004 5) 6 C W. N. 469 = R. & J's. 135.

-Notice of order of-Substituted service of, ordered where respondent was a Hindu woman of rank who coelnot by custom be personally served. JAMES CLARK 2.
BABOO ROUPLANT MULLICK. 3 Moo. P. C. 272-3 Meo. P. C. 252-(1839) 2 M. I. A. 263 (268) - Morton 430 = 1 Sar. 188

## Riddles in-Propounding of.

-Permissibility. See BOUNDARY DISPUTE-PRIVA COUNCIL APPEAL IN-RIDDLES.

### Right of.

-(See also C.P.C. OF 1908-SS 109, 110).

APPEALABLE VALUE-APPEAL AS CONFINED PRINTED CASE AND IN ARGUMENT BELOW, THOUGH OF SUCH VALUE AT PRESENTATION.

BHOPAL - SCHORE IN -- GOVERNOR-GENERAL'S AGENT AT. BOMBAY NAWAB OF SURAT ACT IS OF 1848.

PRIVY COUNCIL-APPEAL-(Contd.)

Right of-(Contd.)

CERTIFICATE OF LEAVE OF COURT BELOW.

CLAIM DISALLOWED BY FIRST COURT AND NOT URGED IN HIGH COURT BY CROSS-APPEAL OR MEMO. OF OBJECTIONS.

COMPANIES ACT OF 1913-Ss. 235, 202.

CONSOLIDATION OF SUITS FOR CONFERRING.

CONTEMPT OF COURT.

COURT BELOW AUTHORIZED TO GRANT LEAVE-GRANT OF LEAVE BY, LEAVING QUESTION OF COMPETENCY OPEN.

COURT OF HIGHEST CIVIL JURISDICTION IN PRO-VINCE-FINAL JULGMENT OF.

COURT OF JUSTICE - PROCEEDINGS BEFORE-AP-PEAL FROM-RIGHT OF.

FINAL ORDER.

INCOME-TAX ACT.

INDIAN LEGISLATURE.

INTERLOCUTORY ORDER-APPEAL FROM.

KATHIAWAR.

LAND ACQUISITION ACT.

LEGAL PRACTITIONER.

NATIVE RULER - DEPOSITION OF, BY VICEROY IN COUNCIL.

OBJECTION TO.

RECEIVER-INTERIM APPLICATION FOR-ORDER ON. REVIEW TO COURT BELOW-MATTER WHICH MIGHT HAVE BEEN SET RIGHT BY.

STATUTE TAKING AWAY.

SUPREME COUNT.

TAKING AWAY OF-WHAT AMOUNTS TO.

TAKING AWAY OF-INDIAN LEGISLATURE-POWER

TRIAL JUDGE'S DECISION.

UNDERTAKING NOT TO APPEAL IN CERTAIN EVENT.

APPEALABLE VALUE-APPEAL AS CONFINED IN PRINTED CASE AND IN ARGUMENTS BELOW, THOUGH OF SUCH VALUE AT PRESENTATION.

-Effect.

If an appeal is competently made, and it appears to their Lordships after argument, or is admitted at the Bar, that the greater part of it must fail, it is the constant practice to give relief in respe t of the portion in which the appellant succeeds, notwithstanding that the subject-matter of that portion of the appeal may be less than the prescribed limit. The appellant ought not to be prejuniced by the fact that his counsel, in the exercise of his dis retion confined, by his printed case and at the Bar, his argument to a matter below the appealable value, because he thought that the appeal could not sucreed as to the renainder (73.4). (Lord Datey). KALKA SINGH t. PAPASRAM.

(1894) 22 I A. 68 = 22 C. 434 (442.5)-6 Sar 545 = R. and J.'s No. 137 = 5 M.L.J. 14.

BHOPAL -SCHORE IN-GOVERNOR GENERAL'S AGENT AT-DECISION OF.

-Anpeal from-Queere if lies. (Lord Macmarkten) (1908) 35 I.A. 88 (97)= HANSRAJ D. SUNDAR LAL. 35 C. 648 (660)= 4 M.L.T. 25= 12 C.W.N. 525= 7 C L.J. 520 = 10 Bom. L R. 581=

138 P.L.R. 1908= 59 P.W.R. 1908=

14 Bom. L.B. 146 = 80 P.B. 1908 = 18 M.L.J. 266. BOMBAY NAWAB OF SURAT ACT 18 OF 1848.

Governor of Bombay in Council-Distribution of awab's property by, acting under Art-Appeal agring. See BOMBAY ACTS-NAWAB OF SURAT ACT 18 OF 1848-GOVERNOR OF BOMBAY IN COUNCIL-DISTRI-BUTION OF NAWAB'S PROPERTY BY, ACTING UNDER (1854) 5 M. L. 450 (500) AOT.

Right of - (Contd.)

CERTIFICATE OF LEAVE OF COURT BELOW.

-Grant of, without jurisdiction - Competence of appeal in case of-Dismissal of appeal as incompetent. (Lord Datey). KALKA 'INGH D. PARASRAM.

(1894) 22 I.A. 68 (73 4) = 22 C. 434 (442)= 6 Sar. 545 = R. and J's No. 137 = 5 M.L.J. 14.

-Invalidity of -Effect of. See C.P.C. OF 1908-S. 110-CERTIFICATE UNDER AND C.P.C. OF 1908-S. 109 -CERTIFICATE UNDER.

-Invalidity of-Effect of-Objection to grant of certificate-Respondent's failure to raise-Effeci.

(1900) 28 I.A. 11 = 23 A. 227.

-Order therefor - Conflict between - Competency of appeal-Test true of, in such a case

(1901) 28 I. A. 132 (183, 185) = 23 A. 415 (419 20).

CLAIM DISALLOWED BY FIRST COURT AND NOT URGED IN HIGH COURT BY CROSS-APPEAL OR

MEMO OF OBJECTIONS.

-Appeal in respect of.

In or about 1894, appellant's father. A, entered into an agreement with the respondent under which the respondent was appointed agent for the purpose of collecting tents and profits from certain forest land, sen ering accounts of his management, from time to tine, to N. N sied in July 1899, leaving three sons, the appellants. The agency was terminated on 161-1902. In September 1904 the appellants commenced the suit out of which the appeal arose against the respondent claiming a declaration that the respondent was liable to render accounts to the plaintiffs of the amount realised in respect of the said property for the hole period of the agency.

The Sub-Judge ordered an account of the income and expenditure from the month of July-August 1896 to the month of January 1902. Against that order the respondent appealed to the High Court. The appeal was allowed and the order of the Sub-Judge was varied so as to limit the amount to five months from August 1901 to January 1902.

On appeal by the appellants against that order of the High Court, they asked that accounts should be ordered for

the whole period of the agency. Held that, in the absence of any cross-appeal to the High Court, or of any memorandum such as was required to be filed under S. 561 of C.P.C. of 1882, it was not competent for the appellants to get any further remedy than the restoration of the order of the Sub-Judge (6-7). (Lord Parmoor). NOBIN CHANDRA BARUA D. CHANDRA MAD-HAB BARUA. (1916) 41 C. 1-5 L.W. 452 = 20 M.L.T. 430 = (1916) 2 M W.N. 505 = 21 C.W.N. 97 =

24 C.L.J. F09 18 Bom. L.R. 1022 = 14 A.L.J. 1199 = 36 I.C. 1 = 31 M L J. 886.

COMPANIES ACT OF 1913-Ss. 235, 202.

-Misfeasance summons proceeding-Order of Pench of two judges of High Court on its original side-Appeal direct from.. See COMPANIES ACT OF 1913 -Ss. 235, 202. (1927) 4 O.W.N. 685.

CONSOLIDATION OF SUITS FOR CONFERRING.

-Statute 21, Geo. III, c. 70, S. 21-Consolidation under

Under 21 Geo III, c. 70; S. 21, a judgment for less than £5,000 is final and conclusive. And where there are two dgments, each of them for less than £5,000 each of m by the words of the statute is final and conclusive.

In a case in which there were two suits (early for less than 65,000 though both for more than that amount) and two ments were given in them, held that the suits could

### PRIVY COUNCIL-APPEAL-(Contd.)

Right of-(Contd.)

CONSOLIDATION OF SUITS FOR CONFERRING-(Centd.)

to the Privy Council. (Mr. Barm Parke). MOOFTI MCHUMMUD UBDOOLAH 2. BAROO MOOTEI CPUND.

(1837) 1 M.I.A. 363 = 5 W.R. 34 (P.C.) = 1 Suth. 56-1 Sar. 129.

CONTEMPT OF COURT.

-Commitment for-Order of-Appeal from. See CONTEMPT OF COURT.

### COSTS.

-Appeal as regards mere. S.c Cos is-APPEAL as TO. COURT BELOW AUTHORIZED TO GRANT LEAVE -GRANT OF LEAVE BY. LEAVING QUESTION OF COMPETENCY OPEN.

-Effect.

Revised statutes of Ontario, 1897, C. 48, "The Act respecting appeals to Her Majesty in Her Privy Council, contemplated an allowance of the appeal by the Court of

Held, in view of the consequences that would follow from admitting an appeal, that it was essential that that appeal should be admitted by that Court, and that the Court was bound to exercise its judgment in considering whether any particular case was appealable or not.

When the Court of Ontario granted leave but carefully avoided expressing any opinion on the question of the competency of the appeal, and in their Lordships' opinion the appeal was not competent, held, that the appeal was not congregate and must be dismissed

Semble, if the appeal had come forward by the direction of the Court of Ontario, and it might be fairly inferred that they had considered the question whether it was of appealable value or not, it might be open, and probably would be open, to their Lordships to hear the appeal. Macnaghten.) GILLET CO., LTD. P. LUMBSDEN.

(1905) 15 M L.J. 461 = 10 C.W.N. 7.

COURT OF HIGHEST CIVIL JURISDICTION IN PROVINCE-FINAL JUDGMENT OF.

-Appeal from-Right of, allowed - Affirming judgment of Court made final-Appeal from-Right of, when its reversing judgment not so made final. See OUDH ACTS-CIVIL COURTS ACT OF 1871. (1877) 4 I. A. 178 (183)= 3 C. 522 (527).

COURTS OF JUSTICE-PROCEEDINGS BEFORE-APPEAL FROM-RIGHT OF.

British subject-Person net a-Right of. The Political Agent of Kathiawar held that the right of appeal to the King in Council "is a birth-right and appertains only to Bri'ish subjects, unless specially conferred by legislative enactment." Their Lordships are unable to concur in this view. They think that if a Court, administering justice on the king's behalf, makes an order, judicial in its nature, by which some one is unjustly and injuriously affected, the person aggriesed is not precluded from applying to the King in Council to redress his wrong merely by the fact that he is not the king's subject. (Sir Arthur Wilson.)

HEMCHAND DEVCHAND P. AZAN SAKARLAI. CHHOTAM

LAL. (1905) 33 I. A. 1=33 C. 219 (253-4)=

10 C. W. N. 361 = 8 Bcm. L. R.129 = 3 A. L. J. 250 = 3 C. L. J. 395=1 M. L. T. 115=9 Sar. 5=

16 M. L J. 115. Taking away of-Power of Indian Legislature as to. See INDIAN LEGISLATURE-PRIVY COUNCIL.

(1854) 5 M. I. A. 499 (508). -See also PRIVY COUNCIL-APPEAL-RIGHT OF a connected for the parpose of permitting arrappear INDIAN LEGISLATURE ... (1856) 6.M. I. 4-448 (455).

Right of-(Cents.)

### FINAL ORDER.

-Appeal from - C. P. C. of 1908-S. 104-Effect of. See C. P. C. 01 1908 S. 104-APPLICABILITY-PRIVY COUNCIL APPEALS

### INCOME-TAX ACT.

-Act of 1918-S. 51-Decision of High Court under -Appeal from Sw INCOME-TAX ACTS- INCOME-TAX ACT OF 1918-S. 51. (1927) 54 I. A. 421 (423-4). -Act of 1922-S, 66 (Prior to amendment)-Decision of High Court under. See INCOME-TAX ACTS INCOME-TAX ACT OF 1922-S. 66. (1927) 54 I. A. 421 (423-4).

### INDIAN LEGISLATURE.

-Finality given to decition by Act of -Effect of, on right of appeal

The farality given to a decision by an Act of the Indian Legislature must be limited to the jurisdiction of that Legislature and cannot deprive the party aggrieved by such decision of his right to appear to the P. C. from it (455.) MODER KAIKH JOSCROW : GOOVERBHAEE. 1 Sar .572.

(1856) 6 M. I. A. 448-4 W. R. 94-1 Suth. 268=

-Limiting or affecting of right by-Sauction of Croten for-Necestly.

It is the prerogative of the Crown to do justice between all its subjects, and the Indian Legislature could have no power to limit or affect that prerogative without the sanction of the Crown (455). (Lord Justice Turner.) MODES KAIKHOOSCROW & G OVERBRAEE. 1 Suth 263 -(1856) 6 M. J. A. 448 = 4 W. R. 94 - 1 Sar. 572.

INTERLOCUTORY ORDER-APPEAL FROM

-Interference in.

Pending an appeal and a cross-appeal to the High Court from the decree of the sub-judge passed mainly in favour of the defendant in the suit, an application was made to the High Court by the respondents before the Privy Council for an injunction to restrain the appellant before the Privy Council from alienating or otherwise wasting the properties in his possession, and the appellant before the Privy Council applied for a stay of execution of the decree of the sub-judge in so far as the same was in favour of the respondents. Both the applications were heard together by a Division Bench of the High Court and a certain order was made. On two consolidated appeals preferred to the Privy Council from the said in erlocutory order of the High Court their Lordship. modified the order of the High Court. (Lord Buckmaster.) SHIBA PRASAD SINGH :: RANI PRAVAG KUMARI DEBI.

(1922) 27 C. W. N. 1004 = 32 M. L. T. 189 (P.C.) -Lanc granted by High Court under erroneous impression that it is final.

The mere fact that the High Court, apparently on the assumption that an order of theirs which was really interlocutory was a final order, have certified the sufficiency of the amount and value of the suit cannot make appealable an order which does not fulfil the statutory conditions (34). (Lord Robertson.) RAI RADHA KISHAN v. COI LECTOR OF JAUNPORE. (1900) 28 I. A. 28 = 23 A 220 (227) = 5 C. W N 153=3 Bom. L. R. 78=7 Sar. 800=

11 M. L. J. 65.

-Letters Patent (Bombay)-Cl. 40-Leave to appeal under-Grant of-Discretion.

The granting of permission to appeal to His Majesty in Council in respect of preliminary or interlocutory judgments decrees, orders or sentences of the High Court under Cl. 40 of the Letters Patent of the High Court of Bombay is entirely discretionary with the Court or judge empowered to give it. There is not an appeal as of right in these interlocutory matters, and but for the provision of Cl. 40 an appeal in such matters would be incompetent. (Lord Askin. to entertain. (Sir Montague R. Smith.) Gallons

### PRIVY COUNCIL-APPEAL-(Contd.)

Right of-(Contd.)

INTERLOCUTORY ORDER-APPEAL FROM .- (Contd.) SOW.) TATA IRON AND STEFL CO. 2. CHIEF-REVENUE AUTHORITY, BOMBAY. (1: 23) 50 I. A. 212(2189)= 47 B. 724 (732) = 25 Bom. L. B. 908= A. I. R. 1923 P. C. 148 = 21 A. L. J. 675= 18 L. W. 372 = (1923) M. W. N. 603= 33 M. L. T. 301 = 9 O. & A. L. B. 783= 28 C. W. N. 307 = 39 C. L. J. 16 = 74 I. C. 469 = 45 M. L. J. 295.

-Receiver-Interim application for-Order on. See RECEIVER-INTERIM APPLICATION FOR-ORDER ON. (1927) 55 I. A. 131 = 55 C. 720-

### KATHIAWAR.

-Political Agent's Court in-Appeal from. Sa KA-THIAWAR-POLITICAL AGENT'S COURT IN.

(1903) 13 M. L. J. 154

-Tribunals in-Decisions of-Appeal to Governor of Bombay in Council from-Decision in-Appeal from. Ser KATHIAWAR -TRIBUNALS IN.

(1905) 33 I. A. 1 = 33 C. 219 (2524)

### LAND ACQUISITION ACT.

-Decision of High Court under-Appeal from. See LAND ACQUISITION ACT OF 1894-S. 54-PRIVY COUN-CH, APPEAL UNDER,

#### LEGAL PRACTITIONER.

-Criminal offence-Conviction of-Removal from roll on ground of -Order of -Appeal from. See LEGAL PRACTI-TIONER-MISCONDUCT-CRIMINAL OFFENCE.

(1899) 26 I. A. 242=22 A. 49. NATIVE RULER-DEPOSITION OF, BY VICERY IN

COUNCIL. Order of made on report of commission appointed to inquire into charges against Ruler-Appeal against. Se ACT OF STATE-ACTS AMOUNTING TO AN OR NOT-(1904) 31 I. A. 239=32 0.1. NATIVE RULER.

### OBJECTION TO.

-Appealable value-Objection on ground of-Time for taking-Lodging of petition of appeal-Hearing of appeal—Objection must be taken at former stage and mil not be allowed to be taken at latter. (Lord Justice Se wyn.) NILMADHUB DOSS v. BISHUMBUR DOSS

(1869) 13 M. I. A. 85 (95) = 13 W. B. P. C. 29= 3 B. L. R. P. C. 27 = 2 Suth. 257 = 2 Sar. 499

Facts known to both parties constituting an disclaed in certificate sent to Privy Council Registrar along with transcript of record-Directions in case of Application to Privy Council or its Registrar at an early stage for-Dat to make.

Where with the transcript of the record in a Privy Concil appeal, the High Court forwarded a certificate to the effect that its decision on one of the points only was make on the undertaking that it was to be final, and the appelled was not to appeal to the Privy Council, and the fact that a did so was known to both parties, held that it was the day of each party, by an application to the Registrar of the Privy Council or to their Lordships themselves, to brist that certificate to the attention of their Lordships and to take their Lordships directions as to what ought to be does before any expense was incurred in preparing cases, or it delivering briefs for the hearing (Lord Justice Justice)
MOONSHEE AMEER ALI P. MAHARANEE INDEXINGH. (1871) 14 M. I. A. 203 (207.8)

9 R. L. P. 400 2 0 0 1 1 10 2 9 84.781.

9 B. L. R. 460 = 2 Suth. 479 = 9 Sar. 781 -Hearing of appeal - Objection taken at - Justicities

Right of-(Contd.)

OBJECTION TO-(Cent.d.)

PERSHAD v. TWO WIDOWS OF EMAM ALI BEG.

(1875) 2 I. A. 205 (206)= 15 B. L. R 221= 3 Suth. 148: 3 Sar. 455 - R & J's. No. 36 (Oudh).

-Hearing of appeal- On is ion to take before-Costs of respondent-Disallowance of, on that ground. See PRIVY COUNCIL-APPEAL-COSTS OF-PRELIMINARY OBJECTION, ETC. (1875) 2 I. A. 205 (210.)

Time for taking-Rule-Exception.

An objection to the mointernability of an appeal to the Privy Council on the ground that the leave to appeal granted by the Court in Incia was in the ci-cumstances of the case clearly ultra vires cught to be taken at the earliest moment, i.e. when the re-pendents first became aware that the irregular petition of appeal had been lodged. The obvious reason for this rule is that the great expense of preparing for the hearing of the appeal is thereby saxed, which is uselessly incurred if, when the objection is obtimately taken, their Lordships feel a bliged to yield to it (206), (Sir Montague E. Smith.) GALFIRUR ITESHAP P. THE TWO WIDOWS OF EMAIN ALL PLG. (1875. 21 A. 205=

15 B. L. R. 221 = 3 Sav. 425 = 3 Suth. 148 = R. & J.'s No. 36 (Oudh)

RECEIVER-INTERIM APPLICATION FOR-ORDER ON. -Appeal from. See RICHVER-INTERIM APPLI-CATION FOR-ORDIR ON. (1927) 55 I. A. 131=

55 C. 720. REVIEW TO COURT BELOW - MATTER WHICH MIGHT

HAVE BEEN SET RIGHT BY. -Appeal in re-pect of -Not competent. VARADA IYENGAR v. VENKATA LUCHMAMAL.

(1874) 3 Euth. 58 (60) = 23 W. R. 91.

STATUTE TAKING AWAY.

Express words-Necessity-Decision declared to be " final and conclusive "-Effect.

The prerogative of the Crown cannot be taken away except by express words; and in any case where the prerogative of the Crown has existed precise words must be shown

to take away that prerogative.

In 1884 a Native Appellate Court was set up in New Zealand, the already exi-ting Native Land Court being ex-pressly continued. To these Courts the Legislature gave exclusive jurisdiction over the civil rights of natives in land and in matters of succession, probate, and administration. The object of the legislation was to provide for the determination of disputes among those natives according to their own customs, so far as those were not repugnant to the general principles of humanity.

The 93rd section of the Act of 1894 (No. 43 of 58 Vict.) declared that the decisions of the Native Appellate Court should be "final and con:lu-ive." There was no express exclusion of His Majesty's prerogative. On a question arising as to whether the words of the section excluded a petition to His Majesty for leave to appeal, held that the prerogative

of the Crown was not taken away.

In the present case their Lordships have to deal with rights which are the ordinary legal rights of subjects of the king. The legal rights of this particular people in the matters of land, succession, and probate are subjected to the newly created tribunal. But for the creation of this court the law courts would have had to determine those rights as best they could, and an appeal would clearly have lain to His Majesty. The exclusion of the right to appeal to His aty would therefore be a forfeiture of existing rights on the part of sovereign and subject. (Lord Robertson.) WM. MATUA In the matter of the WILL OF.

(1908) 12 C. W. N. 1081.

# PRIVY COUNCIL-APPEAL-(Contd.)

Right of-(Contd.)

SUPREME COURT.

- Appeal from-Right of-Scope of.

The context of all the three charters of the Supreme Courts of Rombay, Madras and Pergal shows that the appeal to His Majesty in Council allowed by them is not confined to cases in which some right or duty is finally decided (177). (Mr. Baron Parks.) NATHOOBHOY RANDASS v. MOOL-JEE MADOWDASS. (1840) 2 M. I. A. 169=

3 Moo. P C. 87 = 1 Sar. 198.

-Calcutta Court-Decree in plaintiff's favour of-Reserval on appeal of-Procedure on-Verdict for defendant-New trial-Grant of. See SUPREME COURT OF CALCUTTA-DECKEE IN PLAINTIFF'S FAVOUR OF

(1849) 5 M. I. A. 1 27, (42).

-Equity side of-Suit instituted on-Decree in-Apperl from-Issues in suit directed to be tried on common law side-Findings on-Objection to-Maintainability. See SUPREME COURT OF BOMBAY-EQUITY SIDE OF-SUIT INSTITUTED ON-ISSUES PURICIFIED ETC.

(1840) 2 M. I. A. 169 (178-180).

-Equity side of -Sunt instituted on-Decree or order in Affed from-Right of.

As an appeal undoubtedly fies from all decrees or decretal orders in the equity side of the Sepreme Court at Calcutta, it does equally from every decree or decretal order on the equity side of the Supreme Court of Bombay and Madras (177). (Mr. Baron Parks). NATROOBHOY RAMBASS P. MOOLJEE MADOWDASS.

(1840) 2 M. I. A. 169 = 3 Moo. P. C. 87 = 1 Sar. 198.

- Judgment and verdict of-Weight due to-Interference with.

Where a judgment has been pronounced, and a verdict found, and that jurgment pronounced by the Judges of the Supreme Court, sitting as a court for the purpose of the trial of an action, their Lordships will give, at least, the same weight to that decision as is given in this country to the ventict of a jury, to which the Judge who tries the cause makes no objection; and, where there are no reasonable grounds to suppose that the Jury have come to a wrong conbusion, it is not sufficient to say that the Judge might, prohably, if the case was res integra have come to a different ronrlusion (49.50). (Mr. Pemberton Leigh.) MUSADEE MAHOMED CAZTEM SHERAZEE P. MEFRZA ALLY MAHO-MED KHAN. (1854) 6 M. I. A. 27 = 8 Mco. P. C. 110 =

-Master of-Dismissal for misconduct of-Order of-Appeal to Privy Council from-No right of, under Charter of Justice, because order is not a judicial act. (Lord Brougham.) MINCHIN, In re.

(1847) 4 M. I. A. 220 (221) = 6 Moo. P. C. 43. -Officer of-Suspension for misconduct of-Order of -Appeal to Privy Council from-Leave for-Grant of-Jurisdiction of Supreme Court. See PRIVY COUNCIL-APPEAL-SPECIAL LEAVE FOR-GRANT OF.

(1850) 7 Mco. P. C. 141 (145).

TAKING AWAY OF-WHAT AMOUNTS TO.

Manner and form of right-Provision as to-Delegation to Court below of right of granting or refuting appeal in its discretion-Effect.

There is no ahandonment of the right of a subject to appeal to the King in Council; for there is an express provision made as to the marner in which that appeal shall be exercised and for the Crown baving the power. It might be reasonably contended that the Crown may point out the manner in which the general common law right of appeal to it from Colonial sentences shall be exercised,

Right of-(Contd )

TAKING AWAY OF - WHAT AMOUNTS TO-(Contd.)

by a particular mode of enactment in the Charter. It may say, there is a right to appeal to the Crown generally. That appeal shall be in civil cases at all times, but that appeal shall be in criminal cases only in a certain manner and form, and I shall delegate to my Judges below, the right (the Crown may say so) to refuse or to grant it, as they see fit. I see nothing contrary to the prerogative. I see nothing contrary to the right of the subject, as involved in the exercise of that prerogative of the Crown, having even independently of the Statute, laid down the right in that particular form (495-6) (Lord Brougham). THE QUEEN v. ALLOO PARVO. (1847) 3 M. I. A. 488=

5 Moo. P. C. 296 = 1 Sar. 310 = Per Cr. Ca. 551.

TAKING AWAY OF-INDIAN LEGISLATURE-POWER OF. -Courts of Justi e - Proceedings before-Apper l from-Right of. See INDIAN LEGISLATURE-PRIVA (1854) 5 M. I. A. 499 (508).

-Sanction of Crown - Necessity. See P. C .-APPEAL-INDIAN LEGISLATURE

(1856) 6 M. I. A. 448 (455).

### TRIAL JUDGE'S DECREE.

-Appeal direct from.

A suit filed on the original side of the High Court against A and B, as agent of A. on two contracts, was decreed against A but disnipsed against B, who was however, directed to pay taxed costs to the plaintiffs. An appeal was preferred jointly by A and B against the decree which was made against them. Plaintiffs, however, did not appeal against the decree di-missing their suit against B. The appellate side of the High Court held A was not liable in respect of one of the contracts sued on, modified the decree below in re-pert of his liability under the other contract, with certain costs, and dismissed the suit against B. From the decree made on the appellate side of the High Court the plaintiffs appealed to the Privy Council seeking to make B as well as A liable on the contracts,

Held, that as the plaintiffs had not appealed against the decree of the trial Judge dismissing the sait, excepting as to costs against B. the appeal to the Privy Council was, so faas B was concerned, unsustainable and should be dismissed

The appeal to His Majesty in Council, in so far as B is concerned is in effect an appeal direct to His Majesty in Council from the decree of the trial Judge which is no allowable under C. P. C. of 1908, or under the Letters Patent of the High Court. O. 41, R. 33 of C. P. Code of 1908 was not intended to apply to such an appeal (87). (Six John Edge.) MAHOMED KHALREF SHIRAZ & LA TAN NERIES LYONNAISES. (1926) 53 I. A. 84 = 49 M. 435 = 3 O. W. N. 568 - (1926) M. W. N. 495 - 24 L. W. 115 -44 C. L. J. 67 = 28 Bom. L. R. 1391 = 31 C. W. N. 1 =

A. I. R. 1926 P. C. 34 = 94 I. C. 767 = 51 M.L. J. 570.

UNDERTAKING NOT TO APPEAL IN CERTAIN EVENT. -Appeal in breach of. See DECREE-APPEAL FROM -RIGHT OF-UNDERTAKING, ETC. (1871) 14 M. I. A. 203 (206-7).

Single appeal by different defendants with different defences and different grounds of appeal.

-Irregularity-Lolging of separate cases and appearance by separate counsel ordered.

Where the defendants in a suit by a creditor to recover amounts for which they stood surety raised different defences but joined in preferring a single appeal to Her Majesty

### PRIVY COUNCIL-APPEAL-(Contd.)

Single appeal by different defendants with diffenent defences and different grounds of appeal -(Contd.)

in Council, their reasons in support of the appeal being also different, held that the proceeding was irregular and might easily result in inconvenient consequences. To avoid the necessary embarrassment due to such a proceeding, their Lordships allowed the appellants to lodge separate cases and heard them by separate counsel (172), (Lord Hobbour.) HODGES D. DELHI AND LONDON BANK, LTD.

(1900) 27 I. A. 168 = 23 A. 137 (142) = 5 C. W. N. 1= 2 Bom. L. R. 967 = 7 Sar. 767 = 10 M. L. J. 279.

#### Statute.

-Indian Statute-Practice of Indian Courts as to-Established course of-Interference with. See STATUTE-INDIAN STATUTE.

(1872) 14 M. I. A. 543 (560-1).

-Provisions of-Violation of-Objection based on-Maintainability for first time of. See PRIVY COUNCIL-APPEAL-NEW POINT IN-PERMISSIBILITY-STATUTE

### Stay of execution of decree pending.

-See PRIVY COUNCIL-APPEAL-EXECUTION OF DECREE UNDER.

### Stay of Proceedings pending.

-Grant of-Jurisdiction of Privy Council-Remand order of High Court-Appeal against-Proceedings in remanded suit pending-Stay of-Refusal by High Court of-No appeal to Privy Council from-Application to Privy Council for stay in case of-Quart as to jurisdiction of Privy Council to grant. (Lord Chelmsford.) NAWAB SIDHEE NUZUR ALLY KHAN 2. RAJAH OJOCHYARAN KHAN. (1865) 10 M. I. A. 322 (3267, 328)= 6 W. R. (P. C.) 83=2 Sar. 133.

- Grant of-Remand order-Appeal from-Proces ings in remanded suit pending-Stay of-Grounds.

Costs unnecessary to which applicant might be pet if stay not granted, held not a sufficient ground for granting stay because (1) he could, if he succeeded eventually, recover such costs from respondent and (2) if stay were granted and the appeal failed eventually, the respondent stood is great danger of losing evidence which would be useful at the trial on remand. (Lord Chilmsford.) NAWAB SIDELS NUZUR ALLA KHAN 2. RAJAH OJOODHYARAM KHAN.

(1865) 10 M. I. A. 322 (327) = 6 W. R. (P. C.) 83=

-- Protection of property in dispute-Stay for Ser PRIVY COUNCIL - APPEAL - PROTECTION OF PROPERTY IN DISPUTE IN.

### Subject-matter of-Value of.

-See C. P. C. OF 1908 S. 110, PARA. 1-SUBJECT-MATTER OF APPEAL.

### Suit-Events subsequent to.

Cognizance of. See SUIT- EVENTS SUBSEQUENT TO.

### Supreme Court-Decision of.

-Appeal from. See PRIVY COUNCIL-APPEAL-RIGHT OF-SUPREME COURT.

### Translation of document.

-Official translation-Translation by Court below Conflict between—Translation acted upon by Privy Condi in case of. See DEED-CONSTRUCTION OF-VENI CULAR DEED.

-Question in appeal as to- Transmission of origin deed in case of. See PRIVY COUNCIL-APPEAL-TRANS MISSION OF RECORD IN.

Transmission of record.

DEED-ORIGINAL OF-TRANSMISSION OF.

Adjournment of appeal for purpose of genuineness of deed in question. (Lord Justice Turner.) (1) WISE P. BHOOBUN MOVEE DABIA CHOWDS AINEE.

(1863) 10 M.I.A. 165 (171) = 3 W.R. (P.C) 5 = 1 Suth. 563 = 2 Sar. 91.

(2) (Lord Justice Turner.) RANEE SURNOMOYEE 7. MAHARAJAH SUTTESHCHUNDER ROV.

(1864) 10 M. I. A. 123 (134 5) = 2 W. B. 13 = 2 Sar. 60 = 1 Suth. 548.

Order for, on application made after transmission of the transcript to England. (Lord Kingsdram.) MUSSAMAT KHOOB CONWUR v. BABOO MOODNARAIN SINGH.

(1861) 9 M. I. A. 1 (10) = 1 W. R. (P. C.) 36 = 1 Suth. 465 = 1 Sar. 813.

-Translation of deed by High Court-Appellant questioning correctness of-Procedure in case of. See DEED -CONSTRUCTION OF-VERNACULAR DEED-TRANSLA-TION BY HIGH COURT OF. (1919) 13 L. W. 652 (655). -Law points-Decision below confined to, and appeal involving only-Record bearing upon those points-Transmission only of, directed. RAJAH RAO VENKATA SURVA MAHIPATI RAM KRISHNA RAO BAHADUR 3. COURT OF (1897) 24 I. A. 194 = 20 M. 395 = 7 Sar. 252. -Notice to respondent of-Necessity-Service prior on him of notice of pending appeal-Effect. See PRIVY COUNCIL-APPEAL-RESPONDENT-NOTICE TO.

(1896) 24 I. A. 49 - 19 A. 209. -Peremptory order to Court below for-Made, on application of both parties in a case in which Court below, notwithstanding an express direction to that effect negligently omitted to transmit a portion of the record. BABO'S KASI PERSAD NARAIN v. MUSSUMAT KAWALBASI KOOER. (1851) 5 M. I. A. 146 (161) = 1 Suth. 225 = 1 Sar. 412.

-Petition for-Order en.

On a petition praying for the transmission of certain documents, which were used in the litigation but which were not set up as part of the record, the Privy Council directed the High Court to transmit the documents. MARA-RAJAH OF VIZIANAGAR P. ZEMINDAR OF BOBBILL.

(1869) 4 M. J. 283.

Valuation of property.

Concurrent findings as to-Interference with. See LAND ACQUISITION ACT OF 1894. S. 23-MARKET-VALUE AND PRIVY COUNCIL -APPEAL-LAND AC-QUISITION ACT.

Principle adopted by Courts below as to-Objection to-Maintainability of-Character of valuation of property as a valuation -Objection in Courts below and in case lodged in Privy Council only to. See PRIVY COUNCIL -APPEAL-NEW POINT IN-PERMISSIBILITY-VALUA-TION OF PROPERTY. (1920) 47 I. A. 255 (264) = 48 C. 110 (118-9).

### Vernacular deed-Translation of, adopted by Privy Council.

Official translation-Translation of Court below Conflict between. See DEED-CONSTRUCTION-VERNA-CULAR DEED.

Vernacular words-Meaning of.

Indian Court's opinion as to-Weight attached to. See WORDS-MEANING OF-VERNACULAR WORDS

(1921) 49 I. A. 54 (57-8) = 46 B. 481 (486)

PRIVY COUNCIL -COURTS OF JUSTICE -PRO-CREDINGS BEFORE.

Judicial functions in regard to-Exclusion of-Indian Legislature's powers as to. See INDIAN LEGISLA-TURE-PRIVY COUNCIL. (1854) 5 M. I. A. 499 (508).

### PRIVY COUNCIL—CRIMINAL APPEAL.

COSTS OF-CROWN-PAYMENT TO ACCUSED BY DILLET'S CASE.

EVIDENCE AND COURSE OF PROCEEDINGS-EXAMI-NATION OF.

FUNCTION AND JURISDICTION OF BOARD IN.

INTERFFRENCE IN-GROUNDS.

LETTERS PATENT (CALCUTTA), S. 41-APPEAL UNDER,

PARDON FREE TENDERED TO APPELLANT AFTER FILING OF.

PAUPER-SPECIAL LEAVE TO APPEAL AS A.

PENAL CODE, S. 124-A-SEDITIOUS CHARACTER OF PUBLICATIONS-DUCISION OF INDIAN COURTS AS

POINTS OPEN TO APPELLANT IN.

SPECIAL LEAVE FOR.

SUPREME COURT OF BOMBAY.

### Costs of-Crown-Payment to accused by. Order fer.

In view of the exceptional nature of the case, their Lordships directed the Crown to pay to the appellant (accused) the custs of his appeal to the Privy Council. They also directed the restoration to him of the amount of the costs of prosecution paid by him under the judgment of the Court below. (Lord Shate.) LOUIS EDONARD LANIER P. THE (1913) 26 M. L. J. 1 (8) -18 C. W. N. 98=

15 Cr. L J. 305 - 23 I. C. 657 = (1914) A C. 221. Dillet's case.

### PRINCIPLES OF-APPLICABILITY.

-Crown colonies -- Self-governing dominions-India-Distinction. See PRERUGATIVE-NATURE OF.

(1924) 49 B. 455.

-Special leave-Appeal admitted by.

The ordinary rules limiting the exercise by the Board of its jurisdiction in appeals in criminal matters, enunciated by Lord Watson in Dillet's case, apply to cases in which special leave has been granted (105), (Lord Phillimore.) ABDUL RAHMAN 2. KING-EMPI ROR.

(1926) 54 I. A. 96 = 5 R. 53 = 45 C. L. J. 441 = 6 Bur. L J. 65 = 8 Pat L. T. 15 =

38 M. L. T. (P. C) 64 = 100 I. C. 227 = 4 O. W. N. 283 = 28 Cr. L, J. 259 = 7 A. I. C R. 332 = 29 Bom. L. R. 813 - 25 A. L. J. 117 = 31 C. W. N. 271 - (1927) M. W. N. 103 = A. I. R. 1927 P. C. 44 = 52 M. L. J. 585.

SUBSTANTIAL INJUSTICE WITHIN MEANING OF. -Trial with jury-Statutory provision as to-Viola-

tion of.

The trial against the law of a capital case without a jury is substantial injustice within the rule in Dillet's case, for the conviction in such a case will be conviction without jurisdiction, and special leave to appeal from such a conviction will be granted. (Viscount Visuadin.) BENJAMIN KNOWLES P. THE KING. (1930) 34 C W N. 599 = (1930) 34 C W N. 599=

124 I. C. 573 - 1930 A.C 366 - A.I.R. 1930 P.C. 201. Evidence and course of proceedings-Examination of.

-Privy Council's duty as to, with a view to conclusion upon merits.

By granting an appeal in a criminal case is meant an examination of the whole of the proceedings which have taken place. It is not simply for the investigation of any legal question which might have arisen; it is for the purpose of examining the whole of the evidence, and the whole course of the proceedings upon the trial to enable their Lordships to come to a conclusion upon the merits (192). (Dr. Lushington.) QUEEN v. JOYKISSEN MOOKERJEE.

(1862) 9 M. I. A. 168=1 W. R. 13(P. C.)= 1 Moo. P. C. (N. S.) 272=1 Suth. 481=1 Sar, 680.

### PRIVY COUNCIL-CRIMINAL APPEAL-(Contd.) PRIVY COUNCIL-CRIMINAL APPEAL-(Contd.) Function and jurisdiction of Board in

-in criminal cases the functions of the Privy Council are not to sit as a court of Criminal appeal, and it would he contrary to their constitutional duty to assume that position. A court of criminal appeal can go into questions of evidence and into questions of procedure, and can deal with the case on the same footing as an ordinary Court of Appeal. The functions of the Privy Council, on the other hand, are limited by the principle laid down in Dillet's case to something much more narrow, namely, this :- That if they find that what has been done has been grossly contrary to the forms of justice, or violates fundamental principles, then they have power to interfere. (Lord Chanceller.) CLIFFORD & KING EMPEROR. (1913) 40 I. A. 241=

41 C. 568-(1914) M. W. N. 11-16 Bom L. R. 1-19 C. L. J. 107 - 18 C. W. N. 374 - 12 A. L. J. 75 -15 M. L. T. 84 - 7 Bur. L. T. 37 - 22 I. C. 496 = 15 Cr. L. J. 144 = 2 Bom. Cr. C. 173.

-The Judicial Committee of the Privy Council is not a Court of Criminal appeal and the rules set up with regard to the procedure of the Court of Criminal appeal in England are not the rules adopted by it. The authority, therefore, of English decisions, which apply to a different system, a different procedure, and a different structure of principle. must stand out of the reckoning of anybody of authority on the matter of the procedure of the Board in advising His Majesty. (Lord Shirts). ARNOLD P. KING-EMPEROR.

(1914) 41 I. A. 149 = 41 C 1023 (1068, 1071) = 18 C. W. N. 785 = 23 I. C. 661 = 7 Bur. L. T. 167 = (1914) M. W. N. 506-1 L W. 461-12 A. L. J. 1042 = 16 Bom. L. R. 544 = 4 Cr. L. R 100 = 20 C. L. J. 161 = 16 M. L. T. 791 = 15 Cr. L. J. 309 = 2 Bom. Cr. C. 207 = 8 L. B. R. 16 = 26 M. L. J. 621.

-The practice of the Board in appeals preferred to it in criminal cases is to the following effect:-It is not guided by its own doubts of the appellant's innocence or suspicion of his guilt. It will not interfere with the course of criminal law unless there has been such an interference with the elementary rights of an accused as has placed him outside or the pale of regular law, or, unless within that pale, there has been a violation of the natural principles of justice so demonstratively manifest as to convince their Lordships. first, that the result arrived at was opposite to the result which their Lordships would themselves have reached, and, secondly, that the same opposite result would have been reached by the local tribunal also if the alleged defect or misdire tion had been avoided. (Lord Shaw.) ARNOLD v. KING-EMPEROR. (1914) 41 I. A. 149=

41 C. 1023 (1068-9)= 18 C. W. N. 785 = 23 I. C. 661= 7 Bur. L. T. 167 - (1914) M. W. N. 506 - 1 L. W. 461 -12 A L. J. 1042 = 16 Bom. L. R. 544 = 4 Cr. L. R. 100 - 20 C. L. J. 161 = 16 M. L. T. 791 = 15 Cr. L. J. 309 = 2 Bom. Cr.C. 207 = 8 L B.R. 16 =

-Their Lordships do not, in criminal procedings, exercise the revising functions of a general court of crimi nal appeal. Their Lordships' practice has been repeated-ly defined. Leave to appeal is not granted "except where some clear depature from the requirements of justice" exists nor unless " by a disregard of the forms of legal process. or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. It is true that there are cases of applications for special leave to appeal, but the Board has repeatedly treated applications for leave to appeal and the hearing of criminal appeals as being on the same footing. The Board cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and, conversely, it cannot allow an

Function and jurisaiction of Board in-(Contd.) appeal on grounds that would not have sufficed for the grant of permission to bring it. Misdirection, as such, even irregularity as such will not suffice. There must be something which, in the particular case, deprives the accused of the substance of tair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future. (Lord Summer.)

IBRAHIM v. EMPEROR. (1914) 1 L. W. 989 (1000-1)= 18 C. W N 705 = 23 I. C. 678 = 15 Cr. L. J. 326= (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. B. 187.

- The Judicial Committee cannot be used in general as a Court of review in criminal cases. The Sovereign in Council does not interfere merely on the question whether the court below has come to a proper conclusion as to guilt or into cence; but such interference ought to take place where there has been a disregard of the proper forms of legal pro cess, grievous and not merely technical in character, or a violation of principle in such a fashion as amounts to a denial of justice.

The general principle is that the Sovereign in Council does not act, in the exercise of the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted court of criminal appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the conbelow, as, for example, in the admission of improper evidence, will not suffice, if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of the evidence admitted.

Error in procedure may be of a character so grave as to warrant the interference of the sovereign. Such error may for example, deprive a man of a constitutional or statutor right to be tried by a jury, or by some particular triberal. Or it may have been carried to such an extent as to case the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. Even if their Lordships thought the accused guilty, they would not hesitate to recommend the exercise of the preso gative, were such the case. But where the error consists only in the fact that evidence has been improperly admitted, which was not essential to a result which might bare been come to wholly independent of it, the case is different The dominant question is the broad one whether subtaction justice has been done and, if substantial justice has been done, it is contrary to the general practice to advice the overeign to interfere with the result. (Viscount Haldand.) DAL SINGH D. KING-EMPEROR.

(1917) 44 I.A. 137=44 C. 876= (1917) M.W.N. 522=6 L.W. 71 - 26 CLJ. 18 15 A.L.J. 475=1 Pat. L.W. 661=19 Bcm. L.B. 510= 21 C.W.N. 818 = 13 N.L.R. 100 = 9 Cr. L.R. 461 39 I.C. 311 = 33 M.L.J. 555

The Judicial Committee, when it sits to advise His Majesty in the exercise of his prerogative in criminal cases loes so under constitutional limitations which precise from exercising the full functions of a court of crimina oppeal. (Lord Phillimore.) BESANT 2. ADVOCATE (1919) 46 LA. 176 (196)= GENERAL OF MADRAS.

43 M. 146 (165) = 23 C.W.N. 986=17 A.L.J. 985 26 M L.T. 408=10 L.W. 451= 21 Bom. L.R. 867=(1919) M.W.N. 555 20 Cr. L J. 593 - 52 I.C. 209 = 37 M.L J. 139

The King in Council is not a court of criminal ap peal and the power in the sovereign to entertain crimin appeals is only to be exercised when there has been such a

Function and jurisdiction of Board in-(Contd.)

gross denial of the principles of natural justice as has been defined in numerous cases,

The appeal in this case cannot be brought within the abovesaid limits. Therefore, on the simple ground that it would be outside the jurisdiction of the Crown to entertain it, this appeal must be dismissed. (Viscount Haldane.) MURUGA GOUNDAN D. KING-EMPEROR.

(1921) 14 L W. 558 = 26 C.W.N. 57 = 30 M.L.T. 180 = 69 I.C. 631 = A.I.R. 1922 P.C. 162 (1).

The power of the Judicial Committee to entertain appeals in criminal cases arises, not from the relation of this Board to the court below, as a court of criminal appeal, but as the Privy Council, advising the sovereign with regard to the exercise of the prerogative. (Viscount Haldane). HUNMANT RAO :. EMPEROR.

(1924) 49 B. 455 - 27 Bom. L.R. 704 -26 Cr. L.J. 1419=(1926) M.W.N. 32= 89 I.C. 843 = A.I.R. 1925 P.C. 180.

The Judicial Committee is not a court of criminal appeal. When there has been evidence before the court below and the court below has come to a conclusion upon that evidence, their Lordships will not disturb that conclusion; they will only interfere in such circumstan e+ as are referred to in Dillon's case, where there has been a gross abuse of the forms of legal process,

Where there had been no abuse of that kind, and there was a large amount of evidence on which the court could have come to the conclusion at which they had arrived, held that it was outside the constitutional powers of their Lordships' Board to interfere with the decision of the court below. (Viscount Haldane). BEGU v. KING-EMPE-(1925) 52 I.A 191 = 6 Lah. 226 =

26 P.L.R. 284 = 41 C.L.J. 437 = 27 Bom L.R. 707 = 23 A.L.J. 636=(1325) M.W.N. 418= 7 L.L.J. 324 = 3 P.L.R. 951 (Cr.) = A.I.B. 1925 P.C. 130 = 88 I.C. 3 = 48 M.L.J. 643.

See PRIVY COUNCIL-CRIMINAL APPEAL-SPE-CIAL LEAVE FOR -APPLICATION FOR -POSITION OF PRIVY COUNCIL IN DEALING WITH.

(1925) 49 M.L.J. 834.

This Board only recommends His Majesty to exercise his jurisdiction in appeals in criminal cases upon certain very restricted grounds (101). (Lord Phillimore.) ABDUL RAHMAN D. KING EMPEROR.

(1926) 54 1.A. 96 = 5 Rang. 53 = 45 C.L.J. 441 = 6 Bur. L.J. 65 = 8 Pat. L.T. 155 = 38 M.L.T. (P.C.) 64-100 I C. 227-4 O.W.N. 283-28 Cr. L.J. 259 = 7 A.I.C.R. 362 = 29 Bom. L.R. 813 = 25 A.L.J. 117 = 31 C.W N. 271 = (1927) M.W.N. 103 = A.I.B. 1927 P.C. 44 = 53 M.L.J. 585.

See also PENAL CODE, S. 124-A.

(1920) 48 I.A. 96 - 2 Lah. 34.

See also PRIVY COUNCIL-CRIMINAL APPEAL-INTERFERENCE IN-GROUNDS-CHARGE-STATEMENT AND EXPLANATION OF. (1930) 58 M.L.J. 363.

The Privy Council do not sit as a court of criminal appeal. To allow criminal proceedings to be reviewed there must have been "substantial and grave injustice done."
(Vircount Dunedin.) BENJAMIN KNOWLES P. KING.

(1930) 34 C.W.N. 599 = 1930 A C. 366 = 124 I. C. 578 = A I.B. 1930 P.C. 201.

### Interference in-Grounds.

-(See also under sub-head-SPECIAL LEAVE FOR-GRANT OF-GROUNDS).

# PRIVY COUNCIL -CRIMINAL APPEAL-(Contd.) PRIVY COUNCIL -CRIMINAL APPEAL-(Contd.)

Interference in-Grounds-(Contd.)

Assassors-Opinion of, given inverting, contrary to S. 309 of Cr. P.C.

Tae Criminal Procedure Code (S. 309) prescribes that the assessors shall give their opinions orally to the judge. Where an ab-reation from the precise directions of the section was not shown to have led to any miscatriage of justice at all hald that the Privy Council would not interfere with the conviction (195-6). (Viscount Hardane). BEGU P. KING-EMPEROR.

(1925) 52 I.A. 191 = 6 Lah. 226= 25 P.L B. 284 = 41 C.L.J. 437 = 27 Bom. L.R. 707 = 23 A.L.J. 636 = A.I.R. 1, 25 P.C. 130 = (192) M.W.N. 418=7 L.L.J. 324= 3 Pat. LR. 951 (Cr.) = 88 I.C. 3 = 48 M.L J. 643.

Charge-Statement and explanation of Provision of Code as to-Departure from-No substantial injustice due to-No interference in case of.

Their Lordships, in advising His Majesty, do not act in criminal matters as a court of criminal appeal, and are not concerne I to regulate procedure of courts in India or to criticise what is mere matter of procedure. Questions of procedure are for the Indian courts in the exercise of their criminal jurisdiction.

Where there was no complaint that the accused was not separately in licied, and the case for him was solely put upon departure from the statutory provisions as to stating and explaining the particular charge, but it appeared that the trial in all substance was fair and gave the accused every real opportunity that he required to understand the charge and make his defence, held that, there being a complete absence of any substintial injustice and of anything that outraged what was due to natural justice in criminal cases, it was impossible for their Lordships to advise His Majesty to interfere. (Viscount Sumuer). ATTA MAHO-MED P. EMPEROR. (1930) 31 L.W. 306 =

7 O.W.N. 293=31 Punj. L.R. 150 (2)= 1930 C., C. 193 = A.I.R. 1930 P.C. 57 (2)= 58 M.L.J. 363.

Civil and criminal liability to account-Distinction between-Ignoring of-Conviction based on.

The omission to leave out of judicial view the elementary ground of distinction between civil liability to account and criminal liability would, in any case, be serious, but in the present case the point is not merely formal, and the sentence pronounced against the appellant formed such an invasion of liberty and such a denial of his just rights as a citizen that their Lordships feel called upon to interfere. (Lord Share.) LOUIS EDUNARD LANIER D. THE KING. (1913) 18 C. W. N. 98-15 Cr. L. J. 305-

(1914) A. C. 221 = 23 I. C. 657 = 26 M. L. J. 1 (7-8)

-Cr. P. C., S. 360-Depositions -Reading over to witnesses of, in presence of accused-Provision as to-Noncompliance with.

In a criminal appeal to the Privy Council, two objections were taken to the conviction, the first being that the depositions were read over while other stages of the case were proceeding, so that the accused and his advocate could not attend to the reading over, being occupied with listening to the further evidence that was being given, and indeed, that they were not so loudly read that the accused or his advocate could hear them, and the second objection being that in some cases the depositions were not read out to the witnesses at all, they being left to read them to themselves.

The course pursued was not only not objected to by the accused or his advocate but was adopted in order to save time and to meet the wishes of the counsel for the accused. It was not suggested that the accused suffered any prejudice

## PRIVY COUNCIL-CRIMINAL APPEAL-(Contd.) | PRIVY COUNCIL - CRIMINAL APPEAL-(Contd.)

Interference in -Grounds-(Contd.)

or that there was any correction of the evidence which any witness would have made, or which the accused or his advocate might with propriety have suggested, if all the depositions had been read out loud to the witnesses and to the accused, and, where necessary, translated. There was also no suggestion that there was any actual or possible failure of justice by reason of the course pursued.

Held that, onder the circumstances, it would be contrary to the rule a cording to which the Board proceeded if their Lordships were to entertain the appeal (104-5). (Lord Phillimore.) ABDUL RAHMAN D. KING-EMPEROR.

(1926) 54 I. A. 96 - 5 Rang. 53 - 45 C. L. J. 441 = 6 Bur. L. J. 65 = 8 Pat. L. T. 155 = 100 I. C. 227 = 38 M L. T. (P.C.) 64 - 4 O. W. N. 283 = 28 Cr. L. J. 259-7 A I. C. R. 362-29 Bom. L. R. 813 25 A. L. J. 117= 31 C W. N. 271 (1927) M. W. N. 103= A. I. R 1927 P C. 44 - 52 M. L. J. 585.

Cross-trial varising out of same occurrence held separately-Evidence in one of-Use of, in the other-Other evidence to support conviction-Existence of-Conviction, right on meriti-No interference in case of.

Two parties were charged for their attacks upon each other in the same occurrence, and the charges were tried separately at two distinct trials. But, as the occurrences were common to both cases, the evidence given for the prosecution was similar to a substantial extent in each case. Each party no doubt was a witness against the other; but, on the other hand, there was also independent evidence. Although the two cases were tried separately, the High Court gave one judgment, but treated the cases as two cases which had been separately tried. They imported considerations from one case in o the other, but there was a body of separate evidence which was applicable to each case and that in itself was enough for the conviction. And the conclusion to which they came was right on the merits, and could only be questioned on the technical ground that they did not keep the evidence entirely distinct.

Held, that there was no ground for interference with the judgment below. (Viscount Haldens.) MADAT KHAN P. KING-EMPEROR. (1926) 8 Lah. 198=

(1927) M. W. N. 68 - 31 C. W. N. 393 = 100 I. C. 126 = 28 Punj. L. R. 167 = 23 Cr L. J. 254 = 7 A. I. C. R. 350 = 25 L W. 724 = 29 Bom. L. R. 784 = 45 C. L. J. 418 = A. I. B 1927 P.C. 26= 52 M. L. J. 441.

-Evidence-Admissibility of-Decision as to, in accordance with "probable opinion" of present law.

If a learned Judge after anxious consideration of the authorities (bearing on the question of the admissibility of evilence), decides in accordance with what is at any rate a "probable opinion" of the present law, if it is not actually the better opinion, his conduct is the very reverse of that "violation of the principles of natural justice" which has been said to be the ground for advising His Majesty's interference in a criminal matter. (Lord Sumner.) IRRAHIM 7. EMPEROR. (1914) 1 L. W. 989 (1000)=

18 C. W. N. 705 = 23 I. C. 678 = (1914) A. C. 599 = 15 Cr. L. J. 326 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.

-Evidence inadmissible-Admission of-Other evidence ample to justify conviction.

The jurisdiction, which their Lordships exercise in appeals in criminal matters, involves a general consideration of the evidence and of the circumstances of the case in order to place the irregularities complained of, if substantiated, in their proper relation to the whole matter.

Where, in a criminal appeal to the Privy Council, the conviction was objected to on the ground that there was a grave '

Interference in-Grounds-(Contd.)

miscarriage of justice by reason of the misreception of evidence, but the facts of the case showed that, if not impossible, it was at any rate highly improbable, that the jury should have been sub-tantially influenced by the evidence objected to, and that there was a great preponderance of unquestioned evidence to justify the conviction, held that their Lordships could not conclude that there had been any miscarriage of justice, substantial, grave or otherwise. (Lord Sumner.) IBRAHIM P. EMPIROR.

(1914) 1 L. W. 989 (1002-3) = 18 C. W. N. 705= 23 I. C. 678 - 15 Cr. L. J. 326 = (1914) A.C. 599 = 4 Cr. L. R. 225 - 3 Con. L.B. 187.

-Evidence whelly inadmissible-Admission and use of-Capital conviction-No reliable evidence to support.

Where the Justicial Committee is satisfied that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustive has been done it will not allow the coeviction to stand, whatever doubts it may have of the sp pellant's innocence, or whatever suspicions it may entertain of his g ilt, or however great may be its reluctance to interfere with or o errule the de isio is of the Indian Courts in crin-inal matters.

Held that injustice of the kind mentioned had been done in the case before their Lord hips, mainly owing to this, that a vast body of wholly inadmis ible evidence, bears) and other, had been a imitted, that when admitted it had been used to the grave prejudice of the accused; and that a the end of the hearing before the judge of first instance there did not exist any reliable evidence upon which a optal conviction could safely or justly be based. (Lord Allie-NOW.) VAITHINAT HA PILLAI D. THE KING EMPEROR.

(1913) 40 I. A. 193 (199 200) = 36 M. E01= 17 C. W. N. 1110 = 14 M. L. T. 263= (1913) M. W. N. 806 = 15 Bom. L. 910= 2 Bom. Cr. C. 123 = 18 C. L. J. 365 = 14 Cr. L. J. 577 = 21 I. C. 369 = 11 A. L. J. 881 = 25 M. L. J. 518

--- Jurisdiction-Exercise of-Mistake in.

Unless it can be proved that there was no proper trial at all, that the forms of all judicial procedure were disregard ed, not merely according to local ordinances, but according to what may be called the unvarying character, which is common to all, the Judicial Committee cannot interfere. If there was anything very very gross, it might come under the same category, but even then, the Crown has to be estraordinarily cautious in asserting the survivor even of that very restricted prerogative which existed fifty years ago but which may not exist now. Where the ease cannot be brought up to that, and there was a mistake, if at all, is the exercise of its jurisdiction, by the Court in India, is Judicial Committee will not interfere. (Viscount Halland, (1924) 49 B. 455= HANMANT RAO P. EMPEROR.

27 Bom. L. R. 704 = 26 Cr. L. J. 1419 = (1926) M. W. N. 32 = 89 I. C. 845 A. I. R. 1925 P. C. 180.

-Jury-Charge to-Misdirection in, on a question of

A charge to a jury must be read as a whole. If there are salient propositions of law in it, these will, of course, be the subject of separate analysis. But in a protracted parraire of fact, the determination of which is ultimately left to the jury, it must needs be that the view of the Judge may not coincide with the views of others who look apon the store proceedings in black type. It would, however, not be in accordance either with usual or with good practice to tres such cases as cases of misdirection, if, upon the view taken, the case has been fairly left within the jury

PRIVY COUNCIL—CRIMINAL APPEAL—(Contd). | PRIVY COUNCIL—CRIMINAL APPEAL—(Contd.) Interference in -Grounds-(Contd.)

province. The Privy Council will not interfere in the region of fact, unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred. (Lord Shaw.) ARNOLD v. KING-EMPEROR. (1914) 41 I. A. 149=41 C. 1023 (1062-3)=

18 C. W. N. 785 = 23 I. C. 661 = 7 Bur. L. T. 167 = (1914) M. W. N. 506=1 L. W. 461=12 A.L.J. 1042= 16 Bom. L. R. 844=4 Cr. L. R. 100= 20 C. L. J. 161 = 16 M. L. T. 791 (1)=

15 Cr. L. J. 309 = 2 Bom. Cr. C. 207 = 8 L. B. R. 16= 26 M. L. J. 621.

-Murder and manslaughter - Distinction between-Judgment of court below ignoring-If a ground.

Where, in a capital case tried without a jury, the judgment of the court below convicting the accused of marder appeared to be vitiated by the fact that the judge considered that the only alternative to death by accident was murder and that he failed to consider the question as between manslaughter and murder, their Lordships felt themselves bound to consider whether the evidence had reached the standard of proof necessary to involve a conviction for murder, and being of opinion that it did not, set aside the conviction. (Viscount Dunctin.) BENJAMIN KNOW-LES v. KING-EMPEROR. (1930) 34 C.W.N. 599-

124 I.C. 578 = 1930 A.C. 366 = A.I.R. 1930 P.C. 201.

Sentence not authorised by law-Imposition of-Procedure proper in case of-Remitting of case to Court below for awarding proper sentence.

A sentence not authorised by law may involve the incarceration of the accused during many years without legal authority.

Where such a sentence was imposed, held that substantial injustice must be deemed to have been done within the

principle of In re Dillet's case (38).

In such a case it is no part of the duty of their Lordships to consider what sentence might justly have been inflicted, and they will simply remit the case to the High Court with instructions to pass a sentence according to law. (Lord Buckmatter.) SAYYAPUREDDI 2. THE KING-EMPEROR. (1920) 48 I. A. 35 = (1921) M.W. N. 26 =

23 Bom. L. R. 705 = 3 U. P. L. R. (P. C.) 10 = 13 L. W. 223 = 19 A. L. J. 164 = 33 C. L. J. 222 = 22 Cr. L. J. 174 = 59 I. C. 926 = 30 M. L. T. 192 = 40 M. L. J. 194.

-Trial-Mode of-Discretion vested by Statute in Court below as to-Erroneous exercise of-Not a ground.

The question whether in a given case a jury trial is practicable or is permitted by local circumstances within the meaning of a Statute is a matter to be determined by the local tribunal and not for the Board to form a conclusion upon. And where the local tribunal tries the case without a jury, the maxim omnia proesumuntur rite et solemnitar acta clearly applies to the case, and the Board will not interfere in Criminal appeal with its judgment on the ground that its view was erroneous. (Viscount Dunedin.) BEN JAMIN KNOWLES v. KING-EMPEROR. (1930) 34 C.W.N. 599 = 124 LO. 578 = 1930 A.C. 366 = A.I.B. 1930 P.O. 201.

Violation of principles of justice-Disregard of

legal principle-Evidence-Question of mere.

The responsibility for the administration of criminal Justice in India this Board will neither accept nor share unless there has been some violation of the principles of Justice or some disregard of legal principles; this Board will not consider appeals brought from the criminal jurisdiction in the Province of India. A question of mere evidence will not be considered by the Board. (Lard Buckmaster.) RUSTOM v. KING-EMPEROR. (1924) 48 B. 515= 26 Bom. L. B. 692

Letters Patent (Calcutta), S. 41-Appeal under. Application for special leave as an alternative-

Grant of.

Accused who choose to bring their case before the Board by way of an appeal under cl. 41 of the Letters Patent ought not to assume that an application for special leave to appeal as an alternative would be granted or even entertained by their Lordships (60). (Lord Sumner.) BARENDRA KUMAR GHOSH v. KING-EMPEROR. (1924) 52 I. A. 40 =

52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. B. (Cr.) 1=6 L. R. P. C. (Cr.) 1= 27 Bom. L. R. 148 - 6 Pat. L. T. 169 - 23 A.L. J. 314 - 41 C. L. J. 240 - 25 Cr. L. J. 431 - 26 P. L. R. 50 -

A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543. Maintainability—Trial Judge not reserving any question of law—Advocate-General granting certificate under cl. 26 of Letters Patent. See Letters Patent (CALCUITA), S. 41. (1924) 52 I. A. 40 (59-60)= 52 C. 197.

Pardon free tendered to appellant after filing of.

-Per se ground for not entertaining appeal. (Viscount Care.) KALI NATH ROY P. KING-EMPEROR.

(1920) 48 I. A. 96 (99) - 2 Lah. 34 - 19 A. L. J. 65 -33 C. L. J. 124-13 L. W. 253-22 Cr. L. J. 129= 59 I. C. 641 = 40 M. L. J. 101.

Pauper-Special leave to appeal as a.

-Grant of, against conviction and sentence of murder. (Lord Summer.) IBRAHIM 7. EMPEROR.

(1914) 1 L. W. 989 (992) = 18 C. W. N. 705 = 23 I. C. 678 = 15 Cr. L. J. 326 = (1914) A. C. 599 = 4 Cr. L. R. 225 = 3 Con. L. R. 187.

Penal Code—S. 124 A—Seditious character of publications—Decision of Indian Courts as to.

-Interference with. Sec (1) PENAL CODE-S. 124-A. (1920) 48 I. A. 96=2 Lah. 34.

(2) PRESS ACT, S. 4 (1)-ARTICLES WHETHER (1919) 46 I. A. 176 (196) = 43 M. 146 (165). ETC. Points open to appellant in.

-Leave to appeal-Points on which, standing by themselves, leave to appeal might not have been granted nevertheless open. (Viscount Haldane.) BUGGA v. EMPEROR. (1919) 53 I. C. 703 (719)= (1919) M. W. N. 748 = 20 Cr. L. J. 799.

Special leave for.

APPEAL ADMITTED BY.

DILLETT'S CASE-PRINCIPLES OF-Applicability of, to such appeal. See PRIVY COUNCIL - CRIMINAL APPEAL DILLET'S CASE. (1926) 54 I. A. 96 (105)=5 Rang. 53.

-Function and jurisdiction of Board in-Interference in-Grounds.

Once a criminal appeal is brought up by special leave it is incumbent on their Lordships to examine the judgment as given, even if it appears that the ground on which special leave was granted does not in fact exist in the case. But even in such somewhat exceptional case, their Lordships are not sitting as an ordinary criminal Court of appeal in which case they would be entitled to consider what would have been their own verdict. Though the criterion is hardly as strict as it would have been on an application for leave based on the simple ground that the evidence did not support the verdict, yet they must be satisfied "there is something which in the particular case deprives the accused of the substance of fair trial." (Viscount Dunedin.) BENJAMIN KNOWLES p. KING. (1930) 34 C.W.N. 599 = 1930 A.C. 366 = A.I.R. 1930 P.C. 201. PRIVY COUNCIL—CRIMINAL APPEAL—(Contd.)

Special leave for—(Contd.)

APPLICATION FOR.

-P. C.'s position in dealing with.

In dealing with petitions for special to appeal against sentences pronounced in the Criminal Courts of the various dominions of the King, the Judicial Committee will not act as a court of criminal appeal, and will not advice His Majesty to "review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. (Lord Dunedin.) SHAFI AHMED NABI AHMED v. KING-EMPEROR.

(1925) 23 L.W. 1 = 43 C.L.J. 67 = (1926) M.W.N. 62 = 3 O. W. N. 165 = 28 Bom. L. R. 158 = A. I. R. (1925) P. C. 305 = 92 I. C. 212 = 49 M. L. J. 834.

-Surpension of sentence pending-Jurisdiction.

Petitioners, who applied for special leave to appeal from convictions and sentences of death, applied for an order or a recommendation to the Government of India, for the postponement of the execution of the sentences until the hearing of the petition for special leave, and, if granted, of the appeal.

The application was rejected with the observations; This Board is not a Court of criminal appeal. The tendering of advice to His Majesty as to the exercise of the prerogative of pardon is a matter for the executive Government, and is outside their Lordships' province. (Lord Chancellor.) BALMAKUND c. KING-EMPEROR. (1915) 42 I. A. 133

42 C. 739 = (1915) A. C. 629 = 17 M. L. T. 441 = 2 L. W. 602 = 19 C. W. N. 674 = 21 C. L. J. 522 = 29 I. C. 334 = 17 Bom. L. R. 487.

GRANT OF-GROUNDS.

GROUNDS.) GROUNDS.)

Attempt or abetment-Conviction for full offence instead of for.

Although in general hardly anything could more conspicuously violate natural justice than to convict and sentence a man for an offence of which he was not guilty, it may be that irregularity alone is the proper term to use, when, the facts being the same, the evidence the same, the guilt the same, and the punishment the same, error has occurred in indicting him under the section which charges the full offence instead of under the sections which charge an attempt at or an abetting of the full offence, especially when this error could have been corrected in time, if the accused had put his counsel in a position to raise his defence clearly and in due form at the trial (60-1). (Lord Sumner.) BARENDRA KUMAR GHOSH v. KING-EMPEROR.

(1924) 52 I. A. 40 = 52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26 = 3 Pat. L. R. (Cr.) 1 = 6 L. R. P. C. Cr. 1 = 27 Bom. L. B. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 (Cr.) L. J. 431 = 26 P. L. R. 50 = A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

Cr. P. C., S. 234-Joint trial-Legality of-

Petition for special leave to appeal to Privy Council in a criminal case refused, in a case in which the application for leave was based on the ground that the joint trial of the petitioners on eight different charges was illegal as being contrary to the provisions of Ss. 233 to 235, Cr. P. C., as interpreted in L. R. 28 I. A. 257. The High Court had held that there was no illegality in the joint trial. (Viscount Haldane.) MUKAND SINGH 2. KING-EMPEROR.

(1926) 54 I. A. 45 = 110 I. C. 225 = 8 Lah. 230 = laid d 1927 P. C. 201 = 29 Cr. L. J. 678. cases.

PRIVY COUNCIL-CRIMINAL APPEAL-(Contd.)

Special leave for-(Contd.)

GRANT OF-GROUNDS-(Contd.)

——Dillet's case—Conditions laid down in—Case not complying with. (Lord Chancellor.) GANGADHAR TILAK v. QUEEN-EMPRESS. (1897) 25 I. A. 1 = 22 B. 528 = 7 Sar. 270.

Her Majesty will not review criminal proceedings unless it be shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done.

The applicants for special leave to appeal ought to show the materials upon which one of those propositions can be established, and ought fully to inform the Board of the facts.

Leave to appeal not granted because the applicants did not show the materials, did not fully inform the Board of the facts, and did not even give a summary view of the course of the trial, and of the evidence. (Lord Chanceller.) BIRCH v. KING-EMPEROR. (1910) 13 C. L. J. 129 =

8 A. L. J. 147=13 Bom. L. R. 9=9 M. L. T. 20= 4 Bur. L. T. 33=(1911) 2 M. W. N. 159= 12 Cr. L. J. 100=9 I. C. 581=21 M. L. J. 374

The Judicial Committee is not a court of criminal appeal, but there is a class of cases which is generally defined as the class of cases which falls within the category of what the Board laid down in Dillet, In re, in which they do advise the Sovereign to interfere where there has been a miscarriage of justice referred for its meaning to the fandamental principles of justice, for instance, if there has been anything corum non indice," that is a case in point.

Their Lordships granted leave to appeal because the argument was directed to show that the case had been coven non judice, and there was one point, at any rate, on which their Lordships thought that there was a serious point to argue. (Viscount Haldane.) BUGGA v. EMPEROR.

(1919) 53 I. C. 703 (719)=(1919) M. W. N. 748= 20 Cr. L J. 799.

The responsibility for the administration of criminal justice in India this Board will neither accept nor share, unless there has been some violation of the principles of justice, or some disregard of legal principles; this Board will not consider appeals brought from the criminal jurisdiction in the Province of India.

They cannot but regret that those who an connected with the legal profession in India should have so connected disregarded those injunctions that their Lordships have so often laid down. (Lord Buckmatter.) TABA SINGER KING-EMPEROR. (1924) 22 L. W. 57 = 0.011

26 P. L. B. 394 = 10 O. & A. L. B. 911 = A. I. B. 1925 P. C. 59 = 84 I. C. 935 = 26 Bom. L. B. 692 = 26 Cr. L. J. 391.

Evidence-Admissibility of Question as to, depending on interpretation of certain sections of Cr. P. C. and of Evidence Act.

Special leave to appeal in a criminal case was applied for on the ground that the admission in evidence of a particular statement was wrong and that the improper admission of that evidence amounted to a grave injustice and a violation of the principles of natural justice. The question of the admissibility of the evidence turned entirely on the interpretation of certain sections of the Code of Criminal Procedure and the Evidence Act.

Held, rejecting the application, that the so-called mis carriage of justice in respect of a wrong interpretation of the sections was not such as to bring the case within the rate laid down in In re Dillet, and insisted upon in subsequent

Special leave for-(Contd.)

GRANT OF-GROUNDS-(Contd.)

Although if there has been any departure from the ordinary rules of procedure such as to amount to a denial of ordinary justice, their Lordships will interfere; yet where the matter depends upon the particular view taken of sections of an Indian Act their Lordships could not say that to assert that upon those sections the Judges had come to a wrong conclusion is tantamount to saying that there has been substantial and grave injustice done. (Lord Dunedin.) UMRA D. KING-EMPEROR. (1922) 52 I. A. 121 =

6 Lah. 45 = 21 L. W. 160 = 6 L. R. P. C. (Cr.) 16 = 2 O. W. N. 5 = 27 Eom. L. R. 701 3 Pat. L R. Cr. 93-26 Cr. L. J. 1020= 26 P. L. R. 129 = A. I. R. 1925 P. C. 52 = 87 I. C. 844 = 48 M. L. J. 61.

Evidence-Sufficiency of-Question as to.

All questions as to the sufficiency of evidence are fit for consideration by a court of criminal appeal, but insufficient to support a petition for special leave to appeal to the Privy Council. (Lord Dunedin.) SHAFI AHMED NABI AHMED v. KING-EMPEROR. (1925) 23 L. W. 1 = 43 C. L. J. 67 = (1926) M. W. N. 62 = 3 O. W. N. 165 = AHMED v. KING-EMPEROR. 28 Bom. L. R. 158 = A. I. R. 1925 P. C. 305 = 92 I. C. 212-49 M. L. J. 834.

-Evidence to go to jury-Existence of, on all matters dealt with-Sentences-Question as to, one of form only-Leave refused. (Viscount Haldane, L. C.) CLIFFORD :. THE KING-EMPEROR. (1913) 40 I. A. 241 =

41 C. 568 = (1914) M. W. N. 11 = 16 Bom. L. R. 1= 19 C. L. J. 107 = 18 C. W. N. 374 = 12 A. L. J. 75 = 15 M. L. T. 84 = 7 Bur. L. T. 37 = 22 I. C. 496 = 15 Cr. L. J. 144 = 4 Bom. Cr. C. 173.

-Felonies-Appeal in-Supreme Court Charter of Bombay, 1823-Clause in, reserving to crown right of granting appeal - Effect of.

The clause in the Charter of Bombay, 1823, reserving to the Crown the right of granting an appeal after refusal by the Supreme Court was not intended to apply to cases of

Not only in England, but throughout the dominions of the Crown of Great Britain, governed by the law of Eng land, no right of appeal in felonies has ever existed. The reservation of such a right by the reserving clause in question would be to create an anomaly unknown where the law of England prevails. (Dr. Luxkington.) QUEEN v. EDUL-JEE BYRAMJEE. (1846) 3 M. I. A. 468 = 5 Moo. P. C. 276-1 Sar. 305.

- Jury-Advice to-Sufficiency of-Question as to.

The adequacy or otherwise of an advice to the jury cannot amount to a "disregard of the forms of process or violation of the principles of natural justice" within the meaning of the rule in Dillet's case. (Lord Dunedin.)
SHAYI AHMED NABI AHMED v. KING-EMPEROR.

(1925) 23 L.W. 1 = 43 C.L J. 67 = (1926) M.W.N. 62 = 3 O. W. N. 165 = 28 Bom. L. R. 158 = A. I. B. 1925 P. C. 305 = 92 I. C. 212 =

49 M. L. J. 834.

-Jury-Charge to-Error in.

When special leave to appeal to the Privy Council is asked for in Criminal matters, the applicant has to show that the summing-up affected the due course of justice and the right of the prisoner to be finally tried according to law within the strict and narrow limits laid down by their Lordships in such cases (57). (Lord Sumner.) BARENDRA KUMAR GHOSH v. KING-EMPEROR.

(1924) 52 L A. 40 = 52 C. 197 = 29 C. W. N. 181 = (1925) M. W. N. 26=3 Pat. L. B. (Cr.) 1= (1924) 52 I. A. 40 (46)=52 C. 197=29 C. W. N. 181=

PRIVY COUNCIL—CRIMINAL APPEAL—(Contd.) PRIVY COUNCIL—CRIMINAL APPEAL—(Contd.) Special leave for -(Contd.)

GRANT OF-GROUNDS-(Contd.)

6 L. R. P. C. (Cr.) 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 =

A. I. R. 1925 P. C. 1 = 85 I. C. 47 = 48 M. L. J. 543.

-Jury-Misdirection of.

There are, no doubt, very special and exceptional circumstances in which leave to appeal is granted in criminal cases; but it would be contrary to the practice of this Board, and very mischievous, if any countenance were given to the view that an appeal would be allowed in every case in which it could be shown that the learned Judge had

misdirected the jury.

Where the only foundation for an application for special leave to appeal to the Privy Council from a conviction by the High Court under Ss. 511 and 420 of the Penal Code was that the learned Judge did not in his charge to the jury correctly construe S. 511 of the Penal Code, or that he left the case to the jury when there was no evidence to go to the jury, held that, if their Lordships were to sanction an appeal in such a case, it would be very difficult to refuse leave to appeal in all cases in which it could be established that there had been a misdirection by the Judge who tried the case. (The Lord Chancellor.) MACREA, Ex parte,

(1893) 20 I. A. 90 -(1893) A. C. 346 = 15 A. 310 = 6 Sar. 344.

-Jury trial-Statutory provision as to-Violation of, See PRIVY COUNCIL—CRIMINAL APPEAL—DILLT'S CASE
—SUBSTANTIAL INJUSTICE ETC. (1930) 34 C.W.N. 599.

-Letters Palent-Appeal under-Matter brought up by way of-Special leave as an alternative in case of-Grant of. See PRIVY COUNCIL-CRIMINAL APPEAL-LETTERS PATENT (CALCUTTA), S. 41.

(1924) 52 I. A. 40 (60)=52 C. 197.

-Penal Code, S. 290-Public nuisance-Question as to. See PENAL CODE-S. 290-PUBLIC NUISANCE. (1897) 7 M. L. J. 33.

-Sentence-Objection to, one of form only. See PRIVY COUNCIL-CRIMINAL APPEAL-SPECIAL LEAVE FOR-GRANT OF-GROUNDS-EVIDENCE TO GO TO JURY. (1913) 40 I. A. 241 = 41 C. 568.

-Transfer of case from one Presidency to another-Refusal by Governor-General of.

The ground urged in support of a petition for special leave to appeal in a criminal case was that there had been such copious and prejudicial newspaper comment on the crime committed that a fair trial by jury was impossible in Bombay. An application had been made to the Governor-General of India to order that the trial be held elsewhere and was refused.

Held that to ask the Board to declare that such a refusal of the Governor-General, who had all the advantages of being in the country and of judging of the real state of public feeling, amounted to a violation of the principles of natural justice was nothing less than preposterous, and that their Lordships could not too strongly qualify the impropriety and uselessness of such a demand. (Lord Dunedin.) SHAFT AHMED NABI AHMAD P. KING-EMPEROR.

(1925) 23 L. W.1=43 C.L.J. 67=(1926) M. W. N. 62= 3 O. W. N. 165=28 Bom. L. R. 158= A. I. R. 1925 P. C. 305 = 92 I. C. 212 = 49 M. L. J. 834

-Trial-Points not properly raised at, not good grounds for grant of special leave. (Lord Sumner.) BAR-ENDRA KUMAR GHOSH 2. KING-EMPEROR.

PRIVICO JACIG -C Staffaal APPEAL - (Contd.) [PRIVICO JACIG -CRIMINAL APPEAL - (Contd.) Special leave for-(Contd.)

GRANT OF -GROUNDS-(Contd.)

(1925) M. W. N. 26=3 Pat. L.R. (Cr.) 1= 6 L. R. P. C. (Cr.) 1 = 27 Bom. L. R. 148 = 6 Pat. L. T. 169 = 23 A. L. J. 314 = 41 C. L. J. 240 = 26 Cr. L. J. 431 = 26 P. L. R. 50 = 85 I. C. 47 = A. I. R. 1925 P.C. 1=48 M. L. J. 543.

-Trials reparate-Evidence in one of-Use of, in the other.

In this case their Lordships granted special leave to appeal because of the apprehension that it might turn out that evidence which was given in one trial had been improperly imported into a quite separate trial. (Viscount Haldanc.) MADAT KHAN P. KING-EMPEROR

1926) 8 Lah. 198 = (1927) M. W. N. 68 31 C. W. N. 393 = 100 I. C. 126 - 28 Punj. L. R. 167 -28 Cr. L. J. 254 = 7 A. I. C. R. 350 = 25 L. W. 724 = 29 Bom. L. R. 784 = 45 C. L. J. 418 = A. I. R. 1927 P.C. 26=52 M. L. J. 441,

JURISDICTION TO GRANT.

-With regard to the question whether there exists on behalf of the Crown a prerogative right of appeal even in matters of criminal jurisdiction, their Lordships are desirous that no expression should fall from them which in the slightest degree would throw doubt on the existence of that prerogative, not only under the existing circumstances, but in others which might arise, with reference to the other dominions of the Queen which may have been acquired by conquest. They will assume for the purpose of this case that it does exist, and consequently, that it is in the power of the Judicial Committee of the Privy Council, exercising that prerogative right under the Crown, so to advise Her Majesty, if they should think an appeal ought to be allowed on the present occasion (195).

On an application for leave to appeal from the sentence of the Sudder Nizamut Adawlut the chief native criminal Court of Appeal in Bengal), the Judicial Committee, assuming the prerogative of the Crown to admit an appeal in a criminal matter, and admitting that justice had not been done in the Court below, declined to grant leave to appeal. (Dr. Lushington.) THE QUEEN D. JOYKISSEN MOOKERJEE

(1862) 9 M. I. A. 168=1 W. R. 13 (P.C.)= 1 Moo. P. C. (N. S.) 272 = 1 Sar. 860 = 1 Suth. 481.

PAUPER-LEAVE TO APPEAL AS A.

-Grant of. See PRIVY COUNCIL-CRIMINAL APPEAL -PAUPER. (1914) 1 L. W. 989 (992)

### Supreme Court of Bombay.

-Charter of December, 1823 of-Reserving clause of -Appeal under, against verdiet itself-Maintainability.

The power to grant an appeal conferred by the reserving clause of the Charter of Bombay, of the 8th December, 1823, is by the words of that clause confined to a "judgment or determination" of the supreme Court. All that could therefore be done under that clause would be to allow an appeal for the purposes of ascertaining whether the "judgment or determination" of the Court was erroneous in point of law with reference to the indictment, or, in other words, whether there was error upon the face of the record, as in England. By no construction could the crown grant an appeal as to the verdict itself. The Privy Council could not go over again into the merits of the case. It was not intended by the charter that a new trial should take place (485.6). (Dr. Lushington.) QUEEN v. EDULJEE BY-RAMJEE. (1846) 3 M. I. A. 468 = 5 Moo. P.C. 276=

1 Sar. 305. -Leave refused by-Grant of leave by Privy Council in case of-Jurisdiction-Reserving clause in charter-Effect.

Supreme Court of Bombay-(Contd.)

Under the charter of justice of 1823, Bombay, the supreme Court alone has the power of granting or refusing an appeal in criminal cases. The charter does not reserve a power to the king in council of reviewing a determination of the court below in a criminal case, the court below having denied the application for such a review (490).

The question of an application for a new trial or for a reconsideration of the whole case would be an a fortiori case, a fortieri to a case of error appearing on the record (496). (Lord Brougham.) QUEEN v. ALLOO PAROO. (1847) 3 M. I. A. 488 = 5 Moo. P.C. 296=

Per Cr. Cas. 551 = 1 Sar. 310.

PRIVY COUNCIL-JUDICIAL FUNCTIONS OF. IN REGARD TO PROCEEDINGS BEFORE COURTS OF JUSTICE.

 Exclusion of—Indian Legislature's power as to. Su INDIAN LEGISLATURE-PRIVY COUNCIL - JUDICIAL (1854) 5 M. I. A. 499 (508). ETC.

PRIVY COUNCIL-PRACTICE- QUESTION OF FACT-CONCURRENT FINDINGS.

WHAT AMOUNT TO.

BINDING NATURE OF.

CORRECTNESS OF.

EVIDENCE-EXAMINATION OF.

FACTS-EXAMINATION OF.

IMPORTANT CASE—CONCLUSION SAME REACHED IN-DEPENDENTLY BY PRIVY COUNCIL.

INTERFERENCE WITH-RULE AS TO.

INTERFERENCE WITH—RULE AS TO—APPLICABILITY.

INTERFERENCE WITH-CASES UNDER.

(A.E.-UNDER THIS HEAD ARE COLLECTED IN ALPHA-BETICAL ORDER ALL THE CASES IN WHICH THE PRIVY COUNCIL DID OR DID NOT INTERFERE WITH CONCURRENT FINDINGS OF FACT.)

### What amount to.

-Appellate Court-Majority of-Affirmance of find-

ing only by.

Where the majority of the appellate Court affirmed the finding of the trial judge on an issue of fact, held that made a concurrent finding, and that it was not vitiated as such because the other judge in the appellate court did not come to the same conclusion in fact though coming to the same result in law arising from another fact. Of course, to be concurrent findings binding on this Board, the fact of facts found must be such as are necessary for the foundation tion of the proposition in law to be subsequently applied to them. (Lord Duncdin.) HABIBUR RAHMAN CHOW-DHRY v. ALTAF ALI CHOWDHURY.

(1921) 48 I. A. 114 (119)=48 C. 856 (8623) 40 M. L. J. 510 = 19 A. L. J. 414 = 33 C. L. J. 479 (1921) M. W. N. 366 = 26 C. W. N. 81=

23 Bom. L. B. 636 = 29 M. L. T. 354 = 14 L. W. 175 = 60 I. C. 837 = A.I.B. 1922 P. C. 159.

-Divorce-Suit for-Adultery-Findings as to, if Suit. See PRIVY COUNCIL—PRACTICE—QUESTION OF FACT - CONCURRENT FINDINGS - INTERFERENCE WITH-CASES UNDER-DIVORCE.

(1872) Sup. I. A, 106 (118).

Findings in substance different and based on diferent grounds-Benami or not-Findings as to BENAMI-HUSBAND-WIFE-TRANSFER TO-NATURE (1893) 20 I. A. 38 (48-9)=20 C. 560 (573) Grounds of judgments different. IFTIKARUNISM

BEGUM ?. NAWAB AMJAD ALI KHAN. (1871) 7 B.L. R. 643 (650-1)=2 Sar. 659

6 M. J. 230 = 2 Suth. 420 = R. & J.'s No. 9 (Outh)

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Contd.)

What amount to-(Contd.)

-Decision of first court based on legal objection-Appellate decision based on merits and on evidence-Evidence fairly warranting conclusion of appellate court-No adverse finding on facts-No interference except on strong case being made out. MUSSAMUT HUMEEDA F. MUSSA-MUT AMATOOL MEHDRE BEGUM. (1871) 17 W.R. 106-

2 Suth. 519. -It a rule of practice that their Lordships do not enter into the question of whether the decisions of the courts below are or are not correct on matters of fact, provided the two courts below have proceeded upon the evience, and have come to the same conclusion.

Semble, if the appellant could show that the two courts below did not, in substance, really and truly proceed upon the same ground, the case might be said not to come within the rule. (Lord Blackburn.) MUSSAMUT JAMUNGAL KOERI D. MUSSAMMAT MOHUN KOERI.

(1882) 10 C. L. R. 611 = 4 Sar. 344 = Bald. 430.

It cannot detract from the weight of concurrent findings of fact, that different courts, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations. A difference of opinion to that extent is only calculated to suggest that the evidence. whatever view be taken of it. must necessarily lead to one the same inference (97-8). (Lord Watton). RAJAH NIL-MONI SINGH P. KIRTI CHUNDER CHOWDHRY

(1893) 20 I. A. 95 = 20 C. 847 (852) = 6 Sar. 321. The rule as to concurrent findings of fact is none the less applicable because the courts below may not have taken precisely the same view of the weight to be attached

to each particular item of evidence. Held, therefore, that the fact that the courts below were nor agreed on the grounds of their decision and that the Sub-Judge relied on the oral testimony whilst the High Court based its finding on the documentary evidence was no ground for interfering with the findings. (Sir John Bonser). RAM ANUGRA NARAIN SINGH P. CHOWDERY HANUMAN SAHAL. (1902) 30 I. A. 41 (43) = 30 C. 303=

7 C. W. N. 225 - 5 Bom. L. R. 6 - 8 Sar. 409. The case is an ordinary case of the concurrence of two judgments on a mere question of fact, involving many considerations, on some of which the two courts are not agreed. But the mere fact that the two courts do not agree on all the steps which lead to one and the same conclusion is no reason for disregarding the well-known rule. The rule, however, is not an absolute rule; it presses upon the appellant with more or less weight according to the circumstances of the case, and no doubt the fact that the courts have differed on some important but subordinate questions, is a matter to be taken into consideration in determining whether the evidence before the lower courts should be reviewed in detail.

The question in the case was as to whether a valid adoption had been proved. (Lord Macnaghten.) RAJA CHIT-PAL SINGH D. BHAIRON BAKSH SINGH.

(1905) 28 A. 219 = 10 C. W. N. 225 = 1 M. L. T. 7=8 Sar. 905 - 16 M. L. J. 76.

The rule of the Privy Council as to concurrent findings of fact is nonetheless applicable because the subordinate Judge went principally on oral evidence, while the High Court based its finding on the documentary evidence. (Viscount Dunedin.) BHAGWAN SINGH : ALLAHABAD BANK, LTD. (1926) 53 L. A. 268 = 48 A. 763 = 31 C. W. N. 154 = 38 M. L. T. (P.C.) 15 = 24 L. W. 908 = (1926) M. W. N. 942 =

3 O. W. N. 907 = 98 I. C. 901 = A. I. B. 1926 P. C. 125.

# FACT-CONCURRENT FINDINGS-(Contd.)

What amount to-(Contd.)

Council as to concurrent findings, the fact that the court of Appeal looked at the evidence in rather a different way matters not, for the rule is a rule as to concurrent findings, and not a rule as to concurrent reasons. The rule is nonetheless applicable, because the courts may not have taken precisely the same view of the weight to be attached to each particular item of evidence (906). (Viscount Dunadia.) WILLIAM ROBINS r. NATIONAL TRUST CO., (1927) 101 I. C. 903 = 4 O. W. N. 463 = A. I. R. 1927 P. C. 66.

-Narrative of circumstances -Failure of courts below to make minute and completely exhaustive-Effect.

It would be to misconstrue entirely the provisions as to concurrent findings in fact if the Judges of India were to have impliedly the duty laid upon them of making their narrative of the circumstances minutely and completely exhaustive, under the penalty that, if they failed to do so, the absence from their mind of elementary considerations might be presumed (162).

Where a concurrent finding of the courts below that the plaintiffs (persons who claimed under a deed executed by a pardanashin lady) had failed to prove that she understood the effect of the deed and that the same was intelligently and properly executed by her was sought to be attacked before their Lordships on the ground that in the course of a long judgment of the trial judge certain materials for arriving at a conclusion had not been set out in the narrative which the judgment contained, held, that that circumstance did not take the case out of the rule that in the case of concurrent findings of fact the right of appeal to the Privy Council depended upon the case involving a question of law (161-2). (Lord Shate.) SAJJAD HUSAIN v. WAZIR (1912) 39 I. A. 156=34 A. 455 (463)= ALI KHAN. 16 C. W. N. 889 - 10 A. L. J. 364 - 16 C. L. J. 613 =

14 Bom. L. R. 1055 = (1912) M. W. N. 976 = 12 M. L. T. 361 = 16 I. C. 197 = 23 M. L. J. 210.

### Binding nature of.

(Sir Richard Couch.) MACANLIFFE v. WILSON. (1898) 26 I. A. 6 (12) - 21 A. 209 (219) - 7 Sar. 405. (Sir Ford North.) CHAUDHRI MEHDI HASAN :. (1906) 33 I. A. 68=28 A. 439 (447)= MD. HASAN. 10 C. W. N. 706=3 A. L. J. 405=8 Bom. L. R. 387= 9 O. C. 196 = 1 M. L. T. 163 = 4 C. L. J. 295 = 9 Sar. 27.

### Correctness of.

-Discussion of -Permissibility.

The rule as to concurrent findings is such that, unless some exceptional circumstances exist to warrant a departure from it, any discussion of the merits of those findings is inadmissible, since it can only be fruitless. (Viscount Summer.) MD. ALI MAMOOJEE 2. HARVEY.

(1928) 29 L. W. 445=33 C. W. N. 675= 31 Bom. L. R. 700 = 115 I. C. 722 = A. I. R. 1929 P. C. 63.

Presumption of. (Dr. Lushington.) MADHOO SOO-SUNDIAL D. SUROOP CHUNDER SIRKAR DUN (1849) 4 M. I. A. 431 (433)= CHOWDRY. 7 W. B. (P. C.) 73=1 Suth. 216=1 Sar. 378.

### Evidence-Examination of.

-Detailed examination-Propriety.

It would be inappropriate that their Lordships, in reviewing concurrent judgments on a question of fact.

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(C-mtd.)

Evidence-Examination of-(Contd.)

should rediscuss the evidence in detail. (Lord Robertson.) IBRAHIM GOOLAM ARIFF P. SAIBOO.

(1907) 34 I. A. 167 (177) = 35 C. 1 (22) = 17 M. L. J. 408 = 2 M. L. T. 479 = 6 C. L. J 695 = 11 C. W. N. 973 = 9 Bom. L.R. 872 = 4 A. L. J. 572 = 4 L. B. R. 154 = 9 Sar. 311.

INDEPENDENT CONCLUSION-FORMING BY PRIVY COUNCIL OF.

-Duty as to.

Though the fact that the Judges in India generally possesses advantages of forming a correct opinion of the probability of a transaction, and in some cases of the credit due to the witnesses, affords a strong presumption in favour of the correctness of their decisions on a question of fact, yet that does not, and ought not to, relieve this, the court of last resort, from the duty of examining the whole evidence, and forming for itself an opinion upon the whole case (433). (Dr. Luchington.) MADHOO SOODUN SUN. DIAL P. SUROOP CHUNDER SIRKAR CHOWDRY.

(1849) 4 M.I.A. 431 = 7 W. R. (P.C.) 73 = 1 Suth. 216 = 1 Sar 378.

-It is the duty of their Lordships carefully to examine the cases which are brought before them, giving, of course, full weight to the decisions which have been pronounced upon them; and, if upon the result of that examination they are satisfied that their decisions are not well-founded, it is not less their duty to declare their opinion (63). (Lord Justice Turner). SOONDER KOOMAREE DEREEA :: GUDADHUR PERSHAD TEWAREE. (1858) 7 M.I.A. 54 = 4 W. R. 116=1 Suth. 294-1 Sar. 604.

-The concurrence of opinion of two Courts in India. even upon a mere question of fact, has not upon previous occasions prevented their Lordships acting upon their own independent judgment. As observed by Dr. Lushington in 4 M. I. A. 431 at 433; the concurrence of opinion of two courts in India upon a mere question of fact, while affording a strong presumption in favour of the correctness of their decisions, does not ought not to relieve the Priva Council the court of last resort, from the duty of examining the whole evislence and forming for itself an opinion upon the whole case (455-6). (Lord Chelmsford.) TAYAMMAL v. SESHACHALLA NAICKER. (1865) 10 M, I. A. 429 = 2 Sar. 139.

-Grounds-First Court's finding not clear-Incom sistency in its reasons.

Where, in a case in which the question was whether a Hindu widow entitled to make an adoption only with the assent of her husband's nearest sapindas had applied to them for their assent, there were concurrent findings of the Courts below that she had not, but the findings of the trial Court were by no means clear and its reasons were some what inconsistent, their Lordships considered the evidence in the case and arrived at their own conclusion. (Viscount Cary.) ADUSUMILLI KRISTNAYYA P. ADUSUMILLI LAKSHMIPATHI.

AKSHMIPATHI. (1920) 47 I. A. 99 (105) = 43 M. 650 (657) = 28 M. L. T. 70 = 18 A. L. J. 601 = (1920) M. W. N. 385 = 24 C. W. N. 905 = 12 L. W. 625 = 56 I. C. 391 = 39 M. L. J. 70.

-Grounds-Findings not distinct upon quertions of fact. (Sir James W. Colvile.) BHOWAN DOSS v. SHAIKH MD. HOSSAIN. (1870) 13 M. I. A. 348 (354.5)= 13 W. R. P. C. 38=2 Sar. 560.

-Grounds-Findings not explicit on question of fact. (Sir Montague E. Smith). MUST. BEBEE BACHUN P. SHAIKH HAMID HOSSEIN.

(1871) 14 M. I. A. 377 (386)=10 B. L. R. 45 P. C.= 17 W. B. P. C. 113. FACT-CONCURRENT FINDINGS-(Centd.)

Evidence-Examination of-(Contd.)

INDEPENDENT CONCLUSION-FORMING BY PRIVY COUNCIL OF-(Contd.)

-Purdanashin-Deed by-Validity of-Question as to Their Lordships do not question the soundness of the general rule on which the Board acts when there are concurrent findings of fact by the Courts below, but in this case their Lordships have thought it better to form their own independent conclusions on the question whether there was legal necessity for a mortgage by a purdanashin lady and on the question as to whether the lady had indepenelent advice and understood the effect of the deed (274) (Sir John Edge.) MATI LAL DAS v. EASTERN MORTGAGE AND AGENCY CO., LTD. (1920) 47 L. A. 265=

28 M. L. T. 351 = 2 U. P. L. R. P. C. 166= 25 C. W. N. 265 = (1920) M. W. N. 631 = 61 I. C. 486

NOT MADE BY P. C. EXCEPT UNDER EXCEPTIONAL CIRCUMSTANCES.

-(Sir Mentague E. Smith.) DALA SHAM SOON-(1876) 3 Suth. 298= DER LALT. SOORAJ LAL. Bald 20.

#### Facts-Examination of.

-Examination afresh for the purpose of disturbing findings, forbidden by the general rule of the P. C. (Lot Hobbouse). UMRAO BEGUM P. TRSHAD HUSAIN,

(1894) 21 I. A. 163 (166) = 21 C. 997 (10034) = 6 Sar. 469 = R. & J's. No. 135.

### Important Case-Conclusion same reached independently by P. C.

-Reasons for, stated in some detail. (Lord Phillimerc). SAHDEO NARAIN DEO 2. KUSUM KUMARI. (1922) 50 I.A. 58 67 = 2 P. 230 = A.I.R. 1923 P.C. 21= 32 M. L. T. 121 = 4 Pat. L. T. 217 = 37 C. L. J. 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 = 71 I. C. 769= 44 M. L. J. 476

### Interference with-Rule as to.

-(1) AGA HUSSAIN KHAN RAHADUR r. MUSST. R. & J's. No. 16 (Ondh) JANEE BUGAM. -(2) PAHALWAN SINGH P. MAHARAJAH MUHIS

SUR BUKSH SINGH BAHADOOR. (1871) 9 B. L. R. 150 (165) P. C. = 16 W. R. P. C. 5 2 Sar. 683 = 2 Suth 442.

-(3) (Sir Robert P. Collier.) HAY to GORDON (1872) Sup. I. A. 106 (118) = 10 B. L. B. 301=

18 W. R. 480 = 3 Sar. 185 = 9 Moo. P. C. (N. S.) 102 =

-(4) LALL BEHAREE LALL P. MUSST. GOPEL RELBEE. (1872) 18 W.R. 285=5 Sar. 706=2 Suth. 714.

(5) RAM CHUNDER DUTT D. JUGESH CHUNDER (1873) 19 W. R. 353 = 12 B. L. B. 229 DUIT. 2 Suth. 836 (839)=3 Sar. 249

-(6) (Sir James W. Colvile) FORBES 1. MEER (1873) 2 Suth. 865 (869)= MD. HOSSEIN. 20 W. R. 45=12 B. L. R. 210=3 Sar. 364

-(7) JAYARAM GIRI v. SHEEB PROSHAD GIRL (1873) 2 Suth. 816=19 W. B. 275

-(8) KOER PORFSH NARAIN ROY P. ROBERT WAT (1875) 3 Suth. 157=23 W. B. 451= SON & CO. 3 Sar. 504

(9) (Sir Robert P. Collier). RANGE KHAJOOROO NISSA v. MT. ROUSHUN JEHAN.

(1876) 3 L. A. 291, 306 = 2 C. 184 (196) = 26 W.B. 36 3 SAT. 639

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Rule as to-(Contd.)

(10) JAIMUNGAL KOERI v. MOKHUN KOERI. 10 C. L. R. 611 = Bald. 630 = 4 Sar. 344.

(11) (Lord Hobbouse). UMRAO BEGAM r. IHSRAD HUSAIN. (1894) 21 I. A. 163 (168)=

21 C. 997 (1003-4)=6 Sar. 469=R. & J's. No. 135.

-(12) (Lord Davey). TOOLSEY PERSAUD BHUSKT D. BENAYAK MISSER. (1896) 23 I. A. 102 = 23 C. 918. (13) (Lord Macnaghten). SACHINDRA NATH ROY D. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1912) 17 I. C. 733.

-(14) (Lord Macnaghten). KRISHNA DAYAL GIR v. SECRETARY OF STATE. (1912) 18 I. C. 91.

(15) (Mr. Ameer Ali.) PARBATI DASI :. BAIKUN-THA NATH DE. (1913) 26 M. L. J. 248 = 15 M. L. T. 66=(1914) M. W. N. 42=12 A. L. J 70= 19 C. L. J. 129 = 18 C. W. N. 428 = 16 Bom. L. R. 101 = 22 I. C. 51.

-(16) (Lord Show). MOHUNT BHUGWAN RAMA-NUJ DAS v. RAMKRISHNA BOSE. (1919) 26 C. W. N. 722 = A. I. R. (1922) P. C. 185 = 74 I. C. 561.

(17) (Lord Shaw). NUSRAT ALI P. GHULAM AR. (1924) 20 L. W. 719 = SARWAR.

(1924) M. W. N. 429-11 O. L. J. 433= A. I. R. 1924 P. C. 232 = 10 O. & A. L. R. 885 = 81 I. C. 1056

-(18) (Lord Phillimore). MAHARAJ BAHADUR SINGH D. SETH HUKAM CHAND.

(1925) 24 A. L. J. 100=(1926) M. W. N 199=

93 I. C. 219 = A. I. R. 1926 P. C. 13 =

50 M. L. J. 631 (634).

No interference except in very special cases. (Lord Phillimore). RAJAH KEESARU VENKATAPPAYYA D. RAJAH NAVANI. (1928) 56 I. A. 21 =

52 M. 175 = 27 A. L. J. 41 = 49 C. L. J. 148 = 31 Bom. L. B. 299 = 114 I. C. 17 = 29 L. W. 118 = (1929) M. W. N. 47 = 33 C. W. N. 261 =

A. I. R. 1929 P. C. 24 = 56 M. L. J. 218 (228).

### Interference with—Rule as to—Applicability.

Colonial appeals

The judicature which has given greatest occasion for its development has undoubtedly been the Judicature of I die, but the principle is not in any way limited in its application to Indian legislation or Indian law, be it Hindu or Moslem. as such. Indeed it is obvious that if such a rule is a goo' rule to be applied to the finding of the courts in India, there could be no reason for suggesting that the findings of the courts of our great self-governing Dominions should be entitled to less consideration. Their Lordships wish it to be clearly understood that the rule of conduct is a rule of conduct for the Empire, and will be applied to all the various judicatures whose final tribunal is this Board. (Viscount Dunedin). WILLIAM ROBINS v. NATIONAL TRUST CO., LTD. (1927) A. I. B. 1927 P C. 66 (68)= 4 O. W. N. 463 = 101 I. C 903.

Divorce—Suit for—Adultery—Findings as to. See PRIVY COUNCIL - PRACTICE - QUESTION OF FACT-CONCURRENT FINDINGS - INTERFERENCE WITH-CASES UNDER-DIVORCE. (1872) Sup. I. A. 106 (118).

Findings in substance different and based on different grounds. See PRIVY COUNCIL - PRACTICE-QUES-TION OF PACT - CONCURRENT FINDINGS - INTER-FERENCE WITH - CASES UNDER-BENAMI-FINDINGS AS TO-FINDINGS IN SUBSTANCE, ETC.

(1893) 20 L. A. 38 (47-9) = 20 C. 560 (573).

# FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Rule as to-Applicability-(Contd.)

-Nature of rule-Circumstances excluding its application.

The rule as to concurrent findings is not a rule based on any statutory provision. It is rather a rule of conduct which the Board has laid down for itself. As such it has gradually leveloped. Being a rule of conduct, and not a statutory provision, the rule is not cast iron, but it would avail little to try to give a definition which should at once be exhaustive and accurate of the exceptions which may arise. The rule applies in cases in which it is not shown that there has been a miscarriage of justice or that any principles of law or procedure have been violated in the courts below. (Viscount Dunedin.) WILLIAM ROBINS D. NATIONAL TRUST CO., LTD. (1927) 101 I. C. 903 (904-5) = A. I. R. 1927 P. C. 66 = 4 O. W. N. 463.

### Interference with-Cases under.

-(N. B. CASES UNDER C. P. C. OF 1908-S. 100-MAY ALSO BE REFERRED TO UNDER THIS HEAD).

### ACCRETION TO CHUR LAND-FINDING AS TO.

-Ameen's report in a different way-Reversal of finding on ground of-Materials on which Ameen formed has opinion not before Privy Council-Reversal not justified in such case. KOER PORESH NARAIN ROY r. ROBERT WATSON & CO. (1875) 3 Suth. 157=23 W. R. 451= 3 Sar. 504.

#### ACQUIESCENCE.

-Findings as to.

Acquiescence is not a question of fact but of legal inference from facts found. And, although the Privy Council is bound to accept the concurrent findings of the courts below upon the facts from which acquiescence might or might not be inferred, it is not bound to accept their finding as to whether or not those facts justify the legal inference that there had been acquiescence. (Lord Watson.) LALA RENI RAM D. KUNDAN LALL. (1899) 26 I. A. 58 (65) = 21 A. 496 (504) = 3 C. W. N. 502 = 1 Bom. L. R. 400 = 7 Sar 523.

ACTS AND CONDUCT OF PARTIES-ORAL EVIDENCE-PREFERENCE OF FORMER TO LATTER FINDINGS BASED ON.

-No interference on ground of, especially where evi tence conflicting. GOBINDSUNDARI DEBI D. IAGADAMBA DEBt. (1870) 6 B. L. R. 168 (173) = 15 W. R. P. C. 5 = 6 M. J. 113 = 2 Sar. 611 = 2 Srth 375.

### ADVERSE POSSESSION.

-See C. P. C. OF 1908-S. 100-ADVERSE POSSES. SION; AND HINDU LAW-WIDOW-ADVERSE POSSES-SION-FINDING CONCURRENT AS TO.

(1919) 46 I. A. 197 = 42 A 152.

(Viscount Haldane). CHOWDRI SATGUR PRASAD D. KISHORE LAL. (1919) 46 I. A. 197 = 42 A. 152 (157-8) = 18 A.L.J. 235 = (1920) M. W. N. 3 = 24 C. W. N. 394 = 11 L. W. 384 = 22 Bom. L. R. 451 = 55 I. C. 487 = 38 M. L. J. 259.

#### AGENT.

- Bills - Authority to sign, so as to bind principal-Existence of-Finding as to. See PRINCIPAL AND AGENT (1926) 53 I. A. 268 = 48 A. 763. -AGENT-BILLS,

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

AGENT-(Contd.)

-Borrowing in course of prudent management of principal's estate-Findings as to. See PRINCIPAL AND AGENT -AGENT-BORROWING BY, IF IN COURSE OF ETC.

(1891) 19 I. A. 33 (37)=19 C. 174 (179-80).

-Payment to, or to principal-Findings as to. See PRINCIPAL AND AGENT-AGENT-PAYMENT TO, OR TO PRINCIPAL. (1891) 19 L. A. 33 (38-9)= 19 C. 174 (181).

AGREEMENT-PAROL AGREEMENT-NATURE OF.

-Agreement going to root of whole contract or mere term the breach of which sounded in damages-Finding as See NEGOTIABLE INSTRUMENT - HOONDIE-IN-DORSEE OF-PRIOR INDORSEE. (1928) 29 L. W. 445. APPELLATE COURT -MAJORITY OF-AFFIRMANCE OF FINDING ONLY BY.

-No interference by reason of. See PRIVY COUNCIL -PRACTICE QUESTION OF FACT-CONCURRENT FIND-INGS-WHAT AMOUNT TO-APPELLATE COURT.

(1921) 48 I. A. 114 (119) - 48 C. 856 (862-3).

BENAMI-FINDINGS AS TO.

-- (Sir Joseph Napier). NAWAB AZIMUT ALI KHAN v. HURDWAREE MULL (1870) 13 M. I. A. 395 (402-3) = 14 W. R. P. C. 14=5 B. L. R. P. C. 578= 2 Suth. 343 = 2 Sar. 571.

-(Lord Atkinson). PETHEPERUMAL CHETTY D. MUNIANDI SERVAL (1908) 35 I. A. 98 (101)=

35 C. 551 (557) = 4 M. L. T. 12 = 7 C. L. J. 528 = 12 C. W. N. 562 = 10 Bom. L. R. 590 = 5 A. L. J. 290 = 14 Bur. L. R. 108 = 4 L. B. R. 266 = 18 M. L. J. 277.

See MAHAMMADAN LAW-BENAMI TRANSACTION -FATHER-SON-PURCHASE IN NAME OF-BENAMI OR NOT-CUNCURRENT FINDINGS AS TO.

(1919) 11 L. W. 421 (423).

-Findings in substance different and based on different grounds.

A, a Mahomedan, purchased property at an execution sale benami in the name of K. That was on 11-2-1851. On 8-4-1854, A effected the registration of an ikrarnama executed by himself, in which he declared that the purchasemoney was provided by A's wife, and that she was the real owner of the property. The statement as to the source of the purchase-money was false. As wife was very young, and wholly without property. So that A, was the real owner of the property before 8-4-1854. On that day the formal and ostensible ownership was transferred by A's, orders from K to his (A's) wife. The question for decision was whether that transfer merely changed one benamidar for another or gave a beneficial title to the property.

The subordinate Judge found that A intended the transfer to his wife to be for her benefit, and that she and her sons afterwards derived benefit from it, for about thirty years prior to the suit. He considered that A's wife became

owner at the date of the ikrarnama.

The High Court, on the other hand, thought that the transfer to A's wife was simply a transfer from one benamidar to another. But they were so pressed with the evidence of title and of possession that they could not resist the conclusion that in some way the property was transferred before A's death in 1870. Their finding was that in or about the year 1859 the property was given by A to his wife or her sons, and was thenceforward acknowledged and dealt with by him as their property.

Held, that there was no such concurrence in the findings of the Courts below as would justify their Lordships in OF.

FACT-CONCURRENT FINDINGS-(Contd.) Interference with—Cases under—(Contd.)

BENAMI-FINDINGS AS TO-(Contd.)-

abiding by the ultimate decision in favour of the defendants as something which ought not to be inquired into (47).

Their Lordships accordingly heard the case fully argued and affirmed the view of the Sub-Judge that the tree intertion of A, in causing K to execute the ikrarnama of 1854 was to transfer the beneficial ownership to his wife (489). (Lord Hobbiouse.) SYED ASHGAR REZA D. SYED MEDRI HUSSAIN KHAN. (1893) 20 I. A. 38 = 20 C. 560 (573).

-Hindu father-Purchase in name of undivided see by-Benami or not-Findings as to, based on error as to presumption and onus of proof in such cases-Reversal of. (Lord Justice Knight Bruce). GOPEE KRIST GOSAIN D. GUNGAPERSAUD GOSAIN. (1854) 6 M. I. A. 53(80)= 2 Suth. 13=4 W. R. 46=1 Sar. 493.

Ignoring of-Grounds.

The findings of the Courts below were ignored and the case was decided by the Privy Council on the evidence on record because when the judgments below were examined, it appeared either that there had been no finding at all of the points which it was necessary to find or that those facts had been found in favour of the appellant. (Sir James Colvile.) MOULVIE SAYYUD UZHUR ALI P. MUSSUMAT BEBEE ULTAF FATIMA. (1369) 13 M.I.A. 232 (244-6)=

13 W.R.P.C. 1=4 B.L.R. P.C. 1=2 Sar. 522=

-Mahomedan father-Purchase in names of infent sons by.

Findings of Courts below that purchase was for the benefit of the sons held to be conclusive (46-7).

The question moreover is one for the decision of which familiarity with native families and estates, and with the practice of benami purchases, confers great advantages. Of all classes of questions this would be one of the last in which this Committee could be induced to depart from the wholesome general practice of abiding by concurrent decisions of the Court below (47). (Lord Hobbourt.) SYED ASHGAR REZA D. SYED MEDHI HOSSEIN KHAN

(1893) 20 I.A. 38 = 20 C. 560 (5723).

Reversal of. See Under this very sub-head-FACTS NECESSARY TO FIND.

(1869) 13 M.I.A. 232 (2434) BOND.

-Execution of-Finding as to. See HINDU LAW-WIDOW-BOND BY-EXECUTION OF.

(1891) 19 A. 1 (3)=19 C. 949

Validity of - Possession long consistently with freesions of-Findings as to.

It has been the invariable practice of their Lordships sitting here to require a very strong case indeed to indeed them to interfere with concurrent decisions of the Courts in India upon mere questions of fact (92).

The questions in this case were (1) as to the validity of a bond. (2) the long possession of the defendants consistent with the provisions of the bond, DEVAJI GAYAJI (1869) 2 B.L.B. 85= GODABHAI GODBHAI. 11 W.B. 35 = 2 Suth. 208

BOUNDARY AND MEASUREMENT.

-Findings as to. (Sir James Colvile.) FORBES v. MEER MAHOMED (1870) 13 M.I.A. 438 (453)=14 W.B. P.C. 255 5 B.L.R. 529 = 2 Suth. 358 = 2 Sar. 588

-See BOUNDARY DISPUTE-PRIVY COUNCIL AP-BOUNDARY DISPUTE. PEAL IN-INDIAN COURTS-CONCURRENT FINDINGS

# PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF

Interference with—Cases under—(Contd.)

CONSIDERATION FOR PRU-NOTE.

-Findings as to. See UNDER THIS SUB-HEAD-MINORITY. (1891) 19 I.A. 4 (5).

CORRECTNESS OF FINDINGS-DOUBT FELT BY PRIVY COUNCIL AS TO.

-No interference by reason of.

(Mr. Justice Besauquet.) BABOO ULMACK SINGH r. BENY PERSHAD. (1834) 5 W.R. 77= 1 Suth. 13 (15)=1 Sar. 53=2 Knapp. 265.

DEVAJI GAVAJI P. GODABHAI GODBHAI.

(1869) 2 B.L.R. 85 (P.C.) (92. 97)= 11 W.R. P.C. 35 = 2 Suth. 208.

-(Sir Montague E. Smith.) MUNNOO LALL v. LALLA CHOONEE LALL. (1873) 1 I.A. 144 (156)= 21 W. R. 21 = 3 Sar. 302 = 2 Suth 917. CUSTOM-PROOF OF.

-(See also Under this sub-head-HINDU Law-INHERITANCE-CUSTOM OF.)

-Findings as to.

(Sir James IV. Colvile.) RAJAH VURMAH VALIA P. RAJAH VURMAH MUTHA. (1876) 4 I.A. 76 (83. 1 M. 235 (250) - 3 Sar. 637 - 3 Suth. 382

-See Under this sub-head-HINDU LAW-ADOP. TION-CUSTOM AGAINST.

(1886) 13 I.A. 97 (98) -9 M. 499 (504).

-If the Courts below concur in their conclusion upon such a matter as the existence or otherwise of an alleged family custom, their Lordships are very reluctant to disturb the judgment of those Courts. If there had been any principle of evidence not properly applied; if there had been written documents referred to on which the appellant could show that the Courts below hard been led into error, their Lordships might re-examine the case; but in the absence of any such ground they decline to do so (15-6). (Lord Holdonic.) THAKUR HARIHAR BUKSH v. THAKUR UMAN PAR-SHAD, (1886) 14 I.A. 7 = 14 C. 296 (306 7) =

-(Sir Richard Couch.) SUNDARALINGASWAMI KAMAYA NAIK P. RAMASWAMY KAMAYA NAIK

(1899) 26 I.A. 55 (57) - 22 M. 515 (518) -1 Bom. L. B. 850 - 7 Sar. 531.

·(Lord Lindley.) JAFRI BEGUM S. SYED ALI RAZA. (1901) 28 I.A. 111 (118) - 23 A. 383 (392) = 5 C.W.N. 585 = 3 Bom. L.B. 311 = 8 Sar. 27 = 11 M.L.J. 149.

-(Sir Arthur Wilson.) MAHOMED KAMIL v. IMTIAZ FATIMA. (1909) 36 I.A. 210 (220) = 31 A. 557 (570) = 10 C.L.J. 297 = 14 C.W.N. 59 = 11 Bom. L.B. 1210 = 4 I.C. 457 = 13 O.C. 183 = 19 M.L.J. 697.

-Sn HINDU LAW-CUSTOM-PROOF OF-QUES-TION AS TO. (1910) 14 C.W.N. 545 (551).

Two findings upon questions of pure fact, must, no doubt, be accepted by the Privy Council, but questions of the existence of an ancient custom are generally questions of mixed law and fact, the judge first finding what were the things actually done in alleged pursuance of custom and then determining whether these facts so found satisfy the requirements of the latter. This latter is a question of law DEIVASIKAMANY PANDARA.

(1917) 44 I.A. 147 (157-8) = 40 M. 709 = 22 M.L.T. 1=(1917) M.W.N. 507=6 L.W. 222= 21 O.W.N. 729 = 26 O.L.J. 153 = 15 A.L.J. 485 = 19 Bom. L.B. 567=1 Pat. L.W. 697=39 I.C. 722= 33 M.L.J. 1. FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

DEED-EXECUTION OF-FINDINGS AS TO.

-(Mr. Pemberton Leigh.) KAIBR BUKSH KHAN P. MT. FUSSUL OON NISSA.

(1853) 5 M.I.A. 413 (422)-1 Suth. 241.

-Interference with, only when there is so strong a preponderance of testimony against the finding that the Privy Council can confidently say that it is wrong-Mere balance of testimony not enough. (Sir James Celvile.) RANI SARAT SUNDARI DEBI P. KUMAR PARESNARA-YAN ROY. (1871) 8 B.L.R. 113 (117-8)= 16 W.R. P.C. 9-2 Sar. 681.

-(Sir James W.Colvile.) SADUT ALI KHAN v. KHA-JAH ABDOOL GUNNEE. (1873) Sup. I.A. 165 (174) = 11 Bom. L.R. 203 = 19 W.R. 171 = 3 Sar. 229 = 2 Suth. 785.

-RUNJUT RAM PANDEY D. GOBURDHUN RAM PANDEY. (1873) 2 Suth. 857 (860) = 20 W.R. 25.

-(Sie Montagne E. Smith.) MAHARAJAH RAM KISAN SINGH P. RAJAH SHEONUNDUN SINGH.

(1875) 3 Suth. 151 (154) = 23 W.R. 412 = 3 Sar. 498

-Comprehension of deed-Execution without-Finding as io. (Viscount Catr.) Syen AMATUL FATIMA BIBI F. ABBUL ALIMI SAHER. (1920) 12 L.W. 497 (498)= (1920) M.W.N. 324 = 28 M L.T. 135 = 24 C.W.N. 494 = 32 C.L.J. 447 = 59 I.C. 1.

-Dures and correion-Execution under-Finding as

Their Lordships have not here to deal with a consistent case deposed to by the witnesses for the plaintiff, and contradicted by the witnesses for the defendant, a case of which the determination depends on the credit to be given to the witnesses on one side or the other. In this case their Lordships' conclusion is very much founded on the inconsistencies and imperfections of the plaintiff's proofs. Moreover the finding of the courts below is consistent with the result of the investigation of the Magistrate, held immediately after the transaction, and with the finding of the Principal Sudder Ameen, already adverted to (a finding arrived at also immediately after the transaction), in favour of the validity of the deed. The judgment of the Zillah Judge contains several inferences which do not appear to their Lordships to have been warranted by the facts before him and it treats the order of the Magistrate dismissing the complaint of the Cazee as reversed, whereas it was confirmed, on appeal. The judgment of the High Court is a mere statement that the Judges of that Court saw no reason to differ from the finding of the Zillah Judge. (Sir James Calvile.) GUTHRIE D. ABOOL MOZUFFER.

(1871) 14 M.I.A. 53 (62-3)=15 W.R. P.C. 50= 7 Bom. L. B. 630 - 2 Suth 429 - 2 Sar. 660.

-Fraud and undue influence-Execution under-Findings as to. (Sir Robert P. Collier.) AJIT SINGH r. BIJAI BAHADUR SINGH. (1884) 11 I A. 211 (213)= 11 C. 61 (66-7)=4 Sar. 560=B. & J's. No. 84 (Oudh.)

-Inspection of deed-Findings based on. (Lord Kingsdesen.) CHEYT RAM v. CHOWDHREE NOWBUT (1858) 7 M. I. A. 207 (210) = 5 W. R. 3= RAM. 1 Suth. 319=1 Sar. 627.

-(Lord Kingsdeten.) VENCATESWARA YETTIAPAH NAICKER P. ALAGOO MOOTTOO SERVAGAREN.

(1861) 8 M. I. A. 327 (331-2) = 4 W. R. P. C. 73 = 1 Suth. 440=1 Bar. 788.

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Cont.)

Interference With-Cases under-(Contd.)

DEED-EXECUTION OF-FINDING AS TO-(Contd.)

-Mortgagor-Sale of equity of redemption to mortgagee by-Deed of. (Sir James W. Colvile.) JUGGER-NATH SAHOO P. SYUD SHAH MAHOMED HOSSEIN.

(1874) 2 I. A. 48 (53 4) = 14 B. L. R. 386 = 23 W. R. 99 = 3 Sar. 419 = 3 Suth. 61.

-Reversal of, on ground of entire miscarriage of justice. (Lord Kingsdown.) CHEYT RAM v. CHOWDHREE NOWBUT RAM. (1858) 7 M. I. A. 207 (223)= 5 W. R. 3 = 1 Suth. 319 = 1 Sar. 627.

-- - Undue influence-Execution under-Findings as to. (Sir Arthur Hobbouse.) THAKUR ISHRI SINGH :. BAL-DEO SINGH. (1884) 11 I. A. 135 (143)=

10 C. 792 (803) = 13 C. L. R. 418 - 4 Sar. 528 = R. & J's. No. 79 (Oudh.)

### DIVORCE-SUIT FOR-ADULTERY-FINDINGS AS TO.

-Applicability of rule as to concurrent findings to. Concurrent judgments of Courts below dissolving respon

dent's marriage with his wife on the ground of her adultery with appellant reversed on the ground that there was no sufficient evidence on which the divorce could be supported.

Such reversal held not to violate the general rule of the Privy Council as regards concurrent findings of fact, because (1) the jurisdiction in question was new to the Courts of India, (2) the decree of the first Court was not final unless confirmed by the High Court, so that the confirmatory judgment of the High Court was practically the only judgment in the suit, and there were really no two separate judgments, and (3) statements of the wife were wrongly accepted as corroborative evidence against the appellant (118). (Sir Robert P. Collier.) HAY P. GORDON.

(1872) Sup. I. A. 106=10 B. L. R. 301= 18 W. R. 480 = 3 Sar. 185 = 9 Moo. P. C. (N. S.) 102 = 2 Suth. 721.

### DOCUMENTS-CONSTRUCTION OF -FINDINGS BASED UPON.

-Evidence-Part of-Documents forming-Legal principles-Misapplication of, to facts found-Findings plainly wrong-Interference in case of. (Lord Watson.) RAJAH NILMONI SINGH P. KUTI CHUNDER CHOWDH (1893) 20 I. A. 95 (97-8)= 20 C. 847 (852)= 6 Sar. 321.

-Root of title or basis of suit-Part of evidence-Documents forming-Cases of-Distinction. See Under this head-HINDU LAW-JOINT FAMILY - MEMBER OF-SELF-ACQUISITIONS OF. (1870) 15 W. R. 1.

-See Under this sub-head-HINDU LAW-ADOP-TION-PROOF OF. (1894) 22 I. A. 51 (57-8) -22 C. 609 (617-8).

-(Lord Davy.) TOOLSEY PERSAUD BHUCKT P. BENAVET MISSER. (1896) 23 I. A. 102 = 35 C. 918. -(Lord Daivy.) MAUNG SHWE OH P. MAUNG TUN GYAW. (1904) 31 I. A. 188 (193) = 32 C. 96 (105) = 9 C. W. N. 147 = 8 Sar. 704.

-See Under this sub-head-HINDU LAW-WIDOW -POSSESSION OF. (1919) 46 I. A. 197 = 42 A. 152. -C. P. C. OF 1908-S. 110-SUBSTANTIAL QUES-TION OF LAW-DOCUMENTS. (1928) 55 I. A. 380 = 56 M. L. J. 1.

### EVIDENCE (INCLUDING WITNESSES.)

-Absence of -Interference in case of. BABOO LALL P, DUTTO RANI. (1872) 18 W. R. 233= 5 Sar. 694 (696) = 2 Suth. 684.

FACT-CONCURRENT FINDINGS-(Contd.)

Interference with Cases under-(Contd.)

EVIDENCE (INCLUDING WITNESSES) -- (Contd.)

"(Lord Moulton.) HARENDRA LALROY CHOW-DHURI P. HARI DASI DEBI. (1914) 41 I. A. 110(119)= 41 C. 972 (988) = 18 C. W. N. 817 = 12 A. L. J. 774= 16 Bom. L. R. 400 = 19 C. L. J. 484= (1914) M. W. N. 462 = 23 I. C. 637 = 16 M. L. T. 6=

-Admission or appreciation of-Miscarriage in-Interference in case of. (Lord Kingsdoton.) GHOOLAN MOORTAZAH KHAN BAHADOOR 1: GOVERNMENT.

(1863) 9 M. I. A. 456 (478)=1 W. R. 47 P. C.= 1 Suth. 513 = 2 Sar. 23.

-Appreciation of-Miscarriage of justice in-Interference on ground of. See under this sub-head-MIS-CARRIAGE OF JUSTICE-TRIAL OF CAUSE.

(1870) 5 M. I. A. 389 (390).

1 L. W. 1050 = 27 M. L. J. 80.

-Appreciation of -Mistake palpable in-No interference except in case of. (Lord Kingidown.) CHUNDU-MONEE DEBIA CHOWDHOORAYN D. MUNMOHEENER (1861) 8 M. I. A. 477 (489) = 1 Bar. 809. DEBIA.

-Balance of-Reversal of findings on mere.

Reversal of findings on a mere balance of evidence, or a probability that the P. C. might in the first instance have come to a different conclusion not allowed except on proof of some miscarriage of law or on proof that Courts below have come to a wrong conclusion as to the evidence. MT. HUMEEDA P. MT. AMETOOL MEHDI BEGUM.

(1871) 17 W. R. 106=2 Suth. 519.

Case entirely one of, and of conclusion to be drawn from. (Lord Summer.) BAI MONGHIBAI P. PRAGIL '1925) 89 I. C. 88s DAVAL HARIANI. A. I. B. 1925 P. C. 198

Finding supported by-No interference with.

The Privy Council will not interfere with concurred findings of the Courts below on a question of fact when it annot be said that there is no evidence on which to base the finding. (Lord Dunedin) MUHAMMAD WALL KHAN e. MUHAMMAD MOHI-UDDIN KHAN.

(1919, 23rd June) High Court File for 1919 (P. C. A. Nos. 103 & 104 of 1917.)

-Inadmissible evidence-Admission of-Finding not interfered with on ground of, because (1) the inadmissible evidence was not at all relied upon by Courts below and (2) there was ample other evidence to support finding. (Let Justice Mellish.) LALLA BUNSEFDHUR 2. GOVERNMENT OF BENGAL (1871) 14 M.I.A. 86 (92) = 9 B.L.B. 364 16 W. R. P. C. 11=2 Suth. 448=2 Sar. 689.

-Minute portions of-General conclusion to be drawn from-Findings depending upon-Interference in case of only when particular instances of where the court below had gone wrong are brought before Privy Council. (Lord Dunidin.) JAGANNATHA RAO P. SURYANARAYANARAJ (1924) 21 L, W. 436 (437)=A. I. B. 1925 P. 0, 31= 87 I O. 958

-Oral evidence--Acts and conduct of parties-Pre ference of latter to former—No interference on ground of See under this Sub-head — ACTS AND CONDUCT OF (1870) 6 B. L. B. 168 (173) PARTIES.

-Oral and documentary evidence Credibility of Case turning upon—Deference to judgments below in Case of. (Lord Kingsdown.) GHOOLAM MOORTOOZAH KHAN (1863) 9 M. I. A. 456 (478) 1 W. B. 47 P. C.=1 Suth. 513=9 Sar. 50 BAHADOOR D. GOVT.

### PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF PACT-CONCURRENT FINDINGS-(Cont.d.)

Interference with-Cases under-(Contd.)

EVIDENCE (INCLUDING WITNESSES)-(Cont.)

attached to-Difference between Courts below as to-No interference by reason of. See PRIVY COUNCIL-PRAC-TICE-QUESTION OF FACT-CONCURRENT FINDINGS-WHAT AMOUNT TO. (1902) 30 I. A. 41 (43)= 30 C. 303.

-Part of-Consideration of-Failure of Courts below as to-No interference on mere ground of, when both Courts below have arrived at same result. (Lord Macnaghten.) RAM LAL ". SAIVID MEHDI HUSAIN.

(1890) 17 I. A. 70 (71)=17 C. 882=5 Sar. 572= R. & J's No. 117.

-Unsatisfactory nature of-No interference on ground of, where there was some evidence to support finding. BABOO LALL P. DUTTOO RAM. (1872) 18 W. R. 233 = 5 Sar. 694 (696) = 2 Suth 684.

-Weight to be attributed to-Findings hased upon. Not interfered with, except when there had been some violation of the ordinary principles upon which causes ought to be tried. LALJI SAHILT, COLLECTOR OF TIR-HOOT. (1871) 6 B L R. 648 (651-2)=

15 W. R. P. C. 23 = 6 M. J. 143 = 2 Suth. 642.

-Witness important-Inadequate appreciation or unjustifiable belittling of not a miscarriage of justice. See Under this very Sub-head-MISCAPPIACE OF HISTICE-MEANING OF. (1927) 101 I.C. 903

-Witnesses-Credibility of-Findings based on, SRE RAJA ROW BOOCHEE TUMMIAH P. SHEE RAJA ROW VENKATA NILADRY ROW. (1834) 9 M. J. 151.

(Lord Kingedown.) NARAGUNTY LUTCHMEF-DAVAMAN P. VENCAMA VAIDOO.

(1861) 9 M. I. A. 66 (87) = 1 W R. P. C. 30 = 1 Suth. 460 = 1 Sar. 826.

(Sir James W. Colvile.) MT. JARINT-OOL-BUTOOL D. MT. HOSEINER RECEIVE

(1867) 11 M. I. A. 194 (207 8) = 10 W. R. P. C. 10 = 2 Suth. 56=2 Sar. 243.

EXECUTION OF DECREE-NOTICE OF-SERVICE UPON JUDGMENT-DEBTORS OF.

Findings as to. (Lord Phillimore.) SRIPAT SINGH DUGAR P. RAI HARIPAM COFNKA.

(1922) 16 L. W. 447 (449) = 31 M. L. T. (P. C.) 38= 26 C.W.N. 739 = 4 U. P. L.R (P. C.) 68 = A.LR. 1922 P.C. 51 = 74 I.C. 597 = (1922) M.W.N. 671.

EXECUTION SALE-IRREGULARITY-INJURY RESUL-TING FROM-PROOF OF.

Findings as to. (Sir Robert P. Collier.) FAKHARU-DDIN MAHAMAD AHSAN CHOWDHRY D. OFFICIAL TRUSTEE OF BENGAL. (1881) 8 I. A. 197 (205)= 8 C. 178 (187-8) = 10 C. L. B. 176 = 4 Sar. 270.

EXECUTOR DE SON TORT-LIABILITY AS.

Findings as to. Where the question was whether the defendant in the sult had intermeddled with the property of a deceased person and was at all events executor de son tort, and, nowithstanding a clear admission by defendant made in the suit that he had so intermeddled, all the courts below held he did not on the sole ground that he had not been duly appointed executor and therefore could not have intermedd-led, held that the decision was really one of law and not one of fact to which the rule of concurrent findings did not FACT-CONCURRENT FINDINGS-(Contd.)

Interference with Cases under-(Could.)

EXECUTOR DE SON TORT-LIABILITY AS-(Contd.) Oral and documentary evidence—Weight to be apply and was open to consideration by the Privy Council. (Sir Alfred Wills.) MANIRAM & SETH RUPCHAND.

(1906) 33 I. A. 165 (174-5) = 33 C 1047 (1060-1) = 4 C. L. J. 94=8 Bom. L. R. 501=10 C. W. N. 874= 1 M. L. T. 199 = 3 A. L. J. 525 = 2 N. L. R. 130 = 16 M. L. J. 300.

### FACIS FOUND.

-Misapplication of legal principles to-Interference in See Under this very Sub-head-DOCUMENTS-CONSTRUCTION OF-FINISHED ON-EVIDENCE.

(1893) 20 I. A. 95 (978)=20 C. 847 (852).

-Real issue between parties not concluded by-Revercal of finding in case of. (Lord Chelmsford.) RAJAH BURDACANT ROY :- BAROO CHUNDER COOMAR ROY.

(1868) 12 M. I. A. 145 (153) = 11 W. R. 1 = 2 B. L. R. 1 = 2 Suth. 169 = 2 Sar. 402.

### FACTS NECESSARY TO FIND.

-No findings by Courts below on or finding by them in favour of appellant-Roversal of findings in case of-Benami-Onestion as to. (Sir James W. Colvile.) MOULVI SAYYUD UZHUR ALI :: MUSSAMMAT RIBFE ULTAF FATIMA. 1869) 13 M. I. A. 232 (243 4) =

13 W.R. 1=4 B. L. R. 1=2 Suth. 279=2 Sar. 522. FINDINGS CLEARLY WRONG.

-Interference in case of, and no interference except in rate of.

The question depends entirely upon facts, and in a case coming before this Court, depending upon facts which have received the judgments of two Courts in India, this Board ought not to set aside the last judgment unless it can see very clearly that that judgment is arong. It must be most completely satisfied it was wrong and inconsistent with the justice of the case, and against the facts, (Lord Wenford.) PETAMBER MANIKIEE : MOTEFCHUND MANIKIPE.

(1837) 1 M. I. A. 420 (427-8) = 5 W. R. P. C. 53 = 1 Suth. 71=1 Sar. 136.

-(Mr. Baron Parke.) KHOORSHEDJEE MANIKJEE D. MEHRWANIER KHOORSHEDIER,

(1837) 1 M. I. A. 431 (442) = 5 W. R 57 P. C. = 1 Suth. 73 = 1 Sar. 138.

(Lord Cairne.) TARENY CHURN PONNERIEE P. MAITLAND. (1867) 11 M. I. A. 317 (338 9)= 2 Suth. 98 = 2 Sar. 299.

-(Sir James IV. Colvile.) MOULVIE SAYYUD UZHUR ALI S. MUSSAMAT REBEE ULTAF FATIMA.

(1869) 13 M. I. A. 232 (243) = 13 W. R. 1 P. C. = 4 B. L. R. 1 = 2 Suth. 279 = 2 Sar. 522.

(Sir Lawrence Ped.) RAMBUKSH SINGH r. JUGUT NARAIN SINGH. (1870) 5 M. J. 232.

-This case clearly comes within the rule which their Lordships have so often laid down, where the dispute turns upon matters of fact and where the Courts below have agreed on the conclusion which they have come to respecting that fact. There is certainly no such error shown in the conclusion reached by the Courts below as would enable their Lordships, or make it right and proper, to reverse or alter that decision (445.) BABGO PUHLWAN SINGH 7. MAHARAJAH MOHFSHUR BUKSH SINGH,

(1871) 2 Suth. 442=9 B. L. B. 150=16 W. R. 5=

2 Sar. 683. -(Lord Justice Mellish.) LALLA BUNSEFDHUR 1. GOVT OF BENGAL (1871) 14 M. I. A. 26 (90)=

16 W. B. P. C. 11=9 B. L. B. 364=2 Suth. 448= 2 Sar. 689. PRIVY CCUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Centd.)

Interference with - Cases under-(Contd.)

FINDINGS CLEARLY WRONG - (Contd.)

-(Lead Justice Mellish.) FARQUHARSON .. DWAR-KANATH SINGH. (1871) 14 M. I. A. 259 (265) = 16 W. R. P. C. 29-8 B. L. R. 504-2 Suth. 469= 2 Sar. 708.

- (Sir Robert P. Collies.) BABOO LEKRAJ ROY 7. BAROO MAHTAR CHAND.

(1871) 14 M. I. A. 393 (399) = 10 B. L. R. 35 P. C. = 17 W. R. P. C. 117 = 2 Suth. 536 = 3 Sar. 43; and (1893) 20 I. A. 95 (97-8) = 20 C. 847 (852).

FINDINGS IN SUBSTANCE DIFFERENT AND BASED ON DIFFERENT GROUNDS.

-See Under this very sub-head-BENAMI-FINDINGS AS TO-FINDINGS IN SUBSTANCE ETC.

(1893) 20 I. A. 38 (47) - 20 C. 560 (573.)

FRACD AND MISREPRESENTATION-FINDINGS AS TO -Not interfered with. (Viscount Summer.) KUMAR BAIJNATH PRASAD SINGH :: KADER NATH GOENKA. (1927) 30 Bom. L. R. 115 = 32 C.W.N. 481 = 27 L. W. 802 = I. L. T. 40 P. 18 = 5 O. W. N. 93 = 106 I. C. 646 (2) -47 C.L.J. 134 = 54 M.L.J. 6.

FRAUDULENT TRANSFER-FINDINGS AS TO.

-Mahomedan father-Hibbanamah in favour of son. (Lord Fit:Gerald.) ABDOOL HYE P. MIR MAHOMED MOZUFFER HOSSEIN. (1883) 11 I. A. 10 (19)= 10 C. 616 (625-6)=4 Sar. 500.

-No interference with, unless Privy Council entertains a clear and strong opinion upon the question. (Mr. Pemherton Leigh.) MUSADEE MAHOMED GAZUM SHERAZEE F. MEERZA ALLY MAHOMED KHAN.

(1854) 6 M.I.A. 27 (49) = 8 Mco. P.C. 110= 1 Sar. 489.

#### GIFT

-Deed-Gift by-Finding of first Court of-Verba gift-Finding on appeal of -No reversal of finding by reason of such difference, except on strong and clear proof of miscarriage. (Sir Arthur Hobbourd.) PRINCE MIRZA JEHAN KADIK BAHADOOR P. NAWAB BADSHOO BABOO SAHIBA. (1885) 12 I.A. 124 (126-7)= 12 C. 1 (8)-4 Sar. 630.

-Oral gift-Proof of-Findings as to. (Sir Arthur Hobiouse.) RAM SARUP P. MUSSAMUT BELA.

(1883) 11 I. A. 44 (47) = 6 A. 313 (319) = 4 Sar. 493.

-Proof of-Findings as to.

(Lord Hobkouse.) LACHMAN SINGH : MUSSAMUT PUNA. (1889) 16 I. A. 125 (125-6) = 16 C. 753 (755) = 5 Sar. 370.

-(Sir Lawrence Jenkins.) SRI KAJAH MALRAJU LAKSHMI VENKAYAMMA ROW r. SEI RAJAH VENKA-TADRI APPA ROW. (1920) 13 L. W. 256 (257)=

(1921) M. W. N. 77-23 Bom. L. R. 713= 19 A. L. J. 97 = 33 C. L. J. 171 = 25 C. W. N. 654 = 59 I. C. 767 = 40 M. L. J. 144.

#### GRANT-FACTUM OF.

-Tenure-Nature and incidents of-Findings as to. Held, that concurrent findings of the Courts below on the issues (1) whether the defendant in a suit in ejectment brought by a zamindar held the suit village under a grant made to his ancestor by the then zemindar, before the Permanent Settlement and (2) whether the defendant's holding under such grant was kattubadi or other tenure, subject to a fixed quit-rent which the plaintiff could not legally determine, would, in so far as they were concurrent

FACT-CONCURRENT FINDINGS-(Contd.)

Interference with Cases under-(Contd.)

GRANT-FACTUM OF-(Contd.)

findings on matters of fact, not be disturbed by the Privy Council in accordance with their ordinary rule. STRI RAJA VYRICHERLA RAZA BAHAPOOR v. NADIMINTI BAGA-VAT SASTRI. (1875) 3 Suth. 215=25 W.B. 3.

### GROUNDS OF JUDGMENTS DIFFERENT.

 No interference by reason of. See PRIVY COUNCIL -PRACTICE - QUESTION OF FACT - CONCURRENT FINDINGS-WHAT AMOUNT TO-GROUNDS OF JUDG-MENTS DIFFERENT.

### HEIRSHIP-PROOF OF-FINDINGS AS TO.

-No reversal of, except on proof that they are clearly erroreous. (Sir John Bonser.) RAM ANUGRA NARAIN SINGH P. CHOWDHRY HANUMAN SAHAL

(1902) 30 I. A. 41=30 C. 303= 7 C. W. N. 225 = 5 Bom. L. R. 6 = 8 Sar. 409.

#### HINDU LAW-ADOPTION.

-Capacity to make-Proof of-Findings as to. See Under this sub-head-HINDU LAW-ADOPTION-WILL-

Custom against - Findings as to, (Sir Barnet Peacock.) SRI RAJA RAO VENKATA MAHAPATI SURYA RAO BAHADOOR :- THE HONOURABLE SRI RAJA RAO VENKATA MAHAPATI GANGADHARA RAMA RAO BAHA-(1886) 13 L A. 97 (98)=

9 M. 499 (504)=4 Sar. 725.

-Factum of-Possession as adopted son-Findings 41

In a case in which plaintiff claimed to be the adopted son of one G, and to have been in possession of Grestale 25 such adopted son, the Courts below concurrently found that plaintiff's story relating to adoption and possession was false.

Held, that it was not open to the appellants, plaintiff's representatives, to question those findings in the appeal to (Mr. Ameer Ali.) PRATHIVADI the Privy Council. BHAYANKARAM 2. RANGAYYA APPA RAO.

(1912) 18 I. C. 13=13 M. L. T. 198 a (1913) M. W. N. 191 = 17 C. L. J. 295= 15 Bom. L. B. 483

Factum and validity of Finding as to-Capacity of adoptive father-Question depending upon. St. HINDU LAW-ADOPTION-FACTUM AND VALIDITY OF-OUR (1865) 10 M. I. A. 429 (436) TION AS TO.

-Proof of-Findings as to.

Reversal of, because their Lordships were not satisfed with the grounds on which the judgments below proceeds. and because the Courts below had brushed aside the etdence of a very material witness under a misapprehension RUNGAMMA P. ACS (111-2). (Mr. Pemberton Leigh.) (1846) 4 MIA 1= AMMA. 7 W. R. 57=1 Suth. 197=1 Sar. 513

Reversal of, because of (1) error of Courts below with regard to legal requisites for a valid adoption and (1) reliance by first Court on a deed found by Privy Council to be fabricated. (Mr. Pemberton Leigh.) HARADHUN MOOKERJIA 7. MUTHORANATH MOOKERJIA.

(1849) 4 M. L. A. 414(430)=7 W. B. P. O. 71 1 Suth. 213=1 Sar. 575.

-(Sir James W. Colvile.) MAHA SHOYA SOSE NATH GHOSE 1. SRIMATI KRISHNA SCONDARI DASL (1880) 7 I. A. 2EO (253) = 6 C. S81 (386) 7 C.L.B. 313=3 Suth. 818=4 Bar. 191 PRIVE COUNCIL -PRACTICE -QUESTION OF PRIVE COUNCIL -PRACTICE -QUESTION OF FACE - DO ADJRZENT PINDINGS - (Contd.)

Interference with—Cases under—(Cont.).

HINDU LAW-ADOPTION-(Contd.)

The question whether a person had been adopted in the Dattaka form is a question of fact, the determination of whhich depends on the evidence. It does not cease to be such a question of fact, to which the rule of the Board as to concurrent findings of fact will apply, merely because the evidence relating to it to an important extent consists of writings. The quetstion is not one of construction of one or more deeds, which would be a question of law, but is a question as to the effect to be given to decrees, leases, and other documents as evidence of the fact of adoption and its consequences (57-8). (Lord Shand). LUCH-MUN LAL CHOWDHRY D. KANHYA LAI. MOWAR.

(1894) 22 I. A. 51 = 22 C. 609 (617-8) = 6 Sar. 558.

-(Mr. Ameer Ali.) PRATHIVADI BHAYANKARAM D. RANGAYYA APPA RAO. (1912) 18 I. C. 13 (14)-13 M. L. T. 198 = (1913) M. W. N. 191 = 17 C. L. J. 295 = 15 Bom. L. R. 463.

-(Sir John Edge.) HARI BAKHSH D. BABU LAL. (1924) 51 I.A. 163 (166) = 5 Lah. 92 22 A. L. J. 254 = A. I. R. 1924 P. C. 126 34 M. L. T. 70 = 28 C. W. N. 953 = 20 L. W. 406 = (1924) M. W. N. 650 = 26 Bom. L. R. 1108 = 10 O. & A. L. B. 1471 = 83 I. C. 418 = 47 M. L. J. 938.

(Sir John Edge.) DURGA DEVI D. SHAMBHU ((1924) 51 I. A. 182 (188) = 5 Lah. 200 = 46 M. L. J. 661=22 A. L. J. 394=26 Bom. L. B. 557= A. I. R. 1924 P. C. 113 = 34 M. L. T. 93 = (1924) M. W. N. 434 - 20 L. W. 216 -29 C. W. N. 106-80 I. C. 965.

-Will-Capacity to make-Proof of-Findings as to. In a case in which the question was as to a disputed adop tion and will raising the question of the capacity of a dying man, the trial Judge, not satisfied with the evidence brought before him, selected a witness to assist him with his judgment. There was no careful weighing of the evidence on both sides, but his decision was founded upon the single testimony of that witness. The Sudder Court (appellate court) said, " Little need be added to the arguments on which the Civil Judge has founded his decision, and they added nothing. They, therefore, adopted the con-clusions at which the Civil Judge arrived, based not upon a review of the whole of the evidence, but upon a witness chosen by himself, whose testimony in the opinion of their Lordships did not warrant the judgment which he had pronounced.

Their Lordships, therefore, reversed the decrees below. notwithstanding their concurrent findings (437), (Lord Chelmsford), TAYAMMAL v. SASHACHALLA NAICKER.

(1865) 10 M. I. A. 429 = 2 Sar. 139.

- Widow-Adoption by-Assent of sapindas-Application for-First Court's finding as to, not clear-Inconsistency in its reasons-Examination of evidence in case of. See P. C .- PRACTICE-QUESTION OF FACT-CONCUR-RENT FINDINGS - EVIDENCE - EXAMINATION OF INDEPENDENT CONCLUSION ETC.

(1920) 47 I. A. 99(105)=43 M. 650 (657).

Widow-Adoption by-Assent of sapindas-Proof of-Pindings as to. (Mr. Ameer Ali.) VEERA BASAVA-RAJU D. BALASURYA PRASADA RAO.

(1918) 45 I. A. 265 (274) = 41 M. 998 (1011) = 36 M. L. J. 44 = 25 M. L. T. 1 = 9 L. W. 243 = 17 A. L. J. 34 = 21 Bom. L. B. 238 = 23 C. W. N. 251 = 23 C. W 29 C. L. J. 184=48 I. C. 706. FACE-CONCURRENT FINDINGS-(Contd.)

Interference with—Cases under—(Contd.)

HINDU LAW-AUTHORITY TO ADOPT.

-Deed of-Proof of-Findings as to. See HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-DEED OF. (1858) 7 M. I. A. 54 (63).

-Deed of-Proof of-Finling of trial Judge on-

Omission of H. C. to record finding.

Rule as to concurrent findings held inapplicable to the case, notwithstanding that trial Judge had seen and heard witnesses, because the judgment of the trial Judge recorded the fluctuations of his mind from day to day in the course of an exceptionally long trial; the effect, often temporary, upon him of a particular piece of evidence or argument of counsel; it subjected every witness to criticism more or less unfavourable; and from this mass of often conflicting statements it was not easy for a Court of appeal to extract the precise grounds on which the final conclusion tested (175). (Sir James W. Colvile). SKI RAGHUNADHA SRI BROJO KISHORO. (1876) 3 I. A., 154=

1 M. 69 = 25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263. -Oral authority-Proof of-Findings as to, (Sir.

Barnes Porone). Karunabin Ganesa Ratnamaiyar E. Gopala Ratnamaiyar. (1880) 7 I.A. 173 (177)= E. GOPALA KATNAMAIYAR. 2 M. 270 (279) = 4 Sar. 149 = 3 Suth. 740.

-Proof of-Evidence and inferences drown from acts and conduct of parties-Findings depending upon.

To justify interference appellant must show beyond all reasonable question that there was some miscarriage in the court below in respect of some presumption to which too much weight was given, or in respect of something as to which Privy Council could see that there was a matter of principle involved which the Board ought to set right for the guidance of the Courts of India in other cases. GOVIND SOONDAREE DEBEAT. JUGGODUMBA DEBEA.

1870) 6 M. J. 113=15 W. R. 3= 6 B. L. R. 168=2 Suth. 375=2 Sar. 611.

-Proof of-Findings as to. (Sir James W. Colvile.) INDROMONI CHOWDHRANI S. BEHARI LALL MULLICK (1879) 7 L. A. 24 (31)=5 C. 770=6 C. L. R. 183= 3 Suth. 719=4 Sar. 120.

HINDU LAW-ANCESTRAL PROPERTY-SELF-ACQUISITION OR.

-Finding as to. See HINDU LAW-ANCESTRAL PROPERTY-SELF-ACQUISITION OR.

HINDU LAW-IMPARTIBLE ESTATE.

-Impartibility of estate-Finding as to. Sa HINDU LAW-IMPARTIBLE ESTATE-IMPARTIBILITY OF ES-TATE-QUESTION AS TO. (1811) 8 I. A. 99 (110) = 3 M. 290 (302).

JOINT FAMILY PROPERTY-ESTATE FORMING-SEPARATION AS REGARDS.

Finding as to. See HINDU LAW-IMPARTIBLE ESTATE-JOINT FAMILY PROPERTY-ESTATE FORMING -SEPARATION AS REGARDS-CONCURRENT FINDINGS (1922) 50 I. A. 1 (6)=2 Pat. 319.

-Partible estate or-Findings as to, See HINDU LAW-IMPARTIBLE ESTATE-PARTIBLE ESTATE OR-CONCURRENT FINDINGS AS TO.

HINDU LAW-INHERITANCE-CUSTOM OF.

-(See also Under this sub-head-CUSTOM.)

Aboriginal customs-Retention by aboriginal Bhuyias of-Findings as to-Onus of proof-Error as to-Findings vitiated by.

Ordinarily, the question whether a family of aboriginal Bhuyias had, in matters of succession, retained their aboriginal customs, or had adopted Hindu law, in whole or in part, would be regarded as a question of fact, and the conPRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

HINDU LAW-INHERITANCE-CUSTOM OF-(Could.) current findings of the Courts below on that question would be considered binding upon the Privy Council. As it was said, however, that the trial Judge had omitted all consideration of the origin of the family, and that both he and the High Court had erred in law in throwing the onus of proof on the wrong party, their Lordships went with some detail into the reasons which led them independently to the same conclusion, especially as the case was important. (62-67). (Lord Phillimerc.) SAHDEO NARAIN DEO 2. KUSUM KUMARI. (1922) 50 I. A. 58=

2 P. 230 = A. I. R. 1923 P. C. 21 - 32 M. L. T. 121 = 4 Pat. L. T. 217 = 37 C. L. J. 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 44 M. L. J. 476.

-Daughters-Exclusion of-Custom of-Findings as

Finding, in so far as it is a conclusion of fact, is, though not absolutely binding on the Privy Council entitled to the greatest weight. (Lord Collins.) PARBATI KUNWAR 7: CHANDARPAL KUNWAR. (1909) 36 I. A. 125= 31 A. 457 (473-4) = 10 C. L. J. 216 = 6 A. L. J. 767 = 13 C. W. N. 1073=11 Bom. L. R. 890=12 O. C. 304= 4 I. C. 25=19 M. L. J. 605.

Existence of - Findings as to.

Findings on the question whether there was any special custom, applicable to the class of persons to which the parties belonged, exempting them from the operation of the Mithakshara law of inheritance not interfered with. MUSSA-MAT KISHMISH KOER P. PHUL CHAND LAL.

6 Bom. L. R. 764.

-Females-Exclusion of-Custom of-Findings as

Held, that the question of the custom or no custom in the family of the exclusion of a female from inheritance was substantially one of fact, that, if any proposition of law was mixed up with it, their Lordships might be disposed to review the finding of the Courts below, but that, as no such proposition arose upon the evidence, the finding must be accepted (8). (Sir Robert P. Collier.) BURJORE AND BHAWANI PERSHAD v. MUSST. BHAGANA.

(1883) 11 I. A. 7=10 C. 557 (560-1)=4 Sar. 498= R. & J.'s No. 76 (Oudh).

HINDU LAW-JOINT FAMILY.

——Member of—Exclusion from joint property of— Finding as to. See LIMITATION ACT OF 1908—ART. 127 -EXCLUSION-FINDING AS TO. (1917) 42 L.C. 258.

-Member of-Self-acquisitions of-Throwing into common stock of-Finding as to. See HINDU LAW-JOINT FAMILY - MEMBER OF-SELF-ACQUISITIONS THROWING INTO COMMON STOCK OF-CONCURRENT (1870) 15 W. B. 1

-Partition between members of-Finding as to. HINDU LAW-JOINT FAMILY-PARTITION-QUESTION

#### HINDU LAW-SELF-ACQUISITION.

-Ancestral Property or-Finding as to. See HINDU LAW-ANCESTRAL PROPERTY-SELF-ACQUISITION OR. -Findings as to. See HINDU LAW-SELF-ACQUISI-

TION-FINDINGS CONCURRENT AS TO. (1917) 45 I. A. 41 (46) = 45 C. 666 (676).

Throwing into common stock of-Finding as to. See Under this Sub head-HINDU LAW-JOINT FAMILY -MEMBER OF-SELF-ACQUISITIONS OF.

FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Could.)

HINDU LAW-WIDOW.

-Alienation by-Necessity for-Finding as to. Sa HINDU LAW-WIDOW-ALIENATION BY-NECESSITY FOR-FINDING AS TO. (1914) 42 I.A. 64 (69-70)= 42 C. 876 (885-6).

-Compromise of litigation by-Fraudulent or not-Finding as to. See HINDU LAW-WIDOW-COMPROMISE BY-LITIGATION-COMPROMISE OF-FRAUDULENT OR (1922) 49 I. A. 342 (345)=1 Pat. 741 (745).

-Husband's residence -Non-residence in-Grounds for-Reasonableness of-Finding as to. See HINDU LAW -WIDOW-MAINTENANCE-HUSBAND'S RESIDENCE-NON-RESIDENCE OF WIDOW IN-GROUNDS FOR

(1917) 22 C. W. N. 433 (486)

#### HUSTABOOD PAPERS-GENUINENESS OF.

-Value of land-Findings as to. (Sir Robert P. Cd. lier.) HURROPERSAUD ROY CHOWDHRY P. SHAMPER-(1877) 5 I. A. 31 (37)= SAUD ROY CHOWDHRY. 3 C. 654 (659-60) = 1 C. L. R. 499=3 Suth. 495= 3 Sar. 782 = 2 I. J. 284.

#### IDENTITY OF PARCEL.

-Findings as to. (Sir James W. Colvile.) SREE MUTTY DOSSEE v. RANEE LALUMMONEE.

(1869) 12 M. I. A. 470 (472-3)=11 W. B. P. C. 27= 2 B. L. R. P. C. 64 = 2 Suth. 199 = 2 Sar. 453.

-The question is one of those which it is extremely difficult for a tribunal like this to deal with :- The simple question of parcel, or not parcel, whether a certain portion of chur lands is included in a particular tenure, or remained liable to assessment for rent. It is emphatically one of those questions which are best decided, and can only be satisfactorily decided, upon the spot. GOLAN ALL 5. KALLY KISHEN THAKOOR.

(1872) 12 B. L. B. 107 (109)=18 W. B. 299= 2 Suth. 686=3 Sar. 164.

-(Sir Arthur Wilson.) MAHARAJA JAGADINDRA NATH ROY BAHADUR P. RANI HEMANTA KUMANI (1904) 31 I. A. 203 (211) = 32 C. 129 (142) a 8 C. W. N. 809 = 6 Bom. L. R. 765=1 A. L. J. 585=

#### JUDGMENTS BELOW.

-Grounds of, different-No interference by reason of. See PRIVY COUNCIL—PRACTICE—QUESTION OF FACT AMOUNT TO-CONCURRENT FINDINGS-WHAT GROUNDS OF JUDGMENTS DIFFERENT.

-Mistakes in, on a particular point-No interference merely by reason of. See Under this sub-head-MS TAKES IN JUDGMENTS BELOW, ETC.

(1873) 21 W. B. S. -Narrative of circumstances-Omission to make minute and completely exhaustive—No interference by reson of See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-WHAT AMOUNTS TO-NARRATIVE OF CIRCUMSTANCES.

JURY-TRIAL WITH AID OF.

Findings in case of.

The appellant was a commission agent who brough about an exchange of property between the respondents and a third party. Alleging that they agreed to the exchange on the faith of the representations made by the appelled and that the representations were untrue and the property got by the respondents in exchange was worth much les than it had been represented by the appellant to be worth (1870) 15 W. R. 1. | the respondents sued the appellant for damages.

## PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS - (Contd.)

Interference With-Cases under-(Contd.)

JURY-TRIAL WITH AID OF-(Contd.).

The case was tried with the aid of a jury. The judge, agreeing with the jury, found the respondent's case to be true, and gave judgment for the plaintiffs. The appellant moved for a new trial upon the ground that the verdict was against the weight of evidence, and that the damages were excessive. The learned Judges of the Full Court, by a majority, affirmed the decision below.

On further appeal to the Privy Council, Aeld that their Lordships would be very loath to interfere in such a case unless it could be most clearly shown that there had been an error in law involved in the result reached, or that there was no evidence on which a jury of ordinary reasonable men could pronounce the verdict given on the facts (105-6.) (Lord Dunedin.) THORNES & BROWN.

(1922) 31 M. L. T. 104 P. C.

#### LANDLORD AND TENANT.

Tenant-Transfer of holding by, without con-ent of landlord-Custom of-Findings as to-In igo Factory-Raiyati lands held by-Transfer to stranger of, with right of occupancy. (Sir John Edge.) DAMODAR NARAYAN CHAUDHURY D. MILLER. (1922) 27 C. W. N. 461 =

4 Pat. L. T. 199 = 21 A. L. J. 365 = 16 L. W. 692 = 69 I. C. 134 = A.I.R. 1922 P. C. 349 = 4 U. P. L. R. (P C.) 108 = 31 M. L. T. 205 (P. C.) =

44 M. L. J. 723 (725).

-Considerations of, to be applied at every point in the process of the reasoning—Findings in case of—Interference with. See under this Sub-head — SETTLED ESTATE. (1908) 35 I. A. 195 (204) = 36 C. 1 (18).

Error as to-Findings based on.

There is another way of preventing the application of the rule as to concurrent findings. If it can be shown that the finding of one of the Courts is so based on an erroneous proposition of law that if that proposition be corrected the finding disappears, then in that case it is no finding at all. (Viscount Dunedin.) POPE ALLIANCE CORPORATION D. SPANISH RIVER PULP AND PAPER MILLS, LTD.

(1928) 116 I. C. 593 = (1929) A. C. 269 = A. I. R. 1928 P. C. 38.

Error of-Finding of one of courts based on. If it can be shown that the finding of one of the courts is so based on an erroneous proposition of law that if that proposition be corrected the finding disappears, then in that case it is no finding at all, and the Privy Council will interfere. (Viscount Dunedin.) WILLIAM ROBINS P. NATION-AL TRUST CO., LTD. LTD. (1927) 101 I. C. 903 (905) = A. I. B. 1927 P. C. 66 = 4 O. W. N. 463.

-Findings of fact-Law questions underlying-Misdirections of themselves by courts below as to—Interference in case of. (Lord Shate.) TILAKDHARI SINGH v. MAHA-RAJAH KESHO PRASAD SINGH. (1925) 26 P. L. R. 257 = 6 Pat. L. T. 349 = 3 Pat. L. B. 114 = 41 C. L. J. 386 = 27 Bom. L. B. 819 = A. I. B. 1925 P. C. 122-

(1925) M. W. N. 403 = 88 I. C. 103 = 48 M. L. J. 611 (614.)

General principle or-Ground of-Appellant bound (Lord Hobhouse.) UMRAO BEGUM P. IFSHAD (1894) 21 I. A. 163 (168) = 6 Sar. 469 = HUSAIN. 21 C. 997 (1003-4) = B. & J.'s No. 135

Procedure or-Violation-Interference in case of. See UNDER THIS VERY SUB-HEAD-MISCARRIAGE OF JUSTICE-LAW OR PROCEDURE.

# FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

LEGAL PRINCIPLES-MISAPPLICATION TO FACTS FOUND OF.

-Interference in case of. See under this very Subhead-INCUMENTS - CONSTRUCTION OF-FINDINGS BASED UPON-EVIDENCE.

(1893) 20 I. A. 95 (97 8) = 20 C. 847 (852).

MADRAS ESTATES LAND ACT-RYOTI LAND-PRIVATE LAND OR.

-- Finding as to. Six MADRAS ACTS-ESTATES LAND ACT-SS. 3 (10) AND 185.

#### MAHOMEDAN LAW.

-- Divorce--- Vow that husband would have no further intescourse with his wife-Finding as to. See MAHO-MEDAN LAW-DIVORCE-AILA OR VOW, ETC.

(1875) 2 I. A. 235 (237.)

-Dower-Agreement for-Genuineness of-Finding as to. See MAHOMEDAN LAW-DOWER-AGREEMENT

-Duwer-Amount of. See Mahomedan Law-DOWER-AMOUNT OF, (1) CONCURRENT FINDINGS AS TO AND (2) DECISION OF INDIAN COURTS AS TO.

-Gift-Death-bed gift-Finding as to. See MAHO-MEDAN LAW-GIFT-DEATH-BED GIFT-CONCURRENT FINDINGS, ETC. (1907) 34 I. A. 167 (177) = 35 C. 1 (22).

-Legitimacy-Finding as to. See MAHOMEDAN LAW-LEGITIMACY-CONCURRENT FINDINGS AS TO.

(1844) 3 M. I. A. 295 (316-7).

MAJORITY.

-Finding as to. See MAJORITY.

(1926) 52 M. L. J. 492.

MALABAR LAW-TARWAD-DEWASWON OR STANOM PROPERTY.

Finding as to. See MALABAR LAW-TARWAD-DEVASWOM OR STANOM PROPERTY.

(1883) 8 I. A. 143 (150) = 3 M. 384 (392).

MALICIOUS PROSECUTION-ACTION FOR.

-Malice and want of reasonable and probable cause-Finding as to. See MALICIOUS PROSECUTION-ACTION FOR-MALICE AND WANT OF, ETC.

(1900) 25 B. 332 (336-7).

MANNERS AND CUSTOMS IN INDIA-FAMILIARITY WITH.

-Findings dependent upon. (Lord Macnaghten). KUNWAR SANWAL SINGH P. RANI SATRUPA KUNWAR. (1905) 33 I. A. 53=28 A. 215=3 C. L. J. 86= 10 C. W. N. 230=1 M. L. T. 6=8 Sar. 903= 16 M. L. J. 77.

#### MARRIAGE.

-Proof of-Findings as to.

(Dr. Lushington). KHAJAH HIDAVUT OLLAH v. RAI (1844) 3 M. I. A. 295 (316-7)= JAN KHANUM.

6 W. R. 52 P. C. = 1 Suth. 157 = 1 Sar. 282.

-(Lord Justice Giffard). INDIRUN VALUNGY POOLY TAVER P. RAMASAMI PANDIA TALAWER.

(1869) 13 M. I. A. 141 (155)=12 W. R. P. C. 41= 3 B. L. B. P. C. 1=2 Suth. 267=2 Sar. 498.

-Will - Factum of - Findings as to. (Sir James W. Calvile). MUSSAMUT JARINT-OOL BUTOOL D. MUSA-MUT HOSEINEE BEGUM.

(1867) 11 M. I. A. 194 (208) = 10 W. R. P. C. 10 = 2 Suth 56 = 2 Bar. 243, PRIVY COUNCIL-PRACTICE-QUESTION OF | PRIVY COUNCIL-PRACTICE-QUESTION OF FACE-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Could.)

MEMON-PORBANDAR OR BOMBAY MEMON.

-Findings as to - Accepted, (Lord Dunedin). KHATUBAI 2. MAHOMED HAJI ABU.

(1922) 50 I. A 108 (112) -47 B. 146 (151) = 25 Bom. L. R. 127=17 L. W. 208=37 C. L. J. 131= 32 M. L. T. 45 = 27 C. W. N. 774 =

A. I. R. 1922 P. C. 411 = 72 I. C. 202 = 44 M. L. J. 35. MESNE PROFITS-ASSESSMENT OF.

-Principles of and materials for proper-Findings as to. (Sir Robert P. Collier). FAKHARUDDIN MAHO-MAD AHSAN CHOWDHRY P. OFFICIAL TRUSTEE OF (1881) 8 I. A. 197 (208) = 8 C. 178 (191) = 10 C. L. R. 176=4 Sar. 270.

MINOR-GUARDIAN-COMPROMISE DECREE AGAINST.

-Fraudulent and collusive nature of -Findings as to -Onus of proof-Error as to, and other errors-Findings vittated by.

In this case the Courts below concurrently held that a decree obtained against the guardians of a minor on foot of a compromise was fraudulent and collusive. They so found in a sait brought by the minor, after attaining majority, to set aside the decree and to recover the amount recovered thereunder. They, however, fell into an error in point of law, in assuming that the onus of proof lay upon the defendant, and that error appeared to have influenced their decision. They were also in error in giving undue weight to the non-appearance of the defendant (a mere child at the time of the transaction in question), and to his reluctance to produce the books.

Held that, under the circumstances, the rule as to concurrent findings of fact would not be infringed by a reversal of the decrees below (399 400). (Sir Robert Collier). BABOO LEKRAJ ROY P. BABOO MAHTAB CHAND.

(1871) 14 M. I. A. 393 - 10 B. L. R. 35 P. C. -17 W. R. 117-2 Suth. 536-3 Sar. 43.

MINORITY-PROMISSORY NOTE-CONSIDERATION FOR.

-Findings as to. (Lerd Morris.) HARRICHURN BOSE D. MONINDRA NATH GHOSE.

(1891) 19 I. A. 4 (5)=Bald. 517=6 Sar. 130. MISTAKES IN JUDGMENTS BELOW ON A PARTICULAR

POINT.

-No interference merely by reason of. BISHESHUR BHUTTACHARJEE v. GEORGE HENRY LAMB.

(1873) 21 W. R. 22=2 Suth. 913=4 Sar. 798. MISCARRIAGE OF JUSTICE.

-Law or procedure-Violation of-Miscarriage by reason of-Interference in case of. (1) (Lord Hobboure.) MOUNG THA HNYEEN F. MAUNG PAN NYO.

(1900) 27 I. A. 166=28 C. 1=4 C. W. N. 808= 2 Bom. L. R. 985 = 7 Sar. 786.

(2) (Lord Lindley.) RANI SRIMATI v. KHAJENDRA NARAYAN SINGH. (1904) 31 I. A. 127 (131)= 31 C. 871 (884)=9 C.W.N. 74=8 Sar. 635.

-Law or procedure-Violation of principle of.

The rule of the Board as to concurrent findings of fact is not cast iron, but it would avoil little to try to give a definition which should at once he exhaustive and accurate of the exceptions which may arise. The Board will interfere only when there has been a miscarriage of justice or a violation of any principle of law or procedure (68). ((Viscount Dunedin.) WILLIAM ROBINS P. NATIONAL TRUST CO., LTD. (1927) A. I. B. 1927 P. C. 66= 4 O. W. N. 463 = 101 I. C. 903. SINGH.

FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

MISCARRIAGE OF JUSTICE-(Contd.)-

-Meaning of -Witness important-Inadequate appreciation or unjustifiable belittling of-If a.

The expression miscarriage of justice means such departure from the rules which permeate all judicial procedure as to make that which happened not in the proper use of the word judicial procedure at all.

A quite inadequate appreciation and an unjustifiable belittling of an all-important witness would not amount to such a miscarriage (68). (Viscount Dunedin.) WILLIAN ROBINS D. NATIONAL TRUST CO., LTD.

(1927) A. I. R. 1927 P. C. 66=4 O. W. N. 463= 101 I. C. 903.

-Mistrial or plainly erroneous conclusion-Miscarriage by reason of. See Under this sub-head-MISTRIAL OR, ETC. (1869) 13 M. I. A. 77 (82).

-Principle upon which Courts below acted-Errer at to-No interference except in case of.

Upon a mere question of fact which has been decided in the same way by both Courts in India the appellant must satisfy the Privy Council, beyond all reasonable question, that there was some miscarriage in the Courts below in respect of some principle which they acted upon, in respect

of some presumption to which too much weight was given. or in respect of something as to which they could see that there was a matter of principle involved which the Prin Council ought to set right for the guidance of the Courts of India in other cases. GOBINSUNDARI DEBI P. JAGA-

(1870) 6 B. L. B. 168 (171)= Damba Debi. 15 W. B (P.C.) 5=6 M. J. 113=2 Sar. 611= 2 Suth. 375.

-SAVYAD FUZUL HOSSEIN 2. AMJUD ALI KHAN. (1872) 17 W. R. 523 = 2 Suth. 585.

-GOLAM ALI v. KALLYKISHEN THAKOOR (1872) 12 B. L. R. 107 (109) = 18 W. B. 299 n 2 Suth. 686=3 Sar. 164

(Lord Hobbouse.) LACHMAN SINGH v. MT. PUNA (1889) 16 I. A. 125 (126) = 16 C. 753 (755) =

-(I.ord Phillimore.) HOGARTH v. CORY BROS. & (1926) 53 I.A. 230 (239)=54 C. 84\* Co. 31 C. W. N. 317=99 I. C. 581=26 L. W. 1= 38 M. L. T. (P. C.) 9 = A. I. R. 1926 P. C. 191= (1926) M. W. N. 882

Reversal of finding on ground of. See Under this very sub-head DEED-EXECUTION OF-FINDENCE AS TO-REVERSAL OF, ETC.

(1858) 7 M. I. A. 207 (223).

Trial of cause—Appreciation of evidence—Miscarti age in. SRI KRISHNA DEVU MAHARAJULUNGARU N SRI RAMCHANDRA DEVU MAHARAJULUNGARU. (1870) 5 M. J. 389 (390)

MISTRIAL OR PLAINLY ERRONEONS CONCLUSION-MISCARRIAGE OF JUSTICE BY REASON OF

-Interference in case of. (Sir James W. Cabill.) GOSHAIN TOTA RAM 2. RAJAH RICKMUNEE BULLUE (1869) 13 M. I. A. 77 (82)=12 W. B. 33= 3 B. L. R. 34=2 Suth. 253=2 Sar. 457.

#### MORTGAGE.

-Mortgagee-Absolute owner of property or Proings as to. RAJAH FARZAND ALI KHAN S. BELT B & J.'s No. 19 (Ouds)

## PRIVY COUNCIL-PRACTICE-QUESTION OF PRIVY COUNCIL-PRACTICE-QUESTION OF FACT—CONCURRENT FINDINGS—(C. atd.)

Interference with—Cases under—(Contd.)

MORTGAGE- (Contd.)

-Mortgagee-Concealment of mortgage from subsequent purchasars with a view to deceive them-Findings as to. (Sir Montague E. Smith.) MUNNOO LALL : LALLA CHOONEE LALL. (1873) 1 I. A. 144 (153 4. 156) = 21 W. R. 21 = 3 Sar 302 = 2 Suth. 917.

-Nature of, ordinary mortgage or bybile ala-Finiings as to.

The question was whether the true contract between the parties was that embodied in the copy alleged by the respondent to be a true copy of the original mortgoge, or whether, as alleged by the appellant, it was in the nature of a bybilterfa or deed of conditional sale containing a stipula tion, that in default of payment within one year the interest of the mortgagee should become absolute. Concurrent findings of the Courts below that the mortgage in the terms of the copy produced by the respondent accepted. Aca HUSSEIN KHAN BAHADOOR P. MUSSAMUT JANIE FE-GUM. (1872) 8 M. J. 149.

-Usufructuary mortgaget-Improvement on mortgage ed property by-Reasonableness of-Findings as to. Sa MORTGAGE - USUFRUCTUARY MORTGAGE - MORT-GAGED PROPERTY-INKOVEMENT BY MORIGAGEL ON. (1898) 25 I. A. 211 (246-7) - 26 C. 1 (8).

#### NEGLIGENCE.

Findings as to. (Sir Robert P. Collier.) MADRAS RY. CO. P. ZEMINDAR OF CARVETNAGAR.

(1874) 1 I. A. 364 (386) - 14 B. L. R. 209 -22 W. R. 279 - 3 Sar. 391.

ONUS OF PROOF-ERROR AS TO.

Findings vitiated by. See Under this very sub-head -BENAMI-FINDING AS TO-HINDU FATHER.

(1854) 61 M. I. A. 53 (80).

-See Under this sub-head -MINOR.

(1871) 14 I. A. 393 (399-400).

-See Under this sub-head-OUDH ESTATE-SUCCES-SION BY, ETC.

(1883) 11 M. I. A. 51 (56, 58) = 10 C. 511 (518-9).

See Under this sub-head-HINDU LAW-INHERIT-ANCE-CUSTOM OF-ABORIGINAL CUSTOMS.

(1922) 50 I. A. 58 (62, 67) = 2 Pat. 230.

OUDH ESTATE-SUCCESSION BY RULE OF PRIMOGENITURE—FINDINGS AS TO.

Onus of Proof-Error as to-Findings vitiated by-Reversal of. (Sir Barnes Peacock.) ACHAL RAM 5. UDAI PARTAB. (1883) 11 I. A. 51 (56, 58) = 10 C. 511 (518-9) = 4 Sar. 507 = R. &J's. No. 47 (Oudh).

OUDH ESTATES ACT OF 1869, S. 22(4)-DAUGHTERS' SON-TREATMENT BY TALUQUAR OF, IN ALL

RESPECTS AS SON.

Finding as to. See OUDH ESTATES ACT OF 1869, -S. 22 (4)—DAUGHTER'S SON—TREATMENT BY TALUO-DAR OF, IN ALL RESPECTS AS SON-CONCURRENT, ETC.

## OWNERSHIP OF PROPERTY

Finding as to. See Under this sub-head-HINDU LAW-JOINT FAMILY-PARTITION-PROOF OF

(1919) 46 I. A. 259 = 47 C. 466 (481).

PARCEL OR NO PARCEL.

Pindings as to. See Under this sub-head-IDENTITY OF PARCEL.

#### PARTNERSHIP.

Item of account of-Proof of-Finding as to. If there is any case in which more than another it is wise

# FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

PARTNERSHIP-(Contd.)

and right to adhere to the rule they have laid down as to the concurrent findings of two courts, it is one like the present, in which the question relates to an item in a partnership account, the proof of which depends upon the testimony of native gumastalis, supported by native books which are not produced before their Lordships. (Sir James II'. Colide.) MONMOHINI DASI e. ITCHAMOVI DASI.

(1875) 3 Suth. 161 (164).

-Oral agreement of -Findings as to.

Where the question was whether an oral agreement of partnership had been made on 30-7-1915, and the courts below concurrently found on evidence upon which those findings could have been reached, that, if there had been any concluded agreement at all reached upon 30-7-1915, it was subject to a condition precedent, and that that condition precedent had not been fulfilled, held that there did not exist in the case any circumstance which would justify their Lord-bips in reviewing those findings in view of the practice of their Lordships Board, as stated by Lord Donedin in Rebins v. Automal Trust Company (1927) A. C. 515. (Lord Tomica.) SHETH MAFATLAL GAGALBAI P. SHETH JIVANUAL GIRDHARDAS.

(1929) 118 I. C. 263 - 50 C. L. J. 336 = 30 L. W. 825 - 31 B. L. R. 1369 = A. I. R. 1929 P. C. 205-57 M. L. J. 594.

-Partner of -Share of, in business-Findings as to. Where one of the issues in a suit for dissolution of a parnership and for accounts was as to the share of the defendants in the partnership business, and there were concurrent findings of the courts below on that issue, held that there was no reason for departing from the ordinary rule of the Privy. Council, as to concurrent findings of fact. (Lord Rund of Killmorn.) SULEMAN v. HAJI ABDUL (1930) 34 C.W.N. 737=1930 A.L.J. 868= LATIF. 124 I. C. 891 - A. I. R. 1930 P.C. 185.

## PATENT CASE-FINDING OF TRIAL JUDGE VITIATED BY MISDIRECTION.

-Rule as to concurrent findings inapplicable to. See PATENT-INFRINGEMENT OF-SUIT FOR-JUDGE AND JURY. (1928) 116 I. C. 593.

#### PEDIGREE-PROOF OF.

-Findings as to.

In a case in which the whole question was one of pedigree and the Courts below concurrently found in favour of the pedigree set up, their Lordship observed that they were not disposed to disturb the concurrent finding of fact. Haldane.) BAIKUNATHA NATH BERA P. MOHAN BERA. (1919, 20th January) (Viscount CHANDRA MOHAN BERA. High Court File for 1919 (P. C. A. 6 of 1916.)

PRESUMPTION APPLICABLE-ERROR AS TO.

-Findings-Vitiated by. See Under this Sub-head-ONUS OF PROOF.

PRINCIPAL AND AGENT.

-See Under this Sub-head-AGENT.

PRIVY COUNCIL-ORDER IN COUNCIL-EXPRESSION " THE ROAD " IN-MEANING OF.

Finding as to.

Their Lordships will be very unwilling to disturb the finding of both courts upon that point, particularly when it is considered that the Judge of the lower court was the Judge of the district and, probably had some local knowledge of the wide jungles with which he was dealing (174).

PRIVY COUNCIL-PRACTICE-QUESTION OF | PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.)

PRIVA COUNCIL-ORDER IN COUNCIL-EXPRES-SION " THE ROAD " IN-MEANING OF-(Contd.)

(Sir James W. Colvile.) RAJAH LELANUND SINGH P. MAHARAJAH LUCHMESSUR SINGH.

(1880) 10 C.L. R. 169 - Bald. 386.

PROBABILITIES-CONJECTURE WITH REGARD TO.

-Conclusion in nature of.

Quacre, whether a conclusion, which is more of the nature of a conjecture with regard to the probabilities of an obscure situation, could be classed as a concurrent finding of fact precluding a different finding by the Board. (Lord Shate.) SECRETARY OF STATE FOR INDIA D. MAHARAJA OF BOBILI. (1919) 46 I. A. 302 (308) = 43 M. 529 (535) = 27 M. L. T. 1=

(1919) M. W. N. 775-11 L. W. 204-18 A. L. J. 1= 24 C. W. N. 416 = 54 I. C. 154 = 22 Bom. L. R. 498 = 37 M. L. J. 714.

PROCEDURE OR LAW-VIOLATION OF.

-Interference in case of. Sci Under this very subhead-MISCARRIAGE OF JUSTICE - LAW OR PROCE-DURE.

PROMISSORY NOTE-CONSIDERATION FOR.

-Findings as to. See Under this sub-head - MINORITY. (1891) 19 I. A. 4 (5).

#### PURDANASHIN.

-Compromise of litigation-Agreement in-Validity of-Proof of-Quantum-Findings as to. See PURDA-NASHIN-COMPROMISE OF LITIGATION-AGREEMENT (1919) 46 I. A. 272 (278) = 47 C. 175 (181).

-Deed by-Validity of-Question as to-Examination of evidence and forming by Privy Council of its own conclusion in case of. See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT- CONCURRENT FINDINGS - EVI-DENCE-EXAMINATION OF, ETC.

(1920) 47 I. A. 265 (274).

-Deed by, conferring advantage on person in a position to dominate her will-Onus of proof on latter in case

of-Failure to discharge-Finding as to.

In a suit brought by a purdanashin lady to set aside a deed of endowment executed by her, the Courts below concurrently found that a relation of confidentiality existed between the lady and one B, her nearest male relative, that the deed in question was executed by the lady under the undue influence of the said B, that the deed was clearly harsh and unconscionable as regards the interests of the lady, that B and his issue were the principal objects of the endowment, and that B did not establish that the deed had been executed by the lady of her own free will and not under his influence.

Held, that the concurrent findings of the courts below could not be disturbed and that the deed was rightly set aside by the courts below. (Lord Thankerton.) SRI THAKUR MAHARAJ v. MUSST. RAM DEL

(1930) 51 C. L. J. 414 = 123 I. C. 175 = A. I. R. 1930 P. C. 139 (1) = 59 M. L. J. 14.

PUTNI RIGHT-GRANT OF-FRAUD OR OTHERWISE.

-Setting aside on ground of-Right to-Finding against, (Sir Robert P. Collier.) BIMOLA SOONDARI CHOWDHRANI D. HURRI CHURN CHOWDHRI

(1880) Bald. 366=4 I. J. 421.

RATIFICATION.

-Findings as to. (Lord Hannen.) INDUR CHUN-DER SINGH v. RADHA KISHORE GHOSE. (1892) 19 I A. 90 (92)=19 C. 507 (511)=6 Sar. 185.

FACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Contd.) RELATIONSHIP.

-Proof of-Findings as to. (Sir James W. Colvile.) MEETHUN BEBEE 2. BUSHEER KHAN.

(1867) 11 M. I. A. 213 (216-7)=1 Suth. 683= 7 W. B. (P. C.) 27=2 Sar. 255.

RELEASE-GENERAL RELEASE-PROOF OF.

-Findings as to. See RELEASE-GENERAL RELEASE -PROOF OF. (1835) 5 W. R. 112 (P. C.)=1 Suth. 40

> RELIGIOUS ENDOWMENT-DEDICATION OF PROPERTY TO.

-Findings as to.

In a case in which the Courts below concurrently found that the suit property was debutter property devoted absolutely and in perpetuity as an endowment of an idol and was not rent tree Brahmottar property, and it could not be urged that the Courts below had misconstrued the law applicable to the dispute, or that they had wrongly admitted in evidence documents which ought not to have been considered, or that they had not given proper effect to the documents and transactions in the case, their Lord ships affirmed the judgment of the Courts below. (Lord Buckmaster.) MADHAM CHANDRA BESA p. SRIMATI RANI SARAT KUMARI DEBI. (1918) (18th October)

High Court File for 1918 (P. C. A. 38 of 14). KEVENUE ARREAR—EXISTENCE OF—FINDING AS TO. -Jama - wasil-bakis-Evidence consisting of-Effect. See C. P. C. of 1908, S. 110 -SUBSTANTIAL QUESTION OF LAW-DOCUMENTS. (1928) 55 I.A. 380 = 56 M. L.J. 1.

KEVENUE RECORDS-INFERENCE FROM.

Finding as to whether lands form part of an estate based on - Not interfered with. (Sir John Wallis.) KRISHNA PROMADA DASI P. DHIRENDRA NATH (1928) 56 I. A. 74=56 C. 813= GHOSH. 33 C. W. N. 289 = 49 C. L. J. 112 = 113 I. C. 465 = A. I. R. 1929 P. C. 50.

SETTLED ESTATE-JHUM LANDS WITHIN OR WITHOUT LIMITS OF.

-Findings as to-Rule of non-interference held in applicable to, because at every point in the process of the reasoning considerations of law had to be regarded. (Sir Arthur Wilson.) MD. ALI HAIDER KHANT. SECRE TARY OF STATE FOR INDIA IN COUNCIL.

(1908) 35 I. A. 195 (204) = 36 C. 1 (18)= 4 M. L. T. 234 = 8 C. L. J. 436= 12 C. W. N. 1095 = 10 Bom. L. B. 1101

1 I. C. 182-P. L. R. 1908, 110-18 M. L. J. 548,

TENURE.

-Land tenure. See Under this sub-head-LAND TENURE.

Nature of-Findings as to-Resumption-Nature forbidding—Finding of—Not to be interfered with. Hobbouse.) NAM NARAIN SINGH 1. BHIM GANIBU-(1898) 3 C. W. N. 249.

-Nature and incidents of-Findings as to. So Under this Sub-Head-GRANT-FACTUM OF. (1875) 25 W. R. 3

TRANSFER OF SUIT-SUBMISSION TO TRIAL AND TAKING CHANCE OF FAVOURABLE DECISION IN A CASE

IN WHICH A PARTY MIGHT HAVE APPLIED FOR. -Finding of trial Court affirmed on appeal in case of -No reversal of, where evidence admissible and trustwo thy. MOHUR SINGH r. GHURIBA.

(1870) 6 B. L. B. 495 (499-500)=15 W. R. P. O. 8 2 Suth. 379= 2 Bar. 516

## PRIVY COUNCIL-PRACTICE- QUESTION OF PRIVY COUNCIL-SPECIAL LEAVE FOR AP-PACT-CONCURRENT FINDINGS-(Contd.)

Interference with-Cases under-(Cont.)

#### TRUST.

-Trustee-Purchase of trust property by-Consideration for-Adequacy of-Findings as to. (Sir Barnes Poscock.) MOOKERJEE :. MOOKERJEE.

(1874) 2 I. A. 18 (25)=14 B. L. R. 276=22 W. R. 6= 3 Sar. 408 - 3 Suth. 53.

-Trust property-Private property-Finding as to. (Lord Dunedin.) ANAND RAM P. RAMDAS DADI RAM.

(1920) 48 I. A. 12 (16)-48 C. 493 (496) -(1921) M. W. N. 24 = 13 L. W. 318 =

25 C. W. N. 794-17 N. L. R. 37-62 I. C. 737-30 M. L. T. 194

#### UNDUE INFLUENCE.

-Mortgage bond-Endorsements on-Whether made under undue influence-Findings against, accepted. (Viscount Dunedin.) NEMI CHAND P. RADHA KISHEN,

(1921) 48 C. 839 (841) - 14 L. W. 391 -(1921) M. W. N. 411 = 26 C. W. N. 153 =

30 M. L. T. 39 = 63 I. C. 904 - A. I. R. 1922 P. C. 26.

VALUATION OF PROPERTY-FINDINGS AS TO.

-See Under this sub-head-TRUST-TRUSTEL.

(1874) 2 I. A. 18 (25). -See Under this sub-head-HUSTABOOD PAPERS.

(1877) 5 I. A. 31 (37)-3 C. 654 (659-60).

-See C. P. C. OF 1908, S. 100-VALUATION OF PROPERTY. (1926) 52 I. A. 367 (368-9) = 49 B. 700.

-See LAND ACQUISITION ACT OF 1894. S. 23.

#### WILL.

-Execution of-Capacity (sound disposing state of mind)-Finding as to. See HINDU LAW-WILL-EXECU-TION OF-CAPACITY (SOUND DISPOSING STATE OF MIND-FINDING AS TO. (1925) 52 I. A. 305 (307)= 48 M. 614.

-Execution of -Proof of. See HINDU LAW-WILL -EXECUTION OF -PROOF OF -CONCURRENT FINDINGS (1922) 50 I. A. 32 (36) = 46 M. 167 (171).

-Execution of-Undue influence-Execution under-Finding as to See HINDU LAW-WILL-EXECUTION OF -UNDUE INFLUENCE. (1927) 101 I. C. 903 (904).

-Factum of-Findings as to. See Under this sub-head -MARRIAGE-WILL (1867) 11 M. I. A. 194 (208).

-Factum and validity of-Findings as to, depending upon capacity of testator. See HINDU LAW-ADOPTION-FACTUM AND VALIDITY OF-QUESTION AS TO

(1865) 10 M. I. A. 429 (436),

Nuncupative will-Proof of-Finding as to. See HINDU LAW-WILL-NUNCUPATIVE WILL-PROOF OF -CONCURRENT, ETC. (1859) 5 M. I. A. 199 (212).

### PRIVY COUNCIL-SPECIAL LEAVE FOR AP-PEAL TO.

APPEAL ADMITTED BY.

APPLICATION FOR-ALLEGATIONS OF LAW AND FACT IN.

APPLICATION FOR-AMENDMENT OF.
APPLICATION FOR-LACHES IN MAKING-REFUSAL

OF LEAVE ON GROUND OF. APPLICATION FOR-MAINTAINABILITY OF.

APPLICATION FOR-MISSTATEMENTS IN.

APPLICATION FOR-NATURE OF-APPEAL AS OF

RIGHT-DISTINCTION.

APPLICATION FOR-POINT NOT RAISED IN.

## PEAL TO-(Contd.)

APPLICATION FOR-PREPARATION OF, NEGLIGENT AND VERY FAULTY.

APPLICATION FOR-TIME FOR MAKING.

APPLICATION FOR-Cherima fide: ON PART OF PETI-HONER.

CROSS-APPEAL

EXECUTION OF DECREE-STAY OF-REFUSAL BY COURT BELOW OF-LEAVE TO APPEAL FROM ORDER OF.

GRANT OF.

ORDER GRANTING.

PATENT CASE-CONCURRENT JUDGMENTS IN. REFUSAL OF.

#### Appeal admitted by.

-Execution of decree under-Stay of-Grant by Privy Council of - Direction to High Court-Privy Council it and when will give. See PRIVY COUNCIL-APPEAL-EXECUTION OF DECREE UNDER-STAY OF-PRIVE COUNCIL-GRANT BY-SPECIAL LEAVE.

(1899) 26 I. A. 281 (283-4) = 27 C. 1 (4).

-Execution of decree under-Stay of-High Court's jurisdiction as to See PRIVE COUNCIL-APPEAL-EXECU-TION OF DECREE UNDER-STAY OF-HIGH COURT'S EIC. (1911) 38 I. A. 74 - 38 C. 335.

-Incompetence of, appearing at hearing of appeal-Order proper in ease of-Petition by respondent for reseistion of order greating leave-Necessity.

Where it appeared at the hearing of an appeal for which special leave had been granted that the ground on which such leave was applied for and granted did not in fact exist and that the appeal was therefore incompetent, held that their Lordships were competent to advise His Majesty toat, on the facts as disclosed at the hearing, the appeal should not be further entertained.

Held further that, as the objection to the competence of the appeal was put in the forefront of the respondent's case, a petition by them to have the order in Council giving the pecial leave rescinded was unnecessary. (Lord Blanesburgh.) SHAH ZARID HUSAIN P. MAHOMED ISMAIL.

(1930) 57 I. A. 94 = 124 I. C. 910 = 34 C.W.N. 667 = A.I.R. 1930 P.C. 196=59 M.L.J. 10.

-Protection of property in dispute in-Order for-High Court's jurisdiction to pass. See PRIVY COUNCIL-APPEAL-PROTECTION OF PROPERTY IN DISPUTE IN-ORDER FOR. (1899) 26 I. A. 281 (283)=

27 C. 1 (4). -Receiver of property in dispute pending disposal of -Appointment of High Court's jurisdiction as to. See PRIVY COUNCIL -APPEAL -PROTECTION OF PROPERTY IN DISPUTE IN-RECEIVER. 10 C. L. J. 326.

## Application for-Allegations of law and fact in.

-Vagueness of-Dismissal of petition on ground of, with liberty to file another-Amendment of petition by stating particulars-Verification of facts alleged by affidavit-Adjournment of application for. (Lord Justice Knight Bruce.) GOREE MONEE DOSSEE P. JUGGUT INDRO NARAM CHOWDURY. (1866) 11 M. I. A. 1=2 Sar. 207.

## Application for-Amendment of.

-Allegations in application-Vagueness of-Amendment by stating particulars-Adjournment of application for. See Under this very sub-head-ALLEGATIONS OF LAW AND FACT IN. (1866) 11 M. I. A. 1.

-Judgment below-Portion of, intended to be included in appeal, but not sufficiently covered by words of petition -Amendment so as to include-Grant of, because defect

Application for-Amendment of-(Contd.)

purely technical. (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN P. MUSSAMAT MOHUNDEE BEGUM. (1867) 11 M. I. A. 517 (549) = 10 W. R. P. C. 25 = 2 Suth. 98 = 2 Sar. 315 = R. & J s No. 7 (Oudh).

-Leave generally for, with direction that petition should stand over-Hulvas corpus-Grant of-Order refusing-Appeal against. AMEER KHAN AND ANOTHER, In 6 M. J. 68.

-Party-respondent-Addition of -Amendment by, on application made by that party after grant ex parte of leave to appeal. (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN P. MUSAMAT MOHUNDEE BEGUM. (1867) 11 M. I. A. 517 (542-3) = 10 W. R. (P. C.) 25 = 2 Suth. 98 = 2 Sar. 315 = R. & J.'s No. 7 (Oudh).

APPLICATION FOR-LACHES IN MAKING-REFUSAL OF LEAVE ON GROUND OF.

-Review petition to High Court to bring additional coilence before Privy Council in main appeal pending ore it-Order rejecting-Leave to appeal from.

The application was for special leave to appeal against an order of the High Court, rejecting the petition for review in order to bring before the Privy Council, where the appeal against the first decision was pending, certain documents which, it was said, had not been under the consideration of the Judges.

Held, that, as the petitioner had allowed two years to clapse before she made the application, and had delayed her application up to the very moment at which her appeal was being pressed on by the opposite party and might be ripe for hearing, her application for special leave must be dismissed with costs. (Sir James W. Colvile.) GOBIND SUNDARI DEBIA D. JAGADAMBA DEBIA.

(1868) 3 B. L. R. 25 (P. C.)

## Application for-Maintainability of.

-Appealable value-Case under-Application prior to High Court for certificate that the case is otherwise a fit one tor appeal to Privy Council-Necessity for-Grant of special leave in absence of-Rule-Exception. (Lord Davry). MOTI CHAND 24 GANGA PARSHAD SINGH-

(1901) 29 I. A. 40 (42-3) = 24 A. 174 (178) = 6 C. W. N. 362 = 4 Bom. L. R. 159 = 8 Sar. 247.

Court below-Application for leave to-If condition precedent. (Lord Chelmsford.) MUTHUSAWMY JAGA-VERA YETTAPPA NAYAKER :, VENKATESWARA YETTAYA. (1865) 10 M. I. A. 313 (320) = 1 I. J. N. S. 205 =

 Court below—Application to—Failure to make—Explanation for-Statement of, in application for special leave -Necessary. (Lord Cairns.) GUNGOWA KOME MALUPA v. ERAWA KOME JOGAPA. (1870) 13 M. I. A. 433= 2 Sar. 583.

Court below-Application to-Failure to make, held not a bar because (1) parties were estopped from saying that property in dispute was not under the appealable value, and (2) the High Court, therefore, even if applied to, would not have been competent to grant leave. (Lord Chelmsford.) MUTHUSAWMY JAGAVERA YETTAPPA NAYAKER v. VENCATESWARA YETTAYA. (1865) 10 M. I. A. 313 = 1 I. J. N. S. 205 = 2 Sar. 131.

## Application for-Misstatements in

COSTS OF APPEAL

-Effect on-Appellant made liable for costs. Ski-NARAIN GHOSE v. HULLODHUR DOSS.

(1854) 6 M. I. A. 207 = 1 Sar. 532.

PEAL TO-(Contd.)

Application for-Misstatements in-(Contd.)

DISMISSAL OF APPEAL ON GROUND OF

(Lord Justice Turner.) SRINARAIN GHOSE v. HULLODHUR DOSS. (1854) 6 M. I. A. 207=1 Sar. 532

-Intention to deceive-Misstatements made with-Dismissal in case of, though objection taken only at hearing of appeal.

-(Sir Montague E. Smith.) RAM SABUK BOSE P. MONMOHINI DOSSEE. (1874) 2 I. A. 71 (81)=

14 B. L. R. 394 = 23 W. R. 113 = 3 Suth. 72= 3 Sar. 442.

-(Sir Arthur Hobbouse.) MUSSORIE BANK v. RAY-(1882) 9 I. A. 70 (77) = 4 A. 500 (507-8)= NOR. 4 Sar. 346.

-Intention to deceive-Misstatements made without-Dismissal even in case of -Conditions.

-Dismissal of appeal even in case of, if objection taken by preliminary motion, or even before appeal had been entered upon at their Lordships' bar—When it was called on. (Sir Montague E. Smith). RAM SUBUK BOSS P. MONMOHINI DOSSEE. (1874) 2 I. A. 71(81)= 14 B.L.R. 394 = 23 W. R. 113 = 3 Suth. 72 = 3 Sar. 442

-Intention to deceive-Misstatements made without-Objection taken only after closing of appellant's case at hearing and in course of respondents' own arguments-Appeal not dismissed but costs disallowed. (Sir Montaput E. Smith.) RAM SABUK BOSE P. MONMOHINI DOSSEL

(1874) 2 I. A. 71 (81-2)=14 B. L. B. 394= 23 W. R. 113 = 3 Suth. 72 = 3 Sar. 442

-Merits of appeal-Dismissal without considering. Undoubtedly, if their Lordships had found that leave to appeal had been obtained by misrepresentation or concesment of material facts, they would have dismissed the appeal at once without considering the merits.

As their Lordships acquitted the appellant of any intertion of that kind, they heard the appeal on the merits though they expressed their doubt whether, if they had been in possession of the real facts when the leave was appled for, any leave to appeal would have been given. (Let Davyy.) RAJA RAMPAL SINGH P. BALABHADAR SINGH. (1902) 29 I. A. 203 (213) = 25 A. 1 (18)=

6 C.W.N. 849 = 4 Bom. L. R. 832 = 8 Sar. 340

GRANT OF LEAVE-OBJECTION TO, ON GROUND OF SUCH MISSTATEMENTS.

-Time for, and mode of, taking.

Objection should be taken as early as the matter is brought to the respondent's notice and by a presminary motion. He ought not to leave the objection until the hearing of the appeal. (Sir Montague E. Smith.) RAN SABUK BOSE D. MONMOHINI DOSSEE.

(1874) 2 I. A. 71 (81-2)=14 B. L. B. 394 23 W. B. 113 = 3 Suth 72 = 3 Sar. 48

As a general rule, the proper course, in a case in which the respondent objects to the grant of special karen appeal on the ground of misstatements in the petition for special leave, is for the respondent to move as early as pos sible to rescind the order in Council. An objection of that kind ought to be taken by the respondents as early as the matter is brought to their notice, for the plain reason, that if the leave to appeal is on that ground rescinded, to further costs are incurred. It is wrong to leave the objection using the hearing of the appeal, when the record has been sel from India, and when all the costs attending the bearing have been incurred (77). (Sir Arthur Hobbout) 105 (1882) 9 LA 70 4 A. 500 (507-8)=4 Bar 36 SORIE BANK D. RAYNOR.

Application for-Misstatements in-(Contd.)

GRANT OF LEAVE-ORDER OF-DISCHARGE OF, ON GROUND OF SUCH MISSTATEMENTS.

-Application for-Lackes in making-No lackes-Cases of-Effect of-Distinction.

Where there is, in an application for special leave for appeal, an omission of any material facts, whether it arises from improper intention on the part of the petitioner or from accident or negligence, still the effect is just the same; if this Court has been induced to make an order, which, if the facts were fully before it, it would not, or might not, have been induced to make. In such a case, whether the mistake was intentional or accidental, the ex parte order will be discharged and the petitioner directed to pay all the costs unless there has been laches on the part of the respondent in applying to discharge the order in which case no costs will be given. (Lord Kingsdoon.) MOHUN LALL SOO KUL P. BEBEE DOSS.

(1861) 8 M. I. A. 193 (195, 1978) - 1 Suth. 458 1 Sar. 792.

Application for-Time for making-Rule is, that the application must be made as early as possible. (Sir Arthur Hobbouse.) MUSSORIE BANK & RAYNOR.

(1882) 9 I. A. 70 (77) = 4 A. 500 (507-8) = 4 Sar. 346.

-Application for, made at hearing of appeal.

Rejected, though the application for special leave was very faulty and negligently prepared, because (1) the petition disclosed solid grounds for granting leave, notwithstanding the errors in it, and leave would have been granted even if there had been no such errors, and (2) there was prima facie strong ground for an appeal upon the merits. (Sir Arthur Hobboure.) MUSSOORIE BANK 2. RAYNOR. (1882) 9 I. A. 70 (78-9) - 4 A. 500 (508-9) - 4 Sar. 346.

"Intentional and accidental or negligent misstatements-No distinction between.

A material misstatement in a petition for special leave is enough to justify the rescinding of an order in council granting special leave. It is not sufficient to clear the case of bad faith. To use the words of Lord Kingsdown. " where there is an omission of any material facts, whether it arises from improper intention on the part of the petitioner, or whether it arises from accident or negligence, still the effect is just the same if this Court has been induced to make an order which, if the facts were fully before it, it would not, or might not, have been induced to make." (77-8). (Sir Arthur Hobbouse.) MUSSOORIE BANK v. RAYNOR.

(1882) 9 I. A. 70 = 4 A. 500 (508) = 4 Sar. 346.

-Jurisdiction of Privy Council to discharge order at any time. (Sir Arthur Hobhouse.) MUSSOORIE BANK v. RAYNOR. (1882) 9 I. A. 70 (77) = 4 A. 500 (507-8) =

Liberty to apply again-Reservation of-Intentional and unintentional misstatements-Distinction between cases

If the misrepresentation in the petition for special leave had been Intentional, the ex parte order would be discharged, without liberty to the petitioner to make any further

application.

There being no intentional misrepresentation, the ex parte order was discharged without prejudice to any other application by petitioner, upon giving notice to the res-pondent, (Lord Kingsdown.) MOHUN LALL SOOKUL v. BEBEE DOSS, (1861) 8 M. I. A. 193 (197-8)= 1 Suth. 458=1 Sar. 792. PEAL TO-(Centd.)

Application for-Nature of-Appeal as of right-Distinction

-Certificate of leave erroneously refused by court below in case appealable as of right-Grant of special leave in case of.

A petition for special leave to appeal to the Privy Council from a decree of the High Court is not by way of appeal from the decision of that Court, but is one presented for an exercise of the prerogative right of the Crown to admit an appeal. Although such a petition is not an appeal, it is perhaps a more convenient proceeding than an appeal, because their Lordships can then grant leave on any other ground, if other ground appears for the indulgence that is sought; and if their Lordships find that, in a case in which the appeal is claimed as of right, the court below has refused the certificate for a reason which appears to them to be an unsound reason, then they would advise Her Majesty to admit the appeal (8). (Lord Hobbouse.) RAHIMBHOY HIBIBHOY & TURNER. (1890) 18 I A. 6-15 B. 155.

## Application for-Point not raised in

Raising of at hearing of appeal-Permissibility.

Special leave was applied for and obtained on the ground that important questions affecting a large community were involved in the decision sought to be appealed from. None of those questions were raised at the hearing of the appeal. The only question then raised was that the judgment below was unsu-tainable because it was declaratory only. That objection was not raised in the petition for special leave. It was not raised in appellant's petition to the High Court for eave to appeal, on which leave was granted by the High Court, which, however, became abortive.

Held that the objection could not be allowed to be raised at the hearing (114.) (Sir Montague E. Smith.) SHEO SINGH RALE, MUSSUMAT DAKHO,

(1878) 5 I. A. 87-1 A. 688 (708) = 2 C. L. R. 193= 3 Suth. 529 - 3 Sar. 807.

Application for-Preparation of negligent and very faulty.

-Costs in case of-Disallowance to successful appellant of. See PRIVY COUNCIL-APPEAL-COSTS OF-SPECIAL LEAVE TO APPEAL-APPLICATION FOR. (1882) 9 L.A. 70=4 A. 500 (511)

#### Application for-Time for making.

APPEAL-PERIOD ALLOWED FOR-EXPIRY OF.

-Application made after. See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL TO-GRANT OF-APPEAL-ABLE CASE.

HEARING OF APPEAL-PRELIMINARY OBJECTION TO ITS COMPETENCY TAKEN AT -APPLICATION MADE ON.

Sir James W. Colvile.) SYUD MEER WAHID ALL P. RANEE SADHA BEBEE. (1875) 3 Suth. 82 (84).

-Grant of leave-Hearing of appeal nunc pro tune, on consent of parties, to avoid delay and expense. (Sir. Barnes Peaceck.) THAKOOR HARDEO BUX :. THAKOOR JAWAHIR SINGH. (1877) 4 I. A. 178 (183)= 3 C. 522 (528) = 3 Suth. 427 = 3 Sar. 704 = Bald 218 =

R. & J.s' No. 45.

-Grant of leave, nunc pro tune, in case of-Condi-

No doubt there have been cases where, upon an appeal to the Privy Council being called on and an objection to the maintainability of the appeal on the ground that the leave to appeal granted by the Court in India was ultra virer being discussed, their Lordships have given special leave to appeal, nunc pro tune, directing that the petition to appeal

Application for- Time for making-(Contd.)

HEARING OF APPEAL-PRELIMINARY OBJECTION TO ITS COMPETENCY TAKEN AT-APPLICATION MADE ON-(Contd.)

should go to Her Majesty with the report upon the appeal itself. An appellant, however, cannot be in a better position with regard to the application than that in which be would have stood if he had made it at an earlier period

Leave not granted because of nature of points raised (209-10). (Sir Montague E. Smith.) GAJADHUR PER-SHAD D. THE TWO WIDOWS OF EMAM ALI BEG.

(1875) 2 I. A. 205 = 15 B. L. R 221 = 3 Sar. 495 = 3 Suth. 148 - R. & J.s' No. 36 (Oudh).

HEARING OF APPEAL ON MERITS-COMPETENCY OF APPEAL HELD AGAINST-APPLICATION ALLOWED TO BE MADE ON.

-Grant of leave to appeal so as to treat appeal as if it had been regular.

On an appeal by the late Master of the Supreme Court of Madras against an order of that court dismissing him from his office on the ground of alleged official misconduct, their Lordships were of opinion that the appellant had no right of appeal under the charter. They, however, allowed the appellant's counsel to argue the case upon the merits, and, at the conclusion of the argument, they gave the appellant liberty to present a petition for leave to appeal, which they would recommend Her Majesty to grant, and then give their judgment upon the merits.

In accordance with the leave thus given, the appellant, on the same day presented a petition to Her Majesty in Council, praying that leave to appeal might be granted to him against the order complained of, and that Her Magesty would be pleased to refer such appeal to the Judicial Committee for adjudication by them, and that the said petition of appeal so presented to Her Majesty might stand in the same plight and condition as the same then was.

The Judicial Committee, upon that petition being referred to them, reported to Her Majesty, as their opinion that leave ought to be granted to the petitioner to enter and prosecute the appeal from the order complained of; and their Lordships further recommended that the appeal should come on for hearing upon the petition of appeal, and the printed case already lodged on behalf of the petitioner, and that the appeal should be allowed to stand in the same plight and condition as if the same had not been irregular (222-3). MINCHIN, In re-

(1847) 4 M. I. A. 220 - 6 Moo. P. C. 43.

## Application for—Uberrima fides on part of petitioner.

-Necessity absolute for. (1) (Lord Kingsdown.) MOHUN LALL SOOKUL P. BEBEE DOSS.

(1861) 8 M. I. A. 193 (195)=1 Suth. 458=1 Sar. 792. -(2) (Sir Montague F. Smith.) RAM SABUK BOSE 2. MONMOHINI DOSSEE.

(1874) 2 L.A. 71 (81)= 14 B. L. R. 394 = 23 W. R. 113 = 3 Sar. 442 = 3 Suth. 72.

-(3) (Sir Montague E. Smith.) RAM SABUK BOSE r. MONMOHINI DOSSEE. (1874) 2 I. A. 71 (81)= 14 B. L. R. 394 = 23 W. R. 113 = 3 Sar. 442=

3 Suth. 72

and (4) ORDER-Ex parte ORDER.

#### Cross-appeal.

-Special leave to file. See PRIVY COUNCIL -- AP-PEAL-CROSS-APPEAL-SPECIAL LEAVE TO FILE,

PEAL TO-(Contd.)

Execution of decree-Stay of-Refusal by Court below of-Leave to appeal from order of.

-Grant of-Stay of execution pending appeal-Jurisdiction of Privy Council as to. See PRIVY COUNCIL-APPEAL-EXECUTION OF DECREE UNDER-STAY OF-PRIVY COUNCIL—GRANT BY—JURISDICTION AS TO.

(1886) 14 I. A. 1=14 C. 290.

-Refusal of, though stay, also prayed for, granted. See CHUTRAPUT SINGH DOORGA P. DWARKANATH GROSE (1894) 21 I. A. 170 = 22 C. 1 = 6 Sar. 514.

Grant of.

APPEALABLE CASE.

APPEALABLE VALUE—CASE UNDER.

CERTIFICATE FOR LEAVE GRANTED BY COURT BE-

CERTIFICATE FOR LEAVE BY COURT BELOW-REFUS-AL ERRONEOUS OF, IN APPEALABLE CASE.

COMMUNITY-IMPORTANT QUESTION AFFECTING.

COURT BELOW-LEAVE BY. EXECUTION OF DECREE-STAY OF-REFUSAL OF.

HEARING OF APPEAL-APPLICATION FOR LEAVE MADE AT.

HEARING OF APPEAL ON MERITS-APPLICATION FOR LEAVE MADE AFTER, ON APPEAL BEING FOUND TO BE INCOMPETENT.

INCOME-TAX ACT OF 1922--DECISION OF HIGH COURT UNDER, PRIOR TO COMING INTO FORCE OF AMENDING ACT XXIV OF 1926.

INTERLOCUTORY STAGE-CASE IN.

KATHIAWAR POLITICAL AGENT'S COURT.

LANDLORD AND TENANT-DISPUTE BETWEEN.

LAW-QUESTION OF.

LETTERS PATENT-SUBJECT ADEQUATELY DEALT

MINOR-CUSTODY OF MOTHER-CIRDER TAKING MINOR FROM.

MUNSIF-DISMISSAL FOR CORRUPTION IN EXERCISE OF OFFICE AS JUDGE.

ORDER OF.

POINT INVOLVED NEW OR MOOT AND IMPORTANT. RELIGIOUS SECTS—PUBLIC PROCESSIONS—DISPUTIS IN REGARD TO.

REVIEW-GRANT OF-REASONS FOR-FAILURE TO RECORD.

STATUTE 3 & 4, WILL IV, c. 41-S. 4. VALUATION OF SUBJECT-MATTER.

#### APPEALABLE CASE.

Certificate of leave erroneously refused by court below in case of-Grant of leave in case of. Su PRIVI COUNCIL-SPECIAL LEAVE FOR APPEAL TO-APPLICA-TION FOR NATURE OF. (1890) 18 I.A. 6(8)=15 B. 156

Expiry of time for preferring appeal-Great if leave in case of, on ground of conflict of decisions.

This was a petition for special leave to appeal. The peltioner, being out of time for appealing to England, asked for special leave on the ground of the conflict between the decisions of the High Court in his case and in another case. Leave was granted by the Judicial Committee OOL GAPPACHETTY 2. APBUTHNOT.

Omission to prefer appeal-Grant of leave in call of-Position of appellant in.

Position not better than if he had appealed to that court and it had decided against him. (Sir Arthur Wilson) HEMCHAND DEVCHAND V. AZAM SAKARLAL CHHOTAN (1905) 33 I A. 1=33 C. 219 (941)

10 C. W. N. 361 = 8 Bom. L.B. 129 = 3 ALJ . 50 3 C.L.J. 395=1 M.L.T. 115=9 Sar. 5=16 M.L.J. 115

Grant of-(Contd.)

APPEALABLE VALUE-CASE UNDER.

Certificate of court below that case is otherwise a fit one for appeal-Omission to apply for-Grant of leave in case of Rule-Exception. (Lord Davy.) MOTI CHAND p. GANGA PARSHAD SINGH. (1901) 29 I.A. 40 (42-3) = 24 A. 174 (178) = 6 C.W.N. 362 = 4 Bom, L.R. 159 =

8 Sar. 247.

Court below refusing leave on ground of Grant of leave on appellant undertaking to re-open question of value.

The value of the subject-matter in dispute, though laid in the plaint at a sum exceeding the minimum amount, Rs. 10,000, provided by the Order in Council of the 10th of April, 1836, was reduced on calculation by the Zillah Judge to an amount under that sum, and the finding upon the merits was for the plaintiff for such reduced sum. Upon a cross-appeal, the Sudder Court dismissed the entire claim, and on the ground that the matter in dispute was under the appealable value, refused leave to appeal to England. Upon special petition, leave to appeal allowed, the appellant claiming to open the question of the value of the subject-matter in question, calculated by the Zillah Judge. (Lord Cramworth.) PRANNATH ROY CHOWDRY P. RANEE SURNOMOVEE. (1859) 7 M.I.A. 553

-Insolvency law-Question of general interest in regard to, and of construction and working of statute, involved-Grant of leave in case of, though leave refused by court below. KERAKOOSE P. BROOKS.

(1860) 8 M.I.A. 339 (351-2) = 4 W. R. 61 = 14 Moo. P.C. 452 = 4 L.T. 712 = 1 Suth. 426 =

1 Sar. 778.

"Landlord and tenant-Dispute between-Grant of leave in case of. See PRIVY COUNCIL-APPEAL-SPE-CIAL LEAVE FOR -GRANT OF - LANDLORD AND TENANT.

-Law-Important principle of, involved-Grant of leave in case of. ROGERS P. RAJENDRO DUTT.

(1860) 8 M.I.A. 103 (120) = 13 Moo. P.C. 209 = 3 L.T. 160 = 9 W.R. 149 (Eng.) = 2 W.R. (P. C.) 51 = 1 Suth. 413 = 1 Sur. 755.

 Opinion of court below as to—Application for leave, not made to it on ground of-Grant of leave in case of. (Sir James W. Colvile.) MUTHUSWAMY JAGAVERA YETTAPPA NAYAKER P. VENCATESWARA YETTAYA

(1868) 12 M.I.A. 203 (211, 215) = 11 W.R. P.C. 6= 2 B.L.R. P.C. 15 = 2 Suth. 175 = 2 Sar. 395.

-Partition suit on equity side of Supreme Court-Order of Supreme Court confirming report of Commissioner in-Leave to appeal refused by Supreme Court-Grant of leave in case of, on condition of appellant giving rash security in England. (Dr Lushington.) SIBNARAIN GHOSE, (1853) 5 M.I.A. 322 = 8 Moo P.C. 276 =

Point raised of considerable importance and beneficial to whole country-Leave refused by court below-Grant of leave in case of, on condition of appellant paying all costs of respondent in any event and bearing his own costs. (Lord Langiale.) SPOONER v. JUDDOW

(1849-50) 4 M.I.A. 353 (360 1) = 6 Moo. P.C. 257= Perry O.C. 392 = 1 Sar. 363.

Suits connected, one being of less than appealable value, while others of appealable value-Grant of leave in PEAL TO-(Confd.)

Grant of-(Contd.)

APPEALABLE VALUE—CASE UNDER-(Contd.)

The petition was for special leave to appeal from a judgment of the High Court, and an order made by that court refusing leave to appeal to Her Majesty in Council, on the ground that the sum involved did not amount to Rs. 10 000. the appealable value prescribed by the order in council of the 10th of April, 1838,

Besides the suit in which leave to appeal had been refused, there were seven other cases involving the same question of law pending in the High Court, all of which would be governed by the case in which special leave was applied for. And although the subject-matter of that parficular case did not amount to the appealable value, Rs. 10,000, yet the aggregate amount of the suits was Rs. 34,900. The petitioner contended that Act No. 21 of 1863, which by Ss. 3 and 27 declared the appealable value to be Rs. 10,000 involved directly or indirectly in the claim, met the case, and relied upon 7 M. LA, 548.

Their Loudships, arting upon the authority of the case cited, granted the leave asked for upon the usual terms of security being given for costs. KO KHINE P. RICHARD SNADDEN. (1868) 5 Moo. P. C. (N.S.) 67 = L.R. 2 P.C. 50 37 L.J. P.C. 119.

- Suits separate between some parties each lying a, but all of which of more than appealable value - Grant of lore in all in case of-Condition.

Leave granted on condition that parties consented by a proceeding before court below to abide by decision of Privy Council in first appeal, as governing other appeals, when the court below was to transmit only the transcript of the first suit, and that, otherwise, the other transcripts were to be remitted in the ordinary course. BABOO GOPAL LAIL THAKOOR & TILUCK CHUNDER RAL

(1860) 7 M.I.A. 548 1 Sar. 737.

-Tenure-Important question of, involved-Other suits dependent upon decision in the case-Grant of leave in case of. (Lord Kingalown.) JOY KISSEN MOOKERJEA . COLLECTOR OF EAST BURDWAY.

(1860) 8 M.I A. 265-1 Sar. 773.

CERTIFICATE FOR LEAVE GRANTED BY COURT BELOW.

-Defect in-Grant of leave in case of.

In a case in which the certificate for leave to appeal was found to be defective, their Lordships, in the special cir-cumstances of the case, advised His Majesty that special leave to appeal should be granted, a petition being, of course, lodged for the purpose. (Lord Buckmarter.)
MAHARAJ BAHADUR SINGH 2: BALCHAND CHOWDHURY. (1920) 13 L.W. 365 = 25 C.W.N. 770 = (1921) M.W.N. 87 = 6 Pat. L.J. 163 =

62 I.C. 320 = 29 M.L.T. 156.

-Invalidity of-Grant of tease in case of-Condi-

Even though the certificate which forms the foundation of an appeal to His Majesty in Council is invalid, their Lordships will not shut out the appellant from stating the case to the Board, but will grant special leave to appeal in a case in which there are grounds for granting such leave.

In the case before their Lordships there were no such grounds (185). (Lord Davy).) RADHA KRISHNA DAS P. RAI KRISHNA CHAND. (1901) 28 I A. 182 =

23 A. 415 (420) = 5 C.W N. 689 = 3 Bom. L.B. 469 =

8 Sar. 114.

-Invalidity of-Grant of leave in cace of-Practice erro cons-Court below proceeding upon.

On an application for leave to appeal to the Privy Council made within six months from the date of the final decree

Grant of -(Contd.)

CERTIFICATE FOR LEAVE GRANTED BY COURT BELOW-(Contd.)

the Supreme Court of Madras granted leave to appeal from it and from the preliminary decree, though the application for leave had been made more than six months from the date of the latter decree. It was found that the Supreme Court had no jurisdiction to do so, but that there had been a uniform practice in that court of not allowing an appeal from the preliminary decree and of granting leave to appeal only against the final decree. On an application made to the Privy Council for special leave to appeal from the preliminary decree, relying upon the fact of such erreneous practice, special leave to appeal was granted as prayed for (509-70). (Lord Geffard.) EAST INDIA CO. P. SYED ALLY. (1827) 7 M.I.A. 555 = 1 Sar. 867.

CERTIFICATE OF LEAVE BY COURT BELOW-REFUSAL ERRONFOUS OF, IN APPEALABLE CASE.

-Grant of leave in case of. See PRIVY COUNCIL -SPECIAL LEAVE FOR APPEAL TO-APPLICATION FOR-NATURE OF. (1890) 18 I. A. 6 (8) = 15 B. 155.

COMMUNITY-IMPORTANT QUESTION AFFECTING.

-Grand of leave in case of.

The appeal in this case was admitted by virtue of a special order of Her Majesty in Council, whereby the appellant had leave to appeal in the form of a special case. appeal was admitted, on account of the importance of the questions submitted for determination and the great interest which the Hindu community took in it (1434). (Sir Barws Powerk.) MONIRAM KOLITA r. KERRY KOLI-(1880) 7 LA. 115 = 5 C. 776 (778-9) 6 C.L.R. 322 = 4 Sar. 103 = 3 Suth. 765.

COURT BELOW-LEAVE BY.

-Jurisdiction to grant-Doubt as to-Grant of leave in case of.

The appeal was against an order of the Supreme Court of Calcutta suspending the appellant from the offices of Master, Accountant-General and Examiner in Equity, in that court, until the further order of the Court.

The Supreme Court granted leave to appeal from that order of suspension, but, as doubts existed as to the power of the court, under the Charter of Justice, to grant such an appeal, the appellant applied specially to Her Majesty in Council for leave to appeal.

Leave to appeal was granted by their Lordships, (Dr. Luchington.) WILLIAM PATRICK GRANT. In re-

(1850) 7 Moo. P.C. 141 (145).

-Power to grant-Absence of-Grant of leave in case of, to prevent denial of justice. See PRIVY COUNCIL-SPE-CIAL LEAVE FOR APPEAL TO-GRANT OF-STATUTE 3 AND 4 WILL, IV, C. 41, S. 4. (1862) 8 M. I. A. 270.

-Practice as to grant of-Alteration of-Prejudice on account of-Grant of leave on account of.

Pending proceedings for review of a judgment of the High Court, that Court altered the then prevailing practice of permitting an appeal within six months from the date of the judgment allowing or refusing a review. The six months allowed by order in Council of the 16th of April, 1838, for appealing from the original decree having expired pending the proceedings for review, special leave to appeal from the original decree and the order refusing a review was allowed. (Sir James W. Colvile.) NOGENDAR CHUNDER GHOSE p. MAHOMED EUSUFF.

(1868) 12 M. I. A. 107 = 2 Sar. 358. JOGAPA,

PEAL TO-(Contd.)

Grant of-(Contd.)

PEAL, ETC.

EXECUTION OF DECREE-STAY OF-REFUSAL OF.

-Leave to appeal from order of. See PRIVY COUNCIL -SPECIAL LEAVE FOR APPEAL TO-EXECUTION OF DECREE.

HEARING OF APPEAL -- APPLICATION FOR LEAVE MADE AT.

-Grant of leave on-Hearing of appeal nunc protunc on consent of parties, to avoid delay and expense. (1877) 4 I. A. 178 (183) = 3 C. 522 (528).

-Grant of leave, nunc pro tune, on conditions. See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL-APPLI-CATION FOR-TIME FOR MAKING-HEARING OF AP-

(1875) 2 I. A. 205 (209-10).

HEARING OF APPEAL ON MERITS-APPLICATION FOR LEAVE MADE AFTER, ON APPEAL BEING FOUND TO BE INCOMPETENT.

-Grant of leave on, so as to treat appeal as if it had been regular. See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL-APPLICATION FOR-TIME FOR MAKING-HEARING OF APPEAL. (1847) 4 M. I. A. 220 (222-3).

INCOME TAX ACT OF 1922-DECISION OF HIGH COURT UNDER, PRIOR TO COMING INTO FORCE OF AMENDING ACT XXIV OF 1926.

Leave to appeal from.

Refused, because no sufficient ground was found in the circumstances of the case for any exercise of the prerogative in favour of the petitioner (426). (Lord Blanesburgs.) DELHI CLOTH AND GENERAL MILLS CO. P. INCOME-(1927) 54 I. A. 421= TAX COMMISSIONER, DELHI.

8 P. L. T. 791 = 25 A. L. J. 964 = 4 O. W. N. 1053 = A. I. R. 1927 P. C. 242 = 53 M. L. J. 819,

INTERLOCUTORY STAGE-CASE IN.

-Leave to appeal from.

Their Lordships would be very slow to give leave to appeal to bring up a case at an interlocutory stage.

Their Lordships refused leave to appeal when the case was at an interlocutory stage in the Court below, though they were of opinion that such a petition was necessary. adding that neither party should be prejudiced by the fact that leave to appeal had been refused. (Lord Shan) NAYANI VENKA RUNGA RAU P. RAMAKRISHNIAH.

(1913) 23 I. C. 396=(1914) M. W. N. 170.

KATHIAWAR POLITICAL AGENT'S COURT.

-Appeal from decision of-Leave for-Grant of-Appeal to Governor of Bombay in Council - Failere to pre fer-When no bat. See PRIVY COUNCIL-APPEAL RIGHT OF-KATHIAWAR POLITICAL AGENTS COURT. (1903) 13 M. L. J. 154

LANDLORD AND TENANT-DISPUTE BETWEEN.

-Subject-matter below appealable value—Decision is case not affecting other cases—Refusal of leave in case of (Lord Cairns.) GUNGOWA KOME MALUPA P. EROWA (1870) 13 M. I. A. 433=1 Sar. 583 KOME JOGAPA.

-Subject-matter below appealable value-Grant of leave in case of-Conditions.

Only if (1) there were some general right affecting other holdings, the aggregate amount of which would be above appealable value, (2) such general right was called in que tion before the Privy Council, and (3) the decision the would affect litigation that might arise in other sails repecting other holdings similarly circumstanced. [Lef Cairns.) GUNGOWA KOME MALUPA T. EROWA KOME (1870) 13 M. I. A. 433 = 8 Sar. 553

# PRIVY COUNCIL-SPECIAL LEAVE FOR AP. PRIVY COUNCIL-SPECIAL LEAVE FOR AP.

Grant of -(Contd.)

LANDLORD AND TENANT-DISPUTE BETWEEN-

Suits several between them, subject-matter of each of which below appealable value while subject-matter of all above that value.

Special leave granted in case of, order granting same providing that, if parties consented, judgment in one suit should govern the others, and there should be appeal in one suit only-Parties not consenting and proceedings in all suits sent up to England-Argument in appeal embracing all suits-Decision in appeal to be taken to be given in each of them. (Lord Justice Knight Brace.) BABOO GOPAL LALL THAKOOR P. TELUCK CHUNDER RM.

(1865) 10 M. I. A. 183 (185) - 3 W.R. (P. C.) 1 -1 Suth. 558 = 2 Sar. 98.

LAW-QUESTION OF.

-General importance-Question of very involved-Grant of leave on ground of. (Lord Chelmsford.) PATTA-BHIRAMIER D. VENKATAROW NAICKEN.

(1870) 13 M. I. A. 560 (567) - 15 W. R. 35 -7 B. L. R. 136 - 2 Suth. 410 - 2 Sar. 623.

Important question-Registration Act of 1872-Zillah Judge-Refusal to register document-Order of-Review of - Power of - Question as to.

On an application for special leave to appeal to His Majesty in Council to try the question whether, under the Indian Registration Act, 1872, a Zillah Judge could review an order of his own Court refusing to register a document. their Lordships granted special leave on the usual terms "The point is important, and enough has been said to make it desirable that it should be discussed." (Sir James W. Colvile.) MEER REASUT HOSSEIN P. HADJEE ABDOOLLAH. (1873) 1 I.A. 72-3 Sar. 315.

-Substantial question of general interest-Grant of leave in case of. See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL TO-GRANT OF-APPEALABLE VALUE-CASE UNDER-LAW. (1860) 8 M. I. A. 103 (120).

-Substantial question of general interest-Modeus Estates Land Act, S. 53 (3)-Construction of, not such a

In this case in which the amount in value in the suit was admittedly beneath the proper appealable amount, it was urged that special leave to appeal to His Majesty in Council should be granted upon the ground that an important question of law affecting the whole community was raised under the Madras Estates Land Act, 1908, a question which had not been the subject of judicial interpretation. The question was whether the word "decreed" in S. 53 (3) of the Act meant decreed under the Act, and whether any former decree could have any operation.

Their Lordships held that the question was not of sufficlent weight to justify granting special leave to appeal (34). (Lord Buckmatter.) RADHAKRISHNAIVAR 2. SWAMINA-THA AIYAR. (1920) 48 I. A. 31 = (1921) M. W. N. 119 = 13 L. W. 321 = 19 A.L.J. 161 = 33 C. L. J. 277 =

25 C. W. N. 630 = 23 Bom. L. R. 718 = 29 M. L. T. 418 = 60 I. C. 85 = 40 M. L. J. 229.

Substantial question of very general interest-Exislence of Necessity-What amounts to such a question.

The practice of this Board in advising His Majesty to tercise his prerogative and to give special leave to appeal a well known, and this Board does not advise His Majesty to exercise his prerogative in that manner unless there is tome substantial question of law of general interest involv
KANJI v. DARBAR SHRI VALA JASA RUKHAD. Z D 82

PEAL TO-(Contd.)

Grant of-(Contd.)

LAW-QUESTION OF-(Contd.)

Where the High Court, not differing from the view of the facts taken by the Court below, thought that it also appeared from the evidence that the plaintiffs were so far participes criminis in the fraud which was alleged that they could not recover against the other parties to the fraud, and on that ground they allowed the appeal, held that that involved no question of law at all, much less a substantial question of law of general interest, and that therefore their Lordships could not advise His Majesty to grant special leave to appeal. (Lord Datsy.) MOTI CHAND & GANGA PARSHAD SINGH. (1901) 29 I. A. 40 (42)=

24 A. 174 (177-8) - 6 C. W. N. 362 -4 Bom. L. R. 159 8 Sar. 247.

LETTERS PATENT-SUBJECT ADEQUATELY DEALT WITH BY.

Grant of leave in case of Jurisdiction Practice, The Royal Prerogative could not be exercised without leave granted.

Without going the length of saying that the Royal Prerogative to grant special leave to appeal was limited by the provisions of the Letters Patent, their Lordships observed that they would be slow to advise His Majesty to grant special leave to appeal when the subject had been adequately dealt with in the Letters Patent. (Lord Atkin-tow.) TATA IRON AND STEEL CO. P. CHIEF REVENUE AUTHORITY, HOMBAY. (1923) 50 I. A. 212 (226)=

47 B. 724 (741) = 21 A. L. J. 675 = A. I. R. 1923 P. C. 148 = 25 Bom. L. R. 908 = 18 L. W. 372 (1923) M. W. N. 603 = 33 M.L.T. 301 = 9 O. & A. L. R. 783 - 28 C. W. N. 307 39 C. L. J. 16 - 74 I. C. 469 - 45 M. L. J. 295.

MINOR-CUSTODY OF MOTHER-ORDER TAKING MINOR FROM.

-Lore to appeal from.

Special leave to appeal allowed from an order of the High Court of Judicature for the North-Western Provinces of India, by which order, an infant daughter was taken from the custody of her mother, a Mahomedan, on the ground, that the minor's deceased father had been a professed Christian, and ber mother, who was, as the Court held, living in adultery, was inducing her daughter to adopt the faith and habits of a Mahomedan.

Liberty given, pending the hearing of the appeal, to the petitioner to apply to the High Court, to have access at suitable times to her daughter. (Lord Justice James.) SKINNER, In re. (1870) 13 M.I.A. 532=

L. R. 3 P. C. 451 = 7 Moo. P. C. (N. S.) 297= 2 Sar. 615.

MUNSIF-DISMISSAL FOR CORRUPTION IN EXERCISE OF OFFICE AS JUDGE.

Order of Calcutta High Court of, under S. 26, el. 2, of Rengal Regulation V of 1831-Leave to appeal

No jurisdiction in Privy Council to grant special leave to appeal from such order. (Sir James W. Colvile.) SREE MOHUN GHUTUCK, In the master of.

(1870) 13 M. I. A. 343 = 2 Sar. 549.

ORDER OF.

See PRIVY COUNCIL-SPECIAL LEAVE FOR APPEAL TO-ORDER GRANTING.

POINT INVOLVED NEW OR MOOT AND IMPORTANT. -Grant of leave in case of. MAUN BHAGWANJI

(1903) 13 M. L. J. 154

Grant of-(Contd.)

RELIGIOUS SECTS-PUBLIC PROCESSIONS-DISPUTES IN REGARD TO.

Decisions prior on similar questions—Effect of, involved—Grant of leave in case of. (Lord Macnaghton.) SADAGOPACHARIAR P. RAMA RAO.

(1907) 34 I. A. 93 (101) (99) - 30 M. 185 (188. 190) = 5 C. L. J. 566 - 11 C. W. N. 585 - 2 M. L. T. 204 = 9 Bom. L. R. 663 = 4 A. L. J. 333 = 17 M. L. J. 240.

REVIEW-GRANT OF-REASONS FOR-FAILURE TO RECORD.

-Grant of leave in case of. See C. P. C. OF 1908, O. 47, R. 4--REVIEW-GRANT OF-REASONS FOR.

(1899) 27 I. A. 79 - 27 C. 333.

#### STATUTE 3 & 4 WILL, IV, C. 41, S. 4.

-Grant of leave under-Court below not empowered to grant leave-Grant in case of, to prevent denial of justice. (Lord Justice Kinight Benee.) SALIO RAM A. AZIM ALI BEG. (1862) 8 M. I. A. 270=

14 Moo. P. C. 329 - 1 I. J. N. S. 117 = 1 Sar. 840.

#### VALUATION OF SUBJECT-MATTER.

-Mistake not fraudulent in regard to-Mistake fraudulent-Effect-Distinction.

On an application for special leave to appeal to the Privy Council, leave to appeal was granted by an order which, however, provided that the leave to appeal should be null and of no effect, unless satisfactory evidence should be supplied by the appellants to the Registrar of the Court below that the real or market value of the land in dispute exceeded the sum of Rs. 10,000. The appellants, it appeared, had alleged in their supplemental plaint Rs. 43,000 to be not the real or market value of the land but the auction price of the land, referring not to any then present auction, but to some past auction at which the property had been bought. The appellants, however, satisfied the Registrar of the Court below that the real market value of the land exceeded Rs. 10,000. The respondents contended that the value of the land in dispute was untruly stated in the plaint, in fraud of the revenue laws of India. and that leave to appeal ought not, therefore, to be granted.

Their Lordships were satisfied that, whatever misapprehension there might have been, there was no such fraud

intended, and granted special leave (496).

Their Lordships are far from saying that, if they were satisfied that any such fraud was intended they would be disposed to grant the least indulgence to any party in any way participating in it (496). (Lord Justice Turner.) MOHUN LALL SOOKUL T. BEBEE DOSS.

(1861) 8 M. I. A. 492 - 1 Suth. 458 - 2 W. R. 9 -1 Sar. 811.

#### Order granting.

#### AMENDMENT OF.

- Mistake inadvertent in order as drawn up-Amendment of order in case of, on objection based on mistake raised at the hearing of the appeal-Power and duty of Privy Council-Order as drawn up granting leave to appeal against decree of Sudder Court only. (Sir James IV. Colvile.) RAM CHUNDER DUTT v. CHUNDER KOOMAR MUNDUL. (1869) 13 M. I. A. 181 (182, 196,7)= 2 Sar. 507.

## COSTS-TERMS AS TO.

-Appellant's liability for costs of appeal in any event -Term as to-Respondent ex parte.

costs of appeal by reason of condition. (Lord Buck-

PEAL TO-(Contd.)

Order granting-(Contd.)

COSTS-TERMS AS TO-(Contd.)

master.) NAFAR CHANDRA PAL v. SHUKUR.

(1918) 45 I. A. 183(189)=46 C. 189(198)= 23 C. W. N. 345 = 51 I. C. 760 = 9 L. W. 552

-Appellant's liability for costs of appeal as between solicitor and client in any event-Term as to.

On an application for special leave to appeal to the King in Council, this Board thought fit, in view of the importance of the question raised, to recommend that special leave should be given, but, in the circumstances only on the terms that the appellants should, whatever the result of the appeal might he, pay the whole costs of this appeal as between solicitor and client. (Viscount Haldane, L. C.) GRAND TRUNK RY. CO. OF CANADA 7. ROBINSON.

(1915) 19 C. W. N. 905 (907) = 31 I. C. 684= 84 L. J. (P.C.) 194.

-Award of costs by decree in appeal in accordance with. (Lord Parker.) RANJIT SINGH r. KALI DAS (1917) 44 I. A. 117=44 C. 841= 2 P. L. W. 1=21 C. W. N. 609=

19 Bom. L. R. 462 - 15 A. L.J. 390 - 22 M. L. T. 489 = (1917) M. W. N. 459 = 6 L. W. 101 = 25 C. L. J. 499= 40 I. C. 981 = 32 M. L. J. 565

- (Mr. Ameer Ali.) CHIDAMBARA SIVAPRAKASA P (1922) 49 I. A. 286 (306)= VEERAMA REDDI. 45 M. 586 (611) = 27 C. W. N. 245=

37 C. L. J. 199 = 16 L. W. 102 = 31 M. L. T. 54 (1922) M. W. N. 749=68 I. C. 538= A. I. R. 1925 P. C. 292 = 43 M. L. J. 640,

-Carrying out of, by ultimate decree in appeal.

In a case in which special leave to appeal was granted only upon the footing (inter alia) that the directions as to the payment of costs in the courts below should not be varied in any event and that the appellant should pay the respondent's costs, their Lordships while allowing the appeal, reversed the decrees below, except in so far as the dealt with the payment of costs. (Lord Salveyan.) MOHAMMAD MUSTAZ ALI KHAN P. MOHAN SINGH.

(1923) 50 I. A. 202 (210) = 45 A. 419 (425) = 21 A. L. J. 757 = 26 O. C. 231 = 33 M. L. T. 321= 9 O. & A. L. B. 901 = 10 O. L. J. 383 = A. I. R. 1923 P. C. 118=19 L. W. 283= 39 C. L. J. 295 = 28 C.W. N. 840 = 74 I. C. 478 45 M. L. J. 623.

DEFAULT TO PROSECUTE APPEAL, NOTWITHSTANDING SERVICE OF PEREMPTORY NOTICE

-Dismissal of appeal with costs on ground of. GOUR MONEE DERIA :: KHAJAH ABDOOL GUNNEE. (1864) 10 M. I. A. 59=2 Sar. 60.

#### DISCHARGE OF.

-Application for leave-Misstatements in-Discharge of order on ground of. See PRIVY COUNCIL SPECIAL LEAVE FOR APPEAL TO-APPLICATION FOR-MS STATEMENTS IN-GRANT OF LEAVE-ORDER OF.

Conditions imposed by order-Non-fulfilment of Discharge on ground of-Application by respondent for Rejection of, on imposition of further terms on appear though there had been great laches on his part. (Mr. Pemberton Leigh.) MCKELLAR v. WALLACE

(1858) 5 M. I. A. 372 (391) = 8 Moo. P.O. 378= 1 Equity Rep. 309 = 1 Sar. 453

Liberty reserved to respondent to apply for, on fall are of appellant to prosecute appeal with due diffe Successful appellant nevertheless held disentitled to his (Lord Buckmaster.) UDHAM SINGH v. GURDIP SIN (1922) 45 M. L. J. 254 = 38 O. L. J. 24

## PRIVY COUNCIL-SPECIAL LEAVE FOR AP. PRIZE-(Contd.) PEAL TO-(Contd.)

Patent Case-Concurrent judgments in.

-Appeal against-Special leave for. See PATENT-INFRINGEMENT OF-SUIT FOR. (1928) 116 I. C. 593.

#### Refusal of.

-Laches in making application-Refusal on ground of. See PRIVY COUNCIL--SPECIAL LEAVE FOR APPEAL TO-APPLICATION FOR-LACHES IN MAKING.

(1868) 3 B. L. R. 25 (P. C.).

Reasons for-Statement of-Practice as to.

While observing that the practice of the Board is not to state the reasons for such refusal, their Lordships stated them in the circumstances of the particular case. (Lord Buckmaster.) SHANKAR GANESH DAHIR - SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1922) 49 I. A. 319 = 49 C. 845 =

31 M. L. T. 192 (P. C.) = (1922) P. C. 351 = 18 N. L. R. 176 = 37 C. L. J. 136 = 25 Bom. L. R. 131 27 C. W. N. 343 = 69 I. C. 367 = L. B. 4 P. C. 36 = 18 L. W. 59 = (1923) M. W. N. 528 = 44 M. L. J. 32. PRIZE.

#### Capture of Vessel.

-Completion of -Conditions.

In principle it would seem that capture consists in compelling the vessel captured to conform to the captor's will. When that is done deditio is complete, even though there may be on the part of the prize an intention to seize an opportunity of escape, should it present icself (121). (Lord Sumner.) PELLWORM, In the matter of the Steam-(1922) 31 M. L. T. 117 (P. C.).

-Neutral sovereign - Waters of-Capture honestly believed to have been effected outside-Boarding of within territorial limits-Damages-Claim by neutral sweezign

for-Maintainability.

It is one thing to say that capture effected within Detch waters by boarding or otherwise, involves the restoration of the prize and quite another thing to say, that to board within the territorial limits a prize honestly believed to have been captured outside them must necessarily justify a claim for damages by the neutral sovereign concerned (122). (Lord Sumner.) PELLWORM, In the matter of the Steam (1922) 31 M. L. T. 117 (P. C.)

-Sulmission of vessel to captor's will-What amounts to-Hailing docon flag when not conclusive as to.

Submission by the captured vessel to the captor's will must be judged by action or by absention from action; it cannot depend upon mere intention, though proof of actual intention to erade capture may be evidence that acts in themselves presenting an appearance of submission were ambiguous and did not result in a completed capture. The conduct necessary to establish the fact of capture may take

many forms. No particular formality is necessary (121).

Hidd, that hailing down the flag, when taken in conjunction with stopping the engines as ordered, was not conclusive of the fact of submission by the captured vessel. and that the fact, which appeared from the evidence, that the captured vessels were endeavouring to escape rather showed that they were resisting or evading submission to the captor's will (1212). (Lord Summer.) PELLWORM, In the matter of the Steamship.

(1922) 31 M.L.T. 117 (P.C.).

Three-mile limit-Capture outside-Carrying of vessel within that limit before boarding-Right to follow vessel and reduce it into possession within line.

Quare, whether or not in any circumstances, a prize, duly captured outside the three-mile limit, but carried intention-

Capture of Vessel-(Contd.)

she can be boarded, may nevertheless be legitimately followed and reduced into possession within the line (120).

Such a principle is in any event inapplicable to a case where the neighbouring shore was inhabited and the actual field of operations was under observation by Datch officials, stationed there for the purpose. Such a case bears no analogy, at any rate to salving a prize, which, after being duly captured, has broken adrift or has otherwise by marine perils come involuntarily within the three-mile limit (120). (Lord Summer.) PELLWORM, In the matter of the Steam-(1922) 31 M. L. T. 117 (P. C.)

## Claim in-Onus of Proof on claimant.

Shifting of -Condition.

The claimant's proof that possession of the steamers was finally taken will within the territorial waters of Holland makes it incumbent on the captors to establish affirmatively. at least that capture was legally complete while both the captors and the captured were still outside of them (119). (Lord Sumner.) PELLWORM, In the matter of the Steam-(1922) 31 M.L.T. 117 (P.C.).

Claim of territory.

-Clogging of, with district of justice and of regularity of proceedings of successful secretign-Propriety.

It would be little consonant with the principle of honograble amends between friendly powers, which is the foundation of claims of territory, to clog it with any distrust of the justice and regularity of the proceedings of the successful sovereign (126). (Lord Summer.) PELL-WORM, In the matter of the Steamship

(1922) 31 M. L. T. 117 (P. C.).

Owner-hap of rested in question-Change of-Effect. Changes in the ownership of the vessel, which is the subject of the proceedings in prize, cannot defeat the claim of territory, which is independent of ownership (123-4). (Lord Summer.) PELLWORM, In the matter of the Steamship (1922) 31 M. L. T. 117 (P. C.).

Costs and expenses-Promise to pay-Inference of.

-Propriety-Conditions.

A promise to pay costs and expenses cannot be inferred from a suggestion made in the course of diplomatic correspondence that the whole matter was one for the Prize Court (123). (Lord Sumuer.) PELLWORM, In the matter of the Steamship. (1922) 31 M. L. T. 117 (P. C.).

-Relinquished ship-Appeared value of-Claim to -Nature of - Selatium in money-Res itself-Claim to.

Where prizes have been requisitioned by the Admiralty for the use of His Majesty on the terms of bringing, or of undertaking to bring, the appraised values into Court, a claim to those appraised values, advanced on behalf of the neutral sovereign ought to be treated not as a claim for a solution in money but as a claim for the res itself, in the only form in which it can be returned (125). (Lord Summer.) PELLWORM, In the matter of the Steamship.

(1922) 31 M. L. T. 117 (P. C.).

-Relinquished ship-Appraised value of-Claimant Government-Right of-Relinquished ship still in specie.

There is nothing either in the decisions or in the words of the Orders and Rules, to warrant the contention that for the purposes of a claim of territory, the appraised value of a ship, when once it has been requisitioned, must be treated in all circumstances as if it were the Ship herself, lost or not lost; nor is there anything to restrict the right of the Prize Court to require the return to its Marshal, of a requisitioned ship, which is still in specie, in order that ally or by accident or inadvertence accross the line before it may decree its release to the claimant Covernment. The

PRIZE-(Centd.)

Ship-(Contd.)

order, giving leave to requisition, which the Court itself made, it is also competent in such a case to revoke (128). (Lord Sumner.) PELLWORM. In the matter of the Steam-(1922) 31 M. L. T. 117 (P. C.). thip.

-Requisition of-Order for-Nature and effect of. An order for requisition in itself, however, is not a judgment in rem; it does not purport to charge property; it authorizes use and using up-that is, consumption-but it does not make the thing requisitioned a subject of sale (127). (Lord Sumner.) PELLWORM. In the matter of the (1922) 31 M. L. T. 117 (P. C.). Steamship.

Return in specie impossible without default of captor -Damages in case of -Award of -Propriety.

When there has been no intentional misconduct or affront on the part of the captors, and the loss of the vessel in question, without default on the part of those in control of her, has made her return in specie impossible, the payment of damages to the claimant is a wholly inappropriate remedy (124). (Lord Summer.) PELLWORM, In the matter of the Steamship.

(1922) 31 M. L. T. 117 (P. C.).

## Sovereign claimant whose territorial waters have been violated by belligerent force.

·Position of.

Their Lordships have already stated in the Dusseldorf and the Valeria, and need not now repeat, what is the general position of a sovereign claimant, whose territorial waters have been violated by a belligerent force (123). (Lord Sumner.) PELLWORM, In the matter of the Steamshif

(1922) 31 M. L. T. 117 (P. C.)

#### PRIZE COURT.

-Compact single and weerable-Discharge of-Question as to-General conduct of war-Considerations arising out of-Reference to-Permissibility.

In a matter, which turns on the obligation of a single and severable compact, the Court must inquire whether that very compact has been dis barged, and ought not to be guided by considerations arising only out of the general conduct of war (270). (Lord Summer.) BLONDE, ETC., In the matter of the Stormships.

(1922) 31 M. L. T. 260 (P. C.)

-Function of-Belligerent-General conduct of-Censorship of-Matter coming before Court-Determina-

It is not the function of a Court of prize, as such, to be a censor of the general conduct of a belligerent, apart from his dealings in the particular matters which come before the Court, or to sanction disregard of solemn obligations by one belligerent, because it reprehends the whole behaviour of the other. Reprisals afford a legitimate mode of challenging and restraining misconduct, to which, when confined within recognised limits and embodied in due firm. a Court of Prize is bound to give effect (270). (Lord Sumner.) BLONDE, ETC., In the matter of the Steamships. (1922) 31 M. L. T. 260 (P. C.).

#### PRIZE PROCEEDINGS.

-Commercial domicil in enemy country - Owner having, up to eve of war-Alteration of-Proof of-Onus of-Quantum.

The appellant was the owner of a steamship which was seized in Bombay harbour, shortly after the declaration of war between Great Britain and Turkey, on the ground that at the time of her seizure the appellant, her owner, was an enemy of the Crown,

The appellant was by race a Greek. He was a member of the orthodox Greek Church, but was born in Constantinople

#### PRIZE PROCEEDINGS-(Contd.)

a Turkish subject. About three years before the war he had been naturalised as a Persian subject, but he continued to carry on his business in Constantinople as before. In partnership with a Turkish subject he traded as a manager of shipping, and, in co-ownership sometimes with Turks and sometimes with Germans, and in a few cases without any co-owners, he was owner of a number of vessels trading principally in the Black Sea. That business he carried on up to the very eve of the outbreak of the war between Turkey and Great Britain. He then happened to be in the Pirocas and while there he learned that was had formally begun. He took an early opportunity of removing from the immediate area of war his wife and children, and brought them to Piroeus. His Turkish partners he left in Constantinople. His material interests were there, because all his ships except the one which was seized and another, were in the hands of the Turkish Government, and his undertaking therefore continued as before in Constantinople. He next devoted himself to the fortunes of the vessel in question which he had bought in the previous August. She was a vessel at that time on passage eastwards, and reached Bombay before he had been able to communicate with the captain for the purpose of taking the formal steps necessary to change her flag and to establish her as a Persian vest. She reached Bombay flying the Turkish fiag, under the conmand of a Turkish captain, with a Turkish crew; she had no register on board, but in other respects she was docmented as a Turkish vessel. He accordingly went to Bombay himself for the purpose of trying to terminate her stay at Bombay, for the authorities insisted that before the change of ownership could be recognised the register must be produced and put into regular order. His intention was to forward the vessel to Busra.

In prize proceedings for the condemnation of the said vessel. held that the appellant had retained up to the time when the war broke out a commercial Turkish domicil, that the burden of proof was upon him to show that that domicil had been altered, and that every act of appellant at the time was consistent with the intention to retain his comme cial domicil at Constantinople, and was inconsistent with any intention to divest himself of it. (Lord Summer.) THE (1922) 46 B 857 = 25 Bom. L. B. 116= KARA DNIZ. 70 I. C. 156 = A. I. B. 1922 P. C. 371

-Damages-Claim to, as alternative to claim for release.

A claim for damages in prize proceedings cannot be had as an alternative to a claim for the release of the vessel consistently with her condemnation. (Lord Sunni.) SOCRATES ARYCHIDES P. SECRETARY OF STATE FOR (1922) 18 L. W. 664 (668)=

32 M. L. T. (P. C.) 81 = 27 C. W. N. 557 (1923) M.W.N. 846 = 25 Bom. L. B. 116=84 LO. 73/= A. I. R. 1922 P. C. STL

#### PROBATE.

APPLICATION FOR.

DEED-POLL OF EVEN DATE WITH WILL-PROSESS

GRANT OF.

LETTERS OF ADMINISTRATION WITH WILL ANNIXED OBTAINING OF, AFTER SUIT BUT BEFORE DECREE REFUSAL OF-GROUNDS.

REVOCATION OF.

TESTAMENTARY JURISDICTION.

#### Application for.

ADOPTION RECITED IN WILL-FACTUM OF-DICE SION AS TO.

CITATION -SERVICE OF-MINOR

PROBATE-(Contd.)

Application for-(Contd.)

DISPOSITIONS OF WILL-VALIDITY OF-CONSIDERA-TION OF.

EXECUTION OF WILL-CAPACITY AS TO-ONUS OF PROOF OF.

EXECUTION OF WILL-UNDUE INFLUENCE OR COER-CION AS TO-CAVEATOR'S PLEA OF.

GENUINENESS OF WILL-DECISION AS TO.

MINOR'S INTERESTS AFFECTED BY WILL-PROCE-DURE PROPER IN CASE OF.

PARTIES TO.

REVERSIONER—RELATIONSHIP OF - DECISION AS TO:

ADOPTION RECITED IN WILL-FACTUM OF-DECISION AS TO.

Propriety-Combition.

In a proceeding relating to the grant of probate of a will. which recited the fact that the testator had adopted one C and made provisions on the footing that C was his adopted son, the caveators contended that C' had never in fact been adopted by the testator, that the recital in the alleged will that C had been adopted was false, and that it must be inferred from such false recitals that the alleged will was not a genuine will. The caveators attempted to have the question as to the adoption of C formally raised and decided in the case. Held, although the question as to the alleged adoption is not one which could be excluded from consideration by a Court when considering whether it is probable that the will is a genuine will or a fabrication, it could not be tried as a material and vital issue on an application for grant of probate, the necessary parties to such an issue not being before the Coart. Further, a finding either for or against the adoption would not be decisive as to whether the will which was propounded was a genuine will or a fabrication. The Court would be acting rightly if, in such a proceeding, it declines to frame an issue as to the alleged adoption, though the caveators would not be precluded from questioning the adoption. (Sir John Edge.) DULHIN GENDA KUNWAR D. HARNANDAN PRASAD SINGH.

(1916) 20 C. W. N. 617 = (1916) 1 M. W. N. 358 = 4 L. W. 214 = 33 I. C. 790 = 30 M. L. J. 624 (631).

CITATION-SERVICE OF-MINOR.

Guardian of Service on Sufficiency of. Upon an application for probate of a will, the citation issued must be properly and effectively served, that is to say, so served as to give to the person whose interests are, or may be, adversely affected an opportunity either to oppose the grant of probate or to require the will to be proved in his presence.

Held, on the evidence, that even if some kind of formality was gone through on the occasion when service of notice was said to have been effected on the guardian of the applicant for revocation of the probate, it was not such as would give to the guardian an opportunity either to oppose the grant of probate or to require the will to be proved in her presence and that in the peculiar circumstances of the case the service, if any, was of no greater effect in law than personal service on an infant of tender years. (Lord Sinha.) MT. RAMANANDI KOER D. MT. KELAWATI KOER.

(1027) 55 I. A. 18=7 Pat. 221=5 O. W. N. 96= L L T. 40 P. 19 = 47 C. L. J. 171 = 107 I.C. 14 = 9 P. L. T. 97 = 32 C. W. N. 402 = 30 Bom. L. B. 227 = (1928) M. W. N. 282 = 26 A. L. J. 385 = 27 L. W. 782 = A. I. B. 1928 P. C. 2 = 54 M. L. J. 281.

DISPOSITIONS OF WILL-VALIDITY OF-CONSIDERA-TION OF.

-Jurisdiction.

In probate proceedings the court has not to decide whether or not the testator had power under the law by which he is understood the dispositions of the will, and that it was duly

PROBATE-(Centd.)

Application for-(Contd.)

DISPOSITIONS OF WILL-VALIDITY OF-CONSIDER-ATION OF-(Contd.)

governed to dispose of the whole estate. That is a question which must be determined at some subsequent stage (438). (Viscount Haldane.) ISUBU LEBBE MARIKAR P. IDROSS LEBRE MARIKAR. (1923) 33 M. L. T. 437 (P.C.).

EXECUTION OF WILL-CAPACITY AS 10-UNUS OF PROOF OF.

The question was whether a will alleged to have been executed by a deceased person was genuine or a forgery. The question arose in a petition for probate presented by the father of the alleged testator, who was appointed executor. The defence stated was that the doccased never executed any will, and that the will propounded was fictitions and false, and fraudulently got up. Under this general defence the defendants maintained and endeavoured to prove that the deceased was in such a state of mental and physical incapacity as to be unfit to make a will on the date when he was alleged to have done so.

The will was one which not only complied with all requisites of formality, but which seemed to be in all respects reasonable in its provisions, and such as might naturally be expected to be made, having regard to the deceased's circumstances and family relations. The writer of the will, who declared that he saw it signed by the deceased, and the other witnesses, some of whom were, according to the evidence, expressly called in to see it executed, agreed in the material facts to which they spoke, and there was really nothing in their evidence which could justify or support the inference that there was any want of capacity on the part of the deceased, mental or physical, to understand and execute the will. They concurred in their account of the serious nature of the illness of the deceased, and in descriting him as being in a weak condition, but they did not support the defence that the deceased was not able fully to understand the act he was performing; and they concurred in saying that he sat up in his bed, which was on the floor, leaning against the pillows which were propped up, and so signed the document.

Held, that it was clear that with that testimony, and keeping in view the fact that nothing could be said against the reasonable nature of the provisions of the will (which was always a material element in such questions, from its bearing on the probabilities of the case), it would require a strong case in defence to lead to the result of holding that the will had been forged (139). (Mr. Shand.) BAMA SOONDARI DEBI P. TARA SOONDARI DEBI. (1891) 18 I. A. 132=

19 C. 65 (74) = 6 Sar. 66.

-In an application for probate of a will, the burden is on the applicant of proving the testamentary capacity of the alleged testator (117). (Lord Macnaghten.) RASH MO-HINI DASI :. UMESH CHUNDER BISWAS.

(1898) 25 I. A. 109 = 25 C. 824 (833) = 2 C. W. N. 321 = 7 Sar. 298.

Where, on an application for probate of a will, and a codicil, purporting to have been executed by a deceased person, an issue is raised as to whether the testator was of sound disposing mind when he executed the will and the codicil, the onus is admittedly on the plaintiff, who propounds the will and codicil, to make good the affirmative in each case. (Lord Collins.) SHUNMUGAROYA MUDALIAR (1909) 36 I. A. 185 (190) = p. MANIKKA MUDALIAR. 32 M. 400 (408) = 6 M. L. T. 304 = 10 C. L. J. 276 =

11 Bom. L. B. 1206 = 3 I. C. 799 = 19 M. L. J. 640. A person who applies for a grant of probate of a will must establish the mental capacity of the testator, that he PROBATE-(Could.)

Application for-(Contd.)

EXECUTION OF WILL-CAPACITY AS TO-ONUS OF PROOF OF- (Cont.)

executed by him as his will (628). (Sir John Edge.) BANKIM BIHARI MAITI :: SRIMATI MATANGINI DASI. (1919) 24 C. W. N. 626.

-In an application for probate of a will the onus of establishing capacity lies on the petitioner (444). (Mr. Amer Ali.) MOTIBAI HORMUSJEE KANGA P. JAMSETJEE (1923) 19 L. W. 437-HORMUSJEE KANGA.

22 A. L. J. 98 = A. I. R. 1924 P. C. 28 = (1914) M. W. N. 173 = 34 M. L. T. 4= 26 Bom. L. R. 579 - 29 C. W. N. 45 = 80 I. C. 77 = 5 L. R. P.C. 165.

-English law-Probate granted long ago but only in common form-. Ittack on-Onus in case of

Under the English law those who propound a will must show that the will of which probate is sought is the will of the testator, and that the testator was a person of testamentary capacity. In ordinary cases if there is no suggestion to the contrary any man who is shown to have executed a will in ordinary form will be presumed to have testamentary capacity, but the moment the capacity is called in question then at once the onus ties on those propounding the will to affirm positively the testamentary capacity. Moreover, if a will is only proved in common and not in solemn form, the same rule applies even though the action is to attack a probate which has been granted long ago (68). (Viscount Dunedin.) WILLIAM ROBINS P., NATIONAL TRUST CO., (1927) A. I. R. 1927 P. C. 66= LTD. 101 I. C. 903 = 4 O. W. N. 463.

EXECUTION OF WILL-UNDUE INFLUENCE OR COERCION AS TO-CAVEATOR'S PLEA OF.

Onns of proof as to.

In an application for probate of a will if the caveator impugns the will, on the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lies upon him to establish that case (444). (Mr. Ameer Ali.) MOTIBAI HORMUSJEE KANGA P. JAMSET-(1923) 19 L. W. 437 = JEE HORMUSJEE KANGA. 22 A. L. J. 98 = A. I. R. 1924 P. C. 28 =

(1924) M. W. N. 173 = 34 M. L. T. 4= 26 Bom. L. R. 579 = 29 C. W. N. 45 = 80 I. C. 77 = 5 L. R. P. C. 165

GENUINENESS OF WILL-DECISION AS TO.

-Court exercising other than testamentary jurisdiction-Effect on.

On an application for probate of the will of a deceased person by R, who was described therein as the kartaputra of the deceased, caveats were lodged by, amongst others, the plaintiffs who claimed to be the reversionary heirs of the deceased entitled to his estate after the death of his widows. The District Judge, to whom the application was made, held that the plaintiffs had failed to prove their interest and that the will was proved, and granted probate of the will to R; and his decision was affirmed on appeal.

In a suit subsequently instituted by the plaintiffs for a declaration that they were the next reversioners to the estate of the deceased in case of an intestacy after the death of the deceased's widows, and that as such they (plaintiffs) were entitled to apply to the probate court to get the probate granted to R revoked, held that the will of the deceased having been affirmed in a court exercising appropriate jurisdiction, the propriety of that decision could not in the circumstances of the case be impugned by a court exercising any other jurisdiction (97).

It is not suggested that in this litigation the testamentary jurisdiction is, or can be, invoked and yet there can be no

PROBATE-(Contd.)

Application for-(Contd.)

GENUINENESS OF WILL-DECISION AS TO-(Contd.) doubt that the suit is an attempt to evade or annul the adjudication in the testamentary suit, and nothing more (97). (Sir Lawrence Jenkins.) SHEOPARSAN SINGH v. RAM-NANDAN SINGH. (1916) 43 I. A. 91 =43 C. 694 (704)= 20 C. W. N. 738 = 23 C. L. J. 621 =

14 A. L. J. 466-18 Bom. L. R. 397-20 M. L. T. 1= (1916) 1 M. W. N. 419 = 3 L. W. 544 = 33 I. C. 914= 31 M. L. J. 77

MINOR'S INTERESTS AFFECTED BY WILL-PROCEDURE PROPER IN CASE OF.

-Proof of will in "solemn form"

Where a will of which probate is sought affects the interests of a minor the prudent course is for the propounder to take steps to have the will proved per testes (i.e., in solemn form) in the presence of an independent guardian ad litem appointed for the minor. (Lord Sinha.) MT. RAMANANDI KOER P. MT. KALAWATI KOER.

(1927) 55 I. A. 18=7 P. 221=5 O. W. N. 96= I. L. T. 40 P. 19-47 C. L. J. 171=107 I. C. 14= 9 P. L. T. 97 = 32 C. W. N. 402 = 30 Bom. L. B. 227 = (1928) M. W. N. 281 = 26 A. L. J. 385 = 27 L.W. 782 = A. I. R. 1928 P.C. 2=64 M. L. J. 281.

PARTIES TO.

-Person setting Administrator-General executor under will in motion and undertaking to indemnify him if

A Mahomedan lady executed a will, by which she appointed the Administrator-General of Bengal to be her executor if he should be willing to act, and if that officer should decline to act she appointed the respondent. That will purported to confirm certain transactions between the lady and the respondent, her manager, especially a release deed previously executed by her in his favour. The Administrator-General, having been put in motion by the respondent and acting under an indemnity from him applied to the High Court for probate of the will. The grandchildren of the testator as heirs entered a caveat. Ultimately, however, probate was granted of the will.

Pending the said probate proceedings the said grandchildren instituted a suit against the respondent and the Administrator General alleging that the release deed in his favour was obtained by the respondent by misusing his position of confidence with the lady and that it and the other transactions between him and the lady were invalid and ineffectual, and praying that he (the respondent) should be declared a trustee for the plaintiffs as regards the properties received by him from the lady.

Quarre whether the probate proceedings and the suit were between the same parties within the meaning of S. 13 of C.

P. C. of 1882 (254-5).

The former proceedings were between the Administrator General, who propounded the will, and the grandchildren of the testator, though it is true that the Administrator General was set in motion by the present respondent and acted under his indemnity (254-5). (Sir Arthur Wilson.) MIRZA KURKATULAIN BAHADUR 2. PEARA SAHEB.

(1905) 32 I. A. 244 = 33 C. 116 (126) = 1 C. L. J. 594 = 9 C. W. N. 938 = 2 A. L. J. 758 = 7 Bom. L. B. 876= 8 Sar. 839=15 M. L. J. 336,

REVERSIONER-RELATIONSHIP OF-DECISION AS TO.

-Effect of, in civil suit between parties-Res judicals if. See HINDU LAW-REVERSIONER-RELATIONSHIP OF (1) LETTERS OF ADMINISTRATION. (1929) 58 M. L. J. 171.

AND (2) PROBATE PROCEEDINGS.

(1916) 43 I. A. 91 (98-9)=43 C. 694 (704)

#### PROBATE-(Contd.)

## Deed -Poll of even date with will-Probate of.

Necessity—No incorporation by reference. See SUC-CESSION ACT OF 1865, S. 51—DEED—POLL OF EVEN DATE WITH WILL. (1905) 32 I. A. 142 (163) = 29 B. 530 (563-4).

#### Grant of.

COMMON FORM.

HINDU AND MAHOMEDAN WILLS-GRANT IN RES-PECT OF.

JURISDICTION AS TO.

LOCUS STANDI TO OPPOSE.

MAHOMEDAN WILL.

PORTIONS OF WILL INTRODUCED WITHOUT KNOW-LEDGE AND APPROVAL OF TESTATOR.

PURDANASHIN — WILL BY, CONFIRMING PRIOR TRANSACTIONS BY HER WITH HER MANAGER.

SUPREME COURT—HINDU AND MAHOMEDAN WILLS. VALIDITY OF PROVISIONS OF WILL.

#### COMMON FORM.

Grant of probate in—Genuineness of will attacked long after—Proof of will in case of—Quantum. See HINDU LAW—WILL—EXECUTION OF—EVIDENCE OF—QUANTITY AND, ETC. (1904) 31 C. 914 (920).

Probate granted in—Setting aside of—Application for—Onus of proof in—Ontario law—English law—Distinction. See PROBATE—REVOCATION OF—APPLICATION FOR—ONUS OF PROOF IN. (1927) 101 I.C. 903.

Probate granted long before in—Action to attack—
Capacity of testator in—Onus of proof of—English law.
See Probate — Application for—Execution of WILL—Capacity as to—Onus of proof of—English Law.

(1927) 101 I.C. 903.

Solemn form-Grants of probate in-English law distinction as to-Applicability in India of.

There has been some divergence of opinion in the courts in India as regards the law and procedure governing cases for revocation of probate, due in part to the introduction into Indian practice of the difference in English law between the grant of probate in common form and probate in solemn form. It is worse than unprofitable to consider how far, if at all, that distinction has been incorporated into Indian law. (Lord Sinha.) MT. RAMANANDI KOER & MT. KALAWATI KOER. (1927) 55 I. A. 18—

7 Pat. 221 = 5 O. W. N. 96 = I.L.T. 40 P. 19 = 47 C. L. J. 171 = 107 I. C. 14 = 9 P. L. T. 97 = 32 C. W. N. 402 = 30 Bom. L. R. 227 = (1928) M. W. N. 282 = 26 A. L. J. 385 = 27 L. W. 782 = A. I. B. 1928 P. C. 2 = 54 M. L. J. 281 (285).

HINDU AND MAHOMEDAN WILLS-GRANT IN RESPECT OF.

Effect of - Executors under wills-Title to pro-

From an early date the Supreme Courts granted probates of Hindu and Mahomedan wills. The practice varied greatly from time to time, and it was never perhaps very satisfactorily determined upon what basis the jurisdiction rested. It was, however, established that such probates might issue. But the Supreme Courts never applied the English rule as to the necessity for probate to Hindu or Mahomedan wills, nor did they attribute to such probates when granted the English doctrines as to the operation of probate. Under that system a Hindu or Mahomedan executor took no title to property merely as such by virtue of the probate. In the case of Mahomedan executors such a title was created for the first time by the Pro-

PROBATE-(Contd.)

Grant of-(Contd.)

HINDU AND MAHOMEDAN WILLS-GRANT IN RESPECT OF-(Contd.)

hate and Administration Act (258). (Sir Arthur Wilson.) MIRZA KURRATULAIN BAHADUR 7: PEARA SAHEB.

1 C. L. J. 594 - 9 C.W.N. 938 - 2 A.L.J. 758 - 7 Bom. L.R. 876 - 8 Sar. 839 - 15 M.L. J. 336.

JURISDICTION AS TO.

Persons domiciled abroad-Wills of English practice.

According to English practice, probate may be granted of the will of a person domiciled abroad upon proof that it is valid will according to the law of the domicil, and that there are assets within the jurisdiction. It is not necessary that it should be first proved in the courts of the domicil (119 20). (Lord Parker.) MEYAPPA CHETTY v. SUPRAMANIAN CHETTY. (1916) 43 I. A. 113 =

20 C. W. N. 833 - (1916) 1 M. W. N. 455 = 35 I. C. 323 = 18 Bom. L. R. 942.

Persons demiciled abroad-Wills of-Straits Settlements Supreme Court of-Jurisdiction of.

Section 3 of the Straits Settlements Civil Procedure Ordinance No. 31 of 1907 provides that where no other provision is made by the Code or any law in force for the time being the procedure of the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted. There is nothing in the Code or in any law in force in the Straits Settlements precluding the Supreme Court of the Straits Settlements from granting probate of the will of a person wherever domiciled (119). (Lord Parker.)
MEYAPPA CHETTY 2. SUPRAMANIAN CHETTY.

(1916) 43 I.A. 113 = 20 C. W. N. 833 = (1916) 1 M. W. N.455 = 35 I. C. 323 = 18 Bom. L. R. 642.

#### LOCUS STANDI TO OPPOSE

——Attaching creditor of heir—Purchaser from him— Locus stands of. See PROBABE—REVOCATION OF— APPLICATION FOR—RIGHT OF.

(1883) 10 I.A. 80 (87)=10 C. 19 (27-8).

#### MAHOMEDAN WILL.

——Executor under—Position and right of—Probate of will—45rant of, under Probate and Administration Act—Effect. See EXECUTOR—MAHOMEDAN WILL—EXECUTOR UNDER—POSITION AND RIGHTS OF.

(1905) 32 I.A. 244 (256-7)=33 C. 116 (128-9).

—Executor under — Title to property of—Probate before and after Probate and Administration Act—Effect of. See EXECUTOR—MAHONEDAN WILL—EXECUTOR UNDER—TITLE TO PROPERTY OF.

(1905) 32 I.A. 244 (258) = 33 C. 116 (130).

Grant of probate in respect of Effect of Executor under will—Title to property of, not by virtue of probate. See PROBATE—GRANT OF —HINDU AND, ETC.

(1905) 32 I.A. 244 (258) = 33 C. 116 (130).

——Probate of—Effect — Two-thirds of estate not disposable by testator under Mahomedan Iaw—Heirs' claim to — Maintainability—Estoppel. See MAHOMEDAN LAW— WILL—PROBATE OF—EFFECT.

(1905) 32 I.A. 244 (258-9) = 33 C. 116 (130-1).

PORTIONS OF WILL INTRODUCED WITHOUT KNOWLEDGE AND APPROVAL OF TESTATOR.

-Exclusion from probate of.

The question was whether certain parts of the will of a Hindu testator had been properly excluded from the probate of the will. The trial judge admitted the whole will to PROBATE-(Cont.)

Grant of- (Contd.)

PORTIONS OF WILL INTRODUCED WITHOUT KNOW-LEDGE AND APPROVAL OF TESTATOR—(Centd.)

probate, but on appeal the High Court varied his order by directing that the passages in question referring to a deedpoll executed on the same day by the testator, and to the remuneration of the solicitor who prepared the will and was appointed an executor and trustee of it, should be omitted.

Held that, as on the evidence it appeared that the testator was aware that the passages excluded by the appeal court from the probate formed part of the instrument, they must be taken to have expressed his mind and intention, and that the appeal court was wrong in excluding them from the probate (158), (Letd Direct.) Bat GUNGABAI T. BHUGWANDAS VALJI. (1905) 32 LA. 142—29 B. 530 (562) 9 C.W.N. 769 - 7 Bom. L.R. 854—3 A.L.J. 68 - 8 Sar. 813 - 15 M. L. J. 271.

Where it is found that, in a will otherwise validly executed, a part was introduced without the knowledge and approval of the testator, probate will be granted of all the provisions in the will except the part so introduced. (Sir Lancelet Sandernea.) SRIMATI SARAT KUMARI BIPLE, RAI SAKHI CHAND BARADUR.

(1928) 56 I A. 62 - 8 Pat. 382 - 33 C.W.N. 374 - 1929 M.W.N. 149 - 113 I.C. 471 - 27 A.L.J. 137 - 29 L. W. 370 - 31 Bom L. R. 270 - 10 P. L. T. 1 - A.I.R. 1929 P.C. 45 - 56 M.L.J. 130 (139 40.)

PURDANASHIN-WILL OF, CONFIRMING PRIOR TRANSACTIONS BY HER WITH HER MANAGER.

Grant of probate of in spite of opposition by her heirs-liflest of-Validity of prior transactions recited in will-Grant if conclusive as to.

A Mahomedan lady executed a will by which she appointed the Administrator-General of Bengal to be her executor. By the will she purported to confirm gifts of property made by her to the respondent, her manager, from time to time and a release deed previously executed by her in his favour relinquishing all her claims to the same. The Administrator-General, having been put in motion by the respondent and acting under an indemnity from him, applied to the High Court for probate of the will. The grandchildren of the testator as heirs entered a caveat. Ultimately, however, probate was granted of the will.

Pending the said probate proceedings the said grandchildren instituted a suit against the Administrator-General and the respondent alleging that the gifts and the release deed were obtained by the respondent from the lady by misusing his position of confidence with her and were ineffectual and invalid, and praying that the respondent should be compelled to account for the property which had thus come into his hands, and should be declared to be a trustee for the plaintiffs.

It was contended before their Lordships for the grandchildren that assuming, as the High Court thought, the effect of the decision in the probate proceedings was that the lady thoroughly understood the purpose and effect of her will, that it was her voluntary act, that she was of full testamentary capacity to make the will and that in that will she confirmed the release, the issues in the suit were not the same, because in the suit, in order to validate the confirmation by the will of the release and other transactions, it was necessary to show not only that the testatrix knew and intended what she purported to do by her will, but also knew what her actual rights were in respect to that release and those transactions, and knew them to be invalid and not binding on her—a matter which it was said did not and could not arise in the probate proceedings.

PROBATE-(Contd.)

Grant of-(Contd.)

PURDANASHIN - WILL OF, CONFIRMING PRIOR TRANSACTIONS BY HER WITH HER MANAGER— (Contd.)

Their Lordships observed that that contention seemed to present a serious difficulty in the way of the respondent (255). (Sir Arthur Wilson.) MIRZA KURRATULAIN BAHADUR F. PEARA SAHEB.

(1905) 32 I. A. 244 = 33 C. 116 (126.7) = 1 C. L. J. 594 = 9 C.W.N. 938 = 2 A. L. J. 758 = 7 Bom. L.R. 876 = 8 Sar. 839 = 15 M.L.J. 336.

SUPREME COURT—HINDU AND MAHOMEDAN WILLS.

——Probate of—Grant of—Effect. See PROBATE—GRANT OF—HINDU AND MAHOMEDAN WILLS.

VALIDITY OF PROVISIONS OF WILL.

-Effect on.

The probate gives no efficacy to the provisions of the will; it is merely proof of the contents (42). (Lord Buckmarter.) KHAW SIM TEK P. CHUAH HOOI GNOH NEOH. (1921) 49 I.A. 37 = 30 M. L. T. 160 = 26 C. W. N. 495=

25 Bom. L. R. 121 = A. I. R. 1922 P. C. 212

Letters of Administration with will annexed.

Grant of, by competent Court within province—
Subsequent limitation of grant by High Court—Validity of
Effect of. See Succession Act of 1865, Ss. 187, 3.

(1910) 21 M. L. J. 116.

Obtaining of, after suit but before decree.

Sufficiency of, See Succession Act of 1865. S.

(1910) 38 I. A. 7 = 38 C. 327 (334-5).

Befusal of-Grounds.

---- Mental capacity-Absence of, requisite.

Want of the requisite mental capacity in the alleged testator would form a clear ground for refusing probate of his alleged will (141). (Mr. Shand.) BAMA SOONDARI DEBI v. TARA SOONDARI DEBI. (1891) 18 I. A. 132= 19 C. 65 (75)=6 Sar. 66.

#### Revocation of.

LAW AND PROCEDURE GOVERNING CASES OF.

Opinion as to—Divergence of—Common and solemn forms—Grant of probate in—English law distinction as to
—Divergence based on. Sα PROBATE—GRANT OF—
COMMON FORM—SOLEMN FORM. (1927) 55 I. A. 18=
7 Pat. 221.

ONUS OF PROOF IN.

Citation of parties-Absence of-Forgery of will-

Proceedings were instituted under S, 50 of the Probate and Administration Act for revocation of the probate of a will on two grounds principally, viz., (1) that citations were not properly served on the petitioner (testator's daughter) or on her mother (her guardian at the time of the grant of probate) before the grant of the probate; and (2) that the will was a forgery. The issues raised in the case were (1) was no citation served upon the plaintiff? (2) is the will propounded by the defendant genuine or otherwise.

Held, if those issues were tried separately, and the plaintiff succeeded on the first issue, that in itself would be sufficient for revoking the probate; but it would still be open to the defendant to prove the will, and, if she succeeded, the probate would stand. If, on the other hand, the plaintif failed on the first issue, that would not preclude her from proceeding to prove her second ground, triz., that the will was forged, and the probate would stand or fall according to the result. The question of onus of proof is, therefore, of great importance in this case.

Held further that, when the first issue was found in favour of the plaintiff, the onus of proving the second issue

#### PROBATE-(Contd.)

Revocation of-(Contd.)

ONUS OF PROOF IN-(Contd.)

viz. that the will was genuine, was on the defendant. (Lord Sinha.) MUSAMAT RAMANANDI KOER P. MUSAMAT KALAWATI KOER. (1927) 55 I. A. 18-7 Pat. 221-50.W.N. 96-I.L.T. 40 Pat. 19-47 C.L.J. 171-

107 I.C. 14 = 9 Pat. L.T. 97 = 32 C.W.N. 402 -30 Bom. L. B. 227 = 1928 M. W. N. 282 -

26 A.L.J. 385 = 27 L.W. 782 = A.I.R. 1928 P.C. 2 = 54 M.L.J. 281.

Common form-Grant of produte in-Outario late-English law-Distinction.

The appellate Court has held that once probate was granted, though only in common form, the onus was on him who sought to set it aside, therein differing from the English law. (Viscount Duncdin.) WILLIAM ROBINS 7. NATIONAL TRUST CO., LTD. (1927) 4 O. W. N. 463—101 I. C. 903 = A. I. R. 1927 P. C. 66 (69).

Person on whose behalf probate was obtained Application based on fraud by Failure to prove fraud Benefit

of will taken by him-Effect.

The appellant, the sole heiress of a deceased Hindu, applied through her attorney for probate of a will executed by the deceased. A vakalatnama was executed by her in which she recited the will and gave authority to a certain person to appear for her in probate proceedings and manage the property. Probate was granted and the will having been proved, was acted on for some years.

At the expiration of that period, appellant applied for the revocation of probate on the ground that the will was forged and so were the other documents. The Courts below found against the case set up by her and rejected her application for revocation of probate. On appeal, held by their Lordships that there was no ground for disturbing the

judgment of the High Court.

After four years, after having admitted the genuineness of the document and after having taken advantage of it, the appellant comes forward with a tissue of falsehoods. So far as their Lordships can see, she comes without anything more than a mere suggestion of fraud, and she asks that that question may be tried. (Lord Maringhton.) BABUI BACHA KUMAR.

(1912) 17 I. C. 763.

## RIGHT OF.

-Attaching creditor of testator's hear-Purchaser

from heir-Right of.

Assuming that a purchaser from the heir can oppose the grant of a probate of a will of the propositus, or apply to have it revoked, their Lordships entertain grave doubts whether an attaching creditor can do so, at least in a case which is not founded on the ground that the probate has been obtained in fraud of creditors (87). (Sir Richard Conch.) RAJAH NILMONI SINGH DEO BAHADUR c. UMANATH MOOKERJEE. (1883) 10 I. A. 80 =

10 O. 19 (27-8) = 13 O. L. R. 314 = 4 Sar. 449.

Declaration of Suit for Maintainability—Contest

by plaintiff—Probate granted after. See HINDU LAW— REVERSIONER—WILL OF LAST MALE OWNER.

(1916) 43 I. A. 91 (97-8)=43 C. 694 (704-5).
WILL SUBSEQUENT NOT FORTHCOMING—REVOCATION
BY.

Proof required in case of.

A will daly executed is not to be treated as revoked, either wholly or partially, by a will which is not forthcoming takes it is proved by clear and satisfactory evidence that the later will contained either words of revocation or dispositions so inconsistent with the dispositions of the earlier will that the two cannot stand together. It is not enough to

PROBATE-(Contd.)

Revocation of-(Contd.)

WILL SUBSEQUENT NOT FORTHCOMING—REVOCA-TION BY—(Confd.)

shew that the will which is not forthcoming differed from the earlier will, if it cannot be shown in what the difference consisted. The burden of proof lies upon the person who challenges the will that is in existence. These propositions are founded on reason and good sense and must therefore be regarded as of general application (87-8). (Lord Mannagh Lon.) NAWAR SAHIB MIRZA v. MUSSUMAT UMEDA KHANUM. (1892) 19 I. A. 83 = 19 C. 444 (450) = 6 Sar. 190.

The question was whether a will of 1860 was revoked by a will made by M in 1876.

The alleged wili of 1876 was not forthcoming. All that was known about it was to be found in a letter addressed by M to the Commissioner of Lucknow, and dated the 6th of December, 1876. In that letter, M expressed herself as follows: " I heartily desire that, with your permission and consent, a will in which I have appointed my grandson S my executor be formally and with certain conditions executed and ratified, so that in accordance therewith my estate may be managed after my death, in future, with the exception of the arrangement connected with the distribution (of stipends) among my dependents and the establishment of a charitable institution for the benefit of the public in general, the management and administration of which are not possible without the aid of Government." A little further on she said," a copy of the will is also forwarded for your inspection." And the letter concluded with the sentence: "In short, this last will and testament of mine, being completed and properly executed, shall after the Government shall have accorded its sanction thereto be deposited with the Govern-

No copy or draft of the will referred to in the letter was produced. The Government declined to have anything to do with the matter. M was recommended to deposit her will with the Registrar under the Registration Act, but that advice was not followed.

Held, upon the relevant materials available for consideration, the proper and necessary conclusion of law was that the will of 1860 was not revoked (87).

Considering the terms of the letter of the 6th of December, 1876, it is by no means clear that the will referred to in it was ever executed. The expressions in the letter are no doubt consistent with the view that the will was executed before application was made to the Commissioner, but they are not inconsistent with the view that the will was not executed at the date of the letter, and that it was not intended to be executed until after the Commissioner's consent had been obtained. There is nothing to show in what respects the alleged will of 1876 differed from the will of 1860. Nor, indeed, is it possible to determine whether the reference to " the arrangement connected with the distribution of stipends" and "the establishment of an institution" points to dispositions which are found in the will of 1860 and with which the testatrix did not propose to interfere, or to new and perhaps different dispositions contained in the alleged will of 1876 (87). (Lord Macnaghten.) NAWAB SAHIB MIRZA P. MUSSAMMAT UMEDA KHANUM.

(1892) 19 I. A. 83=19 C. 444 (448-9)=6 Sar. 190.

#### Testamentary Jurisdiction.

#### PROBATE AND ADMINISTRATION ACT V OF 1881.

(N. B. All other Cases will be found Collected upder Probate.)

1881 - (Contd.)

-Law enacted by-English law-Distinction. See SUCCESSION ACT OF 1865-LAW ENACTED BY-ENG-(1927) 55 I. A. 18-7 Pat. 221. LISH LAW.

-Persons governed by.

The Act applies only to persons to whom the Indian Succession Act of 1865 d.d not extend, that is to say, Hindus, Mahomedans and Buddhists (257). (Sir Arthur Wilson.) MIRZA KURRATULAIN BAHADUR v. PEARA (1905) 32 I. A. 244 = 33 C. 116 (129) = 1 C. L. J. 594 = 9 C. W N. 938 = 2 A. L. J. 758 = 7 Bom. L. R. 876=8 Sar. 839=15 M. L. J. 336.

-Probate-Sections relating to-Wherefrom taken.

The sections relating to probate in the Probate and Administration Act are substantially taken from the corresponding sections in the Succession Act (257). (Sir Arthur IVilson.) MIRZA KURRATULAIN BAHADUR r. PEARA ER. (1905) 32 L A. 244 – 33 C. 116 (129) = 1 C. L. J. 594 = 9 C. W. N. 938 = 2 A. L. J. 758 =

7 Bom. L. R. 876 = 8 Sar. 839 = 15 M. L. J. 336

Procedure Act if a.

The Probate and Administration Act of 1881 is mainly a Procedure Act (256). (Sir Arthur Wilson.) RANI BHAG-WAN KUAR P. JOGENDRA CHANDRA BOSE

(1903) 30 I. A. 249 = 31 C. 11 (32) = 7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M.L. J. 381.

S. 2—Hindu—Meaning of. See HINDU.

-S. 4-Executor-Conveyance after estate wound up -Power of-Neglect to transfer shares to legatees-Effect. See EXECUTOR-CONVEYANCE BY-WINDING UP OF (1927) 54 L. A. 276 (286) = 5 R. 427. ESTATE.

-S. 50-Revocation of probate. See PROBATE-REVOCATION OF.

S. 50. III. (b)-Citation of parties-Service of-Sufficiency of-Guardian of minor-Service on. See PRO-BATE-APPLICATION FOR-CITATION.

(1927) 55 I. A. 18 = 7 Pat. 221.

-S. 90-Permission to sell under-Grant to administrator of, pending suit in competent Court for administration of property restol in him- Jurisdiction.

The District Court of Amerist granted letters of administration under the Probate and Administration Act to M to administer the estate of his deceased father, and property of the deceased became vested in M as such administrator. Subsequently an administration suit was instituted against M by the wife of the deceased in the Chief Court of Lower Burma for the administration by the Court of the estate which was in the hands of M. In that suit a preliminary decree was passed directing that certain accounts should be taken and certain enquiries made, and that the suit should stand adjourned for making a final decree until the accounts and inquiries had been taken and made. No receiver was, however, appointed, nor was an injunction issued to M not to continue to act as an administrator under his appointment as an administrator by the District Court of Amherst. Subsequent to the preliminary decree in the suit in the Chief Court, the District Court of Amherst granted, under S. 90 of the Probate and Administration Act, 1881, as amended by Act VI of 1889, permission to M to sell property vested in him as administrator, and in pursuance of that permission, M entered into a contract for the sale of the suit property.

Quarre, as to the validity of the permission to sell granted by the District Court, and as to the power of M to sell the property without having obtained the previous permission of the Chief Court to do so.

The suit for an administration of the estate had been entertained by the Chief Court, and was pending in that I

PROBATE AND ADMINISTRATION ACT V OF | PAOBATE AND ADMINISTRATION ACT V OF 1881-(Contd.)

Court, and it is difficult to understand that the Legislature could have intended that when a suit for administration of an estate is before a Court competent to entertain it and to order that accounts should be taken in the suit, any other court should have power to grant permission for the sale of property part of the estate. (Sir John Edge.) Ma CHIT SEN P. NATIONAL BANK OF INDIA, LTD.

(1925) 23 L. W. 399-91 I. C. 432-30 C. W. N. 76= A. I. R. 1925 P. C. 261 = L. R. 6 P. C. 285 = (1925) M. W. N. 847 = 50 M. L. J. 644 (650-1). S. 98-Inventory under-What amounts to an.

No inventory satisfies the requirement of S, 98 of the Probate and Administration Act, 1881, which omits the essential of this detail, namely, that its contents shall include " a full and true estimate of all the property in posses-

Quarre whether the production of one document containing the details is necessary, and whether it is legitimate to mass together a variety of documents and thereby produce to the Court an inventory containing a full and true estimate. (Lord Shaw.) RAMESHWAR KUMAR P. COLLEC-(1913) 40 I. A. 236=41 C. 556= TOR OF GAYA. 21 I. C. 975=18 C. W. N. 153=(1914) M. W. N. 13=

19 C. L. J. 136-12 A. L. J. 69-15 M. L. T. 87-16 Bom. L. R. 95 = 26 M. L. J. 56.

#### PROCEEDING.

-Judicial proceeding-Executive or administrative proceeding or-Test. See (1) JUDGE-FUNCTION OF; (2) ORDER-JUDICIAL OR, ETC.

## PROCESSIONS.

-Religious processions. See RELIGIOUS PROCES-SIONS.

## PROFESSION.

-Exercise of-Right of-Limit to, imposed by right of others to deal with person exercising profession or not of their pleasure.

The right of the plaintiffs to exercise their calling must be understood only as co-extensive with, and not as overriding the right of the public or of individuals to deal with them or not, at their pleasure; the right to buy or to refuse to buy is as much to be regarded as the right to sell or to refuse to sell (133.) (Dr. Lushington.) ROGERS v. RAJEN-DRO DUIT. (1860) 8 M. I. A. 103 = 13 Moo. P.C. 209 =

3 L. T. 160 = 9 W. R. (Eng) 149 = 2 W. B. 51 = 1 Suth. 413 = 1 Sar. 755.

#### PROPERTY.

ABSOLUTE INTEREST IN-ESSENTIAL INCIDENT OF. ALIENABILITY OF—CUSTOM AGAINST—EVIDENCE OF. ASSESSABILITY.

COURT--TAKING OR ASSIGNMENT OF PROPERTY BY. DAMAGE CAUSED BY NEGLIGENCE TO-DAMAGES FOR-OWNER'S RIGHT TO.

DEALING WITH-CUSTOMS AND USAGES AS TO. DECREE FOR-PROPERTY PASSING UNDER-PLAINT

BODY AND SCHEDULE. DEVOLUTION OF.

ENGLISH FEUDAL PRINCIPLES AS TO.

HEREDITARY PROPERTY.

IMMOVEABLE PROPERTY.

LEGAL AND EQUITABLE ESTATES.

LITIGATION-PROPERTY SUBJECT OF, OR TO BE RE-COVERED BY-AGREEMENT TO SHARE-MOVEABLE OR IMMOVEABLE PROPERTIES OBTAINED BY COM PROMISE IN.

LITIGATION RESPECTING.

MANAGEMENT OF-PURPOSES OF.

MARKET-VALUE OF.

MISDESCRIPTION IN DEED OF-EVIDENCE OF.

#### PROPERTY-(Contd.)

MOVEABLE PROPERTY.

OWNERSHIP OF.

PERSONAL AND REAL PROPERTY.

PRICE OF

PLUNDER OF, IN PURSUANCE OF COMMON OBJECT—
PERSONS JOINING IN—PERSONS COERCED TO JOIN
IN.

RIGHT OF SUIT IF.

RIGHT TO-PRE-EMPTION RIGHT IF A.

RULE LONG AND CONSISTENT AS TO-REVERSAL OF. SITE-OWNERSHIP OF.

TEMPLE ON-ERECTION OF.

TRANSFER OF.

#### Absolute interest in-Essential incident of.

——Power to alienate an. (Lord Blaneshurgh.) JOV-DURGA DASI v. SAROJ RANJAN SINHA. (1929) 33 C.W.N. 1117 = 30 L.W. 494 = 50 C.L.J. 481 — A. I. R. 1929 P. C. 214 = 57 M. L. J. 704.

Alienability of-Custom against-Evidence of.

Instances of alienation—Absence of—Value of. See HINDU LAW—CUSTOM—ALIENABILITY OF PROPERTY.

#### Assessability.

-Distinction.

Property is one thing and assessability is another. (Viccount Casy.) SECRETARY OF STATE FOR INDIA 7. MAHARAJA OF BURDWAN. (1921) 48 I. A. 565 (576) = 49 C. 103 (116) = 26 C. W. N. 619 = 4 U. P. L. R. (P. C.) 1 = 35 C. L. J. 92 = 1922 P. C. 6 = 67 I. C. 835 = 42 M. L. J. 61.

Court-Taking or assignment of property by.

Power of. See COURT—SUIT BY OR AGAINST. (1919) 46 I. A. 228 = 42 A. 158 (167).

Damage caused by negligence to—Damages for— Owner's right to.

Contributory negligence on his part—Effect—English law—Canadian Common law. See DAMAGES—PROPERTY. (1922) 32 M. L. T. 36 (P. C.)

#### Dealing with-Customs and usages as to.

Change or loss by desuetade of.

Customs and usages as to dealing with property unless their continuance be enjoined by law, as they are adopted voluntarily, so they may be changed, or lost by desurefude. Custom implies continuance (243). (Lord Kingsdown.) ABRAHAM v. ABRAHAM. (1863) 9 M. I. A. 195-1 W. R. 1-2 Sar. 10-1 Suth. 501.

Decree for-Property passing under-Plaint body and schedule.

Descriptions of property in—Conflict between— Effect, See Decree—Property sued for. (1880) 7 C. L. B. 404.

#### Devolution of.

Legal course of—Alteration of—Deed or transfer teaching in—Validity of. See HINDU LAW, (1) INHERITANCE—LEGAL COURSE OF; (2) WILL—ESTATE UNKNOWN TO LAW—BEQUEST OF.

Modes of—Inheritance—Transfer—Distinction. See HINDU LAW—PROPERTY—DEVOLUTION OF—MODES OF. (1872) Sup. I. A. 47 (64).

Moveable and immoveable property—No distinction

Moveable and immoveable property—No distinction between. See PROPERTY—IMMOVEABLE PROPERTY—DISTINCTION, ETC.

(1927) 54 I. A. 276 = 5 R. 247.

English feudal principles as to.

Inapplicability to Hindu Zemindar of. See ExCHEAT—CROWN—ZEMINDAR.

(1876) 3 I. A. 92 (101) = 1 C. 391 (402). ESTATES.

#### PROPERTY-(Contd.)

#### Hereditary property.

—Descent to direct descendants of—Custom of—Onus of proof of. See HINDU LAW—INHERITANCE—CUSTOM OF—ANCESTRAL HEREDITARY PROPERTY.

(1873) 19 W. R. 211.

- Evidence prima facie of.

The fact that certain property has actually descended without dispute from father to son, and from the son to his mother, would prima facie tend to show that it was an hereditary property descendible from heir to heir in the ordinary way of Hindu property. RAJAH MAHENDRA SINGH: JOKHA SINGH. (1873) 2 Suth. 802 = 19 W. R. 211.

#### Immoveable property.

#### INTEREST IN-MEANING OF.

— Hindu law and usage—Reference to—Permissibility.

See LIMITATION ACT OF 1908, ART. 144—IMMOVEABLE PROPERTY OR INTEREST THEREIN.

(1873) I. A. 34 (50-1).

#### MEANING OF.

- See LIMITATION ACT OF 1908, ART. 144-IMMO-VEABLE PROPERTY-MEANING OF.

(1873) 1 I. A. 34 (52).

#### MOVEABLE PROPERTY.

——Distinction in India between, as regards succession.

There is little distinction in India between moveable and immoveable property when matters of succession have to be considered (284). (Lord Phillimore.) VERTANNES 2. ROBINSON. (1927) 54 I. A. 276=5 R. 247=

102 I. C. 629 (2)=29 Bom. L. R. 1017=
46 C. L. J. 126=25 A. L. J. 713=31 C. W. N. 1078=

39 M. L. T. 134 = 26 L. W. 417 = A. I. R. 1927 P. C. 151 = 53 M. L. J. 71.

#### MOVEABLE PROPERTY OR.

——Compromise—Property subject of —Nature of —
Mortgaged property—Execution purchase by mortgagee of
—Mortgager's application to set aside—Compromise by
mortgagee pending, allowing sale to be set aside—Subjectmatter of. See HINDU LAW—WIDOW — ALIENATION
BY—SUBJECT-MATTER OF, ETC.

(1922) 49 I. A. 342 (350) = 1 Pat. 741 (749-50).

——Redemption of mortgage—Right of—Nature of, See REGISTRATION ACT OF 1908, S. 17 (b) and (h)—PART-NERS. (1903) 30 I. A. 230=30 C. 1016.

RIGHT IN-MORTGAGE OF IMMOVEABLE PROPERTY-REDEMPTION RIGHT OF.

Nature of. See REGISTRATION ACT OF 1908, S. 17, Cls, (B) & (H).—PARTNERS. (1903) 30 I. A. 230 = 30 C. 1016.

SITUATION OF-PLACE OF-DECISION AS TO.

——Binding nature of, in subsequent suit. Sr. C. P. C. OF 1908, S. 11—CASES UNDER—LAND. (1872) 12 B. L. R. 391.

#### TITLE BY DEEDS TO.

Proof of What amounts to. See TITLE DEEDS. (1914) 27 M. L. J. 20.

#### Legal and equitable estates.

English law distinction between—Inapplicability in India of. See ENGLISH LAW—LEGAL AND EQUITABLE ESTATES. (1872) Sup. I. A. 47 (72).

PROPERTY-(Centel.)

Litigation-Property subject of, or to be recovered by-Agreement to share-Moveable or immoveable properties obtained

by compromise in.

-Meaning of. See LITIGATION-PROPERTY SUB-JECT OF, OR PROPERTY TO BE RECOVERED BY -AGREEMENT TO SHARE-MOVEABLE OR.

(1924) 50 I.A. 1 (20) = 48 M. 230.

Litigation respecting.

-Meaning of. See SALE-CONTRACT FOR-LITI-GATION RESPECTING PROPERTY.

(1925) 50 M. L. J. 644 (650).

Management of-Purposes of.

-Meaning of. See BENGAL ACTS-TENANCY ACT (1903) 31 I. A. 24-OF 1885, Ss. 92, 98. 31 C. 305 (311).

#### Market-Value of.

-Enhancement of -Erection of temple if has effect of. The erection of a temple would not of itself add to the selling value of the property on which it is erected (564). (Lord Shote.) KIDAR NATH T. MUTHU MAL

(1913) 40 C. 555 = (1913) M. W. N. 403 = 13 M. L. T. 434 = 127 P. L. B. 1913 = 17 C. W. N. 797 = 15 Bom. L. R. 467 = 18 I. C. 946 = 77 P. R. 1913 = 25 M. L. J. 176,

## Misdescription in deed of—Evidence of.

-Later deeds in favour of third parties by same executant with same description-Ratification of, at their instance-Evidence of-Admissibility. See MORTGAGE-DEED OF-RECTIFICATION OF - MISDESCRIPTION OF (1914) 41 I. A. 110 (119-20)= PROPERTY. 41 C. 972 (988).

## Moveable property.

-See Under PROPERTY-IMMOVEABLE PROPERTY.

#### Ownership of.

-Community of-Insertion of one or two names as representatives in case of-Practice as to. See OWNER-(1919) 47 I. A. 57 (66) = SHIP-COMMUNITY OF. 42 A. 368 (378).

-Native ideas as to-Community - Individuals -Rights of. See LAND-OWNERSHIP OF-NATIVE IDEAS (1926) 30 C. W. N. 961= AS TO. A. I. R. 1926 P. C. 131 (134).

-Native law as to-Communal or family, not individual, ownership. See AFRICA. (1927) 54 M. L. J. 394.

#### Personal and real property.

-Distinction between-Hindu law if recognises. See HINDU LAW-PROPERTY-REAL AND PERSONAL PRO. PERTY.

(1843) 3 M. I. A. 229 (241). Distinction between—Inapplicability in India of. See ENGLISH LAW-PERSONAL AND REAL ESTATE.

(1878) 5 I.A. 116 (126) = 3 C. 806 (814).

-Transfer of-Law applicable to-Distinction. See PROPERTY-TRANSFER OF-REAL AND, ETC. (1840) 2 M.I.A. 353 (386).

#### Price of.

-Enhancement of-Erection of temple on property if has result of. See PROPERTY-MARKET-VALUE OF. (1913) 40 C. 555 (564).

-Evidence of-Revenue Inspector's ex parte Valuation years before for ascertaining stamp duty payable on deed relating to larger area-Value of. See HINDU LAW-WIDOW-SALE BY-PRICE OF.

PROPERTY-(Contd.

Price of-(Contd.) -Fairness of-Test of-Sale in lump-Sale in small quantifies—Distinction. See HINDU LAW—WIDOW — SALE BY—PRICE OF—FAIRNESS OF—TEST OF.

(1922) 16 L. W. 478 (483-4)

Plunder of, in pursuance of common object-Persons joining in-Persons coerced to join in.

-Liability of, for loss caused. See DAMAGES --PLUNDER OF PROPERTY, ETC.

(1860)3 B. L. R. (P.C) 44 = 12 W. R. (P.C.) 38. Right of suit if.

-See C. P. C. OF 1908, S. 60-PROPERTY. (1871) 14 M. L. A. 40 (49).

## Right to-Pre-emption right if a.

See PRE-EMPTION-RIGHT OF -DECLARATION (1920) 47 I.A. 255 (260·1)= OF CASE. 48 C. 110 (114-5).

## Rule long and consistent as to-Reversal of.

-Propriety. See MAXIMS-STARE DECISIS-PRO-(1866) 11 M. I. A. 75 (90-1). PERTY.

## Site-Ownership of.

-Site covered by water-Site covered by crops-Dit

The site is the property, and the law knows no difference between a site covered by water and a site covered by crops provided the ownership of the site be ascertained (477-8.) (Lord Justice James.) LOPEZ v. MUDDEEN MOHUN THAKOOR. (1870) 13 M.I.A. 467=14 W.B. (P.C.) 11= 5 B. L. R. 521 = 2 Suth. 336 = 2 Sar. 594

## Temple on-Erection of.

-Selling value of property if enhanced by. See PRO-(1913) 40 C. 555 (564). PERTY-MARKET-VALUE OF.

### Transfer of.

-English law general principles as to-English law rules of detail-Applicability of. See HINDU LAW-PRO-PERTY-TRANSFER OF-ENGLISH LAW, ETC. (1872) Sup. I.A. 47 (64).

- Evasion of law-Transfer amounting to-Transfer permitted by late not a.

In the absence of immoral or illegal purposes accompanying and promoting an act of disposition of property, a disposition which the law admits cannot be evasive of the law (546). (Sir Edward V. Williams.) NAWAB UMJAD ALLY KHAN D. MUSSUMAT MOHUNDEE BEGUM.

(1867) 11 M.I.A. 517=10 W.B. (P.C.) 25= 2 Suth. 98=2 Sar. 315=B. & J's No. 7 (Oudh).

-Hindu and Mahamedan Laws-Transfer repugnant to-Transfer limited to single heir of transferre if a.

A sunnud, under which an estate was granted, stipulated that transfers by the grantee of the whole or part thereof should be valid, provided they should not be repugnant to the Hindu or Mahomedan Laws. Held that transfers by the grantee would have been repugnant to those laws if the transfers had been limited to the eldest son or other single heir of a Hindu or Mahomedan transferee (47).(Sir Barnet Peocock.) RAJA VENKATA NARASIMHA APPA RAO BAHADUR D. RAJA NARAYYA APPA RAO BAHADOOR.

(1879) 7 I.A. 38 = 2 M. 128 (134) = 6 C.L.B. 152 = 4 Sar. 81 = 3 Suth. 725.

-Real and personal estate—Law applicable to—Dir tinction.

The Chief Justice acted on the distinction between person (1922) 16 L.W. 478 (483). | al and real estate, the former of which is, generally speak.

#### PROPERTY-(Contd.)

Transfer of-(Contd.)

ing, governed by the law of the domicile of the owner and transferred by an assignment according to that law, the latter by the lex loci rei sitoe, and not so transferred (386). (Mr. Baron Parke.) COCKERELL D. DICKENS.

(1840) 2 M.I.A. 353=3 Moo. P. C. 98= 1 Mont. B. & D. 45 = Morton 407 - 1 Sar. 203.

-Suit based on-Validity of transfer-Onus of proof of-Suit against person who would be entitled to property but for such transfer.

The law is that the party who relies on a transfer of the property in suit must prove that it is valid in law, and not that the party claiming the property which would admitted. ly belong to him but for the alleged transfer must allege and prove that it is invalid. (Land Hobbana). IMMUDI-PATTAM THIRUGNANA P. PERIYA DORASAMI.

(1900) 28 I.A. 46 (53) = 24 M. 377 (384) -5 C.W.N. 217 = 7 Sar. 811.

-Writing-Necessity-Transfer of Property Act-Transfer prior to. See SALE-WRITING.

-Writing-Necessity of, in Hindu law. See HINDU LAW-PROPERTY-TRANSFER OF-WRITING.

(1876) 3 LA. 259 (278).

#### PROPRIETOR.

-Deed-Executant of-Description of, as "proprietor and heir"-Capacity of executant in case of-Executant in fact guardian of minor. See HINDU LAW-MINOR-GUARDIAN OF-ALIENATION BY-DEED OF.

(1856) 6 M.I.A. 393 (412).

Maintenance grant - "Proprietor" and "for ever" in -Meaning and effect of-Estate conveyed. See HINDU LAW-MAINTENANCE - GRANT FOR - WORDS-PRO-PRIETOR. (1900) 28 I. A. 1 (9-10) = 23 A. 194 (204-5).

Ownership if and when indicated by, or by word

The terms of "proprietor" and of "heir", when they occur. whether in deeds or pleadings or documentary proofs, may, indeed, by a mere adherence to the letter, be construed to raise the conclusion of an assumption of ownership, in the sense of beneficial enjoyment derogatory to the rights of the heir; but they ought not to be so construed unless they were so intended (412). (Lord Justice Knight Bruce.) HUNOOMAN PERSAUD PANDAY P. MUSSUMAT BABOOGE MUNRAJ KUNWAREE. (1856) 6 M.I.A. 393 = 18 W.R. 81 = 2 Suth. 29 = 1 Sar. 552 = Sevestie 253 N.

## PROTECTION-COVENANT TO AFFORD.

Adequate protection-Covenant to afford-If implied, See CONTRACT-LABOUR CONTRACT-PROTEC-(1918) 8 L. W. 324. TION.

## PROTECTORATE—BRITISH PROTECTORATE

Crown's jurisdiction in-Extent of-Foreign Jurisdiction Act, 1890-Effect. See FOREIGN JURISDICTION ACT, 1890-EFFECT-PROTECTED COUNTRY.

(1926) 30 C. W. N. 961 = A.I.R. 1926 P.C. 131 (133).

Native subjects in-Rights of, created prior to cestion of land to Crown-Orders in Council extinguishing Validity-Act of State-Foreign Jurisdiction Act, 1890-Effect. See ACT OF STATE-ACT AMOUNTING TO AN. OR NOT-BRITISH PROTECTORATE.

(1926) 30 C.W.N. 961 = A.I.B. 1926 P.C. 131 (136)

Position and status of-Crown's power over. In the general case of a British Protectorate, although the protected country is not a British dominion, its foreign malions are under the exclusive control of the Crown, so that its Government cannot hold direct communication with

#### PROTECTORATE-BRITISH PROTECTORATE -(Contd.)

any other foreign power, nor a foreign power with its Government. The protected state becomes only semisovereign; for the protector may have to interfere, at least to a limited extent, with its administration in order to fulfil the obligations which international law imposes on him to protect within it the subjects of foreign powers. A restricted form of extra-territorial sovereignty may have its exercise called for, really involving division of sovereignty in the hands of protector and protected. But beyond this, it may happen that the protecting power thinks itself called on to interfere to an extent which may render it difficult to draw the fine between a protectorate and a possession. (Viscount Holdane.) SOBBUZA II r., MILLER.

(1926) 30 C.W.N. 961 - 99 I.C. 265 -A.I.R. 1926 P.C. 131 (133).

#### PROVINCIAL INSOLVENCY ACT III OF 1907.

-(S.y Generally under INSOLVENCY.)

-Ss. 5. 6 15-Adjudication-Debter's right to, on his econ petition-Minanduct-Effect-Abuse of process of Cenri-Il'hat amounts to.

The Provincial Insolvency Act presents a complete and exact defineation of a debtor's right to an order of adjudication on his own petition. It entitles him to such an order when its conditions are satisfied. This does not depend on the Court's discretion, but is a statutory right; and a debtor who brings himself properly within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an "abuse of the process of the court." stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the Court, and not on the initial proceeding.

Semble, fraudulent and dishonest conduct of the debtor before filing his petition and the fact that his only object in filing it was still further to impede the creditors who were pressing him did not amount to an "abuse of the process of (Sir Lawrence Jenkins.) CHHATRAPAT the Court." SINGH DUGAR P. KHARAG SINGH LACHMIRAM.

(1916) 44 I.A. 11 = 44 C. 535 = 21 M.L.T. 36 = (1917) M.W.N. 100 - 15 A.L.J. 87 = 19 Bom. L.B. 174 = 25 C L.J. 215 = 21 C.W.N. 497 = 39 I.C. 788 = 10 Bur. L.T. 25 = 32 M.L.J. 1.

-S. 16 (4)-Undischarged insolvent-Property acquired by or deciding upon-Verting of-Right to deal with-Receiver's appointment subsequent-Effect.

Under S. 16, sub S. 4 of the Provincial Insolvency Act III of 1907, the moment an inheritance devolves on an insolvent, who is still undischarged, it vests in the Receiver already appointed, and he alone is entitled to deal with the property so devolving. The alternative in the section applicable to vesting in the Court was no doubt inserted to provide for the case of a Receiver not being appointed at the same time as the adjudication of insolvency was made and to foreclose an argument that vesting was suspended until the actual appointment of a Receiver. The Court only acts through a Receiver, and any estate acquired by or devolving upon an insolvent is vested in him as from the date of acquisition or devolution whatever the date of the receiver's actual appointment (192). (Lord Salveten.) KALA CHAND BANERJEF P. JAGANNATH MARWARI.

(1927) 54 I. A. 190 = 54 C. 595 = 29 Bom. L.R. 882 = 101 I.C. 442 = 31 C.W.N. 741 = 25 A.L.J. 621 = 45 C L.J. 544 = 39 M.L.T. 5 = 26 L.W. 263 = AIR. 1927 P.C. 108 = 52 M.L.J. 734 (P. C.)

Vesting in Court-Provision as to-Object of. The alternative in S. 16, sub-S. 4 of the Provincial In-

# PROVINCIAL INSOLVENCY ACT III OF 1907 PROVINCIAL INSOLVENCY ACT III OF 1907— (Contd.)

heing appointed at the same time as the adjudication of insolvency was made and to foreclose an argument that vesting was suspended until the actual appointment of a receiver (192). (Lord Salvesen.) KALA CHAND BANER-JEE v. JAGANNATH MARWARI. (1927) 54 I. A 190=54 C. 595=29 Bom. L.B. 882=101 I.C. 442=21 C.W.N. 741=25 A.L.J. 621=45 C.L.J. 544=

31 C.W.N. 741 = 25 A.L.J. 621 = 45 C.L.J. 544 = 39 M.L.T. 5 = 26 L.W. 263 = A.I.R. 1927 P.C. 108 = 52 M.L.J. 734 (P.C.)

—S. 16(5)—Mortgage—Suit to enforce—Death of mortgagor pending, and his son (undischarged involvent) brought on as Legal Representative—Final decree obtained against son without impleading receiver—Effect.

Pending a sait to enforce a mortgage, the mortgager died, and his interest devolved on his son, an undischarged insolvent, whose property had vested in a Receiver appointed in insolvency. Without making the receiver a party to the suit and giving him an opportunity to redeem the property, the mortgagee brought the son on record in the place of his deceased father, and obtained first a preliminary decree, and afterwards a final decree by which the son was debarred from all right to redeem the mortgaged property. The High Court held that that procedure was justified by the terms of S. 16, sub-S. 5 of the Provincial Insolvency Act. They interpreted that clause as inferring that the secured creditor was entitled to deal with the security as though there had been no vesting in the Court or the receiver.

Held that that construction of the clause could not be supported and that the whole proceedings by which the son was made a party to the suit were ineffective to bind the equity of redemption vested in the receiver (193.4).

That the rights of the secured creditor over a property are not affected by the fact that the mortgagor or his beir has been adjudicated an insolvent is, of course, plain, but that does not in the least imply that an action against him may proceed in the absence of the person to whom the equity of redemption has been assigned by the operation of law. The latter alone is entitled to transact in regard to it, and he, and not the insolvent, has the sole interest in the subject-matter of the suit. To him, therefore, must be given the opportunity of redeeming the property. The contrary view would encourage collusive arrangements between the secured creditor and the insolvent and might involve the sacrifice of valuable equities of redemption which ought to be made available for the benefit of the unsecured creditors of the insolvent with whose interests the receiver is charged (193.4). (Lord Salvern.) KALA CHAND BANERJEE P. JAGANNATH MARWARI. (1929) 54 I. A. 190=

54 C. 595 = 29 Bom. L.R. 882 = 101 I.C. 442 = 31 C.W.N. 741 = 25 A.L.J. 621 = 45 C.L.J. 544 = 39 M.L.T. 5 = 26 L.W. 263 = A.I.R. 1927 P.C. 108 = 52 M.L.J. 734 (P.C.)

SS. 18 (1) AND 16—HINDU DAYABHAGA FAMILY— ADULT MEMBERS OF, CARRYING ON BUSINESS— INSOLVENCY OF—RECEIVER IN.

--- Property vested in-Minor members of family-Property of, if included.

On the adjudication of the adult male members of a Dayabhaga joint family and the vesting, under S. 18 (1) of the Provincial Insolvency Act of 1907, of the property of a business carried on by them in a receiver, no property belonging to a minor member of the family could vest by the adjudication in the receiver, but what would vest in him would be the right (if it existed) to recover from the minor property in his possession belonging to the firm (118). (Sir Lawrence Jenkins.) Sanyasi Charan Mandal v. Krishnadan Banerji, (1922) 49 I. A, 108 =

(Contd.) 49 C. 560 (571) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L. R. 700 = 35 C. L. J. 498 =

(1922) M. W. N. 364 = 26 C. W. N. 954 = 67 I. C. 124 = 16 L. W. 536 = A. I. B. 1922 P. C. 237 = 43 M. L. J. 41.

Vesting in, of assets of firm-Effect of, on assets of firm in hands of minor members-Recovery of-Right of, if also vested in receiver

Four adult brothers who were governed by the Davabbaga law and who carried on certain businesses, were adindicated insolvents under the Provincial Insolvency Act of 1907, and a receiver was appointed under S. 18, sub-S. 1 of that Act.

Held that all the property of the firm vested in the Receiver on the making of the order of adiadication (S. 16 of that Act), and if any part of it had got improperly into the possession of a minor member of the family of the insolvents, the right to recover it was in the receiver (117).

It is only by its coming into the hands of the rereiver that its rateable distribution among the general body of creditors can be secured. Nor does it make any difference that the business was conducted by the male adult members of a Hindu family governed by the Davabhaga law: the rights and liabilities of a minor member of such a family would be measured by similar principles for the purpose now under consideration (117). (Sir Lawrence Jenkins.) Sanyasi Charan Mandal 2: "Krishnadan Banerii.

(1922) 49 I. A. 108 = 49 C. 560 (570) = 30 M. L. T. 228 = 20 A L.J. 409 = 24 Bom. L. B. 700 = 35 C. L. J. 498 = (1922) M. W. N. 364 = 67 I. C. 124 = 26 C. W. N. 954 = 16 L. W. 536 = A. I. R. 1922 P.C. 237 = 43 M. L. J. 41.

Vesting in. of assets of firm—Effect of, on assets of firm in hands of minor members—Recovery of—Suit by firm's creditor for—Maintainability—Parties—Receiver if one.

The appellant and his four adult brothers were members of a joint Hindu family governed by the Davahhaga law. At the time of the death of his father, the appellant was a minor. The father had two businesses which were carried on by the eldest son as the karta. assisted by his adult brothers. After the death of the father, a new business was started by the eldest son. The businesses ended in loss, the adult brothers were adjudicated insolvents, and a receiver was appointed under S. 18 (1) of the Provincial Insolvency Act, in whom the property of the firm was vested. Meanwhile there was a partition of the ioint family property under which the appellant got one-fifth of bo h ancestral and self-acquired properties.

The plaintiffs-respondents were persons to whom more; was due under a hand note and hath-chitta signed by the adult brothers. The money due under the said documents was in fuct borrowed for the new business started by the eldest brother. As the dividend received by the plaintiffs in the insolvency fell short of the amount due to them, they sued the appellant for the recovery of the sums due under the said documents and claimed a money decree against him. The appellant denied his membership of the new business, and relinquished all claim to a share in the property thereof. The question for decision was whether, assuming that the appellant had come under any liability, that liability could be enforced by the plaintiffs, and whether they could recover for their exclusive benefit.

Held that, assuming that the appellant (a minor at the date of the suit) had been admitted to the benefits of the new business within the meaning of S. 247 of the Contract Act, the suits, as constituted, were misconceived, and should have been dismissed (118),

#### PROVINCIAL INSOLVENCY ACT III OF 1907 PUBLIC SERVANT-(Centd.) -(Contd.)

In the circumstances the receiver is a necessary party to any proceeding for the purpose of realising assets liable for the firm's debts, and the proceeds of any realization would be applicable, not towards the exclusive discharge of any individual debt as the plaintiffs desire, but for rateable distribution among the whole body of the firm's creditors (118). (Sir Lawrence Jenkins.) SANYASI CHARAN MANDAL 2. KRISHNADHAN BANER II. (1922) 49 I. A. 108=

49 C. 560 (572) = 30 M. L. T. 228 = 20 A. L. J. 409 = 24 Bom. L. B. 700 = 35 C. L. J. 498 =

(1922) M. W. N. 364 = 26 C. W. N. 954 = 16 L.W. 536 = A. I. R. 1922 P.C. 237 - 67 I. C. 124 43 M. L. J. 41.

-S. 51-Fraudulent preference. See SINGAPORE BANKRUPTCY ORDINANCE, S. 51 (1).

#### PUBLIC NUISANCE.

-Sa Penal Code, S. 290. (1897) 7 M. L. J. 33.

#### PUBLIC OFFICES -- EXCLUSION OF WOMEN FROM.

Common and statutory law as to-History of, Sor WOMEN. (1929) 58 M. L. J. 300.

#### PUBLIC POLICY.

-Murderer-Succession to estate of murdered-Right of, See HINDU LAW- INHERITANCE -- EXCLUSION FROM-MURDERER. (1924) 51 I. A. 368 48 B. 569. -Statute-Provision of-Conflict between- Which prevails. See STATUTE-PUBLIC POLICY.

(1924) 51 I. A. 368 (373) = 48 B. 569.

## PUBLIC PURPOSE.

#### Dharmasala if a.

-See CALCUTTA MUNICIPAL ACT OF 1899, SS. 14, 357, 356, (1922) 49 I. A. 255 (259) = 49 C. 838 (842).

-Resumption of, for public purpose -- Provision for-Residence of Government officials if such a purpose-Lessor Government. See LEASE-RESUMPTION BY LESSON OF, ETC. (1914) 42 I. A. 44 (47) = 39 B. 279 (294-5).

Resumption of, for public purpose—Provision as to

Resumption pursuant to—Public nature of purpose— Lessor's view as to-Court's interference with. Sor LEASE -RESUMPTION BY LESSOR, ETC.

(1914) 42 I. A. 44 (47) = 39 B. 279 (295).

### Meaning of.

-See STATUTES-22 GEO. III, c. 45. (1782), S. 1-PUBLIC PURPOSE. (1913) 19 I. C. 765 (768) = 17 C. W. N. 735.

Their Lordships do not agree with the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. The phrase " public purpose ", whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned (47). (Lord Duncdin.) HAMABAI FRAMJI PETIT P. SECRETARY OF STATE FOR (1914) 42 I. A. 44 = 39 B. 279 (295) = 17 Bom. L. B. 100 = 13 A. L. J. 113 = 21 C. L. J. 134 = (1915) M. W. N. 603 = 17 M. L. T. 80 = 2 L. W. 191 INDIA.

## PUBLIC SERVANT.

Bona fide but mistaken act of-Damages for-Liabihty for. See DAMAGES-ARREST WRONGFUL-WRONG FUL CONFINEMENT. (1882) 9 I. A. 152 = 9 C. 341.

19 C. W. N. 305=27 I. C. 26=28 M. L. J. 179.

-Public Officers -- Statute-Powers conferred by-Acts done in good faith in exercise of-Protection from suit in Civil Court in respect of -Ultra vires acts - Protection if extends to. See BENGAL ACTS-ALLUVION AND DILLUVION ACT OF 1847, S. 9.

(1889) 17 I.A. 40 (53) = 17 C. 590 (603-4).

#### PUBLIC SERVICE.

-See Statutes-22 Geo. III, c. 45-S. 1-Public SERVICE. (1913) 19 I.C. 765 (768),

#### PUBLIC STREET.

(See also HIGHWAY.)

-Religious processions along. See RELIGIOUS PRO-CESSIONS.

-Rights of public in-Religious processions-Right to carry.

The village in which the street in question is situated is an ordinary ryotwari village. The streets are public streets now vested under the Madras Act V of 1884 in the local board. All members of the public have equal rights in them, including the right to carry religious processions (100 1). (Lord Macnaghten.) SADAGOPA CHARLAR P. (1907) 34 I.A. 93 30 M. 185 (190) = RAMA RAO,

5 C L J. 566 - 11 C W.N. 585 - 2 M L.T. 204 -9 Bom LR 663 4 ALJ 333 17 M.L.J. 240

#### PUFFER PUFFING.

-So Auction sale (1) Puffers and (2) Puff-ING.

#### PUNJAB.

#### Agriculturists in.

FATHER-ANCESTRAL LANDS-ALIENATION OF.

-Son's suit to set aside-Validity of consideration as against son-Proof of-Onus on vender.

The plaintiffs, who were Sikh Jats, sued to obtain posession of ancestral lands which had been conveyed in their lifetime by their father to the defendant. The plaintiffs alleged, and the defendant admitted, that they and their father were agricultorists to whom the custom of the agriculturists of the Punjab applied. They also alleged that the sale to the defendant was not for necessity, not being for the payment of a just debt, and was therefore invalid as against them.

Held that the onus of proving the validity as against the plaintiffs of the consideration for the sale was on the defendant, the vendee (294). (Sir John Edge.) KIRPAL SINGH P. BALWANT SINGH. (1912) 40 C. 288=

13 M.L.T. 5=11 A. L. J. 1=9 P.W R. 1913 -17 C.L.J. 137=15 Bom. L.B. 79=17 C.W.N. 302= 28 P.L.B. 1913-(1913) M.W.N. 58= 26 P. R. 1913-17 I.C. 666-24 M.L.J. 318.

-Validity against son of-Condition-Rule as to-" Just delt " within - Meaning of .

According to the custom of the agriculturists of the Punjab, the payment of a just debt by a male proprietor is a necessity for which he can validly as against the reversioners alienate ancestral lands (295).

A "just debt" within the above rule means a debt which is actually due and is not immoral, illegal or opposed to public policy, and has not been contracted as an act of reckless extravagance or of wanton waste, or with the intention of destroying the interests of the reversioners (295). (Sir John Edge.) KIRPAL SINGH P. BALWANT (1912) 40 C. 288=13 M.L.T. 5= SINGH.

11 A.L.J. 1=9 P.W.B. 1913=17 C.L.J. 137= 15 Bom. L. B. 79=17 C. W. N. 302= 28 P.L.B. 1913=(1913) M.W.N. 58= 26 P. B. 1913 = 17 I C. 666 = 24 M.L.J. 318. PUNJAB-(Contd.)

Agriculturists in-(Contd.)

KHATTARS-SUCCESSION AMONG.

-Daughter or sister-Exclusion by collaterals of in regard to self-acquired property of deceased-Custom of-Proof of-Self-acquired property within meaning of custom.

The parties belonged to one of the agricultural tribes of the Punjab, called the khattar. The questions for decisions were (1) whether the custom, which admittedly existed in the tribe, by which collaterals deprived a daughter or a sister of the right of succession to the "ancestral" property of her father or brother, extended to the self-acquired property of the deceased father or brother, and (2) whether a certain item of property was the self-acquired property of the deceased within the meaning of the said custom.

Hold, on the evidence affirming the court below, that the custom in question did not extend to self-acquired property, and that the property in question was the self-acquired property of the deceased within the meaning of the custom. (Mr. Ameer Ali.) AHMAD KHAN 2, CHANNI BIBL. (1925) 52 I.A. 379=6 Lah. 502=

6 L.R. P.C. 190 = 3 O.W.N. 93 = 30 C.W.N. 506 = A. I. R. 1925 P. C. 267 = 91 I. C. 455 = 50 M. L. J. 637.

SUCCESSION IN DEFAULT OF MALE ISSUE—FEMALE HEIRS—EXCLUSION OF, BY COLLATERALS.

— Custom of — Mahomedan tribes who are endogamous — Applicability to — Exception in favour of daughter marrying near collateral who remains in her father's house as khana-damad (resident son-in-law).

Assuming that there is a general custom of agnatic or collateral succession in default of male issue to the exclusion of female heirs among the agricultural tribes of the Punjab, about which the decisions of the Punjab Chief Court are by no means uniform, especially in the case of Mahomedan tribes who are endogamous, it is clear that the rule is admittedly subject to a considerable number of exceptions. Held that the appellant had proved the custom set up by him that, in the sub-community of Dabs settled in the Jhang District of the Punjab, a daughter married to a near collateral who took up his residence in the father-in-law's house as a khana-damad or "resident son-in-law" succeeded to her father's inheritance to the exclusion of the agnates. (Mr. Amorr Ali.) BEG v. Allah Ditta.

(1916) 44 LA. 89=44 C. 749=45 P.B. 1917= 21 M.L.T. 310=12 P.W.R. 1917=21 C.W.N. 842= 15 A. L. J. 525=19 Bom. L.R. 388=26 C.L.J. 175= 38 I.C. 354=32 M.L.J. 615.

#### Customary law in.

-Pagwand and Chundawand rules-Applicability-Children of two wives-Property divided and separated off between-Descendant of child of one wife-Succession to-Collaterals entitled to.

S, a Punjabi governed by customary law, had two sons by his first wife and two sons by his second wife. In 1858 he distributed villages between his four sons. From that time, and for the long period of about 60 years there was as between those two families (if not as between the four sons) a complete separation of the possession and ownership of the properties thus partitioned. In 1907, B, a descendant through the second wife of S, died childless, and the question arose whether the property. Which was allotted to B's ancestor at the partition of 1858 and which had descended to B, devolved upon a collateral through the Second wife also were entitled to share in the succession. In other words, the question was whether in the succession of B the full-blood excluded the half-blood,

PUNJAB-(Contd.)

Customary law in-(Contd.)

Held, affirming the High Court, that in the distribution of the succession to B the full-blood excluded that half-

blood which was claiming in the case.

The theory of abondoning the pagwand rule for the chundawand rule need not necessarily be put forward. For when the distribution or segregation which occurred and has been so long acted on arose, each portion of property thus succeeded to by the children of the second wife became a separate entity; and the rules of succession to it are rules of succession to the owner of it and not to the anterior or ancestral owner to whom, prior to distribution, a much larger entity inclusive of that portion belonged. It is, therefore, possible and it is necessary to decide this case on the simple ground that when the smaller entity thus formed is succeeded to the pagwand system may still apply, but it applies within the simple family of S's second wife's children and not within the range of the complex family consisting of the children of his two wives (205.6). (Lord Show.) NARI BAKHSH P. AHMAD KHAN.

(1924) 51 I.A. 199 = 5 Lah. 278 = 29 C.W.N. 510 = 20 L. W. 999 = 34 M. I. T. 106 = (1924) M. W. N. 425 = 80 I.C. 158 = A.I.B. 1924 P.C. 117.

#### Mahomedans in.

- Sheikh Ansaries - Ancestral property-Gift to daughter of, by souless father-Life estate only conveyed under-Custom of-Evidence of.

Held, that plaintiffs had failed to prove the existence of a custom, among Sheikh Ansaries of a Pathan tribe of Punjab Mahomedans, by which a female could take only a life interest in the ancestral property which had come to her by gift from her sonless father, and had in such property no power to alienate it by a gift in her lifetime (29.30).

Held further, that neither evidence as to the limited rights by custom of a widow in her deceased husband's property, nor evidence that a Mahomedan father had been prevented by some local custom from giving the bulk of his property to one of his sons was evidence of the custom alleged (30). (Sir John Edge.) UMAR KHAN v. NIAZ-UD-DIN KHAN. (1911) 39 I. A. 19 = 39 C. 418 (437.8)

15 C. L. J. 172=16 C. W. N. 458=9 A. L. J. 137= 14 Bom. L. B. 182=13 I. C. 344=12 P. L. B. 1912= 11 M. L. T. 76=6 P. W. B. 1912= (1912) 1 M. W. N. 77=22 M. L. J. 240.

#### Mohal in-Description of.

-Persons entitled to.

As the Court of Appeal find there seems to be little doubt that Mohal is the name of a sub-division of the tribe of Rajputs, and so far as the evidence in this case shows, there is no other tribe in the Punjab which has a got of the name of Mohal."

And the same court also states-

"The conclusion at which we arrive is that, so far as is known, there are no persons in the Punjab, who have any real right to be described as Mohals, except Rajputs and some Jats, who rightly or wrongly claim that they are really of Rajput origin" (301-2). (Lord Carson.) GHULAM RASUL KHAN v. SECRETARY OF STATE FOR INDIA.

(1925) 22 L. W. 299=86 I. C. 654=23 A. L. J. 639= 30 C. W. N. 101=26 P. L. B. 390=6 L. 269.

## Village Shamilat-Share in-Right to.

Persons paying grazing dues but not being a protrietor paying land revenue—Right of.

Where plaintiffs, who did not own any lands assessed to land revenue, claimed that as they had paid grazing dues they should be treated in the partition of the common land

#### PUNJAB-(Contd.)

#### Village Shamilat-Share in-Right to-(Contd.)

of the village as if they were proprietors of the village holding lands assessed to land revenue, held that plaintiffs had not proved any right to participate in the partition of the common lands and that their suit had been rightly dismissed.

Payment of tirni by a person who is not a proprietor paying land revenue does not confer upon him any right to share in the Shamilat of the village. (Sir John Edge.) (1915) 19 C. W. N. 1023= BAGGA P. SALEH.

2 L. W. 706 = (1915) M. W. N. 642 = 6 P. R. 1916 = 1 P. W. R. 1916 = 29 I. C. 1005 = 29 M. L. J. 137.

#### PUNJAB ACTS.

#### Alienation of Land Act (XIII of 1900).

-8. 2 (3)-Tea-garden land-Pre-emption right in respect of. See PUNJAB ACTS-PRE-EMPTION ACT 11 OF 1905, S. 3(1). (1923) 51 I. A. 11 = 5 Lah. 50.

#### Court Act (XIII of 1888).

-S. 6-Liquidation of Company-Supercision of-Additional District Judge to whom District Judge assigned all functions of supervision-furridiction of

The question was whether the jurisdiction which the District Court had, under the Companies Act, of supervising the liquidation of a Company was confined to the District Judge or could be exercised also by an additional District Judge to whom the District Judge had assigned all the functions of supervising the liquidation.

Held that, under S. 6 of the Punjab Courts Act of 1888, the Additional District Judge had jurisdiction to pass orders in the matter of the winding-up of the Company. (Lord Phillimore.) BEHARI LAL-BULAKI RAM P. KUNDAN (1922) 27 C. W. N. 509 (510)=

A.I.R. (1922) P. C. 361 - 32 M. L. T. (P. C.) 15 = (1923) M. W. N. 388 = 69 I. C. 356 = 47 M. L. J. 322.

#### Court of Wards Act II of 1903.

-Ss. 11 and 12-Deputy Commissioner-Injunction restraining alienation-Power to issue-Landholder and property not within jurisdiction.

A. Deputy Commissioner has no power under Ss. 11 and 12, of the Punjab Court of Wards Act, 1903, to issue an injunction restraining a landholder from alienating property, neither the property nor the landholder being, at the time when the injunction was issued, within the area of the Deputy Commissioner's jurisdiction (229).

Quaere, whether the Deputy Commissioner's authority would have extended to making such an order had the property been within his jurisdiction (229). (Lard Buckmaster). MUHAMMAD RUSTAM ALI P. MUSHTAQ HUSAIN.

(1920) 47 I. A. 224 = 42 A. 609 (615) = (1920) M. W. N. 565 = 18 A. L. J. 1089 = 12 L. W. 539 = 28 M. L. T. 220 = 57 I. C. 329 = 39 M. L. J. 283.

#### Land Revenue Act XVII of 1887.

8. 44-Record of rights-Entry in-Effect-Land freed to be wash or graveyard-Wash by dedication or by

Where the question for decision was whether the land in talt was the private property of A or was wakf and it appeared that an area of land comprising the suit land was in record of rights entered as " in the possession of the Mahomedans" and was described as Kabristan or ghairmamkin Khabristan, that is "graveyard or unculturable had forming portion of a graveyard," though in the ownerhip column A was entered as owner, held that by virtue of the provisions of S. 44 of the Punjab Land Revenue Act entry in the record of rights was conclusive on the point red that the suit land formed part of a graveyard set spart for the Mussulman community and that by user, if CHANDRA BOSE. (1903) 30 I. A. 249 = 31 C. 11 (31)=

#### PUNJAB ACTS-(Contd.)

#### Land Revenue Act XVII of 1887-(Contd.)

not by dedication, it was wakf. Held, also, that in the circumstances the entry of A, as owner was not inconsistent with the conclusion that the land was wakf. (Lord Macnaghten). COURT OF WARDS :: ILAHI BAKSH.

(1912) 40 I. A. 18-40 C.297-13 M. L. T. 318-(1913) M. W. N. 270 = 1 P. W. R. 1913 = 11 A. L. J. 265 - 17 C. L. J. 360 - 27 P. R. 1913 = 83 P. L. R. 1913 - 17 I. C. 744 - 15 Bom. L. R. 436 -25 M. L. J. 1.

#### Laws Act IV of 1872.

-Adjudication prior under-Adjudication sub-equent by Bombay High Court under Indian Insolvency Act (11 and 12 Vict., c. 21)—Effect—Administration of estate— Right of, Sw Insolvency—JURISDICTION—CONFLICT OF-ADJUDICATION PRIOR, ETC.

(1910) 37 I. A. 86 (92-3) = 37 C. 418 (424).

-Scope and applicability of.

Under the Punjab Laws Act, IV of 1872, in a series of sections beginning with S. 22, the Punjab Legislature has created a system of insolvency of its own, but, of course, such an Act can be effective only within the ambit of the jurisdiction of the Legislature which passed it. (Sir Arthur Wilson). OFFICIAL ASSIGNEE, BOMBAY F. REGISTRAR, SMALL CAUSE COURT, AMRITZAR.

(1910) 37 I. A. 86 - 37 C. 418 - 14 C. W. N. 569 (571) = 7 A. L. J. 357 = 12 Bom. L. R. 395 = 68 P. W. R. 1910 = 7 M. L. T. 417 = 11 C. L.J. 443 = 45 P. R. 1910.

-S. 5-Brahmins of Kashmir settling in Amrittar-Applicability to.

S. 5 of the Punjab Laws Act IV of 1872. as amended. applies to a family of Brahmins which came from Kashmir and settled in Amritzar in the Punjab (186). (Sir John Edge.) DURGA DEVI :: SHAMBHU NATH.

(1924) 51 I.A. 182 = 5 Lah. 200 = 22 A. L. J. 394 = 26 Bem. L. R. 557 = A. I. R. 1924 P. C. 113 = 34 M. L. T. 93 - (1924) M. W. N. 434 - 20 L. W. 216 = 29 C. W. N. 106 - 80 I. C. 965 - 46 M. L. J. 661.

8. 5-Effect-Custom-Personal law-Applicability -Presumption-Onus of Proof of.

With regard to the true relation of the necessity of proof as between customary and established law, Robertson, J. observed in a case arising on the interpretation of S. 5 of the Punjab Laws Act: "In all cases it appears to me under this Act, it lies upon the person asserting that he is ruled in regard to a particular matter by custom, to prove that he is so governed, and not by personal law, and further, to prove what the particular custom is. There is no presumption created by the clause in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision, . . . . When either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom which he seeks to apply; if he fails to do so clause (b) of S. 5 of the Punjals Laws Act applies, and the rule of decision must be the personal law of the parties subject to the other provisions of the clause,"

The principle that underlies this statement is correct (13-4). (Lord Buckmaster). ABDUL HUSSEIN KHAN P. (1917) 45 I. A. 10= BIRI SONA DERO.

45 C. 450 (459) = 22 C. W. N. 353 = 23 M. L. T. 117 = 16 A.L.J. 17 = 27 C.L.J. 240 = 20 Bom. L. R. 528 = 4 Pat. L. W. 27=43 I. C. 306=34 M. L. J. 48.

-8.5 (b)-Hindus-Sikhs if within.

The term Hindu in S. 5 (b) of the Punjab Laws Act is used in the old sense, and includes Sikhs (255). (Sir Arthur Wilson.) RANI BHAGWAN KUAR D. JOGENDRA

PUNJAB ACTS-(Contd.)

Law Act IV of 1872-(Contd.)

7 C. W. N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381.

-S. 27-Effect-Insolvent's estate-No testing of, in Court or Receiver-Administration alone vested in Court.

Under S. 27 of the Punjab Laws. Act IV of 1872 what is entrusted to the Punjah Court is merely administration of the estate of the involvent. Under that Act no transfer of property takes place. (Sir Arthur Wilson). OFFICIAL ASSIGNEE, BOMBAY P. REGISTRAR, SMALL CAUSE (1910) 37 I. A. 86 (92)= COURT, AMRITZAR. 37 C. 418 (425)=7 M. L. T. 417=

14 C. W. N. 569 = 7 A. L. J. 357 = 12 Bom. L. R. 395 = 68 P. W. R. 1910 - 11 C. L. J. 443 - 45 P. R. 1910 -119 P. L. R. 1910 = 20 M. L. J. 432.

### Laws Act XII of 1878.

-S. 9. 12-Seep and effect of -Effect on of Se. 10

Semble, the generality of Ss. 9 and 12 of Act XII of 1878 is not cut down by Ss. 10 and 11. These sections apply a different rule in the cases of villages from that which is applicable in the case of towns and cities. And it may well be that they were not intended to do more. (Lord Macnaghten). RAHIM-DD-DIN 2. REWAL.

(1903) 30 I. A. 89 (92) = 30 C. 635 = 7 C. W. N. 498 = 66 P. R. 1903 - 8 Sar. 461.

-Ss. 10 and 12-l'illage Communities in-Meaning

The expression "village communities" in the Act of 1878 is not used to denote a village community of the typical sort, consisting of members of one family or one clan holding the village lands in common and dividing between them the agricultural lambs according to the custom of the village. It seems rather to be used in a popular sense to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs, and subject to the administrative con trol of the village offices. There seems to be no reason why a village community should be confined to the landowners in the village. Occupancy tenants are members of a village community within the meaning of the Act, and so are all persons in an inferior position who belong to the village, though they may be unconnected with the land and not entitled to any right of pre-emption under the Act of RAHIM-UD-DIN P. REWAL. 1878. (Lord Macnaghten). (1903) 30 I. A. 89 (92-3)= 30 C. 635=

7 C. W. N. 498 = 66 P. R. 1903 = 8 Sar. 461.

## Pre emption Act II of 1905.

-S. 3 (1)-Agricultural land under-Tea-garden land if-Pre-emption right in respect of-Punjab Alienation of Land Act (XIII of 1900)-S. 2 (3)-Effect.

The suit was for possession by pre-emption of a portion of an estate in the Punjab known as the Gopalpur Tea Estate, and the question for decision was whether the property in suit was definable as agricultural land within the meaning of sub-S. (1) to S. 3 of the Pre-emption Act II of 1905. The suit estate comprised tea-garden lands, timber forests, factories (with plant and machinery) and other buildings.

Held, affirming the courts below, that the suit tea-garden land was" agricultural" land within the meaning of the Punjab Pre-emption Act, 1905. (Lord Shaw). KAJU (1923) 51 L. A. 11=5 Lah. 50= MAL P. SALIG RAM.

46 M. L. J. 536=22 A. L. J. 40= A. I. R. 1924 P. C. 1=(1924) M. W. N. 172= 33 M. L. T. 470=10 O. & A. L. R. 261= 29 C. W. N. 395=79 I. C. 946.

PUNJAB ACTS-(Contd.)

Pre-emption Act II of 1905-(Contd.)

-S. 12 (a)-Scope and effect of-Pre-emption-Remoter heirs of vendor-Right of.

S. 12 (a) of the Ponjab Pre-emption Act, 1905, does not contemplate merely inheritance by one person, or even by a group of people, who at the critical moment would be together equally entitled to inherit the property sold, if the vendor were dead, but it assumes that there will be different priorities as between the different claimants and that such priorities shall be determined in due order of succession. The meaning of the rather obscurely worded S. 12 (a) is made clear by S. 25 of the Act. There may be several claimants for pre-emption in respect of the same sale, those with inferior rights to pre-empt trusting that those whose rights are superior to theirs may be unwilling or unable to pay the pre-emption price decreed (76), (Lord Buckmaster). SARZ ALI KHAN P. KHAIR MUHAMMAD (1922) 49 I. A. 74=3 L. 48 (49-50)=

30 M. L. T. 237 = 20 A. L. J. 427 = 35 C. L. J. 514 = 7 P. W. R. 1922 = 1 P. L. B. 1922 = A. I. R. 1922 P. C. 139 - 67 I. C. 264 = 43 M. L. J. 49.

-S. 17-Vendor-Remote heirs of- Suit to enforce claim to pre-empt by-Maintainability.

There may be several claimants for pre-emption in respect of the same sale, those with inferior rights to pre-empt trusting that those whose rights are superior to theirs may be unwilling or unable to pay the pre-emption price de-

To be in a position to enforce by suit a claim to preempt under the Act the claimant must under S. 17 of the Act have given a notice within a limited time of his intention to enforce a right of pre-emption. It is obvious that a claimant to be successful need not have been at the date of the sale or at any time the heir-presumptive of the vendor. The heir-presumptive may not have the means to purchase or for any reason may not be desirous to purchase, and may have omitted to give within the time limited a notice of his intention to pre-empt. (Lord Buckmaster.) SABZ ALI KHAN P. KHAIR MUHAMMAD KHAN.

(1922) 49 I.A. 74 (76) = 3 L. 48 (50) = 30 M. L. T. 237 = 20 A. L. J. 427 = 35 C. L. J. 514 = 7 P. W. R. 1922 = 1 P. L.R. 1922 = A. I. R. 1922 P. C. 139= 67 I. C. 264 = 43 M. L. J. 49.

#### PUNJAB CODE.

-Ss. 10 and 11-Marrriage contracts made prior to enactment of Code-Dewer mentioned in-Modification of

-Power of. It was suggested that the power of the Court under Ss. 10 and 11 of the Punjab Code to modify the dower mentioned in a marriage contract both in the case of a divorce and of the death of the husband was only to apply to future contracts, and not to contracts previously made. But their Lordships think it clear that these sections provide for the mode in which all contracts of this description which might come before the courts were to be treated (277). Kingsdown). MULKAH DO ALUM NOWAB TAJDAR BOHOO v. MIRZA JEHAN KUUR. (1865) 10 M.I.A. 252=

2 W. R. P. C. 53=1 Suth. 554=2 Sar. 106= B. & J's No. 2 (Oudh).

-S. 19, cl. 4-Interest on mortgage-Usurious rate-31 per cent. per mensem if-Fair rate to be allowed in such case-A per cent. per annum if a.

A mortgage deed, executed in 1850, stipulated that the mortgagee was to be let into possession, to be at full liberty to enjoy the lands mortgaged, and to be at liberty to fell the trees or assign such produce to any person to whom he might think fit to give it. The mortgagor also promised to pay interest at the rate of 31 per cent, per mensem,

#### PUNJAB CODE-(Contd.)

In a sult brought by the mortgagee the Court below held that the amount of interest fixed by the deed, namely, 3\frac{1}{2} per cent, per mensem was usurious, and awarded half the amount of principal by way of interest. The question for decision was whether the amount of interest which had been awarded by the court below was a fair and equitable amount, or one which could legally stand. The Punjah Code, which had been extended to Oudh, admittedly applied to the case.

Held, modifying the decree below, that under S. 19 of the Punjab Code, a fair amount of interest would be at the rate of 12 per cent, per annum for the time during which the plaintiff was out of possession of the estate, and that he ought not to have any interest at all during the period in which the period is a which the period is a state.

in which he was in possession (86).

The amount of 3½ per cent, per mensem, or 42 per cent, per annum is unjustly usurious. At the same, time inferest equal to half, the amount of principal would not be much more than about 4 per cent per annum, and that would be too low a rate of interest to be allowed upon a mostgage in which 3½ per cent, per mensem had been agreed upon (86), (Sir Barnes Peaceck.) RAJAH MAHOMED AMEER HUSSUN KHAN D. THAKOOR MONOO SINGH.

(1875) 3 Suth. 85 - R. & J's. No 35.

Part II, S. 1-Running account-Payment by debtor's agent upon account continued for account months if a.

Payments made by a debtor's agent upon an account, continued monthly for several months ought to be regarded as tantamount (at least) to a running account, if not itself correctly described as a running account (385). (Lord Chelmiford). Shah MUKHUN LALL P. NAWAR IMTIA-200D DOWLAH. (1865) 10 M. I. A. 362

5 W. R. P. C. 18=1 Suth. 612=1 Sar. 160= R. & J's. No. 3(Oudh).

Part II. S. 1. Cl. (b) Acknowledgment of Jeht-Letter offering to pay principal by instalments and praying to be excused from payment of interest if an.

Their Lordships entertain no doubt that if the question were to be tried by the rules of English law before Lord Tenderden's Act, those letters offering to pay the principal money by instalments, and praying to be excused from the Payment of the interest, would be an ample acknowledgment to take the case out of the statute of limitations, and they are not aware of anything in the Punjah Code which would lead to a different conclusion (383). (Lord Chalmstord.) Shah Mukhan Lall, P. Nawah Intla-ZOOD DOWLAH. (1865) 10 M.I.A. 362

5 W. R. P. C. 18 = 1 Suth. 612 = 1 Sar. 160 = 'R. & J.'s No. 3 (Oudh).

Part 11, S. 1, Cl. (6)-Partial satisfaction of demand-Part bayment amounting to.

From Cl. 7 of S. 1 of Part II of the Punjah Code it appears, that it is not every part payment which will amount to "a partial satisfaction of demand" within the meaning of Cl. 6 of S. 1 of Part II of that Code. It must be a payment according to a regular and continuous course of dealing, "something tantamount to a running account" (384). (Lord Chelmtford.) SHAH MUKHUN LALL. P. NAWAB IMTIAZOOD DOWLAH.

18ath. 612=1 Sar. 160=E. & J.'s No. 3 (Oudh).

PURWAR RAJPUTS.

Right of other branches to equal shares without regard to distance in Kinship—Custom of.

In this case the plaintiff-appellant alleged that by a certain custom prevalent among the Punwar Rajputs, if a branch of a family became extinct the other branches took PUNWAR RAJPUTS-(Contd.)

Succession to branch of family becoming extinct

—Right of other branches to equal Shares without regard to distance in Kinship-Custom of—
(Comtd.)

the estate in equal shares, which meant in equal shares as hetween those branches, without regard to their being more or less remote in Kinship to the deceased. One of the lines of evidence adduced in proof of the custom consisted of records of rights in wajib-ul-arzees. In the wajib-ul-arzees it was stated that brothers or nephews of the deceased were to succeed, regard being had to the nearness of kinship.

Held that that was a statement contrary to the custom which the plaintiff alleged (15.6). (Lord Holdonic.) THAKUR HARIHAR BUKSH T. THAKUR UMAN PERSHAD. (1886) 14 I. A. 7=14 C. 296 (306)=4 Sar. 766.

—Proof of.

In this case the plaintiff-appellant alleged that by a certain custom prevalent among the Punwar Rajputs, if a branch of a family became extinct the other branches took the estate in equal shares, which meant in equal shares as between those branches, without regard to their being more or less remote in kinship to the deceased. On that question both the Courts below come to a conclusion adverse to the plaintiff. And their Lordships accepted the finding of the Courts below (15.6). (Lord Hobboure.) THAKUR HARI-HAR BUKSH & THAKUR UMAN PERSHAD.

(1886) 14 I.A. 7 - 14 C. 296 (306) - 4 Sar. 766.

#### PURAKUDIS.

-Meaning of.

The petitioners are described as Purakudis, that is to say, "tenants who provide themselves with seeds and ploughing cattle, and cultivate the land by personal or hired labour, receiving a share of the produce in return. (Sir Audrew Scotle.) SEENA PENA REENA SEENA MAYANDI CHETTIAR P. CHOCKALINGAM PILLAI.

(1904) 31 I. A. 83=27 M. 291 (296)=8 C. W. N. 545= 8 Sar. 587-14 M. L. J. 200.

#### PURAKUDI ULAVADAI.

-Meaning of.

Semble the term "purakudi ulavadai" does not necessarily imply a right of occupancy. (Sir Andrew Scotte.) SEENA PENA REENA SEENA MAYANIH CHETTIAR v. CHOCKALINGAM PILLAI. (1904) 31 I. A. 83 (93) ->

27 M. 291 (299) - 8 C. W. N. 545 - 8 Sar. 587 = 14 M. L. J. 200.

#### PURDANASHIN.

ADMISSION BY.

AWARD OR FAMILY ARRANGEMENT ASSENTED TO BY
-VALIDITY AGAINST HER OF.

BENEFITS FROM-PERSONS TAKING.

COMPROMISE OF LITIGATION.

DEED BY.

EXAMINATION OF-COMMISSION FOR.

GIFT BY-VALIDITY OF-PROOF OF-ONUS-QUAN-TUM.

HUSBAND OF.

LADIES WITH DIFFERENT INTERESTS—DEED BY-VALIDITY—ISSUE SINGLE AS TO BOTH.

LEGAL PRACTITIONER EMPLOYED BY.

MAHOMEDAN FAMILY—MALE MEMBERS OF-MORT-GAGE BY — PURDANASHIN'S RIGHT TO DISPUTE VALIDITY OF, AS REGARDS AS HER SHARE.

MORTGAGE BY.

OUDH LAND REVENUE ACT OF 1876-S, 61-PETI-TION BY LADY UNDER-STATEMENTS IN.

PLEA OF-PRIVY COUNCIL APPEAL.

PROTECTION AFFORDED BY LAW TO.

QUASI-PURDANASHIN.

WILL OF-PRIOR TRANSACTIONS BY HER REFERRED TO IN-VALIDITY OF-PROBATE OF WILL, PURDANASHIN-(Contd.)

### Admission by.

-Oudh Land Revenue Act of 1876-S. 61-Petition by her under-Statements in-Admissions if. See OUDH ACTS-LAND REVENUE ACT OF 1876-S. 61.

(1916) 43 I. A. 212 (226-7) = 38 A. 627 (650-1). Recitals in deed by her-Use of, as admissions against her-Proof necessary for, See PURDANASHIN-DEED BY-RECITALS IN. (1902) 29 I.A. 132(137) - 29 C. 664 (672-3).

## Award or family arrangement assented to by-Validity against her of.

Issue as to—Points to be considered in case of.

Where an award or an arrangement to which a purdanashin lady is a party is sought to be enforced against her, the question to be considered is, not whether the lady knew what she was doing, had done, or proposed to do, but how her intention to act was produced; whether all that care and providence was placed round her, as against those who advised her, which from their situation and relation with respect to her they were bound to exert on her behalf. Fraud cannot be condoned unless there be full knowledge of the facts and of the rights arising out of those facts, and the parties are at arm's length. (Sir John Edge.) SRI KISHEN LAL P. MUSSAMUT KASHMIRO.

(1916) 20 C. W. N. 957 - 14 A. L. J. 1236 = (1916) 1 M. W. N. 433 = 3 L. W. 628 = 34 I. C. 37 = 31 M. L. J. 362 (374).

-Person in fiduciary position interested in proceedings leading up to award-Consent of lady to award procured by betrayal of confidence by-Effect.

In this case the High Court were of opinion that by a socalled award to which a purdamashin lady was a party no fair family arrangement was arrived at, and found that it had not been shown that the lady had any independent advice, or understood the effect of the so-called award on her interests. They therefore dismissed the suit to enforce the award against the lady with costs. On appeal their Lordships, while not dissenting from the conclusions of the High Court, considered that the appeal might be dismissed on the broad ground that, on the death of her husband, the lady came under the influence of her brother-in-law, who was an interested party in all the subsequent proceedings leading up to the so-called award, whom she trusted to advise her, and on whose advice she acted, and that, in inducing her to assent to the award, he betrayed the confidence she had reposed in him. They accordingly held that the award must be treated as a nullity. (Sir John Edge.) SRI KISHAN LAL P. MUSSAMAT KASHMIRO.

(1916) 20 C. W. N. 957=14 A. L. J. 1236= 1 M. W. N. 433=3 L. W. 528=34 I. C. 37= 31 M. L. J. 362.

## Benefits from-Persons taking.

-Obligations on.

Their Lordships do not intend to throw the slightest doubt on the sound doctrine laid down in numerous cases as to the obligations of persons taking benefits from a purdanashin lady (144). (Lord Davey.) HAKIM MUHAM-MAD IKRAM-UD DIN v. NAJIBAN. (1898) 25 I.A. 137= 20 A. 447 (456) = 2 C.W.N. 545 = 7 Sar. 353.

## Compromise of litigation.

AGREEMENT IN-VALIDITY OF.

-Proof of-Onus-Quantum - Concurrent findings as to-P. Cs interference with.

Where the validity of an agreement by a pardanashin lady in compromise of litigation is in question, it is not necessary-indeed, it is undesirable-to insist upon a test which depends upon a clear understanding of each detail of ties. It is sufficient that the general result of the compromise | was understood by her, and that disinterested and compe

PURDANASHIN-(Contd.)

Compromise of litigation-(Contd.) AGREEMENT IN-VALIDITY OF -(Contd.)

should be understood, and that people disinterested and competent to give advice should, with a fair understanding of the whole matter, advise the lady that the deed should be executed.

Where both the courts below found that the deed was executed with the full knowledge of the nature and effect of the transaction, and that the lady had independent and disinterested advice in the matter, held, that it was not in accordance with the practice of the Board to interfere with two concurrent findings of fact so clearly and definitely expressed. (Lord Buckmaster.) SUNITABALA DEBI v. DHARA SUNDARI DEBI CHOWDHURANI.

(1919) 46 I. A. 272 (278) = 47 C. 175 (181) = 22 Bom. L. R. 1 = 17 A. L.J. 997 = (1919) M. W. N. 821 = 11 L. W. 297 =

24 C. W. N. 297 = 52 I. C. 131 = 37 M. L. J. 483. CONSENT TO-ISSUE AS TO-EVIDENCE-LEGAL PRACTITIONER ENGAGED IN LITIGATION.

Examination of-Necessity. See COMPROMISE-SUIT-COMPROMISE OF-CONSENT OF PARTY TO. (1922) 17 L. W. 481 (493).

CONSENT TO-PROOF OF.

-Evidence-Nature of, necessary, See PURDANASHIN -COMPROMISE OF LITIGATION-AGREEMENT IN.

(1919) 46 I. A. 272 (278)=47 C. 475 (181).

-Exidence of non-consent not being satisfactory if amounts to.

The question was whether or not a compromise of a suit purporting to have been made and entered into by a purdanashin lady had in fact been so made and entered with her full knowledge and consent or the contrary.

The lady and one of her brothers practically denied that she ever consented to the compromise. No witness gave direct and positive evidence that she did consent to it. There was also no documentary evidence proving that she did so. Yet the appellate Judges considered that as the circumstantial evidence given in the case went to show that the evidence of the lady and her brother on the point was not reliable, they were therefore entitled to hold the affirmative proposition that she did give her consent to the compromise was proved.

Held, that the view of the learned Judges was erroneous and that the error was due to the fact that they dealt with the case without keeping sufficiently before their minds that an affirmative proposition was not established by showing that the evidence of witnesses who deposed to a contradic tory negative proposition was not reliable. (Lord Athinson.) SRIMATI SARAT KUMARI DASI P. AMULLYADHAN KUNDU. (1922) 17 L. W. 481 (483)=

A.I.B. (1923) P. C. 13=32 M. L. T. (P. C.) 137= 37 C.L.J. 501=25 Bom. L. B. 548= (1923) M.W.N. 392=72 I. O. 632.

Onus-Quantum.

Owing to the secluded life purdanashin ladies live, and the consequent inexperience in the conduct of business, legal or other, the law throws its protection around them. The strongest and most satisfactory proof ought to be gren by the person, who claims under a sale or gift from them. that the transaction was a real and bona fide one and was fully understood by the lady whose property is dealt with. It is requisite that those who rely upon deeds executed by such ladies should satisfy the Court that they have been explain ned to and understood by those who executed them. In the case of an agreement to compromise litigation, it is sufficient cient to show that the general result of the compromise, distinct from the details and legal technicalities involved

#### PURDANASHIN-(Contd.)

Compromise of litigation-(Contd.)

CONSENT TO-PROOF OF-(Contd.)

tent persons with a fair understanding of the whole matter advised her to execute it.

Held, that nothing of the kind was shown in the case before their Lordships in which the question was whether or not a compromise of a suit purporting to have been made and entered into by the appellant, a purdanashin lady, had in fact been so made and entered with her full knowledge and consent or the contrary. (Lord Atkinson.) SRIMATI SARATKUMARI DASI v. AMULLYADHAN KUNDU.

(1922) 17 L. W. 481 (490-1) = A.I.R. (1923) P. C. 13 = 32M.L.T. (P.C.) 137 = 37 C.L.J. 501 = 25 Bom.L.R.548 = (1923) M. W. N. 392=72 I. C. 632=27 C.W.N. 629.

In a case in which the question was whether or not a compromise of a suit purporting to have been made and entered into by the appellant, a purdanashin lady, had in fact been so made and entered into with her full knowledge and consent or the contrary, the appellant distinctly denied that she ever consented to the compromise. The vakils engaged on opposite sides in the suit were examined, and their evidence, put at the highest, showed that the appellant's brothers had an opportunity of informing her of the fact that a compromise was proposed and of obtaining her consent to it, and even raised a suspicion that she was informed of it and did consent to it.

Held, that the evidence of the vakils was quite insufficient in face of the distinct denial of the appellant to establish the affirmative proposition that she did in fact consent to the compromise. (Lord Atkinson.) SRIMATI SARAT

KUMAKI DASI P. AMULLYADHAN KUNDU.

(1922) 17 L. W. 481 (493) = A.I.B. 1923 (P. C.) 13 = 32 M. L. T. (P. C.) 137 = 37 C. L. J. 501 = 25 Bom. L. R. 548 = (1923) M. W. N. 392= 72 I. C. 632 = 27 C. W. N. 629.

DAUGHTER-COMPROMISE WITH FATHER'S COLLATERALS BY-TRANSFER OF FATHER'S ESTATE PURSUANT TO.

-Validity against her son of-Claim false to knowledge of collateral-Compromise under his advice and influence. See HINDU LAW-DAUGHTER-COMPROMISE BY-FATHER'S ESTATE-TRANSFER TO FATHER'S, ETC. (1923) 51 I.A. 145 (150-1)=47 M. 181.

#### Deed by.

AGENT-DEED SECURED BY. COMPREHENSION BY HER OF. CONFIRMATORY EVIDENCE OF. DUE EXECUTION OF. EXPLANATION TO HER OF. FORGERY OF, OR FRAUD IN OBTAINING.

INDEPENDENT ADVICE.

NATURE AND EFFECT OF-ISSUE AS TO.

RECITALS IN-USE OF, AS ADMISSIONS AGAINST HER PROOF NECESSARY FOR.

REGISTRATION OF.

SALE DEED-HEIR'S SUIT TO RECOVER PROPERTY CONVEYED UNDER, OR CONSIDERATION.

SETTING ASIDE OF-SUIT BY LADY FOR-ONUS OF

VALIDITY OF-PROOF OF-ONUS-QUANTUM. AGENT-DEED SECURED BY.

Execution of deed under pressure and in ignorance Principal if affected by.

Where a security was given to the appellants by a marri-ad woman for debts of her husband, and it appeared that he deed was obtained by pressure through her husband and lithout independent advice, and that the appellants had

## PURDANASHIN - (Contd.)

Deed by-(Contd.)

AGENT-DEED SECURED BY-(Contd.)

left everything connected with the execution of the deed to the husband, held that the appellants could not be held to be unaffected by such pressure and ignorance, and that, having left everything to the husband, they must abide the consequences (815), (Lord Lindley.) TURNBULL & Co. P. DUVAL. (1902) 6 C. W. N. 809.

#### COMPREHENSION BY HER OF.

-Proof of-Necessity-Presumption of comprehention from her having affixed her name to deed-Propriety

Undoubtedly, if a person of competent capacity signs a deed, it is to be presumed that he understood the instrument to which he has affixed his name; but in the case of a purdanashin woman, who had no legal assistance, the ordinary presumption does not arise, and it is incumbent on the Court to be satisfied, as a matter of fact, that she really did understand the instrument to which she has put her name (447). (Sir Montague E. Smith.) NAWAB SYED ASHGAR ALI P. DILRUS BANNOO REGUM. (1877) 3 Suth. 444.

-Proof of-Sufficiency of-Complex and simple dispositions-Distinction.

Evidence to establish comprehension by a purdanashin lady of a deed executed by her is most obviously found in proof that the deed was read over to the settlor and, where necessary, explained. If it is in a language which she does not understand, it must, of course be translated, and it is to be remembered that the clearness of the meaning of the deed will suffer in the process. The extent and character of the explanation required must depend on the circumstances. Length, intricacy, the number and complexity of the dispositions, or the unfamiliarity of the subject-matter, are all reasons for requiring an increased amount and efficiency of explanation. Thus a matter not likely to attract the attention of the executant in itself ought not to be relied on as binding, unless her attention had been directly drawn to it. So if the deed, as presented for execution, differs substantially, either by way of addition or of omission, from the scheme and details which the intending settlor has previously laid down, the discrepancy ought to be clearly pointed out and its nature and effect should be fully described unless, which must be rare, the difference is so obvious that even a person in the settlor's position must perceive and appreciate it for herself. If the description and explanation have been partial or erroneous, or have not been given at all, the question will then arise, as it arises where there has been no independent legal advice, whether, if proper information had been given, it would have affected the mind of the executant in completing the deed. On the other hand, the doctrine cannot be pushed so far as to demand the impossible. The mere declaration by the settlor, subsequently made, that she had not understood what she was doing obviously is not in itself conclusive. It must be a question whether, having regard to the proved personality of the setlor, the nature of the settlement, the circumstances under which it was executed, and the whole history of the parties, it is reasonably established that the deed executed was the free and intelligent act of the settlor or not. If the answer is in the affirmative, those relying on the deed have discharged the onus which rests on them. Of course fraud, duress and actual undue influence are separate matters (350-1). (Lord Sumner.) MUSAMMAT FARID-UN-NISSA v. MUNSHI MUKHTAR AHMAD. (1925) 52 I. A. 342 = 47 A. 703 =

2 O. W. N. 662=28 O. C. 338=23 A. L. J. 1000 = 42 C. L. J. 531 = (1925) M.W.N. 918 = 12 O.L.J. 656 = 28 Bom. L. B. 193 = 30 C. W. N. 337 =

A. I. B. 1925 P.C. 204 = 89 I. C. 649 = 49 M. L. J. 758.

PURDANASHIN-(Cental.)

Deed by- (Could.)

COMPREHENSION BY HER OF-(Confd.)

Proof of Written statement filed by her referring to deed if-No contence of statement having been explained

By a trust indenture executed by a Mainomedan, he appointed his wife and her father trustees and disposed of property in her favour purporting to do so in satisfaction and discharge of her claim for the unpaid bulance of her dower. The question arose whether the contents, purport, or effect of the trust deed were ever brought to her knowledge and whether she had ever as a trustee accepted the gift purporting to be contained in it in satisfaction of her claim for the balance of her dower. In proof of that fact a written statement filed by her and her fathe; as trustees was relied upon, which written statement stated that the defendants (the lady and her father) were trustees appointed under the deed of trust, and as such held the properties described in the schedule annexed to it upon the trusts thereby created. The written statement purported to be signed twice by each of the trustees, and signed once by their attorney. Over one set of the signatures of the trustees it contained the usual declaration by the defendants that the statements contained in the document were true to their knowledge, except as to matters stated on information and belief, and as to such matters they believed them to be true. Following this was the indorsement, "Explained by me to the defendants abovenamed" signed by the attorney. The attorney was not called, and no explanation was given for his absence. And though the father of the lady, who was a purdanashin, identified his daughter's signature to the written statement, he said nothing about the document having been read and explained either to himself or to her. It appeared that the father gave instructions to the solicitor for preparing the written statement, but there was no proof whatever that he ever communicated with his daughter on the subject.

Held that it was impossible under those circumstances to accept the written statement as satisfactory proof that the contents, purport, or effect of the trust deed were ever brought to the knowledge of the lady, or that she had ever as a trustee accepted the gift purporting to be contained in it in satisfaction of her claim for the balance of her dower (224-5). (Lord Atkinson.) SADIK HUSSAIN KHAN :: HASHIM ALI KHAN. (1916) 43 I A. 212=

38 A. 627 (648-9) = (1916) 2 M. W. N. 577 = 21 M. L. T. 40 = 6 L. W. 378 - 21 C. W. N. 133 = 25 C. L. J. 363=14 A. L. J. 1248=

18 Bom. L. R. 1037 = 19 O. C. 192 = 1 Pat. L. W. 157 = 36 I. C. 104 = 31 M. L. J. 607.

CONFIRMATORY EVIDENCE OF.

-Documents subsequent purporting to be executed by her if-No proof of execution thereof by her and of her knowledge of contents thereof.

The suit was to set aside a deed of sale executed by a deceased purdanashin lady in favour of the appellant. The appellant attempted to support the validity of the deed by the evidence of proceedings which had taken place in the lifetime of the lady in rent suits, and in a suit in which there was a contest between the lady and her relatives. Documents in those suits referred to the sale; and authenticity was endeavoured to be given to the transaction in consequence of the lady herself having recognised it. But there was an entire absence of satisfactory proof that those documents, which were said to contain confirmatory evidence of the transaction, were executed by the lady, or that, if she did execute them, their contents were known to her.

upon as confirmatory evidence of the transaction (deed of There is, generally, the evidence of some relation, or failing Held that the proceedings in question could not be relied

PURDANASHIN-(Contd.)

Deed by-(Contd.)

CONFIRMATORY EVIDENCE OF-(Contd.)

sale sought to be set aside) (207). (Sir Montague E. Smith.) TACOORDEEN TEWARY v. NAWAB SYED ALI HOSSEIN KHAN. (1874) 1 I. A. 192 = 21 W. B. 340 = 13 B. L. B. 427 = 3 Sar. 368.

DUE EXECUTION OF.

-Evidence against-Non-attestation by independent person when not.

In a case in which the question was whether a deed of gift alleged to have been executed by a purdanashin lady in favour of her daughter's orphan children was really executed by the lady, the learned Judges of the High Court who held that the deed was not really executed by the lady, mentioned as a matter of suspicion that no independent person was called in to attest that deed. It appeared that every member of the family, who could have been present and who could have attested the deed, was present and attested the deed.

Held that the objection was of no force (87-8).

It is somewhat difficult to understand what is meant by the objection that no independent person was called in to attest the deed. It has not been suggested that any member of the family or any person who would naturally have been present if the deed were genuine was absent on the occasion when it is said to have been executed. It is difficult to see what advantage would have been gained by summoning an independent person to attest the deed. The lady was a purdanashin lady. A stranger would not have been admitted to her presence. The attestation of a stranger who could not have seen her write and who could not have known her voice would have carried the matter very little further (88). (Lord Macnaghten.) MAHOMED BUKSH KHAN v. HOS-(1888) 15 I. A. 81=15 C. 684 (694-5)= SEINI BIBL

-Exidence of - Attestation of deed by her son and her man of business if.

Held that the High Court were right in holding in favour of the due execution by a purdanashin (of the mortgage bond sued upon), where her son and her man of business had both attested the bond, and no evidence had been given that it had not been properly explained, or that she was not aware of its contents. (Sir Richard Couch.) SRIMATI AKIKUN-(1898) 25 I. A. 117= NISSA BIBI P. RUP LAL DAS. 25 C. 807 = 2 C. W. N. 566 = 7 Sar. 358.

-Proof adequate of - Evidence amounting to.

In a suit instituted by the heir of a Mahomedan lady to recover possession of property belonging to her after setting aside (1) a mookhtarnamah given by her to one / empowering him to sell the suit property, and (2) a sale-deed executed pursuant to the mookhtarnamah, held, affirming the Courts below, that the said deeds were executed with the lady's knowledge and by her authority, with the intention of vesting the suit property in the aliences.

The lady died nearly 5 years after the dates of the said deeds, and the suit was instituted nearly 7 years thereafter. The deeds were duly registered; mutation of names was made in pursuance thereof; and possession and enjoyment of the property since the date of the conveyance was consistent with it. The nearest male relatives of the lady, whose interest it was to preserve her property, were not only aware of, but were present and concurred in her acts (337). (Sir Montagne E. Smith.) MUSSAMUT MEDHI BEGUM 5. (1876) 3 Suth. 333=Bald. 71. ROY HURI KISHEN. -Proof of, necessary-Registration of deed and mult

tion of names pursuant thereto-Sufficiency of. The whole evidence falls far short of that which is ord narily given to prove a conveyance by a purdah woman.

## PURDANASHIN-(Contd.)

Deed by-(Contd.)

DUE EXECUTION OF-(Contd.)

a relation, of some female servant; certainly of some person who is admitted behind the purdah, who can speak to having seen the execution of the instrument by the person in question, and who professes to have identified the executing party to the witnesses on the other side of the screen or purdah (524). Again, when a transaction of this kind is impeached, there ought to be clear evidence not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about. In such cases mere registration does not go far to corroborate the proof of the validity of the transactions, for the registration must necessarily take place under a mooktearnamah executed by the party executing the principal conveyance; and there can be, on the face of the one, no higher proof of its execution than there is of the execution of the other. Semble: when a document executed by a purdah woman is produced for registration, the Registrar must send some officer as Commissioner to the house of the lady, who, by examining her through the purdah, after satisfying himself of her identity. must obtain an acknowledgment of her signature.

Mutation of names, though a more solemn proceeding has not, if done under a mooktearnamah, the same effect against a purdah woman as it has against a person capable of transacting his own business and acting for himself (524). SYUD FUZZUL HOSSAIN P. AMJUD ALI KHAN.

(1872) 17 W. R. 523 = 2 Suth. 585.

Proof strict of-Necessity.

Their Lordships re-affirmed the importance of watching with extreme care the proof of transactions relating to the property of a purdanashin (336). (Sir Mentagne E. Smith.) MUSSAMAT MEDHI BEGUM P. ROY HURI KISHEN. (1876) 3 Suth. 333 - Bald. 71.

### EXPLANATION TO HER OF

-What amounts to.

There is a wide difference between reading out a deed, neither short nor simple, and explaining its effect. Nobody can explain the effect of a deed upon a purdanashin lady without knowing her position with respect to the various parts of the property dealt with by the deed (78).

To read a deed fluently, to read it in the usual way without stopping anywhere, is calculated to puzzle more competent persons than an illiterate purdanashin. To do so would hardly amount to explaining that deed to her (79-80). (Lord Hobbouse.) ANNODA MOHINI ROY CHOWDHRY v. BHUBAN MOHINI DEBI. (1901) 28 I. A. 71-

28 O. 546 (555-6) = 3 Bom. L. B. 386=7 Sar. 819= 11 M. L. J. 164.

Sufficiency of Complex and simple dispositions-Distinction. See PURDANASHIN—DEED BY—COMPRE-HENSION BY HER OF—PROOF OF—SUFFICIENCY OF. (1925) 52 I. A. 342 (350-1) = 47 A. 703.

## FORGERY OF, OR FRAUD IN OBTAINING.

-Evidence of-Male relatives of lady, nearest and interested, aware of, and present and concurring in her acts. The sail was brought by the heir of a deceased Mahomedan lady to recover possession of property of the deceased to have been executed by the deceased in favour of the detendants. The plaintiff alleged that the deed in question vas either forged, or that, if executed by the deceased, it was obtained from her by fraud.

e of fraud when the nearest male relatives of the lady .—DUE EXECUTION OF—EVIDENCE AGAINST. fram interest it was to preserve her property were not only

## PURDANASHIN-(Contd.)

Deed by-(Contd.)

FORGERY OF, OR FRAUD IN OBTAINING-(Contd.) aware of, but present and concurring in, her acts (337). (Ser Montague E. Smith.) MUSSAMUT MEDHI BEGUM :, KOV HURI KISHEN. (1876) 3 Suth. 333 - Bald. 71.

-Onus of proof of-Registered deed-Heir at law's suit to set aside deed on ground of forgery or fraud-Mutation of names and possession consistent with deci-Laches in instituting mit.

The suit was by the heir of a Mahomedan lady to recover po-session of property belonging to her after setting aside (1) a mookhtarnamah executed by her authorising the sale of the suit property, and (2) a sale-deed executed by the mookhtar in resp ct of the suit property pursuant to the mookhtarnamah.

The lady died nearly 5 years after the sale, and the suit was instituted nearly 7 years thereafter. The plaintiff's case was that the said two deeds were either forged or were obtained from the deceased by fraud. The defendants, the alienees, admitted the original title of the deceased to the property, and rested their title to the same on the validity of the said deeds. The deeds were duly registered. Mutation of names was made in pursuance thereof; and possession and enjoyment of the property ever since the dates of the deeds was consistent with them.

Held that, whatever might be the title under which the deceased held the property in question, the onus was on the plaintiff to make out her case that the deeds in question were either forged or were obtained from the deceased by fraud (335). (Sir Montague E. Smith.) MUSSAMUT MEDHI REGUM P. ROY HURI KISHEN.

(1876) 3 Suth. 333 = Bald. 71.

#### INDEPENDENT ADVICE.

-Absence of Validity of deed even in case of -Conditions.

It cannot be held as an absolute rule of law that a gift by a punlanashin lady cannot stand unless it is proved that she had independent advice. The possession of independent advice, or the absence of it, is a fact to be taken into consideration and well weighed on a review of the whole circumstances relevant to the issue of whether the grantor thoroughly comprehended, and deliberately and of her own free will carried out, the transaction. If upon a review of the facts-which include the nature of the thing done and the training and habit of mind of the grantor as well as the proximate circumstances affecting the execution-the conclusion is reached that the lady would have executed the deed even if she had obtained independent advice, the deed ought to stand.

Their Lordships upheld a deed of gift executed by a purdanashin lady in favour of the legitimate son of her muktear and paramour in respect of nearly one-half of her properties, which were considerable, though there was no evidence to show that, in executing the deed, she had acted under independent advice. (Lord Share.) KALI BAKHSH SINGH 2. RAM GOPAL SINGH. (1913) 41 I. A. 23 = 36 A. 81 = 18 C. W. N. 282-21 I. C. 985-(1914) M. W. N. 112-

16 O. C. 378 = 15 M. L. T. 130 = 19 C. L. J. 172 = 16 Bom. L. B. 147 = 12 A. L. J. 115 = 26 M. L. J. 121.

See PURDANASHIN-DEED BY-INDEPENDENT ADVICE-NECESSITY FOR-RULE AS TO-SCOPE AND (1925) 52 I.A. 342 - 47 A. 703. OBJECT TRUE OF.

-Evidence against-Non-attestation of deed by inde-Held that it would require strong evidence to support a pendent person when not. See PURDANASHIN-DEED BY

(1888) 15 I.A. 81 (88)=15 C. 684 (694-5).

PURDANASHIN-(Contd.)

Deed by-(Contd.)

INDEPENDENT ADVICE—(Contd.)

mooktar of lady if and when. See PURDANASHIN-DEED that the family generally were taking gross advantage of BY-DUE EXECUTION OF-EVIDENCE OF.

(1898) 25 I.A. 117-25 C. 807.

-Necessity for - Rule as to-Application of, to woman not belonging to purdanashin class-Propriety. See PURDANASHIN-PROTECTION AFFORDED BY LAW TO-APPLICATION OF, ETC.

(1900) 27 I. A. 168=23 A. 137.

-Necessity for-Rule as to-Legal protection, not legal disability. See PURDANASHIN-PROTECTION AF-FORDED BY LAW TO-TRANSMUTING OF, ETC.

-Necessity for-Rule as to-Mahomedan and Hindu women-Applicability alike to. See PURDANASHIN-PRO-TECTION AFFORDED BY LAW TO -MAHOMEDAN AND (1867) 11 M.I.A. 551 (585-6).

-Necessity for-Rule as to-Other party to transaction also purdanashin lady-Applicability to case of. See PURDANASHIN-PROTECTION AFFORDED BY LAW TO -OTHER PARTY, ETC.

-Necessity for-Rule as to-Scope and object true of -Absence of such advice-Validity of deed even in case of -Conditions.

The case of an illiterate purdanashin lady, denuding herself of a large proportion of her property without professional or independent advice, is one on which there is much authority. Independent legal advice is not in itself essential. After all, advice, if given, might have been bad advice, or the settlor might have insisted on disregarding it. The real point is, that the disposition made must be substantially understood and must really be the mental act, as its execution is the physical act of the person who makes it. If, however, the settlor's freedom and comprehension can be otherwise established, or, if the scheme and substance of the deed were themselves originally and clearly conceived and desired by the settlor, and were then substantially embodied in the deed, there would be nothing further to be gained by independent advice. If the settlor really understands and means to make the transfer, it is not required that some one should have tried to persuade her to the contrary. (Lord Sumuer). MT. FARID-UN-NISSA E. (1925) 52 I.A. 342= MUNSHI MUKHTAR AHMAD.

47 A. 703 = 2 O. W. N. 662 = 28 O.C. 338 = 23 A. L. J. 1000 = 42 C. L. J. 531 = (1925) M. W. N. 918=12 O. L.J. 656= 28 Bom. L.R. 193 = 30 C. W. N. 337 = A. I. R. 1925 (P. C.) 204 = 89 I. C. 649 = 49 M. L. J. 758.

-Proof of-Relations of lady being co-signatories or identifying witnesses if-Relations acting in their own interests and not as protection to her.

In deciding in favour of the validity of a mortgage bond executed by a purdamashin lady in favour of her legal adviser, the trial Judge was influenced by the consideration that the relatives of the lady must have been aware of the transaction because her brother was a co-signatory of the deed, and two of her relatives were the identifying wit-

Held that, apart from the question of the sufficiency of such a consideration, the facts of the case entirely destroyed any inference that the relatives of the lady were acting as a protection to her in the transaction.

Her brother was personally interested in carrying through the transaction, because by it he obtained the discharge of debts for which he alone was primarily liable, and this relief was obtained by mortgaging property in which he ing her through the purdah, after satisfying himself of her

PURDANASHIN-(Contd.)

Deed by-(Contd.)

INDEPENDENT ADVICE-(Contd.)

-Evidence of-Attestation of deed by son and by had no interest with regard to the other relatives it is clear the unprotected state of this purdanashin lady. She had been betrothed but the relatives would not give consent to her marriage unless she surrendered the whole of her share in the family property. Under these circumstances the relatives could not be regarded as defenders of the lady's interests. (Lord Moulton). LALA MAHABIR PERSHAD (1914) 1 L.W. 599= r. MUSSAMMAT TAJ BEGAM. 19 C.W.N. 162 = (1915) M.W.N. 387 =

23 I.C. 462=27 M.L.J. 13. NATURE AND EFFECT OF-ISSUE AS TO.

-Strict construction of deed-Necessity.

A Hindu widow, being a purdanashin lady, executed in favour of her deceased husband's divided brother, who would be entitled to succeed to the estate of her husband in her hands, after the widow's death a document whereby it was agreed that the latter should, at once take possession of the estate and pay a certain sum of money annually for the executant's maintenance during her life. The question being whether the document operated as a conveyance, held, the document having been executed by a purdanashin lady in favour of the chief male member of the family, it should receive a strict construction.

On a consideration of the whole evidence and the surrounding circumstances, the Judicial Committee held that the document did not operate as a conveyance. SOOKYA-BOYE AMMAL P. LUTCHUMI AMMAL

(1869) 13 W.R. 3 (P.C.) = 2 Suth. 282.

RECITALS IN-USE OF, AS ADMISSIONS AGAINST HER-PROOF NECESSARY FOR.

-The widow and daughter-in-law by a predeceased son of a member of a joint Hindu family governed by the Mitakshara law took possession of three villages forming part of the undivided estate. Having to file road-cess returns in respect of those viliages, they executed a mookhtarnama, and in that mookhtarnama there was a statement or recital that the villages were in their possession "as life interest." That recital was relied on as an admission by the widows. The widows were purdanashin ladies, and the mookhtar appointed by them was the mookhtar of the reversionary heirs.

Held that, under the circumstances, it would be dange rous to rely on such an admission, unless it were proved that the attention of the widows was directly called to it (137). (Lord Macnagiden.) SHAM KOER v. DAH KOER.

(1902) 29 I.A. 132 = 29 C. 664 (672-3) = 6 C.W.N. 657=4 Bom. L.B. 547=8 Sar. 280.

-Registered deed-Collateral recitals in. The fact that a purdanashin lady, executed certain deeds containing collateral recitals which were registered and acted upon does not raise any presumption that the lad was aware of the recitals in the instruments acted upon. It is incumbent on the person who relies upon the recitals as admissions as against her to establish conclusively that those particulars of the deeds were brought to her notice (Lord Attinton). KISHORI LAL v. CHUNNI LAL

(1908) 36 I.A. 9 (25-6)=31 A. 116 (134-5)= 5 M L T. 58 = 9 C.L.J. 172 = 13 C.W.N. 370= 11 Bom. L.R. 196=1 I.C. 128=19 M.L.J. 186.

REGISTRATION OF.

-Steps to be taken by registrar in case of. When a document executed by a purdah woman is produced for registration, the Registrar must send some officer as Commissioner to the house of the lady who, by examin-

Deed by-(Contd.)

REGISTRATION OF-(Contd.)

identity, must obtain an acknowledgment of her signature. SYUD FUZUL HOSSAIN v. AMJUD ALI KHAN.

(1872) 17 W.R. 523 - 2 Suth. 585.

SALE DEED-HEIR'S SUIT TO RECOVER PROPERTY CONVEYED UNDER, OR CONSIDERATION.

Decree for purchase-money in-Propriety of-Sale found to be binding, but consideration found not to have been paid.

In a suit by persons claiming to be the heirs of a deceased Purdanashin lady to recover possession from the appellant of villages comprised in a sale deed executed by her in his favour, or, for recovery of the sale consideration thereof, it was founded that the deed was duly executed by the deed and was intended to pass property but that no part of the consideration for the sale was paid by the appellant to the

Their Lordships upheld the sale but decreed to the plaintiffs the consideration amount with interest (144-5). (Lord Davey). HAKIM MUHAMMAD IKRAM-UD-DIN T. NAJIBAN. (1898) 25 I. A. 137 - 20 A. 447 (456) -2 C. W. N. 545 - 7 Sar. 353.

SETTING ASIDE OF-SUIT BY LADY FOR-ONUS OF PROOF IN.

Person not in fiduciary position-Deed in facour of. The respondent (a purdanashin) comes into court seeking to be relieved from the effect of her own conveyances, the execution of which she does not dispute, against one who, if not an absolute stranger, stands in no fiduciary relation to her; and it lies upon her to establish her right to that relief, (Sir James W. Colvile). MOOSHEE BUZLOOR RUHEEM D. SHUMSOONNISSA BEGUM. (1867) 11 M. I. A. 551= 8 W. R. P. C. 3-2 Suth. 59-2 Sar. 259.

VALIDITY OF-PROOF OF-ONUS-QUANTUM.

This committee and the Courts in India have always been careful to see that deeds taken from Purstak women have been fairly taken; that the party executing them has been a free agent, and duly informed of what she was about (431). (Sir Jamee W. Colvile). GERESH CHUNDER LAHOREE D. MUSSUMAT BHUGGOBUTTY DEBIA.

(1870) 13 M. I. A. 419-14 W. R. P. C. 7= 2 Suth. 339 = 2 Sar. 579.

It is incumbent on the Court, when dealing with the disposition of her property by a purdanasheen woman, to be salisted that the transaction was explained to her. and that the knew what she was doing; and especially so in a case where for no consideration, and without any equivalent, the lady has executed a document which deprives her of all her property (445). (Sir Montague E. Smith). NAWAB SYED ASHGAR ALI P. DILRUS BANNOO BEGUM.

(1877) 3 Suth. 444.

In the case of deeds and powers executed by purdanashin ladies, it is requisite that those who rely upon them boold satisfy the Court that they had been explained to, and tadentood by, those who execute them (43). (Sir Mon-Is the E. Smith). SUDISHT LAL P. MUSSUMAT SHEOBA-RAT KOER. (1881) 8 I. A. 39 = 7 C. 245 (250) = 4 Sar. 222.

Their Lordships desire not to say a word which could interfere with the settled principles on which the Court acts in considering the deeds of purdanashin larlies or could lend to lessen the protection which it is the duty of throw around those who are unable to throw around those who are unable to themselves. They do not forget that the security was a purdanashin lady. They do not forget that the security was a purdanashin lady. They do not forget that the time of the execution of the deed she was living in itself conclusive. It must be a question whether, having

PURDANASHIN-(Contd.)

Deed by-(Contd.)

VALIDITY OF-PROOF OF-ONUS-QUANTUM-(Contd.)

more than ordinary seclusion; that she was in very deep distress; and that she was surrounded by the members of that branch of the family to which the objects of her bounty more immediately belonged. But bearing all these things in mind, and reviewing the whole evidence, they come to the conclusion that the lady knew perfectly well what she was doing, and that in every sense the act was her own act (92), (Lord Managhta). MAHOMED BURSH KHAN v. HOS-(1888) 15 I. A. 81-15 C. 684 (698)-SEINI BID.

-The result of previous cases as to the onus and quantum of proof in cases of deeds executed by purdanashin ladies stated on pp. 28-9. (Lord Shaw). KALI BAKHSH SINGH T. RAM GOPAL SINGH. (1913) 41 I. A. 23= 36 A. 81 = 18 C. W. N. 282 = 21 I. C. 985 =

(1914) M. W. N. 112=16 O. C. 378-15 M. L. T. 130= 19 C. L. J. 172-16 Bom. L. R. 147-12 A. L. J. 115-

26 M. L. J. 121. -The Board has always held that the cirrumstances under which a purdanashin woman agrees to sell or mortgage property in which she is interested must be carefully examined in order to ascertain that she had independent advise and "that the lady has sufficient intelligence to understand the relevant and important matters, that she did understand them as they were explained to her, that nothing was concealed, and that there was no undue influence or misrepresentation" (273).

Held, on the evisience, that the lady thoroughly understood the effect of the deeds in question, and that she acted under independent advice (274). (Sir John Elge.) MATI LAL DAS P. EASTERN MORTGAGE AND AGENCY, CO., LTD.

(1920) 47 I. A. 265 = 28 M. L. T. 351 = 2 U. P. L. B. (P. C.) 166 = 25 C. W. N. 265 = 61 I. C. 486 = (1920) M. W. N. 631.

Their Lordships fully recognised the force of the observations of the Court below that every protection should be given to pardanashin ladies, and that the proof required from persons who have entered into transactions with pardanashin ladies, and seek to enforce those transactions against them, should be adequate and satisfactory (714). (Mr. Amer Ali.) MOHAYMAD ALIE, KAMZAN ALI.

(1921) 14 L. W. 710 = 24 C. W. N. 997 - 58 I. C. 891 = 23 O. C. 150.

-The parties who set up and rely upon a deed executed by a purdanashin lady must satisfy the court that the deed has been explained to and understood by the lady. either before execution or after it under circumstances which establish adoption of it with full knowledge and comprehension. Mere execution by such a person, although unaccompanied by duress, protest or obvious signs of misunderstanding or want of comprehension, is in itself no real proof of a true understanding mind in the executant. (Lord Summer.) MUSSUMMAT FARID-UN-NISSA v. MUNSHI MUKHTAR AHMAD. (1925) 52 I. A. 342= MUKHTAR AHMAD.

47 A. 703 = 2 O. W. N. 662 - 28 O. C. 338 = 23 A. L. J. 1000 = 42 C. L. J. 531 = (1925) M. W. N. 918 = 12 O. L. J. 656 = 28 Bom. L. R. 193 = 30 C. W. N. 337= A. I. R. 1925 P. C. 204 - 89 I. C. 649 -49 M. L. J. 758.

Persons who take transfers from purdanashin ladies are bound to show that they not merely executed the docu-

Deed by-(Contd.)

VALIDITY OF-PROOF OF-ONUS-QUANTUM-

the settlement, the circumstances under which it was executed, and the whole history of the parties, it is reasonably established that the dead executed was the free and intelligent act of the settlor or not. If the answer is in the affirmative, those relying on the deed have discharged the onus which rests upon them. Of course, fraud, duress and actual undue influence are separate matters. (Sir John Wallin.) MUSSUMMAT BARKATUNNISSA 2: DEBI MUSSUMMAT BARKATUNNISSA 2: DEBI BAKHSH. (1927) 25 A. L. J. 314 = 31 C. W. N. 693 = 4 O. W. N. 523 = 8 Pat. L. T. 480 = 26 L. W. 147 = 101 L. C. 29 = A. I. R. 1927 P. C. 84 (86).

———Daughter reversioner—Mortgage by mother—Deed validating, executed by daughter to her own busband—Validity of. See PURDANASHIN—HUSBAND—DAUGHTER REVERSIONER. (1892) 19 I. A. 196 (200) = 14 A. 420 (426-7).

-Executor-Will in favour of.

In a case in which the issue was whether the will produced was the act of a deceased lady, it was contended before the trial. Judge that the will being a will made by a purdanashin lady, whose face was veiled ordinarily, in favour of the person who was executor, purporting to convey the whole property to him, the burden was very heavy upon the person setting up the will to show that the will was the deliberate act of the executrix.

The learned Judge, however, held on the evidence, that, whether the burden was heavy or not, it had been discharged adequately, and his decision was affirmed on appeal.

Their Lordships accepted the concurrent findings of the Courts below, (Viscount Haldane.) ISUBU LEBBE MARIKAR v. IDROSS LEBBE MARIKAR.

(1923) 33 M. L. T. 437 (P. C.).

- Gift by lady. See PURDANASHIN-GIFT BY.

——Husband—Transaction by lady with her. Src PUR-DANAHIN HUSBAND.

In a suit brought against purdah women upon a deed alleged to have been executed by them, the plaintiff adduced no proof that the women had ever signed the deed, or that it had ever been signed by any person authorized by them.

Held, disseating from the High Court, that the plaintiff had not made out a prima facie case.

The deed sued upon was executed by the husband of one of the ladies, but it was not proved that any mookhtarnamah authorising the execution of the deed by him as agent of his wife and her sister was passed by them; and there was no proof of any verbal authority. MUSSUMAT AZEE-ZOONNISSA v. BAQUR KHAN. (1872) 10 B.L.R. 205 = (211-2, 213) = 17 W. B. 393 = 3 Sar. 100 = 2 Suth. 572.

--- Illiterate lady-Deed by.

In the case of a disposition of property by a pardanashin lady an onus is cast on the person relying on the disposition to establish that the transaction is one which the disponent thoroughly comprehended and deliberately and of her own free will carried out. Where the pardanashin lady is illiterate, the court will be especially alert to see that the burden cast on those supporting her disposition is satisfactorily discharged. (Lord Atkin.) RAHULLA v. HASSANALLI DEGUMIA. (1928) 32 C. W. N. 929=

I. L. T. 40 B. 113 = 110 I. C. 200 = after generation, and that under every the second at the should have full power for good or evil. D thus became A. I. R. 1928 P. C. 303 = 55 M. L. J. 84 (85-6), the person substantially interested because looking at the

PURDANASHIN-(Contd.)

Deed by-(Contd.)

VALIDITY OF—PROOF OF—ONUS—QUANTUM— (Could.)

-Inheritance-Relinquishment of-Deed of.

The deed, in short, is a deed substantially without any consideration by a pardanashin donor of her entire property in favour of a donee, who, or whose representatives, submit the prepared document to her and obtain within the parda her signature. It is the established law of India in these circumstances that the strongest and most satisfactory proof ought to be given by the person who claims under a sale or gift from them that the transaction was a real and bowa fide one, and fully understood by the lady whose property is dealt with (384).

When, however, the law is that the lady must fully understand the transaction, this is but a secondary way of saying that it is the obligation of the donee in any transaction proceeding from her to see that she does so understand it. The relations of parties demand that this duty be performed, and where courts of law declare that the onus rests upon the donee of showing that he did so, that, of course, is founded upon the fundamental fact that it was his duty to do it. If accordingly this obligation thus arising out of the relations of the parties be not fulfilled, the case for rescission and consequent remedy is clear (384-5).

Applying the above principles, their Lordships reversed the judgment of the High Court, and restored that of the Sub-Judge declaring invalid a deed by which the plaintiff was alleged to have relinquished all her rights in respect of her inheritance (385). (Lord Shaw.) KAMAWATI v. DIGBI-JAI SINGH. (1921) 48 I. A. 381 = 43 A. 525 (530) =

15 L. W. 1 = 26 C .W. N. 490 = 30 M. L. T. 47 = 24 Bom. L. R. 626 =

4 U. P. L. R. (P. C.) 27 = (1922) M. W.N. 336 = A. I. B. 1922 P. C. 14 = 64 I. C. 559 = 42 M. L. J. 87.

Legal adviser — Mort gage in favour of.

We have a case of the legal adviser to a purdanathin woman acting the part of money-lender to her, and procuring the execution by her of a mortgage bond to secure its repayment. It is difficult to conceive a case in which the court would be entitled, and indeed obliged, to examine the transaction with closer scrutiny, or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed, and that the transaction was a fair and honest one.

Held, that the appellants (who represented the mortgagee) entirely failed to support either of those issues.

Held further, on the evidence, that the terms of the mortgage bond were extortionate, and that the lady, the mortgagor, did not understand the effect of the deed by reason of its not having been adequately explained to her. The deed was therefore held to be void and unenforceable against her. (Lord Moulton.) LALA MAHABIR PERSHAD P. MUSSAMMAT TAJ BEGAM.

(1914) 1 L. W. 959 = 19 C. W. N. 162 = (1915) M. W. N. 387 = 23 I. C. 642 = 27 M. L. J. 13.

Managing agent—Voluntary conveyance in fatour

Rani S was a lady 65 years of age and comparatively illiterate, and she had no adviser or counsellor except D, who had great influence over her. S executed a deed or will in 1865 in favour of D. The deed at first provided that the lady set apart 29 villages of her patrimony, producing a rental of Rs. 9,993 a year, to defray the expenses of her tomb and that of her deceased husband. It, however, went on to say that D, her managing agent, should have the management of the endowment in perpetuity, generation after generation, and that under every circumstance he should have full power for good or evil. D thus became

Deed by-(Contd.)

VALIDITY OF-PROOF OF-ONUS-QUANTUM-(Contd.)

facts of the case it appeared that a comparatively small portion of that large fund could be annually allocated to the expenses of the tomb, and that a large surplus would each year remain in his hands.

In a suit by the son of D for a declaration of right to possession of the villages conveyed by the deed, held that D certainly filled such a position towards S, as to render it incumbent upon him to show that he had made a proper use of the confidence reposed in him by her, and that the execution of the document granted without any valuable consideration and from which he obtained important pecuniary benefit, was free from all attempt at undue influence

Every onus is thrown upon a person who fills such a character as D did, of shewing conclusively that the transaction was an honest one, and a bona fide one, as to which a woman in the position of S, had some independent advice, or some opportunity of knowing exactly what she was about and in which she was not under the complete influence of her manager (148).

Held, further that the plaintiff had not discharged the onus which lay upon him, that all the facts of the case went to show that there was active undue influence, and that the instrument was bad ab initio (148). (Lord Morris.) Wajid Khan v. Raja Ewaz Ali Khan.

(1891) 18 I. A. 144 = 18 C. 545 = 6 Sar. 46 = R. & J's. No. 123 (Oudh).

-Mookhtar-Sale deed of entire property in favour of. A deceased lady executed a deed of sale in favour of the appellant, who, on some occasions, had acted as her mooktear (man of business). The lady was a pordanashin, living apart from her relations; whether in the house of the appellant or not was not distinctly proved, but certainly in a place where she was without those natural advisers which a lady, when she was going to fact with apparently the whole of her property, ought to have around her. She, whilst thus alone and unprotected, executed the deed in question in favour of the appellant.

In a suit by the heirs of the lady to set aside the deed, held that, according to the principles which had always guided the courts in dealing with sales or gifts made by ladies in such a position, the strongest and most satisfactory proof ought to be given by a person who claimed under a sale or gift from them that the transaction was a real and bonu fide one, and fully understood by the lady whose property was dealt with (206-7).

Held further that the appellant, far from discharging such onus, failed to produce even that evidence which clearly was within his power, and which ought to have been given even in an ordinary case of a sale that is at all impeached (207). (Sir Montague E. Smith.) TACOOR-DEEN TEWARY D. SYED ALI HOSSEIN KHAN.

(1874) 1 I. A. 192 = 21 W. B. 340 = 13 B. L. B. 427 = 3 Sar. 368.

-Mortgage.

The suit was for the redemption of a mortgage executed by B, the mother of the first plaintiff. The defendant in the salt was the son and representative of the original mort-Page. The allegations in the plaint were directed to show that the mortgagor, B, was an illiterate pardamashin village woman" incapable of understanding business; and that she executed the mortgage without a comprehension of the on of the nature of the deed.

by the mortgage the mortgagee was to enjoy the mort-

PURDANASHIN-(Contd.)

Deed by-(Contd.)

VALIDITY OF-PROOF OF-ONUS-QUANTUM-(Contd.)

mortgage money at the rate of I per cent, per mensem. The lady appeared to have had the advice of her son-in-law on the occasion of the execution of the mortgage deed, and the first two courts in holding that she executed the mortgage with a full comprehension of the transaction relied on the fact that she did owe debts which were paid off with monies advanced on the mortgage; and no question was raised against the transaction in the lifetime of the lady.

Held that the first two courts were right in deciding that the lady executed the mortgage with a full comprehension of the transaction (714-5). (Mr. Ameer Ali.) MOHAM-MAD ALI D. RAMZAN ALI. (1921) 14 L. W. 710=

24 C. W. N. 997 = 58 I. C. 891 = 23 O. C. 150. -Position to dominate will-Person in-Deed conferring benefit on-Latter's failure to discharge onus-Concurrent findings as to-Privy Council's interference with. See PRIVY COUNCIL-PRACTICE-QUESTION OF FACT-CONCURRENT FINDINGS - INTERFERENCE WITH-CASES UNDER-PURDANASHIN.

(1930) A. I. R. 1930 P. C. 139 (1).

-Religious trust-Deed dedicating entire property to. The effect of a deed purporting to have been executed by a pardanashin lady was to devote all the property which the lady possessed to religious uses, to destroy her rights as proprietor, and to constitute her one only of the muttawallis for the management of the endowment, giving her 3/28 parts of the income of the whole property only for her management. The deed was written in a language which the lady did not understand. Her case was, that although she executed the instrument, its contents were not explained to her, and that she was ignorant that its effect would be that set out above.

A mutation of names from her own name alone to her own and another's name as mutwalis was effected; but the mooktarnamah was not proved. The estates also were afterwards described in several documents as wagfnamahs, and she herself was described in many transactions relating to the estates as mutwali. Receipts for rents were given first in her own and her co-mutwali's name as mutwalis, and, after her co-mutwali's death, which happened about two years after the deed, in her own name as mutwali. Pottahs were granted in which she was so described. Suits were also brought in which she was plaintiff with a similar description. On the other hand, for more than twenty years, notwithstanding that she was nominally described in the above transactions as mutwali, she actually dealt with the property as her own. She granted mowrossee leases, sold parts, and mortgaged other parts, and in every way treated the property as her own, and as if it were not subject to a religious trust. Those acts, which extended over the whole time from the execution of the deed to the commencement of the suit strongly showed her own consciousness, that while she was described as a mutwali she really believed herself to be the proprietor and owner of the property, and had no idea that she had reduced herself to the state of a mere manager of it, entitled only to 3/28 parts of the income for her main-

Held, affirming the High Court, that it was not established that the lady understood the full import and effect of the document she executed. (Sir Montague E. Smith.) NAWAB SYED ASHGAR ALI 2. DILRUS BANNOO BEGUM.

(1877) 3 Suth. 444. -Son-in-late and am-mookhtar - Mortgage bond signed in name of lady by.

It is a well-known rule of this Committee that in the property for thirty years in lieu of interest and that case of deeds and powers executed by purdanashin ladies, it is requisite that those who rely upon them should satisfy the

Deed by-(Contd.)

VALIDITY OF—PROOF OF—ONUS—QUANTUM— (Contd.)

Court that they had been explained to and understood by those who executed them.

In a suit brought against a purdanashin lady on a mortgage bond which purported to be signed in her name "by the pen of Soonder Lal, son-in-law and am-mukhtar," there was no satisfactory evidence that the son-in-law had authority to execute the bond. The High Court further found, and their Lordships accepted the findings, that "though the mortgage bond is said to have been read out to the lady, there is no evidence that it was in any way explained to her, and that she really understood the conditions and effect thereof."

Held, that the plaintiff had failed to discharge the onus which lay on him and that his suit had been rightly dismissed. (Sir Andrew Scoble.) SHAMBATI KOERI T. JAGO BIBL. (1902) 29 I. A. 127 (130-1) = 29 C. 749 =

6 C. W. N. 682-4 Bom. L. R. 444-8 Sar. 304.

—Trustee creditor of husband—Security bond executed by lady in favour of, for such debts—Validity of—Proof—Onus—Quantum. See PURDANASHIN—HUSBAND—DEBTS OF—SECURITY FOR, ETC.

(1902) 6 C. W. N. 809 (815).

--- Wakfnamak.

In the ordinary case of a deed granted by a pardanashin lady, it rests upon those founding upon the document to establish that she understood its effect and that the deed was intelligently and properly executed by her (159).

In a suit by plaintiffs claiming to be trustees under a deed of endowment executed by a pardanashin lady (which was to take effect de praesenti and which stripped the lady of all her possessions, except to the extent of the reservation made to herself of her pension of Rs. 40 per month) for a declaration that all the property comprised in the deed was waqf, held that the plaintiffs had not discharged the onus which lay upon them (161). (Lord Shaw.) SAJJAD HUSSAIN v. WAZIR ALI KHAN. (1912) 39 I. A. 156=34 A. 455 (463-4)=16 C. W. N. 889=

10 A. L. J. 364 = 16 C.L.J. 613 = 14 Bom. L. R. 1055 = (1912) M. W. N. 976 = 12 M. L.T. 361 = 16 I. C. 197 = 23 M. L. J. 210.

The plaintiff had executed a wakfnama by which she purported to divest herself of the whole of her property, subject to a life-stipend for herself and her husband and to a right of residence in a house, and to appoint the respondents mutawallis of the wakf. She sued in substance to set aside the deed.

At the time of the execution of the deed the plaintiff was a married woman, illiterate, childless, and purdanashin. The grounds on which the plaintiff sought to have the deed set aside were (1) that she had executed it under actual undue influence of her husband, which dominated her choice and will, and (2) that, when she executed it, she had had no explanation of its nature and contents, but throughout believed it to be an instrument needed for the routine management of her estate.

It was found on the evidence that the deed was not executed under actual undue influence of the husband, and that both before its execution and also shortly after its execution when it came to be registered, its contents were read over to the plaintiff and were to some extent explained to her. The evidence also showed that the lady had herself an idea of executing a wakfnama and had given instructions for the preparation of one. The deed in question differed, however, in material respects from the one she was shown to have had in view, and there was no satisfactory evidence that her attention was pointedly drawn to the differences and that she assented to the deed with those differences.

## PURDANASHIN-(Contd.)

Deed by-(Contd.)

VALIDITY OF-PROOF OF-ONUS-QUANTUM-(Contd.)

Held that the deed could not stand and must be set aside.

(Lord Summer.) MUSAMMAT FARID-UN-NISSA v. MUNSHI MUKHTAR AHMED. (1925) 52 I. A. 342=

47 A. 703 = 2 O. W. N. 662 = 28 O. C. 338 = 23 A. L. J. 1000 = 42 C.L.J.531 = (1925) M.W.N. 918 =

12 O. L. J. 656 = 28 Bom. L. B. 193 = 30 C. W. N. 337 = A. I. B. 1925 P. C. 204 = 89 I. C. 649 = 49 M. L. J. 758.

The plaintiff claimed as muttawali under a deed of wakf by which the settlor, a deceased purdanashin lady, disposed of property of the value of about Rs. 20,000 on the terms that five months of the income should be applied for the benefit of a mosque founded by her grandfather and four-ninths of the income should be applied for the maintenance of the mutawali, who was to be herself during her lifetime and on her decease the plaintiff, who was her maternal uncle. The suit was for possession, the defendants being the lady's husband and her nearest agnate and some tenants of the property. The execution of the deed was not in question.

Held, affirming the High Court, which had reversed the trial Judge, that the validity of the deed was established.

Here is a disposition which the lady had every motive to make, benefiting natural recipients of her bounty disputed by persons, who in the circumstances had no claims upon her, and there is a body of evidence that she knew and approved of what was being done. (Lord Atkin.) RUHULLA p. HASSANALLI DEGUMIA. (1928) 32 C. W. N. 929

I L. T. 40 B. 113 = 110 I. C. 200 = 28 L. W. 595 = 48 C. L. J. 412 = 5 O. W. N. 1138 = A. I. R. 1928 P. C. 303 = 55 M. L. J. 84.

## Examination of-Commission for.

Issue of—Discretion as to—Refusal to issue when not prudent. See COMMISSION—PURDANASHIN DEFENDANT. (1898) 25 I. A. 117 (124-5)= 25 C. 807 (815-6).

—Refusal to issue—Reversal of decree on ground of—Conditions. See C. P. C. 1908, S. 99—COMMISSION TO EXAMINE PARTY. (1898) 25 I. A. 117 = 25 C. 807.

# Gift by-Validity of-Proof of-Onus-Quantum.

Death-bed dispositson. Their Lordships have to deal with an instrument avowedly taken ex capite lecti from a woman stricken with a mortal disease, and in expectation of death-that woman being one of a class which the law regards as in need of especial protection. Whatever strictness is required in the proof of a testamentary disposition is, at least, equally required here. The document is written in a character and language which, if in the fullest possession of her faculties, she could neither read nor understand. The accounts given by the witnesses of the preparation and explanation of the deed of gift alleged to have been executed by her are inconsistent and unsatisfactory. If it were even established that the person who put her hand to the paper were the woman alleg ed to have executed the deed, the proof would still fall short of that which ought to be given to support such a transaction-proof that she really knew what she was about, and intended to make this disposition of her property (168). (Sir James W. Colvile.) MUSSUMAT THA-

KOOR DEYHEE 31. RAI BALUK RAM. (1866) 11 M. I. A. 139 = 10 W. B. (P. O.) 3 = 21 I. J. N. S. 106 = 2 Suth. 49 = 2 Sar. 231.

The plaintiffs-respondents claimed the suit properties under a deed of gift from a M, a Hindu widow. They were the sisters of M. The defendant-appellant, who was in possession and resisted the plaintiff's suit for possession,

Gift by-Validity of-Proof of-Onus-Quantum -(Contd.)

pleaded, inter alia, that the alleged deed of gift was either a forgery, or, having been procured from J by the fraud and contrivance of her brothers, was not an effectual dis-

position of the property.

M was a purdah woman, and the disposition in question was made not very long before her death, and whilst she was labouring under a mortal disorder. It was not open to the objection of inofficiousness. Her preference of her own blood relations to a son adopted by her husbond, and otherwise provided for, was not unnatural. The respondent's evidence was conflicting as to the party intended to be benefited, and left it uncertain, to say the least, what were the instructions for the deed, and from whom those instructions emanated.

Held, reversing the High Court, that evidence so untrustworthy, so uncertain, and so conflicting, was not such as to induce their Lordships to declare affirmatively that the Hibba was in any sense the act and deed of M. or even that she herself put her hand and seal to it (431-2). (Sir James W. Colvile.) GERESH CHUNDER LAHOREE P. MUSSUMAT BHUGGOBUTTY DEBIA.

(1870) 13 M. I. A. 419-14 W. R. (P. C.) 7= 2 Suth. 339 = 2 Sar. 579

Lady in extremis at time of execution of deed.

The appellant claimed under a deed which on the face of it purported to be a deed of sale for Rs. 9,000 of property worth a lac of rupees. The alleged sale was by a purda-nashin lady, during a very severe and painful illness, of which she died within a few days afterwards. The vender was the niece of the lady, and the deed was prepared by the directions of the niece's husband. The first Court came to the conclusion that, treated as a sale, the deed could not stand, and set it aside. On appeal to the High Court, it was suggested that though the deed might not be good as a deed of pure sale, it would be good as a deed of hounty. the sale being colorable for the purpose of giving effect to a gift which otherwise it might be difficult to make under the Mahomedan Law. The High Court came to the conclusion that there was no evidence sufficient to satisfy the burden of proof which lay upon every person who endeavoured to sastain a deed of that kind as a deed of gift from a person in extremes where the thing had assumed on the face of it a totally different character, and where, in the first instance, it was pleaded and endeavoured to be supported as a deed of such different character.

On appeal their Lordships affirmed the judgment of the High Court. MUSSAMUT KUMUROONISSA BEGUM P. MEERZA SYUFFOOLLAH. (1871) 16 W. R. (P.C.) 32 = 2 Sar. 743.

## Husband of.

BANKING BUSINESS CARRIED ON BY-SETTLEMENT OF ACCOUNT BY HIM IN RESPECT OF.

Suit against lady on foot of Maintainability of-Proof required in case of.

The suit was to recover a sum of money from a purdanathin lady on foot of an account settled by her husband. The account alleged to have been so settled was in respect of a banking business. There was no evidence that the lady lad expressly authorized her husband to make such a settlement. There was no satisfactory evidence that such a business was tarried on by the lady, and certainly none that it was carried on with her knowledge and by her authority.

Held that under the circumstances no authority could be interred from the fact that a banking business was carried on by the circumstances. on by the hasband to the knowledge of the lady (43).

## PURDANASHIN-(Contd.)

Husband of-(Contd.)

HANKING BUSINESS CARRIED ON BY-SETTLEMENT OF ACCOUNT BY HIM IN RESPECT OF-(Contd.)

No implication founded on the course of business can arise (45). (Sir Montagne E. Smith.) SUDISHT LALV. MUSSUMAT SHEOBARAT KOER. (1881) 8 I. A. 39 = 7 C. 245 (252)=4 Sar. 222.

DAUGHTER REVERSIONER-MORTGAGE BY MOTHER-DEED VALIDATING, BY DAUGHTER EXECUTED IN FAVOUR OF HER OWN HUSBAND.

Validity of -Onus of proof of.

A person claiming under a mortgage by a Hindu wislow contended that, even if originally invalid, the mortgage was binding upon the husband's estate, because it had been validated by the daughter of the deceased by a deed subseuently executed by her and her mother, the mortgagor. The deed relied upon for validating the mortgage was a general power of attorney executed by the widow and the daughter in favour of the latter's husband, and it was urged that by that deed the daughter admitted and recognised the mortgage. There was no evidence that at the time when the general power of attorney was executed, the daughter knew anything about the mortgage. It was not shewn that she received any advice or information beyond having the deed read to her word for word.

Held that it would be against all principle if a lady so situated were held bound by such a transaction (200).

The daughter was a purdanashin lady; she had no interest in the estate other than one in expectancy; she was not dealing with a stranger but with her own husband; she was not receiving any valuable consideration. There is no evidence that she was told that the deed she executed had the effect of subjecting her expectant estate to a burden which she was gratuitously undertaking (200). (Lord Hobhouse.) Lala Amaranath Sah v. Rani Achan Kun-(1892) 19 I. A. 196 = 14 A. 420 (426-7) = WAR. 6 Sar. 197.

## DEBTS OF.

-Security bond given by lady for-Validity of-Creditor trustee for lady-Deed obtained by, by pressure put through husband-No independent advice.

The question was whether a security for £1,000 given to the appellants by a married woman for debts of her husband

was impeachable by her.

The security was open to the double objection of having been obtained by a trustee from his certai que trust by pressure through her husband and without independent advice, and of having been obtained by a husband from his wife by pressure and concealment of material facts. It was also found that the document signed by the wife was very different from what she supposed it to be and a document of the true nature of which she had no conception

Held that the security could not be upheld.

Semble the security could have been upheld if the only ground for impeaching it had been that the wife had no independent advice (815). (Lord Lindley.) TURNBULL & (1902) 6 C. W. N. 809. CO. r. DUVAL.

-Surety for-Deed making lady liable as-Validity

of-Proof of-Onus-Quantum.

Plaintiff sued the widow Ranis and the infant son of a deceased Rajah, and based his claim on a bond signed by the Ranis. The plaint alleged that the debt was the Rajah's, but the bond recited that the Rajah had borrowed moneys from the plaintiff, and that the Ranis had also borrowed from the plaintiff, and it drew a distinction between the dealings and estate of the Rajah, and the dealings and estate of the Ranis. Held, that the suit against the Ranis was in the nature of a claim against sureties, and

Husband of- Could.)

DEETS OF - (Contd.)

that in the absence of proof that they knew the circumstances under which the Rajah contracted the loan, it could

not be maintained against the Ranis

"The plaint expressly states that the debt was a debt due from the Rajsh himself; consequently it was not a debt due from the Ranis but from the Rajah himself. Therefore the claim against the Ranis must be considered as in the nature of a claim against sureties. MAHANT JAVARAM GIR P. (1869) 2 B. L. R. 98 (P. C.)= RANI SHIORAJ KOER. 11 W. R. (P. C.) 41 = 2 Suth. 216.

DEED IN FAVOUR OF-EXECUTION UNDER UNDUE INFLUENCE OF.

Presumption of from non-payment of consideration -Propriety-Lady of capacity-Execution with comprehension proced-I'ndue influence not pleaded and not raised on issues or evidence.

In a suit instituted by the heirs of a deceased purdanashin lady to recover possession of villages conprised in a sale-deed executed by her in favour of the appellant, her husband, on the ground that she did not execute the deed with a full comprehension of its nature and effect, the High Court agreed in the findings of fact by the Sub-Judge that the lady was not as alleged intoxicated at the time of verification of the sale-deed, that she was a woman capable of managing her affairs and that she did in fact manage them. that she un loobtedly executed by her own hand the sale deed in question, but that no part of the consideration for the sale was paid to her by the appellant. The High Court thought that in the circumstances there was a presumption of undue influence on the part of the appeilant, and that he ought to have shown that the old lady had independent advice and thoroughly understood what she was doing. The High Court accordingly set aside the transaction altogether.

Their Lordships doubted whether that was right or altogether consistent with the previous findings by the Court

There is no case of undue influence made by the plaintiffs in their plaint or raised in the issues on which the case was tried; and there is no evidence that Rs. 30,000 was an inadequate price, or that the sale was an improvident one if the price had been paid (144). (Lord Dazer,) HAKIM MUHAMMAD IKRAM-UD-DIN P. NAJIBAN.

(1898) 25 I.A. 137 - 20 A. 447 (455-6) = 2 C. W. N. 545 = 7 Sar. 353.

#### MOOKTARNAMAH IN FAVOUR OF.

-Validity of -- Proof of -- Onus -- Quantum.

Held, that there was no satisfactory evidence that the mooktarnama (alleged to have been executed by the defendant, a purdanashin lady, in favour of her husband, shortly after her coming of age) was explained to the defendant in such a way as to enable her to comprehend the extent of the power she was conferring upon her husband (43). (Sir Montague E. Smith.) SUDISHT LAL D. MUSSUMAT SHEO-BARAT KOER.

(1881) 8 I. A. 39=7 C. 245 (250)=4 Sar. 222.

#### SALE DEED IN FAVOUR OF.

-Gift intended by-Finding of-Propriety.

M. a purdanashin (Mahomedan) lady, executed a sale deed by which she declared that she had sold two villages to the appellant (her husband) for Rs. 30,000, and having received the sale consideration in full from the aforesaid vendee had put him in proprietary possession of the property sold like herself. The deed was duly registered. The registering officer in his report stated that M admitted that she had already received gold mohurs worth Rs. 20,000, and that I her own use.

## PURDANASHIN-(Contd.)

Husband of-(Contd.)

SALE DEED IN FAVOUR OF-(Contd.)

the appellant, the vendee, paid in his presence ten bags con-

taining Rs. 10,000, to M, the vendor.

After the death of M. the plaintiffs, claiming to be her sisters, sued the appellant for possession of, inter alia, the villages comprised in the said sale deed and, in the event of the appellant proving the sale of the two villages to be genuine, for recovery of the sale consideration thereof instead of possession. The plaintiffs alleged with regard to the sale deed, that it had not been executed by M with full comprehension of its nature and effect.

Both the Courts below found that the sale deed was duly executed by M with full comprehension of its nature and effect, and that no part of the consideration for the sale was proved to have been paid by the appellant to M. On those findings of fact the Sub-Judge held that the presumption was that out of affection M gave the property to the appellant as a matter of favour, and through some policy called that gift a sale. The High Court dissented from that view.

Their Lordships agreed with the High Court (143-4). There is no evidence of any intention to make a gift, and there is no suggestion in the pleadings that the villages had been given to the appellant, or that his wife intended to remit to him or release him from payment of any part of the purchase-money. From the findings on the evidence it must be presumed that M intended to pass the property for some purpose, and as the suggestion of a gift is excluded the deed must operate (if at all) according to what it purports to be, namely, a sale (144). (Lord Datey.) HAKIM MUHAMMAD IKRAM-UD-DIN P. NAJIBAN.

(1898) 25 I. A. 137 = 20 A. 447 (454-5)= 2 C. W. N. 545=7 Sar. 353.

#### TRANSFER TO-VALIDITY OF.

Issue as to-Exidence-Examination by lady of herself-Failure of, when immaterial.

In a case in which the question was as to the validity of transfers of Government paper by a purdanashin lady to her husband, the lady did not examine herself. The question was whether and to what extent her failure to examine herself affected her case. Their Lordships observed as follows :-

It would, doubtless, have been more satisfactory if the respondent had thought fit to support her claim by her own testimony. Her abstaining from so doing certainly affords an objection to her case deserving of serious consideration; and their Lordships do not think that it is altogether removed by the suggestion of the strong repugnance felt by native females in the respondent's position to taking such a step. But the objection, though it may weaken, does not destroy the case made by the respondent; and their Lordships are of opinion that, whatever weight may be due to it, it is quite insufficient to affect the conclusions in her favour to be drawn from the facts and circumstances of the case, which have been already adverted to (595). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM v. SHUMSOON-(1867) 11 M. I. A. 551= NISSA BEGUM. 8 W. R. (P. C.) 3=2 Suth. 59=2 Sar. 259.

-Proof of-Onus-Quantum.

In a suit by a Mahomedan woman against her husband to recover the value of Company's paper and real and personal estate, the plaintiff alleged that such paper being her separate property, had been, as she lived in sechsion, indorsed and handed over by her to her husband for the purpose of receiving the interest thereon. The defence of the husband was that he had purchased such paper from his wife, and on the indorsement and delivery had paid the full value to his wife, who had appropriated the proceeds to

Husband of-(Contd.)

TRANSFER TO-VALIDITY OF-(Contd.)

Held, affirming the Courts below, that the burden of proving bona fide purchases of those Company's papers was properly thrown on the appellant (husband), and that he had failed to do so (595-6). (Sir James IV. Celvile.) MOON-SHEE BUZLOOR RUHEEM : SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. R. (P.C.) 3 = 2 Suth. 59-2 Sar 259.

-Proof of-Onus-Quantum-Transfer denning

wife of all her property.

In a suit by a Mahomedan woman against her husband to recover the value of Company's paper and real and personal estate, the plaint alleged that such paper being her separate property, had been, as she lived in seclusion, indorsed and handed over by her to her husband for the pur pose of receiving the interest thereon. The defence of the husband was that he had purchased such paper from his wife, and on the indorsement and delivery had paid the full value to his wife, who had appropriated the proceeds to her own use. Admittedly she came to his house a wealthy woman and left it almost destitute.

Held, that transactions of such nature and magnitude between husband and wife, with such a result, required a full and clear explanation on the part of the former, supported by such evidence as would satisfy a Court of Justice that they were conducted fairly and properly, and with a due regard to the rights and interests of the wife (584).

The principle of the judgments of the lower Courts is that the relation of the parties being what it was, although the wife may have failed to establish the precise case made by her, the husband was bound to show that the transactions which he set up were hone fide sales and purchases, and that he actually paid the full value for what he received from her. Their Lordships are clearly of opinion that this is a sound principle, and in accordance with the long established practice of the Courts in India.

This lady is entitled to the protection which the law gives to a purdanashin, and the burden of proving the reality and bone fides of the purchases pleaded by her husband was properly thrown on him (585.6). (Sir James W. Colvile.) MOONSHEE BUZLOOR RUHEEM P. SHUMSOON-NISSA BEGUM. (1867) 11 M. I. A. 551=

8 W. R. (P. C.) 3=2 Suth. 59=2 Sar. 259. Ladies with different interests-Deed by-

Validity-Issue single as to both ladies. Defences in fact separate but not kept separate-Ir.

regularity in procedure.

A.deed of mortgage of a testator's estate to secure debts for which it was liable was executed by, amongst others, two pardanashin ladies, one of whom was the widow of the testator and an executrix of the will, and the other, his daughter, who was a donee of villages from the testa-tor in his lifetime. In a suit to enforce the mortgage, the two ladies, while not denying their execution of the deed in wit, put in separate defences, each contending that she signed it without knowing what it contained, and admitted in execution before the Registrar without comprehending the real nature of the transaction. The Subordinate Judge did not keep the two defences separate; he mixed them together in one issue, and in his judgment he applied to both ladies evidence which applied to either, and found in the affirmative against both without distinction.

Held that that was a course very likely to cause error (76).

In the first place, there is direct evidence affecting the dow which does not affect the daughter. In the next the positions of the two ladies in relation to the tate were quite different. The widow was executrix, and

#### PURDANASHIN-(Contd.)

Ladies with different interests-Deed by-Validity-Issue single as to both ladies-(Contd.)

she took large beneficial interests under the will. She had good reason to intervene actively in the affairs of the estate, and she appears to have done so. The daughter was not an executrix; her property came to her indepedently of the will; she was not liable for any of the debts secured by the deed until she made berself liable by the deed itself; and, though, both the ladies were illiterate, there was evidence shewing that the widow was an efficient woman of business, while there was no such evidence as regards the daughter (76-7) (Lord Hobbouse.) ANNODA MOHINI ROY CHOWDHRY :: BHUBAN MOHINI DEBI.

(1901) 28 I. A. 71 = 28 C. 546 (553-4) = 3 Bom, L.R. 386=7 Sar. 819=11 M.L.J. 164.

## Legal practitioner employed by.

-Authority ordinarily implied in-Inference of-Proof of agency-Further inquiry as to-Necessity. See LEGAL PRACTITIONER-PURDANASHIN.

(1930) 58 M.L.J. 551.

Compromise of suit by-Authority of lady for-Proof of-Quantum. So: LEGAL PRACTITIONER-PUR-DANASHIN. (1930) 58 M.L.J. 551.

-Examination as witness of -Necessity-Compromise of litigation-Lady's consent to, and knowledge of-Issue as to-Examination on. See COMPROMISE - SUIT-COMPROMISE OF-CONSENT OF PARTY TO.

(1922) 17 L.W. 481 (493).

-Mortgage by lady in favour of-Validity of-Proof of-Onus-Quantum, See PURDANASHIN-DEED BY-VALIDITY OF-PROOF OF-ONUS-QUANTUM-LEGAL PRACTITIONER. (1914) 27 M L.J. 13.

Mahomedan family-Male members of-Mortgage by-Purdanashin's right to dispute validity of. as regards her share.

-Estoppel-Management of property left by her to male members—Dealings with property by them without her concurrence—No misleading by her otherwise. See EVI-DENCE ACT, S. 115-MAHOMEDAN FAMILY-MALE (1912) 40 C. 378. MEMBERS OF.

#### Mortgage by.

ATTESTATION OF DEED OF-PROOF OF, REQUIRED.

-The question was whether the mortgage bond sued upon was duly attested by at least two witnesses within the meaning of S. 59 of the Transfer of Property Act.

The mortgagors were two pardanashin ladies who did not appear before the attesting witnesses, and consequently their faces were not seen by the witnesses. The two attesting witnesses, who were examined, were, however, well acquainted with the voices of the ladies. The mortgagors were, on the occasion of the execution of the mortgage deed, brought from the zenana apartments of the house in which they were to an ante-room to execute the deed. In the ante room the ladies seated themselves on the floor, and between them and these two attesting witnesses there was a chick, which was not lined with cloth, hanging in the door-way. These two attesting witnesses recognised the ladies by their voices, and deposed to the effect that they saw each lady execute the deed with her own hand, although owing to the chick they were unable to see the face of either of the ladies.

Their Lordships accepted the evidence of the two attesting witnesses as true, and held it proved that the suit mortgage deed was duly attested within the meaning of S. 59 of the Transfer of Property Act (167). (Sir John Edge.) PADARATH D. RAM NARAIN UPADHIA.

(1915) 42 L. A. 163 = 37 A. 474 (481) =

PURDANASHIN-(C. w.d.)

Mortgage by- (Cantd.)

ATTESTATION OF DEED OF-PROOF OF, REQUIRED -(Contit.)

19 C.W.N. 991 - 22 C.L.J. 165 - 17 Bom. L.R. 617 = 13 A.L.J. 809 - 18 M L.T. 85 - 2 L.W. 639 = (1915) M.W.N. 709 - 30 I.C. 366 = 29 M.L.J. 159.

 A purchase-hin lady executed a deed of mortgage as guardian of her son. She was behind the purda when the document was taken to her for signature; none of the witnesses saw her sign it; her son came from behind the purda and said that it had been signed by her. Thereupon the witnesses appended their names. Held that the witnesses who appended their names under those circumstances did not "attest" the document in accordance with the provisions of S. 50 of the Transfer of Property Act, and that the mortgage was therefore void.

This case is very different from the one reported in 42 1.A. 103. Here not only was the actual execution by a hand put out from behind the curtain not witnessed, but the voice was not beard, and what the witnesses went on was, in the main, the fact that the son came to them and said: "Here is the deed which my mother has executed." (96). (Pinceunt Haldane.) GANGA PERSHAD SINGHT. ISHRI PERSHAD SINGH. (1918) 45 I.A. 94 a

45 C. 748 - 20 Bom L R. 587 - 22 C. W. N. 697 -4 Pat. L.W. 349 = 23 M.L.T. 388 = 8 L.W. 176 -27 C.L.J. 518=(1918) M.W.N. 382=16 A.L.J. 409= 45 I.C. 1-34 M.L.J. 545.

 Where the evidence showed that when a pardanashin lady signed a mortgage bond not one of the persons who signed as witnesses was present or saw her sign it; that she was behind the pardah, "that her son took that deed, and others, inside the purelah; that he came out and told those outside, and out of sight of the lady, that she had signed the deed; and that after that all those signed whose names appeared as witnesses, held that the document was not duly attested.

The mortgage deed here in question was not, in a legal sense, attested; for it was merely signed by persons who professed to be witnesses to its execution, although in truth and in fact they were not so. (Lord Darling.) HIRA BIBI (1925) 52 I. A. 362 = 2. RAM HARI LAL.

5 Pat. 58 = 23 A. L: J. 815 = 2 O. W. N. 641 = 6 P. L. T. 575 = 27 Bom. L. R. 1144= 42 C. L. J. 148 = 22 L. W. 373 = (1925) M. W. N. 728 = 3 P. L. R. 296 - 30 C. W. N. 364 -

A. I. R. 1925 P. C. 203 = 89 I. C. 659 = 49 M. L. J. 240.

-Insufficiency of proof adduced-Remand by Pricy Council for fresh evidence in cone of.

In a case in which their Lordships, differing from the High Court in Calcutta, dismissed a suit to enforce a mortgage deed executed by a purdanashin lady on the ground that it was not "attested" within the meaning of S. 59 of the Transfer of Property Act, it was suggested for the appellant that the appeal should be referred back to the Court below, on the view which their Lordships took of the law (a view which was a somewhat novel one at the time the case was decided by the High Court), for the purpose of framing an issue to see whether it could be brought within the decision in 42 I. A. 163 about purdanashin ladies. Their Lordships declined to accede to the suggestion, observing :- But it is obvious that the facts, as proved here, fall far short and very remote from what was under consideration in the case to which reference has been made, and their Lordships see no justification for taking the unusual course of referring back an appeal which has been argued, and which ought prima facie to be decided upon the materials which were before the Courts below. (Viscount

PURDANASHIN-(Contd.)

Mortgage by-(Contd.)

ATTESTATION OF DEED OF -PROOF OF, REQUIRED -(Contd.)

Haldang.) GANGA PERSHAD SINGH D. ISHRI PERSHAD (1918) 45 I. A. 94 (96-7) = 45 C. 748 = SINGH. 20 Bom. L. R. 587 = 22 C. W. N. 697 = 4 Pat. L. W. 349 = 23 M. L. T. 388 = 8 L. W. 176 =

27 C. L. J. 548=(1918) M. W. N. 382= 16 A. L. J. 409 = 45 I. C. 1 = 34 M. L. J. 545.

MOOKHTEAR-MORTGAGE IN FAVOUR OF.

-Interest exorbitant and unconscionable provided by-Relief against-Assignee of mortgage-Suit by. See CON-TRACT ACT, S. 16-PURDANASHIN.

(1885) 12 I. A. 215 (226)=12 C. 225 (238-9). VALIDITY OF DEED-PROOF OF.

-Onus-Quantum, See PURDANASHIN-DEED BY -VALIDITY OF-PROOF OF - ONUS - QUANTUM-MORTGAGE.

Oudh Land Revenue Act of 1876, S. 61-Petition by lady under-Statements in

-If admissions See OUDH ACTS-LAND REVENUE ACT OF 1876. S. 61-PETITION BY PURDANASHIN UN-(1916) 43 I. A. 212 (226.7)= 38 A. 627 (650-1).

## Plea of-Privy Council appeal.

-Maintainability for first time in.

In a suit for specific performance of a contract for sale entered into by the widow of a deceased Hindu and his executor, no plea was raised either in the written statement, the issues, or the grounds of appeal to the High Court that the widow was a purdanashin woman and either required or had not had advice or assistance of friends.

Held, that that plea was not consequently open to the vendor. (Lird Wrenhury.) NAROTTAM DAS v. KEDAR (1916) 41 I. C. 957=6 L. W. 61= NATH SAMANTA. 21 C. W. N. 665 (668-9).

## Protection afforded by law to.

-Application of, to woman not belonging to that class -Propriety.

The well-known rules of law applicable to deeds executed by purdanashins are not applicable to deeds executed by women not belonging to that class. In the case of such women, it must depend in each case on the character and position of the individual woman whether those who deal with her are or are not bound to take special precautions that her action should be intelligent and voluntary and to prove that it was so in case of dispute (176).

Held, in the case of a Kashmiri woman, who was found to have been an independent woman of more than ordinary capacity for, and experience in, dealing with property, that she was not entitled to the protection which the law gave to purdanashins. (Lerd Hobkouse.) HODGES v. DELHI AND (1900) 27 I. A. 168= LONDON BANK, LTD.

23 A. 137 = 5 C. W. N. 1 = 2 Bom. L. B. 967 = 7 Sar. 767 = 10 M. L. J. 279.

-Mahemedan and Hindu women-Applicability of protection alike to.

As regards the protection afforded by law to purdanashin women and the onus thrown by it upon their husbands of proving that transactions entered into by them with their wives were conducted fairly and properly, and with a due regard to the rights and interests of the wives, it was argued that a distinction cught to be drawn between a Mahomedan and a Hindu woman, because it was said that in all that concerns her power over her property, the former is by has more independent than an English wemen of her husband.

## Protection afforded by law to-(Contd.)

Held, that no such distinction ought to be drawn, and that a Mahomedan woman was entitled, equally with a Hindoo woman, to the protection which the law gives to a purdanashin (585-6).

In India the Mussulman woman of rank, like the Hindoo, is shat up in the zenana, and has no communication, except from behind the purdah, or screen, with any male persons, save a few privileged relatives or dependants; the culture of the one is not, generally speaking, higher than that of the other, and they may be taken to be equally liable to the pressure and influence which a husband may be presumed to be likely to exercise ever a wife living in such a state of seclusion (585-6). (Sir James W. Celvile.) MOONSHEE BUZLOOR RUHEFM v. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W R. (P.C.) 3 = 2 Suth. 59 = 2 Sar. 259.

-Other party to transaction also a purdamashin lady -Applicability of protection to case of.

On the death of a Mahomedan a dispute arose between his widow and his sister as to which of them was entitled to have her name entered as proprietor in an application made to the Revenue Court for mutation of names. At the suggestion of the friends and relations of both the ladies. the matter was referred for arbitration to a common friend who gave an award. In a suit by the widow against inter alia her sister-in-law (the deceased's sister) for the recovery of her dower and her share of her husband's property as against the provisions of the award, the High Court (differing from the Court below) held the arbitration and award to be good and dismissed the suit. On appeal to the Privy Council. it was contended for the plaintiff that, she being a pardanashin lady, the onus lay on the defendants of showing that everything had been explained to her (the plaintiff), and that the same had not been discharged. In over-ruling this plea, their Lordships observed as follows:—Their Lordships have fully in view the importance of maintaining the rule which has been so often laid down as to deeds by pardamashin ladies. This, however, is not the ordinary case of a deed or contract being got from a pardanashin lady by one who had all the advantages of education and understanding on his side. The two ladies whose dispute it was were both pardanashin ladjes, and they were both counselled and assisted by their respective male relatives. It is, after all, a question of evidence, and their Lordships are satisfied that it has been shown not only that the plaintiff had had explained to her and understood that a family settlement was proposed to be carried out. by the help of the arbitrator but also that she was made aware of the solution that the arbitrator prepered. (Lerd Dunedin.) MUSAM-MAT IMTIAZ-UN-NISA D. MUMTAZ HUSSAIN.

(1918, 28th October) High Court File for 1918 P. C. A. 32 of 1915.

Transmuting of, into legal disability—Propriety.

The law throws around a purdanashin lady a special cloak of protection. But the legal protection thus given to her ought not to be transmuted into a legal disability. (Lord Show.) KALI BAKHSH SINGH v. RAM GOPAL SINGH.

(1913) 41 I. A. 23 = 36 A. 81 = 18 C. W. N. 282 = 21 I. O. 985 = (1914) M. W. N. 112 = 16 O. C. 378 = 15 M. L. T. 130 = 19 C. L. J. 172 = 16 Bom. L. B. 147 = 12 A. L. J. 115 = 26 M. L. J. 121.

While it is important to maintain the principles of law laid down for the protection of purdanashin ladies, it is also important not to "transmute such a legal protection late a legal disability. (Lord Alkin.) RUHUILA r. HASSANALLI DEGUMIA. (1928) 32 C. W. N. 929 = I. L. T. 40 B. 118 = 110 I. C. 200 = 28 L. W. 595 =

#### PURDANASHIN-(Contd.)

Protection afforded by law to-(Contd.)

48 C. L. J. 412 = 5 O. W. N. 1138 = A. I. R. 1928 P. C. 303 = 55 M. L. J. 84 (87-8), Quasi-Purdanashin.

- Meaning of - Recognition of class of - Propriety.

Their Ladships observed that the contention that a woman might be a quasi-purdanashin in the sense that, without being of the purdanashin class, she might yet be so close to them in kinship and habits, and so secluded from ordinary social interceurse, that a like amount of incapacity for business must be ascribed to her, and the same amount of protection which the law gave to purdanashins must be extended to her, was a novel one and that they were not favourably impressed by it (175 b), (Lord Hobbouse.) HODGES P. DELHI AND LONDON BANK, LTD.

(1900) 27 I. A. 168 = 23 A. 137 (145) = 5 C. W. N. 1 = 2 Bom. L. R. 967 = 7 Sar. 767 = 10 M. L. J. 279.

Will of—Prior transactions by her referred to in— Validity of—Probate of will.

 Grant of, in spite of opposition of her heirs—Effect of. See PROBATE—PURDANASHIN.

(1905) 32 I. A. 244 (255) - 33 C. 116 (126-7).

## PYMASH ACCOUNTS.

 Almirability of Accounts never confirmed and acted upon-Public documents—Accounts if, in such a case,

In a case in which the question was whether certain lands were or were not devaswam property, the Sub-Judge said that certain pymash accounts of the years 1798-9 and 1805-6, most satisfactorily shewed that the lands were devaswam property. On the face of the accounts it was stated that they were never confirmed and never acted on. In a prior sait a copy of one of those accounts was refused to one of the litigant parties, on the very ground that the account had never been confirmed, and was only granted on its being discovered that a copy had already been given to his opponent.

Held that the pymash accounts could hardly be said to be public documents at all, and that they should not have been treated as evidence (150).

The person who made those returns may have believed that the lands were devaswam property, but his statement to that effect is a mere private opinion, unless and until it is affirmed or acted on in some public way (130). (Sir Arthur Hebburge.) VENKATESWARA IVAN P. SHEKHARI VARMA. (1881) 8 I. A. 143=3 M. 384 (392-3)=

-Persensien-Title-Exidentiary value as regards.

Pymash accounts, putting them at the highest, are only evidence of possession, having been rendered to Government for the purpose of informing them from whom they were to demand the revenue (150). (Sir Arthur Hobbouse.) VENKATESWARA IYAN P. SHEKHARI VARMA.

(1881) 8 L. A. 143 = 3 M. 384 (392) = 4 Sar. 259.

## PYMASH PROCEEDINGS.

——Title—Evidentary value as to. SM HINDU LAW —RELIGIOUS ENDOWMENT—TEMPLE—PROPERTY OF, OR PRIVATE PROPERTY OF DHARMAKARTA.

(1922) 49 I. A. 237 (246-7) = 45 M. 565 (576).

#### BAILWAY.

Right of way across—Possibility in law of. See EASEMENT—WAY. (1922) 32 M. L. T. 62 (63) (P.C.).

## BAILWAYS ACT IX OF 1890.

- Railway-Liability of carriers by-Nature and extent of-Reason for exceptional treatment of railways.

The Indian Kailways Act, 1890, reduces the responsibility of carriers by railway to that of bailees under the Contract

## RAILWAYS ACT IX OF 1890-(Contd.)

Act of 1872. But then it declares that nothing in the common law of England, or in the Carriers Act, 1865, shall affect the responsibility of carriers by railway. The reason for dealing with railways in this exceptional manner, may, perhaps, he found in the circumstance that railways in India are to a great extent in the hands of the Government, and the Government is excepted from the definition of a common carrier in the Act of 1865. The Act of 1879, which is now repealed, declared that nothing in the Carriers Act, 1865, should apply to carriers by railway. But it did not negative the application of the common law of England to such carriers. In S. 10 it spoke of "the obligation imposed on a carrier by railway by the Indian Contract Act, 1872." It did not, however, declare that that obligation was to be the measure of the liability of carriers by railway, but only that their liability was not to be reduced below that limit except in a specified manner (128). (Lord Macnaghton.) IRRAWADY FLOTILLA CO. P. BUGWAN-DASS. (1891) 18 I. A. 121-18 C. 620 (628) = 6 Sar. 40.

S. 7- Legislation of land-Taking of railrowy on level across public highway if an-Taking of land by railway for station, or for tunnel or for a cutting if an

The taking of a railway on the level across a public high way is not an acquisition of immovable property within the meaning of S. 7 of the Indian Railways Act of 1890, as amended by Act IX of 1896.

Semble, when a railway company takes land for a station or for a tunnel or a cutting, the case may be one of an acquisition of land. (Viscount Haldone.) BOMBAY COR-PORATION 2. GREAT INDIAN PENINSULA RY.

(1916) 43 I. A. 310 = 41 B. 291 (298-9)= 21 C. W. N. 447 - 25 C. L. J. 209 - 21 M. L. T. 1 -(1917) M. W. N. 83 - 15 A. L. J. 63 -38 I. C. 923 = 19 Bom. L. R. 48.

-S. 7-Public street vested in Municipality-Railway lines across-Power of Railway Company to lay-

Land Acquisition Act of 1894-Fifeet.

S. 7 of the Indian Railways Act of 1890, as amended in 1896, made the powers conferred by that section subject to any enactment in force for the acquisition of land for public purposes and for companies. Held that the provisions of the Land Acquisition Act of 1894 were not so expressed as to cut down the power conferred by S. 7 of the Indian Railways Act on a railway company in India to carry a line of railway across a street, subject to the control of their powers by the Governor-General, and that accordingly the respondents had the right to construct certain lines of railway on the level across a public street vested in the appellant corporation without obtaining permission from the appellant corporation or acquiring under the Land Acquisition Act, 1894, so much of the street as was occupied by the level crossing.

The Indian Railways Act in such a case contemplates the right of the public being kept alive (Ss. 13, 14, 104). The Land Acquisition Act does not repeal these sections, and the taking of the railway on the level across a public highway is accordingly not an acquisition of immovable property within the meaning of the Act. (Viscount Haldane.) BOMBAY CORPORATION P. GREAT INDIAN PENINSULA (1916) 43 I. A. 310 = 41 B. 291 (298 9)=

21 C. W. N. 447 = 25 C. L. J. 209 = 21 M. L. T. 1= (1917) M. W. N. 83=15 A. L. J. 63= 38 I. C. 923 = 19 Bom. L. R. 48.

-S. 72 (2)-Risk note Form H-Attestation by two witnesses if essential part of.

Where the body of a risk note was admittedly in the form H approved by Order in Council, but the form so approved contained at the end of it space for the attestation

## RAII-WAYS ACT IX OF 1890, S. 72 (2)-(Contd.)

that the attestation by two witnesses was not an essential part of the document prescribed.

Para. (a) of S. 72 (2) of the Act of 1890, which alone deals with the execution of an agreement of this nature, does not provide that the agreement shall be attested; and para. (b) of the same sub-section, while it requires that the form shall be approved by the Governor-General in Council, does not entrust that authority with the duty of providing for the attestation of the document. (Viscount Care, L. C.) TAM-BOLLE. GREAT INDIAN PENINSULA RY.

(1927) 55 I. A. 67 (70·1) = 52 B. 169 = 47 C. L. J. 214 = 5 O. W. N. 219 = 30 Bom. L. B. 275 = 107 I. C. 124 = 9 Pat. L. T. 171=32 C. W. N. 544=

(1928) M. W. N. 938 = 27 L. W. 667 = 28 A. L. J. 545 = A. I. R. 1928 P. C. 24 = 54 M. L. J. 167.

-Risk note Form H-Goods consigned for carriage under-Destruction by fire of, while awaiting despatch-Limitation of responsibility under note if attaches to

Appellant, a Commission agent, delivered on 5-2-1920 128 hales, and on 7-3-1920 162 hales of cotton at the Amaluer Station of the respondent company for transport to the appellant's business premises at Kurla. Of the 290 bales so delivered. 216 were duly put on board the respondent company's wagons and carried to Kurla, but the remaining 74 bales remained on the station platform at Amalner awaiting transport. On February 25 a fire broke out, and the 74 bales were destroyed. The question was whether, in respect of the 74 bales, the respondent company was protected from liability by the terms of a document called a " risk-note " which was in a form approved by the Governor-General in Council under the Indian Railways Act. S. 72 (2).

Appellant contended that the note, by the terms of the recital contained in it, applied to goods despatched by the sender and charged for by the railway administration at reduced rates, and that, therefore, until goods had been loaded on wagons for transport, or at all events until the railway company had given a receipt for the goods specifying that they were to be carried at the reduced rate, the risk note had no application to them, and the railway company were mere ordinary bailees of the goods. By the consignment notes signed by the appellant on the dates of the delivery of the goods he however requested the railway company to receive the goods therein described and forward them by goods train to Kurla. Further the conditions indorsed on each of the consignment notes provided that, when articles were delivered for conveyance, the responsibility of the railway for the loss, destruction or deterioration of the article should be subject to the provisions of S. 72 of the Railways Act of 1890.

Held, over-ruling the appellant's contention, that the bales in question were delivered to the railway company for carriage and were so accepted, and that consequently the responsibility of the railway company for each parcel of goods accrued forthwith on the delivery of the goods and the acceptance of such delivery-and accordingly that the risk note attached to them immediately on such delivery and acceptance. (Viscount Care, L. C.) THAMBOLI P. GREAT INDIAN PENINSULA RY. CO.

(1927) 55 I. A. 67 (71.2) = 52 B. 169 = 47 C. L. J. 214 = 5 O. W. N. 219 = 30 Bom. L. R. 275 = 107 I.C. 124 = 9 Pat. L. T. 171 = 32 C. W. N. 544=

(1928) M. W. N. 938= 27 L. W. 667=28 A. L. J. 545= A. I. R. 1928 P. C. 24=54 M. L. J. 167.

-Risk note Form H-Signature of agent of firm in -Signature by him as agent-Necessity.

S. 72 of the Indian Railways Act, 1890, requires that an of the execution of the document by two witnesses, held agreement purporting to limit the responsibility of a rail-

## RAILWAYS ACT IX OF 1890, S. 72 (2)-(Contd.)

way administration for the loss, destruction, or deterioration of animals or goods shall in so far as it purports to effect such limitation be void unless it is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods. It was argued that a signature in the name of a firm was ineffective unless it appeared on the face of the document that the signature was affixed either by the sender himself or by the hand of an agent whose agency was disclosed. This objection has no weight. When the person signing the document had full authority to sign the name of the firm, it is unnecessary that he should purport to sign as agent. (Viscount Care, L. C.) TAMBOLI P. GREAT INDIAN PENINSULA RY. CO.

(1927) 55 I. A. 67 (70) = 52 B. 169 = 47 C. L. J. 214 = 5 O. W. N. 219 = 30 Bom. L. R. 275 = 107 I. C. 124 = 9 Pat. L. T. 171 = 32 C. W. N. 544 = (1928) M. W. N. 938 = 27 L. W. 667 = 28 A. L. J. 545 =

A. I. R. 1928 P. C. 24 - 54 M. L. J. 167.

-Wilful neglect-Meaning of-Failure of Railway Company to provide efficient means for extinguishing

The expression "wilful neglect" means that the act is done deliberately and intentionally and not by accident or inadvertence, but so that the mind of the person who does the act goes with it.

Failure on the part of a railway company to provide efficient means for extinguishing fire does not amount to "wilful neglect". (Viscount Cave, L. C.) TAMBOLI v. GREAT INDIAN PENINSULA RY. CO.

(1927) 55 I. A. 67 (73) = 52 B. 169 = 47 C. L. J. 214 = 50. W. N. 219 = 30 Bom. L. B. 275 = 107 I. C. 124 = 9 Pat L. T. 171 = 32 C. W. N. 544 = (1928) M. W. N. 938 = 27 L. W. 667 =

28 A. L. J. 545 - A.I. B. 1928 P. C. 24 = 54 M. L. J. 167.

BAILWAY COMPANY.

## Accident Cases.

-Evidentiary difficulties in.

The case presents in very full measure the evidentiary difficulties which attend all accident cases and particularly Indian accident cases (765). (Lord Summer.) EAST

INDIAN RAILWAY CO, p., KIRKWOOD, (1919) 48 C. 757 = 15 L. W. 248 = 62 I. C. 921 (P. C.) = 1922 P. C. 195.

## Dangerous articles carried by fellowpassenger-Death caused by.

-Damages for-Claim for-Onus on claimant. Where the father of a person killed by the fireworks Carried by a passenger under his seat sued the Railway

Company for damages for negligence :

Held, that the burden was on the plaintiff to prove that the company knew or ought to have known of the dangerous character of the goods and should have prevented the carriage of such goods, and not upon the Railway com-Pany to show that they were not guilty of any negligence not discovering their real character. (Lord Chancellor.) RAST INDIAN RAILWAY CO. v. KALIDAS MUKERJEE.

(1901) 28 I. A. 144 = 28 C. 401 = 11 M. L. J. 156 = 5 C. W. N. 449=3 Bom. L. B. 293=8 Sar. 33.

Liability of.

Nature of. A Railway Company is not, like a common carrier, liable for not carrying safely. It is liable only for culpable negli-note. (Lord Chanceller.) EAST INDIAN RAILWAY COMPANY D. KALIDAS MUKERJEE.

(1901) 28 I. A. 144 = 28 C. 401 = 11 M. L. J. 156 =

## RAILWAY COMPANY-(Contd.)

#### Negligence of.

-Damages for-Suit for-Onus on plaintiff in. In actions for damages for negligence against a Railway Company the onus is on the plaintiff to prove negligence on the part of the Railway Company. (Lord Chancellor.)

EAST INDIAN RAILWAY CO P. KALIDAS MUKERJEE. (1901) 28 I. A 144 = 28 C. 401 = 11 M. L. J. 156 = 5 C. W. N. 449 = 3 Bom. L. R. 293 =

8 Sar. 33.

The appeal arose out of a suit brought by the respondent against the appellants, a Railway company, claiming damages in respect of injuries which he suffered in consequence of the appellants' train in which he was a passenger being derailed and wrecked. He alleged that the accident was due to the negligence of the appellants or their servants.

The appellants denied the alleged negligence; stated that the derailment was caused by the malicious and criminal act of some person or persons unknown in removing the rail; and submitted that even if such persons were in the employment of the company the removal was not done in the course of their employment and that the appellants were not liable.

Held that the burthen of proof was on the appellants, except as to the question of damages (760). (Lord Sumner.) EAST INDIAN RAILWAY CO. v. KIRKWOOD.

(1919) 48 C. 757=15 L. W. 248-(1922) P. C. 195= 62 I. C. 921 (P. C.).

-Liability for-Canadian Common law as to.

Apart from statute a carrier is liable in Canada, as in England, for injury arising from negligence in the execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability (907). (Viscount Haldane, L. C.) GRAND TRUNK RAILWAY COMPANY OF CANADA P. ROBINSON.

(1915) 19 C. W. N. 905 = 31 I. C. 684 = 84 L. J. P. C. 194.

-Liability for-Freedom from-Canadian statute law as to-Canadian Rathways Act-Scope and effect of.

The freedom of a Railway company to stipulate for its non-liability for injury arising from negligence in the execution of its contract to carry has been restricted in Canada by the Railway Act. Under S. 340 of that Act no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Hoard, which is empowered to determine the extent to which such fiability may be impaired, restricted, or limited, and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. Standard and special freight tariffs are to be filed with the Board and to be subject to its approval, and are to be published, and made open to the inspection of the public at the railway companies' stations and officers. Under the Act, the companies are, by S. 284, put under a general obligation to carry and deliver with due care and diligence, and any one aggrieved by a breach of this duty is to have a right of action, from which the companies are not to be relieved by any notice, condition, or declaration if the damage arises from negligence or omission. This right is, however, expressed by the section to be given "subject to this Act (907). (Viscount Haldane, L.C.) GRANT TRUNK RAILWAY COMPANY OF CANADA 2. ROBINSON.

(1915) 19 C. W. N. 905 = 31 I. C. 684 = 84 L. J. P. C. 194.

-Liability for-Freedom from-Contract stipulating for-Validity-Canadian Railways Act, S. 340-Effect.

Their Lordships think that where, under S. 340 and the other sections which deal with special tariffs, forms of stipulation limiting liability have been approved by the Board, and the conditions for making them binding have 60. W, N. 449 = 3 Bom. L. B. 293 = 8 Bar. 33. | been duly complied with, the companies are enabled in such

## RAILWAY COMPANY-(Contd.)

Negligence of - (Contd.)

cases to contract for complete freedom from liability for negligence (907). (Viscount Haldane, L. C.) GRAND TRUNK RAILWAY COMPANY OF CANADA P. ROBINSON. (1915) 19 C. W. N. 905 - 31 I. C. 684 -84 L. J. P. C. 194.

## Passenger.

-Agent of-Contract with company by-Binding nature of-Duty of care required of company as regards passenger-Contract deprising him of-Negligence of agent in entering into-Passenger if affected by.

If the contract between the passenger and the Railway company is one which deprives the passenger of the benefit of a duty of care which he is prima facie entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special term imposed. This may be shown to have been done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised, antecedently or by way of ratification, the making of the contract under circumstances in which he must be taken to have left everything to his agent. In such a case, it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to (909-10).

The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from alleging afterwards want of authority to make any such terms as the law allows. Moreover, if the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered, and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by the company, be bound, and his principal will be bound through him. To hold otherwise would be to depart from the general principles of necessity recognised in other business transactions, and to render it impracticable for Railway companies to make arrangements for travellers and consignors without delay and inconvenience to those who deal with them (910). (Viscount Haldane, L. C.) GRAND TRUNK RAILWAY COMPANY OF CANADA P. ROBINSON.

(1915) 19 C. W. N. 905 = 31 I. C. 684 = 84 L. J. P. C. 194.

-Contract special-Passenger travelling under-Liability of company to-Measure of-Claim inconsistent with -Maintainability.

It is not accurate to speak of the right of a passenger to be carried without negligence, as if such a right existed independently of the contract between the passenger and the Railway Company and was taken away by it. The only right to be carried will be one which arises under the terms of the contract itself, and these terms must be accepted in their entirety. The company owes the passenger no Juty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it, he cannot afterwards reprobate it by claiming a right inconsistent with it. For the only footing on which he has been accepted as a passenger is simply that which the contract has defined (910). (Viscount Haldane, L. C.) GRAND TRUNK RAILWAY COMPANY OF CANADA D. (1915) 19 C. W. N. 905=31 I. C. 684= ROBINSON. 84 L. J. P. C. 194.

## RAILWAY COMPANY - (Contd.)

Passenger-(Contd.)

-Duty of company to-Contract modifying-Effect

The general duty of a Railway Company to exercise care in regard to a passenger entering a train on a mere invitation or permission from the company without more, may, subject to statutory restrictions, be superseded by a specific contract which may either enlarge, diminish, or exclude it. If the law authorises it, such a contract cannot be pronounced to be unreasonable by a Court of Justice. The specific contract, with its incidents either expressed or attached by law, becomes in such a case the only measure of the doties between the parties, and the passenger cannot by any device of form get more than the contract allows him (909). (Viscount Haldane, L. C.) GRAND TRUNK RAILWAY COM-PANY OF CANADA P. ROBINSON.

(1915) 19 C. W. N. 905 = 31 I.C. 684= 84 L. J. P. C. 194.

Injury to-Negligence of Company-Injuries not due to-Proof of-Quantum.

The appeal arose out of a suit brought by the respondent against the appellants, a Railway Company, claiming damages in respect of injuries which he suffered in consequence of the appellant's train in which he was a passenger being derailed and wrecked. He alleged that the accident was due to the negligence of the appellants or their servants. The accident was caused by a length of rail of about 36 feet having been removed from the railway line.

The appellants denied the alleged negligence; stated that the derailment was caused by the malicious and criminal act of some person or persons unknown in removing the rail; and submitted that even if such persons were in the employment of the company the removal was not done in the course of their employment and that the appellants were not liable.

Held, restorting the trial judge, that the appellants had discharged the onus which lay opon them of proving that the respondent's injuries were not due to the appellant's negligence. (Lord Sumner.) EAST INDIAN RAILWAY (1919) 48 C. 757= CO. P. KIRKWOOD.

15 L. W. 248 = (1922) P.C. 195 = 62 I. C. 921 (P.C.).

-Injury caused by negligence to-Damages for Company's liability for-Contract varying-Validity-Passenger entering train by invitation or permission from

company. If a passenger has entered a train on a mere invitation of permission from a Railway Company without more, and be receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract, or of a duly imposed by the general law, and in the latter case as in form a tort. But in either view this general duty may subject to statutory restrictions, be superseded by a specific contract, which may either enlarge, diminish, or exclude it (909). (Viscount Haldane, L. C.) GRAND TRUNK RAIL WAY CO. OF CANADA r. ROBINSON.

(1915) 19 C. W. N. 905=31 I. C. 684= 84 L. J. P. C. 194.

## Preference and common stock of.

-Valuation of, as a going concern—Evidence. On a question of the value of the preference and common stock of a Railway Company for the purpose of its acquis tion by the Government, such value to be arrived at by

valuing the property as a going concern, any attempt to estimate future profits by reference to selling value or replace ment cost would be of no avail. Held, therefore, that eridence relating to the same was rightly excluded by the arti-

#### BAILWAY COMPANY-(Contd.)

### Preference and common stock of-(Contd.)

trators to whom the whole question was referred (255).

(Viscount Birkenhead.) GRAND TRUNK RAILWAY CO.

OF CANADA v. KING. (1922) 33 M. L. T. 246 (P. C.).

RAJ.

-Sa Hindu Law-Impartible Estate-Raj.

RAJPUTS.

—Mohal in Punjab sub-division of tribe of. See PUNJAB—MOHAL IN. (1925) 22 L. W. 299 (301-2). BATIFICATION.

Acts in excess of authority—Ratification of—General former to do similar acts in future—Conferring of—finitiation.

There is a wide distinction between ratifying a particular act which has been done in excess of authority, and conferring a general power to do similar acts in future (95). (Sir Barnes Peacock.) IRVINE P. UNION BANK OF AUSTRALIA. (1877) 4 I. A. 86=3 C. 280 (287) — 3 Sar. 692=3 Suth. 394.

Act not done on behalf of a person - Ratification by

Where a mortgage executed by a Hindu widow did not purport to be made in any way on behalf of her son, held it was not a case for ratification by the son (231).

A new agreement or obligation would be necessary to bind bim (231). (Sir Richard Conch.) RAM GOPAL T. SHAMSKHATON. (1892) 19 I.A. 228 = 20 C. 93 (98) = 6 Sar. 247.

Ratification, in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier. And this rule is recognised in S. 196 of the Contract Act (58). (Six Arthur Wilson.) BHAGWAT DAYAL SINGH v. DEBI DAYAL SINGH. (1908) 35 I. A. 48 = 35 C. 420 (429) =

SINGH. (1908) 35 I. A. 48 = 35 C. 420 (429) = 7 C. L. J. 335 = 12 C. W. N. 393 = 5 A. L. J. 184 = 3 M. L. T. 344 = 10 Bom. L. R. 230 = 14 Bur. L. R. 49 = 18 M. L. J. 100

Binding nature of—Knowledge of rights—Ratification without—Effect. See HINDU LAW—ADOPTION— ADOPTED SON—ADOPTIVE FATHER—ALLOTMENT OF PAMILY PROPERTY, ETC. (1846) 4 M. I. A. 1 (103).

Company—Directors of—Acts of, in excess of authority—Ratification of—Effect of—Not an extension of future authority. See COMPANY—DIRECTORS OF—BOR-ROWING AND, ETC. (1877) 4 I. A. 86 = 3 C. 280.

Company—Unauthorized and ultra vires transaction

Ratification of—Validity. See COMPANY— UNAUTHORIZED AND ultra vires TRANSACTIONS.

(1922) 32 M. L. T. 196 (203) (P.C.).

Consent previous required by law—Ratification subequent if equivalent to. See HINDU LAW—ADOPTION—
ADOPTED SON—ADOPTIVE FATHER—ALLOTMENT OF
FAMILY PROPERTY, ETC. (1846) 4 M. I. A. 1 (103).

CONTRACT—Void contract — Ratification of See CONTRACT—VOID CONTRACT—RATIFICATION OF

(1926) 50 M. L. J. 498 (502).

A ratification is in law treated as equivalent to a previous attority (94). (Sir Barnes Peacock.) IRVINE P. UNION (1877) 4 I. A. 86 = 3 O. 280 (285) = 3 Sar. 692 = 3 Suth. 394.

Requestion was whether one D was bound by a mortage executed by his mother, who was a co-sharer with in, by reason of his having accepted and ratified the mort-

## RATIFICATION-(Contd.)

The trial Judge and the first appellate court held the ratification to be proved by the evidence adduced by the mortgagee. The Judicial Commissioner in second appeal went fully into the facts of the case, and said that in his opinion the evidence was not sufficient to justify the conclusion of the lower appellate court and that it could not be held on that evidence that D was bound by the mortgage executed by his mother.

Their Lordships affirmed the Judicial Commissioner (233-4). (See Richard Couch.) RAM GOPAL 1. SHAMS-KHATON. (1892) 19 I.A. 228-

20 C. 93 (99-100) = 6 Sar. 247.

—Finding as to—Fact or Law. Sα (1) C. P. C. OF 1908. S. 100—RATIFICATION AND (2) PRIVY COUNCIL.

—PRACTICE — QUESTION OF FACT — CONCURRENT FINDINGS — INTERFERENCE WITH—CASES UNDER—RATIFICATION.

——Guarantor—Purchase in name of a person—Purchase without his original authority—Ratification of use of name by guarantor—What amounts to—Effect. See CONTRACT—GUARANTOR—PURCHASE IN NAME OF A PERSON. (1879) 6 I.A. 238 = 5 C. 421.

—Hinda Law—Joint family—Member of—Charity— Dedication of joint family property to—Ratification by remaining members of—Effect. See HINDU LAW—JOINT FAMILY—MEMBER OF—CHARITY.

(1882) 9 I.A. 86 (94)-7 B. 19 (29 30).

— Hindu Law—Widow—Alienation by—Reversioner's ratification of. See HINDU LAW—REVERSIONER—WIDOW—ALIENATION BY—ELECTION TO TREAT, AS GOOD AND HINDU LAW—WIDOW—LEASE BY—INVILAD LEASE.

——Minor—Guardian—Compromise by—Alienation by
—Ratification of—Evidence—Laches in questioning compromise though it was acted upon if important. See
HINDU LAW—MINOR—GUARDIAN OF—COMPROMISE
BY—ALIENATION BY.

(1888) 15 I.A. 220 (224-5) = 16 C. 161 (168-9).

——Minor—Power of attorney granted by—Ratification of, on attaining majority. See HINDU LAW—MINOR— POWER OF ATTORNEY, ETC.

(1915) 19 C. W. N. 787 (790).

Person not competent to authorize act-Ratification of act by-Effect.

As a general rule, a person, or body of persons, not competent to authorize an act. cannot give it validity by ratifying it (94). (Sir Barnes Peaceck.) IRVINE v. UNION (1877) 4 I.A. 86= 3 C. 280 (285)=3 Sar. 692=3 Suth. 394.

——Principal and Agent—Agent—Act of—Ratification by principal of. See PRINCIPAL AND AGENT—AGENT.

— Unauthorized and ultra vires transactions—Ratification of. See COMPANY—UNAUTHORIZED AND ultra vires TRANSACTIONS. (1922) 32 M.L.T. 196 (203) (P. C.).

Validity—Knowledge of right—Ratification with—
Proof of—Necessity. See HINDU LAW—ADOPTION—
ADOPTED SON—ADOPTIVE FATHER—ALLOTMENT OF
JOINT FAMILY PROPERTY TO STRANGER BY.

(1846) 4 M.I.A. 1 (103).

#### RECEIVER.

ADMINISTRATION BY-CONSENT ORDER AS TO.

APPOINTMENT OF-DURATION OF.

HINDU WIDOW - ESTATE OF - RECEIVER AND

MANAGER OF. INTERIM APPLICATION FOR.

JURISDICTION OF APPOINTING COURT OVER.

#### RECEIVER-(Contd.)

MAINTLE ANCE—PROPERTY ALLOTTED FOR, WITH-OUT POWER OF TRANSFER—DECREE AGAINST GRANTEE OF—REMEDY OF HOLDER OF.

MANAGER - TRUSTEE.

PARTNERSHIP-DISSOLUTION OF-SUIT FOR.

POSITION OF- PROPERTY VESTED IN.

PRIVY COUNCIL APPEAL.

PROCEEDINGS AGAINST — LEAVE OF APPOINTING COURT FOR.

PROPERTY VESTED IN.

PURCHASE BY.

RELIGIOUS ENDOWMENT.

SURETY FOR-DISCHARGE OF.

#### Administration by-Consent order as to.

-Challenge of-Conditions.

Where a consent order is obtained it always remains open to challenge administration thereunder which is of such a character as either amounts to malfeasance, and accordingly releases the consenter, or secondly, has been proved by experience to be in substance so protracted and imperfect as to be futile. (Lord Shaw.) SIR RAMESHWAR SINGH P. HITENDRA SINGH. (1924) 20 L.W. 456 =

5 Pat. L.T. 491 = A.I.R. 1924 P.C. 202 =

35 M.L.T. 179 = 81 I.C. 576 = 22 A.L.J. 968 = 26 Bom. L.R. 1153 = 40 C.L.J. 431 = 29 C.W.N. 413 = 3 Pat. L.R. 180 = 47 M.L.J. 286 (293).

## Appointment of-Duration of.

- Discretion of Court-Permanent appointment-Appointment for as long as necessary after decree.

It is within the discretion of a court appointing receiver in a suit to order that the office should continue permanently after the decree, when such continuance is necessary, or for so long as it may be so.

A decree of the High Court declared it to be necessary

that a permanent appointment should be made of a receiver and manager of the estate ailotted by the Government to the family of the deceased Maharajah of Tanjore, and directed that fresh appointments to the receivership should be made from time to time, as occasion might require during the life of the senior widow, under whose management the estate had originally been placed, and the lives of the co-widows surviving her, or so long as the court might consider necessary, held, that the decree was not in variation of the judgment which it purported to follow; that the court had a discretion to make such an order when necessary for the preservation of the estate; and that so doing

was in accordance with the practice, there being nothing to prevent the court from giving the management to the senior widow living at the time, if she should he fit to manage the estate on behalf of all interested in it. (Lord Macnaghten.) MATHUSRI UMAMBA BOYI SAIBA v. MATHUSRI DEEPAMBA BOYI SAIBA.

(1895) 23 I. A. 28=19 M. 120=6 Sar. 684.

## Hindu Widow-Estate of-Receiver and Manager.

Removal of Discretion of Indian Court as to-Privy Council's interference.

Rights and proceedings rendering a Court's order, refusing to remove an appointed Receiver and Manager of the estate, of which the widowed Ranis of the late Maharajah of Tanjore had become possessed by grant from the Goverament, entirely a matter for the discretion of the Court, which had exercised its discretion soundly. (Sir Barnes Powork.) Ex parte RANI MATHUSRI JIGAI AMBA.

(1890) 13 M. 390=5 Sar. 584.

#### Interim Application for.

— Grant of Discretion as to—Primary Court—Distretion of Interference in appeal with—Conditions.

#### RECEIVER-(Contd.)

#### Interim Application for-(Contd.)

An order for the interim appointment of a receiver is discretionary, and the discretion is, in the first instance, that of the Court in which the suit itself is pending. When the order of that Court is altered on appeal it becomes necessary to consider whether the Court below had before it the evidence required to support such an order and considered it in accordance with the principles on which judicial discretion must be exercised. If the Court of review rightly concludes that proper discretion was not used below, it is free to exercise its own discretion in the matter. (Viscount Summer.) BENOY KRISHNA MUKERJEE v. SATISH CHANDRAGIRI.

(1927) 55 I. A. 131 = 55 C. 720 = 27 L. W. 333 = 5 O. W. N. 272 = I. L. T. 40 C. 99 = 47 C. L. J. 424 = 26 A. L. J. 481 = 108 I. C. 348 = 32 C. W. N. 681 = 30 Bom. L. R. 815 = A. I. R. 1928 P. C. 49 = 54 M. L. J. 423.

Order an-Appeal to Privy Council against-Right

As a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Coarts in India than they can be to their Lordships, but the delay occasioned by taking this addditional appeal adds gravely to the procrastination, which is already the bane of Indian litigation.

N.B.—The above observations were made on an appeal from an order on an *interim* application for receivership. (Viscount Sumner.) BENOY KRISHNA MUKERJEE v.

SASTISH CHANDRAGIRI.

(1927) 55 I. A. 131 = 55 C. 720 = 27 L. W. 333 = 5 O. W. N. 272 = I. L. T. 40 C. 99 = 47 C. L. J. 424 = 26 A. L. J. 481 = 108 I. C. 348 = A. I. R. 1928 P. C. 49 = 32 C.W.N. 681 = 30 Bom. L. R. 815 = 54 M. L. J. 423 (426).

-Points to be considered on.

On an interim application for a receivership the coart has to consider whether special interference with the possession of a defendant is required, there being a well-founded fear that the property in question will be dissipated, or that other irreparable mischief may be done unless the court gives its protection. (Viscount Sumner.) BENOY KRISHNA MOOKERJEE v. SATISH CHANDRA GIRI.

(1927) 55 I. A. 131 = 55 C. 720 = 27 L. W. 333 = 5 O. W. N. 272 = I. L. T. 40 C. 99 = 47 C. L. J. 424 = 26 A. L. J. 481 = 108 I. C. 348 = 32 C. W. N. 681 = 30 Bom. L. R. 815 = A. I. R. 1928 P.C. 49 = 54 M. L. J. 423.

# Jurisdiction of appointing Court over.

Dismissal of suit in which appointment was made-

It appears to be extravagant to suggest that the court which has appointed a receiver has not ample jurisdiction, without the aid of a pending process, to require accounts from their own officer, to permit parties interested to intervene in the examination of these accounts, to make just allowances to their officer for his administration, and to deal with all questions of costs connected with the investigation of his accounts, as between him and any parties interested who may be allowed to appear and take part in it (2067). (Lord Watson.) ADMINISTRATOR-GENERAL OF BENGAL v. PREM LAL MULLICK. (1895) 22 I. A. 203= 22 C. 1011 (1015-6)=6 Sar. 660=5 M. L. J. 151.

BECEIVER-(Contd.)

Maintenance—Property allotted for, without power of transfer—Decree against grantee of—
Remedy of holder of.

——Receiver for realization of rents and profits and for payment of surplus towards decree—Right to apply for. See HINDU LAW—MAINTENANCE—PROPERTY ALLOTTED FOR, WITHOUT POWER OF TRANSFER.

(1925) 52 I. A. 262 - 47 A. 385.

#### Manager-Trustee.

——Distinction. See TRUST—TRUSTEE—RECEIVER. (1920) 47 I. A. 224 (232) = 42 A. 609 (618).

#### Partnership-Dissolution of-Suit for.

Receiver appointed in. See PARTNERSHIP—DIS-SOLUTION OF—SUIT FOR—RECEIVER APPOINTED IN.

#### Position of-Property vested in

-Custody of, in the eye of law.

The Receiver was an officer of the court, he was not in the interest of the plaintiff (164). MONMOHINI DASI P. ITCHAMOVI DASI. (1875) 3 Suth. 161.

A receiver appointed by a Court is simply the officer of the Court, and the estate must, for all legal purposes, be regarded as being in manibus caria (200). (f.ord Watson.)

ADMINISTRATOR-GENERAL OF BENGAL v. FREM LAL MULLICK. (1895) 22 I. A. 203 = 22 C. 1011 (1015) = 6 Sar. 660 = 5 M. L. J. 157.

#### Privy Council appeal.

——Protection of property in dispute pending—Appointment of receiver for. See PRIVY COUNCIL—APPEAL—PROTECTION OF PROPERTY IN DISPUTE PENDING.

## Proceedings against—Leave of appointing Court for.

-Necesity

According to the rules of a Court of Equity, no proceedings could be taken against the sequestrator except by leave of the Court. Where the property is in the custody of the Court, as when in the possession of a Receiver, the course pursued in our Courts, if it appears there is a legal title, has been to permit an action of ejectment to be brought, to put the matter in the most convenient course of determination. It was laid down in Angel v. Smith that the possession of Receivers and sequestrators is not to be disturbed without leave. When a party is prejudiced by having a Receiver put in his way, the course has been either to give him leave to bring an action of ejectment, or permit him to be examined, pro interests suo (44-5). (Mr. Pomberton Leigh.) MUSADEE MAHOMED CAZEEM SHERAZEE v. MEERZA ALLY MAHOMED KHAN.

(1854) 6 M. I. A. 27 = 8 Moo. P. C. 110 = 1 Sar. 489.

#### Property vested in.

Discretion as to—Order of appointment—Construction of.

An order appointing a Receiver provided, inter alia, that he should have "all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvements of the property, the collection of the rents and profits thereof, the application and disposal of such suits and property, and the execution of documents as the owners themselves have." That order was, by a subsequent consent order, varied as follows:

The Government Revenue and cesses and other outgoings, as per scheme framed by Court, and the budget of the Receiver, are to be paid first, and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and then the decrees which do not carry any interest and the new carry in the carry in the

#### RECEIVER-(Contd.)

## Property vested in-(Contd.)

Held, that the subsequent consent order did not abolish or abrogate the powers contained in the prior order, that the two orders must be read together, and that, in particular, under the terms "realization, management, protection," etc., of the properties, a power of sale was not taken away from but was still vested in the Receiver (290).

A realization by sale of any of the properties under mortgage is not ultra virca, but intra virca of the Receiver. He
may decline to put the properties to sale, and it is for him to
consider carefully the result of putting blocks of property on
the market. But if, in his view, a sale would be, in certain
conjectures of circumstances of advantage, then he might,
with the necessary sanction well exercise his power of sale
accordingly (249). The order does not mean that even contrary to the receiver's own ideas of prudence, the power of
sale must be exercised; and that, if it is not exercised at
once or promptly, then the basis of the receivership has
gone and it ought to be declared at an end. (Lord
Shawe) SIR RAMESWAR SINGH r. HITENDRA SINGH.

(1924) 20 L. W. 456 = 5 Pat. L. T. 491 =
A. I. R. 1924 P. C. 202 = 35 M. L. T. 179 =
81 I. C. 576 = 22 A. L. J. 968 = 26 Bom. L. R. 1153 =
40 C. L. J. 431 = 29 C. W. N. 413 = 3 Pat. L. R. 180 =
47 M. L. J. 286 (290).

Recovery of, from mortgagee in possession thereof under prior arrangement with indgment-debor-Right of 
Accounts between mortgagee and receiver—Basis of.

Respondent was appointed as a Receiver upon the entire estate of certain judgment-debtors. That estate included property J, which property therefore fell within the order of Receivership. That property had previously been possessed by the appellant under an arrangement with the judgment-debtors that he should be debited with a certain sum per annum in respect thereof. Alleging that the rental of the property had far exceeded the sum so fixed, the respondent sued the appellant for recovery of Khas possession of the said property, and for an account of all his collections from the same.

Held, affirming the High Court, that the respondent was entitled to recover khas possession of the property and to administer and manage the same as part of the estate under his charge. Held further that in taking the accounts the entire annual income collected from the property and not merely the agreed figure should be debited to the mortgagee after the decree for sale. (Lord Shaw.)

SIR RAMESWAR SINGH P. HITENDRA SINGH.

(1924) 47 M. L. J. 294 = 20 L. W. 437 =

(1924) 47 M. L. J. 294 = 20 L. W. 437 = 35 M. L. T. 179 (182) = 26 Bom. L. R. 1161 = 40 C. L. J. 444 = A. I. R. 1924 P.C. 206 = 29 C. W. N. 420 = 82 I. C. 794 = 3 Pat. L. R. 190.

## Purchase by.

-Validity-Leave of Court-Necessity.

In the case of Nugent v. Nugent [(1907) 2 Ch. 292] it was held that a receiver appointed by the court cannot purchase the property of which he is receiver without the leave of the court, even where the sale is not made in the action in which he was appointed, but by a mortgagee selling with leave outside the suit. Their Lordships think that this was a correct decision. (Lord Buckmaster.) Peary MOHAN MUKERJI. P. MANOHAR MUKERJI.

(1921) 48 L. A. 258 (266) = 48 C. 1019 (1028) = 23 Bom. L. B. 913 = 14 L. W. 104 = (1921) M. W. N. 554 = 19 A. L. J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 L. C. 76 = 30 M. L. T. 24 = 1922 P. C. 235 = 41 M. L. J. 68.

#### Beligious Endowment.

## RECEIVER-(Contd.)

# Religious Endowment-(Centd.)

coare-Appointment of-Necessity. See HINDU LAW-ENDOWMENT-MUTT--MOHUNT DEBTS OF-SUIT AGAINST SUCCESSOR FOR BINDING. (1927) 54 I. A. 228 (237) = 50 M. 497.

-Shebait of-Mortgage for necessity by-Decree on foot of-Realisation of amount of, from rents and profits-Provision in decree for-Receiver-Appointment of. Sec HINDU LAW-RELIGIOUS ENDOWMENT-SHEBAIT OF-PROPERTY OF ENDOWMENT-MORTGAGE OF-NECES-(1926) 53 I. A. 253 (267-8). SITY.

## Surety for-Discharge of.

-Consent of Court appointing receiver-Necessity -Notice to person at whote instance appearament made -Sufficiency of.

When a surety has been accepted as such by the court, he cannot free himself from liability without the consent of the

It is not therefore competent to the surety for a Receiver, who has been appointed an officer of the court, to discharge himself merely by notice to the decree-holder, or other person at whose instance or for whose benefit the Receiver was appointed. He can discharge himself only with the consent of the Court. (Vinvant Finlay.) MAHOMED ALI MAMOOJEE :: HOWESON BROTHERS.

(1926) 30 C. W. N. 266-(1926) M. W. N. 493-98 I. C. 506 = A. I. R. 1926 P. C. 32.

# RECORDER'S COURT AT BOMBAY.

- Jurisdiction personal-East India Company -Servants of - Jurisdiction as to.

Quaere whether the personal jurisdiction of the court of the Recorder, at Bombay, existed as to the servants of the East India Company (358). (Mr. Justice Besamquet.)
POONEAKHOTY MOODALIAR r. THE KING.

(1835) 3 Knapp. 348 = 1 Sar. 76.

"Title proper of -Prefixing of "Honorable" to

The question was whether, in an indictment which was preferred in the Recorder's Court, at Bombay, the offence was sufficiently and properly alleged to have arisen within the jurisdiction of that Court. The indictment itself was headed" In the Court of the Honorable The Recorder of Bombay," and the offence was charged to have been committed "within the jurisdiction aforesaid." It was said that the title of the Court was not correctly described, the proper title being "the Recorder of Bombay," and not of the Honorable The Recorder of Bombay.

Held, over-ruling the objection, that by the Charter, the name given to the Court was," the Court of the Recorder of Bombay," and that prefixing to it, the word " Honorable," could not make it less the Court of the Recorder (370). (Mr. Justice Bosanquet.) POONEAKHOTY MOODELIAR v. (1835) 3 Knapp. 348=1 Sar. 76. THE KING.

## REGISTRATION.

## Authority to adopt.

-Non-registration of deed of-Presumption from. See HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-DEED OF-EVIDENCE AGAINST.

(1861) 8 M. I. A. 477 (489-90).

---- Registration of-Desirability. See HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-REGISTRATION (1872) 18 W. R. 221. OF.

Bond payable at short date—Non-registration of. -Presumption against its genuineness from-Propriety Sa BOND-GENUINENESS OF.

## REGISTRATION-(Contd.)

#### Burma.

-Registration law in. See BURMA REGISTRATION REGULATION II OF 1897.

## Deed-Fraudulent concealment of-Plea of.

-Registration of deed if displaces. See LIMITATION ACT OF 1908, S. 18-DEED-FRAUDULENT CONCEAL-MENT OF-PLEA OF-REGISTRATION OF DEED, ETC.

(1881) 8 I. A. 143 (156) = 3 M. 384 (398).

Deeds different-Registration at same time of-Presumption from.

-Single transaction or different transactions-Question as to. See DEED-DEEDS DIFFERENT.

(1871) 14 M. I. A. 289 (302).

#### Effect of.

-The effect of admitting a deed to registration is no more than to satisfy an onerous condition before the deed can be given in evidence; and, when in evidence it is subject to every objection that can be made to it precisely as if no registration had taken place (174). (Sir Montague E. Smith.) MOHAMMED EWAZ v. BIRJ LALL.

(1877) 4 I. A. 166=1 A. 465 (473)=3 Sar. 735= 3 Suth. 438.

# English and Irish systems of—Law in India.

Non-registration—Effect—Distinction. See REGIS TRATION-NON-REGISTRATION.

(1920) 47 I. A. 239 (253) = 48 C. 1 (10-1, 19).

## Fraud in obtaining.

Effect of-Remedy in case of.

Where the registration of a deed is obtained by fraud, the act of registration, like all other acts which have been so arrived at, might be set aside by a proper proceeding (175). (Sir Montague E. Smith.) MOHAMMED EWAZ v. BIRJ (1877) 4 I. A. 166 = 1 A. 465 (474) a LALL. 3 Sar. 735 = 3 Suth. 438.

# Invalidity of—Plea of—Onus of proof of.

-Mortgage deed, See MORTGAGE-DEED OF-RE-(1914) 41 I. A. 110 (1189) = GISTRATION OF. 41 C. 972 (987).

-Registration of deed in fact.

Where a deed has been in point of fact registered, it lies upon the party who impeaches that registration to shew the facts which invalidate it (168). (Sir Montague E. Smith.) MOHAMMED EWAZ v. BIRJ LALL. (1877) 4 I. A. 166 = 1 A. 465 (467) = 3 Sar. 735 = 3 Suth. 438.

## Non-registration.

-Presumption against genuineness of deed from-Propriety-Rond payable at short date. See BOND-GENU-INENESS OF-REGISTRATION.

(1858) 7 M. I. A. 207 (223)

-Effect-English and Irish systems-Law in India -Distinction.

In England two systems of registration of deeds exist, one in the County of Middlesex and the other in the County of York. With regard to the former, non-registration avoids the unregistered deed as against a subsequent holder of a registered document, but leaves the deed good as between grantor and grantee and as between the grantor and his creditors. The Yorkshire system, though in form compulsory, also effects its purpose by giving priority to deeds according to the date of entry on the register. Neither of these systems affects the liability of the grantor upon the deed. In Ireland the system is slightly different, for by the Statute 6 Anne, c. 2 (Ir.), non-registration in that country not only makes the deed void as against subsequent registered holders, but also as against creditors. There is no pro-(1858) 7 M. I. A. 207 (223). Vision in any of these Acts corresponding to that to be

## REGISTRATION-(Contd.)

### Non-registration-(Contd.)

found in the Indian Registration Act of 1877, which destroys the whole effect of the transaction as against immoveable property and renders the document incapable of use in any proceedings by which such property is affected or in the Transfer of Property Act, which wholly avoids an unregistered mortgage for a sum exceeding Rs. 100 (245-6).

The main differences between the system of registration in India and the systems in England and in Ireland are these; that in India non-registration in certain cases has the effect of rendering the registered document ineffectual even as between grantor and grantee and excludes it from evidence. Both in England and in Ireland it has no such effect. This is sometimes stated by saying that in India registration is compulsory and here permissive; but the true difference is better expressed as it has already been stated (253), (Lord Buckmaster.) TILAKDHARI LAL 2. KHEDAN (1920) 47 I. A. 239 = 48 C. 1 (10-1, 19)=

25 C. W. N. 49=32 C. L. J. 479=13 L. W. 161= (1920) M. W. N. 591=28 M. L. T. 224= 18 A. L. J. 1074 = 2 P. L.T. 101 = 22 Bom. L. R. 1319 = 57 I. C. 465 = 39 M. L. J. 243.

## Notice of deed from.

Presumption of. See MORTGAGE - DEED OF-REGISTRATION OF-NOTICE OF MORTGAGE.

(1911) 39 I. A. 68 (82) = 39 C. 527 (556).

## Purdanashin-Deed by-Registration of.

-Procedure to be adopted by registrar in case of. See PURDANASHIN-DEED BY-REGISTRATION OF.

#### Purpose of.

-Registration affords a security against the too common practice in India of setting up forged and fraudulent deed, (228). (Lord Justice Turner.) SREENANTH BHUT-TACHARJEE D. RAMACOMAL GUNGOPADYA.

(1865) 10 M. I. A 220 = 3 W. R. (P. C). 43 = 1 Suth. 600 = 2 Sar. 121.

The registration of a deed is mainly required for the purpose of giving notoriety to the deed, and it is required under the penalty that the deed shall not be given in evidence unless it be registered. If it be registered, the party who has presented it for registration is then under the Act in a position which prima facie at least entitles him to give the deed in evidence (175). (Sir Montague E. Smith.) MOHAMMAD EWAZ v. BIRJ LALL. (1877) 4 I. A. 166 = 1 A. 465 (474) = 3 Sar. 735 = 3 Suth. 438.

Registered deed-Holder of - Notice of prior un-registered deed-Effect-England and India-Distinction. The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed be has actual notice of some unregistered transaction which may be valid apart from registration. In England such notice would prevent the registered document having priority over that which was unregistered. In India this would not be the result if it were a mortgage for over Rs. 100 or if the unregistered document was one brought within the provisions of S. 49 of the Registration Act. In either case the object of registration is to protect against prior transactions (252). (Lord Buckmatter.) TILAKDHARI LAL 2. KHEDAN LAL. (1920) 47 I. A. 239 = 48 C. 1 (18) = 25 C. W. N. 49 = 32 C. L. J. 479 = 13 L. W. 161 =

18 A. L. J. 1074=2 P. L. T. 101=22 Bom. L. B. 1319=

REGISTRATION-(Contd.)

## Registered deed-Holder of-Notice of prior unregistered deed.

-Effect-England and India-Distinction. See REGIS-TRATION-PURPOSE OF. (1920) 47 I. A. 239 (252)= 48 C. 1 (18).

## Registered deeds-Priority as between.

-Test-Execution-Registration-Dates of.

By the provisions of the Registration Act a deed operates not from the time of its registration, but from the time when it would have commenced to operate if no registration had been required. If, therefore, a deed is tendered for registration within the time prescribed by the Act, and registered, it is immaterial that another deed has obtained priority of registration. (Sir Montague E. Smith.) MOHAMMED EWAZ P. BIRJ LALL.

(1877) 4 LA. 166 (170-1) = 1 A. 465 (469) = 3 Sar. 735 = 3 Suth. 438.

#### Validity of.

-Question as to- P.C. Appeal-Maintainability for first time in.

The respondents urged that the conveyance in favour of the appellant was bad, because the registration was not in order in respect that the registration does not bear that a proper power of attorney was possessed by the person asking for the registration and in respect that it does not afford proper evidence of the execution by one of the signatories to the deed of transfer.

These points were admittedly not taken before the courts below and their Lordships would be slow to admit their validity in such circumstances. (Lord Dunedin.) KAN-HAVA LAL NATIONAL BANK OF INDIA, LTD.

(1923) 50 I. A. 162 (172)=4 Lah. 284= 33 M. L. T. 349 = 25 Bom. L. R. 1248 = A. I. B. 1923 P. C. 114 = 28 C. W. N. 689 = 40 C. L. J. 1 = 75 I. C. 7 = 45 M. L. J. 497.

-Unregistered deed- Deed subsequent confirming-Registration of-Memorandum of registration written not on first sheet of latter deed but at end of former which was annexed as a schedule to it.

On 25.9-1873 N. F. & Co. executed a deed of conveyance in favour of A of immoveable property of more than the value of Rs. 100. That deed was not registered, and was not therefore admissible in evidence. On 31-12-1878 another deed of conveyance was executed by N. F. & Co. in favour of A in respect of the same property. That deed referred to the deed of 1873, which was set out in a schedule as part of the deed of 1878. The deed of 1878 was registered, and the memorandum of registration was written, not on the first sheet of the deed of 1878 but at the end of the deed which was annexed as a schedule to, and was consequently part of, the deed of 1878. The deed of 1878 not only confirmed the deed of 1873, but it went on to state that the parties to the deed did, and each of them did, " according to their and his respective estates and interests, grant, convey, assign, and confirm unto the said A, his heirs, executors, administrators, and assigns, the piece or parcel of land" conveyed thereby.

Held, reversing the High Court, that the deed of 1878 was duly registered, and was a valid conveyance of the property from N.F. & Co. to A (156-7). (Sir Barnes Peacock.) MITCHELL D. MATHURA DASS. (1885) 12 I. A. 150= 8 A. 6 (11-2)=4 Sar. 663

## Will-Registration or non registration of .

Presumption as regards genuineness from. See HINDU LAW-WILL-EXECUTION OF-PRESUMPTION 57 L. C. 465=39 M. L. J. 243. AS TO-REGISTRATION OF WILL.

## REGISTRATION ACT.

Object of, as regards real property.

The Registration Act was not passed to avoid the mischief of allowing a man to be in possession of real property without having a registered deed, but as a check against the production of forgsd documents, and in order that subsequent purchasers, or persons to whom subsequent conveyances of property were made; should not be affected by previous conveyances unless those previous conveyances were registered. The Registration Act, as regards real property, was not intended to be a clause similar to that which is in the Bankrupt and Insolvent Acts, by which persons who are allowed to be in the order and disposition of goods, with consent of the real owners, are, as against creditors, to be considered the real owners (156-7). (Sir Barnes Peacock.) MITCHELL P. MATHURA DASS (1885) 12 I. A. 150 = 8 A. 6 (12) =4 Sar. 663

-Provisions of -Compliance strict with -Necessity.

The provisions of the Indian Registration Act are very carefully designed to prevent forgeries and the procurement of conveyances or mortgages by fraud or undue influence, and though it may seem somewhat technical to insist upon exact compliance with the provisions of the Act, it is necessary so to do. (Lord Phillimore.) BHARAT INDU p. (1920) 47 I. A. 177 (182) = HAMID ALI KHAN. 42 A. 487 (492) = 18 A.L.J. 717 = (1920) M.W.N. 413 = 28 M. L. T. 98 = 12 Bom. L. R. 1362 = 25 C.W N. 73 = 58 I. C. 386 = 39 M. L. J. 41,

## REGISTRATION ACT XIX OF 1843.

## S. 2-Registered deed-Priority of.

-Deprivation of-Grounds.

A registered deed cannot be deprived of the priority given by Act XIX of 1843, unless it be both alleged and proved that there was fraud on the part of the grantee (228). (Lord Justice Turner.) SREENAUTH BHUTTACHARJEE P. RAMCOMUL GUNGOPADYA. (1865) 10 M. I. A. 220 = 3 W. R. P. C. 43-1 Suth. 600-2 Sar. 121.

-Fraud-Deed tainted by.

The proviso in S. 2 of Act XIX of 1843 is, that the authenticity of the deed be established to the satisfaction of the Court. The word " authenticity " would seem, according to its natural meaning, to point merely at the exclusion of a forged deed from the benefit of the Act; but their Lordships think that it could not be intended by the Act that a deed which was tainted by fraud, although in other respects genuine, should be placed on the same footing as an honest and bona fide deed. They are not disposed so to construe the Act (228). (Lord Justice Turner.) SREE-NAUTH BHUTTACHARJEE :. RAMCOMUL GUNGOPADYA (1865) 10 M. I. A. 220 = 3 W. R. P. C. 43 =

1 Suth. 600 = 2 Sar. 121. -Unregistered deed-Priority as against-Notice or knowledge thereof by holder of registered deed-Effect-Mortgage, sale, gift-Dreds of-Distinction between.

The question is whether the words at the close of S. 2 of Act XIX of 1843," any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such unregistered deed or certificate notwithstanding", are to be construed as referring only to the mortgages and certificates mentioned in that part of the enactment which immediately precedes these words, or are to be taken to extend also to the deeds of sale or gift which are mentioned in the earlier part of the enactment. Their Lordships are of opinion that upon the true construction of the Act the words mentioned apply not only to deeds and certificatas of mortguge, but also to deeds of sale or gift (226-7).

This enactment, although divided into two branches, in consequence of the different effect which is given to it as to deeds of sale and of mortgage, was plainly intended to be a general enactment. The words we are considering are

## REGISTRATION ACT XIX OF 1843-(Contd.) S. 2-Registered deed-Priority of-(Contd.)

words of reference, and the terms used being general and comprehensive, their Lordships see no reason for confining their operation to one branch of the enactment rather than extending it to both. Had it been intended that they should be so confined there would have been no difficulty in expressing that intention. It would be difficult to find any reason why, in the case of a mortgage, priority should be given to a registered over an unregistered deed, notwithstanding knowledge or notice of the unregistered deed by the registered mortgagee, but in the case of a sale the priority of an unregistered deed over a registered deed should be retained, in cases of knowledge or notice, by the registered vendee or donee. The too common practice in India of setting up forged and fraudulent deeds, and the security against this practice which is afforded by registration, are quite sufficient to account for this enactment extending both to sales and mortgages, and the policy of such enactments is not unknown in other countries. The Irish Registration Acts afford an instance of it. (227-8.) (Lord Justice Turner.) SREENAUTH BHUTTACHARJEE v. (1865) 10 M. I. A. 220 = KAMCOMUL GUNGOPADYA. 3 W. R. P. C. 43=1 Suth. 600=2 Sar. 121.

#### S. 2 Proviso.

-Authenticity-Meaning of.

The word "authenticity "in the proviso would seem, according to its natural meaning, to point merely at the exclusion of a forged deed from the benefit of the Act (228). (Lord Justice Turner.) SREENAUTH BHUTTA-CHARJEE P. RAMCOMUL GUNGOPADYA.

(1865) 10 M. I. A. 220 = 3 W. B. P. C. 43= 1 Suth. 600 = 2 Sar. 121.

## REGISTRATION ACT XX of 1866.

## S. 17—Lease by Zemindar at favourable rent.

-Registration-Necessity-Lease if "pottah" under S. 3 of Madras Rent Recovery Act of 1865-Validity of lease against succeeding Zemindar-S. 11 of Rent Recovery Act-Effect.

A document of 1867, purporting to be a lease from the late Zemindar of Ramnad to the appellant's father ran as follows:-In consideration of the assistance you have rendered to this samastanam (zemindar), you requested that the kasba (chief) village of S should be leared to you for 50 years fixing a favourable poruppu-"The aforesaid S village "-Describing it-" Has been

accordingly leased to you for forty years from this Fusli 1276 up to Fusli 1315, fixing the poruppu at Rs. 400 per annum. You shall, therefore, raise the required crop and enjoy; and, agreeably to the kararnama (agreement) you have given, you shall continue to pay the fixed poruppu according to the instalments of kist year after year.

It was found that the value of the village S was Rs. 1,700 per annum, so that the lease was obviously a favourable lease, which was intended to confer a valuable interest on the lessee.

Held, that the document was not a puttah within the meaning of S. 3 of Madras Act VIII of 1865; that it was not therefore excluded from the operation of S. 17 of the Registration Act of 1866; and that, being unregistered, it was inadmissible in evidence for the purpose of affecting the estate (174-5).

Quaere whether, assuming the document was a puttah within the meaning of S. 3 of Madras Act VIII of 1860, the proviso to S. 11 of that Act would not nullify its effect as regards the "successor" of the grantor (175.6). (Sir Montague E. Smith.) RAMASWAMI CHETTI v. COLLEC-(1879) 6 I. A. 170= TOR OF MADURA.

2 M. 67 (734)=5 C. L. R. 341=3 Suth 646= 4 Bar. 50. made.

# REGISTRATION ACT XX OF 1866-(Contd.)

Agreement to sell real estate-Specific performance of-Suit for-Unregistered deed acknowledging receipt of consideration-Admissibility in evidence of.

An instrument acknowledging the payment of the consideration money for what was to be ultimately an absolute sale of the real estate,-For what in equity did presently act as a sale of the property,—is an instrument which, by cl (2) of S. 17 of Act XX of 1866, is required to be registered, and cannot be received in evidence under S. 49 of the Act if it has not been registered (131).

So held in a suit for specific performance of an agreement for sale of real estate. (Sir James W. Colvile.) FUTTEH CHUND SAHOO P. LEELUMBER SINGH DOSS.

(1871) 14 M. I. A. 129=16 W. E. P. C. 26= 9 B. L.B. 433 = 2 Suth. 467 = 2 Sar. 709

-Words-Unless it shall have been registered-Provisions of this Act-Applicability of, as regards strangers to

It is not clear that the words "unless it shall have been registered in accordance with the provisions of this Act " in S. 49 of Act XX of 1866, are not, especially as regards strangers to the deed, confined to the procedure on " admitting to registration " without reference to any matters of procedure prior to registration, or to the provisions of S. 19, 21 or 36 of the Act, or rather provisions of a similar nature (216). (Sir Barnes Peacock.) SAH MUKHUN LALL PAN-DAY v. SAH KOONDUN LALL. (1875) 2 I. A. 210-

15 B. L. B. 228 = 24 W. B. 75 = 3 Sar. 509 = 3 Suth. 170.

#### S. 53.

-Decision obtained under - Nature of - Decision called a decree-Effect.

A decision obtained under S. 53 of Act XX of 1866 on a specially registered bond is a Summary decision within the meaning of S. 22 of the Limitation Act of 1859, and the fact that the decision is called a decree does not make any difference in this respect (125). (Sir Richard Couch.) MINA KONWARI P. JUGGUT SETANI.

(1883) 10 I.A. 119=10 C. 196 (203)=13 C. L. R. 385= 4 Sar. 454.

-Decree dated 9.7.1867 under-Execution of-Limilation-Limitation Act of 1859-Limitation Act of 1871-Applicability.

An application to execute a decree obtained on 9th July, 1867 under S. 53 of the Registration Act XX of 1866 is governed as regards limitation by S. 22 of the Limitation Act of 1859, and not by S. 20 of that Act or by the Act of 1871 (125). (Sir Richard Couch.) MINA KONWARI D. JUGGUT SETANI. (1883) 10 I. A. 119=

10 C. 196 (203.4)=13 C. L. B. 385 = 4 Sar. 454.

Decree made under-Summary decision under S. 22 of Limitation Act of 1859 if a. See LIMITATION ACT OF 1859-S. 22-SUMMARY DECISION.

(1883) 10 I. A. 119 (125)=10 C. 196 (2034).

## 8. 84-Petition under.

Decision on-Effect in regular suit.

A decision directing the registration of a deed on a petition under S. 84 of the Registration Act of 1866 would not finally bind the rights of the party denying the execution of the document; and, on the other hand, it would not preclude the opposite party from proving in a less summary proceeding that the denial was false (132-3). (Sir James W. Coltile) FUTTEH CHUND SAHOO v. LEELUMBER SINGH Dose. (1871) 14 M. I. A. 129-16 W. B. P. C. 26-9 B. L. B. 433 = 2 Suth. 467 = 2 Sar. 709. BEGISTRATION ACT XX OF 1866-(Contd.) S. 84—Petition under—(Contd.)

-Execution of instrument-Fact of-Jurisdiction of District Judge to try.

Looking to the words of S. 84 of the Registration Act of 1866, and the form of the petition given in the Schedule, and in particular to the fourth paragraph of that form, which contains the words "the said C. D appeared personally before the said Sub-Registrar and falsely denied the execution of such instrument", their Lordships think that the Ziliah Judge would have jurisdiction to try and determine the fact of the execution of the instrument (132).(Sir James W. Colvile.) FUTTEH CHUND SAHOO v. LEELUMBER SINGH DOSS. (1871) 14 M.I.A. 129-16 W.R.P.C. 26=

9 B. L. R. 433 = 2 Suth. 467 = 2 Sar. 709 -Registration of deed-Order for-When will be

It seems reasonable to suppose that, on a petition under S. 84 of the Registration Act of 1866, if the District Judge saw that a prima farir case of execution of the deed was made out, he would direct the document to be registered, and refer the parties to try the question of forgery or nonforgery in a regular suit (132-3). (Sir James IV. Colvile.) FUTTER CHUND SAHOO P. LEELUMBER SINGH DOSS.

(1871) 14 M. I. A. 129 = 16 W. R. P. C. 26 = 9 B. L. R. 433 = 2 Suth. 467 = 2 Sar. 709

Witnesses - Summoning of-Power of District Judge as regards.

Power is expressly given to the District Judge to summon the parties, and their Lordships imagine, that there must also be power to summon witnesses, if examination of witnesses should be necessary (132). (Sir James W. Colvile.) FUTTEH CHUND SAHOO P. LEELUMBER SINGH DOSS.

(1871) 14 M. I. A. 129 = 16 W. R. P. C. 26= 9 B. L. R. 433 = 2 Suth. 467 = 2 Sar. 709.

## REGISTRATION ACT VIII OF 1871.

RAZZAK P. MUNSHI AMIR HAIDAR.

## Wills-Registration of Depositing of -Proxisions as to-Distinction.

Act VIII of 1871 contains a very distinct set of provisions with respect to what is called depositing wills and registering them. By the deposit of a will no information is given to anybody who may search the register as to its contents, and the testator can at any time during his lifetime withdraw it in the sealed envelope in which it was deposited; whereas, with respect to the registration, in the ordinary and proper sense of the word, of wills and other documents, there are provisions which would enable persons who searched the register to ascertain the contents of those documents (124.5). (Sir Robert P. Collier.) HAJI ABDUL

(1884) 11 J. A. 121=10 C. 976 (983-4)=4 Bar. 555= B. & J's No. 81 (Oudh).

#### Zillah Judge acting under.

-High Court's powers of superintendence over.

The District Courts mentioned in the Registration Act of 1871 must, except when the High Court is said to be, when exercising its local jurisdiction, a District Court within the meaning of the Act, be taken to be the Courts exercising the ordinary Civil jurisdiction within that Disirict, and, therefore, in the case of a Regulation province, to import the ordinary Zillah Courts (225).

The High Court has, therefore, powers of superintendence over a district Court created by the Registration Act, and can interfere with an order made by a Zillah Judge in the exercise of powers conferred upon him by the Registration Act of 1871 (225). (Sir James W. Colvile.) REASUT HOSSEIN v. HADJEE ABDOOLAH. (1876) 3 I. A. 221=

2 C. 131 (138-7)=26 W. B. 50=3 Sar. 641.

## REGISTRATION ACT VIII OF 1871-(Contd.) S. 73-Application under.

--- Order granting-Nature of-Decree if and to what

a stent.

In order rejecting an application for registration under the Registration Act of 1871 must be taken to be in the nature of a decree within the meaning of C. P. C. of 1859. The proceeding may be what is technically called in India a miscellaneous proceeding, or it may be a summary suit; but the order made upon it is, so far as concerns the matter in dispute, final between the parties. Whether it is subject to appeal or not, it is, so far as the court pronouncing it is concerned, a final order of adjudication between the parties (227). (Sir James W. Colvile.) REASUT HOSSEIN v. (1876) 3 L A. 221= HADJEE ABDOOLLAH. 2 C. 131 (138) = 26 W. R. 50 = 3 Sar. 641.

-Order rejecting-Review of- Jurisdiction.

An order rejecting an application for registration under the Registration Act of 1871 is so far in the nature of a decree within the meaning of C. P. C. of 1859 as to fall within the operations of the sections of that code permitting a review of a decree. Even otherwise, S. 38 of the amending Act of 1861 which expressly makes applicable to a proceeding to compel, registration under the Registration Act the whole procedure of the C. P. C. of 1859, includes the power of admitting a review (226-7). (Sir James W. Colvele.) REASUT HOSSEIN v. HADJEE ABDOOLLAH.

(1876) 3 I. A. 221 = 2 C. 131(138-9) = 26 W. R. 50 = 3 Sar. 641.

-Order rejecting-Suit to compel registration of deed or to propound deed-Maintainability.

Quere whether, after a final order rejecting an application for registration under S. 73 of the Registration Act of 1871, it would be open to the parties benefited by the deed to propound it in a regular suit, and to obtain its registration by means of such suit. (Sir Robert P. Collier.) REASUT HOSSEIN P. HADJEE ABDOOLLAH.

(1876) 3 I. A. 221 (226) = 2 C. 131 (137-8) = 26 W. R. 50 = 3 Sar. 641.

## S. 73-Proceeding under.

-Nature of.

A proceeding to compel registration under the Registration Act of 1871 may be what is technically called in India a miscellaneous proceeding, or it may be a summary suit (227). (Sir James W. Colvile.) REASUT HOSSEIN v. (1876) 3 I. A. 221 = HADJEE ABDOOLLAH. 2 C. 131 (138) = 26 W. R. 50 = 3 Sar. 641

-Application for registration-Order rejecting-Ap. real from.

The question was raised whether under S. 76 of the Registration Act of 1871 (of which the final words are, "no appeal lies from any order made under this section," order against which no appeal can be preferred must not be taken to mean only one by which the judge directs the registrar to register a deed, and whether there may not be an appeal from an order rejecting the application for registration.

Their Lordships would have great difficulty in saying that an order of rejection does not fall within the term "an order made under this section"; because if the judge does not make his order of rejection under S. 76, it is difficult to see what other section gives him jurisdiction to make it. It is not, however, necessary to decide the question (225-6). (Sir James W. Colvile.) REASUT HOSSEIN v. HADJEE AB-(1876) 3 I. A. 221 = 2 C. 131 (137) = DOOLLAH. 26 W. R. 50 = 3 Sar. 641.

## REGISTRATION ACT III OF 1877-S. 69-R. 174 OF RULES UNDER.

Trust deed-Interest of registrar in-Trusteeship of sollege a beneficiary under deed if an.

Under a wakfnama. or deed of charitable trust, a college was one of the objects entitled to the benefit of the trust. The deed was registered by a sub-registrar who was a trustee of the college.

Quare whether the interest of the sub-registrar was such an interest as to bring him within the meaning of R. 174 of the rules made under S. 69 of the Registration Act of 1877 (230). (Lord Buckmaster.) MUHAMMAD RUSTAM ALI v. (1920) 47 I. A. 224= MUSHTAQ HUSAIN.

42 A. 609 (616) = (1920) M. W. N. 665 = 18 A. L. J. 1089 = 12 L. W. 539 = 28 M. L. T. 220 = 57 I. C. 329 = 39 M. L. J. 263.

## REGISTRATION ACT (XVI OF 1908).

S. 2(7).

-Agreement to lease-Meaning of. See UNDER THIS ACT-S. 17-LEASE-CONTINGENT EVENT,

(1919) 46 I. A. 240 (245)=47 C. 485 (494-5).

## S. 2 (10)-Representative.

-Adopted son minor-Representative of-Natural father if. See UNDER THIS ACT-Ss. 41, 40, 32-AUTH-(1928) 56 I. A. 21 = 52 M. 175. ORITY TO ADOPT. -Court-Representative of-Clerk of Court if a. See UNDER THIS ACT-S. 32-REPRESENTATIVE.

(1922) 49 I. A. 395 (398) = 50 C. 166 (170).

-Married woman a minor-Representative of-Father of minor if a. See UNDER THIS ACT-S. 34-MINOR (1921) 14 L. W. 576 (581-2) MARRIED WOMAN.

-Meaning of.

The definition of representative in S. 3 of the Registration Act of 1877 does not make it equal to guardian, but says that it includes guardian. (Lord Phillimore.) RAJAH KEESARA VENKATAPPAYYA P. RAJAH NAYANI VEN-(1928) 56 I. A. 21=52 M. 175= KATARANGA ROW.

52 M. 175 = 29 L. W. 118 = 1929 M. W. N. 47 = 33 C. W. N. 161 = 27 A. L. J. 41 = 49 C. L. J. 148 = 31 Bom. L. R. 299 = 114 I. C. 17 = I. D. (1929) P C. 57 = A. I.R. 1929 P. C. 24 = 56 M. L. J. 218 (231).

S. 17.

## CHARGE ON IMMOVEABLE PROPERTY.

-Deed creating-Registration of-Necessity.

L, who was indebted to the appellant, gave him a document, dated 2-8-1923 which ran as follows :- "I confirm that we owe you nearly half a lakh of rupees, I shall convey you my property known as "Mount Pleasant" as agreed by me to liquidate the amount as soon as I feel a little better". The title deeds of the property were not, however, handed

Held that the document of 2-8-1923 was one which created a right, title or interest over immoveable property within the meaning of S. 17 of the Registration Act, that it was compulsorily registrable, and that, as it was not registered, no charge could be created by it. (Lord Share.) KHOO SAIN BAN D. TAN GUAT TEAN.

(1929) 7 Rang. 234 = 33 C. W. N. 652 = A. I. B. 1929 P.C. 141=31 Bom. L. B. 873= 30 L. W. 18 = 50 C. L.J. 99 = 117 I. C. 489 = (1929) M. W. N. 619 = 57 M. L. J. 529.

CONTRACT OF SPECIAL CHARACTER NOT COMING WITHIN ANY OF DEFINITIONS FOUND IN-

-What amounts to-Registration of-Necessity. See CONTRACT-COMPLETED CONTRACT-PROPOSAL, ETC (1874) 1 L A. 194,

## REGISTRATION ACT XVI OF 1908-(Contd.) S. 17-(Contd.)

#### LANDLORD AND TENANT.

-Tenant-Deed executed by-Kabuliyat itself a, or deed merely creating right to obtain kabuliyat-Test-Registration-Necessity. See LANDLORD AND TENANT-KABULIYAT-DEED ITSELF A. ETC.

(1889) 16 I. A. 233 (238) = 17 C. 291 (297).

#### LEASE.

-Contingent event-Agreement for grout of losse on

happening of-Registration-Necessity.

An agreement that, upon the happening of a contingent event at a date which is indeterminate and may be far distant, a lease would be granted is not an "agreement to lease" within the meaning of S. 2 (7) of the Registration Act, 1908, and does not therefore require registration under S. 17 (1) (d) of the Act.

The expression "Agreement to lease" in S. 2 (7) relates to some document that creates a present and immediate interest in the land; while in the case of the agreement referred to above it would be impossible until the happening of the contingent event to determine whether there would be any lease or not. (Lord Buckmaster.) HEMANTA KUMARI DEBI :. MIDNAPUR ZEMINDARI COMPANY.

(1919) 46 I. A. 240 (245) = 47 C. 485 (494 5) =

27 M. L. T. 42 = 17 A. L. J. 1117 = (1920) M. W. N. 66 = 24 C. W. N. 177 = 53 I C. 534 = 31 C. L. J. 298 = 11 L. W. 301 = 37 M. L. J. 525.

Counter-part of lease or-Declaration by tenant's gomasta when amounts to a-Registration-Necessity.

The question was whether a tenancy of land created in or about the year 1871 was a permanent tenancy or a tenancy at will. With a view of establishing that it was a mere tenancy at will, the landlord tendered in evidence a declaration, dated 10.9-1871, signed by the Gomasta and Manager of the tenant firm, purporting to set forth the terms of the tenancy of the land which on that day had been granted to the firm. The declaration was, or purported to be. a lease or counter-part of a lease, but was not registered.

Held that the declaration had, under S. 17 of the Registration Act of 1908, to be registered, and that, being un-registered, it was inadmissible in evidence (181-2.) (Lord

Blanesburgh.) DHANNA MAL P. MOTI SAGAR.
(1927) 54 I. A. 178 = 8 Lab. 573 = 39 M. L. T. 161 = 26 L.W. 634 = 28 Punj. L. B. 658 = 25 A. L. J. 959 = 29 Bom. L. R. 870 = 31 C. W. N. 677 = 101 I. C. 355 = A. I. R. 1927 P. C. 102 = 52 M. L. J. 663,

Lessor and Lessee—Agreement between, collateral to lesse—Registration of—Necessity—Payment to lessor— Provision in agreement for-Money not charged upon immoveable property. See LEASE-AGREEMENT BETWEEN LESSOR, ETC. (1902) 29 I. A. 138 (145-6) = 25 M. 603 (611).

Memorandum of prior and completed transaction or -Test - Registration - Necessity. See LEASE-MEMO-(1919) 46 L. A. 279 (281.2) = RANDUM OF, ETC. 47 C. 280 (285-6).

Relinquishment of-Registered instrument for-Necessity-Consideration for surrender-Receipt of, and relinquishment of possession—Sufficiency of. See LEASE—
RELINQUISHMENT OF—REGISTERED INSTRUMENT FOR. (1886) 13 I. A. 160 (167) = 14 C. 109 (119).

MAHOMEDAN LAW-WAKENAMA APPOINTING TRUSTEES BUT NOT VESTING PROPERTY IN THEM.

Registration of Necessity. See MAHOMEDAN LA W WARPNAMA APPOINTING TRUSTEFS BUT NOT VEST-ING PROPERTY IN THEM. (1920) 47 I. A. 224 (231-2) =

## REGISTRATION ACT XVI OF 1908-(Contd.) S. 17-(Contd.)

## MORTGAGE.

-Deed creating right to obtain regular deed of mortgage or deed itself creating a-Test. See MORTGAGE-DEED OF -DEED MERELY CREATING, ETC.

(1929) 58 M. L. J. 453.

-Equitable mortgage-Deposit of title-deeds-Memorandum accompanying—Registration of—Necessity—Condi-tion. See MORTGAGE—EQUITABLE MORTGAGE—DEPO-SIT OF TITLE-DEEDS-MEMORANDUM ACCOMPANYING-REGISTRATION OF. (1922) 50 I. A. 77 (82-4)= 50 C. 338 (344-5).

Prior and subsequent mortgagees-Agreement between, to divide proceeds of sale of mortgaged property-Registration of-Necessity. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES-MORTGAGES UNDER-AG-REEMENT BETWEEN, ETC. (1920) 47 I. A. 188= 43 M. 660.

Prior and subsequent mortgagees-Agreement between, regarding rights to mortgaged property-Registration -Necessity. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGES-MORTGAGEES UNDER-AGREEMENT BE-(1920) 47 I. A. 188=43 M. 660, TWEEN, ETC.

-Redemption-Right of-Co-mortgagors-Agreement between, vesting right in one of them for limited period to be exercised for his sole benefit-Registration of-Necessity See MORTGAGE-REDEMPTION-RIGHT OF-AGREE-MENT BETWEEN, ETC. (1903) 30 I. A. 230 = 30 C. 1016.

#### PARTITION.

-Deed itself effecting a-Deed merely creating a right to obtain another deed which will effect a-Test-Registration-Necessity. See HINDU LAW-JOINT FAMILY-PARTITION-DEED OF-DEED ITSELF EFFECTING A

(1922) 50 I. A. 134 (140) - 46 M. 373 (380-1).

#### PARTNERS.

-Martgage by-Redemption right-Agreement between them vesting, exclusively in one of them for limited period to be exercised for his sole benefit-Registration of -Necessity, See MORTGAGE-REDEMPTION-RIGHT OF (1903) 30 I. A. 230 = 30 C. 1016. -AGREEMENT, ETC.

## SALE OF IMMOVEABLE PROPERTY.

-Agreement for, acknowledging receipt of consideration-Registration of-Necessity. See REGISTRATION (1871) 14 M. I. A. 129 (131). ACT OF 1866-S. 49.

-An agreement for the sale of immoveable property for a sum of Rs. 10,000, recited, inter alia, that the vendor had received Rs. 1,000 out of the Rs, 10,000 by way of earnest money, that he would complete the sale within a specified period, and receive the balance before the Sub-Registrar at the time of the completion of the sale and registration, that the vendee had been put in possession of the land sold, and that the vendor should pay Rs. 1,000 by way of damages to the vendee, if he failed to complete the sale within the period specified. The vendor refused to complete the purchase, whereupon the vendee instituted a suit for specific performance.

Held that, assuming that the agreement was an agreement to sell, and not a sale, and was consequently exempted under S. 17 (2) (v) of the Registration Act of 1908, yet, as the buyer had paid earnest money exceeding the sum of Rs. 100, and, so far from refusing to accept delivery, was pressing for specific performance, the agreement did in itself by virtue of S. 55 (6) ( $\delta$ ) of the Transfer of Property Act create an interest, and therefore did not allow of the application of S. 17 (2) (v) of the Registration Act, that it was 42 A. 609 (616-8.) therefore, compulsorily registrable under S. 17 of that Act,

S. 17-(Contd.)

SALE OF IMMOVEABLE PROPERTY-(Contd.)

and that, not having been registered, was inadmissible in evidence under S. 49 of that Act. (Viscount Dunedin.)
DAVAL SINGH P. INDAR SINGH. (1926) 53 L. A. 214 = 3 O. W. N. 634 = (1926) M. W. N. 602 = 24 A. L. J. 807 - 44 C. L. J. 97 = 24 L. W. 396 =

24 A. L. J. 807-44 C. L. J. 97-24 L. W. 396-28 Bom. L. B. 1372-31 C. W. N. 125-28 P. L. R. 10-7 P. L. T. 661=

A. I. R. 1926 P. C. 94 = 98 I. C. 508 = 51 M. L. J. 788.

Held, agreeing with the Sub-Judge, and differing from the High Court, that the document of the 18th June, 1918 (the terms of which are fully set out in their Lord-hipjudgment), was a sale deed requiring registration under S. 17 of the Registration Act, and not a mere agreement for sale.

The language employed is perhaps not that of a trained draftsman, but the document clearly purports to transfer the executant's interest in the immoveable properties which he had inherited from his brother, particulars of which are set out in the schedule. (Sir George Lewonder.) Skinner v. Skinner. (1929) 56 I. A. 363 = 33 C. W. N. 1150 = 30 L. W. 451 = (1929) M. W. N. 676 =

A. I. R. 1929 P. C. 269 = 6 O. W. N. 835 = 27 A. L. J. 1060 = 119 I. C. 633 = 50 C. L. J. 487 = 57 M. L. J. 765.

Deal itself effecting a, and also providing as an integral part of transfer for execution of registered dead—Registration of—Necessity.

An unregistered deed executed by a vendor in favour of a vendee, in addition to creating an interest in the immoveable property concerned, provided as one of its terms, and therefore as an integral part of the transfer, that the vendor should, if the vendee so required, execute a registered sale deed.

Held that to allow the vendee to sue for specific performance of that agreement, putting the deed in evidence in proof of it, would clearly be within the prohibition of S 49 of the Registration Act.

An agreement for the sale of immoveable property is a transaction "affecting" the property within the meaning of the section, inasmuch as, if carried out, it will bring about a change of ownership. The intention of the Act is shown by the provision of S. 17 (2) (v), which exempts from registration, and therefore frees from the restriction of S. 49 a document which does not itself create an interest in immoveable property, but merely creates a right to obtain another document which will do so. In the face of this provision, to allow a document which does itself create such an interest to be used as the foundation of a suit for specific performance appears to be little more than an evasion of the Act. (Sir George Lounder.) SKINNER v. SKINNER. (1929) 56 I. A. 363 = 33 C. W. N. 1150 = 30 L. W. 451 =

(1929) M. W. N. 676 = A. I. R. 1929 P. C. 269 = 6 O. W. N. 835 = 27 A. L. J. 1060 = 119 I. C. 633 = 50 C. L. J. 487 = 57 M. L. J. 765.

TRUSTEES—DEED APPOINTING, BUT NOT VESTING PROPERTY IN THEM.

Registration of—Necessity. See MAHOMEDAN LAW
WAKFNAMA APPOINTING TRUSTEES BUT NOT VESTING PROPERTY IN THEM. (1920) 47 I.A. 224 (231-2) =
42 A. 609 (616-8).

S. 17 (2)(v).

-Se All Cases collected under S. 17 of this ACT.

# REGISTRATION ACT XVI OF 1908-(Contd.)

S. 17 (2) (vi).

COMPROMISE OF SUIT.

——Decree recording—Matters outside suit covered by compromise—Decree if receivable in evidence in respect of.

Where an agreement adjusting a suit went beyond the subject-matter of the suit by providing that in a certain contingency lands not included in the suit should be leased, and such agreement was recorded in a decree framed under S. 375 of the Code of 1882, held that such agreement did not fall within S. 17 (1) (d) of the Registration Act, and that, though it would otherwise fall under S. 17 (1) (b) of the Act, it was excepted by the words "any decree of a Court" in Sub-s. (2); and that, though the decree might be incapable of execution as a decree outside the lands of the suit, it might still be received in evidence of the agreement which it embodied. (Lord Buckmaster). HEMANTA KUMARI DEBI L. MIDNAPORE ZEMINDARI CO.

(1919) 46 I.A. 240 (246 8) = 47 C. 485 (496.7) = 27 M.L.T. 42 = 17 A.L.J. 1117 = (1920) M. W. N. 66 = 24 C. W. N. 177 = 31 C.L.J. 298 = 11 L. W. 301 = 53 I.C. 534 = 37 M.L.J. 525.

— Registration of — Necessity — Judicial proceeding — Portion of compromise incorporated into — Portion not so incorporated — Distinction.

A suit to recover land A was compromised, the arrangement being embodied in two deeds, the one being a razinama, and the other an agreement. By the agreement it was agreed that the defendant should have and retain onehalf of land A and one-half of land B which had been excluded from the suit. The agreement dealt with immoveable property beyond the value of Rs, 100 but was not registered. In the body of the razinama which was also unregistered the parties described land A and stated that they were to take it in equal moities. Under the heading of remarks, the razinama referred to the agreement and to the fact that land B was divided between the parties into equal The razinama also included land B in its schedule. In the judgment delivered in the soit, the judge, having the razinama before him, treated the first part of it (the part dealing with land A) as the only portion of the contents of the document with which he was desired by the parties to deal. In giving effect to its terms, the Judge observed that the parties had put in a razinama in respect to land A and that a decree in its terms had been passed. The judge plainly did not understand that he was asked by the parties either to consider or to give effect to the terms of the compromise which the parties narrated, by way of remark, that they had made with respect to land B. Accordingly, the order passed by him did not include and had no reference to land B. The parties obtained possession in pursuance of the compromise and enjoyed the lands

falling to their shares.

In a suit subsequently brought for the recovery of land B by one of the parties to the prior suit who would be entitled to it but for the compromise embodied in the agreement and in the razinama from the other party to that suit, held that, though the razinama was not registered, yet, in so far as it was submitted to and was acted upon judicially by the learned judge in the prior suit, it was in itself a step of judicial procedure not requiring registration; and any order pronounced in terms of it constituted res judicata binding upon both the parties, who gave consent to it.

Held further, as regards land B, that inasmuch as the compromise was not submitted to the learned judge in the prior suit, but was deliberately left by the parties to stand upon their agreement, and that agreement was unregistered, the agreement conferred no title on the defendant.

The razinamah merely referred, by way of remark, to land B; and the judge was only asked to give effect to a

8. 17 (2) (vi)-(Contd.)

COMPROMISE OF SUIT-(Contd.)

compromise which related to land A. The order, accordingly, merely concerns the latter, and has no reference whatever to land B. So far as regarded land B, the compromise was not submitted to the learned judge, but was deliberately left by the parties to stand upon their unregis tered agreement. (Lord Watson.) PRANAL ANNEE P. (1899) 26 I. A. 101= LAKSHMI ANNEE.

22 M. 508 = 3 C.W.N. 485 = 1 Bom. L.R. 394 = 7 Sar. 516=9 M.L.J. 147.

#### DECREE WITHIN THE MEANING OF.

Operative portion only if included in.

The word "decree" in S. 17, Sub-s. (2). (11) of the l'egistration Act must be read in connection with the purpose of the statute, which is to provide a method of public registration of documents, and there is no reason why a limit should be imposed upon the meaning of the word so as to confine it to the operative portion only of the decree (246.7). (Lord Buckmatter). HEMANTA KUMARI DEBI :. MID-NAPORE ZEMINDARI CO. (1919) 46 I.A. 240 -

47 C. 485 (496) = 27 M.L.T. 42 = 17 A.L.J. 1117 = (1920) M.W.N. 66-24 C.W.N. 177-31 C. L. J. 298-11 L.W. 301 - 53 I.C. 534 - 37 M. L. J. 525.

#### JUDICIAL PROCEEDINGS.

-Registration-Necessity.

The provisions of S. 17 of the Registration Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties or of orders made by the court (15). (Lord Watton.) BINDESRI NAIK P. GANGA-SARAN SAHU. (1897) 25 I.A. 9-20 A. 171 (180)= 2 C.W.N. 129 = 7 Sar. 273

### PLEADINGS.

-Registration of-Necessity. See under this very clause-JUDICIAL PROCEEDINGS.

S. 17 (3)-Authority to adopt.

Deed containing disposition of property and giving -Registration as will of, and not as authority to a lopt-Validity of authority in case of. See HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-DEED OF-DIS-POSITION OF PROPERTY. (1925) 52 I.A. 305 (309) = 48 M. 614.

-Will giving-Dispositions of property made by-Validity of Validity of authority if dependent upon. See HINDU LAW - ADOPTION-AUTHORITY TO ADOPT-WILL GIVING-DISPOSITIONS OF PROPERTY MADE BY.

(1907) 34 I.A. 107 (113) = 31 B. 373 (379-80). Will inoperative as such if may be a valid. Sec HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-WILL INOPERATIVE, ETC.

(1925) 52 I.A. 305 (308-9) = 48 M. 614. Will or-Test-Deed -Construction. See HINDU LAW-ADOPTION-AUTHORITY TO ADOPT-WILL OR. (1865) 10 M. I. A. 279 (307-9)

and (1921) 48 I.A. 482 = 44 M. 733. 8. 21.

-Trust deed-Property dealt with by-Description of ufficient to identify same-Necessity.

The deed of trust was registered, and if it had been inlended to make the immoveable property at Pegu subject to the trust for sale, it would have been necessary to insert in the deed a description of such property sufficient to identify the same. (Sir Lancelet Sanderson.) CHOCKALINGAM CHETTIAR D. E. N. M. K. CHETTIAR FIRM.

(1927) 6 B. 113 = 107 I. C. 461 = 47 C.L.J. 429 = 32 C. W. N. 677 = 30 Bom. L. B. 788= 97 L.W. 811 (815) = A.I.B. 1928 P.C. 44= SECTION OF . 64 M.L.J. 517.

## REGISTRATION ACT XVI OF 1908-(Contd.) S. 21 (2),

-Houses in towns-Description of.

The proper description of houses in towns for the purpose of registration is by the street in which they are situated, and the number which they bear in that street (187), (Lord Moulton.) HARENDRA LAL ROY CHOWDHURI :. HARI DASI DEBI. (1914) 41 I.A. 110=23 I.C. 637:-41 C. 972 (985 6) = 18 C.W.N. 817 =

16 Bom. LR. 400 = 19 C.L.J. 484 = (1914) M.W.N. 462 = 12 A.L.J. 774 = 16 M.L.T. 6 = 1 L.W. 1050 = 27 M.L.J. 80.

Presentation for registration within four months-Registration after expiry of that period-Validity of.

Though the Registration Act of 1866 makes it imperative to present an instrument for registration within four months from the date of its execution, no time is fixed within which a deed presented and accepted for registration must be registered.

A deed of sale presented for registration to the proper officer within the period allowed for the purpose was, in consequence of the failure of the vendors to appear not withstanding a summons issued for their appearance, registered on the strength of other evidence of due execution. The registration was held to be invalid in a suit brought for the purpose by the attaching decree-holders of the vendors. The senders again applied to the registering officer to have their deed registered, but that application was refused. Thereupon they petitioned the High Court, who held that the vendees were entitled to have the deed registered, and directed its registration in the proper manner after the usual inquiries. More than 30 days after the order of the High Court, the vendees petitioned the registrar that the surviving vendors and the heirs of the deceased vendors might be summoned, and the deed registered according to the requirements of the law. Thereupon compulsory process was issued, and the deed was registered.

Held that the subrequent registration of the deed was valid and effectual to render the deed admissible in evidence and operative (217-8). (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY P. SAH KOONDUN LALL,

(1875) 2 I.A. 210 = 15 B.L.R. 228 = 24 W.R. 75 - 3 Sar. 509 - 3 Suth. 170.

-- Document executed by several persons-Registration and re-registration of.

Under the proviso to S. 23 of the Registration Act of 1871, a deed, say, by several vendors, may be registered as to one or two of them when one or two have executed the deed, and may be again registered when others have at a later period executed it (171). (Sir Montague E. Smith.) MOHAMMAD EWAZ v. BIRJ LALL. (1877) 4 I.A. 166-1 A. 465 (470) = 3 Sar. 735 = 3 Suth. 438.

-- Document executed outside British India-Registration in British India of-Validity of-Objection to. on ground of presentation for registration not being within four months of its arrival in British India as required by S. 25 of Act-Maintainability of, after due registration of document in British India-Quaere. (Lord Phillimore.) RAJAH KEESARA VENKATAPPAYYA D. RAJAH NAYANI VENKATA RANGA ROW. (1928) 56 I.A. 21=

52 M. 175 = 29 L. W. 118 = 1929 M. W. N. 47 = 33 C. W. N. 261 = 27 A.J. L 41 = 49 C. L. J. 148 = 31 Bom. L. B. 299 = 114 I.C. 17 = I.D. (1929) P.C. 57 = A. I. B. 1929 P. C. 24 = 56 M. L. J. 218 (230),

S. 28-Fictitious inclusion of property in a deed with a view to give jurisdiction.

—Validity of registration in case of. See Under this section. MORTGAGE—REGISTRATION OF—VALIDITY— FIGHTHOUS, ETC.

## S. 28-Mortgage-Registration of-Validity.

 Firstitions inclusion of property in deed with a view to give investigation—Effect.

A fictitious entry as to a parcel in a mortgage deed intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact exists is a fraud on the registration law, and no registration obtained by means thereof is valid (120). (Lord Moulton.) HARENDRA LAL ROY CHAUDHRI v. HARI DASI DEBI.

(1914) 41 I. A. 110=41 C. 972 (989)=
18 C. W. N. 817=16 M. L. T. 6=23 I. C. 637=
16 Bom. L. R. 400=12 A. L. J. 774=
19 C. L. J. 484=(1914) M. W. N. 462=
1 L. W. 1050=27 M. L. J. 80.

——By S. 28 of the Indian Registration Act, 1877, every instrument which by S. 17 of that Act is required to be registered must be presented for registration in the subdistrict within which the whole or a portion of the property affected is situate.

A mortgage bond for Rs. 8,000 was registered in the Mozufferpur district. The only property within that dis-rict which the bond purported to mortgage was a one-kauri share in the village. That kauri share belonged to a third party, and the mortgagor, who wanted to register the mortgage bond in Mozufferpur in order to complete the transaction quickly, but had no property in that district, asked the third party to sell to him the said share on receipt of a sum of Rs. 50. It was allegad that the third party accordingly sold the share to the mortgagor by a kobala, but it was admitted that the same was not registered and that there was no delivery of possession of the said share to the mortgagor. It was found that none of the parties ever intended that the said kauri share should vest in the mortgagor (all that was wanted being the use of the name of the said share for the purposes of registration, and Rs. 50 being paid to the third party only for that use) or that it should pass by the mortgage from the mortgagor to the mortgagee. Held that the said share was a fictitious entry and that such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact existed was a fraud on the registration law, and that the registration obtained by means thereof was not valid.

Their Lordships' judgment rests on the view that none of the parties ever intended that the one-kauri share should vest in the mortgager or should pass by the mortgage from him to the mortgagee. This case differs toto coelo from the case suggested in argument of a more failure to make a good title to property dealt with by the instrument, and which both parties had intended should form part of the security (133). (Viccount Cave.) BISWANATH PRASHAD v. CHANDRA NARAYAN CHOWDHURI.

(1921) 48 I. A. 127 = 63 I. C. 770 = 48 C. 509.

- Property within jurisdiction intended to be mortgaged but mortgagor failing to make good title to same-Effect.

Quare as to the validity of the registration of a mortgage in a case in which property within the jurisdiction of the registering officer is by both parties intended to form part of the security but the mortgagor fails to make a good

BEGISTRATION ACT XVI OF 1908-(Contd.)

S. 28—Mortgage—Registration of—Validity—(Ctd.) title to the same. (Viscount Cav.) BISWANATH PRA-SHAD v. CHANDRA NARAYAN CHOWDHURY.

(1921) 48 I. A. 127 (133)=63 I. C. 770= 48 C. 509 (516).

## S. 28-Property in several sub-districts.

Deed affecting—Registration, in sub-district where smaller and less valuable portion of property is situate—
Validity.

In this case the High Court held:—"In a case, like the present, in which there is a large and valuable property in one sub-district, and another small piece of land situate at a distance, it seems to us that to allow registration of a document affecting both properties in the place where the smaller and less valuable is situate would be inconsistent with the implied intention of the Legislature that registration should be made with reference to the locality of the property." The High Court accordingly held that a literal interpretation of the terms of S. 28 of the Registration Act of 1871 ought not to be adopted, and that it was the intention of the Legislature that the registration should take place where some substantial portion of the property was situate.

Held, that the judgment of the High Court put a construction upon S. 28 which could not be supported, and in fact imputed to the Legislature an intention which did not appear from the provisions of the Registration Act to have been their intention (15).

The words of S. 28, if we take them in their ordinary sense, certainly do not show an intention that there should be any inquiry as to whether the place where the document was registered was the place where what may be called some substantial portion of the property is situate; and an inquiry of that kind might very frequently lead to considerable difficulty. It appears to have been the intention of the Legislature that it should be sufficient that the registration be made by the parties, as is stated in S. 28, is the place where some portion of the property—not a substantial portion, but where any portion of the property is situate, leaving it to the office to do the rest (15.6). (Sir Richard Couch.) HARI RAM P. SHEODIAL RAM.

(1888) 16 I. A. 12=11 A. 136 (141.2)=5 Sar. 281.

S. 28—Property within jurisdiction intended to be conveyed by deed but executant failing to make good title to same.

—Validity of registration in case of, See Under this section. MORTGAGE—REGISTRATION OF—VALIDITY—PROPERTY WITHIN, ETC.

(1921) 48 I A. 127 (133) = 48 C. 509 (516).

## S. 32-Presentation for registration.

The terms of Ss. 32 and 33 of the Registration Act of 1877 are imperative, and a presentation of a document for registration by an agent who has not been duly authorised in accordance with those sections, does not give to the registering officer the indispensable foundation of his authority to register the document. His jurisdiction only comes into force if and when a document is presented to him in accordance with law (28-9).

The fact that the registering officer summons before him the executant of the deed, and obtains his consent to the registration of the deed, does not give the registering officer jurisdiction to register the deed, and his omission to notice that the power of attorney under which the agent had presented the deed for registration had not been executed or

S. 32-Presentation for registration-(Contd.)

authenticated in accordance with S. 33 of the Act cannot be regarded as a defect in procedure within the meaning of S. 87 of that Act (29). (Sir John Edge.) JAMBU PRASHAD v. MUHAMMAD AFTAB ALI KHAN.

(1914) 42 I A. 22=37 A. 49 (55-6)=
17 M. L. T. 148=(1915) M. W. N. 592=
19 C. W. N. 282=21 C. L. J. 218=2 L. W. 277=
13 A. L. J. 129=17 Bom. L. R. 413=28 I. C. 422=
28 M. L. J. 577.

Authority to adopt—Presentation of—Natural father of minor adopted son—Right of. See Under this Act—Ss. 41, 40, 32. (1928) 56 I. A. 21 = 52 M. 175.

— District Judge—Bond in favour of—Presentation by clerk of Court of—Validity of registration—Obligors attending to admit execution but not joining in presentation.

A mortgage bond given by certain persons to the District Judge of V, to secure the performance of any order which His Majesty in Council night make on an appeal then pending in a suit, was presented for registration to the sub-registrar at V "by U on behalf of the Additional Judge, V," and was registered by the Sub-Registrar who gave the usual certificate of registration. U was only a clerk of the District Court.

Held, on the facts, that there was no proper presentation under S. 32 of the Registration Act of 1908, and that accordingly the registration was invalid. The bond was not presented by any person executing or claiming under it. For the District Judge was not present; and although the obligors appear to have attended for the purpose of admitting execution, they did not join in the presentation. Nor was the document presented by any agent holding a power of attorney. The only question, therefore, is whether U, who appears to have attended and presented the deed on behalf of the District Judge, can be said to have been a "representative" of the District Judge within the meaning of paragraph ( $\delta$ ) of S. 32. In their Lordships' opinion he cannot. (Victount Care.) MA SEWE MYA 2: MAUNG IIO HNAUNG.

(1922) 49 I. A. 395 (397.8) = 50 C. 166 (169) = 17 L. W. 213 = 37 C. L. J. 343 = 27 C. W. N. 533 = 2 Bur. L. J. 264 = A. I. B. 1922 P. C. 359 = 31 M. L. T. 304 (P. C.) = 70 I. C. 937 (2) (P.C.) = 44 M. L. J. 732.

Executant-Presentation by-Attendance merely to admit execution if amounts to.

Executants of a deed who attend a registrar or sub-registrar merely to admit that they have executed it cannot be treated, for the purposes of S. 32 of Act III of 1877, as presenting the deed for registration. They no doubt would be assenting to the registration, but that would not be sufficient to give the registrar jurisdiction to register the deed. (29). (Sir John Edge.) JAMBU PRASAD 5. MUHAMMAD APTAB ALI KHAN. (1914) 42 I.A. 22=37 A. 49 (56)=

17 M. L. T. 148 = (1915) M. W. N. 592 = 19 C. W. N. 282 = 21 C. L. J. 318 = 2 L. W. 277 = 18 A. L. J. 129 = 17 Bom. L. B. 413 = 28 I. C. 422 = 28 M. L. J. 577.

Executant deceased—Attorney of—Presentation by— Registration upon—Validity of.

A deed of gift of immoveable property as at first presented for registration did not contain "a description of the property sufficient to identify the same." The Registrar accordingly declined to register, but returned the deed "for correction and compliance with " the provisions of S. 21 of the Registration Act. The deed had been presented on behalf of the executant by H, who held his power-of-attorney subsequently the supplement or detail of the endowed pro-

## REGISTRATION ACT XVI OF 1908—(Contd.) S. 32—Presentation for registration—(Contd.)

perty was added, so as to render the deed registrable, and on that day the deed so completed was executed by the executant. Subsequently, that deed of endowment (i.e., the completed deed) was presented for registration by the same II. In the interval between the execution of the completed deed and its presentation to the registrar, the executant died. The registrar accepted the deed and registered it recording in writing that the man who had executed it and whose attorney presented it for registration was dead.

Held, that the registration was illegal and invalid (22-3). After the executant's death, the only attorney who would have had any land stand; would have been the attorney of the representative or assign of the deceased. When the completed deed was presented for registration. H was a mere volunteer. Nor is it possible to treat the action of the Registrar as compliance with the request for registration in an incomplete condition when the executant was alive, because the deed in fact had been executed afresh subsequently and it was presented afresh. Further, even assuming the continuity of the proceeding, the death of the executant brought it to an end (22-3). (Land Robertson.) MAJIBUNNISSA r. ABDUL KAHIM. (1900) 28 I. A. 15

23 A. 233 (241.2)=5 C. W. N. 177= 3 Bom. L. B. 114=7 Sar. 829=11 M. L. J. 58.

Person claiming under document—Presentation by— Official endorsement of registrar showing—Signature at foot of document showing that presentation was by unauthorized agent — Validity of registration. See BURMA REGIS-TRATION REGULATION OF 1897, RULES 4 AND 7.

(1923) 51 I. A. 18 (21-2) = 51 C. 354.

-Unauthorized person-Presentation by-Validity of registration.

The power and jurisdiction of the Registrar only come into play when he is invoked by some person having a direct relation to the deed. It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration. The Registrar could not be held to exercise the jurisdiction conferred on him if, hearing of the execution of a deed, he got possession of it and registered it; and the same objection applies to his proceeding at the instigation of a third party, who might be a busylody. Registration by the registrar of a deed presented by an unauthorized person is not a mere defect in his procedure only within the meaning of S. 87 of the Act, but invalidates the act of registration (22-3). (Lard Robertson.) MAJIBUNNISSA v. ABDUL RAHIM. (1900) 28 I. A. 15 = 23 A. 233 (241-2) = 5 C. W. N. 177 =

3 Bom. L. B. 114 = 7 Sar. 829 = 11 M. L. J. 58.

The provisions of S. 32 of the Registration Act of 1908 are imperative, and, unless a document presented for

registration is so presented by one of the persons described in the section, the presented by one of the persons described in the section, the presentation does not give to the registrat the indispensable foundation of his authority to register it, and the registration, if made, is invalid. (Viscount Cave.)

MA SHWE MYA v. MAUNG HO HNAUNG.

(1922) 49 I. A. 395 (396) = 50 C. 166 (168) :: 17 L. W. 213 = 37 C. L. J. 343 = 27 C. W. N. 533 = 2 Bur. L. J. 264 = (1922) P.C. 359 = 31 M. L. T. 304 (P.C.) = 70 I. C. 937 (2) (P.C.) = 44 M. L. J. 732.

#### B. 32-Provisions of.

——Imperative. See S. 32—PRESENTATION FOR RE-GISTRATION—UNAUTHORIZED PERSON. (1922) 49 I. A. 385 (396) = 50 C. 166 (168).

## REGISTRATION ACT XVI OF 1908-(Contd.) S. 32-Representative

 Adopted son minor — Representative of — Natural father if. Sa Under this Act-SS, 41, 40, 32-AUTHO-(1928) 56 I. A. 21 = 52 M. 175. RITY TO ADOPT.

-Meaning of-Court - Representative of-Clerk of Court of.

The term " representative " in S. 32 of the Registration Act of 1808 refers to the legal personal representative or (by virtue of S. 2) the guardian or committee of the person described and does not include a clerk or agent. (Viscount Cave.) MA SHWE MYA 7: MAUNG HO HNAUNG.

(1922) 49 I. A. 395 (398) = 50 C. 166 (170) = 17 L. W. 213 - 37 C. L. J. 343 - 27 C. W. N. 533 -2 Bur. L. J. 264 = (1922) P.C. 359 = 31 M. L. T. 304 (P. C.) - 70 I C. 937 (2) (P. C.) = 44 M. L. J. 732.

S. 32 (c).

-Presulation for registration under-Acceptance by registrar - Effect - Right of interested persons to show

that proces was in fact imperfect.

The power of attorney refered to in S. 32(r) of the Registration Act of 1908 must not be general in its form. but must confer the special authority to present on behalf of the principal, and even though the Sub-Registrar accepts the presentation under a general power of attorney, it is open to any interested party to show that the power of attorney was in fact imperfect. The fact that the presentation is accepted by the Sub-Registrar as in proper form is, however, prima facu, evidence that the conditions have been satisfied; and after such acceptance, the burden of proving any all-ged informality rests on the person who challenges the registration (579). (Lord Ruckmanter.) CHROTES Lal. p. Collector of Moradabad.

(1922) 49 I. A. 375 44 A. 514 (517) = 18 L. W. 124 = (1922) P. C. 279 - 31 M. L. T. 284 (P.C.) = 69 I. C. 44 = 27 C. W. N. 437 = 21 A. L. J. 361 = 37 C. L. J. 377 = 25 Bom. L. R. 655 = 9 O. & A. L. R. 450 = (1923) M. W. N. 873.

## Ss. 32. 33-Presentation for registration.

-Provisions as te-Strict compliance with-Necessity. The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions, framed with a view to meet local circumstances, should not be weakened or strained on the ground that they may appear to be exacting and strict (378). (Lord Buckmacter.) CHHOTEY LAL v. COLLECTOR OF MORADABAD.

(1922) 49 I. A. 375 = 44 A. 514 (517) = 18 L. W. 124 = (1922) P.C. 279 = 31 M. L. T. 284 (P.C.) = 69 I. C. 44 = 27 C. W. N. 437 = 21 A. L. J. 361 = 37 C. L. J. 377 = 25 Bom. L. B. 655 = 9 O. & A.L.R. 450 = (1923) M. W. N. 873.

Ss 32 to 35-Object of.

-Compliance with-Necessity.

One object of Ss. 32 to 25 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act. It is the duty of courts in India not to allow the imperative provisions of the Act to be defeated (29-30). (Sir John Edge.) JAMBU PRASHAD t. (1914) 42 J.A. 22 = MUHAMMAD AFTAB ALI KHAN.

37 A. 49 (56)=17 M: L. T. 148= (1915) M. W. N. 592 = 19 C. W. N. 282 = 21 C. L. J. 218=2 L. W. 277=13 A. L. J. 129= 17 Bom. L. R. 413 = 28 I. C. 422 = 28 M. L. J. 577. S. 33-Power of Attorney.

-Sickman-Power by-Execution and authentication of-Validity of-Conditions.

## REGISTRATION ACT XVI OF 1908-(Contd.) S. 33-Power of Attorney-(Contd.)

A power of attorney was brought to a sub-registrar on 4-11-1885 for registration and authentication by B, a servant of A. B told the sub-registrar that A was ill and that he (B) was going to deposit the commission fee and asked that the power of attorney might be registered on the spot. Two days after, i.e., on 6 11-1885, the sub-registrar went to the dwelling place of A and satisfied himself that A was ill and unable without risk or serious inconvenience to attend at the registration office. He read out the contents of the power to A, who thereupon admitted the execution and completion of the power, and asked that after registration the document might be given to D, in whose favour the power was executed. The power of attorney was a general power of attorney to D. Thereupon the sub-registrar registered the power of attorney.

Held, that the power of attorney was cluly presented for -Power of Attorney referred to in-General power registration and authenticated under S. 33 of the Registra-

tion Act. A was the real presenter of the power, and was so treated by the sub-registrar. It was probably an irregularity on the part of the sub-registrar to accept the document as presented by B, and to enter, as he ultimately did, the registration as made on 4-11-1885, instead of 6 11-1885. The presentation by B was inoperative but not injurious to the validity of any subsequent presentation (185).

As regards the point that the power was not executed before the sub-registrar as required by S. 33 of the Registration Act. it is covered by the proviso to that section, under which, if the person is ill, what the sub-registrar is to do is to satisfy himself that the power of attorney has been voluntarily executed, for which purpose he may go to the sick man's house and examine him. This is what the sub-registrar did (185). (Lord Phillimore.) BHARAT INDU P. HAMID ALI KHAN.

(1920) 47 I.A. 177 = 42 A. 487 (493-5) = 18 A. L. J. 717 = (1920) M. W. N. 413= 28 M. L. T. 98 = 22 Bom. L. R. 1362 = 25 C. W. N. 73 = 58 I. C. 386 = 39 M. L. J. 41.

-Validity of-Conditions.

Two mortgage deeds were registered by the Sub-registrar of S. L was the mortgagee under both the deeds, and he resided at S. One of the deeds was presented for registration by N on behalf of L. N beld a power of attorney from L, which, however, did not empower him to present documents for registration. The power of attorney had been duly authenticated by the then sub-registrar of S, but apparently it had not been executed before the Registrar or the Subregistrar. The Sub-registrar's note to the copy of the power of attorney in the register merely stated that L was known to him, and admitted the execution and completion of the

The other deed was presented by B on behalf of L Bheld a power of attorney from L, which, however, did not empower him to present documents for registration. That power of attorney had not been authenticated by the registrar or Sub-registrar of S. and it had not been executed by L before either of those officials. Neither B nor N had any other power of attorney from L.

Held, that in each case the agent who presented the document for registration had not been duly authorized in the manner prescribed by the Act to present it (29-30). (Sir John Edge). JAMBU PRASHAD v. MUHAMMAD AFTAB ALI KHAN.

(1914) 42 I. A. 22=37 A. 49 (54-6)=13 A. L. J. 199= 17 Bom. L. R. 413 = 19 C. W. N. 289= 21 C. L. J. 218=17 M. L. T. 148=2 L W. 271=

. (1915) M. W. N. 592 = 28 I. C. 422 = 28 M. L. J. 571.

## REGISTRATION ACT XVI OF 1908—(Contd.) 8. 33—Power of Attorney—(Contd.)

Validity of - Presumption of - Indersement on deed as registered that power was proper power - Effect.

Where, in a case in which a deed was presented for registration by K, the indorsement of the deed as registered bore that he held a special power of attorney authorising him to appear, keld that it must be presumed that the power of attorney was a proper power under the terms of S, 33 of the Registration Act. (Lord Duncdin.) KANHAYA LAL v. NATIONAL BANK OF INDIA, LTP.

(1923) 50 I.A. 162 (172) = 4 Lah. 284 = 25 Bom. L. B. 1248 = A. I. R. 1923 P. C. 114 = 28 C.W.N. 689 = 40 C.L.J. 1 = 33 M. L. T. 349 = 75 I. C. 7 = 45 M. L. J. 497.

Validity of Presumption of, from acceptance by registrar of presentation under same-Endorsement of certificate on deed lax-Effect.

On a mortgage deed being presented for registration before a sub-registrar by a person, acting under a power of attorney from the mortgagee, the sub-registrar endorsed on the deed a certificate which stated that it was presented by the said agent on behalf of the mortgagee, "under a special power of attorney duly authenticated in this office," but did not refer to the fact that the power of attorney was executed before the Sub-Registrar.

It was contended that the pre-entation was bad because the power of attorney was not executed in the manner provided by S. 33 (a) of the  $\Lambda$ ct.

Held that there was nothing to displace the inference that the presentation was duly made, arising from the fact of its acceptance by the sub-registrar (380).

The endorsement is certainly iax in that it did not state that the power was executed befor the sub-registrar, but it is made under no statutory obligation, and it has no state-tory effect; it is only the evidence to show that the pre-ent-ation has been accepted by the sub-registrar and its acceptance by him, he being the officer whose business it is to see that all essential regulations are regarded, is prima facie evidence that the power of attorney was regular in all respects (380), (Lord Buckmaster.) CHHOTEY LAI. 2. COLLECTOR OF MORADABAD.

(1922) 49 I. A. 375 = 44 A. 514 (517.8) = 18 L.W. 124 = (1922) P.C. 279 = 31 M.L.T. 284 (P.C.) = 69 I. C. 44 = 27 C. W. N. 437 = 21 A. L. J. 361 = 37 C. L. J. 377 = 25 Bom. L. B. 655 = 9 O. & A. L. B. 450 = (1923) M.W.N. 873. S. 34.

Executant—Non-appearance of Registration of dead on strength of other evidence of execution in case of Irregularity or illevality

A deed of sale was presented for registration to the proper officer in due time, but the vendors did not appear before him. They were consequently summoned to appear on a specified date. They did not appear on that date, wherespon the registering officer having satisfied himself by the deposition of witnesses and otherwise that the deed had been executed by the veedors, registered it.

Quare, whether the registration was a nullity, or whether the error was one of which a stranger to the deed could take advantage (215).

Ourze, whether the words of S. 36 of the Registration Act of 1866 are not merely directory to the registering officer for the benefit of the parties to the deed, and whether his acting without the appearance of the parties, and upon evidence, instead of the admisssion of the parties, of the execution of the deed, was more than a defect in procedure within the meaning of S. 88 of that Act (215.6). (Sir Barnes Pasceel.) SAH MUKHAN LALL PANDAY v. SAH KOON.

(1875) 2 I. A. 210 = 15 B. L. B. 228 = 24 W. B. 75 = 3 Sar. 509 = 8 Buth. 170.

# REGISTRATION ACT XVI OF 1908-(Contd.)

S. 34-(Centd.)

-Minor married woman-Gift deed in favour of-Presentation for registration of Father of minor-Right of.

A deed of gift executed in favour of a minor matried woman was presented for registration by her father and was registered. He had never been appointed her legal guardian; he was not an executant of the deed; neither was he the representative, assign or agent duly authorised on behalf of the executant. Held that the presentation by the minor's father of the deed for registration was in direct conflict with the express provisions of S. 34 of the Registration Act, that the deed was consequently never legally registered, and the registration of it, which was procured, was illegal, invalid and a pullity (581-2).

On the marriage of the minor dones her father had ceased to be her natural guardian, and, as he had never been appointed her legal guardian, he was not her assignee or representative within the meaning of S. 3 of the Registration Act of 1877. (Lord Atkinson.) PADMAVAYHI T. SRINIVASA KAMATHI.

(1921) 14 L W. 575 (581.2) = 26 C. W. N. 369 = 68 L C. 754 = (1922) P. C. 135.

-Persons executing document-Monning of.

The persons executing the document, within the meaning of S. 35 of the Registration Act of 1871 (corresponding to S. 35 of the Act of 1908) are not those who on the face of the deed are parties to it, or by whom it purports to have been executed, but those who have actually executed it (172). (Sir Montague E. Smith.) MOHAMMAD EWAZ v. BIRJ LALL. (1877) 4 L. A. 166 = 1 A. 465 (470-1) = 3 Sar. 735 = 3 Suth. 438.

Ss. 34, 35.

Execution of deed—Presumption of due, from its registration—Maxim—Omnia præsumuntur site et solemniter acta—Application of—S. 87 of Act—Effect.

The respondents urged that the conveyance in favour of the appellant was bad, because the registration was not in order in respect that the registration does not afford proper evidence of the execution by one of the signatories of the deed of transfer. Now, by S. 34 of the Registration Act, the duty of inquiring as to execution is put upon the registering officer, and by S. 35 it is provided that if he is satisfied as to various particulars he shall register the documents. The presumption from registration of omnia presumentur rite et selemniter acta would apply, but the matter is finally set at rest by S. 87 of the Act, which provides that "nothing done in good faith pursuant to the Act by any registering officer shall be deemed invalid merely by reason of any defect in his appointment or procedure. (Lord Dunctin.) KANHAYA LAL v. NATIONAL BANK (1923) 50 I. A. 162 (172.3)= OF INDIA, LTD.

4 Lah. 284 = 25 Bom. L. R. 1248 = A.I.B. 1923 P.C. 114 = 28 C. W. N. 689 = 40 C. L.J. 1 = 33 M. L. T. 349 = 75 I. C. 7 = 45 M. L. J. 497.

8. 35.

Agent—Deed executed by, purporting to act under power of attorney—Registration of, on principal's admission of execution—Validity of—Power of attorney not produced—Effect.

In a case in which a document was executed by an agent purporting to act under a power of attorney, held that if the execution of the deed on the part of the principal was validly acknowledged before the Registrar, the non-production of the power of attorney held by the agent was immaterial, since the admission of the principal that he was bound by the deed, as executed, would cover both the signature and the power of attorney to sign. (Viscount

S. 35-(Contd.)

Sunner.) TURAN CHAND NAHATTA z. MONMOTHO (1927) 55 I. A. 81= NATH MUKERJEE. 55 C. 532 = 26 A. L. J. 121 = (1928) M. W. N. 149 = 27 L. W. 336 - 47 C. L. J. 396 - 32 C. W. N.629 = 108 I. C. 342 = 30 Bom. L. B. 783 = A. I. R. 1928 P. C. 38 = 54 M. L. J. 473.

-Person executing-Meaning of - Person actually

ngning if confined to.

It is contended that, in the words " the persons executing the document" in S. 35 of the Registration Act, "executing means and means only "actually signing". Lordships cannot accept this. A document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required, and another person duly authorized, may, by writing the name of the party executing, bring about his valid execution, and put him under the obligaabout his valid execution, and partitions involved. Hence the words "person executing" in the Act cannot be read merely as "person signing." mean something more, namely the person, who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorized and competent attorney in order to make a valid admission. There is nothing in the scheme of the Act repugnant to this construction. (Viscount Summer.) PURAN CHAND NAHATTA P. MONMOTHO NATH MUKERJEE.

(1927) 55 I. A. 81 - 55 C. 532 - 26 A. L. J. 121 -(1928) M. W. N. 149 = 27 L. W. 336 = 47 C. L. J. 396 = 32 C. W. N. 629 - 108 I. C. 342 - 30 Bom. L. R. 783 = A. I. R 1928 P. C. 38-54 M. L. J. 473.

-Refund to register under-Propriety - Presentation for registration by person acting under power of attorney-Executant net attending to admit execution

A mortgage deed was presented for registration before the Sub-Registrar by a person, acting under a power of attorney, and was received by him. The mortgagor did not attend to admit execution, and the sub-Registrar refused registration making an endorsement on the deed in " Under S. 35, Act XVI of 1908, the following terms: registration refused."

Held, that the reason why registration was refused had nothing to do with defect in presentation (378).

S. 35 relates solely to the admission of execution of the deed, and as the mortgagor did not appear, the Sub-Registrar was bound to take the course he did, leaving the interested parties to appeal to the Registrar under S. 73 (378). (Lord Buckmaster.) CHHOTEY LAL P. COLLEC-(1922) 49 I. A. 375 = TOR OF MORADABAD.

44 A, 514 (516-7) = 18 L.W. 124 = A. I. R. 1922 P.C. 279 = 31 M. L. T. 284 = 69 I. C. 44 = 27 C. W. N. 437 = 21 A.L.J. 361 = 37 C. L. J. 377 = 25 Bom. L. R. 655 = 9 O. & A. L. R. 450=(1923) M. W. N. 873 (P. C.)

-Several persons-Deed by-Execution admitted by some and denied by others-Registration quoad persons admitting-Validity of.

A deed of sale which on the face of it purported to have been made by three persons, a mother, and her two sons, was presented for registration by the vendee. The two sons appeared, and admitted their own execution, but denied that of their mother. The deed purported to have been executed by the two sons, each in his own handwriting, and by the mother. by the hand of one of them. The sons admitted their own signatures and execution, but stated that their mother had not assented to the sale. The deed, however was registered by the Sub-Registrar. On a ques- representative of the child within the meaning of S. 3 of the

# REGISTRATION ACT XVI OF 1908-(Contd.)

S. 35-(Could.)

tion arising as to the validity of its registration, the High Court held, relying mainly on S. 35 of the Registration Act of 1871, that the execution of the deed not having been admitted by the mother, and her authority for its execution having been denied, the deed was improperly registered, and could not be received in evidence even as against the sons.

Held that, on the true construction of S. 35, the registration of the deed was, as regards the sons who admitted execution of the same, valid and the deed was receivable in

evidence as against them (173.)

The words of S. 35 (If all or any of the persons by whom the document purports.....the registering officer shall refuse to register the document), taken literally, undoubtedly seem to require the registering officer to refuse to register a deed which purports to be executed by several persons if any one of those persons deny the execution. Such a construction, however, would cause great difficulty and injustice, and would be inconsistent with the language and tenor of the rest of the Act. The words should therefore be read distributively, and be construed to mean that the registering officer shall refuse to register the document. Quot the persons who deny the execution of the deed, and

Quoud any person who appears to be a minor, an idiot, or a lenatic. There appears to be no reason for extending the clause further than this, so as to destroy the operation of the deed as regards those who admit the execution, and who are under no disability, which would be the practical effect of a refusal to register at all (172-3). The proviso in S. 23 of the Act of 1871 shews that the Legislature contemplated a partial registration of a deed, that is, partial as to the persons executing it (173). (Sir Montague E. Smith.) MCHAMMED EWAZ v. BIRJ LALL.

(1877) 4 I. A. 166=1 A. 465 (470-1)=3 Sar. 735= 3 Suth. 438

## Ss. 40, 41-Authority to adopt.

-Presentation of-Right of-Natural father of minor adopted son if has. See Ss. 41, 40, 32-AUTHORITY TO (1928) 56 I. A. 21=52 M. 175. ADOPT.

## S. 41-Right to present.

-Registrar's decision as to-Conclusive nature of.

S. 41 of the Act makes the Registrar the Judge whether the person presenting the authority is entitled to present it. (Lord Phillimore.) RAJAH KEESARA VENKATAPPAYYA 7. RAJAH NAYANI VENKATA RANGA ROW.

(1928) 56 I. A. 21 = 52 M. 175= 29 L W. 118 = (1929) M W. N. 47 = 33 C. W. N. 261 = 27 A. L. J. 41=49 C. L. J. 148=31 Bom. L. B. 299= 114 I C. 17 = I. D. (1929) (P.C.) 57= A. I. R. 1929 P.C. 24 = 56 M. L. J. 218 (232).

Ss. 41, 40, 32-Authority to adopt.

-Right to present-Natural father of minor adopted sen if has-Adoption into same family-Adoption into different family-Distinction.

Where a child is adopted into the same family, and his natural father is the nearest male agnate, and the proper person to be appointed guardian, and the proper person to act as natural guardian in the absence of any judicial ap pointment, the natural father is the representative of the adopted son within the meaning of S. 32 read with S. 3 of the Registration Act of 1877, and is as such entitled to present the authority to adopt for registration under S. 40 of the

said Act. Quare, therefore, where a child of tender years adopted into a different family, from that of his natural father is actually residing with his natural father, and has no appoint ed guardian, the natural father cannot well be said to

8s. 41, 40, 32-Authority to adopt-(Contd.)

Act. (Lord Phillimore.) RAJAH KEESARA VENKATAP-PAYYA D. RAJAH NAYANI VENKATARANGA ROW.

(1928) 56 I. A. 21 = 52 M. 175 = 29 L. W. 118 = 1929 M. W. N. 47 = 33 C. W. N. 261 = 27 A. L. J. 41 = 49 C. L. J. 148 = 31 Bom. L. B 299 = 114 I C. 17 = I. D. (1929) P.C. 57 = A. I. R. 1229 P.C. 24 = 56 M. L. J. 218.

#### S. 49.

## CHARGE ON IMMOVABLE PROPERTY.

 Deed creating—Non-registration of—Admissibility in evidence of. See S. 17-CHARGE ON IMMOVABLE PRO-(1928) 7 Rang. 234.

#### EFFECT OF.

In considering the effect to be given to S.49 of Act XX of 1866 that section must be read in conjunction with S. 88 of the Act, and with the words of the heading of part 10, "of the effects of registration and non-registration" (216). (Sir Barnes Peacock.) SAH MOKHUN LALL PANDAY :. SAH KOONDUN LALL (1875) 2 I. A. 210-15 B. L. B. 228 = 24 W. R. 75 = 3 Sar. 509 = 3 Suth. 170.

## GIFT DEED UNREGISTERED.

Admissibility in evidence of -Proof of gift-Proof of nature of donee's possession -- Admissibility for purpose

A petition by which the petitioners recited that they had made a gift of two villages and prayed that the villages light be transferred into the name of the donce is admissible in evidence to prove that the subsequent receipt of the rents by the donce was in the character of owner of the property so as to make her possession adverse to that of the petitioners, although by reason of the Transfer of Property Act, 1882, S. 123, and the Evidence Act, S. 91, the petition is not admissible to prove a gift (290, 292). (Viscount Cate.) VARATHA PILLAI D. JEEVARATHNAMMAL

(1919) 46 I. A. 285 = 43 M. 244 (249 50) = 24 C. W. N. 346=27 M. L. T. 6=18 A. L. J. 274= 22 Bom. L. R. 444=(1919) M. W. N. 724= 10 L. W. 679=53 I. C. 901=38 M. L. J 313.

#### LEASE.

-Lessor and lessee-Agreement between, collateral to lease-Non-registration of-Admissibility in evidence of. See LEASE-AGREEMENT BETWEEN LESSON, ETC.

(1902) 29 I. A. 138 (145-6) = 25 M. 603 (611).

Registered deed-Rent fixed by-Unregistered agreement barying-Admissibility in evidence of -Acceptance of altered rent for some time.

An agreement in writing purporting to vary the terms of a registered kabeliyat is inadmissible in evidence if not repatered. The fact that the lessor for some years accepts a reduced rent is quite consistent with the reduction being a mere voluntary and temporary abatement. (Sir John Edg.) DURGA PRASAD SINGH v. RAJENDRA NARAYAN BAGCHL

(1913) 40 I. A. 223 (230) = (1914) M. W. N. 1=15 M. L. T. 68=19 C. L. J. 95= 16 Bom, L. B. 42 = 26 M. L. J. 25

## MORTGAGE.

Equitable mortgage—Deposit of title-deeds—Memoan accompanying, constituting bargain between parties registration of—Inadmissibility in evidence of—sevidence to establish mortgage—Admissibility in evi of. See MORTGAGE—EQUITABLE MORTGAGE-

(1922) 50 L A. 77 (82-4)=50 C. 338 (341, 345-6).

# REGISTRATION ACT XVI OF 1908-(Contd.)

S. 49-(Contd.)

MORTGAGE-(Could.)

-Prior and subsequent mortgagees - Unregistered agreement between-Admissibility in evidence of-Agreement regulating rights to mortgaged property-Agreement regulating rights to proceeds of sale thereof-Distinction. See MORTGAGE-PRIOR AND SUBSEQUENT MORTGAGEES -AGREEMENT BETWEEN, REGULATING, ETC.

(1920) 47 I. A. 188 = 43 M. 660

-Registered deed of Terms of Unregistered agreement contradicting or varying-Adminibility in evidence

A mortgaged his propery to B by a registered mortgage deed dated 25th August 1880 which expressly stipulated that the profits of the mortgaged property should belong to the mortgagee in lieu of interest. On 29th August of the same year B leased the property to A. who was thus in possession at an annual rent of Rs. 4,200 being 6 per cent. on the amount of the mortgage money. In June 1881, A gave up possession under his lease and B obtained possession under the terms of the mortgage deed. In a suit for redemption brought in 1905, A claimed an account of the rents and profits of the mortgaged property contending that by virtue of an agreement in writing but not registered come to between himself and B at or about the date of his giving up possession to flas to the mode in which the rents and profits of the property were to be dealt with, the mortgagee was only entitled to interest at 6 per cent. on the mortgage-

ffeld, that by the provisions of the Registration Act such an agreement being unregistered was inadmissible in evidence. (Lord Macnaghten.) ABDULLAH KHAN r. BAS-N. (1912) 40 I. A. 31 = 35 A. 48 (55) = 13 M. L. T. 182 = (1913) M. W. N. 131 = HARAT HUSAIN.

17 C.W.N. 233 = 17 C. L. J. 312 = 15 Bom. L. B. 432 = 17 I. C. 737 - 25 M. L. J. 91.

#### PARTITION.

-Unregistered agreement of Inadmissibility in ceidence of.

As the agreement whereby a partition of immoveable properties was arranged was not registered, it is, under the terms of the Registration Act, not available as evidence of the transaction. (Lord Arkie.) PEDDI REDDI 2. CHIN-(1928) 56 I. A. 6=52 M. 83= NABBI REDDI.

33 C. W. N. 233 = 29 L. W. 86 - (1929) M. W. N. 43 = 49 C. L. J. 98=31 Bom. L. B. 264 = 114 I. C. 5= A. I. R. 1929 P.C. 13 - 56 M. L. J. 165.

-Agreement of, ineffectual for affecting immoveable property, owing to non-compliance with statutory provisions -Admissibility in evidence of, to prove other terms of part-

Ceylon Ordinance No. 7 of 1840 provides by clause (2): No sale, purchase, transfer or mortgage of land or other immoveable property and no promise, bargain, contract or agreement for effecting any such object or for establishing any security, interest or incumbrance affecting land or other immovable property . . . shall be of force or avail in law unless the same shall be in writing and signed by the party making the same . . . in the presence of a licensed notary public and two or more witnesses present at the same time and unless the execution of such writing . . . be duly attested by such notary and witnesses"; Clause 21 of the Ordinance requires that an agreement for a partnership where the capital exceeds £100 shall be in writing signed by or on behalf of the parties. Clause 22 adds the proviso that an instrument affecting land shall "for that purpose" be executed and attested as required by clause 2.

S. 49-(Contd.)

PARTNERSHIP-(Contd.)

By an agreement in writing, dated 21-12-1915 the respondent and the appellant agreed to prospect for plumbago at the Pattagoda mines under the name of the Pattagoda Mining Company. The agreement provided, inter alia, that the respondent "would thereby give over" his interest in the lease which he had taken from the owners of the mine (which had still 8 years to run) to the Company. The agreement was signed by both parties, but the signatures were not attested by a notary or witnesses. The mine was duly worked under the management of the appellant from the date of the agreement until January 1918, when the working was stopped by mutual agreement. In a suit brought by the appellant on 25-1-1923 for a dissolution of the partnership and payment by the respondent of the amount found due to him upon the taking of accounts, held that the agreement was valid for the purpose of establishing a partnership between the parties, but not for the purpose of affecting the ownership of the mine.

The agreement of December 1915, although ineffective, by reason of the provisions of cl. 2 of the Ordinance, to pass any interest in the land, may yet be referred to as showing the other terms of the partnership. The agreement complies with the requirement of clause 21 of the Ordinance. The provision in clause 22 that an instrument affecting land shall " for that purpose " be executed and attested as required by clause 2 leads to the inference that the instrument, although not notarially executed and attested, may yet be referred to for the purpose of establishing the other terms of the contract. The partnership has now run its course, without the necessity for calling for a transfer of the lease, and all that is claimed is an account of the partnership transactions and payment of what may be found ARSECULERATNE D. due. (The Lord Chancellor.) PERERA. (1927) 111 I. C. 351 = A. I. R. 1928 P. C. 273.

SALE OF IMMOVABLE PROPERTY—AGREEMENT FOR-SPECIFIC PERFORMANCE OF—SUIT FOR.

——Agreement for sale unregistered acknowledging receipt of consideration—Admissibility in evidence of, See REGISTRATION ACT OF 1866, S. 49.

(1871) 14 M. I. A. 129 (131).

PROPERTY-AGREEMENT FOR, ETC. (1926) 53 I. A. 214.

——Deed unregistered itself creating interest in property, but also providing as an integral part of transfer for execution of registered deed—Admissibility in evidence of. See under this Act. S. 17—Sale OF IMMOVEABLE PRO-PERTY—DEED ITSELF. ETC. (1929) 56 I. A. 363.

TRANSACTION " AFFECTING " IMMOVEABLE PROPERTY WITHIN MEANING OF.

Agreement for sale thereof if a.

An agreement for the sale of immovable property is a transaction "affecting" the property within the meaning of the section, inasmuch as, if carried out, it will bring about a change of ownership. (Sir George Lowender.), SKINNER 2. SKINNER. (1929) 56 I. A. 363 = 33 C. W. N. 1150 = 30 L. W. 451 = (1929) M. W. N. 676 =

A. I. R. 1929 P. C. 269 = 6 O. W. N. 835 = 27 A. L. J. 1060 = 119 I. C. 633 = 50 C. L. J. 487 = 57 M. L. J. 765.

——S. 58 (1) (c)—Consideration for deed—Admission of receipt of—Record by registrar of—Presumption from—Onus of rebutting. SA ADMISSION—CONSIDERATION—SALE DEED—CONSIDERATION FOR — REGISTERING OFFICER. (1873) 19 W. B. 149.

## REGISTRATION ACT XVI OF 1908-(Contd.)

—8. 60—Certificate of registration—Effect—Deed with registrar's indersement of due registration—Admissibility in evidence—Propriety of registration of such deed— Inquiry into—Permissibility.

The certificate of registration under S. 60 of the Registration Act of 1871 (corresponding to S. 60 of Act of 1908) is that which gives the document the character of a registered instrument, and the Act expressly says that such certificate shall be sufficient to allow of its admissibility in evidence without inquiry as to whether the certificate was

properly granted (175-6).

The High Court say, "Unless a deed be registered in accordance with the substantial provisions of the law, it must be regarded as unregistered, though it may, in fact, have been improperly admitted to registration." This is too broadly stated, if the High Court is to be understood to mean that in all cases where a registered deed is produced, it is open to the party objecting to the deed, to contend that there was an improper registration,-that the terms of the Registration Act in some substantial respects have not been complied with. Undoubtedly, it would be a most inconvenient rule if it were to be laid down generally, that all Courts, upon the production of a deed which has the registrar's indorsement of due registration, should be called on to inquire, before receiving it in evidence, whether the registrar had properly performed his duty. This rule ought not to be thus broadly laid down (174-5). (Sir Montague E. Smith.) MOHAMMED EWAZ v. BIRJ LALL.

(1877) 4 I. A. 166=1 A. 465 (473.4)=3 Sar. 735= 3 Suth. 438.

Registration by-Irregular or Illegal.

Under a wakfnama, or deed of charitable trust, the Aligarh college was one of the objects entitled to the benefit of the trust. The wakfnama was registered by a sub-registrar who was a trustee of the Aligarh College. It was contended that the registration of the deed was invalid because, by virtue of Rule 174 of the rules made under S. 69 of the Registration Act of 1877, the sub-registrar was incompetent to register the wakfnama, being in the words of the rule "personally or otherwise connected with or interested" in the document. There was no allegation made against the good faith of the sub-registrar; on the other hand, it was admitted that he acted faithfully and honestly in the discharge of his duties.

Held, that the disability created by Rule 174 was no more than a question of procedure and that the registration

of the deed was valid (229-30).

The registration by the sub-registrar is obviously the essence of the proceedings in effecting registration. If the sub-registrar were disqualified the registrar would be entitled to act, and the fact that the sub-registrar, overlooking his own interest, or regarding it as an interest which created no disqualification, in perfect good faith effected the registration himself is, in their Lordships' opinion, intended by the rules to be a step in the procedure, for it is under the actual heading "Procedure" that the rule is found (230). (Lord Buckmatter.) MUHAMMAD RUSTAM ALL F. MUSH-TAQ HUSAIN. (1920) 471. A. 224-

42 A. 609 (616)=(1920) M. W. N. 665= 18 A. L. J. 1089=12 L. W. 539=28 M. L. T. 220= 57 I.C. 329=39 M. L. J. 263.

Ss. 72, 76, 77-Refusal to register-What amounts to-Decree of Court directing registration-Necessity.

On a competent Court pronouncing that the registration of a deed of sale was invalid on the ground that it had been made without the appearance of the vendors, the venders again applied to the registering officer to have their deed registered, but their application was refused by the registrat.

Ss. 72, 76, 77-(Contd.)

His grounds for refusal were thus stated :- " This deed has been declared to have been illegally registered. Application is now made for registration, but is refused as being presented beyond the proper period." The refusal to register was not indorsed on the deed.

On appeal to the Registrar-General he refused to order the deed to be registered, upon the ground that it must be deemed to have been duly registered on the former occasion.

Held, that the orders of the Registrar-General and of the registrar did not respectively impose upon the vendees the necessity of petitioning the District Court under S. 84 of Act XX of 1866, to order the registration of the deed, or preclude the registering officer from voluntarily registering it, after the appearance of the vendors and their admission of its execution (218).

Those orders made while there was a de facto registration in existence, do not appear to amount to a refusal to register or to order registration within the meaning of the 82nd section. The latter of those orders assumes that there was a registration (218). (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY v. SAH KOONDUN LALL.

(1875) 2 I. A. 210 = 15 B. L. R. 228 - 24 W. R. 75 = 3 Sar. 809 = 3 Suth. 170.

8. 75-Refusal of Sub-registrar to register under 8.35—District Registrar's order on appeal directing registration-Presentation pursuant to.

-Formalities of original presentation-Necessity Registration without them-Validity.

A mortgage deed was presented for registration before the Sub-Registrar by an agent of the mortgagee, acting under a power of attorney. The mortgagor did not attend to admit execution, and the Sub-Registrar accordingly refused registration under S. 35 of the Act. On appeal, the District Registrar ordered registration. Following upon his order the respondent, the Manager of the Court of Wards acting on behalf of the infant children of the mortgagee, who had died in the interval, forwarded the mortgage and the copy of the order of the District Registrar by post to the Sub-Registrar and asked for registration. The Sub-Registrar accepted the document and registered it.

It was contended that such registration was bad because the presentation to the Sub-Registrar after the District Registrar's order ought to have been made with the same formalities as those necessary for the original presentation, and Sub-S. (2) of S. 75 of the Act was relied upon in

support of the contention. Held, over-ruling the contention, that the registration

was valid (381).

Upon the hypothesis that S. 75, Sub-S. (2), may be dealing with a case, such as the present, in which original presentation has been properly made, and in these circumstanots, and as every condition has been satisfied, there would be nothing to prevent the District Registrar, when he had determined the question of execution, from directing th-t the registration should then be made. The last words in Sub-S. (3) of S. 75, which provide that the registration shall date back, do not necessarily refer only to a registration effected pursuant to the provisions of Sub-S. (2), but to every registration consequent on the order made by the Registrar. There are many mischiefs against which the Mainte was designed to afford protection in requiring obedience to the provisions for presentation in the first instance, but when once the execution of the document has cen proved, and the original conditions for presentation compiled with, there is no reason why they should all be repeated (381-2). (Lord Buckmaster.) CHHOTEY LAL v. COLLECTOR OF MORADABAD. (1922) 49 I. A. 375= 44 A. 514 (520) = 18 L. W. 124 = (1922) P. C. 279 =

REGISTRATION ACT XVI OF 1908-(Contd.)

S. 75-Refusal of Sub-registrar to register under S. 35-District Registrar's order on appeal directing registration-Presentation pursuant to-(Contd.) 31 M. L. T. 284 (P. C.) = 69 I. C. 44 = 27 C.W.N. 437 = 21 A. L. J. 361 = 37 C. L. J. 377 - 25 Bom. L. R. 655 = 9 O. & A. L. R. 450=(1923) M. W. N. 873.

Necessity.

Sub-S. (2) of S. 75 of the Registration Act is mandatory in form and compels the registering officer to effect the registration, if the document be duly presented. If this procedure be followed and registration is refused, the processes of the Court are open for the purpose of compelling obedience, a privilege that would not be enjoyed if the formalities were omitted. There is nothing in the section to prevent the Registrar or the Sub-Registrar from registering a document which had been duly presented, and the execution of which has been proved, without requiring a repetition of all the original steps, but he cannot be compelled to register unless the document be " duly presented " a second time (381-2). (Lord Buckmaster.) CHHOTEY LAL v. COLLECTOR OF MORADABAD. (1922) 49 I. A. 375=

44 A. 514 (520) = 18 L. W. 124 = (1922) P. C. 279 = 31 M. L. T. 284 (P. C.) = 69 I. C. 44 = 27 C. W. N. 437 = 21 A. L. J. 361 = 37 C. L. J. 377 = 25 Bom. L. R. 655 = 9 O. & A. L. B. 450 = (1923) M. W. N. 873.

——S. 75 (2)—Duly presented—Meaning of.

Semble the expression "duly presented" in Sub-S. (2) of S. 75 of the Registration Act means presented in accordance with all the formalities imposed by S. 32 of the Act (381). (Lord Buckmaster.) CHHOTEY LAL v. COLLECTOR OF (1922) 49 I. A. 375-44 A. 514 (519)= MORADABAD. 18 L. W. 124=(1922) P. C. 279=

31 M. L. T. 284 (P. C.) = 69 I. C. 44= 27 C. W. N. 437-21 A. L. J. 361-37 C. L. J. 377= 25 Bom. L. R. 655 = 9 O. & A. L. R. 450 = (1923) M. W. N. 873.

## S. 77-Decree directing registration.

Court having no jurisdiction-Decree of-Registration pursuant to-Validity-Registrar entitled to register of his own accord.

If the registering officer was influenced by the order of the High Court to do that which he might have done without it, the fact that the High Court acted without jurisdiction did not invalidate the registration (218).

In this case the High Court directed the registration of a deed, though it had no jurisdiction to do so. Held, that the registration of the deed was, if otherwise valid, not rendered invalid because the registrar was influenced to register the deed by the erroneous order of the High Court. (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY P. SAH KOON-DUN LALL. (1875) 2 I. A. 210 = 15 B. L. R. 228 = 24 W. R. 75 = 3 Sar. 509 = 3 Suth. 170.

- Jurisdiction to pass-High Court having no ordimary civil jurisdiction-Decree by.

The plaintiffs were purchasers of certain property under a deed of sale executed in their favour by the owner of the property. The deed was registered under the Registration Act XX of 1866. The defendant-appellant, whose attachment of the property in execution of a decree obtained by him against the vendor was raised on objection put in by the plaintiffs on the strength of their sale deed, instituted a suit against the plaintiffs-respondents to set aside the deed of sale on the ground that it had been illegally registered. The Sub-Judge held that the deed was not properly registered and must be considered as an unregistered document and was not admissible in evidence, and that consequently it could not take effect in opposition to the rights of the

S. 77 - Decree directing registration - (Contd.)

defendant, the attaching decree-holder. The High Court of the North-Western Provinces on appeal affirmed his deci-sion on practically the same grounds. The plaintiffs thereupon again applied to the registering officer to have their deed registered. But its registration was refused by the final registration authority upon the ground that it must be deemed to have been duly registered when it was first registered. Thereupon the plaintiffs petitioned the High Court, who held that the plaintiffs were entitled to have the deed registered, and directed its registration in the proper manner after the usual inquiries.

Held that the High Court in ordering the registration of the deed acted without jurisdiction under S. 84 of Act XX

of 1860 (217).

That section authorises a petition to the "District Court", which is defined to mean the "Principal Court of original jurisdiction in a district, and includes the High Court in its ordinary civil jurisdiction." The High Court of the North-Western Provinces, however, has no ordinary civil jurisdiction, either in Cawapore, or in any other district (217). (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY D. (1875) 2 I. A. 210= SAH KOONDUN LALL 15 B.L. R. 228 - 24 W. R. 75 - 3 Sar. 509 - 3 Suth. 170.

Necessity.

It is not necessary to have an order from the District or other court to authorise the registration of a deed (217). (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY D. (1875) 2 I. A. 210= SAH KOONDUN LALL 15 B. L. R. 228 = 24 W.R. 75 = 3 Sar. 509 = 3 Suth. 170.

## S. 87-Registration, illegal or irregular.

-Agent not duly authorised-Presentation by-Registration upon-Executant's consent-Effect. See S. 32-PRESENTATION FOR REGISTRATION—AGENT NOT DULY AUTHORISED. (1914) 42 I. A. 22 (29) = 37 A. 49 (55-6).

-Executant-Appearence of-Inability or refusal as to-Note of-Omission to make as required by registration rules. See BURMA REGISTRATION REGULATION OF 1897. (1923) 51 I. A. 18 (22) = 51 C. 354.

of-Registration -Executant-Non-appearence deed on strength of other evidence in case of. See S. 34-(1875) 2 I. A. 210 (215-6). EXECUTANT.

-Execution of deed-Presumption of due, from registration of deed-Applicability of section to case of. See under this Act SS. 34, 35-EXECUTION OF DEED.

(1923) 50 I. A. 162 (172 3) =4 Lah. 284. -Interest in deed-Registrar having-Registration by. See under this Act-Ss. 69, 87.

(1920) 47 I. A. 224 (230)=42 A. 609 (616).

-Stamp defective-Deed with-Registration of. In seeking to apply S. 87 of the Registration Act it is important to distinguish between defects in the procedure of the Registrar and lack of jurisdiction. Where the Registrar has no jurisdiction to register, the section is inoperative. On the other hand, if the registrar having jurisdiction has made a mistake in the exercise of it, the section takes effect.

The registration of a deed not duly stamped is a mere error in procedure within the meaning of S. 87 of the Registration Act. (Lord Atkin). MA PWA MAY v. 56 I. A. 379= S. R. M. M. A. CHETTIAR FIRM.

7 R. 624 = 30 L. W. 481 = 6 O. W. N. 869 = 27 A. L. J. 869 = 34 C. W. N. 6 = 1929 M. W. N.941 = A. I. R. 1929 P. C. 279 = 51 C. L. J. 6=

32 Bom. L. R. 117 = 120 I. C. 645 = 1930 A. L. J. 533 = 58 M. L. J. 59.

-Unauthorised person--Presentation by--Registration on. See S. 32-PRESENTATION FOR REGISTRATION-UNAUTHORISED PERSON.

## REGISTRATION ACT XVI OF 1908-(Contd.)

S. 87-Registration, illegal or irregular-(Contd.)

-Ss. 19, 21, 34-Provisions of-Non-compliance with.

Considering that the registration of all conveyances of immoveable property of the value of Rs. 100 or upwards is by Act XX of 1866 rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of S. 19, 21, or 36, or other similar provisions of the Act. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words "defect in procedure " in S. 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertance of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register, the mistake may be rectified upon appeal under S. 83, or upon petition under S. 84, as the case may be; but if he registers where he ought not to register, innocent persons may be misled, and may not discover, until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights (216). (Sir Barnes Peacock.) SAH MUKHUN LALL PANDAY D. (1875) 2 L.A. 210= SAH KOONDUN LALL 15 B. L. R. 228 = 24 W.R. 75 = 3 Sar. 509 = 3 Suth. 170.

S. 35—Provisions of—Non-compliance with.

It was not the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of S. 35 of the Act of 1871 (corresponding to S. 35 of the Act of 1908) or other similar provisions. It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words, "defect in procedure" in S 85 of the Act of 1871 (corresponding to S. 87 of the Act of 1908. (Sir Montague E. Smith.) MOHAMMED EWAZ (1877) 4 I. A. 166 (176-7)= D. BIRJ LALL 1 A. 465 (474-5)=3 Sar. 735=3 Suth. 438.

# REGISTRATION OF SHIPS ACT (X OF 1841).

-Registry as British ship under-Condition.

The appeal arose out of an action on the case brought by the appellant (the owner, to the extent of eight sixtyfourth parts, of a vessel, called the "General Wood,") against the respondent, the registering officer of ships, at the port of Bombay, appointed under the Act of the Legislative Council, No. X of 1841, for refusal to register the ship, at that port. To the declaration, the respondent pleaded, that the ship was not, on 11.9-1844 (the day named in the declaration, when the refusal was made), or before, had not been, or was then, entitled to the privileges of, or to be registered as, a British ship.

The ship was built in a foreign port in India, in 1817, within the limits of the Company's charter, by foreigners. It sailed under foreign flags, until 1838, when it was then and thereafter owned by and belonged to British subjects,

resident at Bombay. Held that the ship was entitled, under the Proclamation of the Governor-General in Council, and the Act of the Legislative Council of India No. X of 1841 (passed in pursuance of the powers granted by the statute, 3 &4 Vict., c. 56) to be registered at Bombay, as a British ship, for the purposes of trade, within the limits of the company's charter.

To entitle the ship to registry as a British ship it was necessary that her ownership should have been continuously British from the time of her build, until the time of the application for her registry. Nor did it make any

#### REGISTRATION OF SHIPS ACT X OF 1841- RELATIONSHIP-(Contd.) (Contd.)

difference that the vessel had been previously owned by a She spoke of S, at a time before W was born, as daughter foreigner. (Lord Brougham.) CRAWFORD P. SPOONER.

(1846) 4 M. I. A. 179 = 6 Moo. (P. C.) 1 - 1 Sar. 333.

### REGULATIONS.

-East India Company-Regulations of Finding nature of .

The Regulations of the East India Company are as obligalory as the statute law of the land (494). (Mr. Rar, w Parke.) Maha Raja Dheeraj Raja Mahatab e. The GOVERNMENT OF BENGAL. (1849-50) 4 M.I.A. 466

1 Sar. 385.

Force of, in India.

A Regulation in India has the same effect as an Act of Parliament (155). (Sir John Pattrion.) NUSSERWANJEE PRITONJEE v. MEER MYMOODEEN KHAN WULLUP MEER SUDROODEEN KHAN BAHADOOR.

(1855) 6 M. I. A. 134.

Force of law of.

Madras Regulation XV of 1816 emanates from the highest authority, and is entitled to the force of law (292), (Dr. Lushington.) MOOTOO VIJAYA RAGHUNADHA BODHA GOORGO SWAMY PERRIA WOODIA TAVERT. RANY ANGA MUOTOO NATCHIAR.

(1844) 3 M.I.A. 278-6 W.R. P.C. 50-1 Suth. 155-1 Sar. 280.

#### RELATIONSHIP.

## Evidence of

Family-Deceased member of Relationship of Statements of deceased members of family-Plaintiff seven dence based on - Admissibility.

In a case in which the question was whether the plaintiff's grandfather was as contended for the plaintiff's, a son of M, or as contended for the respondents, a grandson (son's son) of M, held that evidence given by the plaintiffs to the effect that they had heard from any members of their family that their grandfather was a son of .W would have been admissible (349). (Sir Robert P. Collier.) AGARWAL SINCH P. FOUJDAR SINGH.

(1880) 8 C.L.R. 346 - Bald. 388.

Funeral ceremonies-Right to perform-Value of. in India.

The preferential right to perform the funeral religious ceremonies of kirya karam is a circumstance of great value in regard to Indian relationships (562-3). (Lord Sheet.) KIDAR NATH v. MATHU MAL-(1913) 40 C. 555 -

(1913) M. W. N. 403-13 M. L. T. 434-127 P.L.R. 1913 = 17 C.W.N. 797 - 15 Bom. L.B. 467 77 P. R. 1913 = 18 I.C. 946 - 25 M.L.J. 176.

Grandchildren - Legitimacy of - Grandmother's statements to Government made ante litem motam and in purmance of rules requiring them to be mode-Descrip-

tion of children as heirs in-Admissibility and volue of. d, a Mahomedan lady in receipt of a pension from Govtrnment known as a "wasika," made a series of statements to the Wasika office (a department under Government) as to who were her heirs, according to the practice in force by which such pensioners were from time to time called upon make such statements. She was also asked by the Wasika officers to furnish explanations of the statements submitted by her, and there were also several letters in reply to such inquiries. In those documents, beginning with 1860 and ending with 1885, H spoke of the lines of the mothers of S and W, the children of Z, the son of H, as heirs in exactly the same terms as of the line of another wife of Z, whose legitimacy was admitted. She spoke of admittedly had no issue. The plaintiff alle S and W as her grand daughters, and as daughters of Z. the son of a daughter of B by his first wife.

Evidence of -(Contd.)

of a meta wife; and she spoke of the mother of W as a muta wife still alive.

III.14 that the documents mentioned above were most important evidence in favour of the legitimacy of S and W, and that the Appellate Court was right in admitting those becaments and in giving great weight to them on that question (104.5).

The said do unents come from a public office and bear inal assuments which exclude all doubt of their genuineness; they contain the statements of one who had the best means of knockedge, made at times when no such controversy as the present case well have been in contemplation; and the statements are such that, if true, they seem to conclude this part of the case (105). (Sir Arthur Wilson.) BAKER ALI KHAN 7. ANJUMAN ARA BEGAM.

(1903) 30 I.A. 94 = 25 A. 236 (250-2)= 7 C. W. N. 165 = 5 Bom. L.B. 410 = 8 Sar. 397.

-Heaving condence-Admissibility.

The widow of a last male owner died in 1892. The plaintiffs then claimed certain lands as his collateral heirs, alleging that the last male owner was descended in the same degree from a common ancestor, as the persons whose descendants in the direct line the plaintiffs themselves were. These persons had made a similar claim through the common antestor in 1847, when the settlement of the estate with the widow was being made, alleging themselves to be her husband's reversionary heirs (the widow then being in the possession of the land in dispute). The principal evidence consisted of the testimony of two of the plaintiffs. One of them stated the descent of his father and mother from the common ancestor in practically the same way as was stated in 1847, and he said he had learnt the particulars of his family from his elders. The other plaintiff said that he had obtained information about his family pedigree from his grandfather. He also spoke of the names of ancestors being called out on the occasion of marriages, and said that in performing the ceremonies of sradh and tar pan the names of his father, grandfather, and of all the ancestors he could remember were repeated.

It was contended that all statements made to the two plaintiffs (witnesses) since the year 1847 were inadmissible under S. 32, Sub-S. 5. of the Evidence Act, as being made post litem. It did not, however, appear that the heirship of the then claimants was really in dispute at the time.

Held that the evidence was admissible

The construction of the section of the Evidence Act con tended for would practically exclude any attainable evidence in the present case. (Lord Davey.) BAHADUR SINGH P. (1901) 29 I.A. 1 (8)= MOHAR SINGH. 24 A. 94 (107) = 6 C.W.N. 169 =

4 Bom LR. 233 = 8 Sar. 152 = 12 M.L.J. 56.

-Held that the courts below had rightly rejected as hearsay the evidence of witnesses who spoke from information which they derived from others but did not state the, persons from whom they derived the information, nor at what period of time they derived it. (Lord Davy,) MU-SAMMAT SHAFIQ-UN-NISSA 7. KHAN BAHADUR RAJA SHABAN ALI KHAN. (1904) 31 I.A. 217 (218-9)-

26 A. 581 (586-7)-6 Bom. L.R. 750-9 C.W.N. 105=7 O.C. 290-8 Sar. 674.

-Husband Account - Relationship to-Wife's evidence

The question was whether the plaintiff in the suit was the daughter's son of B, the last male owner of the suit property. B was twice married. By his second wife he admittedly had no issue. The plaintiff alleged that he was RELATIONSHIP-(Cald.)

Evidence of - (Cont.)

II did that if the second wife, being after, had testified in a court of law that the plintiff was the daughter's son of pedigree purporting to be signed by M, the son of a deceas-B. such testimony, on shaken in cross-examination, would | ed member of the plaintiffs' family, who was, however, not have been conclusive on the point (563). KIDAR NATH P. MATHU MAL. (1913) M.W.N. 403 - 13 M.L.T. 434-

127 P.L.R. 1913 - 17 C.W.N. 797 =

15 Bom. L.R. 467-77 P.R. 1913=18 I.C. 946=

-- Husbant deceased - Kelationship to-Wife: will

A man's wife is of all people, the person to make a statement of fact with regard to her husband's history, his rela-

tionships, and his succession (562).

The question was whether the plaintiff in the suit was related to B, the former owner of the suit property, as his daughter's son. B was twice married. His second wife admittedly died without issue. The plaintiff's allegation was that by his first wife B had a daughter, who was the

mother of the plaintiff.

Five years before her death, the second wife of B executed a will, declaring in two different parts thereof that she had no issue nor any near relative. The will then stated. "Hardee Sahai, alias Mathu Mal" (the plaintiff) "is related Then after mentioning a to me as my daughter's son." further relative, the will stated: "These are my relatives on my husband's side." She repeated the statement to a similar effect, in the same document, and she put forward the plaintiff, so related to her husband, as the person who was first in order of choice for performing the funeral religious ceremonies of Kirya Karum.

Held that the Court below was justified in attaching

great weight to the contents of that will (562-3).

In the most solemn form, this lady had declared facts which must have been within the scope of her own knowedge. If the lady, being alive, had testified in a Court of Law in the same sense as this will declared, such testimony unshaken in cross-examination, would have been conclusive on this matter of fact (563). (Lord Shear.) KIDAR NATH :. MATHU MAL. (1913) 40 C. 555=(1913) M.W.N. 403= 13 M. L. T. 434 = 127 P. L. R. 1913 =

17 C. W. N. 797 = 15 Bom. L. R. 467 = 77 P. R. 1913 = 18 I. C. 946 = 25 M.L.J. 176.

-Impartible estate--Holder of - Relationship of plaintiff to deceased-Evidence-Return made by former holder to Collector of District pursuant to requisition by Government-Authenticated copy of-Admissibility. See HINDU LAW-IMPARTIBLE ESTATE-POLLIEM-POLI-GAR-RELATIONSHIP TO DECEASED.

(1861) 9 M.I.A. 66 (91.2).

-Member deceased of family -Statement by, in prior suit-Admissibility of, as poligree declaration.

Where the question is as to the relationship of a particular person, a statement as to the existence or otherwise of such relationship made in a previous suit by a deceased member of the family will be admissible as a pedigree declaration. (Viscount Haldane.) BAIKUNTHA NATH BERA v. CHANDRA MOHAN BERA.

(1919, 20th Jan.) High Court File for 1919 (P. C. A. 6 of 16).

-Pedigree not a family pedigree-Statement in, of member of family, made ante litem motam-Admissibility.

The suit was instituted by the appellants, the sons of S, the eased, claiming through their father as heirs of one G to recover possession of the suit property. of which G had died possessed. G was succeeded in the possession and enjoyment of the property by his widow, who died in 1896.

RELATIONSHIP-(Contd.)

Evidence of-(Contd.)

In proof of their relationship to G, the plaintiffs filed a (Lerd Shaw.) examined as a witness. According to the evidence of one (1913) 40 C. 555 = of the witnesses examined in the case, the pedigree was in the handwriting of M and was obtained by him from his father in the years 1894-96 as a statement of the family descent, for the purpose of being given in evidence in cer-25 M.L.J. 176. tain criminal proceedings instituted under S. 323 of the Penal Code.

Held that the statement in the pedigree was admissible in evidence, because it had been adopted by M's father, and was shown to have been made post lit m motam. (Lord Atkinson.) Kalka Parshad v. Mathura Parshad.

(1908) 35 I.A. 166 (174) = 30 A. 510 (523)= 4 M. L. T. 380 = 13 C. W. N. 1 = 8 C. L. J. 447 = 10 Bom. L. R. 1088 = 5 A. L. J. 701 = 11 O. C. 362 = 1 I. C. 175=18 M. L. J. 424.

-Tradition - Oral tradition - Value of-Tribes among whom records of births and deaths and written memorials not common-Tradition not conforming to strict

conditions of proof of pedigree-Effect.

The question was whether the plaintiff in a suit brought to enforce a claim to pre-empt had proved his position of male relationship to the vendors. The vendors were members of an agricultural tribal family, among whom there were no accessible records of births and deaths, and with whom those events were not preserved in written family memorials.

Held that in such a case it was necessary to depend upon oral tradition, which, however, required to be closely scrutinised, and that that tradition should not be regarded as weak and unsatisfactory merely because it might in one or two respects fail to satisfy the strict conditions that would be necessary for proving a pedigree where records and documents could be used (78.9). (Lord Buckmaster.) SABZ ALI KHAN v. KHAIR MUHAMMAD KHAN.

(1922) 49 I.A. 74 = 3 L. 48 (52)= 30 M.L.T. 237 = 20 A.L.J. 427 = 35 C. L. J. 514 = 7 P. W. R. 1922=1 P. L. B. 1922= A. L B. 1922 P.C. 139 = 67 I.C. 264 = 43 M.L.J. 49.

Recognition by conduct of.

-Dispute of relationship subsequently-Estoppel-Onus of proof in case of.

The appeal arose out of a suit brought by the plaintiffs appellants to a certain portion if the property of one D to whom they alleged that they were heirs. The plaintiffs case was that they, and the pro-forms defendants, who constituted another branch of the family, were seventh in degree from a common ancestor when the succession opened on the death of D's widow, that the real defendants, the respondents, were only eight in degree, and that there fore the plaintiffs and the pro-forma defendants, were each entitled to half of the property of D to the exclusion of the respondents. The respondents alleged that the plaintiffs and the pro-forma defendants, as well as they themselves were removed in eighth degree from the common ancestor and that, therefore, each class took one-third of the pro-

It appeared, however, that the plaintiffs undoubtedly admitted the rights of the respondents immediatedly after the opening of the succession, and acted upon that admission by permitting the name of the respondents to be registered in the Cellector's office, and by carrying on suits with them in the joint names of all. In short, they appeared not to have in any respect disputed the respondents' title until about eleven years after the opening of the succession when they instituted the suit out of which the appeal arose.

## RELATIONSHIP-(Contd.)

## Recognition by conduct of-(Contd.)

Held that that course of conduct although it did not amount to an estuppel in point of law threw upon the plaintiffs a heavy burden of proof which they had not sustained (349). (Sir Robert P. Collier.) AGARWAL SINGH p. FOUJDAR SINGH. (1880) 8 C.L.B. 346 - Bald. 388.

## Words of-Meaning of, in connection with law of inheritance.

Difference in, in case of different communities.

Words of relationship in connection with a law of inherit ance differ in their signification and content, according as their context is an inheritance in one community or an inheritance in another. Legitimacy, adoption, and lawful wedlock, all of which involve legal conceptions, are terms which will vary in meaning according to the law of the community. (Viscount Summer.) TEWARI RAGHURAJ CHANDRA v. RANI SUBHADRA KUNWAR.

(1928) 55 I.A. 139 = 3 Luck. 76 = 5 O.W.N. 443 = 26 A.L.J. 609 = 108 I.C. 673 = 30 Bom. L.R. 829 = 32 C.W.N. 1009 = A.I.R. 1928 P.C. 87 =

55 M. L. J. 778.

#### RELEASE.

-General release-Proof of-Concurrent judgments as to-Privy Council's interference with.

Held, on the evidence, affirming the concurrent judgments of the Courts below, that the general release set up by the defendants could never have been contemplated by the parties to operate as a release of all demands. (The Vice-Chancellor.) MALICK BAPOO MEYAN P. HARI-WALUE NAGUNDAS.

## (1835) 5 W.R. 112 (P.C.)=1 Sutb. 40=1 Sar. 183. RELIGIOUS CHARITY.

Dedication of landed property to-Writing-Necessity. See HINDU LAW- RELIGIOUS CHARITY.

(1927) 54 I. A. 136 (140) = 50 M. 421.

Hindu joint family - Manager of - Dedication of family property to religious charity by-Validity of-Inter vives dedication-Dedication by will- Distinction. See HINDU LAW - JOINT FAMILY - MANAGER - RELIGIOUS CHARITY. (1927) 54 I. A. 136 (140)=50 M. 421.

# RELIGIOUS ENDOWMENT.

See HINDU LAW-RELIGIOUS ENDOWMENT AND MAHOMEDAN LAW-RELIGIOUS ENDOWMENT.

# RELIGIOUS ENDOWMENTS ACT XX OF 1863.

## Object of

Trustees in det-Meaning of

In 1810 in the Bengal Presidency and in 1817 in the Madras Presidency, the British Government had assumed control of all the public endowments and benefactions, Hindu and Mahomedan, and placed them under the charge of the respective Boards of Revenue. In 1863, the Government considered it expedient to divest itself of the charge and control of these institutions, and to place them under the management of their own respective creeds. With this object, Act XX of 1863 was enacted; a system of committee was devised to which were transferred the powers vested in Government for the appointment of managers, trustees and superintendents; rules were tracted to ensure proper management and to empower the seperior court in the district to take cognisance of allegations of misfeasance against the managing authority. The Act contains no definition of the word "trustee"; it uses indifferently and indiscriminately the terms "manager trustee or superintendant," clearly showing that the expressions were used to connote one and the same idea of management. After the enactment of 1863, the Committees to whom the

## RELIGIOUS ENDOWMENTS ACT XX OF 1863 -(Contd.)

Object of-(Contd.)

endowments were transferred, were vested, generally speaking with the same powers as the Government had possessed before in respect of the appointment of "managers, trustees or superintendents," (314). (Mr. Ameer Ali.) VIDVA VARUTHI THIRTHA P. BALUSAMI AIYAR. (1921) 48 I.A. 302-44 M. 831 (842)-41 M.L.J. 346=

(1921) M. W. N. 449-(1922) P. C. 123-15 L. W. 78= 30 M. L. T.66 - 26 C. W. N. 537 - (1922) Pat 245-20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161.

## Public Character-Endowment of a.

-Test.

See MAHOMEDAN LAW-RELIGIOUS ENDOWMENT-PUBLIC CHARACTER. (1877) 3 Suth. 444 (447.)

#### Trustees in.

-Meaning of See Under this Act-OBJECT OF.

## S. 10-District Judge acting under.

Courf or persona designata.

S. 10 of the Religious Endowments Act XX of 1863 places the right of appointing a member of the committee in the civil court, not as a matter of ordinary civil jurisdiction, but because the officer who constitutes the civil court is sare to be one of weight and authority, and with the best means of knowing the movements of local opinion and feeling and one can bardly imagine a case in which it would be more desirable that the discretion should be exercised by a person acquainted with the district and with all the surroundings (165.) (Sir Rickard Baggallay.) MEENAKSHI NAIDOO :, SUBRAMANYA SASTRI.

(1887) 14 I. A. 160 = 11 M. 26 (35).

-The making of an order under S. 10 of the Religious Endowments Act is a judicial and not merely an administrative or ministerial act. In acting under that section the civil court exercises its powers as a court of law, not merely as a Acriena designata whose determinations are not to be treated as judgments of a legal tribunal (268-9) (Lord Athinson.) BALAKRISHNA UDAYAR D. VASUDEVA (1917) 44 I. A. 261=40 M. 793= AIYAR.

33 M. L. J. 69 = 22 C. W. N. 60 = 22 M. L. T. 45 = 23 C. L. J. 143 = 15 A. L. J. 645 = 2 Pat. L. W. 101 = 19 Bom. L. R. 715 - (1917) M. W. N. 628 = 6 L. W. 501=40 I. C. 650.

#### S. 106-Order under.

#### APPEAL FROM.

-High Court's jurisdiction as to-Objection to-P. C. appeal-Maintainability for first time in.

There is an inherent incompetency in the High Court to entertain an appeal from an order of the District Judge under S. 10 of the Religious Endowments Act appointing a person to fill up a vacancy in the committee of a pagoda, and no amount of consent can in such a case confer jurisdiction spon the High Court (167).

Held, therefore, that, notwithstanding that no objection, was taken by the appellant in the High Court itself to its jurisdiction to entertain the appeal, he could take the objection before the P. C. in his appeal from the decision of the High Court (166 7.) (Sir Richard Baggalay.) MEENAK-

SHI NAIDOO E, SUBRAMANYA SASTRI.

(1887) 14 I. A. 160=11 M. 26 (35-6.)

-Right of.

No appeal lies to the High Court against an order of the District Judge under S. 10 of the Religious Endowments Act appointing a person to fill up a vacancy in the committee of a pagoda (165-6).

# RELIGIOUS ENDOWMENTS ACT XX OF 1863 | RELIGIOUS PROCESSIONS-(Contd.)

-(Coulda)

S. 106 - Order under- (Contd.)

APPEM. FROM-(Contd.)

There is nothing in S. 10 or in any other provision of the said Act which confers such a right of appeal. Such a right of appeal cannot also be found in the general law. S, 540 of C. P. C. of 1877 does not confer a right of appeal in such a case. There being no civil suit respecting the appointment, it would be impossible to bring an order made by the District Judge pursuant to S. 10 of the Pagoda Act within the definition of a decree as contained in the Code of Civil Procedure (165-6). (Sir Richard MEENAKSHI NAIDOO r. SUBRAMANYA Baggalay.) (1887) 14 I. A. 160 - 11 M. 26 (34-6.) SASTRI.

JUDICIAL OR ADMINISTRATIVE.

-See Under this Act-S. 10-District Judge ACTING UNDER.

JURISDICTION-ORDER WITHOUT.

 Revision against — Maintainability. See S. 10 — TEMPLE COMMITTEE-VACANCY IN.

(1917) 44 I. A. 261 (266-8) - 40 M. 793

## S. 10-Person improperly appointed by District Judge under.

-Removal of-Procedure.

Quare whether a person improperly appointed by a District Judge under S. 10 of the Religious Endowments Act could be removed by proceedings equivalent to proceedings by quo corrento in England (166). (Sir Richard Baggallay.) MEENAKSHI NAHDOO P. SUBRAMANYA (1887) 14 I A. 160 = 11 M. 26 (35). SASTRI.

#### S. 10-Temple Committee-Vacancy in.

-Filling up of -Mede of -Order as to, made without invisdiction-Revision against-Maintainability.

Where on the failure of the remaining members of a temple committee to fill up a vacancy therein by holding an election as provided by S. 10 of Act XX of 1863, the civil court makes an order, under that section, that the vacancy should be forthwith filled up by the remaining members of the committee they must do so by themselves making an appointment. Where they failed to do so, and filled up the vacancy by holding an election by the persons interested and the civil court made an order declaring the appointment valid, held that the order was a judicial order but one passed without jurisdiction and was properly set aside by the High Court in revision under section 115 of the Code. (pp. 266-8.) (Lerd Atkinson.) BALA-KRISHNA UDAYAR r. VASUDEVA AIYAR.

(1917) 44 I.A 261 = 40 M. 793= 22 C. W. N. 60 - 22 M. L. T. 45 = 26 C. L. J. 143 = 15 A. L. J. 645 = 2 Pat. L. W. 101 = 19 Bom. L. R. 715 = (1917) M. W. N. 628 = 6 L. W. 501 = 40 I. C. 650 = 33 M. L. J. 69.

#### RELIGIOUS OFFICE

-S.: HINDU LAW-RELIGIOUS OFFICE.

#### RELIGIOUS PROCESSIONS.

#### Carrying on of.

 Agreement between two temples regulating respective rights of-Right conferred by law-Effect of agreement

Disputes between the " Y " temple and the " U " temple as to the rights of each to carry on processions were settled by an agreement which provided, inter alia, that the 'U" temple should be at liberty to take the procession of Vedanta Desikar, the only God that had been then installed in the said temple, for 23 specified days in meaning, and must be construed according to its content

Carrying on of- (Contd.)

the year, that the 'Y" temple should be at liberty to conduct certain specified festivals, and all the feftivals of all other idels that might be instituted thereafter, and that, if on any of the 23 days on which festivals were to be conducted for the "U" temple, any of the festivals of the "Y" temple in which processions had to be taken should intervene, the "Y" temple should have the preferential right to carry on its prosessions.

The "U" temple held a procession of Vedanta Desikar on a day which was not one of the 23 days specified in the agreement, and on which a very important festival of the "Y" temple fell to be peeformed. The "Y" temple, accordingly, instituted a suit against the "U" temple, in effect claiming that the "Y" temple was by the agreement aforesaid entitled to prevent the "U" temple from holding any processions except those of Vedanta Desikar, and those only on the 23 days in each year referred to in the agreement, and that the "Y" temple was entitled to prevent the "U" temple from installing or retaining in it any other idol.

Held that while, on the one hand, the agreement imported that the "U" temple would not by any procession or ceremony of its own, or in any other way, interfere with or obstruct any processions or ceremonies of the "Y" temple thereby authorised, except to the extent in terms permitted by the agreement itself, it, on the other hand, in no way parported to interfere with the exercise by the "U" temple of any rights in respect either of processions, ceremonies, or anything else of which by law that temple was irrespective of any consent or approval of the "Y" temple possessed, that by its procession in question the "U" temple infringed no right of the "Y" temple, and that the "Y" temple was, accordingly, not entitled to any relief. (Lord Blancsburgh.) NATTU KESAVA MUDALIAR D. GOVINDACHARIAR

(1926) 24 L. W. 58 = 24 A. L. J. 801 = (1926) M. W. N. 509 = A. I. R. 1926 P. C. 64 = 96 I. C. 179.

 Highway—Carrying on of processions through. Sa HIGH WAY-RELIGIOUS PROCESSIONS THROUGH.

Right of-Police control of.

All religious processions are now under the control of the police. As so controlled all are equally lawful (65.) (Lvd Blanciburgh.) NATTU KESAVA MUDALIAR P. GOVINDA-(1926) 24 L. W. 58 = 24 A. L. J. 801 = CHARIAR. (1926) M. W. N. 509 - A. I. R. 1926 P. C. 64 = 96 I. C. 179.

#### REMEDY.

-- Alternative remedies-Choice of - Right of ag: grieved party as to-Choice of one remedy by him-Effect of, on his right to choose other-Estoppel. See TORT-REMEDIES ALTERNATIVE FOR.

(1913) 40 I. A. 56 (63-4) = 40 C. 598 (609-10.)

-Right given by law-Denial of-Remedy for-Existence of -Presumption. See LAW-RIGHT GIVEN BY. (1867) 11 M. I. A, 551 (606).

## RENT RECEIPTS—REVENUE RECEIPTS.

-Title-Exidentiary value as to.

The title of the Mundals to two-thirds does not rest on mere pleading. Prama facie proof of their title is to be found in the receipts for revenue or rent. (197-8). (Sir James Colvile.) RAM CHUNDER DUTT P. CHUNDER (1869) 13 M.I.A. 181 = COOMAR MUNDAL. 2 Sar. 507.

## REPRESENTATIVE.

-Meaning of.

The word 'representative" is a term of ambiguous

#### REPRESENTATIVE-(Contd.)

In ordinary legal use, it denotes the executor or administrator, or sometimes the heir or next of kin. In a certain context it may mean an agent. Their Lordships' attention has not been called to any enactment which makes a clerk of a court the representative, in any legal sense, of the judge. (Viscount Care.) MA SHWE MYA P. MAUNG HO HNAUNG. (1922) 49 I.A. 395 (397-8) =

50 C. 166 (169) = 17 L.W. 213 = 37 C L. J. 343 = 27 C.W.N. 533 = 2 Bur. L.J. 264 = A. I. R. 1922 P.C. 359 = 31 M L.T. 304 = 70 I.C. 937 (2)=44 M.L.J. 732 (P.C.).

-See also REGISTRATION ACT OF 1908-S. 2 (10).

-Conditions -- Neighbours or public -- Existence of-Necessity. See HINDU LAW-MARRIAGE-REPUTE AS TO-CONDITIONS. (1907) 25 I.A. 41 (45) = 35 C. 232 (239).

### RESIDENTIAL PURPOSES - PURCHASE FOR.

-Meaning of, See CIVIL SERVANTS IN INDIA-PURCHASE OF IMMOVEABLE PROPERTY.

(1920) 47 I. A. 275 (280, 284-5) = 48 C. 260 (270-1).

#### RES JUDICATA.

(For all other cases are C.P.C. of 1908-S. 11). -Application of rule of-String, my in-Inadvisability of.

Although it may be desirable to put an end to litigation, the inefficiency of many of the Indian Courts makes it advisable not to be too stringent in preventing a litigant from proving the truth of his case (204). (Sir Richard Couch.) MISIR RACHORARDIAL P. RAJAH SHEO BAKSH SINGH.

(1882) 9 I.A. 197 - 9 C. 439 (444-5) = 12 C.L.R. 520 = 4 Sar. 395 = R. & J.'s No. 70.

C. P. C. applicable-First mit brought before Code of 1882-Second suit brought after passing thereof.

It has been urged that the first suit having been brought in 1876, the Code of Civil Procedure, 1877, and not the Code of 1882, governs the case; but it is to be observed that the Code of 1882 says that "No court shall try any suit or issue"; that is, shall try after the passing of that Act, though the circumstances had arisen previously (238). (Lord Morris.) KAMESWAR PERSHAD P. RAJKUMARI RUTTUN KOER. (1892) 19 I.A. 234 = 20 C. 79 (85-6) = 6 Sar. 241.

-C. P. C. of 1877 and 1882-Law at time of passing

The state of the law of ret judicate at the time of the enactment of C.P.C. of 1877 and C.P.C. of 1882 was, that persons should not be harased by continuous litigations (Lord Merris). about the same subject-matter (238). KAMESWAR PERSHAD P. RAJKUMARI RUTTUN KOER. (1892) 19 I. A. 234 = 20 C. 79 (86) = 6 Sar. 241.

C. P. C. of 1877 and 1882-Law enacted by. It should not be lost sight of that the C.P.C. of 1877 and the Act of 1882 were not introducing any new law, but were only putting into the form of a Code that which was the state of the law at the time (238). (Lord Morris.) KAMESWAR PERSHAD D. RAJKUMARI KUTTUN KOER.

(1892) 19 L. A. 234 = 20 C. 79 (86) = 6 Sar. 241.

Duchess of Kingston's case-law land down-Ap-Nicability in India of.

The rule laid down by the judges in the Duchess of Kingston's case on the law of estoppel is not technical or peculiar to the law of England, but is perfectly consistent with S. 2 of C. P. C. of 1859. KHUGOWLEE SINGH T. HOSSEIN BUX KHAN. (1871) 7 B. L. R. 673 =

15 W. B. 30 = 6 M.J. 146 = 2 Sar. 645 = 2 Suth. 404.

#### RES JUDICATA-(Contd.)

-Final decision - Absence of-No res judicata in case of.

As regards the question of res judicata the final judgment of the High Court does not deal in any way with the question whether the defendant's tenure was a jagir nor does the judgment of the Deputy Commissioner at the trial. On appeal the Judicial Commissioner no doubt referred at the beginning of his judgment to the suit land as the defendant's jagir, but he also stated that the only point at issue was as to the rate of rent, and the High Court dealt with the case in the same way. In these circumstances there was no final decision within the meaning of S. 11 of C.P.C. of the issue whether the defendant's estate was a jugir, if indeed it can be said to have arisen in the case (Sir John Wallis.) SURENDRA NATH KARAN DEO: KUMAR KAMAKSHVA NARAIN SINGH.

(1929) 32 Bom. L. R. 515 = 51 C. L. J. 502 = 31 L. W. 352 = 123 I. C. 145 = A. I. R. 1930 P. C. 45.

-Judgment binding and conclusive between parties -Judgment in favour of one party with intimation at the some time to the other that the cause remained undecided not a.

The only evidence of adoption that is brought forward is the summed, and that is represented as the judgment of a court of competent juri-diction-the sunnud together with the documents belonging to it. But their Lordships are of opinion that that cannot be considered as the judgment of a court of competent jurisdiction, because it was an intimation to one party that there should be a judgment in his favour, whereas there was an intimation by the same authority to the other party that the cause remained undecided, and that, when the particular object was gained which was in view when this sunnul was granted, then the Sudder Court would proceed, and those should be an adjudication between the parties; this came from the same authority, We cannot, therefore, consider that that was a judgment binding and conclusive upon the parties (153). Camplell.) JEWAJEE v. TRIMBUCKJEE.

(1842) 3 M.I.A. 138=6 W.R. 38 (P.C.)=1 Suth. 141= 1 Sar. 257.

-Law of, applicable-Law in force at date of mit, The Indian Act in force relative to estoppel by res judicata was at the time of the institution of this suit Act VIII of 1859, S. 2 (36). (Sir Robert P. Collier.) RUN BAHA-(1884) 12 I.A. 23= DUR SINGH P. LACHOO KOER. 11 C. 301 (307-8) = 4 Sar. 602.

-Letters of Administration-Contested proceedings for-Decision as to reversionary character in-Effect of, in subsequent civil suit between parties. See HINDU LAW-REVERSIONER-RELATIONSHIP OF-LETTERS OF AD-(1929) 58 M.L.J. 171. MINISTRATION.

-Supreme Court-Property subject of suit in-Suit subsequent in respect of - Maintainability.

A suit brought by the appellant in the Supreme Court of Bombay claiming property which had been seized in execution of a decree obtained against a third party was held by that court to be barred by res judicata on the ground tlat it appeared by the statements in the Bill to have been the subject of a previous suit in the same court, in which the appellant had intervened by petition, and obtained sor e order, the nature or effect of which was not stated, and did not appear on the record before the Court,

That decision affirmed by the Privy Council, (Mr. Pemberton Leigh.) MUSADEE MAHOMED CAZEEM SHERAZFE P. MEFRZA ALLY MAHOMED SHOOSTRY.

(1851) 5 M. I. A. 187 = 7 Moo. P. C. 382 = 1 Sar. 416,

### RESPONSIBLE GOVERNMENT.

Minister under-Contract by, involving provision of fund- by Parliament-Sanction of Lieutenant-Governor-Newseity-Requisites of valid contract in such cases. Sa LEGISLATION-RESPONSIBLE GOVERNMENT

(1922) 31 M. L. T. 87.

#### RESTITUTION OF CONJUGAL RIGHTS.

-Decree against wife for-Enforcement of-Mode of -Mahomedan wife. Src C. P. C. of 1908-0, 21, R. 32-RESTITUTION OF CONJUGAL RIGHTS.

(1867) 11 M. I. A. 551 (609).

-Mahomedan Law-Husband and wife-Restitution of conjugal rights. See MAHOMEDAN LAW-HUSBAND AND WIFE-RESTITUTION OF CONJUGAL RIGHTS.

-Parisco-Suit between-Civil Courts in India-Jurisdiction of to entertain.

Their Lordships should much regret if there were no Court and no law whereby a remedy could be administered to the evils which must be incidental to married life amongst parties professing the Parsee religion. We conceive that there must be some laws, or some customs having the effect of laws, which apply to the married state of persons of this description. The Supreme Court on the civil side might administer to aggrieved parties remedies customarily afford ed by their own usages, or at least remedies as nearly approaching to them as circumstances would allow. In suits commenced on the Civil side, the peculiar difficulties which belong to the exercise of Ecclesiastical jurisdiction in some matrimonial causes would not arise. The case in 2 Borr. Bon. Sud. Dew. Rep. 209 shows that the Sudder Advalut at Bombay will take cognizance of matrimonial suits between Parsees, and will afford them such relief as a due regard to their own laws and customs will allow (390-1). (Dr. Lushington.) ARDASEER CURSETJEE D. PEROZEBOVE

(1856) 6 M. I. A. 348-4 W. R. 91-10 Moo. P. C. 376 - 1 Suth. 265 - 1 Sar. 548.

-Parsees-Wife's suit against husband for-Supreme Court of Bombay on its Ecclesiastical side-Jurisdiction of. to entertain.

The appeal arose out of a suit for restitution of conjugal rights brought on the Ecclesiastical side of Supreme Court of Bombay.

The parties were Parsees, natives of the Island of Bombay, and there resident. Their religion was that of Zoroaster. The wife brought the suit. The husband had gone through the form of marriage with another woman, with whom he was co-habiting. He, therefore, either had another wife, lawful by Parsee law, or he was living in adultery. The question was whether, with reference to the limitation in the charter (granting Ecclesiastical jurisdiction to the Supreme Court), "as far as the circumstances and occasion of the said people shall admit or require," it was consistent with that limit tion for the Ecclesiastical Side of the Sunreme Court to entertain a suit for the re-triction of conjugal rights at the instance of a Parsee wife against her husband.

Held that a suit for the restitution of conjugal rights stri tly an E clesiastical proceeding, could not, consistently with the principles and rules of Ecclesiastical law, be applied to parties who professed the Parsee religion (390). (Dr. Lushington.) ARDASEER CURSETJEE r. PEROZE-(1856) 6 M. I. A. 348 = 4 W. R. 91=

10 Moo. P. C. 375=1 Suth. 265=1 Sar. 54

-Wife's suit for-Decree in favour of wife in-Remedy of wife under-English Ecclesiastical law. See ECCLE-SIASTICAL LAW-ENGLAND-LAW IN-RESTITUTION OF CONJUGAL RIGHTS. (1856) 6 M. I. A. 348 (389).

-Wife's suit for, based on adulterous intercourse of husband-Maintainahility of, in England.

#### RESTITUTION OF CONJUGAL RIGHTS-(Contd.)

In England, the wife, on account of an adulterous intercourse by her husband with another woman, would be entirled to a separation from bed and board, and alimony; but a prayer for restitution, under such circumstances, is wholly unbeard of. A Court Christian cannot enforce a renewal of co-habitation with an adulterer or adulteress; such a proceeding would be utterly repugnant to its character, its practice, and its p-inciples. Such a decree would not be tice administration of Ecclesiastical law, but the violation of it (389 90). (Dr. Lushington.) ARDASEER CURSETJEE D. PEROZEBOYE. (1856) 6 M. I. A. 348 = 4 W. R. 91 = 10 Moo. P. C. 375 = 1 Suth. 265 = 1 Sar 548.

#### RESUMPTION.

-What amounts to, So: AMARAM GRANT-RE-SUMPTION OF.

-Altamgah inam. See ALTAMGAH INAM.

----- Amaram grant—Resumption. See AMARAM GRANT. -- Rombay-Quit and ground rent tenure in-Sanadi tenure in-Resumption of-Government's right of. See LAND TENURE-QUIT AND GROUND RENT TENURE.

(1915) 42 I. A. 185 (187) = 39 B. 664 (676-7).

Cantonment-Poona Cantonment-Land within area of-Tenants in possession of-Resumption from-Compensation payable to them on-Basis of. See CANTONMENT, (1911) 38 I. A. 204 = 36 B. 1.

-Chakeran lands - Resumption of - Zemindar -Government-Rights of. See CHACKERAN LANDS-RE-SUMPTION OF.

-Chowkidari chakeran lands-Resumption of-Zemindar-Government-Rights of. See CHOWKIDARI CHAKE-RAN LANDS.

-Desai-Hereditary office of-Allowance in money payable to holder of, and of land revenue of pergunnah-Resumption by Government of. See DESAI-HEREDITARY (1872) 14 M. I. A. 551.

-Desai - Inam village of -Minor inams in-Resumption of-Right of-Kadim and Jadid inams-Distinction. See DESAI-INAM VILLAGE OF-MINOR INAMS IN.

(1928) 55 I. A. 44=53 B. 222.

-Ghatwally tenure-Resumption of. See CHATWAL-LY TENURE-RESUMPTION OF.

-Inam and saranjam-Mixed estate of, held on political tenure-Resumption and re-grant of-Government's power of-Dispute as to. See SARANJAM-POLITICAL (1892) 20 I. A. 50 (68-9) = 17 B. 431 (456).

-Jaidad tenure-Resumption by Government of-Seizure on, of arms and stores purchased by Jaidadar—Act of state if an. See ACT OF STATE—ACTS AMOUNTING TO AN, OR NOT-JAIDADAR.

(1872) Sup. I. A. 10 (32-3).

-Jaidad tenure held by Begum Sumroo-Lands held on-Resumption of, on her death-Legality of-Jurisdiction of Municipal Courts to determine. See ACT OF STATE-ACTS AMOUNTING TO AN, OR NOT-JAIDAD TENURE, ETC. (1872) Sup. I. A. 10 (17).

—Jagir—Resumption of. See JAGIR—RESUMPTION OF.

-Jagir granted by Nawab of Carnatic-Resumption by British Government of-Legality of-Jurisdiction of Municipal Courts to question. See ACT OF STATE-ACTS AMOUNTING TO AN, OR NOT-JACIR GRANTED, ETC. (1857) 7 M. I. A. 555 (577-8).

-Kattubadi grant-Resumption of, See KATTUBADI GRANT.

-Lakhiraj lands-Resumption of. See LAKHIRAJ LANDS-RESUMPTION, LTC,

#### RESUMPTION-(Contd.)

-Landlord and Tenant - Tenant-Death without heirs of-Resumption of holding on. See ESCHEAT-ZEMINDAR.

 -Lease—Resumption of. See LEASE—RESUMPTION. ETC.

Peishwa-Enam village granted by-Resumption of, by his officer-Act of State it an. See ACT OF STATE-ACT AMOUNTING TO AN, OR NOT-WRONGFUL ACT OF INDIVIDUAL. (1838) 2 M. I. A. 37 (50-1).

-Permanent and ancient tenure held in separate shares. -Resumption of some shares in case of. See TENURE-PERMANENT AND ANCIENT TENURE.

(1869) 13 M. I. A. 104 (112).

Saranjam-Resumption of. See SARANJAM. -Service grant - Resumption of Ser SERVICE GRANT.

-Service tenure-Resumption of. Ser TENURE-SERVICE TENURE-RESUMPTION OF.

-Tenure-Resumption of-Proceeding for-Increase of assessment if. See TENURE - RESUMPTION OF

(1869) 13 M. I. A. 104 (111).

-Zemindar-Mocurrary istimrari pettak by-Temant under, dying without heirs-Kesumption on-Zemindar's right of-Receipt of rent by him from members of tenant's family-Effect.

A Hindu Zemindar, having an illegitimate family by a Mahomedan lady domiciled in his house, executed a mokurraree pottah of a mouzah belonging to his Zemindary in the name of S, one of the infant daughters of that family. The grant was clearly intended to create an absolute and hereditary mokurraree tenure.

S died before her father, and not very long after the creation of the tenure. After her death, the father during his life, and afterwards his widows, who, by the Hinda law, were his heirs, continued to receive the rent reserved from those in possession of the lands, the receipts for such rent being, with one exception, taken in the name of S, the original grantee, and in that exceptional case in the name of

On a question being raised as to the effect to be given to that reception of rent as a recognition of the tenure and as an answer to the suit claim to resume the lands included in it, Semble the recognition of the interest of the members of the illegitimate family by the receipt of rent from them would constitute some kind of tenancy requiring to be determined by notice or otherwise, but that circumstance was not of itself sufficient to defeat the suit claim (98).

From this receipt of rent after the death of S, which must have been well known in the family, an inference may undoubtedly be drawn that the Zemindar either originally intended to make the grant for the benefit generally of his illegitimate family, or after the death of his daughter was willing that it should have that effect; and it is difficult to suppose that the widows were not for sometime willing to act on some such view of the transaction. It was impossible, therefore, to treat the parties in possession as mere tres-passers (98). (Sir James W Colvile.) RANGE SONET KOWAR D. MIRZA HIMMUT BAHADUR.

(1876) 3 I. A. 92=1 C. 391 (399)=25 W. B. 239-3 Sar 608 = 3 Suth 258.

Zemindary-Property within ambit of -Resumption of-Zemindar's right of-Presumption-Onus on proof on person resisting.

A talookdar has a prima facie right to resume that which is a portion of her talook, and it is incumbent upon the person who is resisting the resumption to shew a good title painat the talookdar (135). (Sir Arthur Hobbouse.) NAJBAN BIBI D. CHAND BIBI-

#### RESUMPTION-(Contd.)

The suit was by the plaintiff (respondent) for the recovery from the defendant (appellant) of possession of four villages, which had been granted by the plaintiff to the defendant by way of maintenance. The plaintiff was the talookdar of the talook containing a number of villages, including the suit four villages. The plaintiff's case was that the lease or gift of the suit villages to the defendant was resumable either at the pleasure of the lessor or upon notice. The defendant, on the other hand, contended that the lease or gift was one for life.

Held that, as the plaintiff was only seeking to resume that which was a portion of her talook, she had a prima facie right to do that, and that it was incumbent upon the defendant who was resisting the resumption to shew a good title against the talookdar (135). (Sir Arthur Hobbouse.) NAJBAN BIEL r. CHAND BIBL

(1883) 10 I. A. 133=10 C. 238 (241)= 13 C. L. R. 401 - 4 Sar. 472.

-Zemindari-Tenure carved out of-Death of tenureholder without heirs-Resumption of tenure in case of-Right of-Zamindar's or Government's, See ESCHEAT-(1876) 3 I. A. 92 (101) = ZEMINDAR-RIGHTS OF. 1 C. 391 (402).

#### REVENUE.

- Arrear-Revenue when becomes. See BUNGAL ACIS-LAND REVENUE SALIS ACT OF 1859-S. 2: AND Ss. 2 AND 3. (1912) 39 I. A. 177 = 39 C. 981.

-Assessment of lands to-Government's right of-Limitation-Non-exercise of right for 60 years-Bar by. See LAKHIRAJ LAND - ASSESSMENT OF - GOVERN-MENT'S RIGHT OF-LIMITATION.

(1849-50) 4 M. I. A. 466 (508-9).

-Assessment of lands to-Government's right of-Presumption in favour of-Exemption from assessment-Claim to-Onus of proof of.

The general principle is that the ruling power is interested in a certain proportion of the produce of every legal, except so far as it shall have transferred, relinquished, or compounded its right thereto, and all persons claiming the benefit of such exemptions are bound to establish their respective claims and titles (497). (Mr. Baron Parke,) MAHA RAJA DHETRAJ RAJA MAHATAB ». GOVERNMENT (1849-50) 4 M. I. A. 466-1 Sar. 385. OF BENGAL.

-Distraint illegal for arrears of-Trespass for-Action of - Jurisdiction of Supreme Court to entertain-Bona fide belief on part of officers as to existence of authority-Effect.

By the Charter of Justice establishing the Supreme Court of Bombay that Court was prohibited from entertaining any jurisdiction in any matter concerning the revenue, under the management of the Governor and Council, or any act done in the collection thereof.

N was the owner of a house and piece of ground in the town of Bombay till 1836, when he sold it to H. No change, however, of name was made in the books of the Collectorate, and N's name continued to appear in those books as the registered proprietor of the property. For arrears of quitrent due for the period of N's ownership, a warrant of distraint was issued by the Collector of Revenue at Bombay. The warrant, which authorised the entering into and taking possession of the house in question, was, however, addressed to N. In pursuance of the warrant the house of II was distrained. In an action of trespass, brought by H against the Collector and one of his assistants, held reversing the Supreme Court, that it had no jurisdiction to entertain the

13 Q. L. B. 401 = 4 Sar. 472 = B. & J's. No. 74. if the Supreme Court were to inquire whether the defend.

#### REVENUE-(Contd.)

ants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire confirmity to the Regulations of the Governmor and Council of Bombay, for they would be equally entitled to succeed, if the statutes and charters contained no exception or proviso for their protection. There can be no rule more firmly established than that if parties hone fide and not absurdly believe that they are acting in pursuance of statutes and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act. If Indian revenue-officers have fallen into a mistake, or without bad faith have been guilty of an excess in executing the duties of their office, the object of the Legislature has been, that they should not be liable to be sued in a civil action before the Supreme Courts-(379.80). (Lord Campbell.) SPOONER v. JUDDOW. (1849-50) 4 M. I. A. 353 - 6 Moo. P. C. 257 =

Perry, O. C. 392 = 1 Sar. 363.

-Matter concerning-furisdiction of Supreme Court as regards.

By statutes and charters, of which the Judges of the Supreme Court of Bombay are bound to take judicial notice, they are forbidden to exercise any jurisdiction in any matters concerning the revenue under the management of the Governor and Council respecting the collection of the revenue; any such matter arising before them was declared to be coram non judice (374-5). (Lord Camp W/.) POONER c. JUDDOW. (1849 50) 4 M. I. A. 353 = 6 Moo. P. C. 257 = Perry. O. C. 392 = 1 Sar. 363.

-Matter concerning, or concerning any act done in collection of-Quit-rant arrears-Distraint for, if such a matter-Trespass for such distraint-Action of-Jurisdiction of Supreme Court to entertain.

In an action of trespass brought against the Collector of Revenue at Bombay and one of his assistants, for distraining for arrears of Government "quit-rent," Acld that the cause of action was a matter concerning the revenue under management of the Governor and Council of Potnboy, and concerning an act done according to the Regulations of the Governor and Council of Bombay, within the meaning of statutes and charters regulating the jurisdiction of the Supreme Court of Bombay, and that the Supreme Court of Bombay was therefore prohibited from entertaining the suit (379). (Lord Campbell.) SPOONER v. JUDDOW.

(1849-50) 4 M. I. A. 353 = 6 Moo. P. C. 257 = Perry. O. C. 392 = 1 Sar. 363.

-Mortgaged property-Revenue due on-Mortgagee paying-Rights and remedies cf. So: MORTGAGE-MORTGAGED PROPERTY-REVENUE DUE ON.

-Nature of Quit-rent-Land-tax-Reconne sale-Purchaser's rights under.

The Government revenue represents that portion of the produce of the land which from time immemorial has been considered in eastern countries to belong as of right to the sovereign power in the State. In India payment in kind has long since been commuted for a money payment, which, in some cases, is fixed permanently and, in others, is liable to revision by periodical settlements. Sometimes the Government revenue is spoken of as a quit-rent, sometimes as a land-tax. But, however it may be described. and, however it may have been assessed, it is the first and parameunt charge upon the land, and if default is made in payment the estate is sold in a summary way. The Government gives a clear title to the purchaser, and the land is lost for ever to the defaulting proprietor. (Lord Marnaghten.) DAKSHINA MOHUN ROY CHOWDHRY v. SARODA MOHUN ROY CHOWDHRY. (1893) 20 I. A. 160 (163)= 21 C. 142 = 6 Sar. 366.

REVENUE-(Contd.)

-Payment of-Default in-Effect on ownership of estate-Execution sale of estate subsequent to default and before revenue sale-Purchaser's rights.

It was argued that once there was a default in the payment of the Government revenue due in respect of an estate, the estate would in the ordinary course be sold, and all that an execution purchaser of the estate subsequent to the date of the default purchases is not the estate but the right to receive any surplus sale-proceeds of the estate when it should be sold for revenue. But liability to sale is not the same thing as sale, and until a revenue sale takes place the ownership of the estate remains as it has been, except so far as the provisions of the Act (Bengal Act XI of 1859) interfere with it. It is always open to the Collector under S. 18 to exempt the estate from sale if the arrears are paid up before sale; and it is a matter of common knowledge that this is a power which Collectors exercise To regard an estate in respect of which default has freely. occurred, and which is therefore liable to be sold, as a lost e-tate would be quite contrary to the facts as they exist. (Sir Arthur Wilson.) SHYAM KUMARI v. RAMESHWAR (1904) 31 I. A. 176 = 32 C. 27 (38)= SINGH.

8 C. W. N. 786 = 6 Bom. L R. 754 = 8 Ser. 688.

Quit-rent if.
"Quit-rent" is part of the revenue of the East India Company. The "quit-rent" goes into the treasury of the East India Company (379). (Lord Campbell.) (1849.50) 4 M. I. A. 353 = SPOONER D. JUDDOW. 6 Moo. P. C. 257 = Perry, O. C. 392=1 Sar. 363.

-Settlement for-Object and effect of -Title-Possessien-Right to-Effect on-Trust to sohich property subject -Effect on.

The principal claim of S to hold the resumed lands free from this trust on the grounds advanced by her, is destitute entirely of legal foundation. She rested her title on the effect of the resumption proceedings and the settlement for revenue with her. Such a settlement does not establish proprietary right in the land, but is made with Government as to their claim to their khiraj, or revenue. The settlement and the possession under it being evidence of a right to possession, are also so far evidence of proprietary right, but do not necessarily constitute it. A fortiori, they could not divest and destory trusts to which the settlor was subject. The claim supposes a mere settlement for revenue to have the same effect in clearing away preceding titles which a sale under the Revenue Laws works; but antecedent trusts have, in certain cases, been impressed by the decisions of Courts of Justice, including this Tribunal on estates, acquired even under these revenue sales. S could not get rid of her shebait title and possession by the machinery of this settlement, though it was in terms made with her as a private person (305). (Sir Robert Phillimore.) JUGGUT DOSSEE P. MUSSUMAT SOOKHEEMONEY MOHINI (1871) 14 M. I. A. 289= DOSSEE.

10 B. L. R. 19 P. C. = 17 W. R. P. C. 41= 2 Suth. 512=3 Sar. 23.

-Sum realizable as-Claim on account of-Meaning Ser AGRA LAND REVENUE ACT 19 OF 1873, SS. 241 (1) (1903) 30 I. A. 172 (175-6)= AND 45-CANAL DUES. 25 A. 527 (532).

#### REVENUE RECEIPTS.

-Title-Evidentiary value as to. See RENT RECEIPTS -REVENUE RECEIPTS. (1869) 13 M. I. A. 181 (197.8)

#### REVENUE OFFICERS.

-Distraint illegal by-Trespass for-Action of Supreme Court—Jurisdiction to entertain. See REVENUE -DISTRAINT ILLEGAL FOR ARREARS OF.

(1849-50) 4 M. L.A. 353 (379-80, 381).

#### REVENUE OFFICERS-(Contd.)

-Inquiries ex parte by. See EVIDENCE-COLLEC-TOR.

Thakbust Proceeding. See UNDER THAKBUST PROCEEDING.

#### REVENUE SALE.

ANNULMENT OF.

BENAMI PURCHASE AT-PLEA OF.

COLLECTOR—SALE BY, OF WHOLE TALOOK IN ONE LOT—SANCTION OF BOARD OF REVENUE CONDI-TION PRECEDENT TO.

DATE OF.

DEBTS OF GOVERNMENT-SALE FOR GENERAL.

ESTATE NOT IN ARREAR-SALE OF.

EXECUTION SALE—PURCHASERS AT—RIGHTS OF -DISTINCTION.

FRAUD VITIATING-EFFECT OF.

FRAUDULENT PURCHASE AT.

INTEREST PASSING UNDER.

IRREGULARITY IN-WAIVER OF.

MORTGAGED PROPERTY-REVENUE SALE OF.

PURCHASER AT.

TRUSTS ANTECEDENT ON PROPERTY SOLD AT.

VALIDITY OF.

ZEMINDARY-REVENUE SALE OF.

#### Annulment, of.

COMPENSATION TO PURCHASER ON.

-Improvements permanent effected by him-Allocanice for.

In annulling the sale of a tabok for arrears of revenue their Lordships allowed to the purchaser all just and reasonable allowances for permanent improvements made by him on the property purchased (99). (Mr. Justice Erskine.) MAHARAJAH MITTERJEET SINGH BAHADOOR. D. HEIRS OF RANEE JASWANT SINGH.

(1842) 3 M. I. A. 42 = 6 W. R. 15 P. C. = 1 Suth. 114 - 1 Sar. 235.

Payment by Government of-Order as to-Regulation I of 1821-S. 4 (2).

In a case in which their Lordships affirmed the annulment of a revenue sale by the Mofussil and Sudder Commissloners constituted under Regulation I of 1821, the sale having taken place by the direction of the Government, and there being no fraud on the part of the purchaser, their Lordships, under cl. 2 of S. 4 of Regulation I of 1821, awarded the purchaser compensation to be paid by the Government (132-3). (Vice-Chancellor Knight-Bruce.) MAHARAJAH ISHUREE PERSHAD NARAIN SINGH D. (1842) 3 M.I.A. 100 = LALI, CHUTTERPUT SINGH. 6 W.R. 27 P.C =1 Suth. 129 = 1 Sar. 245.

COSTS OF PROCEEDINGS FOR.

-Purchaser when not liable for.

In a suit to annul the sale of a talook for arrears of revenue, the courts below, by their decrees, annulled the sale and directed all the costs (of the proprietor and of the Government) to be paid by the purchaser. The Privy Council, while affirming the decrees below, as regards the annulment of the sale, reversed so much of the decrees below as condemned the purchaser in costs, and directed that each party should bear his own costs both in the coarts below and in the appeal to the Privy Council. They
did so because, in their Lordships' view, the purchaser
stood wholly free from blame; because he purchased the talook at a public auction, which to all appearances was regularly beld under the sanction of the proper authorities, he paid the purchase-money into the treasury, and, after a me delay, got possession of the estate; and the entire purchase-money was appropriated by the proprietor (98 9).

### REVENUE SALE-(Contd.)

Annulment of-(Contd.)

COSTS OF PROCEEDINGS FOR-(Contd.)

(Mr. Justice Erskine). MAHARAJAH MITTERJEET SING BAHADOOR P. THE HEIRS OF RANGE JASWANT SINGH.

(1842) 3 M.I.A. 42=6 W.R. 15 P.C.= 1 Suth. 114=1 Sar. 235.

JURISDICTION OF MOFUSSIL AND SULDER COM-MISSIONERS CONSTITUTED UNDER REGULATION I OF 1821 AS TO.

-Delay in-Commencement of proceedings if a bar to. The appeal was against a decree pronounced by the Sudder Special Commission, appointed under Regulation I of 1821 for the ceded and conquered provinces under the Presidency of Bengal. By that decree, so much of the decree of the Mofessil Special Commission, constituted under the provisions of the same Regulation, as annulled a sale in 1802 of lands in Allahabad for arrears of Government revenue, and decreed the restitution thereof to the respontlent, was affirmed; but so much of that decree as directed compensation out of the Government treasury in favour of the appellant, was reversed. The suit to annul the sale was brought only in the year 1821.

The Judicial Committee affirmed the decrees below, except as to compensation and restitution money and costs. The sale having taken place by the direction of the Government, and there being no fraud on the part of the purchaser the Judicial Committee, under cl. 2 of S. 4 of Regulation I of 1821, awarded the purchaser compensation to be paid by

the Government.

The length of time that elapsed between the sale, of which complaint is made, and the commencement of these proceedings, though very properly urged as matter of grave consideration with reference to the judicial discretion to be exercised, and the mode of exercising it, has, with propriety, been admitted not to form an objection to the jurisdiction, or a bar to relief in such a case as the present (111). (Vice-Chancellor Knight-Bruce.) MAHARAJAH ISHUREE PERSHAD NARAIN SINGH D. LALL CHUTTER-(1842) 3 M.I.A. 100 = 6 W.R. 27 P.C. = PUT SINGIL. 1 Suth. 129-1 Sar. 245.

### PROPRIETY OF.

-Acquirescence in sale by party seeking to annul-Long

posterion with purchaser.

We are not unaware of the propriety and expediency, in general, of giving great weight to acquiescence or delay on one side, and to long possession on the other, or of the generally questionable policy of discrediting or lessening the public faith in transactions having the sanction of the Government or its officers (123). (Vice-Chancellor Knight-Bruce) MAHARAJAH ISHUREE PERSHAD NARAIN SINGH v. Lall Chutterput Singh. (1842) 3 M.I.A. 100= 6 W.R. 27 P.C. = 1 Suth. 129 = 1 Sar. 245.

TERMS OF.

-Purchase-money and interest-Purchaser's right to -Profits made by him out of estate-Proprietor's right to -Accounts of -Taking of -Necessity.

In a suit to annul the sale of a talook for arrears of revenue, the courts below were of opinion that the sale ought to be annulled, and that the proprietor ought to be given possession of the talook sold. The proprietor had, however, appropriated the entire purchase money paid into the treasury by the purchaser. On a claim by the purchaser for the refund of the purchase-money so appropriated by the proprietor, the courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate, assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate. By their decrees

REVENUE SALE-(Contd.)

Annulment of - (Cont.)

TERMS OF - (Const.)

the courts below therefore thought it unaccessary to give any or ler to return the sale price. There was, however, no ground upon which the courts below could found such an assumption. According to the proprietor's account, the talook for some years before the safe had not enabled her to pay the revenue, and there were no facts stated to show that it had been more productive in the hands of the purchaser.

Held, therefore morlifying the decrees below in that respect, that an account should be taken of the principal and interest due to the purchaser in respect of the purchasemoney paid by him into the treasury, and also of the net profits made by him out of the estate during his occupation, and that upon payment to him, by the proprietor of whatever (if anything) might appear to be due to him on taking such account, possession of the talook should be delivered to the proprietor (989). (Mr. Justice Erskine.) MAHA-RAJAH MITTERJEET SINGH BAHADOOR D. HEIRS OF (1842) 3 M.I.A. 42= RANEE JASWANT SINGH, 6 W.R. 15 (P.C.) = 1 Suth. 114 = 1 Sar. 235.

### Benami purchase at-Plea of.

-Maintainability. See SALE OF LAND FOR RE-VENUE ARREARS ACT I OF 1845, Ss. 20, 21. (1870) 13 M.I.A. 419 (423).

Collector-Sale by, of whole talook in one lot-Sanction of Board of Revenue condition precedent to.

Absence of-Effect of-Proof of such sanction-Rengal Regulations applicable to mich cases

The widow of J sued the Government of Bengal, and the appellant, for the purpose of annulling the sale of a talook, formerly the property of the widow, but which had been seized for arrears of revenue by the officers of the Government, and by them sold to the appellant for the sum of

1,10,000 sieca rupees.

The sale was held on the 22nd of June, 1815, and, at that time, the law stood thus:-The discretionary power of deciding whether the whole of a defaulter's lands. or any or what portion of them, should be actually sold to pay the arrears of revenue, which was originally vested in the Governor-General in Council, was transferred to the Board of Revenue and Commissioners. subject nevertheless to the control of the Governor-General in Council, whenever he thought fit to interpose in his executive capacity. But in order to assist the Board in this decision, and to prevent delay, it was the duty of the Collector, whenever any revenue fell in arrear, to report the amount of it to the Board of Revenue, or Board of Commissioners, and, either before or after advertising a sale. to send a statement of the particular land of the defaulter which he proposed should be sold to pay off the arrears, but the Collector was in no case to proceed to an actual sale without the express sanction of the Board.

Held, on the construction of the Regulations in force at the time, that the sale by a Collector of a whole talook in one lot for arrears of revenue, which might have been paid off by the proceeds of some definite portion of the talook. without specific authority previously conferred by the Board of Revenue was an act unauthorised by the general rules

and principles of the Regulations (95-7).

Held further, on the evidence in the case, that the sale by the Collector of the whole talook in one lot was not authorised by any specific authority previously conferred by the Board of Revenue (97). (Mr. Justice Erskine,) MAHARAJAH MITTERJFET SINGH BAHADOOR D. HEIRS OF RANKE JASWANT SINGH. (1842) 3 M. I. A. 42= 6 W. R. 15 (P. C.)=1 Suth: 114=1 Sar. 235.

REVENUE SALE-(Contd.)

Date of.

 Date of actual sale—Day after that on which default in payment of revenue occurred. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859, S. 28 AND SCH. A. (1904) 31 I. A. 176=32 C. 27 (39).

-Meaning of-Date of actual sale-Date to which its operation is carried back by relation-Test. See BENGAL ACTS-LAND REVENUE SALES ACT OF 1859, S. 28 AND SCH. A. (1904) 31 I. A. 176=32 C. 27 (39).

#### Debts of Government-Sale for general.

-Purchasers at-Rights of-Distinction.

It is said that when property is sold by the Government for general debts, and not for arrears of revenue, they sell only the interest of the debtor, and do not guarantee the title. This may be very true, and it is an important distinction between the two classes of sales (296). (Mr. Pemberton Leigh.) DOUGLAST. COLLECTOR OF BENARES. (1852) 5 M. I. A. 271=1 Suth. 231=1 Sar. 434.

-See also REVENUE SALE—EXECUTION SALE. (1867) 11 M.I.A. 433 (455).

#### Estate not in arrear-Sale of.

——Invalidity of. See BENGAL ACTS—LAND REVE-NUE SALES ACT OF 1859—S. 3, ESTATE NOT IN ARREAR. ((1898) 25 I. A. 151 (158-9) = 25 C. 833 (842) & (1912) 39 I. A. 177 (180)=39 C. 981 (9923).

#### Execution sale—Purchasers at—Rights of— Distinction.

Government-Suit by-Execution sale in.

The appellant is the representative of B who purchased the remindary in which the lands in question are situate at an execution sale. The execution, though at the suit of Government, was one in a mere civil suit for moneys, and, accordingly, the purchaser acquired none of the extraordinary rights of a purchaser at a sale for arrears of Government revenue. He took merely the right, title, and interest of the judgment-debtor, and, therefore, subject to whatever subsisting interests in the lands had been effectually granted or created by any former zemindar (455). (Sir Richard Kindersley.) BABOO DHUNPUT SINGH v. GOOMAN SINGH. (1867) 11 M. I. A. 433 = 9 W. B. (P.C.) 3= 2 Suth. 92 = 2 Sar. 309.

-Revenue payment-Default in-Execution sale after and before revenue sale-Rights in case of. See REVENUE -PAYMENT OF-DEFAULT IN.

(1904) 31 I. A. 176=32 C. 27 (38).

#### Fraud vitiating-Effect of.

-Sale reduced to a private sale. See SALE OF LAND FOR REVENUE ARREARS ACT I OF 1845-REVENUE SALE-FRAUDULENT PURCHASE AT.

(1866) 10 M. I. A. 540 (555-6, 559.)

#### Fraudulent purchase at.

-Effect of, on purchaser's rights. See FRAUD-(1866) 10 M. I. A. 540 (556-7). PUBLIC SALF.

#### Interest passing under.

-Defaulting owner-Interest of, or of Crown subject to payment of Government assessment. See BENGAL ACTS -LAND REVENUE SALES ACT XI OF 1859-SALE UNDER-INTEREST PASSING UNDER.

(1914) 27 M. L. J. 365 (368) & (1927) 54 I. A. 218 (223)=54 C. 669.

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### Irregularity in-Waiver of.

-Appropriation of surplus purchase-money by proprietor if amounts to. See BENGAL REGULATIONS GOVERNMENT INDEMNITY REGULATION XI OF 1822 (1842) 3 M. L A. 42 (978). S. 6 (3).

#### REVENUE SALE-(Contd.)

#### Mortgaged property-Revenue sale of.

Decree on mortgage—Sale in execution of—Purchase by mortgagee at, prior to revenue falling into arrear—Rights of revenue sale purchaser and of mortgagee execution purchaser in case of—Latter if can use mortgage as a shield against former. See BENGAL ACTS—LAND REVENUE SALES ACT OF 1859, S. 54—MORTGAGED PROPERTY.

(1912) 39 I. A. 228 - 40 C. 89.

Invalid sale—Proceeds of, in hands of Government

Application of, towards mortgage debt—Mortgagee's
right of—Purchaser at revenue sale—Mortgagee's rights as
against. See MORTGAGE—MORTGAGED PROPERTY—
REVENUE SALE OF—INVALID SALE.

(1852) 5 M. I. A. 271 (297).

Purchaser real of equity of redemption—Fraud of—Sale brought about by—Sub-equent mortgagee's right to attack—Omission to do so in prior mortgagee's suit to recover his amount from surplus revenue sale proceeds—Effect. See MORTGAGE—PRIOR AND SUBSECUENT MORTGAGES—SUBSECUENT MORTGAGEE—REVENUE SALE, ETC. (1917) 34 M. L. J. 361 (366).

—Usufructuary mortgagee—Purchase by—Effect of— Sale brought about by his fraud. See MORTGAGE—USU-FRUCTUARY MORTGAGE—MORTGAGEE UNDER—PUR-CHASE BY—REVENUE SALE, ETC.

(1866) 10 M. I. A. 540.

#### Purchaser at.

Annulment of dependant tenures-Right of-Sale under Regulation XI of 1822.

The sales on which the respondents' power to enhance depends took place under Bengal Regulation XI of 1822; and the rights of the purchasers through whom the respondents' claim were defined by the 30th and three following sections of that Regulation. Those enactments were repealed by the 1st section of Act No XII of 1841; and all the provisions of that Act, with the exception of the 1st and 2nd sections, were again repealed by Act No. 1 of 1845. which, as modified by some subsequent Acts, is the existing sale law. Neither of the two last-mentioned Acts contains any saving of rights acquired under the Acts which it repealed; and though each gave to purchasers at sales for arrears of Government revenue powers equal to or even larger than those given by the repealed Acts, it expressly limited those powers to purchasers at future sales, i.e. "sales under this Act." The respondents, therefore, cannot invoke Regulation XI of 1822, as the foundation of their alleged rights, because that has been absolutely repealed; and they cannot call in aid the subsequent Acts, because they have given no power to purchasers at sales which took place before they were passed (269-70). (Sir James W Colvile.)
RAJAH SUTTOSURRUN GHOSAL v. MOHESH CHUNDER MITTER. (1868) 12 M I.A. 263 = 11 W. R. (P.C.) 10= 2 B. L. R. P. C. 23 = 2 Suth. 180 = 2 Sar. 420.

Rights of. See REVENUE—NATURE OF. (1893) 20 I. A. 160 (163) = 21 C. 142.

Rights of Payment of revenue Default in Execution sale—Revenue sale subsequent to—Purchaser at. See REVENUE—PAYMENT OF—DEFAULT IN.

(1904) 31 L A. 176 = 32 C. 27 (38)

### Trusts antecedent on property sold at.

-Effect on

Antecedent trusts have, in certain cases, been impressed by the decisions of Courts of Justice, including this Tribunal on estates, acquired even under sales under the Revenue Laws (305). (Sir Robert Phillimore.) JUGGUT MOHINI DOSSEE V. MUSSUMAT SOOKHEEMONEY DOSSEE.

(1871) 14 M. I. A. 289 = 10 B. L. B. 19 (P. C.) = 17 W. B. (P.C.) 41 = 2 Suth. 512 = 3 Sar. 23.

### REVENUE SALE-(Contd.)

#### Validity of.

Question as to—Speely determination of—Necessity.

Sales for arrears of revenue are of constant occurrence; anything which impairs the security of purchasers at those sales tends to lower the price of the estates put up for sale. It is therefore of the utmost importance in the interest of the revenue paying population of India that all questions that can arise as to the validity of a sale for arrears of revenue should be determined speedily (175). (Lord Macnaghten.)

RAJAH GORIND I AL ROY 7: RAMJANAM MISSER.

(1893) 20 L A. 165=21 C. 70 (83)=6 Sar. 356.

Sanction previous of Board of Resease condition precedent to—Al wave of—Confirmation of sale by Board in east of—Effect—Authority of Board only a delegated one.

The appeal arose out of a suit brought for the purpose of annolling the sale by the Collector in one lot of a whole tale-sk for arrears of revenue, which might have been paid off by the proceeds of some definite portion of the talook. According to the Regulations in force at the time the collector had no authority to hold such a sale except by a specific authority previously conferred by the Board of Revenue. No such authority had been conferred by the Board, and the question was what effect ought to be given to the subsequent confirmation of the sale by the Board.

Held that the sale which was illegal and void when it was held was not rendered valid by the unauthorized confirmation of it by the Board of Revenue subsequently (97).

In considering the effect of the subsequent confirmation of the sale by the Board, it must be remembered that the Board had not the supreme but only a delegated authority, and that by the terms in which that authority was conferred they were expressly required to exercise their discretion before the sale took place, and that there is no power conferred on them to adopt and confirm an unauthorised sale by the collector (97). (Mr. Junice Erskine.) MAHARAJAH MITTERJEET SINGH BUHADOOK F. THE HEIRS OF RANEE JASWANT SINGH. (1842) 3 M. I. A. 42=

6 W.R. 15 (P.C.) = 1 Suth. 114 = 1 Sar. 235.

Zemindary-Revenue sale of.

See ZEMINDARY-REVENUE SALE OF.

#### RIPARIAN OWNERS.

(See also RIVER AND WATER-COURSE.)

#### Lower owner.

Canal running through his land—Hlocking up of— Flooding of land of upper sconer by—Damage caused by— Liability for,

A raised road or "bund" traversed depressed ground, through which flowed a canal, properly provided with a gap or "eye" for the flow and a bridge over the canal. The to be filled up, thus blocking up the course of the water in the canal at that spot, which water overflowed and flooded land higher up the canal course and damaged the crops there.

Held that the lower owner was liable to compensate the higher owner for damage caused to his crops by such inundation.

It is immaterial in such cases to enquire how or by whom the waterway thus blocked up was originally formed or built or whether it was a natural or an artificial watercourse. (Lord Atkinson.) MAUNG BYA v. MAUNG KYI NYO.

(1925) 52 I. A. 385 = 3 R. 494 = 42 C. L. J. 156 = 27 Bom. L. B. 1427 = 9 L. B. P. C. 209 = (1925) M. W. N. 894 = 30 C. W N. 218 =

A. I. R. 1925 P.C. 236 = 90 I. C. 198 = 49 M. L. J. 282.

Natural voltercourse—Diverting or stopping of—
Flooding of upper owner's lands by—Damage caused by—

## RIPARIAN OWNERS-(Contd.)

Lower owner-(Contd.)

A defendant who diverts or stops the flow of a natural watercourse and thereby floods the lands of a riparian owner is responsible in damages for the wrong notwithstanding that he has not made a profit by it. (Lord Atkinson.) MAUNG BYAP. MAUNG KYI NYO. (1925) 52 I. A. 385 = 3 R. 494 = 42 C. L. J. 156 = 27 Bom. L. R. 1427 =

9 L. R. P. C. 209 = (1925) M. W. N. 894 = 30 C. W. N. 218 - A. I. R. 1929 P. C. 236 = 90 I. C. 198 = 49 M. L. J. 282.

### Natural stream—Artificial watercourse— Water flowing through.

-Right to use of -Basis and extent of -Distinction

The right to the water of a river flowing in a natural channel through a man's land, and the right to water flowing to it through an artificial watercourse constructed on his neighbour's land, do not rest on the same principle. In the former case each successive riparian proprietor is, prima facie, entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident to his ownership of it. In the latter, any right to the flow of the water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from which the water is artificially brought, or on some other legal origin (38). (Sir Montague E. Smith.) RAMESHUR PERSHAD NARAIN SINGH F. KOONJ BEHARI PATTUK.

(1878) 6 I. A. 33 = 4 C. 633 (637) = 3 Sar. 856.

### Rights of.

America, India and England-Distinction.

The law of alluvion in America seems to be less favourable to riparian proprietors than that of India or of England (431). NOGENDER CHUNDER GHOSE P. MAHOMED (1872) 10 B. L. R. 406 = 18 W.R. 113 = ESOF. 3 Sar. 151 -2 Suth. 640.

-Dhar-dhura-Custom of-What is.

The custom of dhar-dhura is a supposed right of a riparian owner to follow the receding bank of the river and to claim all land between the old and new shore. (Sir Edward Fry.) UDITNARAIN SINGH F. GOLABCHAND SARU. (1899) 26 I. A. 236 (239 - 27 C. 221 (226) = 7 Sar. 628.

#### River.

Boundary of-Sudden change of-Effect-Bengal Regulation XI of 1825. See ALLUVION AND DILUVION -ACCRETION-GRADUAL ACCRETION-RIPARIAN PRO-(1879) 6 I. A. 211. PRIETORS.

-Channel of-Change in-Effect of, on rights of riparian owners-Regulation XI of 1325, S. 4(1) and (5)-Distinction. See BENGAL REGULATIONS - ALLUVION AND DILUVION REGULATION (XI OF 1825), S. 4 (1) (1900) 27 L. A. 81 = 27 C. 768. AND (5).

-Land once allovial lying between two branches of a, or between two rivers-Shifting of volume of water-Change of ownership and right to possession of intermediate tract of land-Riparian proprietor on side of channel for time being fordable-Right of-Castom of-Proof-Onus -Quantum. See RIVER-LAND ONCE ALLUVIAL, ETC.

(1872) Sup. I. A. 34 (36).

-Navigable river-Land washed away and re-formed in bed of a-Ownership of. See RIVER-NAVIGABLE RIVER-LAND WASHED AWAY, ETC.

(1868) 12 M. I. A. 136 (140-1).

-Public navigable river—Accretion on either side of-Ownership of-Right to. See RIVER-PUBLIC NAVIG-ABLE RIVER-BED AND BANKS OF,

### BIPARIAN OWNERS-(Contd.)

River channel-Change in.

-Riparian owners-Rights of-Effect on. See BEN-GAL REGULATIONS-ALLUVION AND DILUVION REGU-LATION XI OF 1825, S. 4 (1) AND (5).

(1900) 27 I. A. 81=27 C. 768.

#### Upper and lower owners-Stream flowing through estates.

-Irrigation rights in.

In the absence of a right acquired by contract with the lower heritors, or by prescriptive use, an upper riparian proprietor has no right to dam back a river running through his land and to impound as much of its water as he may find convenient for the purposes of irrigation, leaving only the surplus, if any, for the use of proprietors below. His common law right is to take and use for the purpose of irrigation so much only of the water of the stream as can be abstracted without materially diminishing the quantity which is allowed to descend for the use of riparian proprietors below, and without impairing its quality. What quantity of water can be abstracted and consumed without infringing that essential condition must in all cases be a question of circumstance, depending mainly upon the size of the river or stream and the proportion which the water abstracted bears to its entire volume (68 9).

The legal right of the lower riparian owners is to have the water of the stream transmitted to them continuously and without interruption, and without any substantial diminution in volume, their right being only subject to the qualification that an upper proprietor may, for perposes which the law regards as legitimate, withdraw from the stream as it passes along his lands so much of its stream as will not materially affect its downward flow, or impair their uses of it (72). (Lord Watson.) DEBI PERSHAD (1897) 24 I. A. 60= SINGH P. JOYNATH SINGH.

24 C. 865 (874, 877)=1 C. W. N. 401=7 Sar. 209= 7 M. L. J. 120.

### Water-Right to flow of-Obstruction by neighbouring proprietor-Suit in respect of.

- Maintainability-Conditions.

The plaintiff and the defendant were proprietors of land and gardens on opposite sides of a khal in which the tide in the River Hooghly flowed and re-flowed, and by which the surface water of certain lands was carried in a direction from the east to the west in the Hooghly, the plaintiff being the proprietor on the north side, and the defendant on the south side at the mouth of the khal. The khal was a tidal creek daily subject to the flow of the river. For the protection of banks on each side of the khal, walls had been erected, one at each side of the khal. Upon the wall on his side becoming dilapidated, the defendant constructed a fresh one, whereby the direction of the wall was altered. A portion of it was built further in towards the defendant's land than it had been before, and another small portion was buit a little further out, making what might he called in one sense an encroachment.

The plaintiff, alleging that he was entitled to the salum on which the defendant had built his wall, sued for possession thereof by demolishing the wall. The plaint aver-"By the said act of the defendant, injury having accrued to the retaining wall of my garden, and inconvenience having been caused to the passage of boats to my screw-house through the said khal, and apprehensions being created as to the screw-house falling down eventually, cause of action has arisen."

It was not found-indeed the evidence pointed in the other direction—that the defandant, by what he had dose had sensibly altered the flow of water. All that was found was that the defendant encroached on the bed of the

### BIPABIAN OWNERS-(Contd.)

Water-Right to flow of-Obstruction by neighbouring proprietor-Suit in respect of-(Contd.)

khal, which was the soil of the Government, without causing any sensible injury to the plaintiff.

Held, that the High Court, erred in ordering the removal of a portion of the defendant's khal.

The case of Bickett v. Morris (L. R. 1 H. L. Sc. p. 47)

does not govern the present case, because

(1) the present plaintiff does not state his cause of action in the manner in which it was stated in *Bickett v. Morris*. The plaintiff does not state that, he as a riparian proprietor, was entitled to the flow of the water as it had been

prietor, was entitled to the flow of the water as it had been accustomed to flow, and that that flow was seriously and sensibly directed so as to be an injury to his rights, but he puts his case on the ground that he is the owner of the soil on which the wall was built, as issue which is found against him:

(2) the present plaintiff has neither chained nor proved such an easement as that which has been described in the case of Bickett v. Morris, and which was there interfered with; nor was any issue raised as to such a right of easement;

(3) the plaintiff has not all the rights of a riparian proprietor, or he would have been entitled to the bed of the stream ad medium filum.

The Government being in possession of the khal, they may be able to do what they like with it: and plaintiff would have no right to complain as against them of any interference with the flow. He could therefore have no right against a riparian proprietor on the other side;

(4) Lastly, the defendant, by what he has done, has not, to use the words of Lord Blackburn, sensibly altered the flow of water.

Without establishing this, the plaintiff has failed to show any such injury to his right as would support an action. (Sir Robert P. Collier.) KALI KISHEN TAGORE P. JODOO LAL MULLICK. (1879) 6 I. A. 190 (195 6) 5 C. L. R. 97 = 3 Suth. 656 = 4 Sar. 61 = Bald. 286.

The effect of the case of Bickett v. Morris (L.R.1 H. L. Sc. p. 47) may be stated thus: A riparian proprietor on one side of a stream complained of the riparian proprietor on the other side, who had built into the solum of the stream beyond a line which had been agreed upon between the parties, and had thereby obstructed and changed the flow of the water so that the plaintiff's right to have the water flow in its accustomed manner was injured. It was held that such an obstruction was such an injury to the plaintiff's rights as enabled him to support the action without proof of actual damage immediate or even probable. The ratio decidendi is illustrated by the remark of the Lord Chancellor: "It was asked in argument whether a proprietor on the banks of a river might not build a boat house apon it? Undoubtedly this would be a fair use of his rights, provided he did not thereby obstruct the river or divert its course; but if the erection produced this effect. the answer would be that, essential as it might be to the full enjoyment of the use of the river, it could not be permit-(194.)

This case was explained by Lord Elackbern in this manner: "The defender had without any right built an encroachment on his side of the river which necessarily caused more water to flow on the plaintiff's side, and though that encroachment was small, it was such as in a small stream to make a sensible alteration in the flow. That was an injury to the proprietary right of the pursuer, but he was not able to qualify present damage." (1945.) (Sir Robert P. Collier.) KALI KISHEN TAGORE: JODOO LAL MULLICK. (1879) 6 I. A. 190 = 5 C. L. B. 97 = 4 Sar. 61 = 3 Buth. 656 = Bald. 286.

### RIPARIAN OWNERS-(Contd.)

#### Water course.

In the case of a natural watercourse the successive riparian owners are each entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land as a natural incident of the ownership of his land. In the case of an artificial watercourse, however, any right of the owners to the flow of the water must rest upon prescription or grant from or contract with the owner of the land from which the water is artificially brought. (Lord Atkinson.) MAUNG BYA 7. MAUNG KYI NYO. (1925) 52 I. A. 385 (394-5) = 3 R. 494 = 42 C. L. J. 156 = 27 Bom. L. R. 1427 =

3 R. 494 = 42 C. L. J. 156 = 27 Bom. L. R. 1427 = (1925, M. W. N. 894 = 9 L. R. P. C. 209 = 30 C. W. N. 218 - A. I. R. 1925 P. C. 236 = 90 I.C. 198 = 49 M. L. J. 282.

-Rights in-Lower Burma-Law in, if same as in England.

The law in Lower Buttna as to the flow of, and flooding by, fresh water rivers and water courses or trespasses on the bed or soil of such rivers, is the same as in England (Lord Atkinson.) MAUNG BYA 2. MAUNG KYI NYO.

(1925) 52 I. A. 385 (386) = 3 R. 494 = 42 C. L. J. 156 = 27 Bom. L. R. 1427 = 9 L. R. P. C. 209 = (1925) M. W. N. 894 = 30 C. W. N. 218 = A.I.R. 1925 P. C. 236 = 90 I. C. 198 = 49 M. L. J. 282.

#### RIPARIAN PROPRIETORSHIP.

-Issues-Onns of proof.

The appellant was the owner of a targe estate in Zillah Sarun, which comprised the Doomsee estate. The respondents were Zemindars in Tirhoot, which comprised the Sohappore estate. The two Zillahs were divided by the river Gunduck, which at that part of its course had a northem and a southern channel. In 1790-1, when the two estates were permanently settled, the Gunduck ran in the northern channel; which at that time was the boundary of the two Zillahs, and also of the two estates, Tirhoot and, Sohagpore lying on the northern, Sarun and Doomsee on the southern bank of the stream. In 1837, the river, whether by gradual recession or sudden shifting was not very clear, had got into the southern channel; and a quantity of chur land to the north of that channel was then resumed by Government and settled with the Zemindars of Sobagpore. In 1846 it was again settled with the same Zemindars, who remained in possession until 1848, when the river, having returned to its northern channel, the deara land was claimed by proprietors on the southern or Sarun side of the river. consequence was an Act IV of 1840 suit, which was decided in favour of the Zemindars of Sohagpore. In 1856, on the expiry of the last temporary settlement, the question arose with whom the Government should engage for the revenue, and it was finally decided by the Board of Revenue that a settlement should be made with the Zemindars of Doomsee; who accordingly obtained possession. The Board's decision proceeded upon two principles, ara, that an usage existed that the main channel of the Gunduck should be the boundary of the Zemindars, and that, therefore, the interest of the Zemindars of Sohagpore had been of a limited, temporary, and conditional character. Thereupon the Zemindars of Solagpore instituted the suit out of which the appeal arose to impeach that settlement and to recover possession. The High Court found that the land in dispute was identical with that formerly settled with the maliks of Sohagpore who (it was assumed) have a permanent proprietary interest therein.

#### RIPARIAN PROPRIETORSHIP-(Contd.)

Held, that the proper issues to be tried in the cause were (1) whether the land had been settled in 1837 with the maliks of Schagpore as proprietors of alluvium which had gradually accreted to their estate; or upon what other grounds such settlement was made,-the onus of proving gradual accretion being on plaintiffs: and (2) whether there was at the permanent settlement, and had been since, a clear and definite usage such as supposed by the Board of Revenue,-the burden of proving the affirmative of that being on the defendant. MAHARAJAN RAJENDUR PAR-TAB SAHEE : LALLJEE SAHOO. (1873) 2 Suth. 910 = 20 W. B. 427.

#### RIGHT.

-(See also LEGAL RIGHT.)

-Exercise of-Damage caused by-Liability for-Locusts-Driving away of, to avoid damage to one's own land-Damage to neighbour's land by reason of-Liability for Sa Damages-Locusts. (1911) 21 M. L. J. 674. -Exercise of-Injury caused by-Damages for-Liability for-Fletcher v. Rylands-Principle of See (1874) 1 I. A. 364 (384-5). DAMAGES-RIGHT. -Presumption of, from conduct--Propriety-Facts

disproving right-Effect. See PRESUMPTION-RIGHTS. (1865) 10 M. I. A. 429 (433).

-Infringement of -Action for -Right of -Damage-

Necessity. There may be, where a right is interfered with, injuria sine damno sufficient to found an action; but no action can be maintained where there is neither damnum nor injuria

(195-6). (Sir Robert P. Collier). KALI KISHEN TAGORI v. (1879) 6 L.A. 190 = JADOO LAL MULLICK. 5 C. L. R. 97-4 Sar. 61-3 Suth. 656-Bald. 286.

-Living persons-Rights vested in-Continued recognition of-Refusal of-Grounds-Obsolescence and desnetude if.

Where rights can once be shown to have been established and continue to be vested in living persons obsolescence and desuctude are popular expressions rather than solid legal grounds for refusing a continuing recognition to the right as originally established. (Lord Summer.) NARAYAN SINGH P. NIKANJAN CHAKRAVARTI.

> (1923) 51 I. A. 37 (70) = 3 Pat. 183 = A. I. B. (1924) P. C. 5=28 C. W. N. 351= 34 M. L. T. 27 = 5 Pat. L. T. 171 = 79 I. C. 825.

-Obligation corresponding-Right without-Claim to-Maintainability-Village tank-Repair of at their own cost-Right of some villagers to effect, to exclusion of others-Claim to-Maintainability.

The plaintiffs and defendants were all inhabitants of a village, and the subject of the dispute was a tank belonging to that village. The plaintiffs claimed in their plaint to be hereditary hukdars, that is, rightful owners, of the tank, and they prayed for a declaration that they had the sole right to repair it at their own exclusive cost. It was either admitted or found that the tank was the common property of the village, and that the villagers at large had full right to the enjoyment of it; but the plaintiffs contended that the function of cleaning, repairing, and generally managing and protecting the tank was an hereditary possession of their family, which they had a right to retain so long as they bore the cost of it.

Held, that such a right as that could not be claimed without a corresponding obligation (52).

The plaintiff's counsel are unable to shew in what way any obligation is imposed on their family. There is no endowment to support the tank, and no right of taking tolls or fees. It is confessedly at the option of the plaintiff's family whether they will execute the repairs or not. In their

RIGHT-(Contd.)

Lordships' opinion, it is equally at the option of the other villagers to permit the repair to be executed by the plaintiffs or to insist upon the work being done at the common cost. (52). (Lord Hobbouse.) SIVARAMAN CHETTI v. MUTHIA (1888) 16 I. A. 48=12 M. 241= CHETTL

-Substantive right-Statute dealing STATUTE-RIGHT SUBSTANTIVE DEALT WITH BY. (1927) 54 I. A. 421 (425).

-Suit-Right of. See SUIT-RIGHT OF.

-Wrong and violence-Claim originating in-Legalization of, by long enjoyment. See TODAGARAS HUKS-ORIGIN IN WRONG AND VIOLENCE.

(1859) 8 M. I. A. 1 (39-40).

#### RIVER.

(See also RIPARIAN OWNER AND WATERCOURSE). BED OF-OWNERSHIP OF.

BOUNDARY OF.

CHANNEL OF-CHANGE IN-RIPARIAN OWNERS-RIGHTS OF.

DIVERSION FOR IRRIGATION PURPOSES OF WATER OF, BY PUTTING UP PERMANENT MASONRY STRUC-TURES.

ENGLISH AND INDIAN RIVERS.

GOVERNMENT RIVER-CANAL CONSTRUCTED BY PRIVATE PERSONS ON GOVERNMENT LAND-IRRI-GATION OF, BY WATER FROM GOVERNMENT RIVER.

HIGH-WATER MARK IN-LAND IMMEDIATELY CON-TIGUUUS TO.

LAND GAINED FROM-LAW RELATING TO-LAND LEFT DRY BY PARTIAL RECESSION OF WATERS OF A BHEEL

LAND ONCE ALLUVIAL LYING BETWEEN TWO BRAN-CHES OF A, OR BETWEEN TWO RIVERS-SHIFTING OF VOLUME OF WATER-INTERMEDIATE TRACT OF LAND-OWNERSHIP AND PUSSESSION OF.

LAND WASHED AWAY ON BOTH SIDES BY.

NAVIGABLE RIVER.

PERMANENTLY SETTLED . ESTATE-NON-NAVIGABLE RIVER FLOWING THROUGH-CHURS FORMED IN. PUBLIC NAVIGABLE RIVER.

TIDAL AND NAVIGABLE RIVER.

### Bed of-Ownership of.

-English presumption as to-Applicability of, to great Indian rivers.

Their Lordships have grave doubts whether the presumption (that the owner of both banks is also the owner of the bed of the river) applicable to little English rivers applies to great rivers such as the Godavari. (Lord Hobhouse.) SRI BALSU RAMALAKSHMAMA P. COLLECTOR OF GODAVARI.

(1899) 26 I. A. 107 (112) = 22 M. 464 (469-70) = 3 C. W. N. 777=1 Bom. L. R. 696=7 Sar 534. -Tidal river-Navigable river which has ceased to

he tidal-Distinction.

Somble in India, there is no distinction between a tidal and a navigable river, which has ceased to be tidal, as regards the proprietorship of the bed of the river though, in respect of the mode of accretion, there must be some differ rence between the effects produced by the daily reflux of the tide, and the changes which are mainly consequent of the annual floods (431-2). NOGENDER CHUNDER GHOSE P. MAHOMED ESOF.

(1872) 10 B. L. R. 406=18 W. R. 113=3 Sar 151=

-Wandering and navigable stream-Water running over ground-Bed becoming dry-Ownership in cases of

RIVER-(Contd.)

Bed of-Ownership of-(Contd.)

Although in the case of a wandering and navigable stream, the bed of the river may be said temporarily to belong to the public domain, that state of things exists only while the water continues to run over the ground (803). (Sir James W. Colvile.) RADHA PROSHAD SINGH P. RAM COOMAR SINGH. (1877) 3 C. 796 = 1 C.L. R. 259 = 3 Suth. 485 = 3 Sar. 776.

#### Boundary of.

-Fluctuating boundary-Adoption between two Zillaks of-Effect of, on rights of landed proprietors in those Zillaks.

It by no means follows that if a certain fluctuating boundary, viz., the course of a river, is adopted between two Zillahs, that its adoption for that purpose affects the rights of landed proprietors in those Zillahs. The case in 13 M. I. A. I. is to the effect that there may be a fluctuating boundary between Zillahs, which by no means affects the rights of landed proprietors (38.) (Sir Robert P. Collier.) BABOO BISSESSURNATH v. MAHARAJAH MOHESSUR BUX SINGH BAHADOOR. (1872) Sup. I. A. 34—11 B.L.R. 265—18 W. R. 160—3 Sar. 147—2 Suth. 650.—Shifting of—Lands included as those of defendant—Ownership of—Gradual accretion not proved. See BenGAL REGULATIONS—ALLUVION AND DILUVIAN REGULATION XI OF 1825—S. 4 (2).

(1905) 32 I. A. 165 (170-1) - 27 A. 655

Sudden change of—Regulation XI of 1825, Ss. 2 & 4(2)—Temporary assessment of lands gradually accreted to permanent tenure—Effect. See ALLUVION AND DILU-VION—ACCRETION—GRADUAL ACCRETION—RIPARIAN PROPRIETORS. (1879) 6 I. A. 211.

### Channel of-Change in-Riparian owners.

Effect on—Regulation XI of 1825—S 4 (1) & (5)— Distinction. See BENGAL REGULATIONS—ALLUVION AND DILUVION REGULATION XI OF 1825—S. 4 (1) & (5).

(1900) 27 I. A. 81 - 27 C. 768.

#### Diversion for irrigation purposes of water of, by putting up permanent masonry structures.

Claim to Evidence disproving, but disclosing right to diversion by putting up temporary structures. Decree proper in case of Declaration of latter right.

Appellant, the owner of the Gangole estate, sued the owners of two other estates for a declaration of his right to build a permanent masonry structure across a hill stream known as the Kovvada river, which flowed though his estate, for the purpose of diverting its water for feeding the Saglpadu stream which irrigated the lands in his estate.

The courts below found that for more than 20 years before the commencement of the suit the defendants, whose estates lay below the appellants' estate, had enjoyed the water free entirely from any such interruption as permanent masonry structures would create, and the High Court dismissed the suit on foot of that finding. Both the Courts below, however, keld that there had been from time to time an interruption of the water of Kovvada through the erection of temporary structures put up by the owners of the Gangole estate at the point of junction of the Sagipadu and Kovvada streams, and that those structures were used for the purpose of feeding the Sagipadu stream with water from the Koovada river, and that that right had been earnised for 20 years before suit.

Held that, in the circumstances of the case, the decree of the High Court dismissing the suit was wrong, and that there ought to be a declaration that the appellant was entitled to divert water from the Kovvada Stream so as to accure a flow in the Sagipadu channel for the purpose of impation by the erection of temporary structures at the RIVER - (Contd.)

Diversion for irrigation purposes of water of, by putting up permanent masonry structures.—(Ctd.) point of junction of the stream and channel. (Lord Buck

point of junction of the stream and channel. (Lord Buck master). VIRABHADRAYVA GARU v. MAHALAKSH-MANMA GARU (1929) 31 L.W. 326 =

32 Bom. L.R. 492 = 31 C.W.N. 512 = 122 I. C. 305 = A.I.R. 1930 P. C. 42 = 58 M. L. J. 285.

#### English and Indian Rivers.

Distruction between.

The difference between English rivers and such rivere as the Godavari is obvious. (Lord Hobbotts.) SRI BALSU RAMALAKSHMAMA 7. COLLECTOR OF GODAVARI.

(1899) 26 I.A. 107 = 22 M. 464 (469) = 3 C. W. N. 777 -1 Bom. L. R. 696 = 7 Sar 534.

GRADUAL SLOW AND IMPERCEPTIBLE ACCRETION.

(1921) 49 I. A. 67 (72-3) = 45 M. 207 (213).

Formations in and additions to—Distinction.

In dealing with the great rivers in India and comparing them with the rivers in England, it is necessary to bear in mind the comparative rapidity with which formations and additions take place in the former. (72). (Lord Carson.) SECRETARY of STATE FOR INDIA v. RAJAH OF VIZIA-NAGARAM. (1921) 49 I. A. 67-45 M. 207 (212) =

30 M.L.T. 112 - 26 C. W. N. 348 - 15 L. W. 389 = 20 A.L.J. 438 - 35 C.L.J. 463 = (1922) M. W. N. 381 = A. I. R. (1922) P. C. 105 = 67 I. C. 1 = 42 M. L. J. 589.

Government River—Canal constructed by private persons on Government land—Irrigation of, by water from Government River.

——Right of those persons to—Conditions—Expectations raised by Government to that effect. See CROWN—LAND OF—CANAL CONSTRUCTED BY PRIVATE PERSONS ON. (1901) 28 I. A. 211 = 28 C. 693 (705-6).

# High-water mark in—Land immediately contiguous to.

Onoucrship of.

The case then is, that the East Indian Company, being the owners in fee of a certain portion of land lying between the high and low-water mark which was subject to certain curvatures for navigation and otherwise, with the leave and consent of those who were interested, altered the character of the land. Instead of making the land a portion of the bed of the river, they made it permanent dry land; there is, therefore, a portion of permanent dry land westward of high-water mark, and forming a part of what was anciently the bed of the river, which is now part of the bed of the river, and that portion of land, according to the judgment of the court below, is the part to which the accretion in question has taken place. The questions, therefore, is reduced to this: who is the owner of the land immediately contiguous to the high-water mark in the river at this place? The answer is, those persons who were owners of that portion of the bed of the river which now constitutes dry land, and they are the Respondents, the East India Company (287-8). (Sir William H. Maulc.) DOE DEM SHERKRISTO P. EAST INDIA CO.

(1856) 6 M. I. A. 267-10 Moo. P. C. 140-1 Sar. 540.

Land gained from—Law relating to—Land left dry by partial recession of waters of a bheel.

-Applicability to.

It is not suggested that the law relating to land gained from a river by gradual accretion applies to land left dry by the partial recession of the waters of a bheel (811). (Sir Robert P. Collier.) RADHA GOBIND ROY SAHEB ROY BAHADOOR v. INGLIS.

(1880) 3 Buth. 809 = 7 C. L. B. 364 = Bald. 377.

RIVER -(Could.)

Land once alluvial lying between two branches of a. or between two rivers-Shifting of volume of water-Intermediate tract of land-Ownership and possession of.

-Right to, of reparian owner on side of channel for time being fordable-Custom of Proof of Onus.

The plaintiffs were the owners of a Zemindary on the north side of the north channel of the Ganges, and the defendants, the owners of zemindary A on the south side of the South Channel of the Gauges, both streams flowing from the west and joining each other to the east of the property in dispute. The tract of land between those two channels was, as early as 1790, in the possession of one N. H., with whom, as occupier and proprietor a settlement was made by the Government in 1790. In 1800 a permanent settlement was made with his son. N H, and his heirs and those who succeeded him in title, including the defendants, who claimed by purchase from a descendant of N. H. held uninterrupte I possession of the land in dispute from 1790 to the date of suit.

In 1849 or 1850 the great volume of water left the northern channel and took the southern channel, whereby the northern channel which before had been deep became fordable, and the southern channel which before had been fordable became deep. The plaintiffs alleged that upon that state of facts they were entitled to obtain possession of the whole of the land lying between those two channels, by

virtue, inter alia, of an alleged custom.

Held that, in order to succeed in disturbing a possession of such long duration, under the circumstances of the case. it was necessary for the plaintiff's to establish a custom existing in the district in which those properties were situated to the effect "that where land which had once been alluvial lies between two branches of a river (or it would appear between two rivers), and from time to time the volume of water shifts so that alternately one of those channels is deep and the other is fordable, then the whole of such intermediate land belongs to the land-owner on the side of the channel which at any given time is fordable; in short, that the ownership and right of possession of the whole intermediate tract of land shift with the volume of thewater, always attaching to the riparian proprietor on the side of the channel which happens for the time being to befordable." (36).

The custom appears to be based on the hypothesis that at all times one channel is deep and the other fordable, because it could not apply if both were deep, or both were fordable; the custom is also wholly independent of any question of accretion or errosion of banks; it attaches merely upon the water becoming deeper or shallower in one channel or the other without necessarily any alteration in

the beds or banks of the channels (36).

Held further that very clear and distinct evidence of the existence of the custom was necesary, since the operation of such a custom must be to render the rights of property

fluctuating and precarious (36).

Quaerc, whether a custom of the above description fell within the terms of S. 2 of Regulation XI of 1825 (36). (Sir Robert P. Collier.) BABOO BISSESSURNATH D. MAHARAJAH MOHESSUR BUX SINGH BAHADOOR.

(1872) Sup. I. A. 34 = 11 B. L. R. 265 = 18 W. R. 160 = 3 Sar. 147 = 2 Suth. 650. Land washed on both sides by.

-Ownership of.

There is no reason why the principle that gradual accretion enures to the land which attacts it should not apply to land which the river washes on both sides, as well as to land which is washed only on one side. (Lord Hobbouse.) SRI BALSU RAMALAKSHMAMA 7. COLLECTOR OF GODA-VERY. (1899) 26 I. A. 107 (111-2) = 22 M. 464 (469) = 3 C. W. N. 777=1 Bom. L. R. 696=7 Sar. 534.

RIVER-(Contd.)

Navigable river.

Churs detached formed in middle of a-Acquisitions of-Proof of-Purchaser bona fide of-Ejectment suit

against-Onus on plaintiff in.

Acquisitions of the nature of this chur (a detached chur washed away and reformed in the bed of a navigable river) are often doubtful in their origin; they must depend much on oral testimony, which time is constantly destroying or impairing, and it is often hard to say who is the person to whom the law would ascribe the legal ownership of them. The mere cultivation of them, like that of waste or jungle lands, carries with it no prima facie character of usurpation or wrong. An undisputed possession and cultivation. even though for a few years only, would the more readily induce a purchase, and a purchaser bona bide and without notice might with perfect honesty, and even with the favourable construction by a Court of Justice of his acts, delend his possession by insisting on strict legal proof of an adverse (Lord Chelmsford.) SREE ECKOWRIE title (141-2). SINGH P. HEERALOLL SEAL.

(1868) 12 M. I. A. 136 = 11 W. R. P. C. 2= 2 B. L. R. P. C. 4 = 2 Suth. 171 = 2 Sar. 399.

-Land wached away and reformed in bed of-Ownership of.

But this is a case of a claim to land washed away and re-formed in the bed of a navigable river, the ownership of the soil of which is not commonly in the riparian proprietors of its banks, and which is not proved in this case to have belonged to the predecessor in title of either disputant. The re-forming of laud in such a stream, after a considerable interval and frequent floods, is not prima facie to be ascribed to a loss from any particular portion of territory, nor is the land which has been removed by a sudden avul, sion reclaimable unless the circumstances supply evidence of identity, which is wanting in the case before us. This re-formed land is not ascribed to avulsion, and several years elapsed between the loss of the Plaintiff's land and the appearance of this chur. The title by accretion to a new formation generally, is not founded on equity of compensation, but on a gradual accretion by adherence to some particular land which may be termed the nucleus of accretion. The land gained will then follow the title to that parcel to which it adheres. It is obvious, therefore, that such a title is not established by mere proof of general inclusive boundaries of land, at a time long preceding the actual formation of the chur, since the lands that have such a floctuating boundary as a tidal river, and which are them selves subject to loss and gain of quantity by acts independent of the owner's concurrence, and which may pass from side to side of the river boundary, have not the ordinary element of fixedness which belongs to immoveable estate, in the common course of things. A detached chur, independent of usage, in such a stream would belong to neither riparian proprietor: and the circumstance that it was subtended by the land of one would not be enough to entitle him to it. (140-1). (Lord Chelmsford.) SKEE ECKOWRIE SINGH (1868) 12 M. I. A. 136= v. HEERALOLL SINGH.

11 W. R. P. C. 2=2 B. L. R. P. C. 4=2 Suth. 171= 2 Sar. 399.

-Tidal river-Navigable river which has ceased to be tidai-Bed of-Ownership of-Distinction. See RIVER-BED OF-OWNERSHIP OF-TIDAL RIVER.

(1872) 10 B. L. B. 406 (431-2). Permanently settled estate—Non-navigable river flowing through—Churs formed in-

Liability to assessment of-River bed part of per manently settled estate, See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-PERMANENTLY SETTLE ED ESTATE-NON-NAVIGABLE RIVER ETC (1924) 51 I. A. 241=51 C. 802 (817)

BIVEB -(Contd.)

#### Public navigable river.

—Accretion on either side of—Ownership of—Riparian owner—Right of. See RIVER—PUBLIC NAVIGABLE RIVER—BED AND BANKS OF.

—Bed and banks of—Ownership of—Accretion to land on either side—Ownership of—Private property submerged and then left bare—Ownership of.

The bed of a public navigable river is the property of the Government though the banks may be the subject of private ownership. If there be slow accretion to the land on either side, due, for instance, to the gradual accumulation of silt, this forms part of the estate of the riparian owner to whose bank the accretion has been made. (Sc. Regulation II of 1825). If private property be submerged and sabsequently again left bare by the water, it belongs to the riparian owner. (Lord Phillimore.) NARESH NARAYAN ROY v. SECRETARY OF STATE FOR INDIA.

(1923) 50 I. A. 121 (126) = 50 C. 446 (450·1) = A. I. B. 1923 P. C. 1 = (1923) M. W. N. 511 = 32 M. L. T. 162 = 28 C. W. N. 453 = 77 I. C. 1048 = 45 M. L. J. 444.

- Bed and banks of Ownership of Accretion to land on either side-Ownership of Private property submerged and then left bare-Right to-Onus on claimant.

The bed of a public navigable river is the property of the Government, though the banks may be the subject of private ownership. If there be slow accretion to the land on either side due, for instance, to the gradual accumulation of silt, this forms part of the estate of the riparian owner to whose bank the accretion has been made. If private property be submerged and subsequently again left bare by the water, it belongs to the original owner. Where a claim is made to property on this last-mentioned ground, the onus of proving the facts necessary to establish the original ownership rests upon the claimant (364). (Lord Buckmaster.) HARADAS ACHARJYA CHOWDHURI 2. SECRETARY OF STATE FOR INDIA.

(1917) 43 I. C. 361 = 22 M. L. T. 438 = 26 C. L. J. 590 = (1918) M. W. N. 28 = 20 Bom. L. R. 49.

Private property submerged by water of, and then left bare—Claim to—Evidence of—Rennel's map—Ilaki-ket chowhuldibandi papers—Survey map—Admissibility.

Where the plaintiffs claimed that a large tract of land formerly under the river Ganges, formed part of their permanently settled Zemindary, and relied upon three sets of documents, viz., a plan of a survey conducted by Major Rennel between the years 1764 and 1773, the hakikat chow-huddibandi (boundary) papers, and the Government survey map made in 1879, held that the documents were all admissible in evidence (365). (Lord Buckmaster.) HARADAS ACHARJYA CHOWDHURI v. SECRETARY OF STATE FOR [1917) 31. C. 361-22 M. L. T. 438-

26 C. L. J. 590 = (1918) M. W.N. 28 = 20 Bom. L. R. 49.

Private property submerged by water of, and then left bare—Claim to—Onus on claimant. See RIVER—PUBLIC NAVIGABLE RIVER—BED AND BANKS OF. (1917) 43 I. C. 361 (364).

### Tidal and navigable river.

Island formed in bed of sea near mouth or delta of Crown's right to—Island formed under three miles of mainland. See ISLAND—TIDAL AND NAVIGABLE RIVER. (1918) 43 I A. 192 (199, 201-3) = 39 M. 617 (625, 628).

River forming new channel—Right of grantee to follow liver whose subjacent soil belongs to a riparian proprietor

RIVER-(Contd.)

Tidal and navigable river-(Contd.)

-English law-Distinction. See FISHERY RIGHT-TIDAL NAVIGABLE RIVER-FISHERY RIGHT IN.

(1914) 41 I. A. 221 (241)=42 C. 489.

Jalkai right in—Grantee's right to "follow the river" if extends to new channel formed not gradually but suddenly and rapidly—English law— Inapplicability of. See FISHERY RIGHT—TIDAL NAVIGABLE RIVER—JALKAR' RIGHT IN—GRANTEE'S RIGHT, ETC.

(1914) 41 I. A. 221 (244-5) = 42 C. 489 (533).

Jalkar right of several fishery in—Crown grant prior to permanent settlement of—Proof of, See FISHERY RIGHT—TIDAL NAVIGABLE RIVER—JALKAR RIGHT OF SEVERAL FISHERY IN.

(1914) 41 I. A. 221 (227.8) = 42 C. 489 (511).

——Land thrown up by—Re-formation in situ—Accretion—Claim based on—Proof of. See ALLUVION AND DILLUVION—CHUR LAND — RIVER NAVIGABLE AND TIDAL. (1872) 18 W. B. 113.

#### RIWAJ-I AM.

—Nature of —Statements in —Admissibility—and value of. See CUSTOM—EVIDENCE OF—RIWAJ-I-AM. (1916) 44 I. A. 89 = 44 C. 749 (758-9).

#### ROKKAGUTHAGAI.

-Meaning of.

Rokkaguthaghai, another spelling of the vernacular word "rokkaguthakai", means an 'assessment, also fixed at favourable rates, either from favour or as an inducement to reclaim waste." (Sir John Edge.) NAINAPHLAI MAR-KAYAR P. RAMANATHAN CHETTIAR.

(1923) 51 I. A. 83 (92) = 47 M. 337 = A. I. B. 1924 P. C. 65 = 22 A. L. J. 130 =

19 L. W. 259 = 34 M. L. T. 10 = (1924) M. W. N. 293 = 10 O. & A. L. R. 464 = 28 C. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

#### ROKKAGUTHAGAI MIRAS EKABHOGAM VILLAGE

-Meaning of.

A "rokkaguthagai miras ekabhogam village" neans a rokkagutthagai village all the lands in which are the property of one proprietor. (Str. John Edge.) NAINAPILLAI MARKAYAR v. RAMANATHAN CHETTIAR.

(1923) 51 L A. 83 (95) - 47 M, 337 -A. I. B. 1924 P. C. 65 - 22 A. L. J. 130 -

19 L. W. 259 = 34 M. L. T. 10 - (1924) M. W. N. 293 -10 O. & A. L. R. 464 = 28 O. W. N. 809 = 82 I. C. 226 = 46 M. L. J. 546.

#### ROYAL DESCENT.

- General law of Legal hear - Condition - Semority in age - Nearness of kin.

According to the general law of Royal descent, two conditions are necessary to constitute the legal heir, 272., seniority in age and nearness of kin (541-2). (Lord Chelmsford.) NEELKISTO DEB BURMONO 2: BEERCHUNDER THAKOOR. (1869) 12 M. I. A. 523...

12 W. B. (P. C.) 21=3 B. L. B. (P. C.) 13= 2 Suth. 243=2 Sar. 523.

RULE.

General rule—Existence of—Truism that "each case depends on its own circumstances" not destructive of. See OBSERVATIONS—GENERAL RUDE—EXISTENCE OF.

(1917) 44 I. A. 218 (224)=45 C. 94.

——Legal rule—Application of—Analogy—Reliance on mere—Deduction from logical apprehension of principle— Oriental and Accidental habits. See LEGAL RULE.

(1921) 48 I. A. 162 (174) = 2 Lah. 40,

#### RYOTWARI TENURE.

——Conselect District—Thirty years' settlement of 1910—Notation of 1st June. 1910, cl. 36—Reservation in—Meaning and effect—Achikuttu lands—Wet crops raised on—Levy of set rate in case of—Legality—Wet crops raised even prior to settlement of 1910—Effect.

Wet crops having been raised on achekattu lands which were "retained as ordinary dry," and which were registered as dry and assessed accordingly at the thirty years' settlement of 1910, in the Chingleput District, the Government levied an enhanced assessment on those lands, the enhancement representing the difference between wer rates and the dry rates already paid. Wet crops had been raised on the said lands even prior to the settlement of 1910. In a sait by the owners of the lands, inter alia, to recover from the Government the enhanced assessment so levied on the ground that the levy thereof was opposed to the Notification of 1st June, 1910, and was illegal, held, that the levy of the enhanced assessment in question was not opposed to the said Notification and was not illegal, and that it did not give the plaintiffs any cause of action.

So long as lands which were registered as dry were cultivated with dry crops it would obviously be unfair and opposed to the whole scheme of the settlement that their assessments should be enhanced. On the other hand, there would be nothing harsh or unreasonable in providing that, if during the period of the settlement the pattadar should raise valuable wet crops on lands registered as dry, that is, as bearing the much less valuable dry crops, he should be called upon to pay at the higher rates. The reservation as to lands which might be converted from dry to wet or manavari, in cl. 36 of the Notification of 1st June, 1910, was inserted for the purpose of meeting such a case.

Conversion, within the meaning of cl. 36 of the said Notification, means conversion by the pattadar and only reserved to the Government a power to increase the assessment where there had been such a conversion. In considering whether there has been a conversion within the meaning of the re servation in cl. 36, the fact that wet crops may have been raised on the lands prior to the settlement is not the governing consideration. The raising of wet crops on land registered at the settlement as dry is a conversion within the meaning of the reservation. So long as they cultivated the land as dry the pattadars were entitled to hold the lands for the whole period of the settlement at the rate assessed on them as such, but when they proceeded to raise wet crops on them they effected a conversion and justified the revenue authorities in imposing upon them "corresponding wet assessment," that is, the appropriate wet rates. (Sir John Wallis.) THE SECRETARY OF STATE FOR INDIA 2. VALARPURAM KANDADAI RAMANUJACHARIAR

(1928) 55 I. A. 331 – 51 Mad. 611 – 28 L. W. 384 – 111 I. C. 197 = 1928 M. W. N. 822 – 33 C. W. N. 61 – 48 C. L. J. 500 = A. I. R. 1928 P. C. 221 = 55 M. L. J. 281 (P. C.).

-Land held under-Rent due in respect of-Remistion of-Power of-Board of Revenue-Collector and other inferior officials.

Remissions of the rent due by the ryots holding lands under ryotwari tenure are competent under the Standing orders, but they can only be made by the authority of the Board of Revenue, and the inferior officials, including the Collector, have no power at their own instance to make them (72), (Lard Salveten.) MAHARAJA OF VIZIANAGARAM v. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1926) 53 I. A. 64 = 49 M. 249 = 43 C. L. J. 378 = 94 I. C. 501 = 28 Bom. L. B. 865 = 24 L. W. 9 = (1926) M. W. N. 585 = A. I. R. 1926 P. C. 18 = 50 M. L. J. 391 (398).

#### RYOTWARI TENURE-(Contd.)

- Land held under - Submergence of - Relinquishment by ryot on - Proof of - Quantum - Re-formation in situ after relinquishment - Government's right in case of.

Mere submergence of land held under ryotwari tenure does not infer a relinquishment by the holder. On the other hand, if he wishes to retain his right to the submerged lands on the offchance of their being reformed in situ at some future date, he must continue to pay year by year the assessment or rent which is due to Government.

Held, on the evidence, affirming the High Court, that, on the submergence of lands held under ryotwari tenure, the ryots holding the same relinquished their holdings (and thereby secured immunity from further assessment in respect of them) as and when the lands became submerged and no longer capable of cultivation, and that when the lands were re-formed in situ, they became once more the absolute property of the Government both under the Madras Act III of 1905, and at common law, exactly as they had been when the ryotwari tenures were first instituted (72-3). (Lord Salvere) MAHARAJA of VIZIANAGARAM v. SECRETARY OF STATE FOR INDIA IN COUNCIL.

(1926) 53 I. A. 64 = 49 M. 249 = 43 C. L. J. 378 = 94 I. C. 501 = 28 Bom, L. B. 865 = 24 L. W. 9 = (1926) M. W. N. 585 = A. I B. 1926 P. C. 18 = 50 M. L. J. 391.

——Land held under—Under-ryot of—Claim to right of occupancy by—Proof of—Onus—Quantum. See PERMAN-ENT RIGHT OF OCCUPANCY—RYOTWARI PATTADAR.

(1919) 47 I A. 76=43 M. 567 & (1929) 56 I. A. 248=52 M. 549.

Transfer of Superior's consent—Necessity.

Quarre.—Whether a transfer of a ryotwari tenure can be effected without the consent of the Zamindar or Talukdar, as the case might be, the immediate successor in estate. It would be unsafe for an ultimate Court of appeal to express an opinion upon the question as a mere dry, legal question turning on the incidents of hereditary tenure. (Lord Chelmsford.) (1869) 13 M. I. A. 270 (274)

13 W. R. P. C. 18=2 Suth. 300=2 Sar. 528= 15 B. L. B. 176 (Note).

SALABY—Commission—Persons paid by—Positions of —Distinction. See COMMISSION—SALARY. (1876) 3 I. A. 200 (206)=1 B. 468 (473).

SALE.

AGENT—CONTRACT FOR SALE BY, AREA CONVEYED UNDER DEED OF.

AUCTION SALE

BENAMIDAR-SALE BY.

BOUGHT AND SOLD NOTES.

COMPANY-SHARES IN.

CONSIDERATION FOR.

CONTRACT FOR.

COVENANT FOR TITLE IN DEED OF.

DECLARATION OF INVALIDITY AGAINST PARTY OF

DEED OF—SETTING ASIDE OF DEED OF. EXECUTANT OF DEED OF—MINORITY OF.

EXECUTION OF DEED OF.

EXECUTION OF DEED OF, IN ONE CAPACITY.

EXECUTION SALE.

FRAUDULENT TRANSACTION.

GIFT INTENDED BY DEED OF.

GOODS -SALE OF.

GOODWILL-SALE OF A REAL.

GOVERNMENT OFFICIALS-SALE BY-AREA CONVE-

YED UNDER-ERROR AS TO. GUARDIAN.

HINDU LAW-JOINT FAMILY. HINDU LAW-REVERSIONER.

IMMOVABLE PROPERTY (INCLUDING LAND).

#### SALE-(Contd.)

INCUMBRANCES ON PROPERTY SOLD.

INTEREST PASSING UNDER DEED OF.

LEASEHOLD INTEREST-CONTRACT FOR SALE OF.

LITIGATION.

MARKETABLE TITLE.

MINORITY OF VENDOR.

MORTGAGE.

OBLIGATION TO EFFECT.

OIL SITES TO BE GRANTED BY GOVERNMENT—SALE OF 3 OUT OF 12 TO BE GRANTED.

PRICE.

PROPERTY NOT OWNED BY A PERSON.

PROPERTY NOT POSSESSED BY A PERSON—CONTRACT FOR SALE OF.

PURCHASE-MONEY.

PURCHASER.

PURCHASERS UNDER DEED OF—TENANCY CREATED BETWEEN.

REAL NATURE OF-FINDING AGAINST.

RECITALS IN DEED OF.

RECONVEYANCE-AGREEMENT FOR.

REGISTERED DEED OF-AVOIDANCE OF.

REVENUE SALE.

SETTING ASIDE OF DEED OF.

SPECIFIC PERFORMANCE OF CONTRACT FOR.

SPES SUCCESSIONIS.

STATUTE-PROVISIONS OF-SALE UNDER.

STRANGER TO DEED OF.

VENDOR.

WRITING-REGISTERED INSTRUMENT-NECESSITY.

### SALE -AGENT-CONTRACT FOR SALE BY.

—Authority to enter into—Onus of proof of—Specific performance of contract—Suit for. See PRINCIPAL AND AGENT—AGENT—CONTRACT BY—SALE.

(1928) 55 I. A. 360 = 52 B. 597.

Capacity in regard to, that of principal or of agent merely—Goods manufactured by third party—Contract in tespect of. See PRINCIPAL AND AGENT — AGENT—CONTRACT BY—SALE. (1919) 13 L.W. 537 (540).

### SALE-AREA-CONVEYED UNDER DEED OF.

Body and schedule of deed—Conflict between—Evidence to explain—Admissibility. See EVIDENCE ACT—S 95. (1920) 25 C.W.N. 385 (395).

Boundaries given in it—Conflict between -Effect.

Error as to—Plea of—Proof of—Quantum—Government officials—Sale by—Plea by them. See GOVERNMENT—OFFICERS OF—SALE DEED BY. (1873) 20 W.B. 211.

Fixing of price with reference to—Presumption of— Force of. See SALE—CONSIDERATION FOR—BASIS FOR FIXING. (1920) 25 C.W.N. 385 (3961.

Schedule to deed-Area given in-Assurance or misdescription.

Though the presumption is that in fixing the price, regard was had on both sides to the quantity which both supposed the estate to consist of, yet there may be considerations which may rebut or weaken the presumption (396).

A contract for the sale of immoveable property, which was in the form of an indenture and was registered, contained a clause that the vendors should sell and the purchaser should purchase the land, being plots Nos. 2 and 3, etc. with the privy and the passages shown in red colour in the plan thereto annexed and signed by the respective parties thereto together with the buildings standing thereon being the major portion of the hereditaments and premises described in the schedule thereunder written except the plot No. 1. The contract contained other clauses providing for the payment of the purchase-money and for the vendee

#### SALE—AREA—CONVEYED UNDER DEED OF —(Contd.)

being put in possession. Upon the plan annexed to the contract the areas of the plots contracted to be sold were struck out but the reference to the area was retained in the schedule to the contract.

In a suit brought for the specific performance of the contract, the question was raised whether the contract was on

the basis of area per square yard.

Held. on the evidence, that, though the allegation of plaintiffs (vendors) that the statement of area in the schedule was left thereby an oversight was false, the retention of the area in the schedule was not by way of an assurance and amounted to no more than a misdescription. (Mr. Ameer Ali.) HUSSONALLY SULLEMANJI v. TRIBHOWANDAS MANGALDAS NATHUBAL.

(1920) 25 C. W. N. 385 (396-7) = L. R. 2 A. (P.C.) 11 = (1920) M.W.N. 726 = 61 I.C. 361 = 3 U.P.L.R. (P.C.) 1.

SALE-AUCTION SALE.

-S& AUCTION SALE.

#### SALE-BENAMIDAR-SALE BY.

#### Consent of family—Execution of deed with— Recital as to.

Meaningless and unnecessary but common in Indian deeds. See BENAMI—BENAMIDAR—TITLE OF—INQUIRY INTO—CIRCUMSTANCES EXCITING—CONSENT OF FAMILY. (1872) Sup I. A. 40 (45).

#### Covenants in deed of.

BENAMIDAR—SALE DEED BY. (1876) 3 I. A. 194 (199).

Breach of—Damages against real owner for—Suit for—Maintainability. See BENAMI—BENAMIDAR—SALE DEED BY. (1876) 3 I.A. 194 (199).

#### SALE-BOUGHT AND SOLD NOTES.

- Sale of Contract for. So: CONTRACT-BOUGHT AND SOLD NOTES.

#### SALE - COMPANY-SHARES IN.

----Sale of. See COMPANY-SHARES IN-SALE OF.

#### SALE-CONSIDERATION FOR

- See Sale-Purchase-money.

#### SALE-CONTRACT FOR.

#### Breach of.

#### ANTICIPATORY BREACH.

——Damages for —Measure of —Mitigation of damages —Plaintiff's duty to take steps for. See CONTRACT— EREACH OF—ANTICIPATORY BREACH.

(1928) 55 I.A. 299 = 55 C. 1048.

#### DAMAGES FOR.

——Purchaser committing breach—Damages payable by. See Sale—Contract for—Breach of—Purchaser—Breach by.

Sale of goods—Contract for—Breach of—Damages for. See Sale—Contract for—Breach of—(1) Pur-Chaser—Breach by, and (2) Vendor—Breach by.

——Seller committing breach—Damages—Liability for —Measure of. See Sale—Contract for—Breach OF—VENDOR—BREACH BY.

——Suit for—Maintainability — Plaintiff wholly dispensing with performance—Effect. See CONTRACT— BREACH OF—DAMAGES FOR—SUIT FOR—MAINTAINA-BILITY. (1928) 55 I.A. 154 = 9 Lab. 510.

Suit for—Proof of contract and of breach thereof by defendant—Ones on plaintiff as to. See CONTRACT— BREACH OF—DAMAGES FOR—SUIT FOR—PROOF OF, ETC. (1912) 16 I.C. 75.

### SALE -CONTRACT FOR-(Contd.)

Breach of-(Contd.)

DAMAGES FOR-(Contd.)

Two contracts—Breach of both — Damages for breach of one of contracts—Measure of—Benefit resulting from breach of other contract if can be taken into account in ascertaining. See CONTRACT—BREACH OF—DAMAGES FOR—TWO CONTRACTS. (1925) 88 I.C. 54.

#### PURCHASER-BREACH BY.

C. I. F. contract—Breaches of—Damages for—Evidence given indefinite—Nominal damages only in case of— Award of—Propriety. S& CONTRACT—BREACH OF— DAMAGES FOR—C. I. F. CONTRACT.

(1918) 36 M. L. J. 151.

——Completion of contract within time fixed—Default as to—Provisions in event of, in nature of penalty—What amount to—Vendor's right to enforce—Loss to him—Proof of—Necessity. See Contract Act, S. 74—Sale—Contract for—Time fixed for completion of.

(1922) 47 M. L. J. 145.

—Damages for—Measure of—Amount fixed by contract as damages to be paid by either party in case of breach by him—Re-sale by vendor on breach—Amount fixed by contract—Recovery as damages of—Vendor's right of— Actual loss proved—Right if confined to. See CONTRACT ACT, S. 74—SALE—CONTRACT FOR, FIXING, ETC.

(1929) 57 M. L. J. 323.

(1915) 43 I. A. 6 (9.10) = 43 C. 493-

Re-sale by vendor at a profit subsequent to date of breach—Benefit of—Purchaser's right to, in mitigation of damages. See CONTRACT—BREACH OF—DAMAGES FOR—BUYER'S BREACH.

(1915) 43 I. A. 6 (10-1)=43 C. 493 (503-4).

Sum then paid and sums to be paid in instalments at stated periods—Contract in consideration of—Default in regard to any instalment payment—Forfeiture on, of amounts already paid—S.ipulation for—Penalty if a—Relief from. See CONTRACT ACT, S. 74—SALE OF LAND. (1915) 33 I.C. 323.

#### VENDOR-BREACH BY.

— Crops on tea estate—Contract for sale of—Breach of—Payment of stated sum on, as liquidated damages and not as penalty—Stipulation for—Measure of damages in case of. See CONTRACT ACT, S. 74—CROPS ON TEA ESTATE. (1912) 23 M.L.J. 177.

——Profit made by buyer by other means—Vendor's right to benefit of. See CONTRACT—BREACH OF—DAMAGES FOR—SELLER'S BREACH—PROFIT MADE, ETC. (1921) 48 I.A. 175 (180-1)=43 A. 257 (262-3).

——Purchaser entering into contract with a view to perform his contract with third party—Measure of damages in case of. See CONTRACT—BREACH OF—DAMAGES FOR —SELLER'S BREACH—BUYER, ETC.

(1923) 50 I.A. 142 (152) = 47 B. 563 (575-6).

——Sale of goods—Contract for—Damages in case of— Measure of. See CONTRACT—BREACH OF—DAMAGES FOR—SALE OF GOODS—CONTRACT FOR.

(1896) 23 I. A. 119 (126-7) = 24 C. 8 (19).

——Sales of goods—Contract for—Government control of supply of goods—Indents supplied by actual customer—Condition of supply only on buyer furnishing indent signed by particular person—Measure of damages in case of. See

#### SALE-CONTRACT FOR-(Contd.)

Breach of-(Contd.)

VENDOR-BREACH BY-(Contd.)

CONTRACT—BREACH OF—DAMAGES FOR—SELLER'S BREACH—GOVERNMENT, ETC.

(1923) 50 I.A. 142 = 47 B. 563.

——Sale of goods—Contract for—Quality—Warranty as to—Breach of—Damages for—Onus on purchaser—Acceptance by him of goods after examination—Sale thereof and delivery thereof by him to buyer—Complaint as to quality not made till long after. See CONTRACT—BREACH OF —DAMAGES FOR—QUALITY.

(1886) 13 I.A. 60 (63)=13 C. 237 (242-3 244).

——Sale of goods—Contract for, between chain of buyers and sellers—Breach of—Damages for—Measure of, ascertained between last buyer and seller—If same all along the chain. See Damages—Sale of Goods.

——Sale of goods—Fixed quantity—Contract for sale of —Supply of lesser quantity—Liability for damages in case of. See Contract—Breach of—Damages for—Sel-Ler's Breach—Fixed Quantity, etc.

(1922) 50 I.A. 9=47 B. 344 (346).

#### Earnest-money.

——Forfeiture of, on breach by vendee—Agreement to forego—What amounts to. See CONTRACT ACT, S. 74—SALE—CONTRACT FOR—ERNEST MONEY.

(1925) 50 M. L. J. 629.

#### Evidence of.

—Appropriation by purchaser of money answering to contract not communicated to vendor if. See CONTRACT—PURCHASE OF PROPERTY.

(1857) 5 M. I. A. 217 (233).

#### Performance of.

——Condition precedent to—Oil sites 12 to be granted by Government—Sale of 3 out of—Contract for—Grant of total of 12 sites if condition precedent to performance of. See CONTRACT—PERFORMANCE OF—CONDITION PRE-CEDENT TO.

(1921) 48 I. A. 214 (218) = 48 C. 832 (837).

---Place of. See CONTRACT ACT, (1) S. 49 AND (2) SS. 49, 94.

\_\_\_\_Time for-Failure to fix-Completion within res-

Held, on the evidence, that no time was fixed for completion of the sale by the written contract for sale as subsequently varied by agreement, and that it must therefore be implied that it was to be completed in a reasonable time. (Sir George Lowndes.) RUSTOMJI ARDESHIR COOPER B. DHAIRVAWAN ANNASAHEB (1930) 32 Bom. L.B. 798-2

DHAIRYAWAN ANNASAHEB (1930) 32 Bom. L.B. 798-34 C. W. N. 681 = 51 C. L. J. 527 = 123 I. C. 712 = 31 Punj L. R. 604 = A.I.B. 1930 P.C. 165 = 59 M.L.J. 43.

Time-limit fixed for—Purchaser's preparation and reception of conveyance—Completion of sale itself—Test—Construction of contract.

By an agreement in writing the respondent agreed to sell to the appellant certain leasehold interest for Rs. 85,000, and the appellant paid Rs. 4,000 of that sum as a deposit or earnest. The agreement provided, by clauses 1 and 2, that the title was to be made marketable; that the conveyance was to be prepared and received within two months from the date of the agreement; that on signing the document of sale Rs. 80,500 were to be paid, and after its registration the remaining Rs. 500. Clause 5 provided that on payment of the Rs. 81,000, as provided by clause 2, the document of sale or conveyance was to be executed, but should the parchaser not pay the amount within the fixed period above

### SALE-CONTRACT FOR-(Centd.)

Performance of-(Contd.)

mentioned he was to have no right to the deposit or earnest money of Rs. 4,000 paid on account, and any claim of his was to be void, and the vendor was, after that date, to be at liberty to re'sell.

Quarre whether, on the right construction of the agreement the only time-limit mentioned therein did not refer to the vendee's preparation and reception of the conveyance, as distinguished from completion of the sale (34). (Viscount Haldane.) JAMSHED KHODARAM IRANI P. BURJORJI DHUNJIBHAI. (1915) 43 I. A. 26 = 40 B. 289 =

(1916) 1 M. W. N. 229 = 23 C. L. J. 358 = 20 C. W. N. 744 = 19 M. L. T. 184 = 3 L. W. 239 = 32 I. C. 246 = 14 A. L. J. 225 = 18 Bom. L. R. 163 = 30 M. L. J. 186.

Time fixed for, if and when of essence of contract.

See CONTRACT ACT. S. 55.

#### Rights of parties on.

English law principles-Applicability of, to cases under S. 54 of Transfer of Property Act.

In England a contract for sale of real property makes the purchaser the owner in equity of the estate, and from this principle it follows that, where the rights as to payment of interest on the purchase-money are not regulated by the terms of the contract, the purchaser is deemed to be entitled to the rents and profits of the property as from the time when he did take, or could safely have taken, possession; and interest on the purchase-money runs in favour of the vendor from that time.

Semble, this rule of English law is inapplicable to cases governed by S. 54 of the Transfer of Property Act because it is expressly provided by that section that such a contract creates no interest in or charge upon the land. (Lord Buckmaster, L. C.) MAUNG SHWE v. MAUNG INN.

(1916) 44 I. A. 15=44 C. 542=10 Bur. L. T. 69= 21 M. L. T. 18=15 A. L. J. 82=25 C. L. J. 108= (1917) M. W. N. 117=19 Bom L. R. 179= 21 C. W. N. 500=5 L. W. 532=38 I. C. 938= 32 M. L. J. 6.

#### Specific performance of.

Suit for. See SALE—SPECIFIC PERFORMANCE OF CONTRACT FOR.

# SALE—COVENANT OF TITLE IN DEED OF. Absolute Covenant.

What amounts to.

A covenant in a sale-deed to the following effect:

Should a stranger now or hereafter acquire any other title in the property sold, or any kind of flaw arise, I. the vendor, my heirs and assigns, shall in every way be responsible therefor. The vendee shall, at all events, he at liberty, if any such contingencies arise, to seek his relief in the Civil Coart and realise his losses and damages from me, the vendor, from my person and property, and that of my heirs and assigns, together with interest and costs incurred in the Court; and to this I will have no objection whatever," is an absolute warranty of title to the property which is sold (175). (Sir Richard Couch.) BABU BINDESHRI PARSHAD P. MAHANT JAIRAM GIR.

(1887) 14 I.A. 173 = 9 A. 705 (710) = 5 Sar. 61

Purchaser's right to-Construction of contract for

The plaintiff-appellant and the defendant-respondent, on 3-10-1882, entered into an agreement for the sale of an estate, called Ilaka Dabha. The agreement was in these words:—"Out of Rs. 10,075 at which it has been settled by Mahant f" (the respondent) "to convey Ilaka Dabha to Baba B" (the appellant) "Rs. 200 have been received as earnest money. The balance, viz., Rs. 9,875, exclusive of

# SALE-COVENANT OF TITLE IN DEED OF -(Contd.)

Absolute Covenant-(Contd.)

costs, will be received in cash within 15 days, and then I will execute the sale-deed and get it registered. The purchaser will bear the costs on account of the stamp paper and the registration and mutation fees. I will have nothing to do with them. I will take the entire amount in cash. If the balance is not paid within 15 days the earnest money will be forfeited, and the vendor will be at liberty to sell the Ilaka or not."

Held, that under such a contract the purchaser had no right to an absolute warranty of title (177). (Sir Richard Couch.) BABU BINDESHRI PARSHAD r. MAHANT JAIRAM GIR. (1887) 14 I. A. 173-9 A. 705 (713)=5 Sar. 61.

#### Qualified covenant.

- What amounts to.

A clause in a sale-deed to the effect:—" Should any kind of dispute arise, whether now or hereafter, on my part, or that of my beirs or assigns, in the property sold, I, the vendor, and my heirs will be responsible therefor" is a qualified covenant of title to the property sold (175, 177).

(Sir Richard Cench.) BABU BINDESHRI PARSHAD v.

MAHANT JAIRAM GIR. (1887) 14 I. A. 173 = 9 A. 705 (710-1) = 5 Sar. 61.

Purchaser's right to-Construction of contract for

sale.

The plaintiff-appellant and the defendant-respondent, on 3-10-1882, entered into an agreement for the sale of an estate, called Haka Dabha. The agreement was in these words:—"Out of Rs. 10,075 at which it has been settled by Mahant J" (the respondent) "to convey Haka Dabha to Babu B" (the appellant) "Rs. 200 have been received as earnest money. The balance, riz., Rs. 9-875, exclusive of costs, will be received in cash within 15 days, and then I will execute the sale-deed and get it registered. The purchaster will hear the costs on account of the stamp paper and the registration and mutation fees. I will have nothing to do with them. I will take the entire amount in cash. If the balance is not paid within 15 days the earnest money will be forfeited, and the vendor will be at liberty to sell the Haka or not."

The respondent appeared to have thought that under that contract of sale the appellant was entitled to a covenant to the following effect:—" Should any kind of dispute arise, whether now or hereafter, on my part, or that of my heirs or assigns, in the property sold, I, the vendor, and my heirs will be responsible therefor."

Their Lordships were, however, not prepared to hold that such a contract of sale gave the purchaser a right to insist on any formal covenants such as the practice of English lawyers had attached to an English contract of sale if that was what was in the minds of the parties (175). (Sir Richard Couch.) BABU BINDESHRI PARSHAD 2. MAHANT JAIRAM GIR. (1887) 14 I.A. 173 = 9 A. 705 (710-1) = 5 Sar. 61.

#### SALE — DECLARATION OF INVALIDITY AGAINST PARTY OF DEED OF—SETTING ASIDE OF DEED OF.

——Distinction. See DEED—SETTING ASIDE OF—DEC-LARATION OF INVALIDITY, ETC.

### SALE-EXECUTANT OF DEED OF-MINORITY OF.

--- Onus of proof as to.

In a suit to set aside certain conveyances by the plaintiff to the three first defendants on the ground that the plaintiff was a minor at the time when he executed those deeds, held that the burden lay upon the plaintiff of proving that he

#### SALE-EXECUTANT OF DEED OF-MINORITY | SALE-FRAUDULENT TRANSACTION-(Contd.) OF-(Contd.)

was a minor at the time (195). (Sir Montague E. Smith.) ADMINISTRATOR-GENERAL OF BENGAL P. JUGGESWAR (1877) 3 C. 192=1 C. L. R. 107= 3 Suth. 455=3 Sar. 760.

-See also DEED-EXECUTANT OF-MINORITY OF. (1918) 45 I. A. 97 (101)=45 C. 909 (917) and (1928) 55 M. L J. 88 (90).

#### SALE-EXECUTION OF DEED OF.

 Payment of purchase-money in part—Possession with vendor-Rights of parties in case of-English equitable doctrines-Inapplicability of to transaction between Hindus or between Hindus and Mahomedans,

The Court below arrived at the conclusion that the real and final contract between the parties was one of absolute sale and purchase, upon which there had been a partial payment of the purchase-money. The Court below further held that, in these circumstances, a complete title to the lands passed to the purchaser by virtue of the Bill of sale on its execution; and (by a supposed application of the doctrines of English Courts of Equity) that the vendor in possession of the lands was to be treated as having only a lien for the unpaid balance of the purchase-money; and was to be held accountable as a mortgagee in possession for the rents and profits.

Quare, whether the principles upon which the Court below proceeded were sound in themselves, or applicable to a transaction of the nature in question between Hindoos or between a Hindoo and a Mussulman (305-6), (Sir James W. Colvile.) RAJAH SAHIB PERHLAD SEIN P. BABOO BUDHOO SINGH (1869) 12 M. I. A. 275=

12 W. R. (P. C.) 6=2 B. L. R. (P. C.) 111= 2 Suth. 225 - 2 Sar. 430.

-Possession not delivered-Rights in case of-Hindu rendor.

The Court below seems to have ruled that the effect of the execution of a Bill of sale by a Hindoo vendor is, to use the phraseology of English law, to pass an estate irrespectively of actual delivery of possession, giving to the instrument the effect of a conveyance operating by the Statute of Uses, Whether such a conclusion would be warranted in any case is very questionable (306-7). (Sir James W. Celvile.) RAJAH SAHIB PERHLAD SEIN D. BABOO BUDHOO SINGH.

(1869) 12 M. I. A. 276=12 W.R. (P. C.) 6= 2 B. L. R. (P. C.) 111 = 2 Suth. 225 = 2 Sar. 430.

#### SALE-EXECUTION OF DEED OF, IN ONE CAPACITY.

-Interest of executant in another capacity if passes in case of. See SALE-INTEREST PASSING UNDER DEED OF.

### SALE-EXECUTION SALE

----See EXECUTION SALE.

### SALE-FRAUDULENT TRANSACTION.

-Evidence-Religious Endowment-Mohunt of asthal -Sale of asthal property by. See HINDU LAW-RELIGIOUS ENDOWMENT-ASTHAL-MOHUNT OF-SALE BY.

(1877) Bald. 140 (143).

-Finding of-Propriety - Consideration-Portion small of -Failure to prove-Finding based on.

Where there is no other evidence, the only way in which a sale of immoveable property can be proved to be a fraudulent sale is by showing utter inadequacy of consi deration.

When the total value of property was Rs. 20,000, and the sale thereof was for that amount, and it appeared that Rs. 17,000 out of the Rs. 20,000 was an absolutely good consideration and had passed, held, that the fact that the passing of the remaining Rs. 3,000 was not satisfacforily l

proved was not sufficient to justify the conclusion that the sale was a fraudulent one. (Viscount Dunedin.) V. E. A. R. M. FIRM P. MAUNG BA KYIN. (1927) 5 R. 852=

A. I. R. 1927 P. C. 237 = 27 L. W. 447= 4 O. W. N. 926 = 32 C. W. N. 28 = 46 C. L. J. 349 = 105 I. C. 788 = 29 Bom. L. R. 1481 = 53 M. L. J. 388.

Possible claim-Purchase of.

It would be going much too far to impute fraud to a purchaser upon the mere ground that he had bought up a possible claim (228). (Lard Justice Turner.) Skeenauth BHAUTTACHARJEE D. RAMCOMUL GUNGOPADYA

(1865) 10 M. I. A. 220 = 3 W. B. P. C. 43= 1 Suth. 600 = 2 Sar. 121.

-Proof of.

The appellant set up title to a moiety of the property seized by the Sheriff under a writ of sequestration, addressed to him, in execution of a decree obtained against one A. The appellant claimed title to the mojety under a deed of sale executed by .f in his favour during the pendency of the suit in which the said decree was passed. And the principal question in the case was whether the sale was a long fide conveyance for a valuable consideration, or whether it was collusive between the parties, and intended to defraud the creditors of A.

The Supreme Court held on the evidence that the deed of sale was fraudulent and void as against the creditors of A. and had been executed for the purpose of defeating a sequestration (49-50). (Mr. Pemberton Leigh.) MUSADEE MAHOMED CAZEEM SHERAZER D. MEERZA ALLY (1854) 6 M. I. A. 27= MAHOMED KHAN. 8 Moo. P. C. 110=1 Sar. 489.

#### SALE-GIFT INTENDED BY DEED OF.

 Evidence of —Admissibility. See EVIDENCE ACT. S. 92-SALE DEED-EVIDENCE, ETC.

(1911) 38 I. A. 85=33 A. 340. PURDANASHIN--Finding of-Propriety. See

HUSBAND-SALE DEED IN FAVOUR OF. (1898) 25 A. 137 (143-4) = 20 A. 447 (454-5).

-See MAHOMEDAN LAW-BENAMI TRANSACTION -MOTHER-DAUGHTER-SALE DEED IN FAVOUR OF. (1906) 33 I. A. 86=33 C. 773 (784.5).

SALE-GOODS-SALE OF.

### Collateral security -Goods deposited by insolvent as

-Sale by creditor of-Delivery of goods to assignee in insolvency on payment of their full value if amounts to a. See DEED-CONSTRUCTION OF - COLLATERAL (1842) 3 M. I. A. 19 (39-40). SECURITY.

#### Contract for.

- For cases not noted here. See UNDER--CONTRACT -GOODS-CONTRACT FOR SALE OF.

-Anticipatory breach of-Damages for-Measure of -Mitigation of damages-Plaintiff's duty to take steps See CONTRACT—BREACH OF-ANTICIPATORY (1928) 55 I. A. 299 = 55 C. 1048. BREACH. Breach by buyer of-Damages for. See SALE-

CONTRACT FOR-BREACH OF-PURCHASER-BREACH

Breach by seller of-Damages for. See SALE-CONTRACT FOR-BREACH OF-VENDOR-BREACH BY.

-Expert tribunal set up by-Decision of, on matters within its competence - Court's interference with - Grounds. See CONTRACT-EXPERT TRIBUNAL SET UP BY

(1903) 8 C. W. N. 57.

-Frustration of-Doctrine of-Applicability of. Su CONTRACT-FRUSTRATION OF. (1) (1922) 50 L A. 9 (12-4)=

47 B. 344 (348-9) and (2) (1920) 13 L. W. 1.

#### SALE-GOODS-SALE OF-(Contd.)

Contract for -(Contd.)

Time-Bargain-Meaning of. See CONTRACT-TIME-BARGAIN. (1848) 4 M. I. A. 339 (346 7).

Time for performance of-Extension by agreement of-Rights of parties thereafter-Agreement after original date. See CONTRACT ACT-Ss. 63 AND 55.

(1921) 48 I. A. 175 (179-80) = 43 A. 257 (261-2).

#### Imported sugar-Contract for sale of.

-Tariff valuation of such sugar-Reduction of, after date of contract-Rights of parties on. See TARIFF ACT. S. 10. (1925) 52 I. A. 196 = 52 C. 644.

#### Manufacture by third party-Goods subject of.

-Contract in respect of-Damages for breach of-Contractor's liability for. See PRINCIPAL AND AGENT-AGENT-CONTRACT BY-SALE.

(1919) 13 L. W. 537 (540).

#### Price of -Suit for.

-Maintainability-Delivery of gords-Absence of. and absence of provision for-Payment of differences only -Contract contemplating-Patta Pasti-Making of in

In a suit for the price of goods, which had admittedly never been delivered, it appeared that the plaintiff- had never been in a position to deliver the goods they had sold. and also that the defendants had not agreed to accept what were called delivery orders, directed to third persons, as something equivalent to delivery so as to exonerate the plaintiffs from liability to deliver the goods, and to entitle them to sue for the price. The making of patta pattis in the contracts relating in the suit goods resulted in an agreement that the obligation to deliver the goods should not remain effective, that the price of them should neither be demanded nor paid, but merely the resulting differences.

Held that those differences having been paid or tendered, and nothing being due in regard to them, the plaintiffwere not entitled to recover anything. (Land Darling.) SUKDEVDOSS RAMPRASAD P. GOVINDOSS CHATHUR BHUJADOSS & CO. (1927) 55 I.A. 32 =

107 I. C. 29 = 30 Bom L. B. 238 = 27 L. W. 453 = ILT 40 M. 138 = 26 A. L. J. 494 = 47 C. L. J. 144 = A. I. R. 1928 P.C. 30 - 54 M. L. J. 130.

Onus on plaintiff.

In an action to recover the price of goods alleged to have been sold and delivered by the appellants to the respondents, it is necessary for the appellants to prove that the goods were actually delivered or else that some document of title was given to the respondents which would oblige the custodian of the goods to hand them over to the holder of it. (Lord Darling.) SUKDEVDOSS RAMPRASAD P. GOVINDOSS CHATHUR BHUIADOSS & CO.

(1927) 55 I. A. 32=51 M. 96=5 O. W. N. 195= 107 I. C. 29 = 30 Bom. L. R. 238 = 27 L. W. 453 = I.L. T. 40 M. 138 = 26 A. L. J. 484 = 47 C. L. J. 144 = A. I. B. 1928 P. C. 30 = 54 M. L. J. 130 (133).

# SALE-GOODWILL-SALE OF A BEAL

Contract for-What amounts to. See CONTRACT ACT, S. 27, EXCEPTION 1. (1921) 48 I. A. 508 = 48 C. 1030.

SALE-GOVERNMENT OFFICIALS—SALE BY— AREA CONVEYED UNDER-ERBOR AS TO.

Plea by them of-Proof of-Quantum. See GOV-ERNMENT-OFFICERS OF-SALE DEED BY.

#### SALE-GUARDIAN.

### Contract for purchase of immoveable property by.

-Minor not bound by--Specific performance of contract-Minor's right to, See HINDU LAW-MINOR-GUARDIAN OF-CONTRACT BY-PURCHASE OF, ETC.

(1911) 39 I. A. 1=39 C. 232.

-Admission in deed of, of his having relinquished his share in estate sold—Binding character of, on purchaser. See HINDU LAW-MINOR-GUARDIAN OF -SALE BY-ADMISSION IN, ETC. (1888) 16 I. A. 96 (103)= 16 C. 627 (635).

-Necessity for-Onus of proof of-Evidence, See HINDU LAW-MINOR-GUARDIAN OF-SALE BY-NECESSITY FOR. (1888) 16 I. A 96 (102)= 16 C. 627 (634) and (1880) 6 C. L. R. 528.

-Reversionary interest of minor-Sale of-Validity. See HINDU LAW-MINOR-GUARDIAN OF-REVER SIONARY INTEREST OF MINOR.

#### Sale deed by.

-Capacity in which, executed-Individual capacity or capacity of guardian. See HINDU LAW-MINOR-GUAR-DIAN OF-DEED BY-EXECUTION OF.

(1) (1856) 6 M.I.A. 393 (412); (2) (1887) 14 I.A. 178= 15 C. 8 (15-6).

-Covenant to indemnify in-Charge created on other property of minor for due performance of-Validity. See HINOU LAW-MINOR-GUARDIAN OF- COVENANT TO INDEMNIFY BY-SALE DEED BY GUARDIAN.

#### (1887) 14 I. A. 89 (96-7) = 11 B. 551 (561-2).

-Covenant to indemnify in, imposing personal liability on minor-Validity of. See HINDU LAW-MINOR-GUARDIAN OF-COVENANT TO INDEMNIEY BY-PFR. SONAL LIABILITY, ETC. (1887) 14 I. A. 89 (96)= 11 B. 551 (561).

-" Proprietor and heir"-Deed executed as-Interest of minor if passes under, Sr HINDU LAW-MINOR --GUARDIAN OF-AL ENATION BY-DEED OF.

(1856) 6 M. I. A. 393 (412).

#### SALE-HINDU LAW-JOINT FAMILY.

-Father-Sale of family property by-Contract for, See HINDU LAW-JOINT FAMILY - FATHER-CON-TRACT FOR SALE ETC.

#### SALE-HINDU LAW-REVERSIONER

Presumptive reversioner-Sale of interest of, See HINDU LAW-REVERSIONER -PRESUMPTIVE REVER-SIONER.

-Sale on widow's death of interest in last owner's property-Validity-Major portion of consideration made payable on vendee recovering property. See CHAMPERTY AND MAINTENANCE-REVERSIONER.

(1908) 35 I. A. 48 (56) = 35 C. 420 (426.7).

#### SALE-IMMOVEABLE PROPERTY (INCLUDING LAND.)

#### Contract for sale of.

Completed contract or not-Evidence.

Suit by vendors for specific performance of a contract entered into by defendant's deceased father to purchase a dwelling house from one of the plaintiffs.

The Subordinate Judge dismissed the suit holding that there was no completed contract between the parties for the sale and purchase of the house in question. He found that there was an agreement to sell, that the price had been fixed, that some sort of draft was settled, that the defendant's father even advanced money for the purchase of (1873) 20 W. B. 211. stamp paper, and that the stamp paper itself was purchased

LAND)-(Contd.)

Contract for sale of-(Contd.)

and delivered to the defendant's father. But he was of opinion that the most important condition precedent to the completion of the contract was the inspection of title deeds by the defendant's father and that the plaintiffs did not afford him or his agents such an opportunity,

On appeal the High Court came, on the evidence, to the opposite conclusion. They held on the evidence that the plaintiffs' case of the existence of a completed agreement to sell and buy was more credible, reversed the decree below, and gave a decree for specific performance.

Privy Council affirmed the High Court decree. (Lord) Atkinson.) BAIJNATH RAM P. GOPAL RAM KHEMKA.

(1928) 108 I. C. 681 = A. I. R. 1928 P. C. 92. -In a suit for specific performance of an alleged contract for the sale of immoveable property the issue between the parties was whether there was a contract the plaintiff's alleging a contract, the defendants denying a contract and alleging that there was not even negotiation for a contract. There was no dispute as to the subject-matter of the alleged contract. According to the plaintiffs' story they were actually put into possession of the property, which was the subject-matter of the contract; the price was arranged and a portion thereof was paid as earnest money.

Held, reversing the High Court and restoring the Subordinate Judge, that there was sufficient evidence in the case to establish a contract. (Sir Lancelet Sanderson.) BINDA

PRASAD P. LALA KISHORI SARAN.

PROPERTY.

(1929) 30 L. W. 34 = 116 I. C. 388 = A. I. R. 1929 P. C. 195 = 56 M. L. J. 785.

-Completion of Time for Failure to fix-Time for completion in case of.

Where the time for completion of a contract for the sale of immoveable property is not specifically fixed it would be the duty of the parties to complete within a reasonable time. (Sir Lancel et Sanderson.) BINDA PRASAD D. LALA KISHORI SARAN. (1929) 30 L. W. 34 = 116 I. C. 388 = A. I. R. 1929 P. C. 195 = 56 M. L. J. 785.

-Consideration for, being sum then paid and sums to he paid in instalments at stated periods - Purchaser's default in regard to any of payments to be made-Forfeiture on, of amounts already paid by him-Provision for-Penalty-Relief from. See CONTRACT ACT, S. 74-SALE (1915) 33 I. C. 323 OF LAND. -Specific performance of. See SALE - SPECIFIC PERFORMANCE OF CONTRACT FOR - IMMOVEABLE

-Time if of essence of. See CONTRACT ACT. S. 55 -LAND.

#### Land-Contract to sell.

-Instalment payments provided for by-Payment of, on days fixed, if of essence of contract, See CONTRACT ACT, S. 55-LAND-CONTRACT TO SELL - INSTAL-(1860) 8 M. I. A. 239 (260). MENT, ETC.

-Time if of essence of. See CONTRACT ACT, S. 55 -LAND-CONTRACT TO SELL-TIME, ETC.

#### Land with building on it-Sale of.

Ownership of building if passes to purchaser. BENGAL ACTS-LAND REVENUE SALES ACT XI OF 1859-SALE UNDER-LAND WITH BUILDING ON IT.

(1927) 54 I. A. 218 (224 5) = 54 C. 669.

#### Value less than Rs. 100-Sale of property of.

-Constructive possession by delivery of instrument-Sufficiency of.

S. 54 of the Transfer of Property Act requires that a transfer on sale of tangible immoveable property of a value less than Rs. 100 may be made either by a registered in-

SALE-IMMOVEABLE PROPERTY (INCLUDING SALE-IMMOVEABLE PROPERTY (INCLUDING LAND)-(Contd.)

> Value less than Rs. 100-Sale of property of-(Contd.)

strument or by delivery of the property. Their Lordships cannot accept the suggestion that, for the purposes of S. 54, some sort of constructive possession resulting from the delivery of the alleged instrument of transfer might be sufficient. For this purpose there must be a real delivery of the property. (Viscount Cave.) RISWANATH PRASAD v. CHANDRA NARAYAN CHOWDHURY.

(1921) 48 I. A. 127 (132) = 48 C. 509 (514-5)= 63 I. C. 770.

#### SALE—INCUMBRANCES ON PROPERTY SOLD. Discharge of.

DATE FIXED FOR COMPLETION OF CONTRACT-DISCHARGE BEFORE-VENDOR'S UNDERTAKING AS TO-

-Compliance with-Procuring of mortgage's consent to discharge before that date if.

A contract for the sale of land, by which time was made in all respects strictly of the essence of the contract, fixed a date for the completion of the purchase and empowered the vendor, in the event of default on the part of the purchaser, to put an end to the contract. The contract also provided that if the purchaser raised any valid objection within the time allowed for that purpose to the title, the vendor was to remove it within a reasonable time. The purchaser made default in closing the transaction on the date fixed, and the vendor rescinded the contract. In a suit for specific performance brought by the vendee, he contended that the vendor had no right to rescind, as the latter was not, on the date fixed for the completion of the contract, ready-that is, able and willing to convey to the purchaser the fee of the property sold, inasmuch as he had not before that day paid off and discharged a mortgage existing on the property and procured the legal estate in the property to be revested in

The evidence showed that the vendor had, before the date fixed for the completion of the contract, offered to have the mortgage discharged on closing, and that the mortgagee would have had she been called upon to do so on or before the date fixed for the closing of the transaction, executed a discharge, and that she had consented to do so upon payment. It also appeared that the procedure applicable to the discharge of the mortgage in question and the revesting in the vendor of his former estate in the property mortgaged was very simple. The purchaser contended that, despite all this evidence, the vendor must be held in point of law to have been unable to complete the contract on the date fixed, because the vendor was not entitled to compel the mortgagee to execute a discharge and the mortgagee might have changed her mind on or before the date fixed for the completion of the contract.

Held that, in the absence of evidence that the mortgagee contemplated the change suggested, it could not be held that the vendor was disabled from conveying the interest sold, owing to the bare possibility that a contingent and improba-

ble event might conceivably occur (127-8).

There is no authority for the view that a consent to a certain thing, which, if unrevoked, would validate a vendor's title, is ineffectual for that purpose if, although unrevoked in fact, it is revocable in character. (Lord Atkinson.) (1916) 38 I. C. 123= BRICKLES v. SNELL. 86 L. J. P. C. 22=(1916) 2 A. C. 599.

VENDOR'S DEFAULT AS TO-PURCHASER PAYING SAME -RECOVERY FROM VENDOR OF AMOUNT PAID-

RIGHT OF.

Sale free from incumbrances. Property which was sold to the appellants free from incumbrances was in fact subject to incumbrances. Neither

#### SALE-INCUMBRANCES ON PROPERTY SOLD -(Contd.)

Discharge of-(Contd.)

VENDOR'S DEFAULT AS TO-PURCHASER PAYING SAME-RECOVERY FROM VENDOR OF AMOUNT PAID-RIGHT OF-(Contd.)

the vendor nor one B to whom he had sold other property of his with a stipulation that he (B) should discharge the said incumbrances having discharged the same, the mortgagees who held the prior charges upon the property sold to the appellants took steps to realise their securities by sale. The appellants paid several sums of money in order to clear the property, and instituted a suit against their vendor to recover the amounts so paid by them. The High Court held that, as the property was not actually subject to an effectual order for sale, the appellants were not compelled to make the payments to avert the sale, and that they were not entitled to any relief.

Held, reversing the High Court, that, under S. 55(1)(z). sub-S. (2) of the Transfer of Property Act, the appellants were entitled to recover from their vendor the monies paid by them either for redemption of the mortgages existing upon the property purchased by them, or for the purchase of the property on sales under such mortgages, or to prevent

such sales.

Their Lordships find it difficult to accept the view of the High Court that purchasers of a property are not compelled to pay off mortgagees who have obtained decrees for sale, even though a sale is not immediately threatened. (Lord Buckmaster.) NATHU KHAN P. THAKUR BURTONATH SINGH. (1921) 15 L. W. 635 = 20 A. L. J. 301 = 26 C. W. N. 514 = L. R. 3 P. C. 82 =

24 Bom. L. R. 571=(1922) M. W. N. 323= 35 C. L. J. 417 = A.I.R. 1922 P.C. 176 = 66 I. C. 107 = 42 M. L. J. 444 (447-8).

-Undertaking by vendor to discharge same. See CONTRACT ACT-SS, 69, 70-VENDOR. (1928) 55 I. A. 135 = 50 A. 371.

VENDOR'S STATUTORY OBLIGATION AS TO.

Contract excluding-What amounts to.

Property, which was in fact subject to more mortgages than one, was sold as being subject only to one mortgage in favour of one P. The deed of sale expressly stated that, apart from P's mortgage, " the property is up to this date free from all rights of transfer by sale, mortgage, " etc. The last portion of the sale deed provided that " If, God forbid, any person comes forward as partner or co sharer and brings a claim, or if an encumbrancer, etc, is found in respect of the whole, or, part of the property sold, and as a result of his claim the property pass out of the possession of the vendees," then the vendor should have certain obli-gations, and that was exclusive of all other rights on the part of the vendee.

Held, on a construction of the sale deed, that there was no contract in it excluding the statutory obligation that the seller is bound to discharge all incumbrances existing at the

time of the sale.

The portion of the sale deed which states what is to ensue in the event of the vendees being put out of possession may be an additional safeguard, and may have been a thing suggested by the parties to cover contingencies which were not yet wholly foreseen, but it does not contradict or restrict the wider language of the contract of sale or narrow or wipe out the obligations under the statute. (Lord Shaw.) MUSSU-MAT BHAGWATI D. BANARSI DAS.

(1928) 55 I. A. 135=50 A. 371=26 A. L. J. 550= 32 C. W. N. 705-47 C. L. J. 539-108 I. C. 687-30 Bom. L. B. 834 = 28 L. W. 150 = SALE-INCUMBRANCES ON PROPERTY SOLD -(Contd.)

Invalidity of-Benefit of.

-Vendor or purchaser entitled to-Covenant by ourchaser to pay off incumbrances. See EXECUTION SALE-MORTGAGE-PROPERTY SUBJECT OF.

(1909) 36 I. A. 203 (228-9) = 31 A. 583 (589-90.)

Sale expressly stated to be free from.

Effect.

The purchase deed contained the express declaration that the property was sold free from incumbrances and consequently by S. 55 (1) (c), sub-S. (2) of the Transfer of Property Act the vendor most have been deemed to contract with the buyers that he had power to transfer the property so sold, and consequently that the property was free from burdens. (Lord Buckmaster.) NATHU KHAN P. THAKUR BURTONATH SINGH. (1921) 15 L. W. 635=

20 A. L. J. 301 = 26 C. W. N. 514 = L. R. 3 P.C. 82 = 24 Bom. L. R. 571 - (1922) M. W. N. 323 = 35 C. L. J. 417 = A I.R. 1922 P. C. 176 = 66 I.C. 107 = 42 M. L. J. 444 (445).

### SALE-INTEREST PASSING UNDER DEED OF.

-Execution of deed in one capacity-Interest of executant in another capacity if passes in case of. See MORT-GAGE-DEED OF-INTEREST OF MORTGAGOR PASSING UNDER (1) (1878) 5 I. A. 211 (219-20) = 4 C. 402 (406); (2) (1914) 41 L. A. 189 - 42 C. 56 (64) & (3) (1919) 11 L. W. 241 (244-5.)

——Guardian—Sale deed by, as "proprietor and heir"

—Estate of minor if passes under. See HINDU LAW— MINOR-GUARDIAN OF-ALIENATION BY-DEED OF. (1856) 6 M. I. A. 393 (412).

-Hindu Law-Joint Family-Father-Sale by, of his right and interest and nothing more-Interest of other members capable of being disposed of by him if passes under. See HINDU LAW-JOINT FAMILY-FATHER-SALE BY-INTEREST PASSING UNDER-RIGHT, ETC.

(1887) 14 I. A. 77 (83) - 14 C. 572 (579).

-Language of deed-Control of, by speculations as to idea of all or some of parties to deed.

It would be entirely contrary to settled principles of law as well as most unjust to bong fide purchasers if the Courts were to allow the plain legal interpretation of a deed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. It is a settled rule that the meaning of a deed is to be decided by the language used interpreted in its natural sense. (Lard Moulton.) BIRJRAJ NOPANI P. PURA (1914) 41 I. A. 189 (196) = SUNDARY DASSEE.

42 C. 56 (65-6) = 24 I. C. 296 = 1 L. W. 555 = 16 M. L. T. 338 = (1914) M. W. N. 679 = 20 C L. J. 368 = 18 C. W. N. 1313 =

16 Bom. L. B. 796 = 12 A. L. J. 1185 = 27 M. L. J 93.

#### SALE - LEASEHOLD INTEREST - CONTRACT FOR SALE OF.

-Time if of essence of-Presumption-Evidence to rebat. See CONTRAT ACT-S. 55-LEASEHOLD INTEREST. (1915) 43 I. A. 26 (33)=40 B. 289.

Title-Requisitions by buyer as to-Propriety of. M obtained in 1898 a reclamation lease from the Government of Bombay for a term of 999 years. Under it the lessee was to reclaim the land and bring it under cultivation within a period which was ultimately extended to 1910; he was not to assign or underlet until the reclamation was complete, without the consent in writing of the Collector. A. I. B. 1928 P. C. 98 = 54 M. L. J. 689. The lease contained a provision for re-entry and determina-

### SALE—LEASEHOLD INTEREST—CONTRACT FOR SALE OF—(Contd.)

tion of the lease on breath by the lessee of any of the covenants therein contained. The respondent, who had obtained a transfer of the lease in 1908, agreed, in July 1911, to sell the leasehold interest to the appellant. The agreement between them provided, inter alia, that the title was to be made marketable. The appellant's solicitors, who proceeded to investigate the title made requisitions one of which related to the title of one C, who had professed to make a title as heir to his father, one of certain mortgages of the interest of M. Another of the requisitions was for a certificate or letter from the Collector stating that all the covenants and conditions of the lease had been performed and fulfilled.

Held that if those requisitions had been made in time they would have been proper and should have been adequately answered. (31). (Viscount Haldam:), JAMSHED KHODARAM IRANI v. BURJORJI DHUNJI BHAL.

> (1915) 43 I. A. 26 = 40 B. 289 =: (1916) 1 M. W. N. 229 = 23 C. L. J. 358 =: 20 C. W. N. 744 = 19 M. L. T. 184 =: 3 L. W. 239 = 32 I. C. 246 = 14 A. L. J. 225 =: 18 Bom. L. R. 163 = 30 M. L. J. 186.

#### SALE-LITIGATION.

For other cases see under—LITIGATION—PRO-PERTY SUBJECT OF, OR TO BE RECOVERED BY.)

Letters of Administration were on the application of the appellant, the wife of S, granted by the District Court of Amherst under the Probate and Administration Act to the 1st defendant, as son of S. to administer the estate of his father, S. and the suit property, amongst others, became vested in the 1st defendant as such administrator. Subsequently, an administration suit was instituted in the Chief Court of Lower Burma by the appellant on her own behalf and on behalf of her other children against, inter alia, the 1st defendant for the administration by the Court of the estate which was in his hands. A preliminary decree was made in the suit in the Chief Court which directed that certain accounts should be taken and certain enquiries made. and that the suit should stand adjourned for making a final decree until the accounts and inquiries had been taken and made, That court did not. however, appoint a Receiver or issue an injunction to the 1st defendant not to continue to act as an administrator under his appointment as an Administrator by the District Judge of Amherst. After the said preliminary decree, the 1st defendant obtained, under S, 90 of the Probate and Administration Act of 1881. as amended by Act VI of 1889, from the District Judge of Amherst permission to sell the suit property. The respondent bank offered to purchase the property from the 1st defendant "subject to a clear title", and the latter, on 10-7-1918, agreed to sell "subject to settlement being effected of any litigation relating to the same properties." The respondent Bank sub-equently sent a requisition on title to the 1st defendant, desiring to be informed what the litigation referred to in his letter of acceptance was, to which the 1st defendant replied stating that he referred to the administration suit pending in the Chief Court.

In a suit for specific performance brought by the bank, held that by 10-7-1918, the 1st defendant and the Bank had come to a complete agreement for the sale of the property in question to the Bank; that the condition that the agreement should be subject to a settlement of any litigation relating to the property before the agreement should take effect was a condition for the protection of the 1st defend-

#### SALE-LITIGATION-(Contd.)

ant, and that the bank took the risk of any such litigation; and that there was no substantial litigation which could prevent the 1st defendant from selling. (Sir John Edge.) MA CHIT SU v. NATIONAL BANK OF INDIA LTD.

(1925) 23 L. W. 399 = 91 I. C. 432 = 30 C. W. N. 76 = A. I. B. 1925 P.C. 261 = L. B. 6 P. C. 285 = (1925) M. W. N. 847 = 50 M. L. J. 644 (650).

#### SALE-MARKETABLE TITLE.

---Leasehold interest--Contract for sale of--Title-Requisitions by buyer as to--Propriety of. See SALE-LEASE HOLD INTEREST--CONTRACT FOR SALE OF.

(1915) 43 I. A. 26 (31)=40 B. 289.

—Vendor's default to make out, as agreed—Putchasers' delay in completing sale on ground of—Vendor if can take advantage of, and refuse to complete sale.

A suit brought by G, a mortgagee of properties appertaining to the estate of a deceased person, against, inter alia-B, trustee for the liquidation of the debts of the deceased, to enforce the mortgage, was compromised on the terms, amongst others, that G should, at the request and by the direction of B, pay off certain other mortgages up to a particular amount, that the amount so paid by G should be added to his mortgage claim and carry interest at 7 per cent with quarterly rests, that, upon B making a marketable title to the sait property, the title should be accepted by G, and the purchase should be completed within one month from the date of the compromise, and that, if such purchase was not completed within the aforesaid period, then the interest on the part of the principal moneys secured by the said mortgage and further charges, namely, Rs. 2, 90 000 should cease to run and G should be deemed to be the owner of the property subject to the mortgage and charge aforementioned as well as all existing incumbrances on the property, and the whole of the said consideration money of Rs. 2,90 000 should ipso facto be set off against his claims under his mortgage and further charges.

Held that, under the compromise, B had a duty to perform in relation to the conveyance he had executed to G riz, to make out a marketable title to the property, and that, having failed to do so, he was not entitled to refuse to execute the conveyance on the ground that G did not complete the purchase within the month agreed upon. (Mr. dwice Ali.) BANKU BEHARI DHUR P. GALSTAIN.

(1922) 27 C W. N. 77 = 31 M. L. T. 159 (P. C.) = A I. R. 1922 P. C. 339 = 21 A. L. J. 9 = 9 O. & A. L. R. 237 = 69 I. C. 163 = 47 M. L. J. 145.

----Vendor's undertaking as to-Compliance with-

In 1913 respondents agreed to sell land to appellant and undertook to deduce " a marketable title free from all reasonable doubts". The land had been mortgaged in 1892 to two joint mortgagees by an agreement of charge registered under the Registration Act, 1877, the deeds being deposited with the mortgagee. As evidence of the discharge of the mortgage respondents produced a certified copy of a release registered under the above Act and dated 30 9.02. This lease was executed by one only of the mortgagees, but recited that the other mortgagee was dead, that the executant was his beir, and that the mortgage had been redeemed. Appellant asked for evidence of these facts, but respondents refused to supply such evidence on the ground that the recitals in the release itself were sufficient proof of the facts recited. They also failed to produce one of the title deeds of the mortgaged property.

Held that the recitals in the release deed were not evidence against the joint mortgagee and that the agreement as to title had not been complied with. (Lord Parker.) SHRINIVASDAS BAVRI 2. MFHERBAR.

(1916) 44 I. A. 36=41 B 300=

### SALE-MARKETABLE TITLE-(Contd )

(1917) M. W. N. 258 = 19 Bom. L. R. 151 = 21 M. L. T. 236=21 C. W. N. 558=25 C. L. J. 311= 39 I. C. 627 = 32 M. L. J. 175.

#### SALE-MINORITY OF VENDOR.

Onus of proof as to. See SALE-EXECUTANT OF DEED OF-MINORITY OF.

#### SALE-MORTGAGE.

#### Finding of sale deed being only a.

The suit was for possession of a four anna share of a Raj and Zemindary under a Bill of sale, purporting to be an also lute sale for the sum of Rs. 75,000, and executed by the appellant at a time when he was neither in the possession of the Zemindary, nor had established in any Court his title thereto. The case of the plaintiff-respondent was, that this Bill of Sale expressed the real contract between the parties, which was one for the absolute sale by the appellant and purchase by the respondent's predecessor in interest of the four-anna share specified for the price of Rs. 75,000, and that that sum was actually paid down in cash when the instrument was executed.

The case of the appellant was, that being in want of funds to carry on his suit for the Raj and Zemindary and for his own support, he applied to the respondent's predecessor in interest, who agreed to make advances for those purposes on condition of having the Bill of Sale executed, registered, and duly notified in the pending suit; that no part of the expressed consideration or sum of Rs. 75.000 was paid on the execution of the instrument; and that though the respondent's predecessor in interest, from time to time, advanced small sums of money, the whole amount of his advances fell far short of Rs. 75,000.

Held, on the evidence, that the real arrangement between the appellant and the respondent's predecessor in interest was for advances to be made, from time to time; and that the form of the contract was adopted in order to evade the effect of the decisions of the Indian Courts in respect of what they considered champerty (309). (Sir James W. Celvile.) RAJAH SAHIB PERHLAD SEIN P. BABOO BUDHOO (1869) 12 M. I. A. 275=12 W. R. P. C. 6= 2 B. L. R. P. C. 111 = 2 Suth. 225 = 2 Sar. 430.

#### Intention that sale-deed should operate only as a transfer of a.

See EVIDENCE ACT-S. 92 - SALE-DEED (1) IN-TENTION THAT IT SHOULD, ETC.

(1911) 38 I. A. 146 = 38 C. 892

(2) EVIDENCE THAT TO KNOWLEDGE OF VENDEE. (1917) 44 I. A. 236 = 45 C. 230.

#### Misrepresentation of sale-deed being only a-Execution under.

Evidence-Vendor's statement in his attestation to be appended to his signature at registration of deed-Value

The question was whether a vendor had established that his signature to a sale-deed had been obtained under a mis-

representation that it was really a mortgage deed. All the evidence that was left was that there was in fact an antecedent agreement to sell; there was a certain conversation antecedent to the deed of sale, in which the vendor proposed to mortgage: and then there was what night be called a blank as to what happened at the actual transaction. The vendor had, however, in the attestation which had to be appended at the registration in respect of the sale deed, made a statement that he had signed the

### SALE-MORTGAGE-(Contd.)

Misrepresentation of sale-deed being only a-Execution under-(Contd.)

inferred therefrom that that impression had been influenced by the action of the other party. (Lord Dunedin.) LOTU P. HARI PATIL. (1924) 26 Bom. L. R. 742=

20 L. W. 107 = (1924) M. W. N. 645 = A. I. R. 1924 P. C. 186 - 35 M. L. T. 139= 10 O. & A. L. R. 928 = 80 I. C. 822 = 47 M. L. J. 128 (136).

Relief against deed in case of Vendor's right to. It is open to a vendor to make the case that whereas he in fact signed sale deeds it had been represented by the other party that what he was really signing were mortgage-feeds. On proof of that fact the vendor would be entitled to be relieved against that fraudulent act. (Lord Dunedin.) ATIL. (1924) 26 Bom. L. R. 742 = 20 L. W. 107 = (1924) M. W. N. 645 = LOTU S. HARI PATIL.

A. I. R. 1924 P.C. 186 = 35 M. L. T. 139 = 10 O. & A. L. R. 928 = 80 I. C. 822 = 47 M. L. J. 128 (135).

#### Sale or.

-Nature real of transaction. See DEED-CONSTRUC-TION OF-MORTGAGE OR SALE.

(1894) 21 I. A. 96 = 21 C. 882.

#### Sale absolute in certain events.

-Provision for mostgage becoming-Penalty if a-Mortgagee seeking to avail himself of provision-Ones on. See CONTRACT ACT-S. 74-MORTGAGE-SALE ABSO-LUTE. 9 M. J. 341.

#### Sale with contract for re purchase or.

-See DEED-CONSTRUCTION OF-MORTGAGE-SALE WITH, ETC.

#### SALE-OBLIGATION TO EFFECT.

-Inference of, from acceptance of offer to bay. (Lord Duncdin.) BALTHAZAR AND SON v. ABOWATH. (1919) 13 L. W. 537 (540) = 63 I. C. 521.

SALE-OIL SITES TO BE GRANTED BY GO-VERNMENT-SALE OF 3 OUT OF 12 TO BE

-Contract for-Performance of-Grant of total of 12 sites if condition precedent to. See CONTRACT-PERFOR-MANCE OF-CONDITION PRECEDENT TO.

(1921) 48 I. A. 214 (218) = 48 C. 832 (837).

#### SALE-PRICE.

-See SALE-PURCHASE-MONEY.

#### SALE - PROPERTY NOT OWNED BY A PER-SON.

-Sale of -Validity of-Real owner's right to dispute -Estopped by representations-Contract complete before alleged representations-Effect.

Plaintiff claimed the suit property under a conveyance executed by the widow of a deceased person. The defendants, the heirs-at-law of the deceased, alleged that they were the real owners of the property, that their mother had no title to convey the same, and that the conveyance was therefore not effectual to convey any title to the plaintiff. The question was whether the defendants were, by reason of representations made by them, estopped from disputing the validity of the conveyance. It appeared that, long prior to the date of the alleged representations, the plaintiff document in question not as a sale, but as a mortgage. The trial Judge was of opinion that that statement showed the impression that the vendor was under, and that it must be of the alleged representations.

## SALE-PROPERTY NOT OWNED BY A PERSON | SALE-PURCHASE MONEY-(Contd.)

-(Centile)

Held that the defendants were not estopped as contended lw the plaintiff (288). L. R. 19 B. 374, ref to, (Lord Phillimore.) VERTANNES r. ROBINSON.

(1927) 54 I A. 276 = 5 R. 427 - 29 Bom L. R. 1017 = (1927) M. W. N. 492-102 I. C. 639 = 39 M L.T. 134-25 A.L.J. 713 - 46 C.L.J. 126 - 31 C.W.N. 1078 -26 L. W. 417 - A I.R. 1927 P.C 151 = 53 M.L.J. 71

-Sale of for low price in victo of risk undertaken by purchaser-Contract for-Gambling or speculative contract if a.

Where a vendor agreed in consideration of a sum presently paid, to sell property which he had not, and to which he might never establish a title, and the price was presumably fixed upon a calculation of the risk undertaken by the purchaser, at a sam far below the real value of the thing sold, held, that the contract was an eminently speculative, not to say, a gambling one (308). (Sir James W. Colvile.) RAJAH SAHIR PERHLAD SEIN F. BABOO BUDHOO (1869) 12 M.I.A. 275 = 12 W. R. (P. C.) 6 = 2 B. L. R. (P. C.) 111 = 2 Suth. 225 = 2 Sar. 430.

#### SALE-PROPERTY NOT POSSESSED BY A PER-SON-CONTRACT FOR SALE OF.

Effect of.

A bill of sale executed in respect of property, of which the vendor has not possession, and to which he may never establish a title can only be evidence of a contract to be performed in future, and upon the happening of a contingency (307). (Sir James W. Colvile.) RAJAH SAHIB PERHLAD SEIN P. BAROO BUDHOO SINGH.

(1869) 12 M. I. A. 275 = 12 W.R. (P.C.) 6 = 2 B. L. R. (P.C.) 111 = 2 Suth. 225 = 2 Sar. 430.

·Purchaser's rights under.

The Court below seem to have ruled that the effect of the execution of a bill of sale by a Hindoo vendor is, to use the phrascology of English law, to pass an estate irrespectively of actual delivery of possession, giving to the instrument the effect of a conveyance operating by the statute of uses. To support such a conclusion, the execution of the bill of sale must be treated as a constructive transfer of possession. There can, however, he no such transfer actual or constructive, upon a contract under which the vendor sells that of which he has not possession, and to which he may never establish a title. The hill of sale in such a case can only be evidence of a contract to be performed in future, and upon the happening of a contingency (306-7). (Sir James W. Colvile.) RAJAH SAHIB PERHLAD SEIN :. BAROO BUDHOO SINGH. (1869) 12 M. I. A. 275= 12 W.R. (P.C.) 6 = 2 B.L.R. (P.C.) 111 = 2 Suth. 225 =

Their Lordships see no reason why a gift or contract of sale of property, whether moveable or immoveable, if it is not of a nature which makes the giving effect to it contrary to public policy, should not operate to give to the donee or purchaser a right to obtain possession (232). (Sir Richard Couch.) KALI DAS MULLICK v. KANHVA LAL (1884) 11 I.A. 218=11 C. 121 (135)= 4 Sar. 578.

#### SALE-PURCHASE MONEY.

ADMISSION OF RECEIPT OF.

BALANCE OF.

BASIS FOR FIXING.

CO-DEFENDANTS-SALE BY ONE OF.

FAIRNESS OF-TEST OF.

FALSE RECITAL IN DEED OF SALE AS TO.

INADEQUACY OF - SETTING ASIDE OF DEED ON GROUND OF.

INTEREST ON-PURCHASER'S LIABILITY FOR.

LIEN FOR UNPAID.

MORTGAGE TO BE EXECUTED BY PURCHASER FOR-PREPARATION OF DEED OF.

PORTION SMALL OF-FAILURE TO PROVE.

PRO-NOTE BY PURCHASER FOR-VENDOR'S SUIT ON. PURCHASER'S CONTRACT TO PAY-NOVATION.

PURCHASER'S SUIT FOR-MAINTAINABILITY-RES IUDICATA.

RECEIPT OF-PRESUMPTION.

RE-FUND TO PURCHASER OF-DECREE FOR.

#### Admission of receipt of.

CO-DEFENDANTS-SALE BY ONE OF.

-Admission by him-Value of, as against other defendant claiming adverse title to property conveyed. See AD-MISSION-CO-DEFENDANTS-SALE DEED BY ONE OF.

(1889) 16 I.A. 205 (212)=11 A. 460 (471-2). DEED OF SAEE-ADMISSION IN.

-Collateral agreement that purchase-money should remain in vendee's hands for certain purposes-Proof of-Permissibility. See EVIDENCE ACT. S. 92-CONSIDERA-TION-ADMISSION IN DEED OF RECEIPT OF.

(1900) 27 I.A. 93 (97)=22 A. 370 (375-6). -Effect of, See ADMISSION - CONSIDERATION-

SALE DEED.

(1) (1873) 19 W.R. 149,

(2) (1898) 25 I.A. 137 (144) = 20 A. 447 (455) and

(3, (1921) 48 I.A. 365 (372).

Oral evidence to contradict-Admissibility of See EVIDENCE ACT. S. 92-CONSIDERATION-ADMISSION IN DEED OF RECFIPT OF.

(1900) 27 I.A. 93 (97) = 22 A. 370 (375-6). -Variation of-Evidence for purpose of-Admissibility. See EVIDENCE ACT. S. 92-CONSIDERATION ADMITTED IN DEED, ETC.

(1870) 13 M. I. A. 551 (559).

REGISTERING OFFICER-ADMISSION BEFORE -Record of, under provision corresponding to S. 58 of Registration Act of 1908-Presumption from. See AD-MISSION-CONSIDERATION-SALE DEED-CONSIDERA-

TION-REGISTERING OFFICER. (1873) 19 W. R. 149.

#### Balance of.

DAMAGES FOR NON-PAYMENT OF.

-Purchaser's liability for-Measure of. Six villages, which were in mortgage to the Bank of Upper India, were agreed to be sold by the plaintiffs to the defendant. The agreement recited that the defendant had agreed to buy the six villages for a sum of Rs. 4.23,000 (the amount then due under the mortgage being upwards of that amount), and provided by clauses 1 and 2 that the vendee should pay Rs. 5 000 earnest-money by cheque and one lakh to the Bank by a fixed date. Clauses 3 and 4 of the agreement were as follows :-

3. That the vendee will arrange with the Manager, Bank of Upper India, to get transferred from the said vendor's accounts to the said vendee's accounts the balance of the price, being Rs. 3, 23,000 to which the vendors give

their free consent.

4. The said vendors having hereby made a complete and conclusive sale to the said vendee, if there should be a dispute about transfer of the balance of the price with the Manager of the said Bank, the said vendee will be responsible as below :-

(a) That the said vendee will be liable for all interest after the 18th June, 1914, for the balance of price;

(b) should there be any litigation in connexion with the matter of transfer, the vendee will only be responsible for costs, etc., that may be awarded in such litigation.

### SALE-PURCHASE MONEY-(Contd.)

Balance of-(Contd.)

DAMAGES FOR NON-PAYMENT OF-(Contd.)

By clause 5 the vendors " confirm this sale finally and agree to release and free the said villages from all encumbrances except in case of litigation as provided in clause 4". Clause 8 stated that the vendors agreed to give possession and to obtain mutation of names on payment of the lakh of rupees (which was eventually done).

The earnest-money and the lakh of rupees were duly paid. These sums reached the bank and were applied in reduction of the mortgages, and these sums, together with an independent advance of Rs. 1,800, by the defendant to the plaintiffs left the balance of the purchase-money outstanding at Rs. 3,16,000. Nothing further was arranged or paid. The defendant was never ready and willing to arrange the transfer which cl. 3 contemplated, up to the full extent of the balance of the price, and but, for his untenable objections, the transfer provided for in cl. 3 would have been arranged in the summer of 1914.

On a question arising as to the proper measure of damages for which the defendant was liable for failure to comply with the requirements of cl. 3 of the agreement, held, that the defendant was liable to the plaintiffs in a sum made up of Rs. 3,16,000 with interest at 7 per cent. (the rate provided for by the mortgage bond) from the date on which the transfer contemplated by cl. 3 could have been arranged until the date of payment, together with the taxed costs of the suit throughout. (Viscount Sumucr.) ROBERT HERCULES SKINNER P. ROSY SKINNER

(1927) 5 O. W.N. 245-108 I. C. 350-A.I.R. 1927 P.C. 51.

DECREE WITH INTEREST FOR-GRANT OF, IN SUIT TO SET ASIDE SALE DEED.

-Sale found valid and effectual. See PURDANASHIN -SALEBY. (1898) 25 I.A. 137 (144-5) = 20 A. 447 (456).

INTEREST ON-PURCHASER'S LIABILITY FOR.

Balance left with him to be paid towards incombrance on property, vendor to find remainder-Default on part of vendor-Arrangement that mortgage should be discharged and good title conveyed-Effect.

By a deed property was sold in consideration of Rs. 20,000, which sum was in the deed stated to be for paying the debts due to A and B, and the money was said in the deed to be "left with the vendees" for paying to the former Rs. 17,000 and to the latter Rs. 3,000. The latter sum was paid to B, but the former was not. The vendor's widow brought a suit against the vendees for the recovery of the said sum of Rs. 17,000 with interest thereon from the date of the sale upto the date of suit and also the costs of a suit by A against the ventior.

The facts were that at the time of the sale Rs. 22,000 were due to A, and there was also a mortgage to H and others upon which Rs. 15,000 were due. The evidence showed that the balance due to A and the noney due on the mortgage to B were agreed to be paid by the vendor, and the property sold released from mortgages.

The vendor failed to provide the money for this purpose and A brought a suit against him and obtained a decree for what was due to him with interest and costs, and the amount decreed was realised by A. The High Court gave a decree to the plaintiff for Rs. 3,000, the balance of Rs. 17,000 left after deducting the sum of Rs. 14,000 paid by the vendees with interest from the date of the decree of the Court below.

On appeal from the decree of the High Court their Lord-ships affirmed it.

The Rs. 17,000 were not left with the vendees simply as

a deposit of the money of the vendor. They were to retain

### SALE-PURCHASE-MONEY-(Contd.)

Balance of-(Centd.)

INTEREST ON - PURCHSER'S LIABILITY FOR-(Contd.)

it as a security that the property sold should be freed from the incumbrances upon it and that they should have a good title. They were entitled to retain it until the vendor provided the rest of the money necessary for this purpose. Unless this was done a payment of the Rs. 17,000 would leave the property still incumbered, as A would only receive it, if he did so, in part payment of what was due. From the nature of the transaction it was not a deposit upon which the vendees would be liable to pay interest unless they refused or omitted to pay the money when they were informed by the vendor that he was prepared to pay the balance necessary to satisfy what was due to d. Without that balance they were not bound to pay or tender to him the Rs. 17,000. (Sir Richard Couch.) MUHAMMAD SIDDIO KHAN P. MUHAMMAD NASIR-UL-LAH KHAN.

(1898) 26 I. A. 45 = 21 A. 223 = 3 C. W. N. 201 = 7 Sar. 472.

VENDOR'S SUIT FOR RECOVERY OF.

Affirmative case as to non-payment false-Presumption from.

Where, in a suit by a vendor for the recovery of a sum of money as the balance of the purchase-money alleged to be due under a sale deed which she had executed in favour of the defendant, she set up an affirmative case of nonpayment of the balance which was entirely untrue, held, that there arose therefrom the strongest inference that the fact of payment which that affirmative case was intended to repute was a fact which, but for the attempted refutation, the vendor knew would be established against her by the evidence upon the other side (792). NAWAB SYED ALLEE SHAH P. MUSSAMAT AMANEE BEGUN.

(1873) 2 Suth. 790 - 19 W. R. 149. -Damages for buyer's refusal to take delivery-Suit also for-Purchaser's claim for damages for failure to deliver in-Admissibility of, as counter-claim or set-off-Point as to-Privy Council appeal-Permissibility for first time in. See PRIVY COUNCIL-APPEAL-NEW POINT IN-PERMISSIBILITY-APPELLATE COURT. (1917) 46 I.C. 576.

-Damages for deficiency in property sold-Counter-Jaim by purchaser for-Maintainability.

Under an agreement for the sale of land, the balance of the purchase-money was to be paid on June 30th, 1912, and upon payment the vendor was to convey. The purchasemoney had all been paid excepting two sums of £, 3400 and £ 170 (being interest), which had been retained by the purchaser to meet his claim for compensation for the deficiency in the mileage of fencing. The purchaser proposed that, on payment of the rest of the purchase-money remaining unpaid, the vendor should convey without prejudice to his right of action for the two sums referred to, and he tendered the conveyance for execution without prejudice to his claim for shortage of fencing. The proposal was carried out, a conveyance being executed by the vendor and the purchaser entering into possession.

In a suit by the vendor for the recovery of the sums of £3,400 and £.170, the purchaser counter-claiming for compensation for misrepresentation as to the mileage of fencing on the land, the contract was silent as to the fencing but it was contended that on that subject the vendor's agent had made a material misrepresentation as to the mileage which induced the purchaser to enter into the con-

Held that the vendor had under the contract a valid claim at law for payment of the amounts sued for, but that the purchaser could not counter-claim for compensation.

As shortly after the payment of the deposit, the purchaser

### SALE-PURCHASE MONEY-(Contd.)

Balance of-(Contd.)

VINDOR'S SUIT FOR RECOVERY OF-(Contd.)

entered into possession and has taken profits, recission is now impossible. As there is no charge made of fraudulent misrepresentation no claim can be made for damages for deceit. There is also no such collateral contract as had been referred to above. The claim of the purchaser must therefore fail. (Viscount Haldane.) RUTHERFORD 7. ACTON-ADAMS.

(1915) 32 I.C. 47 = 84 L. J. P. C. 238 = (1915) A.C. 866. Maintainability—Sale not a real transaction.

In a suit by the vendor for the recovery of the balance of the purchase-money alleged to be due under a sale deed executed by her in favour of the defendant, held that, if the transaction of sale was not a real one, she could not recover the amount sued for (793). NAWAR SYAD ALLEE SHAH P. MUSSAMAT AMANEE BEGUM.

(1873) 2 Suth. 790 - 19 W. R. 149.

-Onus of proof in-Shifting of-Conditions.

Suit for the recovery of a sum of money as the balance of the purchase-money which plaintiff alleged was due to her upon a sale made by her to the defendant of a decree

which the plaintiff had obtained.

Held that, although in a general way it might be said that the proof of the payment of the consideration lay upon the party who asserted the payment; the onus of proof was shifted and thrown upon the respondent in consequence of the acknowledgments which plaintiff had made of the receipt of the whole of the purchase-money (1) in the sale deed itself. (2) to the Registrar when the deed was registered, the acknowledgment being formally recorded by the Registrar, and (3) in a petition presented by the plaintiff for mutation of names to the court which made the decree the subject of the sale (791-2). NAWAB SVED ALLEE SHAH P. MUSSUMAT AMANEE BEGUM. (1873) 2 Suth 790= 19 W. R. 149.

#### Basis for fixing-Area sold if.

Presumption.

Though the presumption is that, in fixing the price regard was had on both sides to the quantity which both supposed the estate to consist of, yet there may be considerations which may rebut or weaken the presumption (396). (Mr. Ameer Ali.) HUSSONALLY SULLEMANJI P. TRIBHOWANDAS DAS NATHUBAL. (1920) 25 C. W. N. 385 = L. R. 2 A. P. C. 11 = (1920) M. W. N. 726 = MANGALDAS NATHUBAL

61 L. C. 361 = 3 U. P. L.R. (P. C.) 1.

Co-defendants-Sale by one of.

-Admission by him before Registering Officer of receipt of purchase-money - Effect of, against other defendant claiming adverse title to property conveyed. See ADMISSION-CO-DEFENDANTS-SALE DEED BY ONE (1889) 16 I. A. 205 (212) = 11 A. 460 (471-2).

Fairness of-Test of.

-Large property-Sale of, in lump-Sale of, in component parts-Distinction. See HINDU LAW-WIDOW-SALE BY-PRICE FOR-FAIRNESS OF-TEST.

(1922) 16 L. W. 478 (483-4)

False recital in deed of sale as to-Validity of sale. -Effect on. See LITIGATION-AGREEMENT TO FINANCE-SALE OF PROPERTY, ETC.

(1905) 32 I. A. 113 (121) = 27 A. 271 (290). Inadequacy of-Setting aside of deed on ground of.

Condition.

The question then reduces itself to whether there was uch an inadequacy of price as to be a sufficient ground of sself to set aside the deed. Upon that subject it may be as well to read a passage from the case of Tennent v. Ten- under S. 55 (4) of the Transfer of Property Act cannot

SALE-PURCHASE-MONEY-(Contd.)

Inadequacy of-Setting aside of deed on ground of -(Contd.)

nent in which Lord Westbury very shortly and clearly stated the law upon this subject. He says: "The transaction having been clearly a real one, it is impugned by the appellant on the ground that he parted with valuable property for a most inadequate consideration. My Lords, it is true that there is an equity which may be founded upon gross inadequacy of consideration, but it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about, or was the victim of some imposition" (196). (Sir Montague E. Smith.) ADMINISTRATOR-GENERAL OF BENGAL P. (1877) 3 C. 192=1 C. L. B. 107= JUGGESWAR ROY. 3 Suth. 455=3 Sar. 760.

### Interest on-Purchaser's liability for.

-Date of commencement of.

The right to interest depends upon the following broad and clear consideration. Unless there be something in the contract of parties which necessarily imports otherwise, the date when one party enters into possession of the property of another is the proper date from which interest on the On the one hand, the new unpaid price should run. owner has possession, use, and fruits; on the other, the former owner, parting with these, has interest on the price-(Lord Shaw.) KATANLAL CHOONILAL PANALAL P. MUNICIPAL COMMISSIONER FOR BOMBAY

(1918) 45 I. A. 233 (245) = 43 B. 181 (200) = 21 Bom. L. R. 114 = 29 C. L. J. 138= 17 A. L. J. 1 = 25 M. L. T. 103 = 9 L. W. 171 =

(1919) M. W. N. 321 = 23 C. W. N. 441 = 48 I. C. 404 = 36 M. L. J. 1.

-On a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his parchase money from the date when he took possession. (Lerd Warrington of Clyffe.) INGLEWOOD PULP AND PAPER CO., LTD. P. NEW BRUNSWICK ELECTRIC POWER (1928) 28 L.W. 753=111 I.C. 261= COMMISSION. A.I.B. 1928 P.C. 287.

Lien for unpaid.

-. Abandonment of - Question as to-English cases-

Reference to-Purpose of.

On a question as to whether the statutory charge given by S. 55 of the Transfer of Property Act to a vendor for unpaid purchase-money was abandoned or not, a number of English cases were cited. Their Lordships observed: doubt English cases might be useful for the purpose of illustration, but it must be pointed out that the charge which the vendor obtains under the Transfer of Property Act is different in its origin and nature from the vendor's lien given by the courts of equity to an unpaid rendor" (245). (Lord Davey.) WEBB v. MACPHERSON.

(1903) 30 I. A. 238 = 31 C. 57 (72) = 8 C. W. N. 41= 5 Bom. L. R. 838 = 8 Sar. 554 = 13 M. L. J. 389.

-Agreement to pay portion of purchase-money in annual instalments with interest if inconsistent with

An agreement by the purchaser to pay a portion of the purchase-money in three annual instalments with interest is in no way inconsistent with the existence of a charge to the vendor for the amount of the instalments with interest to become due from time to time (245-6). (Lord Datey.) (1903) 30 L A. 238= WEBB D. MACPHERSON.

31 C. 57 (72-3) = 8 C. W. N. 41 = 5 Bom. L. B. 888= 8 Sar. 554 = 13 M. L. J. 389.

-Apportionment of between original purchaser and purchaser from him of portion of property purchased-Validity of.

The statutory right of charge which the vendor has

#### SALE-PURCHASE-MONEY-(Contd.)

Lien for unpaid-(Contd.)

be affected by the mode in which the purchaser chooses to deal with the property purchased. The vendor's charge under the statute is a charge on the whole property for the whole amount of the balance due to him into whose oever hands it comes through the purchaser (246).

Held, therefore, that the Sub-Judge was wrong, in a suit by the vendor to enforce his charge, in apportioning the charge between the original purchaser and his assignee in the proportion of the property purchased in their hands (246-7). (Lord Datey.) WEBB r. MACPHERSON.

(1908) 30 I. A. 238 = 31 C. 57 (73 4) = 13 M. L. J. 389 = 8 C. W. N. 41=5 Bom. L. R. 838=8 Sar. 554.

Contract excluding-Agreement that portion of consideration was to be paid in eash and that balance was to be secured by agreement of even date if a.

A conveyance by way of sale was made in consideration of a sum of money. The agreement was expressed to be an agreement to sell for a sum of money, of which Rs. 30,000 was to be paid, and the rest was to be secured by an instrument of even date, and the operative part of the conveyance was in consideration of Rs. 30,000 paid down, and of a balance which was identified as being the sum secured by the agreement.

Held that there was no contract excluding the operation of the charge given by S. 55 (4) of the Transfer of Property Act (246). (Lord Davy.) WEBB P. MACPHERSON. (1903) 30 I. A. 238 = 31 C. 57 (73) = 8 C. W. N. 41 =

5 Bom. L. R. 838 = 8 Sar. 554 = 13 M. L. J. 389.

Exclusion of Contract express or implied-Neversity.

In order to exclude the charge given by S. 55 (4) of the Transfer of Property Act to a vendor for unpaid purchasemoney, you have to find something, either express contract, or at least something from which it is a necessary implication that such a contract exists (245). (Lord /Arrys.) WEBB v. MACPHERSON. (1903) 30 I. A. 238=

31 C. 57 (72)=8 C. W. N. 41=5 Bom. L. R. 838= 8 Sar. 554 = 13 M. L. J. 389.

Exclusion of - Contract to defer payment of partien of purchase-money or to take purchase-money by instalments -Agreement with reference to purchase money not inconsistent with continuance of - Effect.

In their Lordships' opinion there is no ground whatever for saying that the charge given by S. 55 (4) of the Transfer of Property Act to a vendor for unpaid parchase-money is excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchasemoney by instalments, nor is it, in their Lordships' opinion, excluded by any contract, covenant, or agreement with respect to the purchase-money which is not inconsistent with the continuance of the charge (245). (Lord Dury.) WEBB v. MACPHERSON. (1903) 30 L A. 238 =

31 C. 57 (72) = 8 C. W. N. 41 = 5 Bom. L. B. 838 = 8 Sar. 554 = 13 M. L. J. 389.

Right to-Consideration for sale covenant to pay money in future-Consideration money which purchaser covenants to pay-Cases of-Distinction.

It was held by the High Court that no charge under 8. 55 (4) of the Transfer of Property Act ever arose, be-Cause the purchase was not in consideration of a sum of money, part of which was paid down and the payment of the balance of which was deferred, but it was a purchase in consideration of a particular covenant. There is no doubt, both on principle and authority, that a conveyance or sale in consideration of a covenant to pay a sum of money in the fatter to the consideration of a covenant to pay a sum of money in the future is different from a sale in consideration of money ich the purchaser covenants to pay. The distinction may an fine, but it is a real distinction, and it is one which, if the amount due under the promissory note, the question

### SALE-PURCHASE MONEY-(Contd.)

Lien for unpaid-(Contd.)

made out, might have the effect which the High Court gave to it (246). (Lord Davy.) WEBB r. MACPHERSON.

(1903) 30 I. A. 238 = 31 C. 57 (73) = 8 C. W. N. 41 = 5 Bom. L. R. 838 = 8 Sar. 554 = 13 M. L. J. 389. Transfer of Property Act, S. 55-Lien under-

English law-Lien under-Origin and nature of-Dis-Dischion.

The charge which the vendor obtains under S. 55 (4) of the Transfer of Property Act for unpaid purchase-money is different in its origin and nature from the vendor's lien given by the Courts of Equity to an unpaid vendor. That lien was a creation of the Court of Equity, and could be modified to the circumstances of the case by the Court of Equity. The charge which the vendor in India has is a statutory charge. The law of India, speaking broadly, knows nothing of the distinction between legal and equitable property in the sense in which that was understood when equity was administered by the Court of Chancery in England, and the Transfer of Property Act gives a statutory charge upon the estate to an unpaid vendor unless it be excluded by contract. Such a charge, therefore, stands in quite a different position from a vendor's lien (245). (Lord Drivy.) WEBB r. MACHPERSON.

(1903) 30 I. A. 238 = 31 C. 57 (72) - 8 C. W. N. 41 = 5 Bom. L. R. 838-8 Sar. 554-13 M. L. J. 389. Mortgage to be executed by purchaser for-Preparation of deed of.

-Responsibility for, tender's or vender's.

An agreement for the sale of land by which time was made in all respects strictly of the essence of the contract, provided that the purchase should be completed within a fixed time and that a portion of the purchase-money was to be secured by a mortgage executed by the vendee of the property purchased to "be drawn on the vendor's solicitors usual form" containing three specified clauses. The purchaser made default, and, on a suit by him for specific performance being resisted by the vendor on that ground, urged that the latter could not avail himself of the default because the vendor's solicitor's form of mortgage had never been delivered or tendered to the purchaser to enable his own solicitors to prepare the mortgage-feed by which the balance of the purchase-money was to be secured to the

Held, over-ruling the purchaser's plea, that it was the duty of the interded mortgagor, the purchaser, to have the mortgage deed prepared, and that neither the vendor nor his solicitors were in any default in having omitted to furnish the form unasked (126). (Lord Atkinson.) BRICKLES P. SNELL. (1916) 38 I. C. 123= 86 L. J. P.C. 22 = (1916) 2 A. C. 599.

Portion small of-Failure to prove-Finding of sale being fraudulent transaction based upon.

Propriety. See SALE-FRAUDULENT TRANSAC-(1927) 5 B. 852. TION-FINDING OF.

#### Pro-note by purchaser for-Vendor's suit on Defences open in.

-Counter-claim against vender for rescission-Readiness to pay amount of note if condition precedent to.

An agreement for the sale of an oil well provided that a portion of the price fixed was to be paid when the agreement was executed, and the balance within 45 days, and that the purchaser was to execute a deed of sale, and the vendor was also to execute and to register the deed. Within the 45 days fixed, the purchaser executed a promissory note for the balance of the purchase-money, and the vendor signed a receipt acknowledging receipt of the price in full.

In a suit by the vendor against the purchaser to recover

### SALE-PURCHASE MONEY-(Contd.)

Pro note by purchases for-Vendor's suit on-Defences open in-(Contd.)

arese whether the purchaser could decline to pay the suit amount on the ground that he had been prevented from obtaining possession of the title deeds to the well, because the vendor refused to hand them over until the money due under the note was paid. It appeared that the purchaser did, while the money so due remained unpaid, try to get the title deeds from the vendor, in order that he might effect a re-sale. The vendor objected to hand them over, the purchase not having been completed. It did not appear that the purchaser at any time tendered a conveyance, which was the preliminary to registration.

Held, reversing the Court below, that the vendor was entitled to recover on the suit note.

There was no defence to the action for the amount due under the note, unless the purchaser could establish a counter-claim to set aside the main contract on the ground that the vendor had broken it by refusing to hand over the deeds. The purchaser was not entitled to obtain the deeds without first tendering a conveyance. And there is no evidence in the case that the purchaser ever tendered any conveyance or asked for a change in the register.

Quarc, whether in any event the parchaser could have counter-claimed against the vendor for recission, without being ready to pay the amount due under the note. (Vircount Haldane.) MA HNIT P. MAUNG PO PU.

(1919) 11 L. W. 253 (255) - 31 C. L. J. 87 = (1920) M. W. N. 176 = 55 I.C. 791 = 27 M. L. T. 139.

### Purchaser's contract to pay-Novation.

-Pro-note given by him and receift given by wender acknowledging payment of same-Effect.

An agreement for the sale of an oil well provided that a portion of the price fixed was to be paid when the agreement was executed, and the balance within 45 days, and that the purchaser was to execute a deed of sale and the vendor was to execute and to register the deed. Within the 45 days specified the purchaser gave a promissory note for the balance of the price fixed, and the vendor signed a receipt acknowledging receipt of the price in full.

Querc, whether the receipt with the promissory note in exchange for which it was signed effected a novation, and put the purchaser in the same position as if he had actually paid the full price. (Viscount Haldane.) MA HNIT 2. (1919) 11 L. W. 253 (254-5) = MAUNG PO PU.

31 C. L. J. 87 = (1920) M. W. N. 176 = 55 I. C. 791 = 27 M. L. T. 139.

## Purchaser's suit for-Maintainability-Res judicata

-Possession of property purchased-Prior suit for-Dismissal of-Effect-C. P. C., O. 2, R. 2-Effect. See SALE-PURCHASER-PROPERTY PURCHASED-POSSES-SION OF-SUIT FOR-DISMISSAL OF.

(1891) 18 I. A. 158 (164)=19 C. 123.

### Receipt of-Presumption.

-Execution of deed of sale and receipt for purchasemoney-Presumption from.

On the trial of an issue whether the consideration for a bill of sale had been paid, held that, though, according to the law and practice of the courts in India, the conduct of the vendor in executing the bill of sale, and the receipt for the purchase-money, and in subsequently recognising them, was not conclusive evidence against the vendor, due weight ought to be allowed to the presumptions arising from such conduct. (Sir James Colvile.) RAJAH SAHIB PERHLAD SEIN v. BABOO BUDHOO SINGH.

(1869) 12 M. I. A. 275 (309) = 2 Suth. 225 (230) =

### SALE-PURCHASE-MONEY-(Contd.)

### Re fund to purchaser of-Decree for.

-Grant of, in suit by him for possession of property purchased-Propriety-Nature of purchase, whether speculative merely or bona fide, not properly raised and tried. See SALE-PURCHASER-PROPERTY PURCHASED-POSSES-(1926) 24 L. W. 328. SION OF-SUIT FOR.

#### SALE-PURCHASER.

BREACH OF CONTRACT BY-DAMAGES FOR.

CHARGES ON OTHER PROPERTY SOLD BY VENDOR TO THIRD PARTY—UNDERTAKING TO PAY OFF.

COMPLETION OF CONTRACT WITHIN TIME FIXED-DEFAULT AS TO-PROVISIONS IN NATURE OF PEN-ALTY IN THE EVENT OF.

COMPLETION OF SALE-DELAY IN, ON GROUND OF VENDOR'S DEFAULT TO MAKE OUT MARKETABLE

DAMAGES FOR BREACH OF CONTRACT-CLAIM TO, IN VENDOR'S SUIT FOR BALANCE OF PURCHASE-MONEY AND FOR DAMAGES FOR BREACH.

DEFICIENCY IN PROPERTY SOLD-DAMAGES FOR. EARNEST-MONEY-FORFEITURE OF, ON BREACH OF CONTRACT.

ESTOPPEL AGAINST VENDOR.

FRAUD OF-EVIDENCE.

INCUMBRANCES ON PROPERTY SOLD.

MESNE PROFITS OF PROPERTY PURCHASAD-RIGHT

PROPERTY NOT IN POSSESSION OF VENDOR-CON-TRACT FOR SALE OF.

PROPERTY PURCHASED.

PURCHASE-MONEY.

REBATE-SUM ALLOWED BY VENDOR AS-PAYMENT TO LOCAL TEMPLE OF.

SPECIFIC PERFORMANCE OF CONTRACT.

TENDER OF SALE DEED.

TITLE-REQUISITIONS AS TO.

TITLE-DEEDS-POSSESSION OF-RIGHT TO.

### Breach of contract by-Damages for.

-Liability for-Measure of See SALE-CONTRACT FOR-BREACH OF-PURCHASER-BREACH BY.

### Charges on other property sold by vendor to third party—Undertaking to pay off.

-Failure to pay pursuant to-Third party paying off same-Suit by, to recover amount paid, against purchaser -Maintainability. See CONTRACT-STRANGER TO-SUIT TO ENFORCE CONTRACT—RIGHT OF—PURCHASER. (1921) 42 M. L.J. 444 (446)

Completion of contract within time fixed-Default as to-Provisions in nature of penalty in event of.

-What amount to-Vendor's right to enforce-Loss to him-Proof of-Necessity. See CONTRACT ACT, S. 74 -SALE-CONTRACT FOR-TIME FIXED FOR COMPLE. (1922) 47 M. L. J. 145 TION OF.

Completion of sale—Delay in, on ground of vendor's default to make out marketable title.

-Vendor if can take advantage of, and refuse to complete sale. See SALE-MARKETABLE TITLE-VEN-(1922) 47 M. L.J. 145. DOR'S DEFAULT, ETC.

Damages for breach of contract-Claim to, in vendor's suit for balance of purchase money and for damages for breach

-Admissibility of, as counter-claim or set-off-Point as to-Privy Council appeal -Permissibility for first time in. See PRIVY COUNCIL-APPEAL-NEW POINT-PER 2 Sar. 430 = 12 W. R. 6 = 2 B. L. R. (P.C.) 111. MISSIBILITY—APPELLATE COURT. (1917) 46 I. C. 576.

#### SALE-PURCHASER-(Contd.)

#### Deficiency in property sold-Damages for.

Counter-Claim for, in Vendor's suit for balance of purchase-money-Maintainability. See SALE-PURCHASE-MONEY-BALANCE OF-VENDOR'S SUIT FOR RECOVERY OF-DAMAGES, ETC. (1915) 32 I. C. 47.

#### Earnest-money-Forfeiture of, on breach of contract.

Agreement to forego-What amounts to. See CON-TRACT ACT, S. 74-SALE-CONTRACT FOR-EARNEST-MONEY. (1925) 50 M. L. J. 629.

#### Estoppel against vendor-Effect of.

-Su SALE-VENDOR-ESTOPPEL AGAINST. (1892) 19 I. A. 203 (220)=20 C. 296 (315)

#### Fraud of-Evidence.

Purchase of possible claim if.

It would be going much too far to impute fraud to a purchaser upon the mere ground that he had brought up a possible claim (228). (Lord Justice Turner.) SREENAUTH BHUTTACHARJEE v. RAMCOMUL GUNGOPADYA. (1865) 10 M. I. A. 220 = 3 W. B. (P. C.) 43=

1 Suth. 600 = 2 Sar. 121.

### Incumbrances on property sold.

-See SALE-INCUMBRANCES ON PROPERTY SOLD.

### Mesne profits of property purchased—Bight to.

Postponement of, till his name is recorded in books of Collectorate-Agreement for-Proof of-Validity.

The appeal arose out of a suit brought by the respondent against the appellant for mesne profits of certain lands purchased by the former from the latter. The defendant pleaed, in har to the action, an agreement contained in an instrument, containing a condition that the plaintiff should have no claim to the profits, until his (the respondent's) name was entered in the Collector's books, and the whole case turned upon the question, whether that agreement was a genuine and valid deed, or, as contended by the respondent, a forged instrument.

Both the Courts below decided against the validity of the instrument.

Held, on a consideration of the evidence in and the probabilities of the case, reversing the concurrent findings of the Courts below, that the agreement was established by the evidence produced, that it must be carried into effect, and that consequently, the respondent was not entitled to the

mesne profits claimed (443). The deed of agreement is in the name of the respondent, addressed to the appellant. It stated that the purchasemoney was not paid, but that a bond was given for it, conditioned for the payment of the money five days after the respondent's name should be recorded in the Collectorate; the bond was, during the interval, not to carry interest, and no claim was to be made for principal during that time. Though at first sight it may appear strange, that instead of actual payment, a bond should be taken, yet there are circumstances which tend to reconcile the arrangement with

probability (438).

The vendor himself was not in possession of a part of the property purported to be sold. Suits at his instance were depending for the recovery of that property, and the results of such as the suits and the results of such as the suits and the suits are such as the suits are suits as the of such suits must in some degree have been uncertain. It was impossible, therefore, for the vendor to give possession of all the property purported to be sold, and, consequently, not improbable that the purchaser should decline to pay the purchaser. Parchase money until put in possession. There is nothing contrary to justice in the provision contained in the agreement, that during the period before the entry of the purcha-ter's name in the books of the Collectorate, no interest hould run upon the bond; and on the other hand, no part that the arrangement represented by the Bill of Sale was

### SALE-PURCHASER-(Contd.)

Mesne profits of property purschased-Right to -(Contd.)

of the profits be payable to the respondent (438-9). (Dr. Lushington.) MUDROO SOODUN SUNDIAL v. SUROOP CHUNDER SIRKAR CHOWDRY. (1849) 4 M. I. A. 431 = 7 W. B. (P.C.) 73 = 1 Suth. 216 = 1 Sar. 378.

Property not in possession of vendor-Contract for sale of.

-Rights under. See SALE-PROPERTY NOT POSSES-SED BY A PERSON.

#### Property purchased.

DEFICIENCY IN- DAMAGES FOR.

-Counter-claim for, in vendor's suit to recover balance of purchase-money - Maintainability. See SALE-PUR-CHASE-MONEY-BALANCE OF-VENDOR'S SUIT FOR.

(1915) 32 I. C. 47.

#### POSSESSION OF-DEPRIVATION OF PART OF-DAMAGES FOR.

-Suit for-Maintainability - Sale collusive and fraudulent and intended to cheat infants-Purchaser

Some land was sold which at the time of the sale, belonged to a joint Hindu family consisting of five brothers to the plaintiffs-appellants. At the time of that sale, three of those brothers were minors, and therefore incapacitated from being parties to it. The deed purported to be executed by all the brothers, either each executing on his own behalf or the two executing on behalf of the other three. It appeared that the transaction was regarded by the plaintiffs as well as by the two elder brothers as open to question, because the plaintiffs thought it necessary to take an ikrarnama from the two elder brothers stating that the three brothers could not come to execute the deed of sale as they were not at leisure.

As soon as the younger brothers came of age they instituted a suit against the plaintiffs to recover their share of the property sold, and they succeeded in that suit. Thereupon the plaintiff instituted the suit out of which the appeal arose against the elder brothers for damages. The Courts below concurrently found that the sale was fraudulent and collusive on the part both of the adult brothers and the plaintiffs, their object being to defraud the minor brothers and dismissed the suit.

Held, that the decree of the Courts below was right.

It is not for the public benefit that a party engaged in a transaction such as this must now be taken to be, wherein both vendors and purchasers are aware that they are dealing with the property of infants, who have not by law the power of sale, and that they are obtaining possession of this property in a manner calculated to injure those infants, should be able to sue another party to the transaction for damages. BHOOP NARAIN CHOWBEY 2. RUGHOO NATH GOBIND ROY. (1872) 18 W. B. 230 = 2 Suth. 666 = 5 Sar. 691.

#### Possession of-Suit for.

-Finding that deed was to be merely security for advances portion of which alone made-Decree dismissing suit-Refund of advances made-Provision in decree for-

The suit was for possession of a four-anna share of a rai and Zemindary under a Bill of Sale, purporting to be an absolute sale for the sum of Rs. 75,000, and executed by the appellant at a time when he was neither in the possession of the Zemindary, nor had established in any court his title thereto, and it was brought after the appellant had established his title and obtained possession. The court found

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### SALE-PURCHASER-(Centd.)

Property purchased-(Contd.)

POSSESSION OF-SUIT FOR-(Contd.)

really for advances to be made from time to time by the vendee, the plaintiff's assignor, that the deed was executed as a security for such advances, and that the vendee had advanced only a portion of the amount undertaken to be advanced by him. In the courts below the plaintiff rested his case on the footing that the Bill of Sale represented the real contract between the appellant and the plaintiff's assignor, which was one for the absolute sale by the former and purchase by the latter of a four-anna share for the price of Rs. 75,000, and that that sum was actually paid down in cash when the instrument was executed. In appeal before their Lordships it was contended for the plaintiff for the first time that complete justice could be done between the paties only by imposing upon the appellant the terms of repaying the advances actually made to him by the plaintiff's assignor.

Their Lordships declined to accept the contention,

observing as follows :-

Their Lordships do not see how they can do this in the present suit of which the dismissal will not prevent the recovery of those advances if they are still recoverable. They do not see how can they supply a new remedy by imposing terms upon the appellant, who is not in this suit seeking the aid of the court, but is sued upon a different and inconsistent cause of action. (Sir James W. Colvile,) RAJAH SAHIB PERHLAD SEIN v. BABOO BUDHOO SINGH.

(1869) 12 M.I.A. 275 (310) = 12 W. R. (P. C.) 6 = 2 B. L. R. (P. C.) 111 = 2 Suth. 225 = 2 Sar. 430.

- Dismissal of Purchase money Subsequent suit for Bar of, under O. 2, R. 2 of C. P. C.

D, the karta of a joint Hindu family, governed by the Mithila law, sold a portion of the joint family property to the appellant in consideration of a sum of money then paid to him by the appellant. The appellant applied to the Collector for mutation of the share parchased by him into his name, but on objections made by the respondents, two of the members of D's family, the appellant's application was rejected. The appellant thereupon instituted a suit against D and the other members of his family, asking to have effect given to his purchase, and possession of the purchased share, with registration, decreed to him. The appellant did not in that suit ask in the alternative for return of the consideration money, in case he should not be held entitled to possession. That suit was dismissed.

In a suit subsequently brought by the appellant against the respondents, the surviving members of D's family, for recovery of the purchase-money paid by him with interest, the Sub-Judge held that the appellant ought, in his prior suit, to have included a claim to recover back the purchase-money, and that the subsequent suit was therefore barred under S. 43 of Civil Procedure Code of 1882. The High Court, on the other hand, held that it

was not so barred.

Their Lordships considered it unnecessary to give any opinion upon that question, observing: "It may be a question of some difficulty in a case of this kind as to what is the effect of S. 43 of Civil Procedure Code." (164). (Sir Richard Couch.) HANUMAN KAMUT :: HANUMAN MUNDAR. (1891) 18 I. A. 158 = 19 C. 123 = 6 Sar 91.

--- Dismissal of Specific performance Subsequent suit for Bar of, under 0.2, R. 2 of C. P. C.

Defendants entered into an agreement with the plaintiffs for the sale to them of a coffee plantation of which the defendants were owners subject to mortgages. The plaintiffs paid a part of the consideration money and were put in possession of the estate subject to the supervision of the

SALE-PURCHASER-(Contd.)

Property purchased-(Contd.)

POSSESSION OF-SUIT FOR-(Contd.)

defendants. The sale was to be completed and the balance of the price was to be paid after a certain time. The terms of the agreement were observed for a few months, the plaintiffs cultivated the estate, and paid off the mortgages, and made some other payments on behalf of the defendants, which left a balance of the purchase-money as due by the plaintiffs. Then disputes arose; the defendants interrupted the work of the plaintiffs, and finally instituted a suit for possession of the estate and for general reliefs. The plaintiffs filed a cross-suit in which they prayed for restoration of possession under S. 9 of the Specific Relief Act, for damages for disturbance, and for an injunction to protect their possession and management. In both suits there was no relief prayed and no issue framed on any point except possession or compensation, The plaintiffs did not ask for completion of the agreement, nor the defendants for its cancellation. In both suits the defendants were held entitled to possession and not the plaintiffs, but the latter were held entitled to a temporary injunction restraining the defendants from interfering with the management,

In a suit subsequently instituted by the plaintiffs for the specific performance of the agreement for sale, held that the suit was barred under S. 43 of Civil Procedure Code of 1882.

Quaere whether the suit was also barred under S. 13 of Civil Procedure Code of 1882 on the ground that the plaintiffs might and ought to have put forward the claim to specific performance by way of defence to the vendor's suit against them.

The agreement was the cause of action in the prior suit by the plaintiffs. There was no other. The purchasers, it is true, sued only for possession; but independently of the agreement, they had no claim to the possession which was refused to them, nor to the management which was allowed to them. The vendors asserted that the agreement was no longer in force. The obvious course for the purchasers was to demand completion of it. For some reason or other they did not do so. They did make the agreement the basis of a claim for possession and damages. In this suit they make it a basis of a claim for transfer of the estate. But that is precisely what the Code says they shall not do. (2267). (Lord Hobhouse.) RANGAYYA GOUNDAN v. NANJAPPA (1901) 28 I. A. 221 = 24 M. 491 (503-4)= RAO. 6 C. W. N. 17=3 Bom. L. B. 799=8 Sar. 117.

— Refund of purchase money in—Decree for—Grant of—Nature of purchase whether speculative merely or bona fide not properly raised and tried—Effect.

A purchaser of a leasehold property sued for possession thereof, and, failing in his attempt to recover possession as against a rival purchaser, asked for the repayment of the price which he had paid. The claim was never really investigated in the Courts below. It was never gone into as to whether this plaintiff's purchase was a truly speculative purchase or a purchase under such circumstances as would warrant a good title. Accordingly the Courts below declined to adjudicate upon that claim, and gave leave to the plaintiff to raise the question in a separate suit.

Their Lordships affirmed the judgment below. (Vincount Dunedin.) LAKSHMAN CHANDRA MANDAL v TAKIM DHALI. (1926) 24 L. W. 328

30 C. W. N. 1009 = A. I. R. 1926 P. C. 118.

#### Purchase-money.

-See All cases under SALE—PURCHASE—MONEY.

### SALE-PURCHASER-(Contd.)

#### Rebate—Sum allowed by vendor as—Payment to local temple of.

——Undertaking as to—Effect—Suit by temple for, recovery of amount, against purchaser—Maintainability. See TRUST—CREATION OF—TRANSACTION AMOUNTING TO-BUYER AND SELLER.

(1890) 17 I. A. 103 (106-7) = 14 B. 526 (531-2).

### Specific performance of contract.

——Suit for. See SALE—SPECIFIC PERFORMANCE OF CONTRACT FOR—SUIT FOR—PURCHASER—SUIT BY.

#### Tender of sale deed.

Duty as to. See SALE—PURCHASER—TITLE-DEEDS. (1919) 11 L. W. 253 (255).

#### Title-Requisitions as to.

Propriety of—Leasehold interest—Contract for sale of. See SALE—LEASEHOLD INTEREST—CONTRACT FOR SALE OF. (1915) 43 I. A. 26 (31) = 40 B. 289.

#### Title-deeds-Possession of-Right to.

Tender of conveyance if and when condition pre-

An agreement for the sale of an oil well provided, interalia that the purchaser was to execute a deed of sale, and the vendor was also to execute and to register the deed.

Held, that the purchaser had no right to obtain possession of the title deeds of the property sold without first

tendering a conveyance.

The daty of the purchaser, having regard to the analogy of what is laid down by S. 55 of the Transfer of Property Act, which is treated as defining what ought to be the practice in Upper Burma, was to tender a conveyance, and he would then, and not before such a tender was either made or waived, have the right to the deeds as the accompaniment of the transferred title. (Viscount Haldame.) MA HNIT v. MAUNG PO PU.

(1919) 11 L. W. 253 (255) = 31 C. L. J. 87 = (1920) M. M. N. 176 = 55 I. C. 791 = 27 M. L. T. 139.

#### SALE—PURCHASERS UNDER DEED OF—TEN-ANCY CREATED BETWEEN.

Joint tenancy or tenancy in common. Sec JOINT TENANCY—SALE DEED. (1928) 54 I. A. 112 (114) = 56 M. L J. 643.

### BALE—REAL NATURE OF—FINDING AGAINST

Propriety—Case of both parties that it is a real one.

Courts of Justice cannot upon mere suspicion treat a transaction of sale as not being a real one, when both parties to the transaction come before them treating it as a real one. They must then regard the evidence which brought forward on either side according to the rules which usually guide the Courts in the consideration of issues and the evidence brought to support them (793). NAWAB SYED ALLEE SHAH v. MUSSAMMAT AMANEE REGUM.

(1873) 2 Suth. 790 = 19 W. B. 149.

## BALE-RECITALS IN DEED OF.

Admissibility in evidence of—Parties—Strangers—Distinction. See DEED—RECITALS IN—ADMISSIBILITY IN EVIDENCE OF. (1) (1916) 43 I. A. 249 (252) = 44 0. 186 (195-6) & (2) (1916) 44 I. A. 36 = 41 B. 300.

Benamidar—Sale deed by—Consent of family—
Execution of deed with—Recital as to—Effect of. See
BENAMI—BENAMIDAR—TITLE OF—INQUIRY INTO—
CIRCUMSTANCES EXCITING—CONSENT OF FAMILY.

(1872) Sup. I. A. 40 (45).

Consideration for deed—Receipt of—Recital as to.

See SALE—CONSIDERATION FOR — ADMISSION OF

### SALE - RECITALS IN DEED OF-(Contd.)

Effect of—Evidence—Admission operating as estoppel—Hindu widow—Sale deed by—Recital in, that property sold was debutter property in her possession as shebait. See Deed—Recitals IN—Effect of—Evidence. (1876) 4 I. A. 52 (62) = 2 C. 341 (350).

——Guardian—Sale deed by—Recitals in—Admissibility against minor of. See HINDU LAW—MINOR— GUARDIAN OF—DEED BY—RECITALS IN.

— Hindu Law—Widow—Sale by—Necessity for— Recitals in sale deed as to. Srr HINDU Law—WIDOW— ALIENATION BY—NECESSITY FOR—EVIDENCE OF— RECITALS IN DEED OF ALIENATION OF.

——Meaningless recitals—Insertion of—Practice as to.

See BENAMI-BENAMIDAR—TITLE OF—INQUIRY INTO
—CIRCUMSTANCES EXCITING—CONSENT OF FAMILY.

(1872) Sup. I. A. 40 (45-6).

# SALE-RE-CONVEYANCE-AGREEMENT FOR. Benefit of.

--- Heirs and assigns of vendor.

S, on behalf of himself and as guardian of his minor son K, sold a village to V for Rs. 10,000. On the same day the parties executed what was called a "counterpart document," by which it was provided that V should reconvey the said village to S and K after a period of thirty years from that date, i.e. in the Ani cultivation season of the thirtieth year, in case S or his son K wished to have the village again, and upon his paying to V the sum of Rs. 10,000.

Held, on a construction of the "counterpart document that the option of purchase was not personal to S and K, but that it was exercisable by their beirs and assigns.

The terms of the contract and the time at which the option was to be exercised go to show that the intention was that the option might be exercised by S and K or their heirs, and that the benefit of the contract could be assigned (Sir Laucelet Sanderson.) SAKHALAGUNA NAYUDU P. MUNUSWAMI NAYAKAR. (1928) 55 I. A. 243 =

51 Mad. 533 = 32 C. W. N. 850 = 28 L. W. 51 = 109 I.C. 765 = 48 C. L. J. 125 = 30 Bom. L. B. 1379 = 26 A. L. J. 1211 = A. I. B. 1928 P. C. 174 = 55 M. L. J. 198.

— Hindu joint family—Father—Sale by, in his own behalf and as guardian of minor son—Agreement for reconveyance in father's name—Son's right to benefit of. See HINDU LAW—JOINT FAMILY—FATHDR—SALE BY—AGREEMENT FOR RE-CONVEYANCE, ETC.

(1928) 55 I. A. 243 = 51 M. 533

# Completed contract—Offer merely to ripen into a contract afterwards or.

-Construction of agreement.

S, on behalf of himself and as guardian of his minor son K, sold a village to V for Rs. 10,000. On the same day the parties executed what was called a "counterpart document" by which it was provided that V should reconvey the said village to S and K after a period of thirty years from that date, i. e. in the Ani cultivation season of the thirtieth year, in case S or his son K wished to have the village again, and upon his paying to V the sum of Rs. 10,000.

Held that there was, by the "counterpart document," a completed contract made between V of the one part and S and K of the other part, by which V undertook for consideration to reconvey the property if the other parties to the contract offered to purchase the same at the time stated and for the amount mentioned in the "counterpart document," and that the counterpart document was not merely a standing offer by V, the benefit of which could not be assigned to a stranger, until the offer had been accepted by the tender of the amount in June 1920 (the Ani season of

-(Contd.)

Completed contract-Offer merely to ripen into a contract afterwards or - (Contd.)

the thirtieth year), and the offer had ripened into a con-

tract to buy and sell.

All the elements necessary to constitute a contract were present. There was an undertaking on the part of V to reconvey the village to S and K in the event of their calling for a conveyance at the time and upon the terms set out in the "counterpart document". The time at which the option was to be exercised and the price which was to be paid for the property were specified. There was consideration for the contract because V, by the sale obtained possession of the property, and S received Rs. 10,000, besides acquiring the right and benefit of getting back the village upon the conditions specified in the "counterpart document". (Sir Lancelet Sanderson.) SAKALAGUNA NAYUDU p. MUNU-SWAMI NAYAKAR. (1928) 55 I. A. 243 =

51 Mad. 533 - 32 C. W. N. 850 - 28 L. W. 51 = 109 I. C. 765-48 C. L. J. 125-30 Bom. L. R. 1379-26 A. L. J. 1211 = A. I. R. 1928 P. C. 174 = 55 M. L. J. 198.

#### Specific performance of-Vendor's right to.

Default on his part to deliver possession of property to purchaser-Effect.

Two deeds were executed on 9-12-1918, one, a deed of sale of the suit properties by the appellants to the 1st respondent, and the other an agreement of reconveyance by that respondent to the appellants. In a suit by the appellants for specific performance of the agreement to reconvey, held that, in the circumstances of the case, failure on the part of the appellants to deliver possession of the properties to the 1st respondent, even if under agreement to do so, was not conduct disentitling them to a decree for specific performance of their agreement for repurchase (891).

There was no default on the part of the appellants going to the root of the contract or any omission that could not have been amply compensated by directing the appellants on repurchase and by way of addition to the stipulated purchase price to account for any rents and profits received by them from the properties (891). (Lord Blanesburgh.) MA SA BON P. MA DEE TWE. (1924) 20 L. W. 884 =

A. I R. 1924 P. C. 233 = 84 I. C. 561. Transferee from purchaser if bound by.

The respondent being in possession of a Mouzah,upon which certain dues were owing to the Government, the land was advertised for sale by the authority of the Collector. The appellant, on the application of the respondent, was induced to give security for the payment of the duties due to the Government, and to take a security for the repayment of that sum. On that agreement two instruments were executed, a Pattah and Arace, both of which were necessary to authorise the Collector to make a transfer of the property to the appellant. Those instruments were, on the face of them, such as to authorise the Collector at once to make a transfer of the property, but as it was meant only as a security to a certain extent, the respondent executed a kararnamah, by which it was stipulated that if he should not pay the instalments fully, or that any part of them should be in arrear, the Zemindary should be continued under the appellant, consistently with that writing, and that the appellant should only return to the respondent the rupees which might have been paid by him. On the same day, however, the appellant executed a counter-kararnamah by which the plan of a conditional sale, entitling the appellant to retain the property, provided no (a?) default was made, was, in truth, reduced to a mortgage, with a covenant between the appellant and the respondent, that whenever he

SALE-RE-CONVEYANCE-AGREEMENT FOR SALE-RE-CONVEYANCE-AGREEMENT FOR -(Contd.)

Transferee from purchaser if bound by-(Contd.)

enabling him to discharge the amount for which he became security, as soon as he should have received out of the rents and profits the sums he had paid, with all expenses, he should restore the Mouzah to the respondent.

Held that the agreement embodied in the counter-kararnamah would not affect any other person to whom the appellant should transfer the property which he had acquired, but was one by which as long as the appellant held the property, he would be bound (20). (Mr. Justice Bosanquet.) SRI RAJAH KAKULAPOODY JAGANNADHA RAJ BAHADOOR D. SRI RAJAH VUTSAVOY.

(1837) 2 M. I. A. 1=5 W. R. 117=1 Suth. 79= 1 Sar. 143.

#### SALE-REGISTERED DEED OF- AVOIDANCE OF.

Registered deed for-Necessity.

Immoveable property of the value of a hundred rupees or upwards can only be transferred by a registered deed, and when a deed of sale has been once executed and registered it can only be avoided by a subsequent registered transfer (373). (Lord Phillimore.) EHTISHAM ALI v. JAMNA (1921) 48 I. A. 365=15 L. W. 104= PRASAD.

30 M. L. T. 132 = 9 O. L. J. 71 = 24 O. C. 272 = 24 Bom. L. R. 675 = A.I.B. 1922 P.C. 56= 27 C.W.N. 8=20 A. L. J. 961=64 I. C. 299.

SALE-REVENUE SALE. -See REVENUE SALE.

SALE—SETTING ASIDE OF DEED OF.

Declaration of invalidity as against party of. -Distinction. See DEED-SETTING ASIDE OF-DE-CLARATION OF INVALIDITY ETC.

Suit for.

REAL OWNER-VENDOR BEING.

Pleadings and evidence raising case of-Vendor only benamidar for vendee-Decision in appeal on foot of-Propriety.

The suit was by the heir of a deceased Mahomedan lady to recover possession of property belonging to her after setting aside (1) a mookhtarnama executed by the deceased in favour of f for the sale of the suit property and (2) a sale deed executed by him in favour of the defendants pursuant to the said mookhtarnamah. The defendants were the sons of one H. H was the original owner of the suit property, and had himself conveyed to the deceased prior to the dates of the deeds in question by duly registered deeds.

The defendants' case in their written statement and at the trial was that the property did belong to the deceased but was effectually conveyed away by the deeds in question-They did not set up the case that the conveyance by H to the deceased was itself a benami transaction, and the deceased a mere benamidar for H, that H had all along remained the owner, and that the conveyance by / was executed merely for the purpose of revesting the property in his sons, the defendants, by his direction as the real owner, Nevertheless the High Court rested its judgment in favour of the defendants on that ground.

Held that so wide a departure from the case made in the pleadings and at the trial could not be permitted (335, 337) (Sir Montague E. Smith.) MUSSAMUT MEHDI BEGUN (1876) 3 Suth. 333 = Bald. 71. v. ROY HURI KISHEN.

VENDOR-SUIT BY.

-Grounds for-Advantage in property known to buyer and not disclosed to vendor if a.

In a suit to set aside a conveyance by the plaintiff to the defendant on the ground that there was coal under the land should take possession of the Mouzah, for the purpose of conveyed, that the defendant knew that fact, and that he SALE-SETTING ASIDE DEED OF-(Contd.)

Suit for-(Contd.)

VENDOR-SUIT BY-(Contd.)

concealed his knowledge from the plaintiff, held that the circumstance was not, apart from defendant's fiduciary character to the plaintiff, and in the absence of any proof of fraud, enough to vitiate the transaction. (Sir Montague E. Smith.) ADMINISTRATOR-GENERAL OF BENGAL v. JUGGESWAR ROY. (1877) 3 C. 192 (198) = 1 C. L. R. 107 = 3 Suth. P.C. 455 = 3 Sar. 760.

Ground for—Inadequacy of price if a. See SALE— CONSIDERATION FOR—INADEQUACY OF.

(1877) 3 C. 192 (196).

---- Nullity of deed of sale—Suit on foot of Equitable relief from deed in, on terms of restoring purchase money with interest—Grant of—Pleadings and exidence incommittent with.

The plaintiff sued to recover possession of certain lands with mesne profits, and to set aside a deed of sale perported to have been executed by him in favour of one /. The plaintiff alleged that he agreed to sign, and that he execut-ed the deed of sale in consequence of pressure and duress put upon him, and in order to get back certain papers, etc., of his, which had been abstracted by the defendant and his servants. He did not set up the alternative case that, even if the deed was not executed by him under such personal duress as destroyed his free agency, and entitled him to treat his deed as a mere nullity, yet there existed circumstances which entitled him in equity to be relieved from it upon the terms of his accounting for the consideration received by him under the deed with interest; and there was no proof of those circumstances either. The deed was in fact found not to have been executed under duress as alleged by the plaintiff.

Held that, plaintiff having failed to prove the case made.

his suit ought to have been dismissed (65-6).

To such a case the rule laid down in *Hickson v. Lembard* (L.R. 1 H.L. 324) applies, (*Sir James W. Colvile.*) GUTH-RIE v. ABOOL MOZUFFER. (1871) 14 M. I. A. 53 = 15 W. R. P.C. 50 = 7 B. L. R. 630 = 2 Suth. 429 =

Purchase-modey with interest—Decree for—Grant of, on sale deed being found to be valid and effectual. See

PURDANASHIN-SALE DEED BY. (1898) 25 I. A. 137 (144-5) = 20 A. 447 (456).

Setting aside of sale in—Condition of—Restoration by vendor of money received under sale if. See CONTRACT ACT—S. 65—SALE. (1871) 14 M. I. A. 53 (64-5).

Undue influence Inadequacy of consideration-Fiduciary position of vendee-Onus of proof of.

In a suit to set aside certain conveyances by the plaintiff to the three first defendants on the ground that he was induced by the defendants, who were trusted servants, but who had abused their fiduciary character, to part with his property without fully understanding the nature of the transaction, and without adequate consideration, held that the onas lay on the plaintiff of proving that the defendants were in a fiduciary capacity to him at the time of the execution of the deeds, and were therefore in a position to exercise undue influence over him. Held further that there was no reliable evidence that at the time of the execution of those documents by the plaintiff the defendants were in any fiduciary character quad him or in a position unduly to influence his judgment. (Sir Montague E. Smith.) Apainistrator-General of Bengal v. Juggeswar Roy. (1877) 3 0. 192 (195-6) = 1 C. L. B. 107 = 3 Buth. 455 = 3 Bar. 760.

SALE—SPECIFIC PERFORMANCE OF CON-TRACT FOR.

EXECUTION PURCHASER OF PROPERTY SUBSEQUENT.
IMMOVABLE PROPERTY—CONTRACT FOR SALE OF.
SUIT FOR—EITHER PARTY AGAINST OTHER—SUIT

SUIT FOR-PURCHASER-SUIT BY. SUIT FOR-VENDOR-SUIT BY.

#### Execution purchaser of property subsequent.

NOTICE OF PRIOR CONTRACT TO.

---What amounts to.

Property which had been contracted to be sold was subsequently sold in execution of a decree against the contractor and was purchased by a third party. The execution sale began before 3 p. m. The pleader for the contractor arrived at the sale at 4 p.m., read the agreement which was in English, and made a general statement in the vernacular that his client would claim on the property and would himself bid at the sale.

Held, that there was no such unequivocal notice as ought to have been given in the case of a Court-sale.

Judicial sales would be robbed of all their security if wague references to antecedent contracts could be held to invalidate the bayer's title. (Lord Duncdin.) NUR MAHO-MED PEERBHOY 2: DINSHAW HORMASJI MOTIWALLA.

(1922) 33 M. L. T. 241 (P. C.)=71 I. C. 625= A.I.R. 1922 P. C. 393=28 C. W. N. 522= 45 M. L. J. 770 (775).

SPECIFIC PERFORMANCE AGAINST-RIGHT OF.

- Attachment subsequent to plaint contract but before execution of formal conveyance.

The respondent being a creditor of S. M. on 29th March, 1819, obtained an order in the nature of an attachment upon the three houses, the subject-matter of the appeal, and on 4th May. 1820, he obtained a further order authorizing the sale of those houses for the purpose of satisfying his decree debt. The appellant claimed to be a bone fafe purchaser of the said properties from S. M., under a deed of sale executed by him to the appellant on the 31st of March 1819. On the strength of that deed he claimed to be entitled to the properties free from the attachment effected at the instance of the respondent.

The Sudder Adawlut (the Court below) was of opinion that the deed relied upon by the appellant was not so complete a document as to warrant its interference with the attachment, not having all the requisites of a sale.

As to the objection to the validity of the deed relied upon by the appellant (assuming it to be genuine, and duly attested) founded upon the fact of its not being a complete and final deed of sale, inasmuch as the parties contemplated the execution of a more formal conveyance. hdd, reversing the Court below, that it was sufficient to bind the property, and to give to the appellant the right to demand a specific performance of the contract, and the execution of such further assurances as might be deemed necessary to invest him with a complete legal title to the houses which were the subjectmatter of the appeal, and that the attachment could not prevail against the appellant's title founded on the said deed. (Vaughan, J.) LALLA CHOONEFLAL NAGINDAS v. SAWA-(1835) 5 W. B. 111 (P. C.)= CHUND NAMEDAS. 1 Suth. 38=1 Sar. 882.

-Condition-Purchase by execution furchaser with notice of contract if a.

A contract for the sale of immoveable property can be specifically enforced against a purchaser of the same at a sale subsequently held in execution of a decree against the contractor only if the purchaser at the judicial sale bought with TRACT FOR-(Contd.)

Execution purchaser of property subsequent-(Cont.f.)

SPECIFIC PERFORMANCE AGAINST-RIGHT OF-(Contd.)

notice of the contract. (Lord Dunedin.) NUR MAHOMED PEERBHOY :: DINSHAW HORMASH MOTIWALLA

(1922) 33 M. L. T. 241 (P. C.) = 71 I. C. 625 = A.I.R. 1922 P. C. 393 = 28 C. W. N. 522 = 45 M. L. J. 770 (775).

Immovable property-Contract for sale of. COMPENSATION WHETHER WILL BE ADEQUATE RELIEF FOR NON-PERFORMANCE.

Presumption under S. 12, Expl. of Specific Relief

Act as to-Proof and finding rebutting.

The presumption referred to in the Explanation to S. 12 of the Sp. R. Act is rebutted by proof and finding shat the breach of the contract can be adequately relieved by compensation in money. (Sir Lancelot Sanderson.) RAMJI (1929) 56 I.A. 280 = PATEL v. RAO KISHORE SINGH.

27 A L.J. 780 = 33 C.W.N. 893 = 1929 M.W.N. 452 = 31 Bom. L. R. 883 = 117 I.C. 1 = 50 C.L.J. 197 = 30 L.W. 443=25 N.L.R. 121=A.I.R. 1929 P.C. 190= 57 M. L. J. 205.

DECREE FOR SPECIFIC PERFORMANCE OF. Propriety-Finding that compensation in money is adequate relief-Effect.

Where, in a suit for specific performance of a contract to sell immoveable property, the Courts below found that compensation in money was an adequate relief to the plaintiff. but nevertheless decreed specific performance of the contract, held that in view of the express provisions contained in S. 12(c) & 21 (a) of the Sp. R. Act, a decree for specific performance of the contract should not have been made. (Sir Lancelot Sanderson.) RAMJI PATEL v. RAO KISHORE (1929) 56 I. A. 280 = 27 A.L.J. 780 = SINGH. 33 C.W.N. 893 = 1929 M.W.N. 452 = 31 Bom.L.R. 883 =

117 I C. 1 = 50 C.L.J. 197 = 30 L.W. 443 = 25 N.L.B. 121 = A.I.R. 1929 P.C. 190 = 57 M.L.J. 205.

-Right to-Proof that compensation in money award for breach cannot be recovered-Effect.

Proof that any pecuniary compensation that may be awarded for breach of a contract to sell property cannot be recovered affords, under S. 12 (d) of the Sp. R. Act, a good ground for obtaining a decree for specific performance. (Sir Lancelot Sanderson.) RAMII PATEL P. RAO KISHORE SINGH. (1929) 56 I.A. 280 = 27 A.L.J. 780 = 33 C.W.N. 893 = 1929 M.W.N. 452 = 31 Bom L R. 883 = 117 I.C. 1=50 C.L.J. 197 = 30 L.W. 443 =

25 N.L.R. 121 = A.I.R. 1929 P.C. 190 = 57 M.L.J. 205 Suit for-Either party against the other-Suit by. Decision of-Principles applicable.

In exercising its jurisdiction over specific performance, a Court of Equity looks at the substance and not merely at the letter of the contract. If a vendor sues, and is in a position to convey substantially what the purchaser has contracted to get, the Court decrees specific performance with compensation for any small and immaterial deficiency, provided that the vendor has not, by misrepresentation or otherwise, disentitled himself to his remedy. Another possible case arises where a vendor claims specific performance and the Court refuses it, unless the purchaser is willing to consent to a decree on terms that the vendor will make compensation to the purchaser, who agrees to such a decree on condition that he is compensated. If it is the purchaser who is suing, the Court holds him to have even a larger right. Subject to considerations of hardship, he may elect to take all that he can get, and to have a proportionate abatement from the purchase-money. But this right applies only

SALE - SPECIFIC PERFORMANCE OF CON- SALE-SPECIFIC PERFORMANCE OF CON-TRACT FOR-(Contd.)

> Suit for-Either party against the other-Suit by -(Contd.)

to a deficiency in the subject-matter described in the contract. It does not apply to a claim to make good a representation about that subject-matter, made not in the contract, but collaterally to it. In the latter case the remedy is recission, or a claim for damages for deceit where there has been fraud, or for breach of a collateral contract if there has been such a contract. (Viscount Haldane). RUTHER-(1915) 32 I. C. 47= FORD P. ACTON-ADAMS.

84 L. J. P. C. 238=(1915) A. C. 866.

Suit for-Purchaser-Suit by.

(See also Specific Performance-Suit for).

AGENT-CONTRACT BY.

ALLEGATIONS AND PROOF NECESSARY IN.

BENAMI SUBSEQUENT PURCHASER IMPLEADED IN-RESISTANCE OF SUIT BY-RIGHT OF.

CONSIDERATION-CONTRACT NOT SUPPORTED BY. CONTRACT TO BE PERPORMED in future AND UPON

HAPPENING OF CONTINGENCY. DAMAGES FOR BREACH OF CONTRACT IN.

DECREE IN-RIGHT TO.

DECREE PROPER IN-PLAINTIFF DEBARRING HIM-SELF AT HEARING FROM ASKING FOR SPECIFIC RELIEF.

DISMISSAL IN APPEAL OF, ON GROUND OF UNDER VALUATION.

SUBSEQUENT - SUIT EXECUTION PURCHASER AGAINST.

FURTHER RELIEF IN-PRAYER FOR.

HINDU LAW - JOINT FAMILY - MANAGER-CON-TRACT BY-SPECIFIC PERFORMANCE OF-SUIT

LITIGATION-PROPERTY SUBJECT OF.

MAINTAINABILITY-BREACH OF CONTRACT BY HIM. RES JUDICATA.

SUBSEQUENT CONTRACT - PURCHASER UNDER -SUIT AGAINST.

TWO PLOTS OF LAND-SALE OF, FOR ONE SPECI-FIED SUM-CONTRACT FOR.

AGENT-CONTRACT BY.

-Specific performance of - Suit for- Authority of agent to enter into contract-Onus of proof of. Su PRINCIPAL AND AGENT-AGENT-CONTRACT BY SALE (1928) 55 I.A. 360 = 52 B. 597.

ALLEGATIONS AND PROOF NECESSARY IN.

-Damages-Claim in suit also for. In a suit by the purchaser for specific performance of the cantract or for damages for the breach of it, it is necessary for the plaintiff to allege and prove either performance on her part of the contract, or at all events that she was ready and willing to perform it but was prevented by the wrongful act of the defendant. RANEE BHABOSOONDUREE DOSSEE v. ISSUR CHUNDER DUTT.

(1872) 11 B.L.R. 36=18 W.R. 140=3 Sar. 136= 2 Suth. 616

-Readiness and willingness of plaintiff to perform his part of contract-Allegation and proof as to-English law-Law under Specific Relief Act.

Under the English law, the plaintiff, in a suit for specific performance, must allege, and, if necessary, prove, a continuous readiness and willingness, from the date of contract to the time of his hearing to perform the contract on his part. Though there is no express statement in the Specific Relief Act to that effect, such an averment of readiness and willingness is equally necessary in an Indian suit for specific performance. (Lord Blanesburgh). ARDESHIR H, MAMA D. FLORA SASSOON. : (1928)-56 J.A. 360=52 B. 597=32 O.W.N. 953=

SALE-SPECIFIC PERFORMANCE OF CON- | SALE - SPECIFIC PERFORMANCE OF CON-TRACT FOR-(Contd.)

Suit for-Purchaser-Suit by-(Contd.)

ALLEGATION AND PROOF NECESSARY IN-(Contd.)

30 Bom. L. R. 1242 = 28 L.W. 257 = LL.T. 40 B. 125=111 I. C. 413=26 A.L.J. 1220= (1928) M.W.N. 893 = 48 C.L J. 451 = A.I.R. 1928 P.C. 208 = 55 M.L.J. 523.

-Benami subsequent purchaser impleaded in-Resistance of suit by-Right of-Vendor and subsequent real

purchaser not resisting same.

A suit for specific performance of a contract for sale was instituted against the vendors and against subsequent purchasers of the property with notice of the contract in favour of the plaintiff-nppellant. The subsequent purchase was in the name of S, but really benami for G. The High Court dismissed the suit, and the plaintiff appealed to His Majesty in Council. The vendors did not appear on the appeal,and the only respondent who contested plaintiff's right to judgment was S, the benamidar, the real purchaser, G. not having filed a case, and not appearing. It was contentended that the appellant must, in any case, succeed because none of the persons really interested opposed his claim.

Their Lordships did not think it necessary in the view they took of the case on the merits, to consider this contention, (Lord Wrenbury). NAROTTAM DAS 2. KEDAR NATH SAMANTHA. (1916) 6 L.W. 1=

21 C.W.N. 665 (667-8) = 41 I.C. 957. Consideration-Contract not supported by-Suit in

respect of.

Held that such promise to convey property as there was in a letter relied upon was not supported by any consideration, and that the claim to specific performance of the agreement based thereon was rightly held to have failed. (Lord Sinka) BALARAM P. NAKTU.

(1928) 47 C.L.J. 418 = 108 I.C. 11 = 24 N.L.B. 59 = 30 Bom. L.R. 821 = 27 L.W. 807 =

A.I.B. 1928 P. C. 75 = 54 M.L.J. 462 (467). Contract to be performed in futuro and upon hap-

pening of contingency-Suit in respect of-Maintainability Condition.

In a case of a contract of sale to be performed in future and upon the happening of a contingency the purchaser may claim a specific performance of the contract if he comes into court showing that he has himself done all that he was bound to do (307). (Sir James W. Colvile). RAJAH SAHIB PERHLAD SEIN v. BABOO BUDHOO SINGH.

(1869) 12 M.I.A. 275=12 W.R. P.C. 6= 2 B. L. B. P. C. 111=2 Suth. 225=2 Sar. 430.

DAMAGES FOR BREACH OF CONTRACT IN.

Amendment of plaint so as to allow claim for-What amounts to-Jurisdiction to allow, at hearing of sult-Discretion. See SPECIFIC PERFORMANCE-SUIT FOR-DAMAGES FOR BREACH OF CONTRACT IN.

(1928) 55 I.A. 360 = 52 B. 597. Award of-Power of-Plaintiff debarring himself at bearing from asking for specific relief. See SPECIFIC PERFORMANCE—SUIT FOR—DAMAGES FOR BREACH OF CONTRACT IN. (1928) 55 I.A. 360 = 52 B. 597.

DECREE IN-RIGHT TO.

In a case in which the vendee under a contract for the sale of land was entitled only to a qualified covenant, he sisted upon his being given an absolute warranty of title, withheld payment of the purchase-money beyond the time fixed by the contract, and sued for specific performance of the contract, insisting on his right to have an absolute war-ranty. At the trial of the suit, in his memoran dum of appeal to the High Court, and in the arguments before the High Court, until he saw that the judgment of the High

TRACT FOR-(Contd.)

Suit for-Purchaser-Suit by-(Contd.)

DECREE IN-RIGHT TO-(Contd.)

Court, was likely to be given against him, the vendee insisted upon having the sale-deed with the warranty of title.

Held, affirming the courts below, that the case was not one in which a decree for specific performance ought to be made (177-8).

. The cases to which their Lordships have been referred are very different from this. They are cases where apparently the plaintiff has been willing to have the agreement which was actually proved performed (177-8), (Sir Richard Couch). BABU BINDESHRI PARSHAD P. MAHANT JAI-RAM. (1887) 14 I.A. 173 = 9 A. 705 (712-3) = 5 Sar. 61.

-GamMing or speculative contract-Portion of purchase-money faid on execution of contract-Purchaser alleging such payment and tendering balance in suit.

In a case in which the contract of sale is a gambling or even a speculative one, from the mere fact that part of the purchase-money was paid upon the execution of the contract, and that the purchaser came into Court alleging such part payment and tendering the balance, it would not fo'low that he would be entitled to a decree for specific performance of the contract (307-8). (Sir James W. Colvile). RAJAH SAHIB PERHLAD SEIN :. BAEOO BUDHOO SINGH. (1869) 12 M. I. A. 275=12 W.R.P.C. 6= 2 B.L.B.P. C. 111 - 2 Suth. 225 - 2 Sar. 430.

- Terms of contract uncertain.

In a suit by a vendee for specific performance of a contract to sell property, the High Court held that specific performance could not be decreed, because, on the evidence, it was impossible to say with any degree of certainty what the terms of the contract were.

Held that the judgment of the High Court was right. AMMA BIBI P. UDIT NARAIN (Lord Macnaghten). (1908) 36 I.A. 44=31 A. 68=6 M.L.T. 89= MISRA. 9 C.L.J. 512=11 Bom. L.R. 525=1 I.C. 890= 19 M.L.J. 295.

DECREE PROPER IN-PLAINTIFF DEBARRING HIMSELF AT HEARING FROM ASKING FOR SPECIFIC RELIEF.

Effect. See SPECIFIC PERFORMANCE—SUIT FOR -DAMAGES FOR BREACH OF CONTRACT IN-AWARD (1928) 55 I.A. 360=52 B. 597.

> DISMISSAL IN APPEAL OF, ON GROUND OF UNDERVALUATION.

-Propriety-Plea of undervaluation not rained in or dealt with by trial Court.

In a suit by the purchaser for specific performance of a contract for sale, the High Court dismissed the suit on the ground inter alia, that the price fixed was not a fair price. There was no issue of undervaluation at the trial, and the trial judge did not therefore deal with the point.

Held that the vendor could not subsequently raise and succeed upon that contention, (Lord Wrenbury). NAR-OTTAM DAS D. KEDAR NATH SOMANTA.

(1916) 41 I. C. 957 = 6 L. W. 61 = 21 C.W.N. 665 (668). EXECUTION PURCHASER SUBSEQUENT-SUIT AGAINST.

-Right of, See SALE-SPECIFIC PERFORMANCE OF CONTRACT FOR-EXECUTION PURCHASER SUBSE-QUENT.

FURTHER RELIEF IN-PRAYER FOR.

-Damages or refund of deposit money in alternative -Claim for- Prayer if includes.

Where, in a suit by the vendee for specific performance of an agreement to sell land, the only specific relief claimed in the plaint was specific performance, held that a olalm for such forther relief as the nature of the case might

SALE - SPECIFIC PERFORMANCE OF CON- SALE - SPECIFIC PERFORMANCE OF CON-TRACT FOR- (Contd.)

Suit for-Purchaser-Suit by-(Contd.)

FURTHER RELIEF IN-PRAYER FOR-(Contd.)

requaire could only mean such further relief as was ancillary to the main specific relief claimed and did not include a claim for damages or a refund of the deposit money in the alternative (125-6.) (Lord Athinson.) BRICKLES v. (1916) 38 I. C. 123-86 L. J. P. C. 22= (1916) 2 A. C. 599.

HINDU LAW-JOINT FAMILY-MANAGER-CONTRACT BY-SPECIFIC PERFORMANCE OF-SUIT FOR.

-Manager and other members-Suit against-Death of manager pending appeal by plaintiff in-Sons and grandsons of manager already on record made L. Rs. Claim for earnest-money and interest against-Maintain-See HINDU LAW-JOINT FAMILY-MANAGER -- CONTRACT FOR SALE BY

(1926) 54 I. A. 55 (59-60)=6 Pat. 323.

Subsequent purchaser impleaded in-Plea by, of non-binding nature of sale against other members of family -Maintainability. See HINDU LAW-JOINT FAMIY MANAGER OF-CONTRACT FOR SALE BY

(1926) A. I. R. 1926 (P. C.) 109 (110.)

LITIGATION-PROPERTY SUBJECT OF. -(See GENERALLY UNDER LITIGATION-PRO-PERTY SUBJECT OF, ETC.)

-Contract for sale of-Specific performance of-Suit for, brought after termination of litigation-Price not fully paid-Dismissal of suit-Decree for possession, leaving vendor to his remedy for recovery of balance of purchasemoney—Decree proper. See LITIGATION — PROPERTY SUBJECT OF, OR TO BE RECOVERED BY—CONTRACT FOR SALE OF. (1869) 12 M. I. A. 275 (307-8.)

-Settlement of litigation-Contract for sale subject to -Administration suit respecting property-Pendency of-Suit brought during-Maintainability. See SALE-LITIGA-(1925) 50 M. L. J. 644 (650.)

MAINTAINABILITY-BREACH OF CONTRACT BY HIM. -Effect. See SALE-PURCHASE MONEY - MORT-GAGE TO BE EXECUTED, ETC. (1916) 38 I.C. 123 (126.) RES JUDICATA.

Possession of property purchased—Prior suit for— Dismissal of—Effect—C. P. C. of 1908—O. 2, R, 2— Effect. See SALE-PURCHASER-PROPERTY PURCHA-SED-POSSESSION OF-SUIT FOR-DISMISSAL OF

(1901) 28 I. A. 221 (226-7)=24 M. 491 (503-4.) SUBSEQUENT CONTRACT-PURCHASER UNDER-SUIT AGAINST.

-Maintainability - Plaintiff's knowledge of subsequent contract after date of his own contract and before execution of conveyance pursuant thereto.

On 22-10-1920, the owner of immoveable property entered into a contract for the sale thereof to Respondent No. 1, and pursuant to that contract, executed on 28-10-1920. a registered sale deed in his favour. It appeared, however, that, on 25-10-1920, the owner had entered into another contract for the sale of the same property to the appellants, and that Respondent No 1 took the conveyance with knowledge of that contract.

Held, in a suit for specific performance brought by the appellants, that Respondent No. 1 was entitled to rely on the earlier contract in his favour, and that his rights were not affected by his knowledge of the contract in appellants' favour before obtaining the conveyance. (Lord Buckmaster.) MUSSUMAT FATMA BIBI D. SAADAT ALL.

(1929) 51 C.L.J. 117=32 Bom. L.B. 485=

TRACT FOR-(Contd.)

Suit for-Purchaser-Suit by-(Contd.)

SUBSEQUENT CONTRACT-PURCHASER UNDER-SUIT AGAINST-(Contd.)

121 I.C. 240 = 31 L.W. 580 = 1930 M.W.N. 326 = A.I.B. 1930 P.C. 99 = 58 M.L.J. 123.

-Mortgages binding on suit property-Amount paid by subsequent purchaser for discharge of-Charge in his favour in respect of-Declaration of, in decree in plaintiff's

On a suit for the specific performance of a contract to sell land brought, inter alia, against a subsequent purchaser of the suit property, it appeared that the latter had, in virtue of his claim to be purchaser, discharged mortgages on the property. In affirming the decree below in favour of the plaintiff their Lordships added a declaration that in respect of any moneys properly paid by the subsequent purchaser towards the discharge of mortgages upon the suit property he was entitled to a charge upon the property for any sums so paid by him which might have been rightfully due under the same mortgages. (Lord Phillimore.) NASIR-(1926) 25 A. L. J. 20= UD-DIN P. AHMAD HUSAIN. (1926) M.W.N. 812 = 3 O.W.N. 731 = 38 M.L.T. P.C. 3= 97 I. C. 543 = A. I. B. 1926 P. C. 109 (110).

TWO PLOTS OF LAND-SALE OF, FOR ONE SPECIFIED SUM-CONTRACT FOR.

-Specific performance in regard to one of plot-Grant of-Specific performance in regard to other impor-

A contract for the sale of two plots of land for one specified sum required the vendor to make out a marketable title, and, in case of failure to do so, bound him to refund the deposit on demand. It also stipulated that, in case of any deficiency in the area or quantity of land, no compensation should be payable by the vendor on actual measurement. There was no general condition either providing for compensation or excluding it. The price fixed was a price for both plots together, and, in describing the steps to be taken as to making title, granting an assurance and receiving rents and profits, both plots were dealt with together as a whole, and there was nothing by which to separate them or to place one on a footing independent of the other. In fact, if it were not for the statement, of their areas and of their boundaries and locality, no separate and independent footing could be suggested or alleged to distinguish either from the other. It was not proved that the part of the contract which was left unperformed bore only a small proportion in value to the whole within S. 14 of the Specific Relief Act, and the purchaser had declined to accept relief on the terms of S. 15.

In a suit by the purchaser to enforce the contract, the vendor proved to be unable to make a title to the second plot. The Trial Judge offered the plaintiff a decree for the conveyance of the other plot on the terms of S. 15 of the Specific Relief Act, and, on the plaintiff declining the offer, dismissed the suit with costs. On the issue of damages for breach of the contract no evidence of material damage was given.

On appeal, the High Court, considering that the case fell within the terms of S. 16 of the Specific Relief Act, allowed the appeal, but, having before them no evidence whatever of the value or character of the plots beyond the particulars given in the contract, remitted the case to the Trial Judge in order that he might take evidence and assess the abatement of price to be allowed in respect of the failure to make title to one of the plots.

Held, reversing the High Court, that the suit should

have been dismissed with costs.

#### SALE - SPECIFIC PERFORMANCE OF CON. | SALE-STRANGER TO DEED OF-(Contd.) TRACT FOR-(Contd.)

Suit for-Purchaser-Suit by-(Contd.)

TWO PLOTS OF LAND-SALE OF, FOR ONE SPECI-FIED SUM-CONTRACT FOR-(Contd.)

To make S. 16 applicable, it had to be shown that there was a part of the contract, to wit, that relating to plot B, which (a) "taken by itself could and ought to be specifically performed," and (b) "stood on a separate and independent footing" from the other part of the contract which admittedly could not be performed. Before a court can exercise the power given by S. 16 it must have before it some material tending to establish these propositions, and cannot apply the section on a mere surmise that, if opportunity were given for further inquiry, such material might be found to be sufficient. The words of the section, wide as they are, do not authorise the court to take action otherwise than judicially, and in particular do not permit it to make for the parties or to enforce upon them a contract, which in substance they have not already made for them selves. The expression "stands on a reparate and independent footing" points to a similation, which would exclude any new bargain, that cannot be said to be contained in the old one.

In the present case, but for the statement of the areas of the plots and of their boundaries and locality, no separate and independent footing could be suggested or alleged to distinguish either from the other. It may be that in the estimation of the parties at the time of the agreement one was more valuable than the other, bigha for bigha, or one was made more valuable than it would otherwise have been by the simultaneous acquisition of the other, apart from their respective areas. Nothing is stated about the quality or amenities of the land. It may be that, because both were sold together, the total price was less than the aggregate prices would have been, if both had been sold apart. To call the parties to give further evidence now is to try to make them agree on a new price, subject to settlement by the Trial Judge, if they differ; it is, in fact, to impose on them an arbitration, to which they have not submitted. To resort to expert evidence is to inquire what they ought to have agreed upon, though the fact is that, left to themselves, they did not choose to do so. To remand the case to the Trial Judge is to delegate to him a discretionary decision, which rested with the High Court itself in the view which it took of the appeal. (Lord Sumner.) WILLIAM GRAHAM P. KRISHNA CHANDRA 6 L. R. P. C. 38 = 21 L. W. 390 = (1925) M.W.N. 138 =

3 P. L. B. 93 = 27 Bom. L. B. 740 = 23 A. L. J. 709 = 29 C. W. N. 919 = A. I. R. 1925 P. C. 45= 86 I. C. 232=48 M. L. J. 172

Suit for-Vendor-Suit by.

-Su SALE-SPECIFIC PERFORMANCE OF CON-TRACT FOR-SUIT FOR-EITHER PARTY AGAINST THE OTHER. (1915) 32 I. C. 47.

BALE\_SPES SUCCESSIONIS.

-Sale of. See T. P. ACT, S. 6 (a).

BALE - STATUTE-PROVISIONS OF - SALE

-Sale contrary to provisions of Statute if a. See RENGAL ACTS—LAND REVENUE SALES ACT XI OF 1859, S. 33 SUIT BY DEFAULTER TO SET ASIDE SALE-GROUNDS. (1893) 20 I. A. 165 (174) = 21 C. 70 (82-3).

ALE-STRANGER TO DEED OF.

Provisions in favour of, in deed of sale. Right to enforce. See CONTRACT—STRANGER TO SUIT TO ENFORCE CONTRACT—RIGHT OF—PUR-CHASER OF PROPERTY, ETC. (1921) 42 M. L.J. 444 (446). estopped from disputing the title of his mother to certain

Validity of deed of sale-Right to question.

-See ASSIGNMENT -STRANGER TO. (1908) 35 I. A. 48 (56) = 35 C. 420 (427).

Void and voidable deeds-Distinction.

After all, so long as the sale-deed in favour the plaintiffrespondent stands, it is no concern of the defendant-appellant's that the vendor, the real owner of the property conveyed and sued for, may have a grievance on the score of a misstatement as to consideration in an instrument to which the defendant-appellant is no party. The vendor himself has taken no steps to impeach the deed. On the contrary, in the course of the two years that elapsed, the vendor more than once affirmed the transaction. To resist the plaintiff's suit for possession based on the saie-deed, it is not enough for the defendant to make out that the sale-deed is voidable at the option of the vendor. He must show that it was and is absolutely void (120-1). (Lord Macnaghten.) LAL ACHAL RAM P. RAJA KAZIM HUSAIN KHAN.

(1905) 32 I. A. 113=27 A. 271 (289)= 9 C. W. N. 477 = 8 O. C. 155 = 8 Sar. 772 = 15 M. L. J. 197.

#### SALE-VALIDITY OF.

-Purchase money-False recital in deed of sale as to -Effect of. See SALE-LITIGATION.

(1905) 32 I. A. 113 (121) = 27 A . 271 (290).

-Stranger's right to question. Siv SALE-STRANGER TO-VALIDITY OF SALE.

#### SALE-VENDOR.

BREACH OF CONTRACT BY-DAMAGES FOR.

COMPLETION OF SALE--REFUSAL OF, ON GROUND OF PURCHASER'S DELAY IN COMPLETION OF SALE.

DEALINGS SUBSEQUENT WITH PROPERTY CONVEYED BY.

ESTOPPEL AGAINST.

INCUMBRANCES ON PROPERTY SOLD.

MARKETABLE TITLE.

MESNE PROFITS-LIABILITY FOR, FOR KEEPING PUR-CHASER OUT OF POSSESSION.

MISREPRESENTATION OF DEED BEING A MORTGAGE EXECUTION OF SALE DEED UNDER.

PROPERTY NOT IN POSSESSION OF.

PROPERTY NOT OWNED BY.

PURCHASE-MONEY.

RE CONVEYANCE-AGREEMENT FOR.

SETTING ASIDE OF DEED OF SALE.

SPECIFIC PERFORMANCE OF CONTRACT.

TITLE-WEAKNESS OF-CONSCIOUSNESS OF.

#### Breach of contract by-Damages for.

----Liability for-Measure of. See SALE-CONTRACT FOR-BREACH OF-VENDOR-BREACH BY.

#### Completion of sale—Refusal of, on ground of purchaser's delay in completion of sale.

Right of-Purchaser's delay based on vendor's default to make out marketable title as agreed. See SALE-MARKETABLE TITLE-VENDOR'S DEFAULT, ETC. (1922) 47 M. L. J. 145.

#### Dealings subsequent with property conveyed by.

-Admissibility of, as declarations in his favour. See ADMISSION-SELF-SERVING STATEMENT-ADMISSI-BILITY OF -SALE-DEED REGISTERED.

(1921) 48 I. A. 365 (373).

#### Estoppel against.

-Purchaser if affected by.

Where it was found that A was, by his acts and conduct,

## SALE-VENDOR-(Contd.)

Estoppel against-(Contd.)

property and the validity of a mortgage thereof granted by her, held that a purchaser of the property from A was equally estopped from disputing the title of the mother and the validity of the mortgage granted by her (220). (Lord Shand.) SARAT CHUNDER DEY : GOPAL CHUNDER (1892) 19 I. A. 203 = 20 C. 296 (315)= 6 Sar. 224.

## Incumbrances on property sold.

-See Sale-Incumbrances on Property SOLD.

#### Marketable title.

-See SALE-MARKETABLE TITLE

Mesne profits-Liability for, for keeping purchaser out of possession.

-Position in respect of -Not that of a trustee.

Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, held that the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. (Lord Cairns.) NIL-KAMAL LAHURI P. SRI GUNOMANI DEBI.

(1871) 7 B. L. R. 113 (130)=15 W. R. 38= 6 M. J. 227 = 2 Sar. 651 = 2 Suth. 413.

#### Misrepresentation of deed being a mortgage-Execution of sale deed under.

Relief against deed in case of-Right of. See SALE -MORTGAGE-MISREPRESENTATION, ETC.

(1924) 47 M. L. J. 128 (135).

## Property not in possession of.

-Sale of. See SALE-PROPERTY NOT POSSESSED BY A PERSON.

#### Property not owned by.

-Sale of. See SALE-PROPERTY NOT OWNED BY.

#### Purchase-money.

-See SALE-PURCHASE-MONEY.

#### Re-conveyance-Agreement for.

-See Sale-Reconveyance-Agreement for.

### Setting aside of deed of sale.

-Suit for. See SALE-SETTING ASIDE OF DEED OF -VENDOR'S SUIT FOR.

#### Specific Performance of contract.

-Suit for. See SALE-SPECIFIC PERFORMANCE OF CONTRACT FOR.

#### Title of-Weakness of-Consciousness of.

-Stipulations in sale-deed indicating.

The suit was brought by the plaintiff-respondent for the recovery of a fourth share of a certain mutta from the defendant. The plaintiff claimed as a purchaser of the fourth share from one S. In the bill of sale executed by S in favour of the plaintiff he stipulated that the plaintiff should not recover from him any costs which he might incur on account of suits that he might bring for the recovery of proprietorship, and of the past profits, or the amount paid for the purchase in case his suit for recovery of the property should be dismissed.

Held that the said stipulation in the bill of sale shewed what little confidence S had in his title (151). (Sir Barnes Peacock.) COLLECTOR OF GODAVERY v. ADDANKI RAMANNA PANTULU. (1886) 13 L A. 147= 9 M. 482 (489)=4 Sar. 728,

#### SALE-WRITING-REGISTERED INSTRUMENT -NECESSITY.

### Impartible zemindary-Transfer of. .

Registered instrument for-Necessity-Recital of transfer in mortgage bond-Notices to revenue authorities of alleged transfer-Mutation of names-Delivery of possession-Sufficiency of. See HINDU LAW-IMPARTIBLE ESTATE-TRANSFER OF-REGISTERED INSTRUMENT.

(1900) 28 I. A. 46 (53, 55) = 24 M. 377 (383-5).

## TRANSFER OF PROPERTYACT-SALE PRIOR TO.

-Prior to the Transfer of Property Act no written conveyance was by the law of India necessary for a transaction between mortgagor and mortgagee extinguishing the equity of redemption in the mortgaged property and transferring a portion of the property to the mortgagee absolutely (6). (Lord Shane.) MAHOMED MUSA v. AGHORE KUMAR (1914) 42 I. A. 1=42 C. 801 (815)= GANGULI.

19 C.W.N. 250 = 17 M.L.T. 143 = (1915) M.W.N. 621= 13 A. L. J. 229 = 2 L. W. 258 = 21 C. L. J. 231 = 17 Bom. L. R. 420 = 28 I. C. 930 = 28 M. L. J. 548.

-Mutation of names-Change of possession-Suffciency of.

A joint Hindu family, living in the Benares district, and governed by the Mithakshara law, consisted of a grandfather, his son, and S, a minor grandson by that son. In January, 1875, the grandfather executed, with the consent of his son obtained for valuable consideration, a deed of gift giving the whole of the family properties to S and his brothers who might be born thereafter. In March, 1875, S was entered in the Collector's books as the sole possessor of the property, and his mother, as his guardian, took possession. S died in August, 1875. His mother then claimed as his heir to have the estates transferred into her own name, and as, after notices issued, no one objected, orders were made to that effect.

Held, that the actions which followed the deed were of a kind which, even without it, might work a transfer of property in India (178). (Sir Arthur Hobbouse.) RAI BISHEN (1884) 11 I. A. 164= CHAND D. ASMAIDA KOER. 6 A. 560 (573-4)=4 Sar. 512.

#### SALE-DEED.

—See all cases under SALE.

## SALE OF LAND FOR REVENUE ARREARS (ACT I OF 1845).

## Hindu widow-Mortgaged property in possession of-Revenue due upon.

-Wilful default to pay-Mortgagee paying same Remedy proper of, in such a case. See HINDU LAW-WIDOW-REVENUE DUE UPON ESTATE-(1867) 11 M. L A. 247 (267-8).

## Mortgagee's fraudulent purchase at

Effect of, on equity of reaemption.

While a Government sale for arrears of revenue gires a title against all the world, with certain exceptions, a fraudulent purchase at such auction sale by a mortgage will not defeat the equity of redemption (555-6). As between the mortgagor and the mortgagee the sale must in soch a case be considered as a private sale (559). (Sir Educate V. Williams) NAWAB SIDHEE NUZUR ALLY KHANS. RAJAH OJOODHYARAM KHAN.

(1866) 10 M. I. A. 540 = 5 W. R. (P. O.) 83 1 Suth 635=2 Sar 195 SALE OF LAND FOR BEVENUE ARREARS (ACT | SALE OF LAND FOR REVENUE ARREARS (ACT I OF 1845)-(Contd.)

Regularity of-Strict observance of.

The regularity of Government sales, under Act I of 1845, for arrears of revenue, should be strictly observed. (Dr. Lushington.) MAHARAJAH MAHASHUR SINGH BAHA-DOOR P. BABOO HURRUCK NARAIN SINGH.

(1862) 9 M. I. A. 272=1 Sar. 854.

-Ss. 6, 14-Sale advertisement-Irregularities in-Effect of, on validity of sale-Civil Appeals Act IX of 1854 if cures irregularities.

Where the sale advertisement was frregular, (1) in not being published in conformity with S. 6 of Act I of 1845, and (2) in the Mehals not being sold in their consecutive numbers, in the Towjee, or Register of the Collector of the District, as provided by S. 14 of that Act, held that the sale was rightly set aside, as such an irregularity was not cured by Act IX of 1854, which related only to technical errors of procedure in the lower court, which were not productive of injury to either parties. (Dr. Luskington.) MAHARAJAH MAHASHUR SINGH BAHADOOR D. BABOO HURRUCK NARAIN SINGH. (1862) 9 M. I. A. 272=1 Sar. 854.

#### S. 9-Suit under.

Hindu widow-Suit against, for recovery of arrears of revenue payable by her but in fact paid by plaintiff-Decree against her in-Sale in execution of-Interest passing under. See HINDU LAW - WIDOW - DECREE AGAINST-SALE IN EXECUTION OF-INTEREST PASSING UNDER-ENTIRE ESTATE OR WIDOW'S INTEREST ONLY SALE OF LAND, ETC. (1867) 11 M. I. A. 241 (266).

-Nature and scope of.

An action brought under S. 9 of Act I of 1845 is only a ersonal action. The section gives no remedy against the land, which it leaves to the then existing law (260, 267). (Lord Romilly.) NUGENDERCHUNDER GHOSE : SREE-MUTTY KAMINEE DOSSEE. (1867) 11 M. I. A. 241 = 8 W. R. P. C. 17 = 2 Suth. 77 = 2 Sar. 275.

-St. 20, 21-Benami purchase-Plea of-Maintainability of-Sections if a bar to.

Their Lordships are not satisfied that Ss. 20 and 21 of Act I of 1845 raise a presumption of law fatal to the case of benamee purchase set up by the appellant, that is, a benamee purchase by a Hindu widow in trust for her husband (423). (Sir James W. Colvile.) GERESH CHUNDER LAHOREE V. MUSSUMAT BHUGGOBUTTY DEBIA.

(1870) 13 M. I. A. 419 = 14 W. R. P. C. 7= 2 Suth. 339 = 2 Sar. 579

8. 21-Hindu joint family-Manager of-Purchase at sale by-Suit by other members to enforce their rights under-Maintainability.

S. 21 of Act I of 1845 is as follows :- " And it is hereby enacted that any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used,

shall be dismissed with costs."

The question was as to the proper construction to be put con the said section. The High Court expressed their opinion "that a purchase at a sale for arrears of revenue under Act I of 1845 made by the managing member of a joint Hinda family in his own name, but on behalf of the joint andly, is not affected by S. 21 of that Act, and that not-tibility and the contained therein the members of ithtanding anything contained therein the members of ach joint family may see to enforce rights acquired by them h is the solo certified purchaser."

I OF 1845)-(Contd.)

S. 21-(Contd.)

Their Lordships entirely concurred in that view of the construction of Act I of 1845 (345). (Sir Barnes Peacock.) TOONDUN SINGH 2. POKHNARAIN SINGH.

(1874) 1 I. A. 342 = 22 W. R. 199 = 3 Sar. 390. S. 24.

Mortgagee in possession-Reginne due upon mortgazed property-Default to pay, pursuant to agreement for secret purchase of same-Purchase at sale by him-Effect of, on right of redemption-Suit by mortgagor to enforce right-Limitation.

A mortgagee in possession and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mortgaged estate between them, including the fraudulent device of a sale by an auction for arrears of revenue, such arrears being designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for possession instituted many years after the sale for arrears was not barred by S. 24 of Act I of 1845 requiring the suit to be brought within one year of the revenue sale (553-4).

The objection that the suit was barred under S. 24 of Act I of 1845 necessarily supposed the suit to be brought to set aside the revenue sale; this remedy, however, the suit did not seek, but, relying on the agreement for the secret purchase antecedent to the sale, the plaintiff claimed a right, as it were, to confess and avoid that sale, by imposing a trust on the estate which passed under it (553). By reason of the alleged agreement and the fraud of the mortgagee, the revenue sale must be considered as a private sale (559). (Sir Edward V. Williams). NAWAB SIDHEE NUZUR ALLY KHAN P. RAJAH OJOODHYARAN KHAN.

(1866) 10 M. I. A. 540 = 5 W. R. P. C. 83= 1 Suth. 635 = 2 Sar 198.

S. 26.

Decennial settlement-Tenure created before or since -Evidence-Hereditary Jaghire tenure.

The suit lands, being certain mahals comprised in a Zemindary, were, in 1775, granted by the Government by a Sanad to A, who had done and was doing service in repressing the incursion of wild elephants. That sanad contained no words of inheritance. On the death of A, the Government, in 1786, granted a second sanad to B and C. esented themselves as the heirs of A. That sanad did contain words of inheritance. In 1804, a suit was brought against B and C by the true heirs of 4 for possession of the lands. The Court declared the daintiffs in that suit to be the true heirs of A. and directed B and C to relinquish possession of the lands to the plaintiffs therein, treating, apparently, the former as trestees for the true heirs. But considering apparently, that it could not, without the sanction of Government, transfer the benefit of the second sanad from the persons named in it to the true owners, the court directed that the possession of the former should not be disturbed until an order should be issued by the Government. In consequence of this, a third sanad was granted in 1807. which recited the two former sanads, and continued the Jaghire to the true heirs of A. Under the three sanads, the lands comprised in the Jaghire were held rent-free for nearly a century. The Zemindary comprising the suit mahals was permanently settled in 1802.

Held that the tenure could not be held to have been first created by the third sanad of 1807, and could not be held to be a tenure created within the Zemindary since the perpetual settlement within the meaning of Act I of 1845 (455).and the same of all a selections and the

## SALE OF LAND FOR REVENUE ARREARS (ACT | SALT-(Contd.) I OF 1845)-(Contd.)

S. 26-(Contd.)

The effect of the second sanad of 1786 was to create an hereditary Jaghire tenure; and the settlement of the Zemindary was made upon the assumption of the subsistence of that hereditary Jaghire. The grant was perfectly good against the Zemindar, who could not have come into court to set aside the second sanad on the ground that the grantees had obtained it from Government by fraud or misrepresentation. That sanad was never in fact revoked or set aside by any court or authority. The decree in the suit between the real and pretended heirs of A made (subject to the sanction of Government) the latter trustees for the former, and directed them to relinquish the enjoyment of the lands accordingly. And the Government by the third sanad sanctioned that arrangement and confirmed the title of the true heirs. The Jaghire must therefore he held to be a tenure created before, and subsisting at the time of, the Decennial Settlement; and, consequently, it is within the exception of S. 26 of Act I of 1845 (455-6). (Sir James IV. Colvile.) FORBES v. MEER MAHOMED.

(1870) 13 M. I. A. 438 = 14 W. R. P. C. 28 = 5 B.L.R. 529 - 2 Suth. 358 - 2 Sar. 588.

#### SALT.

-Manufacture of - Government's exclusive right to-Measures adopted to secure-Salt-producing lands-Government's assumption of-Compensation to owners of land -Measures adopted for.

The Government of India has always claimed, as indeed the Native Governments to which it succeeded had done, the sole right to all salt produced within its territory, and the revenue derived from salt has always been treated as quite distinct from that derived from land. Before the year 1780 the Government had been in the habit of letting the salt-producing districts, which were commonly unfit for agricultural purposes, to farmers, who might or might not be the owners of the adjacent lands, and it was only in the latter part of the last century that some preferential claim to a lease of such districts was admitted on behalf of tha Zemindar within whose Zemindary they were situated (183.4).

In the year 1780 the Government determined on assuming what is called in the Regulations a monopoly of salt, but which may be more correctly described as the exclusive right to manufacture it. They accordingly took all saltproducing lands into their own hands, working them by agents commonly called salt agents. The Zemindars who were thus deprived of their lands were compensated by certain remissions and allowances. To require a Zemindar from whom a portion of his land had been taken, to continue to pay rent for that portion would have been obviously unjust. So much rent therefore as he would probably have obtained for the land he had kept it in his possession, and which was usually estimated on the footing of 11 anna per head on the men who would probably be employed in the salt manufacture, was remitted to him. The remission was thus carried into effect. He was still assessed on the whole Zemindary, but the estimated rent of the "Khalari," or salt land, was treated as payable by the Salt Department, and debited to them. This payment or debit was assumed to enure for the benefit of the Zemindar, and he was credited with it; the effect of this arrangement being that, although he was nominally charged with the jumma due on all the land geographically within his Zemindary, he was in reality charged only with so much of the jumma as appertained to that land which he retained in possession. A further allowance called mushuhara (monthly allowance) was sometimes made to him in respect of profits which he

might have derived over and above rent, and sometimes a

further allowance of salt itself (184). (Sir Robert P. Collier.) SECRETARY OF STATE FOR INDIA D. RANI (1881) 8 I. A. 172= ANUNDMOYI DEBI. 8 C. 95 (103-4)=4 Sar. 281.

#### SALTPETRE DUTY.

-See NUMUK SAYER MEHAL.

#### SALVAGE.

-Claim in nature of-Decree reversed on appeal-Person in possession under-Revenue paid by-Recovery of, from opponent-Claim for. See CONTRACT ACT, Ss. 69, 70-DECREE REVERSED ON APPEAL.

(1893) 20 I. A. 160 (163-4)=21 C. 142.

#### SALVAGE LIEN.

-Statutory lien-Instance of. See BENGAL REGULA-TIONS-PUTNI REGULATION VIII OF 1819, S. 13 (4)-PUTNI RENT-ARREARS OF.

(1914) 41 I. A. 91 = 41 C. 926 (941-2)

#### SANCTION.

-Firm of individuals-Sanction in regard to-Limited Company of same men-Sanction if enures to. See CHOTA NAGPUR INCUMBERED ESTATES ACT OF 1876, S.17 AND R. 16-FIRM OF INDIVIDUALS.

(1915) 42 I. A. 97 (101-2)=42 C. 1029 (1041).

## SANCTION TO PROSECUTE SUIT.

-Failure to obtain-Dismissal of suit on ground of -Jurisdiction. See SUIT-SANCTION TO PROSECUTE. (1889) 17 I. A. 5 (8)=17 C. 688.

#### SARANJAM.

GRANT BY WAY OF.

INAM-DISTINCTION.

INAM AND -MIXED ESTATE OF, HELD ON POLITICAL TENURE.

MAHRATTA SARANJAMS.

MEANING OF.

NATURE OF.

POLITICAL TENURE-MIXED ESTATE OF INAM AND SARANJAM HELD ON.

RESUMPTION BY GOVERNMENT OF.

#### Grant by way of.

DEATH OF HOLDER-GRANT ON-GOVERNMENT'S DECISION AS TO.

-Review of -Civil Court's jurisdiction as to.

The question to whom a Saranjam or jaghir shall be granted upon the death of its holder is one which belongs exclusively to the Government, to be determined upon political considerations and it is not within the competency of any legal tribunal to review the decision which the Government may pronounce. This principle is clearly expressed, not for the first time, in Bombay Act VII of 1863, s. 2, cl. 3, and is recognised in cases where the question has been raised (68). (Lord Hannen.) SHEIKH SULTAN SANI P. SHEIKH AJMODIN.

(1892) 20 I. A. 50=17 B. 431 (456)=6 Sar. 59.

ESTATE CONVEYED-SOIL ITSELF OR REVENUE ONLY.

-Evidence-British Government-Grant by.

Held, on the evidence, reversing the High Court and retoring the trial Judge, that a Saranjam grant made by the British Government in favour of an ancestor of the plaintiff was a grant of the soil itself with the right to make the best possible use of unoccupied land, and not a grant of the royal revenue only (55.6). (Lord Salveten.) SECRETARY OF STATE FOR INDIA IN COUNCIL v. LAXMEN. (1922) 50 I. A. 49=47 B. 327 (3334)= 17 L. W. 405 = 28 C. W. N. 49 = 32 M. L. T. 111=

## SABANJAM-(Contd.)

Grant by way of-(Contd.)

ESTATE CONVEYED—SOIL ITSELF OR REVENUE ONLY—(Contd.)

37 C. L. J. 464 = 25 Bom. L. R. 527 = A. I. R. 1923 P. C. 6 = 72 I. C. 898 = 44 M. L. J. 471.

-Presumption.

A grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the royal share of the revenue only. It must be determined in each case upon the facts what was the quality of the original grant, although it may well be that it is ordinarily a grant of the royal revenue only. (Lord Salveton.) SECRETARY OF STATE FOR INDIA IN COUNCIL P. LAXMIBAL.

(1922) 50 I. A. 49 (55)=47 B. 327 (332)= 17 L. W. 405=28 C. W. N. 49=32 M. L. T. 111= 37 C. L. J. 464=25 Bom. L. R. 527= A. I. R. 1923 P. C. 6=72 I. C. 898=44 M. L. J. 471.

INCIDENTS OF.

Data for accertaining, in absence of deal of grant. It is no doubt correct to say that the fact that the Saranjamdar is in a sense a life-tenant does not alter the ordinary incidents of a grant by way of saranjam. But what those ordinary incidents are, must be ascertained, when there is no deed of grant forthcoming, from (a) the evidence, if any, in the case; (b) from legislative enactments; and (c) from judicial decisions. Failing all these, there would be nothing else but principles of law to apply (308). (Lord Sinha.) SECRETARY OF STATE FOR INDIA v. GIRIJABAI.

(1927) 54 I. A. 359 = 51 B. 957 = 39 M. L. T. 463 = 29 Bom. L. R. 1503 = 46 C. L. J. 420 = A. I. B. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

Inams—Rules applicable to—Inapplicability of.

The word "inam" is sometimes vaguely applied to all grants of revenue-free land, without reference to perpetuity or any specified conditions. It would be unsafe to apply to a peculiar grant like the Mahratta saranjam rules which are held applicable to inams (369). (Lord Stubs.) SECRETARY OF STATE FOR INDIA v. GIRIJABAL.

(1927) 54 I. A. 359 = 51 B. 957 = 39 M. L. T. 463 = 29 Bom. L. R. 1503 = 46 C. L. J. 420 = A. I. B. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

OCCUPANCY RIGHTS IN LANDS INCLUDED IN.

Acquisition or creation in his own favour by saranjamdar of—Creation of such rights in favour of others—
Power of—Resumption of Saranjam—Effect of, on such
rights, See Saranjam—Grant by way of—Revenue.

(1927) 54 I. A. 359 (371) = 51 B. 957 = 39 M.L.T. 463 = 29 Bom. L. B. 1503 = 46 C. L. J. 420 = A. I. B. 1927 P. O. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

Rights existing previously and at time of grant—
Saranjamdar's rights as against. See SARANJAM—MAHMATTA SARANJAMS. (1927) 54 I. A. 359 (368 9) =
51 B. 957 = 39 M. L. T. 463 = 29 Bom. L. B. 1503 =
46 C. L. J. 420 = A. I. B. 1927 P. C. 238 =

46 C. L. J. 420 = A. I. B. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 7 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

REVENUE—GRANT ONLY OF—OCCUPANCY RIGHTS
IN LANDS INCLUDED IN.

Acquisition or creation in his own favour by saranlandar of Creation of such rights in favour of others— Power of Resumption of saranjam—Effect of, on such rights.

In the case of a Saranjam grant of the royal share of the romae, it is not competent for the Saranjamdar (i. e., the

SARANJAM-(Contd.)

Grant by way of-(Contd.)

REVENUE—GRANT ONLY OF—OCCUPANCY RIGHTS IN LANDS INCLUDED IN—(Contd.)

grantee) to acquire or create in his own favour occupancy rights which may remain unaffected by the subsequent resumption of the Saranjam. Accordingly, when a Saranjam of this nature is resumed, the Government becomes entitled to resume not only the land revenue but also all the rights and benefits that the grantee had acquired or secured by virtue of his grant and qua Saranjamdar.

Quarre whether, in the case of Saranjam grants of the revenue only, the grantee could validly create occupancy rights in favour of third parties which could survive the resumption of the Saranjam. (Lord Sinha.) SECRETARY OF STATE FOR INDIA v. GIRIJABAI.

(1927) 54 L. A. 359 (371) - 51 B. 957 - 39 M.L.T. 463 -29 Bom. L. B. 1503 - 46 C. L. J. 420 -A. I. B. 1927 P. C. 238 - 26 A. L. J. 32 - 106 I. C. 1 -

27 L. W. 121 = 32 C. W. N. 329 = 53 M. L. J. 431.

—Inam—Distinction. See INAM—SARANJAM.

Inam and-Mixed estate of, held on political tenure.

—Resumption and re-grant of—Government's power of—Dispute as to—Civil Courts—Jurisdiction. See SARAN-JAM—POLITICAL TENURE. (1892) 20 I. A. 50 (68-9) = 17 B. 431 (456).

#### Mahratta saranjams.

-Nature and classes of Occupancy tenants on land included in grant existing previously to and at time of grant—Saranjamdor's rights as against—Grant of soil itself.

Amongst the Mahrattas the term "saranjam" was applied specially to a temporary assignment of revenue from villages or lands for the support of troops or for personal military service, usually for the life of the grantee; also to grants made to persons appointed to civil offices of the State to enable them to maintain their dignity, and to grants for charitable purposes. These were neither transferable nor hereditary, and were held at the pleasure of the sovereign. They were divided into two classes-namely, (a) grants of revenue only, i. c., of the royal share of the produce of the lands comprised in the grant, and (b) grants of the soil itself. It would seem to follow from the nature of Saranjams that whether they were grants of the soil itself or of the revenue only of specified lands, they could not and were not meant to interfere with rights in those lands existing previously to and at the time of the grant. If and so far as there were occupancy tenants on those lands, they would retain their right of possession (whether it can be called ownership or not is immaterial) but subject to paying the assessed land revenue (i.e., the royal share of the produce) payable before the grant to the Government and after the grant to the grantee. On principle, the grantee would not, unless specially authorized, be able to convey a larger title than his own. He could not convey a permanent title to any portion of the land, either by sale or by lease. Such sale or lease might be good against himself but would be void as against the grantor (368-9). (Lord Simia.) SECRETARY OF STATE FOR INDIA 2. GIRIJABAI.

(1927) 54 I. A. 359 = 51 B. 957 = 39 M. L. T. 463 = 29 Bom. L. R. 1503 = 46 C. L. J. 420 = A. I. R. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

#### Meaning of.

——Saranjam is an assignment of lands or their revenue by the State for the support of troops (56). (Lord Hannen.) SHEIKH SULTAN SANI 2. SHEIKH AJMODIN.

(1892) 20 I. A. 50 = 17 B. 431 (443) = 6 Sar. 52.

SARANJAM-(Contd.)

#### Nature of.

Saranjam is the Marathi equivalent to the term jagir (213). (Lord Shuw.) RAGHOJIRAO SAHEB v. LAKSH-MANRAO SAHEB. (1912) 39 I. A. 202=

36 B. 639 (658)= 16 C. W. N. 1058= 12 M. L. T. 472=(1912) M. W. N. 1140= 14 Bom. L. R. 1226=17 C. L. J. 17— 16 I. C. 239=23 M. L. J. 383.

#### Political tenure—Mixed estate of inam and saranjam held on.

Resumption and re-grant of Government's power of
 Dispute as to-Civil Court's jurisdiction to adjudicate

ироп.

The plaintiff, claimed to be the son of one A', deceased, and as such son to be entitled to certain properties alleged to have been held by A' by a tenure known as Saranjam, and certain other properties alleged to have been held by a tenure known as inam. The plaintiff also claimed the property as devised to him under the will of K'. He sought to recover possession from the defendant of the Saranjam and inam lands of which (as the plaintiff alleged) the defendant had been put into wrongful possession by the Bombay Government after the death of K'.

The Court below held that the Government had power not only to resume the Saranjam, but also the so-called inam property, and to assign them to whom it pleased. And the question for decision in the appeal was whether

the Court below was right in so holding.

Held, on the evidence in the case affirming the Court below, that a mixed estate of Saranjam and inam was granted to K by the treaty of July, 1820, to be held by him as a personal and military jaghir, that the tenure thereby created was political, that no distinction could be made between the inam and the other property, that both passed intact to the person whom the Government might recognise as the head of the family, and that it was not competent for any court of law to dispute it (68-9). (Lord Haunen.) SHEIKH SULTAN SANI v. SHEIKH AJMODIN.

(1892) 20 I. A. 60 = 17 B. 431 (456) = 6 Sar. 52.

Resumption by Government of.

Occupancy rights in lands included in grant—Effect
 on. Sα Sabanjam—Grant by Way OF—Revenue.
 (1927) 54 I.A. 359 (371) = 51 B. 957.

-Right of-Onus on Government to proce-Long pos-

session with grantee's family.

Where the plaintiff, who claimed the suit estate under a saranjam grant made by the British Government in favour of an ancestor of his, was dispossessed by the British Government in 1901, and it appeared that his ancestors had been in possession since before 1775, semble there might be a certain onus on the Government to justify his dispossession (55). (Lord Salvesen.) SECRETARY OF STATE FOR INDIA IN COUNCIL v. LAXMIBAL.

(1922) 50 I.A. 49 = 47 B. 327 (332) = 17 L.W. 405 = 28 C.W.N. 49 = 32 M.L.T. 111 = 37 C.L.J. 464 = 25 Bom. L.R. 527 = A.I.R. 1923 P.C. 6 =

72 I.C. 898 = 44 M.L.J. 471.

——Saranjam and inam—Mixed estate of, held on political tenure—Resumption and regrant of—Power of—Dispute as to—Jurisdiction of Civil Courts to enquire into. See SARANJAM—POLITICAL TENURE.

(1892) 20 I.A. 50 (68-9) = 17 B. 431 (456).

Validity of -Civil Court's jurisdiction to inquire into.

Thus it appears that the Government, on the death of K, resumed the Saranjam held by him, and regranted it to A, on the ground that the Government has the right to resume jaghirs. Assuming the right to exist, it would not be competent for any Court to review this decision of the Government.

#### SARANJAM-(Contd.)

#### Resumption by Government of-(Contd.)

ment on the ground that the reasons upon which it proceeded were erroneous (68). (Lord Hannen.) SHEIKH SULTAN SANI v. SHEIKH AJMODIN.

(1892) 20 I.A. 50 = 17 B. 431 (455) = 6 Sar. 52.

— Where, in the case of a saranjam grant of the soil by the Government, they resumed the estate granted with the object of preventing partition of what they regarded as an impartible estate. held that the right of the Government to resume the estate could not be questioned in the Civil Courts (57). (Lord Salvesen.) SECRETARY OF STATE FOR INDIA IN COUNCIL v. LAXMIBAL.

(1922) 50 I.A. 49=47 B. 327 (335)=17 L.W. 405= 25 Bom. L.R. 527=37 C.L.J. 464=28 C.W.N. 49= 32 M.L.T. 111=A.I.B. 1923 P.C. 6=72 I.C. 898= 44 M.L.J. 471.

#### SARANJAMI EXPENSES.

-Meaning of.

Saranjami expenses are expenses incurred by the landlord in the management of the property. (Mr. Ameer Ali.) JAGDEO NARAIN SINGH v. BALDEO SINGH.

(1922) 49 I.A. 399 (405) = 2 P. 38 (45) = 32 M.L.T. 1 = (1923) M.W.N. 361 = 27 C.W N. 925 = 36 C.L.J. 499 = 3 Pat. L.T. 605 =

A.I.B. 1922 P.C. 272=71 I.C. 984=45 M.L.J. 460.

#### SARANJAM RULES OF 1898.

—Applicability of, to saranjams resumed in 1892— Rule inapplicable proprio vigore to them. (Lord Sinks.) SECRETARY OF STATE FOR INDIA v. GIRIJABAL.

(1927) 54 I. A. 359 (369) = 51 B. 957 = 39 M.L.T. 463 = 29 Bom. L. R. 1503 = 46 C. L. J. 420 =

A. I. R. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1 = 27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

——Effect of—Quaere if merely declaratory of previous law. (Lord Sinha.) SECRETARY OF STATE FOR INDIA 7. GIRIJABAI. (1927) 54 I.A. 359 (369) =51 B. 957 = 39 M. L. T. 463 = 29 Bom. L. R. 1503 = 46 C.L.J. 420 = A. I. R. 1927 P. C. 238 = 26 A. L. J. 32 = 106 I. C. 1=

27 L. W. 124 = 32 C. W. N. 329 = 53 M. L. J. 431.

#### SARAOGEE-AGARWALAS.

#### SARBARAKAR.

-Khurdah-Sarbarakars in-Rights of, in office and in Sarbarakari jogirs.

Sarbarakars in Khurdah had under the Government no heritable or transferable right in their office of Sarbarakar or in the Sarbarakari jagirs; they were liable to be dismissed for misconduct, and on dismissal they lost all right to occupy any sarbarakari jagirs; and on the termination of a settlement they were bound to enter into a fresh engagement with the Government if they wished to be continued in the office of sarbarakar (249-50). (Sir John Edge.) PARAMANANDA DAS GOSWAMI v. KRIPASINDHU ROY. (1918) 45 I.A. 246 = 46 C. 378 = 25 M.J.T. 73 =

29 C.L.J. 175 = 9 L.W. 269 = 23 C.W.N. 393 = 21 Bom. L.B. 580 = 48 L.C. 391 = 36 M.L.J. 18.

-Office of-Nature of.

The office of Sarbarakar has regard to the lands with which the Collector is concerned and not to the person or the personal property of the landholder. (Lord Hobouse.) BETI MAHARANI v. COLLECTOR OF ETAWAH. (1894) 22 I.A. 31 (39) = 17 A. 198 (207) = 6 Sar. 551.

SCYCHELLES PENAL CODE.

S. 216.

jaghirs. Assuming the right to exist, it would not be competent for any Court to review this decision of the Governin forma specifica but only by its equivalent—Case of.

#### SOYCHELLES PENAL CODE-(Contd.)

S. 216—(Contd.)

It was argued that S. 216 of the Scychelles Penal Code | EDONARD LAMIER P. THE KING. referred alone to the failure to restore or replace goods, money, etc., in forma specifica, and that the section was accordingly inapplicable to a position like that of the ordinary breach of agency or trust, in which money, in the sense of the actual notes, sovereigns, or the like, does not fall to be returned, but only its equivalent. The section does not appear to be limited in the sense contended for. (Lord Shaw.) LOUIS EDONARD LAMIER 2. THE KING. (1913) 18 C.W.N. 98 = 15 Cr. L.J. 305 =

(1914) A.C. 221 = 23 I.C. 657 = 26 M.L.J. 1 (6).

Guardian-Agent of-Improper or iniudicious invertment of minor's funds by-Conviction of emberdement

in case of-Legality of.

The appellant, who was a member of a firm, was authorised by the guardian of two minors by a power of-attorney to act for the guardian in collecting and investing the minor's property. Acting under that authority funds were received and remittances made from time to time by the appellant's firm with whom an account was opened in the name of the minors. A certain amount due to the minors from a debtor was paid by him in the shape of crediting it to the appellant's firm in their account with their bankers which account was overdrawn. The minor's account with the appellant's firm was duly credited with that amount. The appellant being thereafter asked to give a guarantee for the funds of the minor in his hand, gave security to the satisfaction of the authorities. Thereafter criminal proceedings were instituted against the appellant who was tried and convicted of having embezzled the minors' money.

Held, setting aside the conviction, that the facts did not on any just or legal view of them, warrant the conviction. (Lord Show.) LOUIS EDONARD LAMIER D. THE KING. (1913) 18 C.W.N. 98=15 Cr. L.J. 305=

(1914) A.C. 221 = 23 I.C. 657 = 26 M.L.J. 1. Mixing of another's funds with one's own-Convic-

tion for-Criminal intent-A eccesity.

The mixture of the funds of another with one's own funds may be in many cases natural and proper, in other cases convenient but irregular, and in the third, both irregular and criminal. The distinctions between these cases require to be treated with the greatest judicial care, so as, while preserving the amplest civil responsibility, to prevent the third or criminal category from being extended to mistaken though convenient acts. A court of justice cannot reach the conclusion that crime has been committed unless it be a just result of the evidence that the accused in what was done or omitted by him was moved by the guilty mind (Lord Shaw.) LOUIS EDONARD LAMIER v. THE KING.

(1913) 18 C.W.N. 98 = 15 Cr. L.J. 305 = (1914) A.C. 221 = 23 I.C. 657 = 26 M.L.J. 1 (6-7).

Squanders away or destroys to the prejudice of the

moner in-Meaning and effect of.

No countenance can be given to the view that the language of S. 216 of the Scychelles Penal Code can be used to rank within the category of crime, conduct, or actions which do not essentially partake of the nature of embezzlement in the sense in which that term is ordinarily and properly understood. Although the term "embezzle" is supplemented by the terms "squander away or destroy" the whole context and view of the section show that the latter expressions are amplifications or exemplifications of the operations which are of the nature of embezzlement, in the sense that the conduct which is libelled has been a wilful appropriation by the accused of the property of another, or, after possession of the same had been acquired, of the wilful squandering or struction of it to his prejudice. (Lord Skaw.) LOUIS

## SCYCHELLES PENAL CODE-(Contd.)

S. 216-(Contd.)

(1913) 18 C.W.N. 98=15 Cr. L.J. 305= (1914) A.C. 221 = 23 I.C. 657 = 26 M.L.J. 1 (6).

SEA.

Island, See ISLAND-SEA.

SEA CUSTOMS ACT (VIII OF 1878).

-S. 20, Proviso-Goods belonging to Government-Importation into India-Liability for customs duty. See PARTNERSHIP- PARTNER OF- SERVANT OR AGENT REMUNERATED BY SHARE OF PROFITS OR A.

(1924) 52 I. A. 167-49 B. 320.

-Affixing of, to deed-Sufficiency of, for purposes of its execution-Proof clear and convincing of such affixing -Necessity. See DEED-EXECUTANT OF-SIGNATURE (1875) 2 1. A. 87 (110). OF-NECESSITY.

-Deceased Nawab-Execution of deed by-Evidence of-Seal on deed being true impressions of seal of deceased -Evidence of-Sufficiency of. See DEED-EXECUTION OF -EVIDENCE OF-NAWAB EXECUTANT

(1866) 11 M. I. A. 120 (124).

Deceased person-Seal of-Use of, by his successor-

Practice as to-Presumption-Proof.

From the mere fact that a loose practice has been shown in one case to have prevailed in the Kutcherry of a Bengal Zemindar (the practice, ave., of the Zemindar using the seal of his deceased predecessor), it would be dangerous, as well as unreasonable, to infer in another that the same practice prevailed in the durbar of a powerful sovereign prince. 10 M. I. A. 192 distinguished. (Lord Chancellor Lord Hatherley.) FORESTER P. SECRETARY OF STATE FOR INDIA. (1872) Sup. I.A. 10 (31) = 12 B.L.B. 120 =

18 W. R. 349 = 3 Sar. 1=1 P. R. 1872= 2 Suth. 628.

-Fabritation of-Common and skilfully conducted in India. (Lord Chelmsford.) MAHARAJAH RAJENDUR KISHWUR SINGH BAHADOOR v. SHEOPURSUN MISSER.

(1866) 10 M. I. A. 438 (453) = 5 W.R. P.C. 55 = 1 Suth. 628 = 2 Sar. 174.

-Zemindar deceased-Seal of-Use by his successor of-Practice of. (Lord Justice Knight Bruce.) BABOO GOPAL LALL THAKOOK 2. TELUCK CHUNDER RAI.

(1865) 10 M. I. A. 183 (192) = 3 W.R. P.C. 1= 1 Suth. 558 = 2 Sar. 98.

### SECRETARY OF STATE FOR INDIA.

-Contract with-Contract with Secretary of State for India in Council pursuant to Government of India Act of 1858 if a.

In a case in which a contract was expressed to be made with the Secretary of State in Council, pursuant to the Act of 1858 for the better government of India, and was made with the concurrence of a majority of the Council, to be paid for out of the revenues of India as required by that Act, and without any personal liability on the Secretary of State, it was orged that it was not with the Secretary of State at all that the contract was made, but with a corpora-

Held that the contention was untenable (740). A contract is none-the-less made with the Secretary of State that he has to obtain the concurrence of others before making it, and that he and they are designated by this statute as liable to be sued or to sue on it as a corporate body (740). (Lord Chancellor.) SIR STUART SAMUEL, In the (1913) 17 C. W. N. 735=19 I. C. 765. matter of. Council of- Relation between.

The Secretary of State for India and his Council have distinct functions prescribed by the Government of India

## SECRETARY OF STATE FOR INDIA-(Contd.)

Act, 1858, which enables them to bind their successors, and this provision affords facilities for litigation, which are not afforded by a Petition of Right. But this is merely machinery; the personality of the Secretary of State is not merged in any corporation by the statute nor is that of the Council. In some particulars they can check him or he can override them. They and he remain with separate and possibly conflicting responsibilities, though for purposes of litigation they can be treated as though they were one legal personality (740). (Lord Chancellor.) SIR STUART SAMUEL, In (1913) 17 C. W. N. 735 = 19 I. C. 765. the matter of. -Declaration on behalf of Crown by-Weight of. See (1905) 33 I. A. 1= COURT OF DIRECTORS. 33 C. 219 (252).

——Duties of —Officer of British Government if an. See STATUTE (22 GEO. III, C. 45), S. I —OFFICER OF BRITISH GOVERNMENT. (1913) 19 I. C. 765 (769) = 17 C. W. N. 735 (739-40).

——Office of—Origin, history, and duties of. See STATUTE (22 GEO, III, C. +5), S. 1—OFFICER OF BRI-TISH GOVERNMENT. (1913) 19 I. C. 765 (769) = 17 C. W. N. 735 (739 40).

## SECRETARY OF STATE FOR INDIA IN COUN-CIL.

——Contract with—Contract with Secretary of State for India if a—Suit on contract—Right of—Parties to. See SECRETARY OF STATE FOR INDIA—CONTRACT WITH.

(1913) 17 C. W. N. 735 (740).

——Suit by subject against—Legislation taking away— Validity of. Sci Government of India Act of 1858, S. 65—Effect of. (1913) 40 I. A. 48=40 C. 391.

## SECUNDERABAD CANTONMENT.

——Military authorities in—Land in Cantonment forming Hyderabad territory—Grant of—Validity.

When the Nizam's Government admitted a British force within its territory, and allotted to it the Secunderabad cantonment as its headquarters, it no doubt by necessary implication conveyed to the military authorities all powers of jurisdiction, control, and management incident to maintaining the efficiency and the discipline of the troops and the peace and good order and convenient use of the cantonment. But it would be going a long way beyond this to hold that the officer commanding the troops could be held empowered to alienate in perpetuity land forming part of the cantonment, and undoubtedly Hyderabad territory for a purpose wholly unconnected with military requirements. (Sir Arthur Wilson.) PESTONJI JIVANJI v. SHAPURJI.

(1908) 35 L. A. 79 (86.7) = 35 C. 478 (493) = 3 M. L. T. 399 = 12 C. W. N. 465 = 7 C. L. J. 401 = 10 Bom. L. R. 287 = 14 Bur. L. R. 102 = 4 N.L.R. 65 = 18 M. L. J. 199.

## SECURITY BOND.

-See SURETY BOND.

#### SECURITY FOR COSTS.

——See (1) BENGAL REGULATIONS—SECURITY FROM FOREIGN LITIGANTS REGULATION XVI OF 1829; (2) C. P.C. OF 1908.

#### SERVAGAR.

---- Office of, in Yettiapuram Zemindari-Nature and remuneration of.

The office of Servagar appears to be one of authority, implying the command of one hundred men, and the grant of lands in cuttoogootaga or Java-tha is a usual mode of remunerating such services (334). (Lord Kingsdown.)

VENCATASWARA VETTIAPAH NAICKER v. ALAGOO MOOTTOO SERVAGAREN. (1861) 8 M. I. A. 327=

4 W. R. 73=1 Suth. 440=1 Sar. 788. APPA RAO BAHADUR.

### SERVICE GRANT.

Amaram Grant.

-See AMARAM GRANT.

#### Burden of service-Grant subject to.

- Condition of service in-Alteration of, into one for money payment.

In a case in which a grant was made rent-free and in lieu of service, the grantee subsequently ceased to render service, and he, his son, who took the property on his death, and the mother of that son, who took it on the son's death, continued to pay a sum of Rs. 29 per annum in lieu of the service, held that the condition of the tenure must be held to have been altered from service to rent at Rs. 29 per annum. RAJA MAHENDRA SINGH v. JOKHA SINGH.

(1873) 2 Suth. 802=19 W. B. 211

-Construction of sunuds.

On the construction of the sunuds by which a talook in a Zemindary was granted, held that the sunuds were grants of the land subject to certain services, namely, the service of paying a small rent of Rs. 245-12-0, and also of performing ghatwali duties; that they were not the hiring of a servant, giving him certain land by way of wages, but grants of land upon the condition of certain services (184-5). (Sir Barnes Peacock.) RAJAH LEELANUND SINGH BAHADOOR v. THAKOOR MUNOORANJUN SINGH.

(1873) Sup. I. A. 181 = 13 B. L. R. 124 = 3 Sar. 238 = 3 O. C. Sup. Vol. 173 = 2 Suth. 818.

-Evidence-Resumption on ground of services not being required.

The appellant was the owner of a sixth share of the zemindari of Nuzvid, and sued for the resumption of the mokhasa village called H, which fell within that share. There was no deed or sanad containing the particulars of the grant under which the village was held by the mokhasadars, but the evidence showed that the village had been held by the mokhasadars and their ancestors on a quit-rent of Rs. 144 per annum from a period antecedent to the introduction of the British Government, and that the service to be rendered was that of one naik and fourteen peons, whose duty it was to guard the zemindar's fort and treasury, to watch over the reaping and threshing of the crops and to attend the zemindar on his hunting or military expeditions. The question for decision was whether the zemindar could dispense with the services and resume the land.

Held, that the grant was a grant subject to a burden of service, and was not a mere grant in lieu of wages, and that as the mokhasadars were willing and able to perform the services, the zemindar had no right to put an end to the tenure whether the services were required or not.

In coming to the above conclusion, their Lordships relied

upon the following considerations:—

(1) No office by any particular designation was conferred upon the original grantee, but an obligation of a feedal character was imposed upon him. He was simply to provide a specified number of men as custodians, so to speak, of the Zemindar's property, and their services were rendered intermittently, and not continuously. Besides, they were paid in money when they actually performed such

(2) The mokhasadars had paid a uniform rent of Rs. 144 a year for 120 years prior to sait without alteration at any time, and the land had descended from father to son hereditarily. There had been no instance of resumption or even an attempt at resumption during all the time. There had also been no attempt to enhance or to alter the rent, or to interfere with the devolution of the property from heir to heir. (Sir Andrew Scoble.) SRI RAJA VENKATA NARA-SIMHA APPA RAO BAHADUR 2: SRI RAJA SOEHANADEL APPA RAO BAHADUR. (1905) 33 I. 4. 45

SERVICE GRANT-(Contd.)

Burden of service-Grant subject to-(Contd.)

29 M. 62 = 3 C. L. J. 1 = 10 C. W. N. 161 = 3 A. L. J. 55 = 8 Bom. L. R. 1-1 M. L. T. 3= 8 Sar. 897 16 M. L. J. 1.

-Resumption of, on service coasing-Kight of-Conditions.

A grant of an estate burdened with a certain service may be so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But, in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express nords, declare that, the service ceasing, the tenure would determine (464-5). (Sir James IV. Colvile.) FORRES P. MIER MAHOMED TUQUEE. (1870) 13 M. I. A. 438=

14 W. R. (P. C.) 28-5 B. L. R. 529 = 2 Suth. 358 - 2 Sar. 588.

Different kings of.

Grant burdened south service-Grant of office r.munerated by use of lands-Grant made partly as reward for past and partly as inducement for future services-Remmability of-Conditions.

In every case the right to resome a service grant must depend in a great measure upon the nature of the particular

tenure, or the terms of the particular grant (464).

There is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties are remanerated by the use of certain lands (464). Assuming a grant to be of the former kind, their Lordships do not dispute that it might be so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But, in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that, the service ceasing, the tenure should determine (464-5).

A provision that the tenure shall cease if and when any of the services cease to be performed is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no occasion for the services. But in the latter case, if the operation of any natural cause removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him (465).

A grant made pro servities impensis it impendendir partly as a reward for past, partly as an inducement for future, services is not liable to be resumed because there is no longer any occasion for the performance of the particular service, though it may be liable to forfeiture if the grantee wilfully fail in the performance of his duty (465-6). (Sir James W. Colvile.) FORBES D. MEER MAHOMED TUQUEF.

(1870) 13 M. I. A. 438=14 W. B. (P. C.) 28-5 B. L. R. 529=2 Suth. 358=2 Sar. 588. Grant subject to condition of its ceasing on non performance of service.

-Grant subject to condition of service as long as it is

meensary-Resumability of-Distinction. A provision in a grant of a service tenure expressly importing that the tenure shall cease if and when any of the trylces cease to be performed is something very different from one which merely easts upon the grantee the performance of certain duties so long as they are necessary. The former makes the grant determinable when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as, r.g., the progress of califyration, which has caused the wild elephants to cease out of the services, the out of the land) removes the necessity for the services, the grantee will hold the lands practically freed from the condiSERVICE GRANT-(Contd.)

Grant subject to condition of its ceasing on nonperformance of service-(Contd.)

tion originally imposed upon him (465). (Sir James W. Celvile.) FORBES v. MEER MAHOMED TUQUEE.

(1870) 13 M.I.A. 438 = 14 W. R. (P. C.) 28 = 5 B. L. R. 529 = 2 Suth. 358 = 2 Sar. 588.

Office remunerated by use of lands-Grant of.

-Researd for past and inducement for future services -Grant made for-Test-Resumption of latter kind of grant-Conditions.

Held, on a true construction of the sunnuds in the case, that the grant might be said to have been made pro servitres impensive inpendendis-partly as a reward for past, partly as an inducement for future, services, and that as there were no words in the sanads expressly importing that the tenure should rease if and when any of the services cared to be performed, the tenure was not resumable because there was no longer any occasion for the performance of the particular service (465-6). (Sir James W. C.d. ile.) FORBES D. MEER MAHOMED TUQUEE.

(1870) 13 M. I. A. 438=14 W. R. (P. C.) 28= 5 B. L. R. 529 = 2 Suth. 358 = 2 Sar. 588.

Resumption of-Zemindar's right of-Evidence of. -Circuit Committee -Records of-Value of See CIRCUIT COMMITTEE-PURPOSE OF.

(1905) 33 I.A. 46 = 29 M. 52 (57).

SERVICE INAM.

Entranchisement of-Incidents of estate-Effect on -Palayam - Enfranchisement of-Abolition of military SETTINE—Effect of. See HINDU LAW-IMPARTIBLE ESTATE—PALAYAM—ENFRANCHISEMENT.

(1921) 48 L. A. 244 (254-5)=44 M. 643 (654-5).

-Karnan service inam. See KARNAM.

SERVICE LANDS.

SO TENURE-SERVICE TENURE.

SERVICE TENURE.

-See TENURE-SERVICE TENURE.

SET OFF.

-See C. P. C. OF 1908, O. 8, R. 6.

SETTLEMENT.

-Foreign countries-Settlement in. See SETTLEMENT IN FOREIGN COUNTRIES.

-Foreign settlement obtained in inhabited country by conquest or cession-Settlement made by colonising-Distinction. See ENGLISH LAW - APPLICABILITY-SETTLEMENT OBTAINED IN, ETC. (1836) 1 M. I. A. 175.

SETTLEMENT IN FOREIGN COUNTRIES.

- Eng. ish settlement in India-Factories-Law appli-calle to people within-English law-Applicability to

natives within factories.

The laws and usages of eastern countries where Christianity does not prevail are so at variance with all the principles, feelings, and habits of European Christians that they have usally been allowed by the indulgence or weakness of the Potentates of those countries to retain the use of their own laws, and their factories have for many purposes been treated as part of the territory of the sovereign from whose dominions they come. But the permission to use their laws by European settlers does not extend those laws to Natives within the same limits, who remain to all intents and purposes subjects of their own sovereign, and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindoos are suited to Europeans (425). (Lord Kingsdown.) ADVOCATE-GENERAL OF BENGAL P. RANGE SURNOMOYE DOSSEE.

(1863) 9 M.I.A. 387 = 1 W. R. 14=2 Moo. P.C. (N.S.) 22= 9 Jur. N. S. 877 = 8 L. T. 843 = 2 N. R. 530 = 12 W. B. (Eng.) 21 = 1 Suth. 515 = 2 Sar. 39.

## SETTLEMENT IN FOREIGN COUNTRIES—(Cont.) | SETTLEMENT COURT—(Contd.)

-Englishmen settling in uninhabited or barbarous country-English first settlement in India-Englishmen settling in Christian country-Law applicable to settlors and to original inhabitants in case of-Distinction. See SETTLEMENT IN FOREIGN COUNTRIES-LAW APPLICA-(1863) 9 M. I. A. 387 (424-5). BLE, ETC.

-Inhabited country-Settlement obtained in, by conquest or cession-Settlement made by colonising - Distinction. S. ENGLISH LAW-APPLICABILITY-SETTLE-(1836) 1 M. I. A. 175. MENT, ETC.

-Law applicable to settlors and original inhabitants -Englishmen settling in uninhabited or barborous country -English first settlement in India-Englishmen settling in Christian country.

V here Englishmen establish themselves in an uninhabit-

ed or harbarous country, they carry with them not only the laws, but the sovereignty of their own state; and those who live amongst them and become members of their community become also partakers of, and subject to, the same laws (424).

But this was not the nature of the first settlement made in India-it was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilised country, under the Government of a powerful Mahomedan ruler, with whose sovereignty the English Crown never attempted nor pretended to interfere for some centuries afterwards (424-5).

If the settlement had been made in a Christian country of Europe, the settlers would have become subject to the laws of the country in which they settled. It is true that in India they retained their own laws for their own Government within the factories, which they were permitted by the ruling powers of India to establish; but this was not on the ground of general international law, or because the Crown of England or the laws of England had any proper authority in India (425). (Lord Kingsdown.) GENERAL OF BENGAL P. RANKE SURNOMOVE DOSSEE.

> (1863) 9 M. I. A. 387=1 W. B. 14= 2 Moo. P. C. (N.S.) 22 = 9 Jur. N. S. 877 = 8 L. T. 843 = 2 N. R. 530 = 12 W. R. (Eng.) 21 = 1 Suth. 515=2 Sar. 39.

## SETTLEMENT COURT.

-Decision of -Binding nature of, in civil suit between parties.

In certain proceedings before the Settlement Court which took place in 1867-68 concerning the right to succession to the estate of J, who had died in 1862, questions were raised amongst the several claimants to the estate inter alia as to whether Indar Kuar, the daughter of J was not excluded from inheritance under a family custom and whether B who claimed to be the agnatic heir of J was in fact what he alleged to be, viz, the son of the adopted son of Z, the father's brother of J. The Settlement Court decided that Indar Kuar was entitled to hold the estate in the limited interest of a Hindu daughter as provided by the Benares School of Hindu law, and that B was, at the date of the decision, the reversioner expectant, his relationship to J as alleged by him being established. In 1909, Indar Kuar entered into a compromise with her deceased son's widow under which it was agreed that Indar Kuar should hold the estate for her life and that on her death her son's widow was to be the owner. In a suit by B as reversionary heir to J on the death of Indar Kuar for a declaration that the agreement between her and her son's widow was invalid and not binding on B (the plaintiff), held-

(1) that the question of the status of B as reversionary heir was rest judicata by the decision in the Settlement

Court proceedings;

(2) that the question of the title under which Indar Kuar was to hold the estate of her father, viz., in the limited interest of a Hindu widow, was also res judicata by the said

(3) that, in the circumstances, the case was a fit one for the grant of a declaratory decree as prayed for in the plaint. (Mr. Ameer Ali.) RANI INDAR KUAR D. THAKUR BAL-DEO BAKSH SINGH. (1920) 25 C.W.N. 170 =

28 M. L. T. 334 = 23 O. C. 281 = 18 A. L. J. 1057 = 7 O. L. J. 439 = 57 I. C. 397 = 39 M. L.J. 115.

Proceedings in-Latitude allowed in-Substance of case-Proof of-Necessity.

Although great latitude must be allowed to the parties in such investigations before such special tribunals as those from which this appeal comes, still parties ought to be required to prove the substance of the case alleged. RAI IBRAM BULLEE P. AGHA HOSSEIN KHAN.

(1871) 6 M. J. 231.

#### SETTLEMENT DEED.

Contingent interest in corpus on youngest child attaining 20 given by.

Transferability of Vested interest in income given Effect-T. P. Act, S. 6 (a) and (e)-Effect.

By a settlement deed, the settlor transferred substantially the whole of his property to trustees in trust to allow the settlor during his lifetime to manage the property, and to have the sole benefit of income both from the immoveable and moveable properties. The settlement then proceeded to deciare certain trusts that should come into operation after his death. Those trusts were that, as to the property comprised in three schedules, the trustees during the life of the settlor's widow and until the youngest child attained the age of 20, were to distribute the income in the manner provided, namely, that they were to pay Rs. 1,000 a month to the widow, and to divide the remainder amongst the children, including the eldest son, C. After the youngest child attained the age of 20, the property was to be sold, and the proceeds were to be divided in equal shares between the children then surviving, the issue of any child who was dead to represent his father's share. There was a slight alteration in the trust in relation to the property comprised in the fourth schedule, because in that case the property was not to be distributed until the death of the youngest child, and it was to be divided then amongst the children living at that date.

Held that the result of the disposition under the settlement deed was to create, first of all, a rested interest in all the children in the income of the property and secondly a contingent interest in all the children in the corpus in respect of all the property until, at any rate, the youngest child reached the age of 20; and that the contingent interest which the children took was something quite different from a mere possibility of a like nature of an heir apparent succeeding to the estate, or the chance of a relation obtaining a legacy, within the meaning of section 6 (a) of the Transfer of Property Act, and also something quite different from a mere right to sue within S. 6 (r) of the same Act.

The contingent interest, which the children took, is a wellascertained form of property-it certainly has been transferred in this country for generations—in respect of which it is quite possible to raise money and to dispose of it in any way that the beneficiary chooses. (Lord Atkin.) MA YATT IS (1929) 57 I. A. 10 = 8 B. 8= OFFICIAL ASSIGNEE.

31 L.W. 196=1930 A. L. J. 119=34 C.W.N. 178= 51 C. L. J. 112=30 Bom. L. B. 125= (1930) M. W. N. 118=121 I. O. 226= A. I. R. 1930 P.C. 17=58 M. L. J. 88.

#### SETTLEMENT DEED-(Contd.)

## Debt-Payment of-Settlement deed for.

Trustee under—Charge created by—Validity—Consent of settlor—Payment of—Charge in respect of. See DEBT—SETTLEMENT DEED FOR PAYMENT OF.

(1925) 53 I. A. 58 = 53 C. 88.

#### Estate created by.

Wested remainder—Contingent interest — Test —
Mahomedan—Deed by. Scc C. P. C. OF 1908, S. 60 (1)

(m)—VESTED REMAINDER.

(1890) 17 I. A. 201 (209-10)=18 C. 164 (176-7).

## Malikana-Settlement fixing. Permanent or temporary.

The appeal arose out of suit brought by the appellant to establish a claim to be paid an annual sum of Rs. 482 0-3 by the Government of India by way of dasturat or malikana in respect of certain land known as mouza S. The claim was based upon an order of 10th May 1865 by which the appellant alleged that the annual malikana payable to him in respect of the land was permanently fixed at Rs. 482-0-3. The defence was that the malikana payable in respect of a jagir of which, mouza S formed part was settled in 1780 at Rs. 796-2-9, and nothing further was recoverable and that the order of 1865 did not give the right claimed. The appellant admitted regular receipt of the sum of Rs. 796-2-9 but claimed to be paid the sum of Rs. 482.0-3 in addition. His contention was that the fixing of the malikana in 1780 was not a final ascertainment of the rights of his predecessors in title in respect of it, but was mevely a temporary fixing of the percentage by which the amount should be ascertained from time to time, as it varied, together with the variation of the amount of the proceeds of the land. Held, affirming the decisions of the courts below, that what was done in 1780 amounted to a final settlement of the owner's rights in respect of the malikana, that the settlement of 1865 did not on its true construction provide for any alteration of or addition to the malikana so fixed, and that the conduct of the parties since the settlement had been consistent with this construction. (Lord Mersey.) RAMESH-WAR SINGH P. SECRETARY OF STATE FOR INDIA.

(1911) 38 I. A. 189 = 39 C. 1 = 15 C. W. N. 1029 = 12 I. C. 114 = 10 M. L. T. 285.

## Property conveyed by-Identification of.

Antecedent documents and maps—Admissibility in evidence of. See EVIDENCE ACT, S. 96.

(1925) 48 M. L. J. 611 (614).

## Rents and profits of land and immoveable property—Dividends on shares.

Apportionment of, between successive beneficiaries—
Intention as to—Words " arising or accruing "—Use of, with reference to income—Effect. See Landlord and Tenant—Rent —Apportionment of—Rents and Profits, etc. (1923) 50 I. A. 276 (281-2) = 47 B. 790 (796-7).

#### Will or.

Life interest to doner—Reservation of—Effect.

The reservation of a life-interest by the executant of an instrument is no doubt a circumstance tending towards the Conclusion that the instrument is one operating inter vivus, and is not merely a testamentary instrument. And if the instrument had been an English instrument prepared by an English conveyancer, that circumstance would have afforded a very strong argument. The same weight cannot be attached in the case of an instrument prepared by an unprofessional native. The will being not a very familiar instrument to the people of India, a testator in India often does expens a great anxiety that he shall not be considered to have parted with anything in his lifetime, and their Lord-

## SETTLEMENT DEED-(Contd.)

Will or-(Contd.)

ships have seen here instruments which most unquestionably were wills, and intended to operate as such, in which nevertheless there have been expressions upon the face of them intimating that the testator intends to remain the owner of the property until he dies (142), (Sir Arthur Hobhouse.) THAKUR ISHRI SINGH 2. BALDEO SINGH.

(1884) 11 I. A. 135=10 C. 792 (801-2)= 13 C.L.R. 418=4 Sar. 528=R. & J.'s No. 79 (Oudh).

-Name given by parties to deed-Effect.

An instrument, which was called a deed of assignment (tamliknamah) by its executant, was nevertheless held, on its true construction, to be a will and not to be a transfer operating interviews (141-2). (Sir Arthur Hobkouse.) THAKUR ISHRI SINGH p. BALDEO SINGH.

(1884) 11 I. A. 135=10 C. 792 (801)= 13 C. L. R. 418=4 Sar. 528=R. & J.'s No. 79 (Oudh).

-Oudh talukdar-Deed by.

An instrument executed by an Oudh talookdar ran as follows:-

I, M, am the talukdar of R, etc., in the Sitapur district.

"Whereas —I hold and enjoy possession of my estate situate in the Sitapur district, I, while in the enjoyment of sound health and mind, without reluctance or coercion, assign (tamlik) the said property to my younger brother, B, subject to the following conditions:—

"1. That during my lifetime, I shall hold and enjoy possession of it; and that after my death my aforesaid brother B shall hold and enjoy the same like myself;

"2. That whereas I am childless, should a legitimate and self-begotten child be born to me, it shall become the owner of one-half of the estate, and R shall be owner of the other half;

"3. That after my death B shall be bound like myself to maintain and take care of my wife. Hence I have written out these few words in the way of a deed of assignment (tamliknamah) so that it may witness in future."

The document was duly signed and attested by three witnesses. On 1-7-1871, the Registration Act (VIII of 1871) came into force, and on 3-7-1871, the document was registered according to its provisions as a will.

On 19-11-1879 M died without issue, never having had

Held that, in view of what were the substantial characteristics of the document, setting aside mere matters of form and what might be considered as technical expressions, the reasons for holding it to be a will had a decided preponderance over those which would lead to the conclusion that it was a deed (142-3).

The document answers the definition of a will in S. 2 of Act V of 1869. It was registered as a will with the full knowledge and assent of the executant. It provides for contingencies which are not ascertainable, or may not be ascertained, until the death of the testator; for instance, the contingency of his having a child, which he had not at the time of the will, and the contingency of his leaving a widow surviving him. It does not purport to give to any body any possessory or present interest until the death of the executant. And it makes a gift to the children of the executant, which, if it be a deed of transfer operating at once, cannot take effect, because no child was in existence; whereas, if it is a will, the gift may perfectly will take effect. All those are very strong indicia of a testamentary character (141).

Circumstances relied upon to show that the instrument

(1) Use of the word "tamlik" ("assign"); (2) The deed being called a "tamliknamah;"

(3) Deed being stamped; and

## SETTLEMENT DEED-(Contd.)

Will or-(Contd.)

(4) Reservation of a life interest to the executant. (Sir Arthur Hobbani:) THAKUR ISHRI SINGH P. BALDEO SINGH. (1884) 11 I. A. 135-10 C. 792 (800 1)= 13 C. L. B. 418-4 Sar. 528-R. & J.'s No. 79 (Oudh).

- Ond't talublar - Official inquiries as to who should be heir - Petition in answer to.

The last holder of an Oudh talook was a lady, who had been recognised by the Government, and whose title had been established by sanad granted in July, 1862. Before the issue of the sunned, inquiries were made by executive officers to ascertain the views of the thakurain concerning the succession to her estate. Her answer was stated in a petition (marked A-3) which ran as follows:—

"Your petitioner was much honoured by service on her of your order, inquiring as to the heir-apparent to the estate. Your petitioner begs to submit that since she is issueless, she appoints S to be her heir. She shall be the proprietor during her lifetime and shall (herself) manage the estate affairs, and, after her death, S shall become the proprietor (malik) of the estate. Therefore during her lifetime she declares S to be her heir, and this application is submitted by way of a deed of inheritance in order that it may be a sanad, and be of use when required."

On the very next day after the date of the petition (A-3) the thakurain wrote a letter to the father of S, which ran as follows:—

"I request you to give S to me. During my litetime 1 will be the proprietor. I make S my heir and proprietor of this estate, after me. I make S proprietor and landlord of this Raj, the Gaera (estate) after me."

It was contended that the petition (A-3) operated to transfer the estate, and that by it the thakurain's absolute interest became an estate for life with remainder to S, or became burdened with a trust having the same effect. Held, over-ruling the contention, that the document was

merely testamentary.

This is not one of the cases in which a sunnud has been obtained in consequence of some promise by the grantee. The thakurain's petition (A-3) was not founded on any valuable consideration moving to her. In answer to an inquiry who was heir-apparent to the estate, she says she appoints S to be her heir. Though she speaks of her petition as a sunnud and a deed of inheritance, it is highly improbable that she had in her mind any idea so novel to her people as the idea of turning her inheritance into an estate for life with remainder to a collateral relative. Doubtless her idea was that she was simply pointing out who should take through her by inheritance; and if she had then died her nominee would have been quietly installed. official inquiries as to successors had reference to the critical state of the country, and it was not their object to derogate from the hereditary transferable right which had been promised to the thalookdars, and which was expressed in the sunnud soon afterwards granted to the lady.

The letter to the !ather of S is to the same effect with the declaration of the day before. In effect the thakurain informs the father of S of her inclinations towards S. But there was no contract with the father and no consideration moving from him. (Lord Hobbouse.) BALBHADDAR SINGH v. SHEO NARAIN SINGH.

(1899) 26 I. A. 194 = 27 C. 344 = 4 C.W.N. 203 = 7 Sar. 625.

- Technical expressions showing transfer inter vivos - Employment of, by unprofessional native - Effect.

If the words in the instrument relied upon as showing that the instrument was one operating inter vivos and not a testamentary instrument had been the words of an English conveyancer preparing an English instrument, they

#### SETTLEMENT DEED-(Contd.)

Will or-(Contd.)

would have afforded a strong argument, but the instrument in question was prepared by an unprofessional native, and we must not construe with too great nicety, or assign too much weight to the exact words that he uses for a transfer of property, as if he were accurately weighing the difference between a testamentary instrument and one operating interviews (142). (Sir Arthur Hobhour.) THAKUR ISHRI SINGH v. BALDEO SINGH.

(1884) 11 I.A. 135=10 C. 792 (801-2)= 13 C.L.B. 418=4 Sar, 528= R. & J.'s No. 79 (Oudh).

—Words—"Assign"—Use of -Effect—Unprofessional native—English conveyancer—Instruments prepared by— Distinction.

The use of the word "assign" is, no doubt, a circumstance tending towards the conclusion that the instrument in which the word is used is a deed operating in procuentiand not merely one of a testamentary character. And if the word had been used by an English conveyancer preparing an English instrument, it would have afforded a very strong argument. But where the instrument is prepared by an unprofessional native, the same weight cannot be attached to the words he uses for a transfer of property (142). (Sir Arthur Hobbonse.) THAKUR ISHRI SINGH v. BALDEO SINGH. (1884) 11 I.A. 135=

10 C. 792 (801-2)=13 C.L.B. 418= 4 Sar. 528=R. & J.'s No. 79 (Ondh)

#### SETTLEMENT OFFICER.

--- Decree of -- Proprietary rights in husband's estate conferred on Hindu widow by -- Effect -- Estate taken by her. See HINDU LAW -- WIDOW -- INHERITANCE TO HUSBAND -- ESTATE GOT BY -- SETTLEMENT OFFICER'S ETC.

(1889) 17 C. 246 (250).

- Proprietary rights of Government-Conveyance of -Power of.

The proprietary rights in certain mouzahs, which were originally vested in the plaintiffs, became vested in Government by reason of their purchase at a sale for arrears of revenue. The question was whether the Government had ever parted with those proprietary rights to the plaintiffs, entitling them to maintain the suit out of which the appeal arose to have it declared that they were at the date of suit entitled to the proprietary rights in the estate. The plaintiffs contended that the proprietary rights were parted with by the Government, and substantially regranted to the plaintiffs by the revenue settlement which was entered into with them in the year 1860.

Held that the officer appointed at that settlement to consider the amount of assessments had no judicial power to exercise, and consequently he had no power to convey away the proprietary rights of the Government.

The officer was told that his primary duty was merely a fiscal one. (Sir Barnes Peacock.) POORUN SINGH F. GOVERNMENT OF INDIA. (1875) 3 Suth. 141.

Title—Determination of question of Jurisdiction.

The settlement officers have no power to determine questions of title. GOKULDAS a. KRIPARAM.

(1873) 13 B.L.R. 205=3 Sar. 279.

## SETTLEMENT PROCEEDINGS.

- Effect - Evidence - Revenue officers - Statements subsequent of - Admissibility.

Subsequent statements of the revenue officers as to the effect of a settlement cannot avail to supply the evidence which the settlement-proceeding itself, and the pottah on which it purports to be founded, fail to afford. COURT OF WARDS v. RAJA LEELANUND SINGH

(1875) 3 Suth. 225 (234)=25 W.B. 157=5 Bar. 792

#### SETTLEMENT RECORD.

Hindu widow—Record of name of, in regard to portion of joint family property—Effect of. S.v. CENTRAL PROVINCES LAND REVENUE ACT OF 1881, S. 87.

(1899) 27 I.A. 39 = 27 C. 515.

—Regulation VII of 1882—Records prepared under —Admissibility in evidence of, against Secretary of State for India in Council.

Settlement records prepared under Regulation VII of 1882, although they may not have the same evidentiary value as the settlement records prepared under the Bengal Tenancy Act, are evidence against the Secretary of State for India in Council. (Sir Benode Mitter.) MIDNAPUR ZEMINDARY CO., LTD. 7. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1929) 57 Cal. 756 =

32 Bom. L. R. 114 = 51 C. L. J. 1 = 120 I. C. 56 = 30 L. W. 600 = 34 C. W. N. 1 = 56 I. A. 382 = A.I.R. 1929 P.C. 286 = 57 M.L.J. 849.

-Title-Evidentiary value as te.

Settlement records are, of course important documents, which must have been carefully prepared, and probably ought to have been challenged, if they were seriously incorrect but they are not conclusive of title. (Lord Summer.)

KARIMUNNESSA KHATUN : MAHOMED FAZLUL KARIM, (1924) 88 I.C. 149 =

A.I.B. 1925 P.C. 70 (74).

### SETTLEMENT REGISTER.

Title—Evidentiary value as to. See HINDU LAW— RELIGIOUS ENDOWMENT—TEMPLE—PROPERTY OF, OR PRIVATE PROPERTY OF DHARMAKARTA.

(1922) 49 I. A. 237 (246 7) = 45 M. 565 (576).

## SHIP (SHIPPING).

(See also PRIZE, PRIZE COURT AND PRIZE PRO-CREDINGS.)

BARGES-Scows.

CAPTAIN-DUTY OF.

CARRIAGE-CONTRACT OF.

CHARTER-PARTY—EXCEPTION IN FAVOUR OF GOV-ERNMENT REGULATIONS AND RESTRICTIONS IN.

COLLISION.

GENERAL AVERAGE-CONTRIBUTION FOR.

GENERAL SHIP-GOODS SPECIFIED FOR COMMON BENEFIT-OWNER OF.

JETTISON.

LIGHT-RULE AS TO-RULE OF PORT.

LOADING ACENT.

LOSS OF GOODS-SHIPOWNER'S LIABILITY FOR.

MASTER OF.

MATE'S RECEIPT.

REGISTRATION OF SHIPS ACT X OF 1841—REGISTRY
AS BRITISH SHIP UNDER.

SHIPOWNER.

TRADING IN ENEMY'S COAST - PRESUMPTION-PROOF.

#### Barges-Scows.

-Distinction.

Barges, in general, have a rudder and carry a man or men who can use the rudder and to some extent keep the tow behind the tag. Scows have no rudder and carry no men, and their lines are such that they have a tendency to ran up into the wind (193). (Lord Phillimore.) POINT ANNE QUARRIES, LTD. v. THE SHIP M. F. WHALEN.

(1922) 32 M. L. T 190 (P. C.).

#### Captain of-Duty of.

of. See INSURANCE—MARINE INSURANCE—CAPTAIN of anythe (1869) 6 Moo. P. C. N. S. 302 (317-8). proof in.

## SHIP (SHIPPING)-(Contd.)

Captain of-Duty of-(Contd.)

Transhipment of Cargo when ship disabled from pursuing voyage insured—Duty as regards. See INSU-RANCE—MARINE INSURANCE—CAPTAIN OP SHIP.

(1869) 6 Moo P. C. N. S. 302 (317-8).

#### Carriage-Contract of.

-Termination of, when.

A contract of carriage is terminated by the arrival of the flat at the wharf at which delivery should be taken. (6). (Sir Walter Phillimere.) DWARKNATH RAIMOHAN CHAUDHURI: RIVERS STEAM NAVIGATION CO.

(1917) 8 L. W. 4 = 20 Bom. L. R. 735 = 23 M. L. T. 376 = (1918) M. W. N. 435 = 46 I. C. 319 = 27 C. L. J. 615.

#### Chapter-party-Exception in favour of Government Regulations and restrictions in.

-Kule of Port if included in.

The plaintiffs, the owners of a steamship, entered into a charter-party with the defendants by which the steam--hip was to receive on board at Calcutta at such dork. place or wharf as the charterers might direct from the said charterers a full and complete cargo of coal in bulk, which cargo the said charterers bound themselves to ship or cause to be shipped, and to proceed with all possible despatch to Colombo, where she was to deliver the cargo. Clause 25 of the charter party provided; "subject to Indian Government license for export of coal being obtained, if necessary, and the cargo being released and coals avail able, and in all respects to customs and other Government regulations, restrictions or otherwise, affecting the normal shipment of the cargo and clearances and sailing of the vessel." a rule of the port that a vessel could not have a birth assigned to her until there was either roal actually ready for her on the wharf or about immediately to come down in sufficient quantities to making the loading continuous.

Held that the words "Government regulations and restrictions" in cl. 25 of the charter-party did not include local regulations made by the port authorities and affecting the time or manner of loading in the port, and that the rule of the port referred to was not a Government Regulation or restriction within the meaning of the said clause (237), (Lord Phillimere.) HOGARTH v. CORY BROS. & CO.

(1926) 53 I. A. 230 = 54 C. 84 = 31 C. W. N. 317 = 99 I. C. 581 = 26 L. W. 1 = 38 M. L. T. (P. C.) 9 = A. I. R. 1926 P. C. 121 = (1926) M. W. N. 882.

#### Collision.

-Anchor-Collision at-Duty of colliding testel-Duty at anchor-Onus of proof of.

When a vessel under way comes into collision with a vessel at anchor exhibiting a proper light she has a heavy burden cast on her to justify her conduct. In the case of a vessel at anchor there is an obligation to keep a competent person on watch and it is his duty not only to see that the anchor light or lights are properly exhibited but also to do everything in his power to avert or to minimise a collision (132, 134).

If that person acts in error of judgment, when placed by the colliding vessel in a position of difficulty calling for instant decision, he is entitled to favourable consideration, and it must be shown that any alternative course would have prevented or mitigated the collision (135-6). (Sir Francis Jenne.) MARY TUG COMPANY D. BRITISH INDIA STEAM NAVIGATION COMPANY. (1897) 24 I. A. 129 = 24 C. 627 = 1 C. W. N 329 = 7 Sar. 167.

Ship properly at anchor in proper, place-Cellision of another rested with-Suit for damages for-Onus of trees in

Collision-(Contd.)

The suit was brought by the respondent, as the master of a barque called the "Michelino", for the recovery of damages in consequence of a collision which took place between the "Michelino" and the "Dacca". The "Michelino" lay about three miles from the fairway buoy of the pilot's station near the entrance of the Rangoon river. She was at anchorage there. The collision took place by the stem of the "Dacca" running amid ships into the post side of the other vessel while at anchor,

Held that the burden of proof lay very heavily upon the "Dacca" to show that the collision so caused with a vessel properly at anchor in a proper place was not the consequence of her ("Dacca's") negligence and had seamanship. HART & AVIGNO. (1877) 3 Suth. 409 - Bald. 115

### General average-Contribution for.

DELIVERY OF CARGO WITHOUT SECURITY FOR CLAIMS OF PERSONS ENTITLED TO.

Injunction restraining Master from 'making.

A master may be restrained from making delivery of the cargo, at the instance of all or most of those entitled to contribution, without taking security for their claims (245-6). (Lord Watson.) STRANG, STEEL & CO. v. A. SCOTT & Co. (1889) 16 I. A. 240 = 17 C. 362 (368) = 5 Sar. 338.

JETTISON-OWNERS OF JETTISONED CARGO-OWNERS OF SHIP--RIGHTS OF.

-Master's fault-Jettison occasioned by. See SHIP -JETTISON-GENERAL AVERAGE,

(1889) 16 I. A. 240 (249-50) - 17 C. 362 (371).

#### RULE-EXCEPTION.

Deck cargo-Exception in case of Scope of Reason for- Jettison of deck goods-Remedy of owner of goods against master and owner of ship.

The second exception to the rule of contribution for general average is in the case of deck cargo. The reason why relief by general contribution is denied to the owners of goods stowed on deck, when these are thrown overboard in order to save the cargo under hatches, is obvious. According to the rules of maritime law, the placing of goods upon the deck of a sea-going ship is improper stowage, because they are hindrances to the safe navigation of the vessel; and their jettison is therefore regarded, in a question with the other shippers of cargo, as a justifiable riddance of incumbrances which ought never to have been there, and not as a sacrifice for the common safety. But the owner of deck goods jettisoned, though not entitled to general contribution, may nevertheless have a good claim against the master and owners of ship who received his goods for carriage upon deck; and the exception does not apply, either (1) in those cases where, according to the established custom of navigation, such cargoes are permitted, or (2) in any case where the other owners of cargo have consented that the goods jettisoned should be carried on the deck of the ship (247-8). (Lord Watson.) STRANG, STEEL & CO. P. A. SCOTT & CO.

(1889) 16 I. A. 240 = 17 C. 362 (370-1) = 5 Sar. 338

Peril mediately giving rise to claim-Person responsible for-Exception in case of-Reason for.

One of the well-established exceptions to the rule of contribution for general average is when a person who would otherwise have been entitled to claim contribution has, by his own fault, occasioned the peril which mediately gave rise to the claim. It would be manifestly unjust to permit such a person to recover from those whose goods are saved, although they may be said, in a certain sense, to EXCEPTION-DECK GOODS. have benefited by the sacrifice of his property. In any

SHIP (SHIPPING)-(Contd.)

General average—Con tribution for—(Contd.)

RULE-EXCEPTION-(Contd.)

question with them he is wrongdoer, and, as such, under an obligation to use every means within his power to ward off or repair the natural consequences of his wrongful act. He cannot be permitted to claim either recomponse for services rendered, or indemnity for losses sustained by him, in the endeavour to rescue property which was imperilled by his own tortious act, and which it was his duty to save (247). (Lord Watson.) STRANG, STEEL & CO. v. A. SCOTT CO.

(1889) 16 I. A. 240 = 17 C. 362 (370) = 5 Sar. 338.

General ship-Goods sacrificed for common benefit-Owner of.

-Right of, as against separate consignee of goods salved-Mode of enforcing-Master's duty in case of.

In the case of a general ship, the owner of goods sacrificed for the common benefit has a lien upon each parcel of goods salved belonging to a separate consignee for a dee proportion of his individual claim. The cargo not being in his possession or subject to his control, his lien can only be enforced through the ship-master, whom the law of England, following the principles of the Law of Rhodia, regards as his agent for that purpose. The duty being imposed by law upon the master, he is answerable for its neglect (245). (Lord Watton.) STRANG, STEEL & CO. (1889) 16 I. A. 240= r. A. Scott & Co. 17 C. 362 (368)=5 Sar. 338.

#### Jettison.

-Contribution in cases of-Rule as to-Origin and hasis of.

The rule of contribution in cases of jettison has its origin in the maritime law of Rhodes. The principle of the rule has been the frequent subject of judicial comment. Lord Bramwell said that, to judge from the way in which contribution is claimed in England, "it would seem to arise from an implied contract inter se to contribute by those interested". The present Master of the Rolls disputed that view, and stated his opinion to be that the right to contribution "does not arise from any contract at all, but from the old Rhodian laws, and has been incorporated into the law of England as the law of the ocean. It is not as a matter of contract, but in consequence of a common danger, when natural justice requires that all should contribute to indemnify for the loss of property which is sacrificed by one, in order that the whole adventure may be saved." Whether the rule ought to be regarded as matter of implied contract, or as a conon of positive law resting upon the dictates of natural justice, is a question which their Lordships do not consider it necessary to determine. The principle upon which contribution becomes due does not appear to them to differ from that upon which claims of recompense for salvage services are founded. But, in any aspect of it, the rule of contribution has its foundation in the plainest equity. In jettison, the rights of those entitled to contribution and the corresponding obligations of the contributors, have their origin in the fact of a common danger which threatens to destroy the property of them all; and these rights and obligations are mutually perfected whenever the goods of some of the shippers have been advisedly sacrificed, and the property of the others has been thereby preserved (246.7). (Lord Watton.)
STRANG STEEL & CO. v. A. SCOTT & CO.

(1889) 16 I. A. 240=17 C. 362 (369-70)=5 Sar. 338.

-Deck goods-Jettison of-Remedy of-Owner of goods against master and owner of ship. See SHIP-GENERAL AVERAGE- CONTRIBUTION FOR-RULE-

(1889) 16 I.A. 240 (247-8)=17 O. 362 (370-1)

Jettison-(Contd.)

General average - Contribution for - Owners of jettisoned eargo-Owner of thip - Rights of - Master's fault-Jettison occasioned by.

Steamship A, with a general cargo ran aground. Part of the cargo was thrown overboard in order to lighten the vessel, which was got off by that means, and was enabled to reach the destination in safety. The respondents and other consignees were required to make a deposit of a certain percentage upon the value of their goods before delivery "against probable average claim." The respondents paid the required deposit under protest, and obtained delivery of their goods. Thereupon they instituted the suit out of which the appeal arose for a declaration that they were not liable to contribute for general average on account of either ship or cargo, because the grounding of the ship. and the consequent jettison of part of the cargo, were due to the negligence and misconduct of her master.

The lower court found, as a fact, that the stranding of the ship was occasioned by the negligent navigation of the master, and held, as a matter of law, that no claim for general average arose to the owners of cargo jettisoned because the peril which necessitated jettison was induced by

the fault of the ship.

Held, that the fault of the master being matter of admission, it was clear upon authority, that no contribution could be recovered by the owners of steamship A. unless the conditions ordinarily existing between parties standing in that relation had been varied by special contract between them and their shippers; but that the negligent navigation of the master could not afford any pretext for depriving those shippers whose goods were jettisoned of their claim to

a general contribution (248). The shippers whose goods were jettisoned were not privy to the master's fault, and were under no duty, legal or moral, to make a gratuitous sacrifice of their goods, for the sike of others, in order to avert the consequences of his fault. The Rhodian law, which in that respect is the law of England, bases the right of contribution not upon the causes of the danger to the ship and cargo, but upon its actual presence; and such exceptions as are recognised are in truth limitations on the rule, which have been introduced from equitable considerations, in the case of actual wrongdoers, or of those who are legally responsible for them. The owners of goods thrown overboard having been innocent of exposing the steamship A and her cargo to the sea peril which necessitated jettison, their equitable claim to be indemnified for the loss of their goods is just as strong as if the perilhad been wholly due to the action of the winds and waves (248-9).

The proposition that " when a jettison is justified by the dreamstances in which it takes place, and these circumstances are occasioned by the fault of the master or his want of care or skill, the jettison would give no claim for contributton; but the owners of the ship would be liable to the owners of the goods jettisoned for the damages caused by the wrong doing of the master " is inaccurate, in so far as it bears that no claim of contribution will arise to the owners of jettisoned cargo in the case supposed (249-50). (Lord Waten.) STRANG, STEEL & CO. P. A. SCOTT & CO. (1889) 16 I. A. 240 = 17 C. 362 (371) = 5 Sar. 338.

Goods jettisoned-Owner of-Contribution pro rata lowards his indemnity-Right of, as against each of comers

of this and cargo—Mode of enforcing.

Each owner of jettisoned goods becomes a creditor of ahip and cargo saved, and has a direct claim against each of the cargo saved, and has a direct claim against each of the cargo saved. the owners of ship and cargo, for a pro rate contribution towards his indemnity, which he can enforce by a direct action (245) action (245). (Lard Watton.) STRANG, STEEL & CO. 2.

A. SCOTT & CO. (1889) 16 I. A. 240 = 17 C. 362 (367-8) = 5 Bar. 338. SHIP (SHIPPING)-(Contd.)

#### Landing agent.

--- Position of. See SHIP-LOSS OF GOODS-SHIP-OWNER'S LIABILITY FOR-LOSS AFTER DELIVERY, ETC. (1908) 19 M. L. J. 316.

## Light-Rule as to-Rule of port.

-Sailing rule of international obligation- Applicability-Foreign ressel anchored, perhaps in a fairway, but certainly on the high sca.

The sait was brought by the respondent, as the master of a barque called the "Michelino", for the recovery of damages in consequence of a collision which took place between the "Michelino" and the "Dacca". The "Michelino" was an Italian barque, lying about three miles from the fairway buoy of the pilot's station near the entrance of the Rangoon river. She had been at anchorage there for some days. The collision took place by the stem of the "Ducca" running amidships into the port side of the other vessel while at anchor.

The defence which the "Docca" set up was that the harque" Michelino" had not, at the time, a proper light, in the sense of not being sufficiently bright, and that the light was not placed at a proper place. A rule of the port of Rangoon was relied upon which provided that all vessels in the port and in the roadstead there should carry a light upon their starboard foreyard arm. There was no question in the case that that rule was not complied with.

Semble, in the circumstances of the case, rule of the port of Rangeon relied upon was not binding upon the barque

"Michelino" (410).

The "Michelino" appears to have been anchored, perhaps in a fairway, but certainly on the high sea. Their Lordships, therefore, are not by any means satisfied that the rule was binding upon this foreign vessel; and it would he a question deserving of very great consideration whether, in these circumstances, the rule which was binding upon her was not rather the sailing rule, which is of international obligation, and which enjoins that the light shall be carried, where it can be best seen, not higher than 20 feet (410). (1877) \$ Suth. 409 = Bald. 115. HART D. AVIGNO.

#### Loss of goods-Shipowper's liability for.

-Contract freeing him from-Validity of.

A shipowner and a shipper are perfectly free to make a stipulation freeing the shipowner from liability for goods consigned.

There is no very close analogy between a case where it is sought to get rid of a legal obligation, which is presumed to he the basis of every contract of carriage by sea, and a case like this, where the parties are perfectly free to make any stipulation they please, unembarrassed by any implied condition, or any original underlying obligation. (Lord Macnaghten.) CHARTERED BANK OF INDIA, ETC. v. B. I. STEAM NAVIGATION CO., LTD.

(1908) 13 C. W. N. 733-6 M. L. T. 11-4 I. C. 475= 19 M. L. J. 316 (323).

-Fire-Loss by, evering to alleged negligence-Suit for damages for-Onus of proof in-Duty of shipowner to lay all available materials before court.

The suit was in respect of two parcels of jute laden on board the flat " Jattrapore" for carriage, on the terms of certain bills of lading, and the plaintiffs sued in respect of a loss of the jute by fire.

The flat proceeded to her destination; but when she reached her discharging berth the consignees were not ready to take delivery. The flat with other cargo on board was then taken further down the Hooghly, and ultimately moored head and stern to two buoys, near a wharf called Nintollah Ghat. She was moored with head up river out-

Loss of goods-Shipowner's liability for-(Contd.) side another flat called the " Coleroon ", which was fast to the same buoys. There were other flats further in shore. She had been in that position two or three days when a fire broke out on board the "Coleroon". The fire spread to the " Jattrapore ", and though the latter was ultimately got clear and towed away down river, so much mischief had been done that the greater part of the jute in question was destroyed. In those circumstances the plaintiffs sued the defendant company for that the company had not delivered the goods in accordance with the bill of lading, and afterpatively for not taking care of the goods and saving them from the fire. The flat having arrived at the wharf at which delivery should have been taken, and the plaintiffs having neglected to take delivery in due course, the responsibility of the defendant company was thereafter only that of an ordinary bailee.

The trial Judge held that it was incombent upon the defendant company to satisfy him that they had taken such care of those goods as a man of ordinary prudence would take of his own goods.

Held, that that was not a correct statement of the law (7.8).

It is true that, under S. 106 of the Evidence Act, "when any fact is especially within the knowledge of any person, the burden of proving that fact is on him"; and it was therefore right that the defendant company should call the material witnesses who were on the spot. But this provision of the law of evidence does not discharge the plaintiffs from proving the want of due diligence, or (expressing it otherwise) the negligence, of the servants of the defendant company (8).

It may be for the company to lay the materials before the Court; but it remains for the plaintiffs to satisfy the Court that the true inference from those materials is that the servants of the defendant company have not shown due care, skill, and nerve (8), (Sir Walter Phillimere.) DWARKANATH RAI MOHUN CHAUDHURI P. RIVERS STEAM NAVIGATION CO. (1917) 8 L. W. 4 =

20 Bom. L. R. 735 = 23 M. L. T. 376 = (1918) M. W. N. 435 = 46 I. C. 319 = 27 C. L. J. 615. Loss after delivery to loading agent and before deliy to consigner—Liability for—Precision in bill of lad-

very to consignee—Liability for—Provision in bill of lading relieving him from liability as soon as goods are free from ship's tackle—Effect—Landing agent—Position of. Goods were shipped on the respondent's steamship

"Teesta" at Cuddalore and Pondicherry for Penang under two bills of lading. By each of the bills of lading the goods were expressed to be shipped for carriage to Penang and to be delivered at the Port of Penang and each contained the following clause:—

"The company is to have the option of delivering these goods or any part thereof into receiving ship or landing them at the risk and expense of the shipper or consignee as per scale of charges to be seen at the Agent's Office, and is also to be at liberty until delivery to store the goods or any part thereof, in receiving ship, godown, or upon any wharf the usual charges thereof being payable by the shipper or consignee. The company shall have a lien upon all or any part of the goods against expense incurred on the whole or any part of the shipment. In all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee."

The Shippers drew hills against the goods on S. F. & Cr. of Penang in favour of the appellants to whom the hills of lading were handed as security. The hills on S. F. & Cr. were accepted and were held with the bills of lading by the

SHIP (SHIPPING)-(Contd.)

Loss of goods—Shipowner's liability for—(Contd.)

appellants until 6-9-1905, when the bills were dishonoured
by S. F. & Co.

The "Teesta" had arrived at Penang on 10-8-1905, and on her arrival, the cargo intended for Penang was delivered overside into lighters and taken to the wharf. The practice for the owners of steamers calling at Penang was to appoint landing agents at that port. The business of the landing agents was to send lighters to meet an incoming vessel belonging to their employers on being furnished with a ropy of the ship's manifest. The goods were discharged from the ship's tackle into the lighters. The landing agents gave the master a clean receipt, if they were received in good order. The goods were then carried to jetty shed, held under lease from Government, landed there, and assorted by the landing agents ready for delivery to the consignees; on production of the bill of lading endorsed by the ship's agents with a delivery order. If the consignees applied for their goods within 96 hours they got them free of store rent; if not, the goods were either kept in the jetty sheds or removed to godowns. The landing agents made out their account of the landing charges and storage rent, if any, according to a scale of charges exhibited in the offices of the ship's agents. They received payment direct from the consignees. The endorsement of the hill of lading was required as a release of the ship's lien for freight and expenses incurred on the shipment. Without such endorsement the landing agents were not at liberty to deliver goods to con-

On 6-9-1905 upon the dishonour by S. F. & Co. of the bills accepted by them, the appellants produced the bills of lading, with delivery order endorsed, and claimed the goods from Bob & Co., the landing agents of the respondent company. The goods were not forthcoming, having already been taken away without the production of a bill of lading or a delivery order by the representative of S.F. & Co., acting in collusion with the representative of Bob & Co. and been disposed of, in fraud of the persons entitled.

In a suit brought by the appellants against the respondent Company for damages for non-delivery or conversion of the suid goods, held, affirming the Court below, that the clause providing for cesser of liability applied to the case and that it afforded complete protection to the respondent Company.

Simble the landing agents at Penang were in the position of intermediaries owing duties to both parties agent for the shipowners as long as the contract of affreightment remained unexhausted, and agents for the consignees as soon as the bill of lading was produced with delivery order endorsed. (Lord Macnaghten.) CHARTERED BANK OF INDIA, ETC v. B. I. STEAM NAVIGATION CO., LTD.

(1908) 13 C. W. N. 733=6 M.L.T. 11=4 I. C. 475= 19 M. L. J. 316.

#### Master of.

——Delivery of cargo by, without security for claims of persons entitled to contribution for general average—Injunction restraining making of. See SHIP—GENERAL AVERAGE—CONTRIBUTION FOR—DELIVERY OF CARGO. FTG. (1889) 16 I. A. 240 (245-6) = 17 C. 362 (368).

General loss—Adjustment of average claims and liabilities and securing of their payment in case of—Doty as o. See Ship—Shipowner—General loss.

(1889) 16 I. A. 240 (246)=17 C. 362 (369)

General ship—Goods sacrificed for common benefit

Owner of—Right of, as against separate consignee of
goods salved—Mode of enforcing—Duty in case of. See
SHIP—GENERAL SHIP. (1889) 16 I A. 240 (246)=
17 C. 362 (368)

Master of-(Contd.)

Jettison of deck goods—Remedy of owner of goods against matter. See SHIP—GENERAL AVERAGE—CONTRIBUTION FOR—RULE—EXCEPTION—DECK GOODS.

(1889) 16 I. A. 240 (247-8) = 17 C. 362 (370 1).

#### Mate's receipt.

Document accompanying transhipment of goods issued by shipowner to shipper if a. S& SHIP—SHIPOWNER
—TRANSHIPMENT OF GOODS—DOCUMENT ACCOMPANYING, ISSUED BY SHIPOWNER TO SHIPPER—DOCUMENT
OF TITLE. (1913) 41 C. 670 (678).

-Mate's receipt if A. (1913) 41 C. 670 (678).

#### Registration of Ships Act X of 1841—Registry as British ship under.

OF 1841. S.v REGISTRATION OF SHIPS ACT X (1846) 4 M. I. A. 179.

#### Shipowner.

CONSIGNEE'S NEGLECT TO TAKE DELIVERY IN DUE COURSE—LIABILITY ON.

DELAY IN LOADING-CLAIM TO DEMURRAGE IN CASE OP.

GENERAL LOSS—ADJUSTMENT OF AVERAGE CLAIMS AND LIABILITIES AND SECURING OF THEIR PAY-MENT IN CASE OF.

LIGHTER MANNED BY LABOURERS—LETTING OF.
TO ANOTHER SHIPOWNER—NEGLIGENCE OF LABOURERS DURING PERIOD OF LETTING.

LOADING BERTH-FAILURE TO GET, OWING TO CHARTERER'S DEFAULT.

LOSS OF GOODS.

SEAWORTHINESS OF VESSEL.

TIME-CHARTER—SUB-CHARTERAUTHORIZED BY.
TRANSHIPMENT OF GOODS—DOCUMENT ACCOMPANYING, ISSUED BY SHIPOWNER TO SHIPPER.

CONSIGNEE'S NEGLECT TO TAKE DELIVERY IN DUE COURSE—LIABILITY ON.

Nature of. See Contract Act—Ss. 151, 152—Shipowner—Liability of, etc. (1917) 8 L. W. 4 (6).

DELAY IN LOADING—CLAIM TO DEMURRAGE IN CASE OF.

Accord and satisfaction of —What amounts to.

The plaintiffs as owners chartered to the defendant company the steamship B to load at Calcutta a full and complete cargo of coal for carriage to Colombo. The plaintiffs sued the charterers claiming demurrage under the charter party for delay in loading beyond the lay days provided. The defendants pleaded that there had been an accord and satisfaction, the plaintiffs having accepted the sum of Rs. 2076-3.0 in full discharge of their claim. The amount claimed by the plaintiffs was Rs. 44,400 odd.

The facts bearing upon that point appeared from a few documents. There was no oral evidence on the point. The focuments relied upon did not disclose any intention to give up such a large claim. What appeared was that there was no question about the liability of the charterers to the extent of the sum actually paid, and, therefore, the sum of farther amount for subsequent arrangement. The cargo was, no doubt, released without full payment being exacted. In these was no cesser clause in the charterparty, and the solventy of the defendance of the charterparty, and the

solvency of the defendants was unquestionable.

Held reversing the appellate Court, and restoring the trial judge, that the onus was on the defendants to prove the accord, and that they failed to do so (239-40). (Lord Phillimore.) HOGARTH v. CORY BROS. & CO.

SHIP (SHIPPING)-(Contd.)

Shipowner-(Confd.)

DELAY IN LOADING-CLAIM TO DEMURRAGE IN CASE OF-(Contd.)

(1926) 53 I. A. 230 = 54 C. 84 = 31 C. W. N. 317 = 99 I.C. 581 = 26 L. W. 1 = 38 M. L. T. (P.C.) 9 = A.I.R. 1926 P. C. 121 = (1926) M. W. N. 882.

GENERAL LOSS—ADJUSTMENT OF AVERAGE CLAIMS AND LIABILITIES AND SECURING OF THEIR PAYMENT IN CASE OF.

- Duty of master or shipscour as to.

A master or shipowner is bound to exercise the power he is invested with when a general loss has arisen, and to use the means in his power for adusting the average claims and liabilities and securing their payment. The right to detain for contribution is derived from the civil law, which also imposes on the master of the ship the duty of having the contribution settled and of collecting the amount, and the usage has always been substantially in accordance with that law, and has become part of the common law of England. (24b). (Letd. Watson.) STRANG STEFL & CO. 7. A. SCOTT & CO. (1889) 16 I. A. 240 = 17 C. 362 (369) = 5 Sar. 338.

LIGHTER MANNED BY LABOURERS—LETTING OF, TO ANOTHER SHIPOWNER—NEGLIGENCE OF LABOURERS DURING PERIOD OF LETTING.

Loss of lighter due to-Liability for. See Con-Tract Act. Ss. 151, 152-Shipowner - Lighter, Etc. (1927) 47 C. L. J. 258.

LOADING BERTH-FAILURE TO GET, OWING TO CHARTERER'S DEFAULT.

Damages payable by charterer in case of - Measure of.

If a ship is prevented from getting to a loading berth owing to an obstacle created by the charterer, or owing to the default of the charterer in performing his duty, then it is well established that the shipowner has done all that is me 'ful to bring the ship to the loading place, and that the charterer must pay for the subsequent delay (236). Quarre whether the latter's measure of liability is arrived at by giving to the shipowner damages for the delay, or whether the lay days are antedated to the date when they ought to have begun, and the charterer pays for them at the agreed rate of demurrage (236). (Lord Phillimere.) HOGARTH 2. CORY BRUS. & CO. (1926) 53 LA. 230 = 54 C 84 =

31 C. W. N. 317=99 I. C. 581-26 L. W. 1= 38 M. L. T. (P.C.) 9-A. I. R (1996) P.C. 121= (1926) M. W. N. 882.

#### Loss or coops.

-Liability for. See SHIP-LOSS OF GOODS.

## SEAWORTHINESS OF VESSEL.

Implied warranty as to-Contract evoluting-Contract for named word if a.

A contract for a named vessel excludes any implied warranty (1956.) (Lord Phillimore.) POINT ANNE QUAR-RIES, LTD :: THE SHIP M. F. WHALVN.

(1922) 32 M.L. T. 190 P. C.

-Unscarcerthiness-Liability for-Contract excluding
-Validity.

If a shipowner wishes to relieve himself from liability to the shipper in case his vessel should be found to have been unseaworthy, he must plainly say so. That is an old rule (Lord Macnaghten.) CHARTERED BANK OF INDIA, ETC. v. B. I. STEAM NAVIGATION CO., LTD.

(1908) 13 C. W. N. 733=6 M. L. T. 11=4 I. C. 475= 19 M. L. J. 316 (323).

Shipowner-(c'antil.)

TIME & HARTER-SUR CHARTER AUTHORISED BY. -to de dopped under, and bills of lading authorised by time-charter-lien on, for traight payable under time-charter-Right to-Netice to time-charterer of sub-charter-Effect-Without promine to this charter-

The appellants were respectively the registered owner and captain of a steamship. By a charter dated 20-8-1898, and entered into by the agents of the owners and some Bombay merchants, the owners agreed to let and the charterers agreed to hire the ship for 6 calendar months. She was placed at their disposal with a full complement of officers and men at Bombay for employment in the Indian Ocean and other Eastern waters as the charterers or their agents should direct, on certain conditions of which the following were important:-(2) The owners were to pay the captain and crew (4). The charterers were to pay freight monthly in advance at a rate, which came to Rs 18,000 (8). In default of such payment the owners were entitled to withdraw the steamer from the service of the charterers without prepalice to any claim the owners might otherwise have against them (14). The captain, although appointed by the owners, was to be under the orders and directions of the charterers as regards employment, agency, or other arrangements, Bills of lading were to be signed at any rate of freight the charterers or their agents might direct without prejudice to that charter, and the captain was to attend daily, if required at their offices to do so. The charterers were to indemnify the owners from all consequences or habilities that might arise from the captain doing so except for short delivery (21). The charterers were to have the option of subletting the steamer. (22) The owners were to have a lien upon all cargoes for freight or charter money due under the charter, and the charterers were to have a lien on the ship for all meneys paid in advance and not

Shortly after the time charter was made the ship was subchartered to the respondent for a round voyage from Saigon to Reunion and back from Mauritius to Bombay. She was to take rice from Saigon to Reunion and sugar from Mauritius to Bombay. Freight was to be payable for the whole voyage at a rate calculated only on the cargo, shipped from Saigon to Reunion. There was to be no freight payable by the sub-charterer (the respondent) to the time-charterer (the charterers under the time-charter) for any other cargo. On account of the freight thus estimated, Rs. 37,500 were to be paid at Bombay before the steamer sailed from Saigon, Rs. 25,000 at Reunion or Mauritius, and the balance was to be paid at Bombay after delivery of the cargo there.

The steamer completed that voyage and on 2-2-1899, sae arrived at Bombay, having on board a quantity of sugar put on board by the sub-charterer at Maritius, and for which he had received bills of lading from the captain. The freight payable by those bills of lading was prepaid by the sub-charterer, in Mauritius, so that when the ship arrived in Bombay nothing remained to be paid by the sub-charterer to the owners in respect of the bill of lading freight. Something was, however, due from the sub-charterer to the time charterers for money payable under the sub-charter. There was also due to the owners a month's freight from the time-charterers under the time charter, and the owners claimed a lien for that amount on the sub-charterer's sugar. And the question for decision was whether the ship owners were entitled to such a lien. The sub-charterer knew, in a general way, of the time charter, and that the freight payable under it by the time-charterers was Rs. 18,000, payable monthly in advance.

Held, that the shipowners were not entitled to the lien

SHIP (SHIPPING)—(Contd.)

Shipowner-(Contd.)

TIME-CHARTER-SUB-CHARTER AUTHORIZED BY -(Contd.)

any lien which the charterers had on the goods of the plain-

Apart from the bills of lading there was no contract between the shipowners and the sub-charterer. But he shipped sugar on board the steamer on the terms of those bills of lading, and the captain was authorised by the charter-party to sign them. Whether he signed them for the shipowners or for the sub-charterer he had express authority from the ship-owners to sign them. Hence the ship-owners contracted with the sub-charterer that his sugar should be carried to Bombay in that ship on the terms of the bills of lading.

The bills of lading in this case are not mere receipts for goods given to a charterer already bound to the shipowner by a charter-party entered into between them and which the

captain had no authority to depart from.

Unless, therefore, the fact that the sub-charterer had notice of the charter-party makes a difference, the bills of lading entitled him to have his goods delivered to him on payment of the bills of lading freight. Notice by shipper of a charter-party has not the effect of incorporating into the bill of lading any terms which are inconsistent with it and which the captain was not bound to embody in the bill of lading. If the charter-party shows that the captain exceeded his authority in signing the bill of lading, and the shipper knew this, he cannot enforce the terms of the bill of lading uncontrolled by the charter-party. If the shipper knew that there was a charter-party, and had an opportunity of reading it, and did not trouble himself about it, he might be treated as knowing its contents. In the present case the charterers had authority to let other persons have the use of the ship for 6 months for any voyage in the waters mentioned in the charter-party. The captain was not only empowered to sign but was bound to sign bills of lading at any rate of freight which the charterers or their agents might direct, but " without prejudice " to that charter. These words only mean that the rights of the ship-owners against the charterers, and vice versa, are to be preserved. The condition in the charter-party empowering the owners to withdraw the ship, cannot mean that, after the captain has shipped goods for Bombay and given bills of lading for them to persons other than the charterers the owners can refuse to allow the ship to go to Bombay and deliver the goods there as agreed by the bills of lading. So as regards the condition giving a lien on all cargoes for freight or charter money due under that charter. This is a stipulation binding on the charterer, and gives the ship-owner a more extensive lien than he would have for freight payable in advance. But this clause does not override or limit the power of the captain to issue bills of lading at different rates of freight, or entitle the shipowners to a lien on the goods of persons who have come under no contract with them conferring a lien for the freight payable under the charter-party. A right to seize one person's goods for another person's debt must be clearly and distinctly conferred before a Court of Justice can be expected to recognise it.

Quarre whether if the bills of lading were mere receipts for goods put on board, the sub-charterer could have had any greater rights than those which the charterers had themselves. (Lord Lindley.) TURNER r. HAJI GOOLAN (1904) 31 I. A. 222= MAHOMAD AZAM.

28 B. 573=9 C. W. N. 1=6 Bom. L. R. 743= 1 A. L. J. 553 = 8 Sar. 662.

TRANSHIPMENT OF GOODS-DOCUMENT ACCOMPANY. ING. ISSUED BY SHIP-OWNER TO SHIPPER.

-Assignment by transfer of-Delivery of goods by Company to Shipper or his nominee without production of claimed by them but that they were entitled to the benefit of document-Liability of Company to assignee for loss caused

Shipowner-(Contd.)

TRANSHIPMENT OF GOODS-DOCUMENT ACCOM-PANYING, ISSUED BY SHIPOWNER TO SHIPPER-(Contd.)

by-Circular order of Company that goods will not be delivered except on production of document-Object of.

The respondents in the case were the Irrawaddy Flotilia company. The appellants (plaintiffs in the suit) were money-lenders. The appellants had advanced money to Chowdry, 1st defendant in the suit, under an agreement by which the money was to be employed in purchasing paddy to be stored in the appellant's godowns at a place called D, and thence to be taken to Rangoon for sale. In such case it was stipulated by the agreement that a receipt should be given to the plaintiffs for what should be taken, and that on the arrival of it at Rangoon money for it should be paid to the plaintiffs and then the receipt should be delivered up to the 1st defendant.

The 1st defendant's agent at D induced the appellants' agent to allow the paddy to be shipped to Rangoon in boats belonging to the respondents in the name of the 1st defendant as shipper. Eleven boot-loads in all were sent in respect of eight of which the 1st defendant paid the money to the plaintiff's nominee at Rangoon. In respect of the cargo of the last three boats the agent of the 1st defendant endorsed and delivered to the plaintiffs documents which accompanied the transmission of the goods and which were denominated " Mate's receipts." The 1st defendant sold the cargoes, obtained delivery of the posledy from the respondents without producing the documents called " Mate's receipts," and delivered the paskly to the purchasers, paying nothing to the plaintiffs.

The appellants thereupon instituted the suit out of which the appeal arose against the 1st defendant and the respondents, as 2nd defendant, for the recovery of the amount due for advances from the 1st defendant, and for the recovery of the said amount as damages from the respondents.

It was found that the document called a "Mate's Receipt" was a simple ordinary receipt for goods, that it was not a a document of title, and that an assignee by mere transfer of that document acquired no right as against the shipowner. The appellants contended that the respondents were nevertheless charged with a duty and came under an obligation to deliver to no one except upon the Mate's receipt. The argument was founded upon the circular, dated 1st January 1907, which was a sample of what was usually issued in the course of the respondent's business. The clause upon which they relied was as follows :- "Mate's receipts must, however, be given up before discharge is allowed to commence, or in the event of Mate's receipts not having come to hand, the company's usual guarantee must be signed."

Held, that the clause in the circular merely set forth a mode in which in conducting their own business, the respondent company would protect themselves in the course of their trade, and that it could not be founded upon by other Parties as forming any part of an obligation to them restrictive of their freedom or methods of action in conducting

their own affairs (680).

An against customers the clause afforded protection to the respondent company, and it gave an intimation or waralong that they shall not part with the goods unless Mate's receipts are given up, or otherwise unless a guarantee be obtained. But this protection of themselves they could freely an arrange of the freely give up if satisfied of the identity and solvency of the owner or nominee of the owner who demanded the goods at the port of delivery. And it is wholly just tertii for any per-son in the position of the appellants to plead that that clause of the abipowner's cricular constitutes an obligation spon which at which they as outside parties are entitled to found in Council, 7th January, 1807.

SHIP (SHIPPING)-(Contd.)

Shipowner-(Contd.)

TRANSHIPMENT OF GOODS-DOCUMENT ACCOM-PANYING, ISSUED BY SHIPOWNER TO SHIPPER--(Contd.)

(680-1). (Lord Show.) NATCHEAPPA CHETTY :: IRRA-WADDY FLOTILIA COMPANY. (1913) 41 C. 670 ::

(1914) M. W. N. 163 = 18 C. W. N. 457 = 12 A. L. J. 211 = 15 M. L. T. 193 = 7 Bur. L. T 40 = 19 C. L. J. 265 = 16 Bom. L. R. 298 = 22 I. C. 311.

-Document of title if and when a-Assignment by transfer of.

A document which accompanied a shipment of goods was beaded as follows .- " Irrawaddy Fletilla Company, Limited" (the Shipping Company). It was denominated plainly in the document as a " Mate's receipt." The document then proceeded in these terms :- "Received from O. Rahman " (the shipper) " the undermentioned quantity of paddy to be forwarded per cargo boat 128 in tow of steamer" and then the denomination was given, and then followed the expression " with liberty to tranship to other vessel. Number of baskets 5,000-five thousand baskets paddy, more or less," That document was signed " Alex. Wingate, Agent." He was, in point of fact, the ship's agent acting at the place for the shipping company. The document also said :- "N. R. All risk of navigation, loading and unloading goods, destruction, or damage by fire, robbery, weather, wreck of boat, separation of flat from steamer, or any other cause of whatever nature or kind soever to be home by the shipper, Freight payable before delivery.

On a question arising under what legal category the above document fell, held that the document was not a bill of lading, not a Mate's receipt, and not a negotiable instrument in the sense of S. 137 of the Transfer of Property Act, but that it was a simple ordinary receipt for goods (687.9),

It is a document which charges the Shipping Company with receipt of certain goods from the shipper, under a bargain to convey them by ship to Rangoon for stipulated freight and on certain conditions, and the duty arising from it was to deliver the goods to the shipper or to his nominee at Rangoon (679). It was not a document of title. There was no authority by law to give to an assignee by transfer of that document any right as against the shipowner except upon the usual form of an assignment as between the shipper and his assignee. That usual form must be accompanied by notice to the ship-owner which charges him with the fact of the assignment and makes him responsible to the assignee instead of to the orginal shipper (678-9). Assuming the "Mate's receipt," as it is called, to have been lost, was the owner of the goods, who then handed them to the shipowner, not to be entitled, because the receipt had disappeared, to the possession of his own goods from the car-rier whose freight he was willing to pay? That simple statement of the point shews that there is no legal foundation for the position that that was a document of title, and that the goods passed upon the transfer of it (679). (Lord Shate.) NATCHEAPPA CHETTY :. IRRAWADDY FLOTILLA CO.

(1913) 41 C. 670 = (1914) M. W. N. 163 = 18 C. W. N. 457 = 12 A. L. J. 211 = 15 M. L. T. 193 = 7 Bur. L. T. 40 = 19 C. L. J. 265 = 16 Rom. L. R. 298 = 22 I. C. 311.

Trading in enemy's coast-Presumption-Proof.

-Majesty's Order in Council, 7th January, 1807-Confiscation of ship and cargo under.

An American Vessel, after disposing of her outward cargo at Batavia, proceeded from thence to Samarang, another Dutch port in the island of Java, where she took in a cargo of coffee, with which she was proceeding back to Bataria, when she was captured on the ground of her being engaged in a trade prohibited by His Majesty's Order

Trading in enemy's coast-Presumption-Proof-(Contd.)

Held that the presumption, which was not rebutted by the evidence in the cause, was that the vessel was going to Batavia for the purpose of discharging her cargo; that the trade must, therefore, be considered as part of the coasting trade of the enemy; and that the ship and cargo, in cenformity with His Majesty's Order in Council, were liable to (Ser H. Scott.) CORA. VAN ALLEN, confiscation. (1811) 2 Act. 44. MASTER.

### SHROTRIEM.

#### Grant of.

- Estate inalienable and heritable only by lineal heirs conveyed under.

A shrotriem grant made in 1750 by the Nawah of Carnatic to the predecessors in title of the respondents was as

"To the annals present and future of the pergunnah of T. Be it known:-It has been represented to us that the entire village of K, in the pergumah aforesaid, has been established and enjoyed for a length of time by way of 'shrotriem' for the yearly sum of 110 gory chuckrums, according to the sunnuds of former princes, as a subsistence to L. Zunardar and that these sunneds have been lost; wherefore it is written, that the said village provided it has been enjoyed according to the 'mamool sheedamed'shall be restored to the said Zunardar, that, having appropriated to his own use the produce of the seasons, each year, he may be assiduous in offering up prayers for the lasting prosperity of the empire, and let him pay regularly to the sirkar the established amount of the 'shcotriem,'

II.4.1 that, on the true construction of the grant, the interest created by it was inalienable and heritable only by lineal heirs, so that on any occasion of forfeiture on extinction of lineal heirs the grantor or someone deriving title under him would come in by vistoe of the reversion which had not been transferred (66). (Sir Lawrence Jenkins). SECRETARY OF STATE FOR INDIA & SRINIVASA (1920) 48 I.A. 56 = 44 M. 421 (429-30) = CHARIAR.

(1921) M.W.N. 111 = 29 M.L.T. 181 = 19 A.L.J 201=3 U.P.LR. (P.C.) 43= 25 C.W.N. 818-13 L. W. 592 = 33 C.L.J. 380 = 60 I.C. 230 = 40 M.L.J. 262.

-Melwaram only conveyed under See INAM-GRANT IN-MELWARAM ONLY OR KUDIVARAM AISO CONVEYED UNDER-MELWARAM. (1929) 56 I.A. 146=52 M. 453. -Melwaram only or kudiwaram also conveyed under -Presamption. See INAM - GRANT IN-MELWARAM ONLY OR KUDIWARAN ALSO CONVEYED UNDER-PRE-SUMPTION. (1929) 56 I A. 146=52 M. 453. -Melwaram out kuliwaram capable of heing conreyed under.

A shrotriem grant may in fact grant the kudiwaram as well as the melwaram. (Lord Atkin). SEETHAVVA P. SUBRAMANYA SOMAYAJULU

(1929) 56 I.A. 146 = 52 M. 453 = 29 L.W. 804 = 33 C.W.N. 578 = A.I.B. (1929) P.C. 115 = 31 Bom. L.R. 756 = 49 C.L.J. 566 = (1929) M.W.N. 553 = 117 I.C. 507 =

56 M. L. J. 730 (737). -Minerals - Grantee's right to - Ruling prayer-Grant to Brahmin for subsistence by.

A shrotriem grant made in 1750 by the Nawab of Carnatic to the predecessors in title of the respondents was as

To the annals present and future of the pergunnah of T. Be it known :- It has been represented to us that the entire village of K, in the pergunnah aforesaid, has been established and enjoyed for a length of time by way of 'shrotriem,' for the yearly sum of 110 gory chukrums,

#### SHROTRIEM-(Contd.)

#### Grant of-(Contd.)

according to the sunnuds of former princes, as a subsistence to L. Zunardar and that these sunnuds have been lost wherefore it is written, that the said village, provided, it has been enjoyed according to the 'mamool sheedamed' shall be restored to the said Zunardar, that, having appropriated to his own use the produce of the seasons, 'each year, he may be assiduous in offering up prayers for the lasting prosperity of the empire, and let him pay regularly to the sirkar the established amount of the 'shrotriem.'

Held that, on the true construction of the grant, the full right to the quarries and minerals in the village did not

pass to the grantee (65).

There is nothing to suggest that the original grant contained words sometimes employed in Indian documents, where it is the intention that the main grant of a village should create such an interest in land as would vest the minerals in the grantce, Nor does the language suggest that any further benefit to the grantce was contemplated or intended than such as might be derived from the ordinary use of the land for the purposes of cultivation (65). (Sir Lawrence Jenkins). SECRETARY OF STATE FOR INDIA D. (1920) 48 I.A. 56= SRINIVASACHARIAR.

44 M. 421 (429-30)=(1921) M.W.N. 111= 29 M.L.T. 181 = 19 A.L.J. 201 = 3 U. P. L. R. (P.C.) 43 = 25 C.W.N. 818= 13 L. W. 592 = 33 C.L.J. 380 = 60 I.C. 230 = 40 M.L.J. 262.

Meaning of.

-Revenue. (Lord Atkin). SEETHAYYA v. SUBRA-MANYA SOMAYAJULU.

(1929) 56 I. A. 146 = 52 M. 453 = 29 L. W. 804 = 33 C.W.N. 578 - A.I.R. 1929 P C. 115= 31 Bom L R. 756 = 49 C.L.J. 566 = (1929)M W.N. 553 = 117 I. C. 507 = 56 M. L. J. 730 (737).

SIGNATURE

-See (1) (DEED-EXECUTANT - SIGNATURE OF AND (2) WILL-SIGNATURE OF TESTATOR.

Brahmo Samaj-Sikh er Hindu becoming member of-Effect of.

It was contended that, assuming the testator as a Sikh to have been originally a Hindu within the meaning of the Probate and Administration Act, he had ceased to be a Sikh or a Hindu by becoming a member of another religious body, the Brahmo Samaj. The learned judges of the Chief Court held that a Sikh or Hindu becoming a Brahmo did not necessarily cease to belong to the community in which he was born. In this conclusion their Lordships agree (256.7). (Sir Arthur Wilson). RANI BHAG-WAN KUART. JOGENDRA CHANDRA BOSE

(1903) 30 I. A. 249 - 31 C. 11 (33) - 7 C.W.N. 895 = 84 P.R. 1903 = 135 P.L.R. 1903 = 13 M.L.J. 381.

Hidoos if. See SIKHS-LAW APPLICABLE TO. (1903) 30 I A. 249 (254)=31 C. 11 (30)

-Heme real of.

The Punjab is the real home of the Sikhs (254). (Sir Arthur Wilson). RANI BHAGWAN KUAR P. JOGENDRA CHANDRA BOSF.

(1903) 30 I.A. 249 = 31 C 11 (30) = 7 C.W.N. 895= 84 P.R. 1903 = 135 P.L.R. 1903 = 13 M.L.J. 381. Law applicable to.

The Hindu law has been applied to the Sikhs, and it has been so applied upon the view that Sikhs were included under the term Hindu, and not upon the alternative rule of justice, equity and good conscience (254). (Sir Arthur JOGENDRA KUAR D. RANI BHAGWAN Wilson). (1903) 30 I.A. 949= CHANDRA BOSE.

31 C. 11 (30-1)=7 C W.N. 89 84 P.B. 1903=135 P.L.B. 1903=13 M.L.J. SEL SIKHS-(Contd.)

Orthodox practices-Lapse from-Effect of, Say HINDU-ORTHODOX PRACTICES.

(1903) 30 I.A. 249 (257) - 31 C. 11 (33)

## SINGAPORE BANKRUPTCY ORDINANCE.

S. 51 (1)-Fraudulent preference.

-Application by Assignee to set aside transfer by insolvent as being-Onus on assignee in, to show that the case is within the statute. (Lord Warrington of Clyffe). SIME, DARBY & CO., LTD. P. OFFICIAL ASSIGNEE OF THE ESTATE OF LEE PANG SENG.

(1927) 30 Bom. L. R. 290 = 107 I.C. 233 = 47 C.L.J. 339 = 1 L.T. 40 C. 104 = 27 L.W. 744 == A.I.R. 1928 P.C. 77=51 M.L.J. 337 (339).

Decision as to-Basis of - Points to b considered. On an application by the Assignee in hankruptcy to set aside a transfer by the insolvent on the ground that it was a fraudulent preference within the meaning of S. 51 (1) of the Singapore Bankruptcy Ordinance, the question to be determined is one of fact, was the dominant motive actualing the debtor in making the transfer a desire to prefer the particular creditor or was it of a different character? As the solution of the question involves an enquiry into the state of a man's mind, and it must very seldom be the case that there is direct evidence on the point, the decision generally depends upon the inference properly to be drawn from the circumstances attending the transfer as established by the evidence. (Lord Warrington of Clyffe.). SIME, DARBY & CO., LTD. r. OFFICIAL ASSIGNEE OF THE ESTATE OF LEE PANG SENG.

(1927) 30 Bom. L. R. 290 - 107 LC. 233 -47 C.L.J. 339 = 1 L.T. 40 C. 104 - 27 L W. 744 A.I.R 1928 P.C. 77 = 54 M L.J. 337 (338).

-Test-English Bankruptcy det principles-Applicability of.

Whether a transfer made by an insolvent is to be deemed fraudulent and void as against the official Assignee in the bankruptcy within the meaning of S. 51 (1) of the Singapore Bankruptcy Ordinance depends upon the answer to the question whether the transfer was made "with a view of giving the transferee a preference over the other creditors." S. 51 (1) of the Ordinance is identical with the provision on the same subject in the English Bankruptcy Act, and the principles applicable to the latter are applicable to the Ordinance in Singapore (338). (Lord Warriguton of Clyffe.) SIME, DARBY & CO., LTD. S. OF FICIAL ASSIGNEE OF THE ESTATE OF LEE PANG SENG.

(1927) 30 Bom. L. R. 290 - 107 I.C. 233 -47 C. L. J. 339 = 1 L.T. 40 C. 104 = 27 L.W. 744 -A.I.B. 1928 P.C. 77 = 54 M.L.J. 337.

Transfer made to avert proscention for criminal breach of trust not a.

Where the proper inference to draw from the facts was that the dominant motive actuating the debtor was that, in making the transfer to his creditor, he (the debtor) was only doing what he felt himself bound or compelled to do, and where it must have appeared to him that the alternalive to handing over was a prosecution for a criminal breach of trust, the case is not one of fraudulent preferthe within the statute. (Lord Warrington of Clyffe).

THE DARBY & CO., LTD. 2. OFFICIAL ASSIGNEE OF THE ESTATE OF LEE PANG SENG.

(1927) 30 Bom. L B. 290 = 107 I.C. 233 = 47 O.L.J. 339=1 L.T. 40 C. 104-27 L.W. 744= A.I.B. 1928 P.O. 77 = 54 M.L.J. 337 (343).

TTAMBARAI JAINS.

-See JAINS-SITAMBARAI JAINS.

#### SITE.

-Ownership of - Water-Site covered by - Site cover ed by crops-Distinction. See PROPERTY-SITE.

(1870) 13 M.I.A. 467 (477-8).

SKINNER FAMILY.

History of.

(1870) 13 M.I.A. 277.

Will of

-Children-liequest to-Illegitimate children if take under, See HINDU LAW-WILL-CHILDREN-REQUEST TO-ILLEGIIDATE CHILDREN IF TAKE UNDER.

(1870) 13 M.I.A. 277.

-Construction of - Rules applicable to - English technical rules-fustice, equity, and good conscience.

The construction and effect of the will must depend upon the law of the domicil, if that can be ascertained. At the time of the testator's death, there was no lex loci of the province in which he was comiciled, and the law applicable to the succession of any individual depended on his personal status, which again mainly depended on his religion.

Thus the succession of a Hindu would, as a general rule, fall to be regulated by Hinou law, and of a Mahomedan by Mahonedan law, and of an East Indian Christian by English Low; but in every case, for the purpose of determining the status personalis, regard was to be had to the mode of life and habits of the individual, and to the usages of the class or family to which he belonged.

If no specific rule could be ascertained to be applicable to the case, then the Judges administering justice in the province were to act "according to justice, equity, and good conscience. Such is the substance of the Regulations, as explained in the case of Abraham v. Abraham, which were made by the East India company for defining the jurisdiction of the Courts of the North-West Provinces of India in which the testator was domiciled, and which were in force at the time of his decease (1841). (Lord Westbury.) (1870) 13 M.I.A. 277 (307-8)= BARLOW & ORDE.

13 W.R. P.C. 41-5 B.L.R. 1=2 Suth. 324= 2 Sar. 540 = 6 M.P.C. (N.S.) 437 = Punj. (P.C.J.) 1870.

There is nothing to indicate the religious belief or profession of the testator or of his family or what were their habits or usages. His origin is unknown; it is stated, and there is proof, that he was illegitimate, being probably the child of a native woman by an European father; being illegitimate, he belonged to no family, and all that can be collected is that he was probably a soldier of fortune, who rose by his courage and military skill to a certain rank and distinction in the service of the East India Company. It is impossible, under these circumstances, to affirm that any particular law is applicable to the construction of the testator's will or the regulation of his succession. Any questions that may arise respecting them must, therefore, be determined by the principles of natural justice (309). (Lord Westbury.) BARLOW v. ORDE.

(1870) 13 M.I.A. 277-13 W.R. P.C. 41= 5 B.L.R. 1 = 2 Suth. 324 - 2 Sar. 540 = 6 M.P.C. (N.S.) 437 = Punj. (P.C.J.) 1870.

From the case of Barlow v. Orde (13 M. I. A. 277). in which the history of the skinner family is referred to, it is plain that English rules of interpretation-in so far at least as these are artificial rules of construction which have arisen in the administration of English Courts of equitymust not be allowed to govern the interpretation of Thomas Skinner's will, Questions affecting the construction of such a settlement as the present, or the regulation of a succession under it, must be determined by the principles of natural justice, or, to use the familiar language, according

#### SKINNER FAMILY-(Contd.)

Will of - (Contd.)

to "justice, equity and good conscience" (114-5). (Lord Shaw) SKINNER v. NAUNITAL SINGH.

(1913) 40 I.A. 105 = 35 A. 211 (224) = (1913) M.W.N. 500 = 13 M.L.T. 488 = 11 A.L.J. 494 = 17 C.L.J. 555 = 17 C.W.N. 853 = 15 Bom. L.R. 802 = 19 I.C. 267 = 25 M.L.J. 111.

- Estate conveyed under-A and his lateful male children according to late of inheritance-Bequest to.

The material clauses of S's will, which fell to be construed according to "justice, equity, and good conscience," were in these terms:—

"(4) That my private zemindary . . . as well as all villages, houses and other property . . . may at my demise descend to my eldest son, Thomas Blown Skinner, and to his lawful male children according to the law of inheritance.

"(5) In the event of my eldest son, Thomas Brown Skinner, dying without lawful male children, the abovementioned private zemindari, etc., shall descend to my next male heir, and should all my sons die without lawful male children, the zemindari, etc., shall descend to my female children, or, in the event of their death, to the female, to the female children born in wedlock of my sons in succession."

Held that, on the true construction of the will, Thomas Brown Skinner took an estate for his life only as contradistinguished from an absolute estate (114-5). (Lord Shate.) SKINNER v. NAUNITAL SINGH.

(1913) 40 I.A. 105 = 35 A. 211 (222 4) = (1913) M.W.N. 500 = 13 M.L.T. 488 = 11 A.L.J. 494 = 17 C.L.J. 555 = 17 C.W.N. 853 = 15 Bom. L.R. 802 = 19 I.C. 267 = 25 M.L.J. 111.

—Manager under—Commission to, See HINDU LAW—WILL—MANAGER UNDER.

(1880) 7 I.A. 196=3 A. 91.

(1929) 56 I.A. 363=57 M.L.J. 765.

(1927) A.I.R. 1927 P.C. 51.

See also Hindu Law-Minor-(a) Custody OF, (b) Education OF, (c) Guardianship OF.

### SLANDER.

——Damages for—Special damage—Claim to—Failure to prove—Ordinary damages—Recovery of—Right of. See TORT—DAMAGES FOR—SPECIAL DAMAGE.

(1866) 10 M.I.A. 563 (574-5).

#### SLAVERY ACT V OF 1843.

---- Applicability-Property of persons who at the time of their death were slaves-Act or S. 3 thereof if confined to.

Their Lordships cannot accede to the general proposition that the operation of Act V of 1843 or of this particular section (S. 3 thereof, is to be confined to the property of persons who at the time of their death were slaves. They are of opinion that in construing this remedial statute they ought to give to it the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied, and falls within the language of the enactment (1434). (Sir James W. Colvile.) SAYAD MIR UJMUDIN KHAN v. ZIA-UL-NISSA (1879) 6 I.A. 137 = 3 B. 422 (430-1) = 6 C.L.R. 11 = 4 Sar. 37 = 3 Suth. 633.

Nature of—Remedial statute if—Construction of.

Act V of 1843 is a remedial statute, and in construing it, the court ought to give to it the widest operation which its of his or her death." (144). (Sir James W. Calvile)

#### SLAVERY ACT V OF 1843-(Contd.)

language will permit. It has only to see that the particular case is within the mischief to be remedied, and falls within the language of the enactment (143.4). (Sir James W. Colzile.) SAYAD MIR UJMUDIN KHAN v. ZIA-UL-NISSA (1879) 6 I.A. 137 = 3 B. 422 (430.1) = 5 C.L.B. 11 = 4 Sar. 37 = 3 Suth. 633.

-Scope and effect of.

Ss. 2 and 3 of Act V of 1843 point to the conclusion that it was the general intention of the Legislature in passing that Act to relieve all persons then subject thereto from all the disabilities arising out of the status of slavery (142).

The general scope and object of the statute was to remove all the disabilities arising out of status of the slavery. The rule of Willa whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator of the emancipated was not less such a disability, than the rule of law whereby the natural heirs of an unemancipated slave were excluded by his master or his heirs (144). (Sir James W. Colvile.) SAYAD MIR UJMUDIN KHAN v. ZIA-ULNISSA BEGUM. (1879) 6 I.A. 137 = 3 B. 422 (429-431) = 5 C.L.B. 11 = 4 Sar. 37 = 3 Suth. 633.

- Mahomedan Law-Emancipated slave-Succession to
-Heirs of slave-Heirs of emancipator-Preference-Act
in force while succession opened-Willa rule-Applicability of.

A, one of the two wives of the last recognised Nawab of Surat, died in 1857. He had a daughter, B, born some four years before the marriage of A with the Nawab. B had been married in her father's lifetime to J, and the respondents, daughters, were the issue of that marriage. The question for decision was who was entitled to succeed to A, the respondents, or, the plaintiff, a distant relative of the Nawab.

A was originally a Rajput girl who had been converted to Mahomedanism; she was brought into the Zenana of the Nawab as his purchased slave, and was the mother, while still a slave, of B to him. She had been emancipated by him on the day previous to the celebration of the nikah marriage, by which she became his wife.

Plaintiff's case was that, according to the law of Willa.

M (though whom the plaintiff claimed) was, as the male
heir of the Nawab, the emancipator of A, entitled to succeed to As property, to the disherison of her own natural

Held that, by Act V of 1843, which was in force at the time of the death of A, the right, if any, of the Nawab's heirs under the law of Willa was taken away, and that the respondents were entitled to succeed to their grandmother (142-3).

The Act was in force at the time of the death of A: and the question who is entitled to succeed to her property is determinable by the law as it stood when the succession opened. Their Lordships cannot recognise any vested interest said to have been acquired previous to the passing of the Act by the unascertained persons who might at her death be thethen residuary heirs of her husband; or admit that her husband, by the act of emancipation, acquired a vested right which the statute could not except by express and retrospective words take away. (142-3). (Sir Jamus W. Colvile). SAYAD MIR UJMUDINKHAN v. ZIA-UL-NISSA BEGAM. (1879) 6 I. A. 137 = 3 B. 422 (429-30) = 5 C. L. R. 11 = 4 Sar. 37 = 3 Suth. 633.

S. 3-" that the person from whom the property may be derived was a slave "-Meaning.

The words "that the person from whom the property may be derived was a slave" in S. 3 of Act V of 1843 may well be taken to apply to any person who had at any time been a slave. The words are not "was a slave at the time of his or her death." (144). (Sir James W. Colvile.)

SLAVERY ACT V OF 1843-(Contd.)

SAYAD MIR UJMUDIN KHAN P. ZIA-UL-NISSA BEGAM. (1879) 6 I. A. 137 = 3 B. 422 (431) = 5 C. L.R. 11 = 4 Sar. 37 = 3 Suth. 633.

-S. 3-" Who may have acquired property by inderi tance"-Meaning.

It was contended that the words " who may have acquired property by inheritance" in S. 3 of Act V of 1843 are to be construed by the Mahomedan Law, which gives the property to a preferable class of heirs, we, the heirs of the husband, the emancipator. This argument reduces the clause to a nullity. Their Lordships conceive that the words must be taken to include any persons who would have acquired a title to property by right of inheritance, but for some obstacle arising out of the status of slavery. (143). (Sir James W. Colvile). SAYAD MIR UJMUDIN KHAN 2. ZIA-UL-NISSA BEGAM. (1879) 6 I. A. 137=

3 B. 422 (430) = 5 C. L. R. 11 = 4 Sar. 37 3 Suth. 633.

## SOONDERBANS.

Decennial settlement-Non-inclusion in. See DE-CENNIAL SETTLEMENT SOONDERBANS, ETC.

(1868) 12 M. I. A 226 (230).

-Zemindary bounded by-Temple lands within limits of-Right to-Presumption. See ZEMINDARY-SOONDER-(1868) 12 M. I. A. 226 (238-9).

## SONTHAL PARGANAS.

-Ghatwally tenures in. See GHATWALLY TENURE SONTHAL PARGANAS.

-Position of-Legislation special relating to. (Lord Moulton). MAHA PRASAD v. RAMANI MOHAN SANGH. (1914) 41 I. A. 197 (205-14) = 42 C. 116 (136-148) -18 C. W. N. 994 = 1 L. W. 619 = 20 C. L. J. 231 - 16 M. L. T. 105 -(1914) M. W. N. 565 = 16 Bom. L. R. 824 = 25 I. C. 451 - 27 M. L. J. 459.

# SONTHAL PARGANAS ACT XXXVII OF 1855.

-S. 2-Proviso-Effect-Laws and regulations applicable to proceedings under-Proviso-Exception-Distinction between.

Two rival interpretations of the proviso to S. 2 of the Sonthal Parganas Act XXXVII of 1855 naturally suggest themselves. The one is that the officers exercising the jurisdiction shall do so in accordance with the general laws and regulations, so that the rights of the parties are unaffected by the provision, although they are to be pronounced upon by a different judicial tribunal. The other is that not only the laws that govern rights, but also the procedure to enforce those rights, shall remain unchanged. Now it must be observed that this is a proviso and not an exception, and accordingly, taken in connection with the general language of the previous portions of the clause the former of these two interpretations is the one that commends itself to their Lordships, so that it must be construed as providing that the special officer or officers shall try such suits, but that is, trying and determining them they shall observe the general have and regulations obtaining in Bengal, which but for the Act would have applied equally in the Sonthal Parganas (206). (Lord Moulton). MAHA PRASAD F. RAMANI-MOHAN SINGH.

(1914) 41 I. A. 197 = 42 C. 116 (138)= 18.0. W. N. 994 = 1 L. W. 619 = 20 C. L. J. 231 = 16 M. L. T. 105=(1914) M. W. N. 565=

## SONTHAL PARGANAS PERMANENT SETTLE-MENT REGULATION III OF 1872 (BENGAL).

-Property situate partly in Southal Parganas-Suit in respect of -British Indian Courts - Jurisdiction - Abandomment of claim with respect to portion in the Parganas

The suit related to the succession to an impartible estate, called the Lachmipur Raj. The estate was situated in N. W. Bengal in the district of Bhagalpur, part of it extending into the Sonthal Parganas. The High Court held that by reason of Kegulation 3 of 1872, relating to those Parganas, the Court of the Subordinate Judge of Bhagalpur had no jurisdiction to try it, even though the plaintiffs abandoned that part of their claim which related to the postion in the Southol Parganas.

It seemed, however, to their Lordships not so plain, on first impression, that that decision was correct. (Loral Phillimore). SAHDEO NARAIN DEO P. KUSUM KUMARI.

(1922) 50 I. A. 58 (61) = 2 P. 230 = A. I. R. (1923) P. C. 21 = 32 M. L. T. 121 = 4 Pat. L. T. 217 = 37 C. L. J. 369 = 18 L. W. 597 = (1923) M. W. N. 377 = 27 C. W. N. 901 = 25 Bom. L. R. 560 - 71 I. C. 769 - 44 M. L. J. 476.

-S.5-Mertgage of land nitnated partly in Southal parganas and unsettled-Suit to infere-furisdiction-Cour: harying no fraviduction to entertain mut-Consent of parties - Effect-Usury-President in mertgage hand of nature of-Relief against-Duty of Court-S. 6-Effect.

The appeal assee out of a suit instituted in 1904 in the Court of the Subordinate Judge at Bhagalpur in Bengal to enforce a mortgage bond of the year 1896. By far the greater portion of the mortgaged properties was situated in the district of the Southal Parganas, and the mortgagors resided in that district. The remainder of the mortgaged property was situated within the local jurisdiction of the Bhagalpur Court. The bond in suit was executed at Bhagalper and contained a stipulation that the mortgagers might enforce it in the Bhagalpur Court. Although portions of the lands mortgaged had been settled, and notification had been duly made that such settlement had been completed, at dates prior to the institution of the suit, other portions were not so settled. The suit bond provided for compound interest and the amount claimed in the suit for interest exceeded the amount of the principal advanced

Held (1) that the Bhagalpur Court had no jurisdiction to entertain the suit; (2) that the stipulation in the mortgage bond that the mortgagees might enforce it in the Court of Phagalpur could not give it the necessary jurisdiction: and (3) that, apart from the question of jurisdiction, any Court dealing with the subject-matter of the suit would be bound to give full force and effect to the provisions of S. 6 of the Sonthal Parganas Settlement Regulation, 1872, relating to usury, and therefore to refuse to decree any compound interest arising from any intermediate adjustment of interest, or an amount of total interest exceeding the principal of the original debt or loan, (215.6).

The suit came within the provisions of S. 5 of the Sonthal Parganas Setllement Regulation, 1872, relating to the exclusive jurisdiction of officers, appointed by the Lieutenant-Governor of Bengal, or by settlement officers, in as much as it related to land which had not been settled, or the settlement of which had not been declared by a notification in the Calcutta Gazette to have been completed and concluded (210).

The Bhagalpur Court had no jurisdiction to entertain the suit, which, beyond question, was a suit in regard to land in the Sonthal Parganas and that being so the parties could not give it the necessary jurisdiction by consent. To do so would be to nullity the express prohibition of S 5 of the 16 Bcm. L. E. 105 = (1914) M. W. N. 105 = Sonthal Parganas Regulation 1872, which was binding on

## SONTHAL PARGANAS FERMANENT SETTLE-MENT REGULATION III OF 1872 (BENGAL)

any Court having jurisdiction in the Southal Parganas in exercise of that jurisdiction (216), (Lord Moulton), MAHA-PRASAD P. RAMANIMOHAN SINGH.

(1914) 41 I. A. 197-42 C. 116 (149-50) = 18 C. W. N. 994 = 1 L. W. 619 = 20 C. L. J. 231 = 16 M. L. T. 105 - (1911) M. W. N. 565 -16 Bom. L. R. 824 - 25 I. C. 451 - 27 M. L. J. 459.

-S. 6-Interest greater than principal-Rule as to

Prior payment if can be taken into account.

S. 6 of Regulation III of 1872, as amended by Regulation V of 1908, does not authorise any Court to decree as interest a larger sum of money than would, together with prior payments if any, equal the original loan or debt, (Sie John Edg..) SOURENDRA MORAN SINHA P. HARI PRASAD SINHA. (1925) 52 I A. 418 (432) = 5 Pat. 135 =

42 C L.J. 592 - 24 A.L.J. 33-(1926) M.W.N. 49 7 Pat. L. T. 97 - A.I.R. 1925 P.C. 280 -91 I.C. 1033 50 M.L.J. 1.

-Mortgage land situated partly in Sonthal Parganas and unsettled-Usury-Provisions in bond of nature of-Relief against-Duty of court entertaining suit to enforce mortgage. See Under this REGULATION S. 5.

Provisions of-Giving full force and effect to -Duty as to, of Court having jurisdiction in Sonthal Parganas. See SONTHAL PARGANAS SETTLEMENT REGL OF 1908, S. 5. (1925) 52 I.A. 419 (429-30) = 5 Pat. 135.

#### SONTHAL PARGANAS RURAL POLICE RE-GULATION IV OF 1910.

 Scope and effect of—Ghatwali tempre—Inalienability of-Government's right to enforce-Effect on. See GHAT-WALL TENURE-INALIENABILITY OF -GOVERNMENT'S (1928) 55 M.L.J. 7 (9, 11). RIGHT TO ENFORCE.

#### SONTHAL PARGANAS SETTLEMENT EEGULA-TION III OF 1908.

S. 5-Effect-Mortgage of property situate partly in Bhagalpur and partly in Southal Parganas-Suit on, filed in 1915-Jurisdiction of Bhagalpur Court to entertain-S. b of Reg. 111 of 1872 as amended-Effect.

The effect of S. 5 of Regulation III of 1908, which replaced S. 5 of the Kegulation of 1872, has been to exclude for the future after that substitution the jurisdiction of the civil courts to try cases relating to any lands in the Sonthal Parganas only during such period as that land should be under settlement, the period being reckoned from the time when the land is notified as under settlement to the time when the settlement is completed (429),

In a suit brought in the court of the Salverdinate Judge of Bhagalpur to enforce a mortgage, it appeared that the mortgage was made in Bhagalpur, and that some part of the mortgaged property was within the local limits of the jurisdiction of the Sub-Court of Bhagalpur, while the rest was in the Sonthal Parganas. Held, that the jurisdiction of the Court of the Sub-Judge of Bhagalpur to entertain the suit which was instituted on 5-2-1915 was not excluded by the substituted S. 5 of the Regulation of 1872

Held further, that in entertaining the suit the Sub-Judge of Bhagalpur was a court "having jurisdiction in the Sonthal Parganas" within the meaning of S. 6 of the Regulation III of 1872, as amended in 1893, and was bound to give full force and effect to the provisions of that section (429.30). (Sir John Edge.) SOUNDRA MOHAN SINHA (1925) 52 I.A 418= 7. HARI PRASAD SINHA.

5 Pat. 135=42 C.L.J. 592=24 A.L.J. 33= (1926) M.W.N. 49=7 Pat. L.T. 97= A.I.R. 1925 P.C. 280 = 91 I.C. 1033 =

#### , SOUTH CANARA.

-Land tenures in. See MADRAS LAND TENURES -SOUTH CANARA.

#### SOVEREIGN.

-Absolute soccreign-Public and private property of Distinction.

In the course of the argument in this case Lord Tenterden asked, "what is the distinction between the public and private property of an absolute sovereign? You mean by public property, generally speaking, the property of the state but in the property of an absolute sovereign, who may dispose of every thing at any time, and in any way he pleases, is there any distinction?" and in delivering the judgment of their Lordships he also observed, "another point made is that the property was not proved to have been the public property of the Peishwa. Upon that point I have already intimated my opinion that when you are speaking of the property of an absolute sovereign there is no pretence for drawing a distinction, the whole of it belongs to him as sovereign, and he may dispose of it for his public or private purposes in whatever manner he may think proper". (Lord Tenterdon.) ADVOCATE-GENERAL OF BOMBAY P. AMEERCHUND. (1829) 1 Sar. 16 Note.

-Acquisition of territory for first time-Rights of inhabitants of acquired territory in case of-Rights prior to acquisition if and when can avail them. See ACT OF STATE—ACT AMOUNTING TO AN, OR NOT-SOVEREIGN.

(1924) 51 I.A. 357 (360-1)=48 B. 613.

-Cession of territory. See Under CESSION OF TERRITORY.

-Subjects-Religious feelings of -Duty to respect. The interest of sovereigns, as well as their daty, will ever incline them to secure, as far as it is in their power, the happiness of those who live under their government; and no person can be happy whose religious feelings are not respected (247). (Lord Wynford.) RAMTONOO MULLICK (1829) 1 Knapp. 245= E. RAM GOPAUL MULLICK.

#### SOVEREIGN POWERS.

See Under INTERNATIONAL -Treaty between. AGREEMENT.

#### SPECIAL APPEALS ACT.

#### Act III of 1843.

-Admissibility of special appeal-Decision of single Judge as to-Finality given by Act to-Effect of-Prity Council appeal-Right of-Effect on.

By Act III of 1843, the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a special appeal was final so far as the Sudder Court was concerned; but the Act did not extend to take away the right

of appeal to the Privy Council (455).

It is the prerogative of the Crown to do justice between all its subjects, and the Indian Legislature could have so power to limit or affect that prerogative without the sanction of the Crown, which does not appear to have been given. The finality created by the Act must be limited by the jurisdiction of the Legislative power which created it and their Lordships are, therefore, of opinion that the order of the single Judge has been properly made the subject of appeal to Her Majesty in Council (455). (Lord Justice Turner.) MODEE KAIKHOOSCROW HORNUS (1856) 6 M.I.A. 448= JEE 7. COOVERBHAEE. 4 W.R. 94=1 Suth. 268=1 Sar. 562

-Special appeal-Scope of-Points certified-Appea if confined to-Act XVI of 1853-Effect.

Although the amount at issue was under Rs. 5,000, the appealable value, a special appeal was admitted by the 50 M.L.J. 1. Sudder Dewanny Adamsut from a decree of the Zillah

### SPECIAL APPEALS ACT-(Contd.) Act III of 1843-(Contd.)

Court. The sitting Judge upon the appeal, acting under the Act. No. III of 1843, then in force, amended the certificate of the points at issue in the proceedings before the Zillah judge by adding further points. Upon the proceedings coming before the full Court of the Sudder Descenny Adapted that Court ordered the certificate to be further amended. After these proceedings had taken place, Act, No. XVI, of 1853, was passed, whereby the Act. No. III of 1843, relating to special appeals, was repealed. By section 3 of the Act No. XVI, of 1853, power was given to the Sudder Dewanny Adambut to determine appeals without reference to the points certified. Held, that under that Act, the whole subject at issue at the last hearing upon appeal was open to the Sudder Court's consideration. (Lord Kingstown.) SUMBHOOLALL GIRDHURLALL &. THE COLLECTOR OF SURAT. (1859) 8 M.I.A. 1 (41) = 4 W.B. (P.C.) 55 = 1 Suth. 387 = 1 Sar. 713.

#### Act XVI of 1853.

-8. 4, Para. 4-Application of -Appeal on account of difference of opinion as to rulne of cridence Promesu-

Their Lordships think it of great importance that this provision in the 4th paragraph of the 4th clause of the Act XVI of 1853 should be carried to its full legitineate extent and that no appeal should be allowed on account of difference of opinion as to the value of evidence (163). (See John Romilly.) SEVVAJI VIJAVA RAGHUNADHA :. CHINNA NARAYANA CHETTI.

(1864) 10 M.I.A. 151-2 Sar. 88.

## SPECIFIC PERFORMANCE.

AGENT-CONTRACT BY.

AGREEMENT REMAINING in ficei.

BENAMIDAR-REAL OWNER -CONTRACT FOR SALE TO, OF PROPERTY HELD BENAMI.

COMPROMISE.

CONFISCATED PROPERTY-AUCTION SALE BY GOV-ERNMENT OF-PURCHASER AT.

DEBTOR-CONTRACT BY, TO TRANSFER PROPERTY IN EXTINGUISHMENT OF DEBT.

DECREE-ASSIGNMENT OF-AGREEMENT FOR.

DETINUE-ACTIONS OF.

DISQUALIFIED PROPRIETOR-CONTRACT BY, WHILE

UNDER DISABILITY. HINDU JOINT FAMILY.

HINDU LAW-ADOPTED SON-REVERSIONER AND ALIENEE FROM WIDOW.

INSURANCE-MARINE INSURANCE COMPANY.

LITICATION-PROPERTY SUBJECT OF, OR TO BE. RE-COVERED BY-AGREEMENT TO SHARE.

LOAN-AGREEMENT TO TAKE

MINOR-GUARDIAN.

MORTGAGE-CONTRACT TO GRANT.

PART OF CONTRACT.

RE-CONVEYANCE-AGREEMENT FOR.

RIGHT TO. SALE.

SUIT FOR

VENDOR AND PURCHASER.

## Agent-Contract by.

Own name-Contract by agent in his-Specific performance of Soit for Defendant in Agent if only a aloal, See PRINCIPAL AND AGENT—AGENT—CON-TRACT BY-OWN NAME. (1907) 17 M.L.J. 454 (461 2). Sale-Contract for-Purchaser's suit for specific performance of-Authority of agent-Onus of proof of.

## SPECIFIC PERFORMANCE (Centd.) Agent-Contract by-(Contd.)

See PRINCIPAL AND AGENT-AGENT-CONTRACT BY-S.M.E. (1928) 55 I. A. 360 = 52 B. 597.

-Unauthorized term-Contract with-Specific performance of, without term-Principal's right of, Sc. PRINCI-PAL AND AGENT-AGENT-CONTRACT BY-UNAUTHO-RIZED TERM. (1866) 11 M. I. A. 7 (24).

#### Agreement remaining in ficri.

-Suit for specific performance of-Defences ofen in. In a suit for the specific performance of an agreement semaining in fiers, a Court of Equity has a discretionary power to grant or to refuse relief beyond the law. In such a suit the fact that the agreement was procured by the fraud of the party seeking specific performance would be a good defence to the suit (289), (Lord Kingsdown.) GREGORY 7. COCHRANE. (1860) 8 M. I. A. 275=1 W. R. 66= 1 Suth 431=1 Sar. 779.

### Benamidar-Real owner-Contract for sale to, of property held benami.

-Specific performance of, and recovery of property-Suit by real owner of-Nature of-Limitation for. See LIMITATION ACT OF 1908, ART. 113.

(1922) 49 I. A. 335-45 M. 641.

#### Compromise

- Consideration for, executory - Specific performance of contract-Right of, of party guilty of breach of terms amounting to failure of consideration. Nec 1 OMPROMISE-CONSIDERATION FOR-EXECUTED OR EXECUTORY,

(1904) 31 I. A. 107-31 C. 584.

-Terms of-Specific performance of-Possibility of. See C. P. C. OF 1908, O. 23, R. 3-COMPROMISE-(1927) 53 M. L. J. 345. CONSTRUCTION.

#### Confiscated property-Auction sale by Government of-Purchaser at.

-Suit for specific performance by-Maintainability. SAY ACT OF STATE - ACT AMOUNTING OR NOT AMOUNTING TO-CONFISCATED PROPERTY.

(1869) 13 W. R. 4 (P.C.).

### Debtor-Contract by, to transfer property in extinguishment of debt.

-Specific performance of-Creditor's right of-Acceptance by him of transfer of another property in part satisfaction of delt-Effect.

/, who was indebted to the appellant, gave him a document dated 2.8-1923 which ran as follows:-" I confirm that we owe you nearly half a lakh of supees, I shall convey you my property known as " Mount Pleasant " as agreed by me to liquidate the amount as soon as I feel a little better.

Shortly after, I. died. After his death his widow executed a registered deed in favour of the appellant transferring to him another property of L for the sum of Rs. 15,000. The appellant accepted the said transfer as " in part satisfaction of " the debt in respect of which the document of 2.8-23 was given, and credited the said sum of Rs. 15,000 towards that debt.

Held that, in the view that the document of 2-8-1923 was a contract to grant an out-and-out transfer, liquidating the amount due in the sense of complete extinguishment of any existing debt, a decree for specific performance of the contract by conveyance of the property could not be granted.

Subsequent to the execution of the dacument of 2-8-1923

the appellant had accepted a property valued at Rs. 15,000 in part satisfaction of the obligation of 2-8-23 and in part payment of the sum due to him, and had in fact credited that part payment accordingly. To grant specific performance would accordingly be to vest the property fully in the

## SPECIFIC PERFORMANCE-(Centd.)

Debtor-Contract by, to transfer property in ex-

considerable part extinguished. According to one argument laid before the Board the appellant would have been permitted to realise the property and he would then stand in the position of a debtor to the estate of the vendor should more be obtained than was necessary to cover the remnant balance. In the opinion of their Lordships, looking to the facts of the transaction, specific performance of the obligation cannot be given or worked out on any such principle. (Lord Shaw.) KHOO SAIN BAN & TAN GUAT TEAN.

(1929) 7 R. 234 = 31 Rom. L. R. 873 = 50 C. L. J. 99 = 30 L. W 18 = 117 I. C. 489 = (1929) M. W. N. 619 = 33 C. W. N. 652 - A. I. R. (1929) P. C. 141 -57 M. L. J. 529.

## Decree - Assignment of - Agreement for

-Specific performance of -Assignor's sunt for - Maintainability-Decree barred in interval.

The suit was brought to obtain a decree for specific per formance of an agreement by which the defendant had agreed to purchase from the executors of B a decree and all the rights appertaining thereto which the said executors had obtained on a nontgage. The decree agreed to be assigned to the defendant was a decree for sale of certain immoveable properties, which could also in certain events be executed against the person and other property of the defendant to the suit in which it was made. Owing to the bor of limitation the decree for sale became incapable of execution subsequent to the date of the agreement, and thereupon the defendant refused to pay the agreed price and to take an assignment of the decree; hence the suit for specific performance.

Held, reversing the Court below, that, as the plaintiffs were unable to perform their part of the agreement, they were not entitled to a decree for the specific performance of the agreement.

After the expiry of the time allowed by law for executing the decree for sale, the decree, as a decree capable of being executed, could not by reason of the bar or limitation be assigned to the defendant. It had become a dead decree. whereas the decree, whatever might be its value, which he had agreed to purchase, and which the executors had agreed, to assign to him, was a decree capable of execution. (Six John Edge.) JATINDRA NATH BASC & PEYER DEVE (1916) 43 I. A. 108 = 43 C. 990 =

24 C. L. J. 67 = 20 C. W. N. 866 = 20 M. L. T. 25 = (1916) 1 M. W. N. 403 = 3 L. W. 553 = 18 Bom. L. R. 509 = 14 A. L. J. 527 = 34 I. C. 69 = 31 M. L. J. 248.

#### Detinue-Actions of.

-Distinction. See ACTIONS-DETINUE-SPECIFIC PERFORMANCE. (1876) 4 I. A. 76 (79-80) = 1 M. 235 (246).

#### Disqualified proprietor-Contract by, while under disability.

-Ratification of, after order for release of estate from management-Specific performance of contract in case of. See CHOTA NAGPUR ENCUMBERED ESTATES ACT OF 1876-DISQUALIFIED PROPRIETOR-CONTRACT, ETC. (1889) 16 I. A. 221 (231-2) = 17 C. 223 (232).

#### Hindu joint family.

- Father-Contract for sale of family property by-Specific performance of-Decree for-Execution of sale deed by Court pursuant to, and possession given to purchaser who paid off mortgage on property-Setting aside of

### SPECIFIC PERFORMANCE-(Contd.)

Hindu joint family-(Contd.)

tinguishment of debt—(Centd) | contract in son's suit for that purpose—Terms of. See appellant in respect of an obligation which had been in HINDU LAW—JOINT FAMILY—FATHER—CONTRACT (1925) 53 I. A. 142 (152)= FOR SALE, ETC. 48 A. 443.

> -Manager-Contract for sale of family property by-Specific performance of-Suit for. See HINDU LAW-JOINT FAMILY-MANAGER-CONTRACT FOR SALE OF FAMILY PROPERTY BY.

#### Hindu Law-Adopted son-Reversioner and alience from widow.

-Compromise between, on the terms that latter should not question title of former and that former should confirm alienations in favour of latter and settle other properties on hif wife-Questioning of adopted son's title by reversioner -Effect of, on his right to specific performance of other portions of compromise. See COMPROMISE-CONSIDERA-TION FOR-EXECUTED OR EXECUTORY.

(1904) 31 I. A. 107 = 31 C. 584.

#### Insurance—Marine Insurance Co.

-"Open cover"-Policies in terms of-Refusal to issue, as per contract-Specific performance of contract in case of. See INSURANCE - MARINE INSURANCE-(1888) 16 I. A. 60 (70)=16 C. 564. 'OPEN COVER."

#### Lease.

-Contract to grant-Specific performance of. See LEASE-CONTRACT TO GRANT.

-Lease for term-Renewal of, at option of lesser-Covenant for-Specific performance of-Right to-Portion small of demised property-Person owning and possessing only, at expiry of term-Right of, to claim renewal as regards entire property demised or the part remaining in his possession. Nee LEASE-LEASE FOR TERM-RENE-WAL OF-COVENANT FOR-SPECIFIC PERFORMANCE (1928) 55 I.A. 423 = 51 Mad. 885. OF.

-Lessee - Dispossession wrongful by lesser of-Remedy in case of-Possession-Injunction-Specific performance-Suits for-Lease not an executory contract. See WRONGFUL BY LEASE — LESSEE — DISPOSSESSION LESSOR-REMEDY IN CASE OF

(1865) 10 M.I.A. 386 (395-6).

## Litigation-Property subject of, or to be recovered by-Agreement to share.

-Specific performance of. See LITIGATION -- PRO-PERTY SURJECT OF, OR TO BE RECOVERED BY.

#### Loan-Agreement to take.

-Specific performance of Sec LOAN-AGREEMENT TO TAKE.

#### Minor-Guardian.

-Contract by. See HINDU LAW-MINOR-GUAR-DIAN-CONTRACT BY.

#### Mortgage-Contract to grant.

-Specific performance of. See MORTGAGE-CON-TRACT TO GRANT-SPECIFIC PERFORMANCE OF.

#### Part of contract.

-Specific performance of, with compensation for residue-Grant of-Jurisdiction - Specific Relief Ad. St. 17. 14-Limits imposed by.

When the whole contract is enforced in one way or another, as to the greater part by the remedy of specific performance, and as to a small residue by compensation it is not necessarily making a new contract to select from among the remedies, which the court can grant, one los the major and another for the minor part of the contract For this jurisdiction S. 14 of the Specific Relief Act speci-

## SPECIFIC PERFORMANCE-(Contd.)

Part of contract-(Contd.)

fically provides and S. 17 forbids any extension beyond it (93). (Lord Sumner.) GRAHAM v. KRISHNA CHANDRA DEY. (1924) 52 I.A. 90 = 52 C. 335 = 6 L.R. P.C. 38 = 21 L.W. 390 = (1925) M.W.N. 138 = 3 P.L.R. 93 = 27 Bom. L. R. 740 = 23 A.L.J. 709 =

29 C.W.N. 919 = A.I.R. 1925 P.C. 45 -86 I.C. 232 = 48 M.L.J. 172.

#### Reconveyance-Agreement for.

-Specific performance of-Vendor's suit for-Default on his part to deliver possession of property to purchaser-Effect. See SALE-RECONVEYANCE OF -- AGRIEMENT FOR-SPECIFIC PERFORMANCE OF.

(1924) 20 L.W. 884 (891).

#### Right to.

SW SPECIFIC PERFORMANCE - SUIT FOR-DE-CREE IN.

#### Sale.

Contract for-Specific performance of -Purchaser's wit for. See SALE-SPECIFIC PERFORMANCE OF CON-TRACT FOR-SUIT FOR-PURCHASER.

Contract for—Specific performance of—Vendor's suit for, See SALE—Specific Performance of Con-TRACT FOR-SUIT FOR-VENDOR.

-Reconveyance-Agreement for-Specific performance of-Vendor's suit for-Default on his part to deliver possession to purchaser-Effect. See UNDER SALE-RE-CONVEYANCE. (1924) 20 L.W. 884 (891).

#### Vendor and Purchaser.

-Specific performance of contract for sale. No SALE -- SPECIFIC PERFORMANCE OF CONTRACT FOR.

#### Suit ior.

(Cases not found under this head will be found under the head. SALE-SPECIFIC PERFORMANCE OF CONTRACT FOR-SUIT FOR.)

ALLEGATIONS AND PROOF NECESSARY IN.

BASIS OF.

DAMAGES FOR BREACH OF CUNTRACT IN.

DECREE IN-DISCRETION OF COURT.

DECREE IN-PLAINTIFF'S RIGHT TO.

DECREE PROPER IN-PLANTIFF DEBARRING HIM-SELF AT HEARING FROM ASKING FOR SPECIFIC RELIEF.

LACHES IN INSTITUTING.

LIMITATION.

NATURE OF.

POINTS FOR DETERMINATION IN.

PROOF OF TERMS OF AGREEMENT ALLEGED.

ALLEGATION AND PROOF NECESSARY IN.

SM SALE-SPECIFIC PERFORMANCE OF CON-TRACT FOR-SUIT FOR - PURCHASER - SUIT BY -ALLEGATION AND PROOF IN.

#### BASIS OF.

-Executory as distinguished from executed agreement.

The expression 'specific performance,' as applied to suits known by that name, pre-supposes an executory as distinct from an executed agreement, something remaining to be done such as the execution of a deed or a conveyance, in order to put the parties in the position relative to each where to put the parties in the position retains they were in-tended to be placed (112). (Sir John Edge.) JATINDRA NATH BASU v. PEYER DEYE DEBI

(1916) 43 LA. 108=43 C. 990=24 C.L.J. 67= 20 C. W. N. 866=20 M.L.T. 25=

## SPECIFIC PERFORMANCE-(Contd.)

Suit for-(Contd.)

RASIS OF-(Contd.)

(1916) 1 M.W.N. 403=3 L.W. 553= 18 Bom. L.B. 509 = 14 A.L.J. 527 = 34 I.C. 69 = 31 M.L.J. 248.

DAMAGES FOR BREACH OF CONTACT IN.

-Amendment of plaint to as to make suit one for-What amounts to.

A purchaser saed for the specific performance of a contract for the sale of immoveable property with claims for damages additional or alternative all in terms of S. 19 of the Specific Relief Act. During the pendency of the suit, the plaintiff amended his plaint, his object in doing so evidently being to convert the suit imo one for damages for breach of the contract simplicater. But the amended plaint retained the paragraph in the original plaint, which alleged that the plaintiff "is as he has been throughout ready and willing to perform his said contract," and it also retained the claim for specific performance.

Held that the amendment, when properly construed, did not operate to convert the suit into one for the recovery of damages for breach of the contract simplicator. (Lord Mounday A.) ARDESHIR H. MAMA P. FLORA SASSOON.

(1928) 55 I.A. 360 = 52 E. 597 - 32 C.W.N. 953 -30 Rem. L.R. 1242 - 28 L.W. 257 =

I L.T. 40 B. 125-111 I.C. 413-26 A.L.J. 1220

(1928) M.W.N. 893-48 C.L.J. 451-A.I.R. 1928 P.C. 208 - 55 M.L.J. 523.

-American of plaint so as to make unit one for-Jurisdiction to allow, at hearing-Discretion-Principles generating exercise of - Specific Relief Act, S. 29.

S. 29 of the Specific Relief Act. which makes the dismissal of a suit for specific performance of a contract a bur to a right to sur for compensation for breach, implies that, prior to such discussal, the right is not larred. A suit for specific performance of a contract with claims for damages additional or alternative all in 'erms of S. 19 of the Act may, therefore, in a proper case, he allowed to be amended at its hearing into one for damages simpliciter. The power to allow such an amendment is, however, one to be most carefully and jealously exercised in all the circumstances of each individual case and with due regard to its effect upon the position both of the plaintiff and the defendant. Indeed so serious in many cases is the exercise of this power that it would be a wise precaution for a Judge before allowing any such amendment in a contested case to require the plaint to be actually re-modelled in a form appropriate to an action seeking compensation for breach of contract and nothing else. (Lord Blauedurgh.) ARDESHIR H. MAMAT, FLORA SASSOON. (1928) 55 I.A. 360 4

52 B. 597 - 32 C.W.N. 953 - 30 Bom. L.B. 1242 -28 L.W. 257-I. L.T. 40 B. 125-111 I.C. 413-26 A.L.J. 1220-(1928) M.W.N. 893-48 C.L.J. 451-A.I.B. 1928 P.C. 208 = 55 M.L.J. 523.

-Award of -Power of -Plaintiff debarred at hearing from asking for specific decree-Effect-Decree proper in

Exception as to the case provided for in the explanation (to S. 19 of the Specific Relief Act)- as to which there is introduced an express divergence from Lord Cairns' Act of 1868, as expounded in England-S. 19 of the Specific Relief Act embodies the same principle as Lord Cairns' Act and does not any more than did the English Statute enable the court in a specific performance suit to award "compensation for its breach" where at the hearing the plaintiff has deberred himself by his own action from asking for a specific фолес.

## SPECIFIC PERFORMANCE-(Contd.)

Suit for - (Contd.)

DAMAGES FOR BREACH OF CONTRACT IN-(Could.)

In a purchaser's suit for specific performance with an alternative claim for damages consitioned just as it is conditioned in S. 19 of the Specific Relief A.t, the plaintiff, nine mouths or more before the trial, wrote a letter formally notifying the defendant to the effect that he had decided to abandon his claim for specific performance, and that he would, instead, at the trial claim damages against the defendant for her breach of contract.

Held, that there was after that letter no power left in the Trial Judge without an apt and sufficient amendment of the plaint, to award the plaintiff at the hearing any relief at all, and that he had no power to award damages. (Lord Blanesburgh.) ARDESHIR H. MAMA P. FLORA SASSOON.

(1928) 55 I. A. 360 - 52 B. 597 - 32 C. W. N. 953 -30 Bom. L. R. 1242 = 28 L. W. 257 = I. L. T. 40 B. 125 = 111 I. C. 413 = 26 A. L. J. 1220 = (1928) M. W. N. 893 = 48 C. L. J. 451 = A. I. R. 1928 P. C. 208 - 55 M. L. J. 523.

#### DECREE IN-DISCRETION OF COURT.

-Bargain oncrous, but not unconscromable.

It has been strongly urged on behalf of the defendant that, as a decree for specific performance is discretionary, their Lordships, having regard to the onerous character of the bargain, should not affirm the decision of the Chief Court decreeing the suit. In the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract, their Lordships see no reason to accede to the argument. The bargain is onerous, but there is nothing to show that it is unconscionable (168-9). (Mr. Ameer Ali.) DAVIS v. MAUNG SHWE GO.

(1911) 38 I. A. 155 = 38 C. 805 (823) -15 C. W. N. 934 = 13 Bom. L. R. 704 = (1911) 2 M. W. N. 79 = 14 C. L. J. 250 = 4 Bur. L. T. 229 = 8 A. L. J. 1193 = 10 M. L. T. 455 = 11 I. C. 801 = 21 M. L. J. 1127.

#### DECREE IN-PLAINTIFF'S RIGHT TO.

Breach by him of one of terms of contract-Defendant accepting benefit of agreement in part-Effect.

A suit which appellant had instituted against Robert Watson & Co. was compromised on certain terms which related to the subject-matter of the suit and also on condition of his granting a lease of land not comprised in the same in favour of the said company. A pesition of compromise based upon the agreement was filed by the appellant, judgment was given in terms of the compromise, and a decree was drawn up in pursuance of the judgment. In a suit subsequently instituted by the successors in interest of Robert Watson & Co. against the appellant for specific performance of the agreement to lease referred to above, appellant contended that the plaintiffs were not entitled to specific performance because Robert Watson & Co. had violated a term of the compromise. Held that, if the term affected the contract, it must affect it in toto and it was impossible for the appellant, having accepted and received the advantage of the compromise so far as it related to the lands in the prior suit, afterwards to resist its effect upon the other portion of the lands to which it related. (Lord Buckmaster.) HEMANTA KUMARI DEBI P. MIDNAPUR ZEMINDARI COMPANY. (1919) 46 I. A. 240 (249)=

47 C. 485 (499) = 27 M. L. T. 42 = 17 A. L. J. 1117 = (1920) M. W. N. 66 = 24 C. W. N. 177 = 53 I. C. 534 = 31 C. L. J. 298 = 11 L. W. 301 = 37 M. L. J. 525.

-Default on plaintiff's part not going to root of contract and capable of being compensated for-Effect. See

## SPECIFIC PERFORMANCE-(Contd.)

Suit for-(Contd.)

DECREE IN-PLAINTIFF'S RIGHT TO-(Contd.)

SALE-RECONVEYANCE-AGREEMENT FOR-SPECIFIC (1924) 20 L. W. 884 (891). PERFORMANCE OF.

-Laches in instituting suit. See SPECIFIC PERFOR-MANCE-SUIT FOR-LACHES IN INSTITUTING.

-Written statement disclosing no defence.

In a suit for specific performance, if, on the written statement being filed, the plaintiff finds that it does not disclose any valid defence, he may move for a decree of specific performance, and he will be entitled to such a decree at once and as a matter of course. (Lord Macnaghten.) IKRAMULL HUQ P. WILKIE. (1907) 11 C. W. N. 946=

4 A. L. J. 740=2 M. L. T. 448=6 C. L. J. 682= 17 M. L. J. 454 (462).

DECREE PROPER IN-PLAINTIFF DEBARRING HIMSELF AT HEARING FROM ASKING FOR SPECIFIC RELIEF.

-See Specific Performance—Suit for—Dama-GES FOR BREACH OF CONTRACT IN-AWARD OF. (1928) 55 I. A. 360 = 52 B. 597.

#### LACHES IN INSTITUTING.

-Effect of.

It certainly is rather startling to be told that nine years after a contract has been made, which could have been satisfied within twelve months of its execution, a party to the contract is at liberty to take proceedings for specific performance. The rights of equity which prevail in British Barma are rights which are given to people who are vigilant and not to those who sleep and, unless there can be clearly established some reason which threw upon the defendant the entire blame for the delay that had occurred or unless indeed it can be shown that the real right of action had only accrued a short time before the proceedings were instituted, such a lapse of time would be fatal to any action for specific performance of a contract (219). (Lord Buckmoster.) MA SHWE MYA?. MAUNG MO HNAUNG.

(1921) 48 I. A. 214 = 48 C. 832 (838) = (1921) M. W. N. 396-30 M. L. T. 28-24 Bom. L. R. 682=63 I. C. 914= A. I. R. 1922 P. C. 249.

-Plea of -Maintainability.

In a suit by the appellant for specific performance of a contract for the sale of land as varied by subsequent agreement, the main defence of the respondents in the courts below and before the Privy Council was that the suit was premature. Before the Privy Council they raised an alternative plea that the appellant had lost his right to specific performance by his delay.

There was no suggestion that the position of the purchaser had been so prejudiced by the appellant's delay in seeking specific performance that it would be inequitable to enforce it. It also appeared that all the delay, such as it was could not be ascribed to the laches of the appellant, and that the purchaser was professing willingness to complete only a few days before the commencement of the suit.

Held, under the circumstances, that the alternative plea was curious, and that there was in any event no substance in it. (Sir George Lounder.) RUSTOMJI ARDESHIR COOPER (1930) 32 Bom. L. R. 798= v. DHARIYAWAN. 34 C. W.N. 681 = 51 C. L. J. 527 = 31 Punj. L.B. 604 123 I. C. 712 = A. I. B. 1930 P.C. 165 = 59 M.L.J. 48.

LIMITATION.

See LIMITATION ACT OF 1908, ART. 113.

NATURE OF.

-Suit to enforce real rights created by a transaction not a. See LIMITATION ACT OF 1908, ART. 113-SPECIFIC PERFORMANCE-SUIT FOR-NATURE OF.

(1918) 45 I. A. 162 (167) = 46 C. 173 (181)

## SPECIFIC PERFORMANCE—(Contd.)

Suit for-(Contd.)

POINTS FOR DETERMINATION IN.

-In a suit for specific performance it is of some importance to distinguish between negotiation and contract. and to ascertain what the contract is, when and by whom it was made, and who the parties are who are bound by it (Lord Macnaghten.) IKRAMULL HUQ :: WILKIE. '1907) 11 C. W. N. 946 - 4 A. L. J. 740 -

2 M. L. T. 448=6 C. L. J. 682=17 M. L. J. 454 (460).

PROOF OF TERMS OF AGREEMENT ALLEGED.

Onus on plaintiff as to.

In a suit for the specific performance of an agreement, it is incumbent upon the plaintiff, in order to maintain any right to relief in equity, to prove that agreement (230). (Vice Chancellor Turner.) EAST INDIA COMPANY P. NUTHUMBADOO VEERASAWMY MOODELLY

(1851) 5 M. I. A. 217.

Quantum-Possession taken under contract-Perusion taken adversely-Cases of-Distinction.

With regard to the necessity of proving the terms of a contract specific performance of which is sought, there is a distinction between cases where possession has been taken under the contract, and there is an uncertainty about its terms, and those where the possession was originally taken adversely. In the former case, the court will go to a great extent in order to do justice between the parties. In the latter case the court will not extend its equitable jurisdiction for the purpose of dealing with what is a mere legal question between the parties (232). (Vice Chancellor Turner.) EAST INDIA COMPANY P. NUTHUMBADOO VEERA-SAWMY MOODELLY. (1851) 5 M. I. A. 217.

SPECIFIC RELIEF ACT (I OF 1877).

(N.B.-ALL CASES RELATING TO SPECIFIC PER-FORMANCE WILL BE FOUND COLLECTED UNDER SPECI-FIC PERFORMANCE.)

#### Chapter II.

-Codification of -Basis of - Sections in Chapter -Interpretation of-English Law at the time of their enactment-Reference to-Permissibility.

Chapter II of Part II of the Specific Relief Act is a codification with modifications deemed to be called for by ladian conditions and procedure of the then existing rules and practice of the English Law in relation to the doctrine of specific performance. It will aid the interpretation of the relevant sections in the chapter to have in mind what the English system on which the Specific Relief Act is based vas in its origin and in its fullness at the date of codification, Account of the English system at the date of the Specific Relief Act. (Lord Blanesburgh.) ARDESHIR H. MAMA D. PLORA SASSOON.

(1928) 55 I.A. 360 = 52 B. 597 = 32 C. W. N. 953 = 30 Bom. L. R. 1242 = 28 L. W. 257 = ILT. 40 B. 125=111 I. C. 413=26 A. L. J. 1220= (1928) M. W. N. 893 - 48 C. L. J. 451 -A. I. B. 1928 P. C. 208 = 55 M. L. J. 523.

Sections in - Interpretation of - English Law at the ime of their enactment—Reference to—Permissibility. See SPECIFIC RELIEF ACT, CH. II (SS. 12, ETC.)—CODIFICA-(1928) 55 I. A. 360 = 52 B. 597.

#### 8s. 14 to 17.

Exhaustive of eases in which specific performance can be decreed—English Law—Resort to—Permissibility.

So. 14 to 17 Inclusive of the Specific Relief Act are both

Reality and Positive and negative in their form. Taken together they constitute a complete Code, within the terms of which relief of the character in question must be brought, if it is to be

## SPECIFIC RELIEF ACT (I OF 1877)-(Conta.) Ss. 14 to 17-(Contd.)

granted at all. Although assistance may be derived from a consideration of cases upon this branch of English jurisprudence the language of the sections must ultimately prevail (92). (Lord Summer.) WILLIAM GRAHAM r. KRISHNA CHANDRA DEV. (1924) 52 I. A. 90 = 52 C. 335 =

A. I. R. 1925 P. C. 45 - 6 L. R. P. C. 38 = 21 L. W. 390 = (1925) M. W. N. 138 = 3 P. L. R. 93 = 27 Bom. L. R. 740 = 23 A. L. J. 709 = 29 C.W.N. 919 = 86 I. C. 232 - 48 M. L. J. 172.

#### S. 23 (3.)

-Marriage settlement-Beneficiary not a party to-Briefit conferred by settlement on-Right to enforce -Tweddle v. Atkinson-Rule in - Inapplicability of Benefit charged upon immoveable property. Sw CONTRACT — STRANGER 70. (1910) 37 I.A. 152 = 32 A. 410.

#### S. 31.

-Mortgage deed-Rectification. See MORTGAGE-DEED OF-RECTIFICATION OF.

-Rectification of deed on ground of alleged mistake -Suit for-Failure to proc mintake-Effect.

In a seit for a declaration that a security bond given in a prior suit had been brought about by a mistake and for a decree directing the rectification of the security bond. held that, on failure to prove the mistake alleged, the claim for restification failed. (Lord Atkin.) JULIEN MARRET P. MD. KHALFEL SHIRAZI AND SONS

(1929) 34 C.W.N. 425 - 51 C.L.J. 252 - 32 L.W. 43 = 122 I.C. 11 - A.J.R. 1930 P.C. 86 - 58 M. L. J. 275.

-Registered deed - Frandulent insertion in, after execution and hefore registration-Unintentional departure in drafting of deed-Rectification as regards.

In a suit for the rectification of a registered deed of compromise, it appeared that a clause therein as to the appointment of the defendant as lambardar was fraudulently, and without the knowledge of the plaintiffs, inserted by the defendant in the dead of compromise after it had been executed and before it was registered.

There was also an unintentional departure in the drafting of the deed from the terms of compromise which had been agreed upon by the plaintiff and the defendant.

The High Court rectified the deed as regards both the

Held that the High Court acted rightly in so doing (138. 9.) (Sir John Edge.) MARY LILLAN HIRA DEVI P. UNWAR DIGBIJAI SINGH. (1917) 7 L. W. 133= 21 C. W. N. 137 - 42 I. C. 236 (1917) M. W. N. 636. KUNWAR DIGBIJAI SINGH.

#### S. 38.

-Recision of contract-Compensation on-Grant of -Discretion as to-Privy Council's interference on appeal with, See HINDU LAW-MINOR-MORTGAGE BY-CAN-CELLATION OF-MONEY ADVANCED UNDER MORT-(1903) 30 I. A. 114 (125) - 30 C. 539 (549).

——Award—Declaration of invalidity of—Suit for— Maintainability. See Under this ACT, S. 42—CASES (1925) 52 I. A. 265 (277). UNDER-AWARD.

-Deed-Cancellation or declaration of invalidity of-Possession of land covered by-Suit in substance for-Text. See Under S. 42 OF THIS ACT-CASES UNDER-DEED -CANCELLATION, ETC. (1902) 29 I A. 203 (210.3)= 25 A. 1 (15-6).

-Grant for life -Permanent lease by grantee under-Invalidity of-Grantor's suit for declaration of-Necessity. See LIMITATION ACT OF 1908, ART. 91.

(1899) 26 I. A. 216 (223-4) = 27 C. 156 (165-6).

## SPECIFIC RELIEF ACT (I OF 1877)-(Contd.) S. 41.

—Minor — Mortgage by — Cancellation of—Money advanced under mortgage-Restoration of-Discretion as to-Privy Council's interference on appeal with. See HINDU LAW-MINOR-MORTGAGE BY-CANCELLATION OF

(1903) 30 I. A. 114 (125) = 30 C. 539 (549).

S. 42

LAW PRIOR TO.

ORIGIN AND PURPOSE OF.

WORDS-PROPERTY-ANY RIGHT AS TO.

DECLARATORY DECREE.

DECLARATORY SUIT-ABUSE OF.

DECLARATORY SUIT-DECREE IN-FORM PROPER OF. CASES UNDER (OR DECLARATORY SUIT-MAINTAIN-ABILITY.)

DECLARATORY SUIT-MAINTAINABILITY OF-OBJEC-TION TO-RIGHT OF.

DECLARATORY SUIT-NECESSITY.

DECLARATORY SUIT-POSSESSION LAWFUL OBTAIN-ED BY PLAINTIFF PENDING-LEGAL REPRESENT-ATIVE OF DEFENDANT DYING pendente lite-DECREE FOR POSSESSION TO.

DECLARATORY SUIT-RIGHT ALLEGED-FAILURE TO PROVE.

## S. 42-Law prior to.

See Under this section-DECLARATORY DECREE-GRANT OF-LAW REGULATING.

(1883) 10 I. A. 150 (155)= 10 C. 324 (332.)

#### S. 42-Origin and purpose of.

-S. 42 of the Specific Relief Act was intended to introduce the provisions of S. 50 of the Chancery Procedure Act of 1852 (15 & 16 Vict., c. 86) as interpreted by judicial decision. Before the Act of 1852 it was not the practice of the court in ordinary suits to make a declaration of right except as introductory to relief which it proceeded to administer. (Lord Macnaghten.) FISCHER P. SECRETARY OF STATE FOR INDIA IN COUNCIL.

> (1898) 26 I. A. 16 (27-8) = 22 M. 270 (282) = 3 C. W. N. 161 = 7 Sar. 459.

#### S. 42 -- Words-Property-Any right as to.

-Pre emption right if a. See PRE-EMPTION-RIGHT OF-DECLARATION OF-SUIT FOR BARE.

> (1920) 47 I. A. 255 (260-1) 48 C. 110 (114-5). S. 42-Declaratory decree.

ADMITTED RIGHTS-INCORPORATION IN DECREE OF.

APPEAL. APPEAL AGAINST-IMPERTINENT INTERVENOR.

EFFECT OF.

GRANT OF-CONSEQUENTIAL RELIEF-PRAYER FOR -NECESSITY.

GRANT OF-CONSEQUENTIAL RELIEF-RIGHT TO-EXISTENCE OF-NECESSITY.

GRANT OF-DISCRETION AS TO.

GRANT OF -LAW REGULATING.

GRANT OF-LEGISLATION IN INDIA IN REGARD TO. GRANT OF-MOFUSIL COURTS IN INDIA.

GRANT OF-OBJECTION TO-TIME FOR TAKING-APPEAL.

GRANT OF-TERMS PRECISE OF SECTION-REGARD FOR.

ADMITTED RIGHTS-INCORPORATION IN DECREE OF.

-Necessity. See DECREE-ADMITTED RIGHTS. (1916) 43 I. A. 243 (248-9) = 44 C. 87 (96). APPEAL.

Grant in, though case one in which court below might in its discretion have refused relief-Grounds-Decree

## SPECIFIC RELIEF ACT (I OF 1877)-(Contd.) S. 42-Declaratory decree-(Contd.)

APPEAL-(Contd.)

below on merits but erroneous. See SPECIFIC RELIEF ACT, S. 42 - DECLARATORY DECREE-GRANT OF-DIS-CRETION AS TO-DECISION REFUSING RELIEF ON MERITS AND NOT IN EXERCISE OF.

-Refusal in, on ground of expense or intricacy of dispute-Propriety.

The presumptive reversioners of a deceased Hindu sued for a declaration that a deed of gift executed by his widows in favour of his daughter did not affect their reversionary interest, and that part of the properties conveyed by the deed, which the widows claimed to be their own, were really part and parcel of the estate of the deceased. The widows and the daughter contended that the deed of gift vested the estate at once in the daughter absolutely, and that the properties purchased by the widows were their own and were not part of their husband's estate.

The first court, after taking the whole evidence adduced by both parties and thoroughly investigating the law and the facts of the case, held with the plaintiffs and decreed the suit. The High Court reversed the decree below and dismissed the suit, mainly on the ground that the case involved intricate questions of law, that, as the plaintiffs might not survive the widows and the estate might never vest in them, the suit ought not to be allowed to be protracted and a great additional expense to the allowed to be incurred, and that the decision might be postponed till there was some one before the court entitled to immediate

Held, reversing the High Coart, that objections resting on the difficulties of the dispute were of much more weight in a preliminary stage than in a court of appeal, and that, as the defendants had not in the first instance objected to declaratory relief and taken the opinion of the first court upon that point, but had disputed the whole case of the plaintiffs, and as all the issues of fact and of law had been decided by the first Court in the plaintiff's favour, it was too late for the appellate court to reverse the decree below on the ground of discretion and in order to save further litigation and expense (157). (Sir Arthur Hobhouse.) ISRI DUT KOER D. MUSSUMAT HANSBUTH KOERAIN.

(1883) 10 I. A. 150=10 C. 324 (333)= 13 C. L. R 418=4 Sar. 459

APPEAL AGAINST-IMPERTINENT INTERVENOR.

-Right of. See DECLARATION-PERSON IN POS-(1916) 43 I. A. 179=38 A. 440. SESSION.

#### EFFECT OF.

-Declaration of rights-Creation of rights.

A declaratory decree does not create or affect existing rights; it merely declares what they are. (Lord Buckmarter.) PIRTHIPAL SINGH v. GANESH DIN SINGH. (1922) 50 I. A. 210 N.

## GRANT OF-CONSEQUENTIAL RELIEF-PRAYER FOR-NECESSITY.

-Hindu Law-Widow-Alienation by-Declaration of invalidity of-Presumptive reversioner's suit for-Prayer in-See HINDU LAW-REVERSIONER-PRESUMPTIVE RE-VERSIONER-WIDOW-ALIENATION BY-DECLARATION OF INVALIDITY OF-SUIT FOR.

- Madras Land Revenue Assessment Act I of 1876 Ss. 5 and 6-Separate registration and sub-assessment Collector's order for-Government's order cancelling-Declaration of invalidity—Suit for—Prayer in. See MADRAS ACTS-LAND REVENUE ASSESSMENT ACT I OF 1876 (1898) 26 I. A. 16 (28-9)=22 M. 270 (282-3)

# SPECIFIC RELIEF ACT (I OF 1877)—(Contd.) S. 42—Declaratory decree—(Contd.)

GRANT OF—CONSEQUENTIAL RELIEF—PRAVER FOR—NECESSITY—(Contd.)

— Will-Gift over - Declaration of right under-Injunction and-Suit for-Prayer for possession in. See HINDU LAW-WILL-GIFT OVER-DECLARATION OF RIGHT, ETC. (1914) 38 B. 399(415).

GRANT OF-CONSEQUENTIAL RELIEF-RIGHT TO-EXISTENCE OF-NECESSITY.

Both under the 15 & 16 Vict., c. 86, S. 50, and under S. 15 of C. P. C. of 1859, a declaratory decree cannot be made unless plaintiff would be entitled to consequential rebef if be asked for it (161). (Sir Barnes Powers, SREE NARAIN MITTER D. SREEMUTTY KISHEN SOUNDORY DASSEE, (1873) Sup. I. A. 149=11 B. L. B. 171=19 W. R. 133=3 Sar. 203-2 Suth. 774.

A declaratory decree ought not to be made under S. 15 of C. P. C. of 1859 unless there is a right to some consequential relief which, if asked for, might have been given by the court, or unless in certain cases a declaration of right is required as a step to relief in some other court (III). (Sir Montague Smith.) SHEO SINGH RAI S. MUSSUMAT DAKHO. (1878) 5 I. A. 87 =

1 A. 688 (705) = 2 C. L. R. 193 = 3 Sar. 807 = 3 Suth. 529.

Their Lordships may further observe that this being a declaratory suit, it is clearly not maintainable on the ground that no possible relief could be given (74). (Str. Robert P. Collier.) NAWAB MALKA JAHAN SAHIBA F. DY. COMMISSIONER OF LUCKNOW.

(1879) 6 I. A. 63 = 3 Sar. 244 = 3 Suth. 584 = Bald 194 = R. & J's No. 55.

Plaintiff not entitled to relief against defendant— Effect—Hindu Lato—Adoption—Gift and acceptance— Deds of—Cancellation of, by natural father—Suit by video for—Maintainability.

A Hindu widow sued the defendant for himself and as guardian of his minor son to set aside two deeds, by one of which the defendant agreed to give the said minor to her for adoption in the Dattaka form, and by the other of which she agreed to take the said child into adoption. The plaintiff's case was that, notwithstanding the deeds, the defendant refused to give the child, and that, therefore, the form of adoption had not been complied with. The minor was not a party to the suit. The cause of action for the suit was stated to be the defendant's refusal to execute an ikramamah in cancellation of the said deeds.

Hild, reversing the courts below, that the suit as framed was not maintainable (161).

The suit is merely to set aside the deeds, and does not pray either for setting aside the adoption, or for a declaration that there was no valid adoption. The deeds were not actually necessary to render the adoption valid, and, even if they be set aside, the adoption may be proved adiumde (159). If the deeds are mere agreements between the plaintiff and the father of the child, the breach by the defendant of his agreement to give would not render the deeds null and void and entitle the plaintiff to maintain the wit. If, on the other hand, the deeds are deeds of gift and adoption, the suit is not maintainable, because there is no consequential relief to which the plaintiff would be entitled against the defendant if the deeds be declared void (161). (Sir Barnes Peacock.) SREE NARAIN MITTER v. SREE-MUTTY KISHEN S ONDORY DASSEE.

(1873) Sup. I. A. 149 = 11 B. L. B. 171 = 19 W. B. 133 = 3 Sar. 203 = 2 Suth. 774.

On the right construction of S. 15 of C. P. C. of 1859 a declaratory decree cannot be made unless there be a right

## SPECIFIC RELIEF ACT (I OF 1877)—(Covid.) S. 42—Declaratory decree—(Conid.)

GRANT OF—CONSEQUENTIAL RELIEF—RIGHT TO— EXISTENCE OF—NECESSITY—(Contd.)

to consequential relier capable of being had in the same court or in certain cases in some other court (187). (Six James W. Colvile.) KATHAMA NATCHIAR P. DORA-SINGA TEVER. (1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W R. 314 = 3 Sar. 456 = 3 Suth. 106.

-Rule-Exception.

S. 15 of C. P. C. of 1859 does not confer any right to declaratory relief in any given case, but merely enacts that no suit shall be liable to objection on the ground that a merely declaratory decree is sought, and that it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief (155).

The apparently wide door here opened for declaratory suits is greatly narrowed by the decision that, as a general rule, the Court shall not make a declaration except in cases in which she plaintiff could if he chose seek some consequential relief. That doctrine is, however, subject to exceptions (150). (Sir Arthur Hobboute.) ISRI DUT KOER P. MUSSIMUT HANSBUTH KOERAIN.

(1883) 10 I.A. 150 = 10 C. 324 (332) = 13 C. L. R 418 = 4 Sar. 459.

-Sout itself - Kight to relief in.

It must be assumed that there must be cases in which a surrely destaratory decree may be made without granting any consequential relief, or in which the party does not actually seek for consequential relief in the particular suit; otherwise the 15th section of the C. P. C. of 1859 would would have no operation at all. What their Lordships understand to have been decided in India on this article of the Code, and in the Court of Chancery upon the analogous provision of the English statute, is that the court must see that the destaration of right may be the foundation of relief to be got somewhere (171). (Sir James W. Colvile.)
SALUT ALI KHAN 7. KHAJEB ARDOOL GUNNEE.

(1873) Sup. I.A. 165-3 Sar 229-11 B.L.R. 203-19 W.B. 171-2 Suth. 785.

—Zemindar—Ryots of - Allegation of sight to certain tenure by—Declaration of sittle free frem—Suit for—Maintainal-filty—Consequential relief—Zemindar not entitled to any. See LANDLORD AND TENANT—LANDLORD—TEN-NATE (1874) 2 I. A. 83.

GRANT OF-DISCRETION AS TO.

Under S. 42 of the Specific Relief Act, a claim to a declaratory decree is not a matter of right, but it rests with the judicial discretion of the Courts. (Sir Arthur Wilson.)
THAKURAIN JAIPAL KUNWAR P. BHAIYA INDAR BAHADUR SINGH. (1904) 31 I. A. 67 = 26 A. 238 (242 3) = 8 C. W. N. 465 = 6 Bom. L. R. 495 =

7 O. C. 239 - 8 Sar. 625 - 14 M. L. J. 149.

Decision on merits and not in exercise of Appeal against Decision on merits erroncous Grant of relief in appeal on ground of.

A suit for deciaratory relief by a more remote remainderman under a will might, in its discretion, have been dismissed by the First Court on the ground that there was a concurrent suit for the same relief by a nearer remainderman. Instead of dismissing the suit on that ground, the first Court entertained it but erroneously dicided the suit against the plaintiff on the merits. And its decree on the ments was affirmed by the appellate Court.

Their Lordships reversed the decrees below on the merits and granted the more remote remainderman the decree he asked (57). (Sir Robert P. Collier.) ANANT BAHADUR SINGH v. THAKURAIN RAGHUNATH KOER.

(1882) 9 I. A. 41 = 8 C. 769 (788) = 11 C. L. B. 149 = 4 Sar. 316 = B. & J.'s Nos. 67 and 68.

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SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42-Declaratory decree-(Contd.)

GRANT OF-DISCRETION AS TO-(Contd.)

——Hindu Law—Adoption—Deeds of gift and acceptance relating to—Declaration of invalidity and cancellation of—Widow's suit against natural father for—Minor adopted son not party. See HINDU LAW—ADOPTION—DEEDS RELATING TO—GIFT AND ACCEPTANCE—DEEDS OF.

(1873) Sup. I. A. 149 (1623).

R died about 1837, leaving a son, S, and a widow the 1st respondent. S died subsequent to June 1864, having, as alleged by the appellant, the widow of S, made a provision for life for the maintenance of the 1st respondent.

On 14—12—1883, the 1st respondent executed a document whereby she recited that she had adopted the 2nd respondent and bequeathed to him all her estate, moveable and immoveable. The appellant shortly afterwards instituted the suit-out-of-which the appeal arose to have it declared that that adoption and alienation were invalid. The Court below (the Judicial Commissioner, thought that the case was not one in which, in the exercise of a sound judicial discretion, it ought to grant a d-claratory decree, or that a declaratory decree ought to have been granted by the Court of first instance, and it therefore reversed the decision of that Court and refused a declaratory decree.

Held that the Judicial Commissioner exercised a very

sound judgment in what he did.

All that is suggested in support of a declaratory decree is this: that at some time or other after the death of the present plaintiff, the person who according to the plaintiff's contention is not an adopted son may by some means, either by an act of the Government or otherwise, obtain possession as an adopted son. The only object therefore of having a declaratory decree is to prevent him being put into possession. Their Lordships cannot assume that the Government, if petitioned to put the person claiming to be an adopted son into possession would do so unless they saw that he had a right to that possession. The officers of Government would in ordinary course, if there were any doubts as to the title, refer the parties to the Civil Court. If the person claiming to have been adopted brings an action to enforce his title, the question will be investigated whether he was validly adopted or not. (Sir Barnes Peacock.) RANI PIRTHI PAL KUNWAR P. RANI GUMAN KUNWAR.

(1890) 17 I. A. 107 = 17 C 933 = 5 Sar. 569 = R. & J.'s No. 118.

——Hindu Law—Reversioner presumptive—Declaration of right of. See SETTLEMENT COURT—DECISION OF.

(1920) 39 M. L. J. 115 (125 6).

—Hindu Law—Widow—Will by—Invalidity against reversionary interest of—Declaration of—Grant of. See HINDU LAW—REVERSIONER — PRESUMPTIVE REVER-SIONER—WIDOW—WILL BY.

(1904) 31 I. A. 67 = 26 A. 238 (242-3).

Indian Court's discretion—P. C.'s interference with.

Their Lordships are always slow to reverse the decisions of Courts below made in the deliberate exercise of a discretion entrusted to them by law.

In a case in which the Courts below had granted a declaration to a contingent reversioner that a will by a Hindu widow purporting to transfer to a stranger the estate of her husband was invalid for that purpose, ther Lordships, though of opinion that if they had been sitting as a Court of first instance they would have felt no little hesitation before making the decree that had been made, refused to

SPECIFIC RELIEF ACT (I OF 1877)—(Contd.)

S. 42-Declaratory decree-(Contd.)

GRANT OF-DISCRETION AS TO-(Contd.)

the matter was one of discretion vested in them by law. (Sir Arthur Wilson.) THAKURANI JAIPAL KUNWAR 2. BHAIVA INDAR BAHADUR SINGH. (1904) 31 I. A. 67 = 26 A. 238 (243) = 8 C. W. N. 465 = 6 Bom. L. B. 495 = 7 O. C. 239 = 8 Sar. 625 = 14 M. L. J. 149.

- Minor-Compromise affecting, and decree on foot thereof-Doclaration of invalidity of, for want of lone under O. 32, R. 7, C. P. C.

The appellants when minors had been defendants in a pre-emption suit in which the respondent (their guardian de farto) was plaintiff, and a second pre-emption suit as to the same property had been instituted in their name by the respondent, he and others being defendants. No guardian ad litem was appointed. Under a compromise agreement, to which the sanction of the Court had not been obtained, a derree was made in the first suit in favour of the respondent and the appellants' suit was dismissed. The appellants brought the present suit for a declaration that the compromise and decree was not binding upon them.

Held that a dectaration as prayed should be made, that the suit was not one brought under S. 42 of the Sp. R. Act, and that the grant of the declaration was therefore not discretionary. (Sir John Edge.) PRATAB SINGH r.

BHABUTI SINGH.

(1913) 40 I. A. 182=35 A. 487 (498.9)= 15 Bom. L. R. 1001=21 I. C. 288=11 A. L. J. 901= 17 C. W. N. 1165=(1913) M. W. N. 785= 14 M. L. T. 299=18 C. L. J. 384=25 M. L. J. 492.

- Object indirect of avoiding appropriate proceedings-Declaration sought with.

When the real object of a suit brought by a Zemindar against a great number of his ryots to set aside, not any act but a mere allegation of the defendants that they had a certain tenure appeared to be to obtain a general declaration against a great number of persons holding by different rights that they had not bromultur tenure, of which declaration the Zemindar might avail himself in proceedings to be taken in the Revenue Court in suits for the enhancement of rent, held that, even if no rule of law had barred the suit, the case was not one in which, in the proper exercise of judicial discretion, a declaration of title should have been made (85).

The Zemindar may institute any action he may think fit in the Revenue Court for the purpose of enhancement of rent against all or any of these his tenants; but each of these cases must be tried upon its merits, and ought not to be prejudiced by a declaration such as he has sought to obtain (85-6). (Sir Robert P. Collier) RAJAH NILMONY

Singh r. Kally Churn Battacharjee. (1874) 2 I. A. 83 = 14 B. L. B. 382 = 23 W. B. 160 = 3 Sar. 447 = 3 Suth. 77.

Persons recognised by law as suitors to such relief-Refusal to exercise discretion in favour of Grounds.

In a suit for a mere declaration, there is no doubt, discretion in the Court, which may find it inexpedient to grant the relief asked. But a strong case of inexpediency should be shown for refusing declaratory relief to classes of persons expressly recognised by the law as suitors for such relief. There may be such a case (156-7). (Sir Artist Hobboute.) ISRI DUT KOER v. MUSUMAT HANSBUTH KOERAIN. (1883) 10 I. A. 150=

10 C. 324 (333)=13 C. L. R. 418=4 Sar. 459.

--- Principles guiding exercise of-Special care needs

## SPECIFIC RELIEF ACT (I OF 1877)-(Contd.) 8 42-Declaratory decree-(Contd.)

GRANT OF-DISCRETION AS TO-(Contd.)

It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or (Sir James W. Colvile.) KATHAMA NATCHIAR v. DORAnot, and in every case the court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for. There is so much more danger in India than here of harassing and vexatious litigation, that the Courts in India ought to be most careful that mere declaratory suits he not converted into a new and mischievous source of litigation. (162). (Sir Barnes Peacock). SREE NARAIN MITTER :. SREEMUTTY KISHEN SOONDARY DASSEE.

(1873) Sup. I. A. 149 = 11 B. L. R. 171 = 19 W. R. 133=3 Sar. 203=2 Suth. 774.

Rent-Enhancement of -Right of-Suit by sharer in Zemindary to establish-Maintainability of-Discretion as to-Enhancement of rent-Suit prior for-Dismissal of, on the ground that plaintiff had no Zemindary title. See LANDLORD AND TENANT-RENT-ENHANCEMENT OF -RIGHT OF. (1873) Sup. I. A. 165 (171).

Revenue Officers—Proceedings of—Ultra viras nature of—Declaration of—Suit for. See BENGAL ACTS -ALLUVION AND DILVION ACT OF 1847-Ss. 6, 9.

(1889) 17 I. A. 40 (46-7) = 17 C. 590 (604. 598). Statute-Provisions of-Order passed in violation of-Ultra Vires nature of-Declaration of, See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-Se. 6, 9.

(1889) 17 I. A. 40 (46 7)=17 C.590 (604. 598). -Statute-Structures ordered to be demolished under -Compensation in respect of-Right to-Declaration of. See CALCUTTA MUNICIPAL ACT OF 1899-S. 341.

(1916) 43 I. A. 243 (247-8) = 44 C. 87 (95-6).

-Will-Life estate holder-Alienation by-Declaration of invalidity of-Suit by more remote remainderman entitled under will for-Concurrent suit by nearer remainderman, See HINDU LAW-WILL-ESTATE FOR LIFE-ALIENATION BY HOLDER OF.

(1882) 9 I. A. 41 (57) = 8 C. 769 (787-8).

GRANT OF-LAW REGULATING.

-C. P. C. of 1859-S. 15-Effect.

S. 15 of C. P. C. of 1859 does not confer any right to declaratory relief in any given case, but merely enacts that to sait shall be liable to objection on the ground that a merely declaratory decree is sought, and that it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief (155). (Ser Arthur Hobhouse.) ISRI DUT KOER v. MUSUMUT HANS BUTTI KORRAIN. (1883) 10 I. A. 150 10 C. 324 (332) = 13 C. L. R. 418 = 4 Sar. 459.

-Sp. R. Act-Law prior to.

The law regulating suits for the grant of declaratory relief prior to the passing of the Specific Relief Act was that macted by S. 15 of C. P. C. of 1859 (155). (Sir Arthur Hollowe). ISRI DUT KOER v. MUSSUMUT HANSBUTTI (1883) 10 I. A. 150 = 10 C. 324 (332) = 13 C. L. R. 418 = 4 Sar. 459.

GRANT OF-LEGISLATION IN INDIA IN REGARD TO.

History of.
It appears that before the passing of the C.P.C. of 1859.
So of the 15 & 16 Vict. c. 86 had been extended to India Act VI of 1854, the 19th section of which is in precisely words as the English enactment. Then came the O.P.C. of 1859, in framing which the Legislature thought fit oct of Act VI of 1854 the 19th section. and to em-It in the very same words in the new Code (1867).

# SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42-Declaratory decree - (Contd.)

GRANT OF-LEGISLATION IN INDIA IN REGARD TO -(Centd.)

SINGA TEVER. (1875) 2 I. A. 169 = 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106.

GRANT OF -MOFUSIL COURTS IN INDIA.

Perser of before and after C. P. C. of 1859.

It was suggested that the power to make a merely declaratory decree was possessed by the courts in the Mofussil before the C. P. C. of 1859 was passed, and had not been taken away thereby. No authority which establishes the first of those propositions was cited; and their Lordships conceive that if the Legislature had intended to continue to those Courts the general power of making declarators (if they ever possessed such a power), it would not have introduced this clause (S. 15) into the C. P. C. of 1859, which, if a limited construction is to be put upon it, clearly implies that any decree made in excess of the power thereby conferred would be objectionable. Nor does any Court in India since the passing of the Code seem to have considered that it had the power of making declaratory decrees independently of that clause (179-80.) (Sir James W. Celvile.) KATHA-MA NATCHIAR P. DORASINGA TEVER,

(1875) 2 I. A. 169 - 15 B. L. R. 83 = 23 W. R. 314 = 3 Sar 456 = 3 Suth. 106.

GRANT OF -OBJECTION TO -TIME FOR TAKING-APPEAL.

Objection for first time in-Maintainability.

Objections to the grant of declaratory relief resting on the difficulties of the dispute are of much more weight in a preliminary stage than in a Court of Appeal. The defendant ought to object to declaratory relief in the Court of first instance and to take the opinion of the trial Court on the point. Where, however, he omits to do so, but disputes the whole case of the plaintiff and an important issue of fact, and two important issues of law, are decided by the first Court in plaintiff's favour, it comes very late for the Court of Appeal to reverse the action of the Court below on the ground of discretion and in order to save further litigation and expense (157). (Sir Arthur Hobbouse.) ISRI DUT KOER P. MUSSUMUT HANSBUTTI KOERAIN.

(1883) 10 I. A. 150 = 10 C. 324 (333) = 13 C. L. R. 418 = 4 Sar. 459.

GRANT OF-TERMS PRECISE OF SECTION-REGARD

The Court's power to make a declaration without more is derived from S. 42 of the Specific Relief Act, and regard must, therefore, he had to its precise terms (97). (Sir Lawrence feating.) SHEOPARSAN SINGH P. RAMNANDAN SINGH. (1916) 43 I. A. 91 = 43 C. 694 = 33 I. C. 914 = 14 A. L. J. 466 = 20 C. W. N. 738 = 18 Bom L. B. 397 - 23 C. L. J.621

(1916) M. W. N. 419-20 M. L. T. 1-3 L. W. 544= 31 M. L. J. 77.

## S. 42-Declaratory suit-Abuse of.

Court's duty to guard against. There is so much more danger in India than here of harassing and veratious litigation that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation (97). (Sir Laurence Jenkins.) SHEOPARSAN SINGH v. (1916) 43 I. A. 91= RAMNANDAN SINGH. 43 C. 694 (704-5) = 20 C. W. N. 738 = 23 C. L. J. 621 = 14 A. L. J. 466=18 Bom. L. B. 397=20 M. L. T. 1= (1916) 1 M. W. N. 419 = 3 L. W. 544 = 33 I. C. 914 = 31 M. L. J. 77.

SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42-Declaratory suit-Decree in-Form proper of

Possessory title—Person only with —Suit for declaration of title and injunction against trespasser by. See Under this section—CASES UNDER—TRESPASSER.

(1893) 20 I. A 99 (106-7) = 20 C. 834 (812-3).

S. 42 - Cases under (or Declaratory suit—Maintainability).

(N. B.—Under this head are collected in alphabetical order all cases in which declaratory saits have been held to be or not to be maintainable.)

AWARD:-INVALIDITY OF -DECLARATION OF.

——S. 39, and not S. 42, of the Specific Relief Act, applies to and covers a suit for a declaration that an award is null and void. Even if the suit were covered by S. 42, the effect of that section would not be to render the suit unmaintainable. (Lord Athinson.) KIRKWOOD alias MATHEIN v. MAUNG SIN. (1925) 52 I. A 265 (277) =

6 L. R. P. C. 160 = A. I. B. 1925 P. C. 216 =

89 I C. 773.

——Injunction restraining opposite party from withdrawing amount realised in execution of award—Suit also for—Objection to maintainability of—Right of—Consent order—Appeal from—Consent to adjudication on merits by appellate Court—Effect.

The respondents were parties to a contract which provided that any dispute arising out of, or in any way relating to, the same, or to its construction or fulfilment, should be referred to arbitration " in accordance with the Rules and Bylaws endorsed on the contract," and that such Rules and By-laws should form part of the contract. They commenced an action against the appellants, the other party to the contract, in which they alleged (among other things) that the appointment by the appellants of one S to act as sole arbitrator was illegal, and that the awards made by S were void and inoperative and claimed a declaration to that effect. The awards had been filed under S. 11 of the Indian Arbitration Act, and in pursuance of S. 15 of that Act a warrant had been issued directing the Sheriff to levy the amounts awarded by seizure of the respondents' goods; and that had been done. By their plaint the respondents therefore also claimed an injunction restraining the appellants from withdrawing the sum in the Sheriff's hands and a declaration that the respondents were entitled to a refund of that sum. There was also a claim for damages which had not been proceeded with.

The High Court, on appeal, declared the awards void, and, with the consent of the parties, ordered the appellants (defendants) to repay to the respondents the amount realised by the Sheriff and paid over to the appellants upon an undertaking by the respondents to return the amount if the awards should be found valid by the Privy Council.

On appeal to the Privy Council by the appellants, they contended that the suit was open to objection under Ss. 42 and 56 of the Specific Relief Act, on the ground that no relief was asked other than a declaration.

Their Lordships overruled the plea observing as follows:-

The plaint asked not only for a declaration, but also for an injunction, repayment of the amount levied, and other relief. Further, it is difficult to see how any technical objection to the jurisdiction can now be maintained, having regard to the fact that the order appealed from was to some extent a consent order, and contemplated that the question of the validity of the awards should be finally determined by this Board. (Viscount Care.) SASSOON & CO.

2. RAMDUTT RAMKISSEN. (1922) 49 I. A. 366 (373) =

50 C. 1 (9.10) = 32 M I. T. (P.C.) 19 = 37 C. I. J. 336 =

50 C. 1 (9·10) = 32 M.L.T. (P.C.) 19 = 37 C.L.J. 336 = 27 C.W.N. 660 = (1923) M. W. N. 372 = 18 L. W. 537 = 70 I. C. 777 = 44 M. L. J. 758.

SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42—Cases under (or Declaratory Suit—Maintainability)—(Contd.)

DEED-DECLARATION OF INVALIDITY OF.

An Oudh talookdar sued for (1) possession of a village comprised in his taluq; (2) mesne profits; (3) (alternatively) a declaration that the defendant had no right in the suit village beyond that of a lessee having no right, and that he was liable to be ejected by an ordinary notice of ejectment; (4) further relief.

The defendant claimed a perpetual under-proprietary right in the village under a lease of 1865 granted by the plaintiff's grandfather to the defendant's father and confirmed in defendant's favour by the plaintiff as part of a compromise

between the plaintiff and his grandfather.

Held that in substance the object of the suit was to get rid of the blot or cloud on the plaintiff's title occasioned by the defendant's claim under the deed of 1865, either by cancellation of the instrument or by a declaration that it was not the plaintiff's deed, and had not by any act of his become hinding upon him or his estate, or by a decision that according to its true construction it had no operation beyond the life of the grantor (plaintiff's grandfather) or alternatively of the grantee (defendant's father), and that the suit therefore came within S. 39 or S. 42 of the Specific Relief Act.

The suit can only be maintained (if at all) as one for those objects, notwithstanding that for obvious reasons it is in the plaint made to look as much like a suit for recovery of land as possible, and an order for ejectment in the Revenue Court might be consequential on a decree in the plaintiff's favour. No doubt, the ultimate object of the plaintiff was recovery of possession; but that relief could not be given in this suit. It is different, therefore, from a case in which the substantial relief sought is recovery of land and the setting aside an instrument is merely ancillary or incidental to that relief. In the present case the cancellation of the in-trument or a declaration of its invalidity as against the plaintiff was the substantial relief sought and the only relief which the Courts had jurisdiction to give. (Lord Datey.) RAJA KAMPAL SINGH v. BALABHADAR (1902) 29 I. A. 203 (210-3) = 25 A. 1 (156)= 6 C. W. N. 849 = 4 Bom. L. R. 832 = 8 Sar. 340.

Title to or enjoyment of property—Deed obstructing.

A right to come to the Court to have a document or at which obstructs the title or enjoyment of property canceled or set aside, or for an injunction against such obstructions, would be sufficient to sustain a declaratory decree (111-2).

(Sir Montague Swith.) SHEO SINGH RAI v. MUSSUMD DAKHO.

(1878) 5 I. A. 87 = 1 A. 688 (705)=

2 C. L. R. 193 = 3 Sar. 807 = 3 Suth.529.

Written statement—Deed set up in—Relief to plaintiff as against, awardable on amended plaint—Award ofwithout amendment.

The settlement officer called upon a Jain widow to name her successor to a mouzah owned by her, with a view to enter the name in the wajib-ul-arz. In answer to this requisition she requested that the name of M should be recorded as her adopted son and successor. The appellant objected to this being done, on the ground that the adoption of M was illegal, whereupon the settlement officer refer red the parties to the civil Court.

The widow thereupon instituted a suit against the appellant claiming to be maintained in possession by establishment of her exclusive right of inheritance to the estate of her husband, composed of the mouzah in question, and to uphold the adoption of M, as well as his right permanently

#### SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

8. 42—Cases under (or Declaratory Suit—Maintainability)—(Contd.)

DEED—DECLARATION OF INVALIDITY OF—(Contd.) to succeed her after her death, by voiding the appellant's pretensions. The widow was sole plaintiff in the suit as originally framed.

On objection by the defendant, M was added as a coplaintiff.

The defendant, in the written statement filed by him before the joinder of M, had put forward a nuncupative will
of the deceased husband of the widow-plaintiff by which he
was made the proprietor of the estate. The defendant persisted in this claim after M had been added as a co-plaintiff
and indeed to the end of the suit. The Sub-Judge decided
the issue framed on the point against the defendant; and
the defendant in his appeal to the High Court from the
Sub-Judge's decision complained that his finding was not
correct. The High Court also dealt with the question of
the will in its final judgment.

On appeal to the Privy Council the appellant contended that the settlement proceedings could not afford the plaintiffs a cause of action to sustain the suit for a declaratory decree, that relief against the will was not one of the objects of the original suit, and that his putting forward of the will ought not to be regarded in considering whether the suit as

framed was sustainable.

Semble the contention could not, in the circumstances of

the case, he upheld (113).

When M was made a plaintiff, the sun might be considered as a new suit, and the appellant, having before that time put forward the claim under the will and persisted in it to the end, relief might, if asked for, have been granted against it. It was not necessary that the suit should have been in fact remodelled when he became plaintiff, so as to seek for this relief: it is sufficient if it neight have been so remodelled, and relief obtained (113). (Sir Montague Smith.) SHEO SINGH RALP. MUSSUMUT DAKHO.

(1878) 5 I. A. 87 = 1 A. 688 (707) = 2 C. L. R. 193 = 3 Suth. 529 = 3 Sar. 807.

#### HINDU LAW-ADOPTION.

Deeds relating to—Gift and acceptance—Deeds of—Declaration of invalidity of, and cancellation of—Widow's sait against natural father for —Maintainability—Discretion of Court—Minor adopted son not party. Say Hindu Law—Adoption—Deeds Relating to—Gift and acceptance—Deeds of. (1873) Sup. I. A. 149 (1623).

Mother-in-law—Adoption by, and will bequeathing property to adopted son—Daughter in-law's suit for declaration of invalidity of. See Specific Relief Act—S. 42—Declaratory Decree—Grant of—Discretion as

Widow Adoption by Declaration of validity of Suit by her for Maintainability Wajibul-arz in which widow already recorded as proprietor Entry of adopted sm's name in, as successor Refusal by settlement officer of, on reversioner's objection Widow referred to civil suit by him.

TO-HINDU LAW-ADOPTION BY MOTHER IN-LAW, ETC.

(1890) 17 I. A. 107 = 17 C. 933.

I, a Jain of the sub-division of the Saraogee-Agarvalas, died sonless. He had during his lifetime received from the Government a grant for his life of the Zemindary of mouzah N. After his death the Government offered to sell the mouzah to his widow, and she purchased it, the purchase-money being paid out of the proceeds of her deceased hasband's estate. Whilst making up the wajib-ul-arz, the attlement officer called upon the widow to name her successor to the mouzah, with a view to enter the name in the paper; and in answer to this requisition she requested that

### SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42—Cases under (or Declartory Suit—Maintainability)—(Contd.)

HINDU LAW-ADOPTION-Contd.)

the name of M should be recorded as her adopted son and successor. The defendant-appellant objected to this being done, whereupon the settlement officer referred the widow to the civil Court.

The widow thereupon instituted a suit claiming to be maintained in possession by establishment of her exclusive right of inheritance to the estate of her husband, including Mouzah A', and to uphold the adoption of M, as well as his right permanently to succeed her after her death, by voiding the defendant's pretensions. M was also made a coplaintiff.

It was not shown that the entry on the wajib-ul-arz of the name of M, as the adopted son of the widow, was necessary to the settlement of the mouzah, or the completion of the title, or the right to present possession, because the mouzah had already been granted by the Government to the widow, and she had been recorded as proprietor. The object of the paper was merely to record peculiar customs and rights for the information of the settlement officers.

Nemble: notwith-tanding that the Deputy Collector asked for information as to the widow's successor and, upon the appellant's objection to the entry of the adoption, placed his objection upon the wajib-ul-arz, and referred the parties to a civil Court, the proceedings before the settlement officer were not such an obstruction to the title or right of possession as would sustain the declaratory decree sought for (112). (Six Montagia Smith.) SHEO SINGH RALT. MUSSPHUT DARHO. (1878) 5 I. A. 87 =

1 A. 688 (706) = 2 C. L. R. 193 = 3 Suth. 529 = 3 Sar 807.

— Widow—Adoption by—Reversioner's suit for declaration of invalidity of. See Under Hindu Law—Reversioner.

#### HINDU LAW-WIDOW-ALIENATION BY.

——Presumptive reversioner's suit for declaration of invalidity of—Maintainability—Consequential relief—Prayer for—Absence of. So. HINDU LAW — REVERSIONER— PRESUMPTIVE REVERSIONER—WIDOW— ALIENATION BY—DECLARATION OF INVALIDITY OF—SUIT FOR.

#### LANDLORD AND TENANT.

——Kent—Enhancement of—Declaration of right of— Sout by sharer in Zemindary for—Maintainability—Discretion of Court—Prior suit for enhancement by plaintiff— Dismissal of, on ground of plaintiff having no Zemindary title. See Landlord and Tenant—Rent—Enhance-MENT OF—RIGHT OF. (1873) Sup. I. A. 165 (171).

——Rival landlords—Declaration of title—Suit by one against another for—Maintainability—Property in possession of tenant. See LANDLORD AND TENANT—LAND-LORD—RIVAL LANDLORDS—PROPERTY IN ETC.

(1898) 25 I. A. 225 (226) = 26 C. 11 (14).

——Tenant—Allegation of right to certain tenure by— Declaration of title free from—Landlord's suit for—Maintainability—Consequential relief—Landlord not entitled to any. See Landlord and Tenant—Landlord— Tenant. (1874) 2 I. A. 83.

#### MADRAS LAND REVENUE ASSESSMENT ACT I OF 1876—Ss. 5 AND 6.

Separate registration and sub-assessment—Collector's order for—Government's order cancelling—Declaration of invalidity of—Suit for—Maintainability—Prayer for further relief—Necessity. See MADRAS ACTS—LAND REVENUE ASSESSMENT ACT I OF 1876—SEPARATE REGISTRATION AND SUB-ASSESSMENT—COLLECTOR'S SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42—Cases under (or Declaratory Suit—Maintainability)— (Contd.)

MADRAS LAND REVENUE ASSE ASSMENT CT I OF 1876—SS, 5 AND 6—(Contd.)

ORDER FOR—GOVERNMENT'S ORDER CANCELLING— SUIT ETC. (1898) 26 I. A. 16 (28-9)= 22 M. 270 (282-3).

MAINTENANCE GRANT—REVENUE PAYABLE ON PROPERTY SUBJECT OF.

Charge in respect of, on other properties of grantor and on properties granted by him to third parties—Declaration of—Grantee's suit for. See HINDU LAW—MAINTENANCE—GRANT FOR—REVENUE PAYABLE ON PROPERTY SUBJECT OF. (1920) 47 I. A. 149 (164) 47 C. 932.

MINOR-COMPROMISE AFFECTING.

——Leave under O. 32, R. 7 of C. P. C. not obtained for—Invalidity of compromise, and of decree on foot thereof, on ground of—Declaration of—Suit for—Minor's right of. Sc. C. P. C. OF 1908—O. 32, R. 7—LEAVE OF COURT UNDER—OMISSION TO OBTAIN—INVALIDITY OF COMPROMISE, AND OF DECREE ON FOOT THEREOF, ON GROUND OF.

(1913) 40 I. A. 182 (192) =

35 A. 487 (498-9).

MUNICIPALITY—DEMOLITION OF STRUCTURES BY—
ORDER FOR—COMPENSATION IN CASE OF DEMOLITION.
—Right to—Declaration of—Suit for—Right of—
Discretion of Court. See CALCUTTA MUNICIPAL ACT OF
1809, S. 341. (1916) 43 I.A. 243 (247-8)=
44 C. 87 (95-6).

OUDH ESTATE—SUNNUD IN FAVOUR OF ONE OF WIDOWS OF DECEASED TALOOKDAR.

— Declaration that she held a mere life estate and that plaintiff, another voidow, was entitled to succeed her as reversioner—Suit fer.

On the death of an Oudh talookdar, R, one of his widows, succeeded to the talook in pursuance of a will of the deceased, a summary settlement was made with her and a sunnud granted to her purporting to confer an absolute estate upon her. R purported to make a gift of the estate to one B. The plaintiff, another widow of the deceased talookdar, thereupon instituted a suit for a declaration that she was entitled to succeed to the estate after the death of R, that K held only a life interest and was a trustee, notwithstanding anything contained in Act I of 1869, that the gift to B was invalid, and that she (plaintiff) was entitled as a reversioner entitled to succeed to the estate after the death of R.

It was not contested that by virtue of Act I of 1877, S, 42, such a suit was maintainable (44). (Sir Robert P. Collier.) THAKURAIN RAMANUND KOER T. THAKURAIN RAGUNATH KOER. (1882) 9 I. A. 41 = 8 C. 769 (775) = 11 C. L. R. 149 = 4 Sar. 316 = R. & J's. Nos. 67 & 68.

POSSESSORY TITLE-PERSON ONLY WITH.

— Declaration of title and injunction against trespasser —Suit for. See Under this very sub-head—TRESPASSER. (1893) 20 I. A. 99 (106-7) = 20 C. 834 (842-3).

PRE-EMPTION—RIGHT OF—DECLARATION OF.
—Suit for bare—Maintainability. See PRE-EMPTION
—RIGHT OF—DECLARATION OF—SUIT FOR BARE.

(1920) 47 I. A. 255 (260 1) = 48 C. 110 (114-5).

REVENUE OFFICERS—PROCEFDINGS—ULTRA VIRES NATURE OF.

Declaration of Suit for—Maintainability—Discretion of court to refuse declaratory decree. See BFNGAL ACTS—ALLUVION AND DILLUVION ACT OF 1847—Ss. 6, 9 (1889) 17 I. A. 40 (46-7)=17 C. 590 (604, 598).

SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42—Cases under (or Declaratory Suit—Maintainability)—(Contd.)

STATUTE.

Interpretation true of Declaration of Suit for, and to have act done in contravention of statute prenounced void.

S. 42 of the Specific Relief Act is inapplicable to a suit which is in substance a suit to have the true construction of a statute declared, and to have an act done in contravention of the statute rightly understood pronounced void and of no effect. That is not the sort of declaratory decree which the framers of the Act had in their mind. (Lord Machaeghten) FISCHER v. SECRETARY OF STATE FOR INDIA IN COUNCIL. (1898) 26 I. A. 16 (28)=

22 M. 270 (282) = 3 C. W. N. 161 = 7 Sar. 459.

——Provisions of—Order passed in violation of— Ultra vires nature of—Declaration of—Right of aggreed party to—Discretion of Court in granting. See BENGAL ACTS—ALLUVION AND DILUVION ACT OF 1847— Ss. 6, 9. (1889) 17 I. A. 40 (467)= 17 C. 590 (604 598).

——Structures ordered to be demolished under—Compensation in respect of—Right to—Declaration of—Suit for—Maintainability—Grant of declaration—Discretion of court as to. See CALCUTTA MUNICIPAL ACT OF 1899—5. 341. (1916) 43 I. A. 243 (247-8)=44 C. 87 (95-6).

TENURE-ALLEGATION MERE OF RIGHT TO.

(1874) 2 I. A. 83.

TRESPASSER—DECLARATION OF TITLE AND INJUNCTION AGAINST.

- Suit by person with only possessory title for-Maintainability of-Decree in-Form of.

The plaintiff claimed title to the suit property under a purchase by his vendor from the heist of one K. The defendant alleged that the suit property had been dedicated by K to religious and charitable purposes and was therefore inalienable, and that he (defendant) was the Mutawallee thereof. The suit was for a declaration that the plaintiff was the sole and absolute owner of the suit property, that it had not been dedicated for religious or charitable purposes, and that the defendant had no sort of right, title, or interest therein, and for an injunction and damages.

The High Court found in favour of the dedication set up and that the property was inalienable and that plaintiff acquired no title by his porchase. It also found that the defendant was not Mutawallee and had no sort of right to or interest in the property, that plaintiff had been in possession of the suit property for six years before suit, and that defendant's interference with plaintiff's possession was illegal and unlawful. Nevertheless, the High Court dismissed the plaintiff's suit.

Held, reversing the High Court, that the plaintiff was entitled to a declaration of his title to the property, but that the decree should merely declare him to be "lawfully entitled to possession" of the suit property (107).

There is a misapprehension by the High Court of the nature of the plaintiff's case upon the facts stated in their judgment. The possession of the plaintiff was sufficient evidence of title as owner against the defendant. By S. 9 of the Specific Relief Act, if the plaintiff had been dispossessed otherwise than in due course of law, he could, by a suit instituted within 6 months from the date of the dispossession, have recovered possession, notwithstanding any other title that might be set up in such suit. If he could thus recover possession from a person who might be able to prove a title, it is certainly right and just that he should be

SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

8.42—Cases under (or Declaratory Suit—Maintainability)—(Contd.)

TRESPASSER—DECLARATION OF TITLE AND IN-JUNCTION AGAINST—(Contd.)

able, against a person who has no title and is a mere wrongdoer, to obtain a declaration of title as owner, and an injunction to restrain the wrong-doer from interfering with his possession. It was not necessary for the plaintiff to negative that the suit land was dedicated to religious or charitable purposes, because the only defendant, who maintained that it was, was not entitled to maintain the walkfinamah (106-7). (Sir Richard Couch.) ISMAIL ARIFF v. MAHO-MED GHOUSE. (1893) 20 I. A. 99 = 20 C. 834 (842-3) = 6 Sar. 305.

#### WILL

Deceased—Will of Declaration of invalidity of Heir's suit for Will in writing Nuncupative will.

It would not probably be disputed that if a fictitious will in writing be set up, the heir, upon a proper case being made, might claim to have the document cancelled, and their Lordships are not prepared to say that in cases where property may legally pass by an oral will an analogous right to have it declared null may not exist. A claim under such a will is not a bare assertion of title, but the setting op a specific fact by which title to property may be conferred. The reasons, too, for giving such relief in the case of written wills would seem to apply to nuncapative wills, and one of them, the probable deaths of witnesses, with even greater force to the latter than the former (112.3). (Sir Mentague Smith.) SHEO SINGH RALP MUSSUMUT DAKHO.

(1878) 5 LA. 87 = 1 A. 688 (706-7) = 2 C. L R 193 = 3 Sar. 807 = 3 Suth. 529.

Gift over—Declaration of right under—Injanction and—Suit for—Maintainability—Possession of property—No prayer for. See HINDU LAW—WILL—GIFT OVER—DECLARATION OF RIGHT ETC. (1914) 38 B. 399 (415).

Life estate holder under—Alienation by—Declaration of invalidity of—Suit by more remote remainderman entitled under will for—Maintainability—Discretion of Court—Concurrent suit by nearer remainderman. Nor-HINDU LAW—WILL—ESTATE FOR LIFE—ALIENATION BY HOLDER OF. (1882) 9 I. A. 41 (57) = 8 C. 769 (787-8).

Life estate holder under—Alienation—Declaration of invalidity of—Suit for, by person entitled in remainder after number of life estates—Maintainability—Other life-estate holders alive. See HINDU LAW—WILL—ESTATE FOR LIFE—ALIENATION BY HOLDER OF.

(1882) 9 L. A. 41 (53) = 8 C. 769 (783-4).

Suit for declaration of—Revocation of—Right to apply for—Suit for declaration of—Maintainability—Probate granted after contest by plaintiff. See HINDU LAW—REVER-SIONER—WILL OF LAST MALE OWNER.

(1916) 43 I. A. 91 (97-8) = 43 O. 694 (704 5).

Widow—Will by—Declaration of invalidity of.

Against reversionary interest—Grant of—Rule as to—Discretion.

See HINDU LAW—REVERSIONER—PRESUMPTIVE REVERSIONER—WIDOW—WILL BY—DECLARATION OF ETC. (1904) 31 I. A. 67 = 26 A. 238 (242-3).

 42-Declaratory suit—Maintainability of— Objection to—Right of.

Consent order—Appeal from—Consent to adjudication on merits by appellate Court—Effect. See Under this section—CASES UNDER—AWARD.

(1922) 49 I. A. 366 (373) = 50 C. 1 (9-10).

## SPECIFIC RELIEF ACT (I OF 1877)-(Contd.)

S. 42—Declaratory suit—Necessity.

—Grant for life—Permanent lease by grantee under—

Grant for life—Permanent lease by grantee under— Invalidity of declaration of—Grantor's suit for. See LIMI-TATION ACT OF 1908—ART, 91.

(1899) 26 I.A. 216 (223-4) = 27 C. 156 (165-6).

S. 42—Declaratory suit—Possession lawful obtained by plaintiff pending—L. R. of defendant dying fendente lite—Decree for possession to.

Plaintiff's right to complain of, himself being with-

Claiming to have been adopted by a deceased Zemindar, the plaintiff sued for the recovery of the zemindary from B, his surviving widow. The first Court found against the alleged adoption and dismissed the suit. The plaintiff preferred an appeal from its decree. Pending that appeal B died, and the respondent, who claimed to be the heir of the deceased zemindar as his son by a Gandharva marriage to another wife, was brought on record as her legal representative. In the meantime the Collectors of the District put the plaintiff into the exclusive possession of the whole of the zemindary, and he continued to be in such possession. The appellate Coart concurred with the court below in finding against the title of the plaintiff, found that the respondent was the person entitled to succeed to the zemindary, and in effect directed him to be put into possession of it.

Held that the portion of the appellate decree establishing the title of the re-pondent and directing him to be put into possession was wrong, and that the plaintiff was entitled to complain of it, notwith-tanding that his title had been found against.

The question of the title of the respondent was not the question in the cause. The plaintiff having acquired a possession of some sort by lawful authority by a grant by the Executive Government, he should have been allowed to retain that possession, and the respondent must be left to his own remedy. (Mr. Judice Parke.) RAJAH HAIMUN CHULL SINGH P. KOOMAR GHUNSHEAM SINGH.

(1834) 5 W. R. 69-1 Suth. 4 (7) = 2 Knapp. 203=1 Sar. 37.

#### S. 42—Declaratory suit—Right alleged— Failure to prove.

- Plaintill hazing some rights-No declaration in case of.

In a suit brought by the respondents under S. 42 of the Specific Relief Act for a declaration that they, as the Mutwallis or managers of the Bisrum Ghat, were entitled to one-third of the donatians given by pilgrims to the ghat and that the appellants were not sole owners and Mutwallis of the said ghat, and for consequential relief, held, reversing the judgment of the High Court, that the suit was rightly dismissed by the Court of first intance, because though the evidence showed that the plaintiffs had some rights in the ghat, they had failed to prove the particular rights which they alleged or their title to the particular relief claimed, (Sir Barnes Poatock.) Maina 2. Brill Mohan.

(1890) 17 I. A. 187 = 12 A. 587 = 5 Sar. 624.

#### 8.45

Injunction. See Under INJUNCTION.

——Public officer—Refusal to do duty imposed by statute —Court's power to force him to do it.

If the Legislature says that a public officer, even a revenue officer, shall do a thing, and he without cause or justification refuses to do that thing, the Court has power, under S. 45 of the Specific Relief Act, to compel him to do so (Lord Phillimore,) ALCOCK, ASHDOWN & CO. 2. CHIEF REVENUE AUTHORITY, BOMBAR.

(1923) 50 I. A. 227 (2334) = 47 B. 742 (749) =

SPECIFIC RELIEF ACT (I OF 1877)-(Centd.)

S. 45-(Contd.)

25 Bom. L. R. 920 = 21 A.L.J. 689 = A. I. R. 1923 P. C. 138 = 33 M. L. T. 267 = 18 L. W. 918-(1923) M. W. N. 557-39 C.L.J. 302-28 C. W. N. 762 = 75 I. C. 392 = 45 M. L. J. 592.

SPIRITUAL MINISTER

Choice of-Gifts to-Right of-Freedom as regards.

Court's interference with.

Anyone who pays fees or gives gifts in respect of spiritual benefits, may, so long as it is a voluntary business, choose whom he thinks right to be his minister in spiritual things, and to be the recipent of his fees or gifts. (Lord Phillimore.) MANICKA VACHAGA DESIKAR 7. PARAMA-(1928) 33 C.W.N. 382 = SIVAN. (1929; M. W. N. 161 - 113 I. C. 476 - 29 L. W. 414 = A. I. R. 1929 P. C. 53 - 56 M. L. J. 121 (125).

Imparting of Upadesam and receipt of gifts by-Injunction restraining.

-Legality-Acts done by him in his individual capacity-Acts done by him colore officit-Distinction.

Though a person may not, in his individual capacity, be restrained by injunction from imparting Upadesain or receiving fees therefor, he may be restrained from doing so colore efficir. (Lord Phillimore.) MANICKA VACHAGA DESIKAR T. PARAMASIVAN. (1928) 33 C. W. N. 382 = (1929) M. W. N. 161 - 113 I. C. 476 - 29 L. W. 414 -

A.I.R. 1929 P.C. 53 - 56 M. L. J. 121 (126).

Office of -- Appointment to.

-Herolitary right of -Vesting in a family of -Exercise of right in favour of non-member of family in case of -Validity.

The heredisary to appoint to the raffice of a Spiritual Minister or Guru may vest in a family, and may be exercised by appointing some one who is not a member of the legal family. (Lord Phillimore.) MANICKA VACHAGA DESI-KAR v. PARAMASIVAN. (1928) 33 C. W N. 382-(1929) M. W. N. 161 = 113 I. C. 476 = 29 L. W. 414 = A. I. R. 1929 P. C. 53 = 56 M.L. J. 121 (125).

-- Last holder of vince-Right of-Family of last holder-Right of an default of appointment by him-Exi-

The question was as to the right to appoint to the office of priest or Kilamadam Swamiyar of the Nattukottai

Nagarathars.

Held, on the evidence, that, according to the usage of the institution in question, the right of appointment vested in the first instance in the last holder of the office, and that, in default of appointment by him, the right vested in the family of the last holder. (Lord Phillimore.) MANICKA VACHAGA DESIKAR :: PARAMASIVAN.

(1928) 33 C. W. N. 382 = (1929) M. W. N. 161 = 113 L. C. 476 - 29 L.W. 414 = A. I. R. 1929 P.C. 53 = 56 M. L. J. 121.

#### SPIRITUAL PRECEPTOR.

-Native ruler-Grant of non-religious lands by latter to former-Appanage or endowment of office-Personal inam of grantee-Test. See GRANT-NATIVE RULER-SPIRITUAL PRECEPTER.

(1917) 45 I. A. 1 (6) = 41 M. 296 (302 3).

#### STAMP.

-Certified copy of compromise petition creating a mortgage filed in and accepted by Court-Stamp on-Inference from, that original bore same stamp-Propriety-Bengal Regulation X of 1829.

In a suit for the redemption of an usufructuary mortgage alleged to have been created in 1857, the plaintiffs relied on a certified copy of a petition of compromise filed in Court

STAMP-(Contd.)

on April 1, 1857, to establish the mortgage. The question for decision was whether, if the petition was to be treated as creating the mortgage, it was properly stamped in accordance with the Indian statute then in force to entitle the plaintiffs to sue upon it.

The certified copy produced bore only a stamp of Re. 1, and the District Judge thought that, as the copy bore a stamp of Re. 1 only, the original deed of compromise must have borne a stamp of Re. 1, and held that, as the document was insufficiently stumped, its copy was not admissible in evidence. He was of opinion that if the original had borne a stamp of Rs 10 (which was the proper stamp), the stamp on the copy would also have been one of Rs. 10, as required by Act XX of Schedule A of the Regulation.

Held that, if the petition was to be treated as the document creating the mortgage, it might be rightly presumed that the officer before whom it was presented satisfied himself that it was properly stamped, and that the District Judge had clearly fallen into an error in taking the stamp on the certified copy as an indication of the stamp on the

petition itself (268).

No inference can be derived from the fact that the copy bears a Re. I stamp. Under the Court-Fees Act of 1870 it is the proper stamp for issuing a copy of the proceeding in the Zillah Court; and as a copy of the petition and the order thereon, it bears the right Court-fee stamp of Re.1 (208). (Mr. Ameer Ali.) AHMAD RAZA P. ABID HUSAIN. (1916) 43 I. A. 264 = 38 A. 494 (501-2)=

14 A. L. J. 1099 = 21 C. W N. 265 = 24 C. L. J. 504 = 20 M. L. T. 447 = (1916) 2 M. W. N. 548 = 5 L. W. 153 = 1 Pat. L. W. 90 = 39 I. C. 11 = 18 Bom. L. R. 904

 Deed sucd upon—Stamp affixed on—Insufficiency of -Dismissal of suit on ground of-Propriety-Procedure proper in case of. Sie MORTGAGE-EQUITABLE MORT-GAGE - MEMORANDUM ACCOMPANYING DEPOSIT-STAMP AFFIXED ON.

(1852) 5 M. I. A. 271 (277-8).

STAMP ACT I OF 1879.

Ss. 34 to 39-Applicability-Last deed unstamped-Applicability of penalty previsions to case of.

The provisions made by the Stamp Act I of 1879 for the case of deeds either unstamped or insufficiently stamped have no application when the original deed, which ought to have been stamped or was insufficiently stamped, has not been produced. Accordingly secondary evidence of the contents of the document is in such a case inadmissible.

The clauses of the Stamp Act throughout deal with and exclusively refer to the admission as evidence of original documents which, at the time of their execution, were not stamped at all or were insufficiently stamped. It is only upon production of the original writ that the Collector has the power given him, or the duty imposed upon him, of assessing and charging the penalty-a duty which he must in that case perform by writing an indorsement upon the writ submitted to him, which then, and not till then becomes probative in law. (Lord Watson.) RAJAH OF BOBBILI P. INUGANTI CHINA SITARAMASAMI GARU.

(1899) 26 I. A. 262 = 23 M. 49 = 4 C. W. N. 117= 7 Sar. 597.

#### STAMP ACT II OF 1899.

S. 7.

-Contravention of provisions of - Objection to-Privy Council arpeal - Maintainability for first time in-See STATUTE-PROVISIONS OF-VIOLATION OF-OB-(1924) 52 I.A. 126 (128-9) = 52 C. 408 JECTION TO. -Sea insurance - Contract for-What amounts to See INSURANCE—SEA INSURANCE—CONTRACT FOR

(1924) 52 I.A. 126 (129)=52 0. 408

#### STAMP ACT II OF 1899-(Contd.)

8.7-(Contd.)

-Sea insurance-Contract for, by word of mouth-LATION OF -OBJECTION 10.

(1924) 52 I.A. 126 (128-9) = 52 C 408.

#### S. 35-Deed insufficiently stamped.

-Admission in evidence of-Operation of deed-Cutting down extent of, to the portion covered by the stamp in fact affixed-Permissibility.

The respondent, a younger son of a deceased Hindu, executed in favour of the appellant, his eldest brother, a deed of release thereby accepting some property for the maintenance of himself and his family and relinquishing all his right to any portion of the family property in fasour of the appellant. In a suit brought by the respondent, notwithstanding that deed of release, to recover his share of the family property from the appellant, the 1-tter pleaded the deed in bar to the suit. He tendered it in evidence and no objection was raised by the respondent to its being admitted in evidence. The first court admitted it in evidence, and, giving effect to it, dismissed the respondent's suit. The High Court on appeal found that the deed was not properly stamped, being stamped only with a stamp of two annas. It did not reject the deed on the ground that it was insufficiently stamped, nor did it require the deed to be properly stamped and the penalty to be paid. It, however, adopted the course of leaving the deed as part of the evidence in the case, just in the way in which it had been placed among the evidence by the court of first instance, but it qualified its effect, and the extent of its operation, by making it a deed of release, releasing so much of that which the respondent might otherwise claim as would be covered by the insufficient stamp of two annas-

Held that the course taken by the High Court was entirely nithout precedent, without principle, and without

authority (39).

Being evidence in the case, the deed ought to have full and natural weight given to it as part of the evidence in the cause (39). (Lord Cairus.) MANTAPPA NAI GOWDA P. BASWANTRAO NADGOWDA. (1871) 14 M.I.A. 24= 15 W. R. (P.C.) 33 = 2 Suth. 407 = 2 Sar. 648.

-Operation of-Cutting down extent of to portion covered by stamp in fact affixed. See STAMP ACT OF 1899, 8. 35-DEED INSUFFICIENTLY STAMPED -ADMISSION IN EVIDENCE OF. (1871) 14 M. I. A. 24 (38 9).

Tender in evidence of Procedure on Rejection of

document altogether-Propriety of.

The Sudder Ameen should have allowed the defendant to get his documents stamped, and, if necessary, should have adjourned the hearing for that purpose. The court, however, excluded them from evidence, as unstamped, and as documents which were inadmissible unless stamped. The proper course, therefore, is to remand the cause to the lower court to enable the defendant to get the instruments stamped (452), (Lord Chelmsford.) MAHARAJAH RAJ-UNDER KISHWUR SING, BAHADUR P. SHEOPURSUN MISSER. (1866) 10 M.I.A. 438 = 5 W.B. (P.C.) 55 =

1 Suth. 628 = 2 Sar. 174. Where a document insufficiently stamped is tendered in evidence, two courses are open to the court. It may refuse to admit the document for want of a proper stamp; or it may, under the Acts and Regulations for that purpose, require the document to be properly stamped, and the Denalty paid into court for the purposes of the revenue.

Obviously the more correct course is to require the deed to be properly stamped and the penalty to be paid (38-9).

(Lord Caiens.) MANTAPPA NADGOWDA r. BASWANTRAO
NADGOWDA. (1871) 14 M.T.A. 24 = 15 W.B. (P.C.) 33 = 2 Suth. 407 = 2 Sar. 648.

### STAMP ACT II OF 1899-(Contd.)

Ss. 35. Proviso (a) and 26.

-Mining lease-Royalty in excess of amount covered Enforceability of. See STATUTE-PROVISIONS OF-VIO- by stamp on-Claim for-Right to, on payment of deficient stamp duty and penalty.

The proviso (a) of S. 35 of the Stamp Act of 1899 is of equal ambit with the body of the section, and just as an instrument cannot be acted upon-that is to say, nothing can be recovered unless it has a proper stamp-so by the proviso if there is not a proper stamp it may be put on afterwards on payment of a penalty, and the instrument then becomes operative.

Under a mining leave the full amount o royalty can be recovered, though in excess of the amount covered by the stance originally put on the lease if the deficient stamp duty and penalty has been poid. (Lord Dunedin.) LACHMI NARAYAN AGARWALA P. BRAJA MOHUN SINGH.

(1924) 51 I.A. 332-4 P. 34=5 Pat. L.T. 570= 26 Bom LR. 1140 - 40 C.L.J. 443 = 20 L.W. 811 = 29 C.W.N. 296=A.I.R. 1924 P.C. 221= 10 O. & A L. R. 1272 = 82 I.C. 789 = 47 M.L.J. 300.

#### S. 36-Document insufficiently stamped-Admission in evidence of.

- Objection subsequent to its admissibility - Maintain ability.

Where a document bearing a defective stamp has once been received in evidence, its admission cannot, under S. 36 of the Stamp Act, be called in question at any stage of the suit on a stamp objection (Lord Atkin,) Ma PWA MAY r. S. R. M. M. A. CHETTIAR FIRM.

(1929) 56 I.A. 379 = 7 R. 624 = 34 C.W.N. 6 = 30 L. W. 481 = 6 O. W. N. 869 = (1929) M.W.N. 941 = 51 C.L.J. 6 = 32 Bom. L.R. 117 = 120 I.C. 645 = 1930 A. L. J. 533 - A. I. R. 1929 P.C. 279 -58 M.L.J. 59.

-Rejection of it subsequently-Permissibility.

As to rejecting the document in total for want of a stamp, there would have been this serious difficulty, that there does not appear to have been any objection raised to its admission in the Cours of First Instance, and it is difficult to see how, that being the case, it would have been a just course to have rejected in tota the document in the Court of last appeal (38.9). (Lerd Cairns.) MANTAPPA NADGOWDA F. BASWANTRAO NALGOWDA

(1871) 14 M.I.A. 24-15 W.R. (P.C.) 33 2 Suth. 407 - 2 Sar. 648.

-S. 37-Mamp of improper description within-Recense stamp of sufficient amount surcharged "Court Fee" if a.

A revenue stamp surcharged "Court Fee" is a stamp of improper description within the meaning of S. 37 of the Stamp Act, and in the care of a document bearing such a stamp of sufficient amount, the Collector is entitled to exercise the powers given by that section. (Lord Atkin.) MA PWA MAY P. S. R. M. M. A. CHETTIAR FIRM.

(1929) 56 I. A. 379 = 7 R. 624 = 51 C.L.J. 6= 32 Bom. L B. 117 = 120 I.C. 645 = 1930 A.L.J. 533 = 34 C.W.N. 6=30 L.W. 481=6 O.W.N. 869= (1929) M.W.N. 941 - A.I.R. 1929 P.C. 279 -58 M.L.J. 59.

#### STARE DECISIS.

-See MAXIM-STARE DECISIS.

#### STATUTE.

ADDITION TO. ALTERATION OF. AMENDING STATUTE.

AMENDING AS WELL AS CONSOLIDATING STATUTE.
APPEAL—RIGHT OF—STATUTE GIVING.

APPLICABILITY OR APPLICATION OF.

BODY CREATED BY.

CIVIL COURT—DECISION OF—APPEAL FROM—RIGHT OF—DEPRIVATION OF.

CODE OR CODIFYING ACT.

COLONIAL STATUTE.

CONSOLIDATING STATUTE.

CONTRACT.

CRIMINAL LAW.

DECLARATORY OR PROSPECTIVE.

DEED.

DEFECTS IN.

DISABLING STATUTE.

DRAFTING OF.

DISCRETION VESTED BY.

DOMINION AND PROVINCIAL STATUTES DEALING WITH DIFFERENT SUBJECT-MATTERS BUT COVER-ING PARTICULAR CASES.

DUTY IMPOSED BY-REFUSAL IMPROPER OF.

EARLIER AND LATER STATUTES.

EQUITABLE CONSTRUCTION.

ESTOPPEL AGAINST.

EXTENSION OF WHOLE OR PART OF—POWER OF LOCAL GOVERNMENT AS TO.

FACULTATIVE AND PERMISSIVE ONLY.

GENERAL AND PARTICULAR PROVISIONS OF.

GENERAL AND SPECIAL STATUTES.

ILLUSTRATIONS TO.

IMPERIAL AND PROVINCIAL STATUTES DEALING WITH DIFFERENT SUBJECT-MATTERS, BUT COVER-ING PARTICULAR CASES.

INDIAN STATUTE-INTERPRETATION OF.

INTERPRETATION OF.

JURISDICTION.

LAND ACQUIRED FOR PUBLIC PURPOSES UNDER.

LAW-DECLARATION OF-ENACIMENT OF.

LIMITATION ACT.

MODERN STATUTE.

ORDER PURPORTING TO BE MADE UNDER-VALIDITY OF.

PARAPHRASE OF.

PENAL STATUTE.

POWERS CONFERRED BY.

PRACTICE.

PREAMBLE OF.

PREROGATIVE OF CROWN-DEPRIVATION OF.

PRIVATE PACTION.

PROCEDURE.

PROVISO.

PROVISIONS OF.

PUBLIC POLICY.

REASONS FOR-PHRASEOLOGY EMPLOYED-REASONS

RE-ENACTING STATUTE.

REMEDIAL STATUTE.

RETROSPECTIVE OPERATION.

RIGHT BARRED PRIOR TO.

RIGHT EXISTING AT DATE OF-DEPRIVATION OF.

RIGHT SUBSTANTIVE DEALT WITH BY.

RIGHTS DEALT WITH BY-EXTENT OF.

SPECIAL AND SELF-CONTAINED STATUTE.

SPECIAL REMEDY CREATED BY.

STATUTORY BODY.

SUIT PENDING AT DATE OF.

TAX IMPOSED BY GOVERNMENT—COLLECTION OF, THROUGH MUNICIPALITY WHEN THERE IS ONE.

ULTRA VIRES OR INTRA VIRES.

WORDS IN.

#### STATUTE-(Contd.)

WORKS AUTHORISED BY—CONSTRUCTION OF—COM-PENSATION IN RESPECT OF, ON GROUND OF LAND BEING "INJURIOUSLY AFFECTED."

WRONGFUL ACTS—RESPONSIBILITY FOR—STATUTE IMPOSING.

#### Addition to.

It is impossible that any court can add to a Statute that which the Legislature has not done. If it did so it would be legislating and not interpreting the statute (176). (Sir Montague E. Smith.) MOHAMMUD BAHADOOR KHAN r. COLLECTOR OF BAREILLY.

(1874) 1 I. A. 167=13 B. L. R. 392= 21 W. R. 318=3 Sar. 363.

Equitable construction—Addition by. See FORFEI-TURE ACT OF 1859, S. 20, PROVISO—LIMITATION PRES-CRIBED BY. (1874) 1 I. A. 167 (176).

Qualifying conditions—Addition of. See EVIDENCE ACT, S. 115—CONSTRUCTION OF—ADDITION OF, EIC. (1892) 19 I. A. 203 (215) = 20 C. 296 (310).

#### Alteration of.

——Decree and appeal therefrom—Alteration between dates of—Notice of—Appellate court's duty to take. See BENGAL REGULATIONS—ZILLAH COURTS REGULATION III OF 1793, S. 18. (1835) 5 W. B. 25 (P. C.).

#### Amending statute.

Alteration of prior law by—Question as to—Consideration of prior law in case of—Necessity. See STATUTE
—INTERPRETATION OF—PRIOR LAW—REFERENCE TO
—RULE. (1927) 55 I.A. 96 = 55 C. 519.

Jurisdiction of court in respect of proceeding commenced prior to—Deprivation by amending statute of—Effect of. See CALCUTTA RENT ACT III OF 1920—OPERATION OF. (1927) 54 I. A. 152 (156) = 54 C. 508.

—Substantive provision—Act introducing — Retrospective operation if has. Sα STATUTE—RETROSPECTIVE OPERATION—AMENDING ACT, ETC.

(1927) 107 I. C. 455.

### Amending as well as consolidating statute.

Section of, intended to consolidate or amend—Test to find out. See CONTRACT ACT—AMENDING AS WELL AS, ETC. (1916) 43 I.A. 164 (170-1) = 40 B. 630 (686-7).

### Appeal-Right of-Statute giving.

# Applicability or application of.

EQUITABLE CONSTRUCTION.

Strict words of Act—Test proper. Sα LIMITATION
ACT—APPLICABILITY—EQUITABLE CONSTRUCTION.
(1873) 20 W. B. 375.

#### ESTOPPEL.

——Applicability by. See (1) LIMITATION ACT OF 1908, S. 22—PLAINTIFF. (1889) 17 0.580 & (2) LIMITATION ACT, ART. 11 (1)—APPLICABILITY BY ESTOPPEL OF. (1928) 55 I. A. 256=51 M. 349.

HARDSHIP OR INCONVENIENCE—CONSIDERATIONS OF—PROPRIETY.

OUTY.)

OF APPLICATION OF COURT'S

No question of convenience or inconvenience can in a clear case be allowed to have any weight in the interpretation of a statute (440). (Dr. Lushington.) MORGAN. LEECH. (1841) 2 M. I. A. 428 = 3 Moo. P. U. 588 2 Suth. 428 = 1 Sar. 315.

#### Applicability or application of-(Contd.)

HARDSHIP OR INCONVENIENCE-CONSIDERATIONS OF-PROPRIETY-(Contd.)

Where the meaning of a statute is clear and undoubted, effect must be given to its provisions, however injurious the Court may conceive the consequences to be (483). (Dr. Luckington.) QUEEN v. EDULJEE BYRAMJEE.

(1846) 3 M. I. A. 468 = 5 Moo. P. C. 276 = 1 Sar. 305.

It may appear to be harsh to disregard the presumptions arising from length of time and general conduct, but we have nothing to do with that question, we are bound to act on the principles laid down in the two Regulations bearing upon the subject and having the force of statute law, according to that which we deem the true construction (497). (Mr. Baron Parke.) MAHARAJADHEERAJ RAJA MAHATAB p. THE GOVERNMENT OF BENGAL.

(1849-50) 4 M. I. A. 466-1 Sar. 385.

The conclusion reached by their Lordships may appear to bear hardly upon the appellants, but if so a remedy must be found in an amendment of the law the terms of which are reasonably clear (227). (Viscount Caty.) WARD & CO. v. THE COMMISSIONER OF TAXES. (1922) 33 M. L. T. 225 (P. C.).

See C. P. C. OF 1908, O. 2, R. 2-APPLICABILITY (1922) 50 I. A. 115 (120) = OF -- DUTY OF COURT. 4 Lah. 32

#### MOTIVES OF PARTY AFFECTED-REASONS FOR ENACTMENT.

Considerations of -Propriety.

If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it (604). (Sir James W. Colvile.) MOON-SHEE BUZLOOR RUHEEM v. SHUMSOONNISSA BEGUM.

(1867) 11 M. I. A. 551 = 8 W. B. P. C. 3= 2 Suth. 59 = 2 Sar. 259.

PROCEEDING COMMENCED DURING OPERATION OF STATUTE.

Amending Act passed subsequently depriving Court of jurisdiction in the matter-Effect. See CALCUTTA RENT ACT III OF 1920-OPERATION OF.

(1927) 54 I. A. 152 (156) = 54 C. 508.

REMEDY TO PARTY AGGRIEVED-EXISTENCE OR OTHERWISE OF.

Consideration of-Propriety. See STATUTE-JURIS-(1849 50) 4 M. I. A. 353 (378). DICTION. STATUS, RACE, ETC., OF PARTIES-CONSIDERATION OF.

Permissibility. See LIMITATION ACT-APPLICA-(1873) 1 L. A. 34 (52). BILITY-STATUS, ETC.

SUIT NOT KNOWN AT DATE OF PASSING OF ACT. Applicability to. See LIMITATION ACT OF 1859 (1872) Sup. I. A. 108 (111-2). DIVORCE A'VINCULO.

Body created by.

Powers conferred upon. See STATUTE-STATU-TORY BODY.

Civil Court-Decision of-Appeal from-Bight of-Deprivation of.

APPEAL FROM-RIGHT OF-CIVIL COURT. (1878) 5 I. A. 233 (237)=

2 A. 67 and (1916) 43 I. A. 192 (198) = 39 M. 617 (624-5).

STATUTE-(Contd.)

#### Code or Codifying Act.

- Exhaustiveness of, on matters dealt with by it.

The essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or to go outside the letter of the enactment according to its true construction. (Lord Davey.) GOKUL MANDAR 7. PUDMANUND SINGH.

(1902) 29 I. A. 196 (202) = 29 C. 707 (715) = 6 C. W. N. 825=4 Bom. L. B. 793=8 Sar. 323.

Instance of — Interpretation of—Principles appli-cable. See SUCCESSION ACT OF 1865—NATURE OF— CODIFYING ACT IF A. (1896) 23 I. A. 18 (26)= 23 C. 563 (571-2).

-Prior law-Alteration of-Intention as to-Mode of ascertaining.

The proper mode of dealing with an Act intended to codify a particular branch of the law is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered. to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a Code a particular branch of the law is to be treated in this fashion, its utility will be almost entirely destroyed, and the very object with which it was enacted will be frestrated. The purpose of such a statute surely was that on any point specially dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions. (Lord Macnaghten.) NORENDRA NATH SIRCAR v. KAMALA-(1896) 23 I. A. 18 (26)= BASINI DASI,

23 C. 563 (571-2) = 6 M. L. J. 71 = 6 Sar. 667 Prior Statute-Law dealt with by-Codification of

-Mode of.

The question was whether the Contract Act of 1872 was intended to alter the law applicable to common carriers. At the time of the passing of the Act of 1872, there was in force a statute relating to common carriers (The Carriers Act of 1865), which, in connection with the common law of England, formed a Code at once simple, intelligible, and complete.

Held that, if it had been intended to codify the law of common carriers by the Act of 1872, the more usual course would have been to have repealed the Act of 1865 and to re-enact its provisions, with such alterations or modifications as the case might seem to require (129). (Lord Macnaghten.) IRRAWADY FLOTILLA CO. v. BUGWANDASS.

(1891) 18 I. A. 121 = 18 C. 620 (628-9) = 6 Sar. 40.

#### Colonial Statute.

-Interpretation of -English lines -Interpretation on -Permissibility. See STATUTE - INDIAN STATUTE --INTERPRETATION OF-ENGLISH LINES. (1916) 43 I. A. 256 (262).

### Consolidating Statute.

-Object of -Interpretation of.

The proposition that, in dealing with a consolidating statute, each enactment must be traced to its original source, and, when that is discovered, must be construed according to the state of circumstances which existed when it first became law, has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may from a useful Code applicable

STOTATE.

STATUTE-(Cont.)

Consolidating Statute-(Contd.)

to the viscourstances existing at the time when the consolidating Act is passed. (Lord Watson.) ADMINISTRATOR-GENERAL OF BENGAL 2. PREM LAL MULLICK.

(1895) 22 I. A. 107 (116) = 22 C. 788 (798) = 6 Sar. 603.

#### Contract.

-Conflict between-Which prevails.

An Act of the Legislature must prevail against private (115). (Lord Dunedin.) SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ.

(1924) 52 I. A. 109 = 4 P. 244 = 6 P. L. T. 42 = 21 L. W. 289 = 29 C. W. N. 725 = 27 Bom. L. R. 753 = 23 A. L. J. 712 = A. I. B. 1925 P. C. 42 = 86 I. C. 289 = 48 M. L. J. 328.

 Consent specified in statute — Contract made without -Statute prohibiting-Statute restraining Court from entertaining suit upon-Distinction-Repeal of statute subsequent to contract-Suit upon contract-Effect on right of. See CONTRACT - ENFORCEABILITY OF-STATUTE (1834) 5 W. R. 72.

-Provisions of statute applicable to-Variation of, by reason of general considerations or administrative rules not having sanction of statute-Permissibility. See CONTRACT (1912) 39 I. A. 177 (182)= -VARIATION OF, ETC. 39 C. 981 (992).

#### Criminal Law.

-Strict construction of -Necessity.

With respect to the Criminal Law, the construction is always to be strict. (Lord Wensleydale.) NGA HOONG r. THE QUEEN. (1857) 7 M. I. A. 72 (98)= 4 W.R. 109 (P.C.) = Boul. 189 = 1 Sar. 598 = 1 Suth. 285.

-If the mofussil court has no jurisdiction now, by virtue of the East Indian Company's Regulations, to dispose of this case, they (the appellants) must escape justice; but we (their Lordships) are not, in any way, to alter or construe differently the rules of the Criminal Law in consequence of the supposed justice of a particular case. The rule is that that law is to be strictly construed. (Lord Wensleydale.) NGA HOONG P. THE QUEEN.

(1857) 7 M. L. A. 72 (103) = 4 W. R. 109 (P. C.) = Boul. 189=1 Sar. 598=1 Suth. 285.

#### Declaratory or prospective.

-Test. See BOMBAY REGULATIONS-CIVIL COURTS (LAW TO BE OBSERVED) REGULATION IV OF 1827-NATURE OF. (1837) 1 M. I. A. 470 (481).

-Construction of-Subsequent statute-Reading into deed of-Propriety. See DEED-CONSTRUCTION OF-STATUTE SUBSEQUENT. (1904) 31 I. A. 116 (120)= 26 A. 299 (309)

-Deed taken under Statute-Construction of-Reference to provisions of Statute-Necessity.

Where there are alternative possible constructions of an instrument taken in pursuance of the provisions of a Statute it is proper and indeed necessary to refer to the statute by which the form and purposes of the instrument are prescribed in order to make sure that the construction determined upon is consistent with the provisions of the statute (441). (Sir Henry Duke.) UNITED STATES FIDELITY GUARANTY CO. r. KING. (1923) 33 M.L.T. 438 (P. C.).

#### Defects in.

Supplying of-Permissibility. See STATUTE-IN-TERPRETATION OF-INTENTION OF LEGISLATURE.

(1846) 4 M. I. A. 179 (187-8). - DISCRETION VESTED IN.

STATUTE-(Contd.)

#### Disabling Statute.

Void in-Voidable when means.

English lawyers are familiar with this principle of construction applied as early as the time of Lord Coke to the disabling Statute of 1st Eliz. c. XIX, s. 5, and in several modern reported cases between landlord and tenant, or clauses of forfeiture in leases. Words which make a Bishop's grant " utterly void and of none effect to all intents, constructions, and purposes," have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor; and so a proviso in a lease, that it should be void altogether in case the tenant should neglect to do a certain act, has been held only to make it voidable at the option of the landlord. These authorities illustrate a general principle of construction which for its justice, reasonableness, and convenience be considered of universal application.

S. 5 of Bengal Regulation XLIV of 1793 provides that when a Zemindary is sold at a public sale for discharge of arrears due from the proprietors to the Government, engagements which such proprietors shall have contracted with dependent Talookdars, whose Talooks may be situated in the lands sold, as also all leases to under-farmers and Pottahs to Ryots . . . shall stand cancelled from

the day of sale. . .

Held, on the principle of construction above stated, that the existing interests of the Talookdar did not, ipso facts, cease to exist from the date of sale, that the section did not authorize the purchaser to disturb the possession, and that it left him an option to confirm the existing rate of rent (145-6). (Lord Justice Turner.) RANEE SURNOMOYEE v. MAHARAJAH SUTTEESCHUNDER ROY BAHADOOR.

(1864) 10 M. I. A. 123-2 W. R. 13-2 Sar. 60= 1 Suth. 548.

Drafting of.

-Bad drafting-Instance of. See COMPANIES ACT OF (1919) 47 I. A. 33 (43-4)= 1882, S. 68, EXPL. 43 M. 550 (566)

-Defect in-Instance of. See C. P. C. OF 1908, S. 2 (1915) 42 I. A. 125 (131)= (11)-OBJECT OF. 38 M. 406 (413).

-Expressions different to convey same idea-Use of It is certainly to be wished, that in framing statutes, the same word should always be employed in the same sense and that the introduction of new terms, in dealing with the same matter, should be avoided (406). (Lord Brougham.) (1845) 3 M. I. A. 395= CASEMENT D. FOULTON. 5 Moo. P. C. 130=1 Sar. 293.

-See CONTRACT ACT, SS. 102, 103, 108, 178 (1916) 43 I. A. 164 (171-2)=40 B. 630 (638)

——Inartificial drafting—Instance of. See LIMITATION ACT OF 1859—DRAFTING OF. (1877) 4 I. A. 127 (185)= 3 C. 47 (57).

#### Discretion vested by.

-Exercise of-Mode of-Guide to-Mode pointed out by Statute. See C. P. C. OF 1908, S. 34-DISCRETION (1898) 25 I. A. 179 (182)= UNDER, JUDICIAL, ETC. 26 C. 39 (45).

-Interference in appeal with. See HUSBAND AND WIFE-SEPARATION ON GROUND OF, ETC.

(1922) 31 M. L. T. 302 (P. C.)

-Judicial not arbitrary. See DISCRETION-JUDICIAL (1898) 25 I. A. 179 (182)= NOT ARBITRARY. 26 C. 39 (45) and (1917) 44 L.A. 218 (225.6)=

Statutory body. See STATUTE—STATUTORY BODY

Dominion and Provincial Statutes dealing with different subject-matters but covering particular

Conflict between, as regards latter-Which prevails -Exception in section of Provincial Statute-Introduction of, by reason of such conflict-Propriety. See LEGISLATION -DOMINION AND PROVINCIAL LEGISLATION.

(1922) 33 M.L.T. 219 (224) (P.C.).

Duty imposed by-Refusal improper of. -Remedy by mandamus in case of. See C. P. C. OF 1908, O. 21, R. 92-REFUSAL TO CONFIRM SALE.

(1876) 3 I. A. 230 (238).

#### Earlier and later Statutes. EARLIER STATUTE.

Control of by later Statute-Title of later Statute purporting to give scope of earlier one-Later Statute not

expressly declaratory.

Where the question was as to the true intent of a particular regulation of the year 1787-whether it operated as a prohibition of a loan to a Zemindar without the consent of the Revenue Officers registered as therein mentioned or whether it amounted to nothing more than a restriction upon the jurisdiction of the court over transactions of that description, unless sanctioned and registered as above mentioned-and the title of a Regulation passed in 1793 was referred to which appeared to treat the restrictions containedin that of 1787 as amounting to prohibitions, held that unless that was the true construction of the Regulation of 1787 itself, that sense could not be imposed upon it by the language of a subsequent Regulation, not expressly declaratory; much less by the title of a Regulation only. (Mr. Justice Bosanquet.) GOPEE MOHUN THAKOOR P. RAJA RADHANAT. (1834) 5 W. R. 72=1 Suth. 8(11)=

Intention of -Later Statute if and when a guide to-The question was whether a person who had obtained an order for a certificate under S. 3 of Act XL of 1858 was a properly constituted guardian, though no formal certificate in pursuance of such order was ever issued to, or obtained by, him, in other words, whether the provisions of the section were sufficiently complied with when a person obtained an order that he should have his certificate.

The Court Fees Act, which was passed in 1870, contained a provision to the following effect: "Except in the Courts hereinbefore mentioned no document of any of the kinds specified as chargeable in the first or second Schedule in this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules.

The High Court considered that the certificate under S. 3 of Act XL of 1858 could not actually come into existence until the person who has the permission of the Court to obtain it, deposits the requisite amount of stamp duty." They therefore held that a person was not a duly constituted guardian under S. 3 of Act XL of 1858 until he obtained the certificate in manual of the order that he was certificate in pursuance of the order that he was entitled to one.

Held that, if the meaning of the Act in 1858 was that the octaining the certificate was complied with by obtaining the order, any subsequent provision in the Court Fees Act could not make any difference in the intention of the Legislature

(200.1)

The High Court gave as a reason that the Court Fees Act, which was passed twelve years after the Act of 1858, though that the obtaining the certificate is not complete the fee is paid, and the certificate is actually issued. The answer to this is that it must be seen what was the in-

#### STATUTE-(Contd.)

Earlier and later Statutes-(Cont.)

EARLIER STATUTE-(Contd.)

tention of the Legislature when the Act of 1858 was passed and when there was apparently no such provision as this in existence requiring the court-fee to be paid before the certificate was issued (200). (Sir Richard Couch.) MUNGNIRAM MARWARI P. MOHUNT GURSAHAI NUND.

(1889) 16 I.A. 195=17 C. 347 (357)=5 Sar. 463.

-Interpretation of-Later Act if and to robat extent a guide to.

It is not a conclusive argument as to the construction of an earlier Act to say that unless it be construed in a particular way a later enactment would be surplusage. The later Act may have been designed ex abundante cautela, to remove possible doubts (768), (Lord Chancellor.) SIR STUART SAMUEL, In the matter of.

(1913) 19 I.C. 765=17 C.W.N. 735.

-Law dealt with by-Codification of-Mode of. See STATUTE-CODE OR CODIFYING ACT-PRIOR STATUTE. (1891) 18 I.A. 121 (129) = 18 C. 620 (628.9).

-Right barred under-No revival by later statute of. See LIMITATION ACT-EARLIER ACT-RIGHT BARRED UNDER.

#### LATER STATUTE.

-Interpretation of -Repeal of earlier Statute-Interpretation resulting in-Propriety-Earlier Statute enacting special law-Later one enacting general law.

Difficulties have frequently been imposed on Courts of Justice in construing statutes, arising from the apparent conflict between special and general legislation; and the rule of construction that special legislation is not repealed by general enactments, unless a clear implication of that intention can be found, was adopted in early times to meet these difficulties, and has been acted on in numerous modern instances. "It is a fundamental rule, in the construction of statutes, that a subsequent statute in general terms is not to be construed to repeal a previous particular statute, unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication" (7). (Sir Montague E. Smith.) UNNODA PERSAUD MOOKERJEE P. KRISTO COOMAR MOITRO.

(1872) 19 W.B. 5=15 B.L.B. 60=2 Suth. 740.

It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one. This as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation . . . that earlier and special legislation is not to be held indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so (93.4). (Lord Phillimore.) NICOLLE v. (1922) 31 M.L.T. 90. NICOLLE.

-Positive enactment in-Qualification or neutralisation of, by reference to earlier statute.

A positive enactment in a statute of 1874 cannot be qualified or neutralised by indications of intention gathered from previous legislation upon the same subject. (Lord Watton.) ADMINISTRATOR-GENERAL OF BENGAL v. (1895) 22 I. A. 107 (116)= PREM LAL MULLICK. 22 C. 788 (797) = 6 Sar. 603.

#### Equitable construction.

 Addition to statute by—Power of, See FORFEITURE ACT IX OF 1859, S. 20, PROVISO.

(1874) 1 I.A. 167 (176).

Applicability of Act by-Permissibility. See LIMITA-TION ACT-APPLICABILITY OF-EQUITABLE CONSTRUC-(1873) 20 W.R. 375. TION.

-Permissibility-Exception in certain cases from provisions of Act-Implication by equitable construction of. See FORFEITURE ACT OF 1859, S. 20-PROVISO.

(1874) 1 I. A. 167 (176).

#### Estoppel against.

See STATUTE-PROVISIONS OF-VIOLATION OF-PLEA OF.

#### Exception.

-Express exception confined to one case-Applicability of, to other cases. See LIMITATION ACT OF 1859, S. 6-EXCEPTION CREATED BY.

(1871) 14 M.I.A. 144 (149-50).

-Proviso-Distinction. See STATUTE-PROVISO-EXCEPTION.

#### Extension of whole or part of-Power of Local Government as to.

-Exercise of-Mode of-Section modified by later section-Extension of former without extending latter so as to give former a different operation from that which it would have in the Act read as a whole-Legality of. See TRANSFER OF PROPERTY ACT, Ss. 1, 123, 129.

(1926) 54 I.A. 23 (27-8)=5 Rang. 7.

#### Facultative and permissive only.

-Statute which is. See OUDH ACTS-SETTLED ESTATES ACT, 1900-NATURE OF

(1929) 56 I.A. 156 (164) = 4 Luck. 122.

#### General and particular provisions of

-Avoidance of former by latter. See MORTGAGE-SUIT TO ENFORCE-DECREE IN-INTEREST ALLOWED BY-CONTRACT RATE-INTEREST AT-DATE TO WHICH MORTGAGEE IS ENTITLED TO.

(1926) 54 I.A. 1 (2-3)=54 C. 161.

-Express provisions exclusively applicable to one matter-General provisions applicable to different matter-Control of former by latter.

The question was whether the Supreme Court of Judicature at Bombay had power to admit persons as Attornies and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out by the Charter and Letters Patent of 1823 by which that Court was constituted, and its proceedings regulated. In support of the contention that the Court had such a power reference was made to a clause in the Charter, whereby a general power was given to make rules with regard to the general practice of that Court. That general power was, however, clearly applicable to another and a different matter.

Held, that that general power could not be considered as overriding the express directions given in the clause peculiarly and exclusively applicable to the appointment of Solicitors in that Court (440). (Dr. Lushington.) MORGAN v. LEECH. (1841) 2 M.I.A. 428=3 Moo. P.C. 368= 2 Suth. 428=1 Sar. 215.

#### General and Special Statutes.

Repeal of latter by former-Test-Two virtually contemporaneous,

Where the question was whether the special legislation contained in Bengal Act X of 1859 (S. 32) was repealed by the general legislation as to limitation contained in Act XIV of 1859 passed six days later, held, upon a comparison of the two statutes in question, with reference to their S. (5) of the Straits Settlements Evidence Ordinance III of

#### STATUTE-(Contd.)

#### General and Special Statutes-(Contd.)

objects, and considering that they were virtually contemporaneous Acts, that the intention to repeat the particular law was not made distinctly to appear, either by express words or necessary implication (7). (Sir Montague E. Smith.) UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOITRO.

(1872) 19 W. R. 5=15 B.L.R. 60=2 Suth. 740.

-Special statute earlier-General statute later-Interpretation of later one resulting in conclusion of repeal of earlier one-Propriety. See STATUTE-EARLIER AND LATER STATUTES-LATER STATUTE - INTERPRETA-(1872) 19 W. B. 5(7). TION OF.

-Subject-matter same-Statutes relating to-Repeal of latter by former-Test. See BENGAL ACTS-RENT ACT OF 1859, S. 32-RENT SUIT IN COLLECTOR'S (1872) 19 W. B. 5 (7). COURT, ETC.

#### Illustrations to.

-Part of Statute.

The illustrations to a Statute are to be taken as part of the Statute (617). (Lord Atkinson.) LALA BALLA MAL v. AHAD SHAH. (1918) 16 A.L.J. 905 = 124 P.R. 1918 = 23 C. W. N. 233 = 25 M.L.T. 55 = 180 P. W. R. 1918 = 29 C.L.J. 165=1 U. P. L. R. (P.C.) 25=48 I.C. 1=

21 Bom. L.R. 558 = 35 M.L.J. 614.

-Usefulness of - Rejection of, when permissible.

In the construction of the Straits Settlements Evidence Ordinance III of 1893 it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired (263). (Lord Shaue.) MAHOMED SYEDOL ARIFFIN v. YEOH OOL GARK. (1916) 43 I. A. 256 = 21 C. W. N. 257 = (1917) M. W. N. 162-39 I. C. 401-19 Bom. L. R. 157.

#### Imperial and Provincial Statutes dealing with different subject-matters, but covering particular cases.

-Conflict between, as regards latter-Which prevails -Exception in section of Provincial Statute-Introduction of, by reason of such conflict-Propriety. See LEGISLATION -DOMINION AND PROVINCIAL LEGISLATION.

(1922) 33 M. L. T. 219 (224) (P.C.).

Indian Statute-Interpretation of

-English law on which statute founded-Reference to -Permissibility. See STATUTE. (1) INDIAN STATUTE-INTERPRETATION OF-LANGUAGE OF STATUTE POS-(1927) 55 I. A. 18 TIVE.

LAW-REFERENCE (2) INTERPRETATION OF-PRIOR (1927) 55 I. A. 96. TO-PERMISSIBILITY-RULE.

English law principles—Inapplicability of, in case of positive language of Indian statute. See TRANSFER OF PROPERTY ACT, S. 130-CONSTRUCTION OF.

(1912) 40 I.A. 24=37 B. 198.

-English lines-Interpretation on-Permissibility Colonial Statute-Rule in case of.

On a question arising as to the construction of S. 32, sub-

Indian statute-Interpretation of-(Confd.)

1893 one of the learned Judges of the Court below observed: "I think that it is safer to construe S. 32 (5) and the illus trations on English lines than to extend the English law of evidence in reliance upon the language of S. 32 (5), and the illustrations which it appears to me are construable as enacting in changed phraseology the principles of English adjective law."

Held, that such a method of construction was neither safe nor warranted, and that the correct view was "that the rule and principle of the Colony must be accepted as it is found in its own Evidence Ordinance, and that the acceptance of a rule or principle adopted in or derived from English law is not permissible if thereby the true and actual meaning of the statute under construction he varied, or denied effect " (262). (Lord Shaw.) MAHOMED SYEDOL ARIFFIN P. YEOH OOI GARK.

(1916) 43 I. A. 256 = 21 C. W. N. 257 = (1917) M. W. N. 162=19 Bom. L. R. 157= 39 I.C. 401.

-Facts of Indian life-Reference to-Necessity. See INSOLVENCY ACT-INTERPRETATION OF.

(1895) 22 I. A. 162 (170) = 23 C. 26 (36).

-Indian Courts-Practice of-Established course of -Privy Council's interference with.

The Privy Council would be unwilling to interfere with an established course of practice of the Courts in India (in this case as regards the construction of S. 240 of C. P. C. of 1859) unless they came to a very clear opinion that it was wrong (560-1). (Sir Robert P. Collier.) ANUND LALL DOSS v. JULLODHUR SHAW.

(1872) 14 M. I. A. 543=17 W. R. 313= 10 B. L. R. 134 = 2 Suth. 559 = 3 Sar. 81.

Where the question was whether a second appeal lay to the High Court in cases arising under the Madras Rent Recovery Act and the Privy Council found that the practice was, ever since the passing of the Act, for such appeals to be preferred to the High Court, held that their Lordships would not be disposed to interfere with such a long-standing practice, even if they thought there was an implied rule against second appeals lying in such cases (264-5). (Mr. Ameer Ali.) RAVI VEERARAGHAVULU P. HOMMA DEVARA VENKATA NARASIMHA.

(1914) 41 I. A. 258 = 37 M. 443 (453) = (1914) M.W.N. 695 = 16 M. L. T. 262 = 20 C. L. J. 375 = 16 Bom. L. R. 853 = 19 C. W. N. 97 = 25 I. C. 305 = 1 L. W. 779 = 27 M. L. J. 451.

-Language of statute positive-Interpretation in case of Previous state of law English law upon which Statute

founded - Reference to-Permissibility.

It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the Proper course is to examine the language of the statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law-or of the English law upon which it may be founded. These observations apply with peculiar force to testamentary cases which are governed by the Indian Succession Act of 1865 or the Probate and Administration Act of 1881. (Lord Sinka.) MT. RAMANANDI KOER » MT. KALAWATE KOER.

(1927) 55 I. A. 18= 50. W. N. 96=I. L. T. 40 P. 19=47 C. L. J. 171= 107 I. O. 14=9 Pat. L. T. 97=32 C. W. N. 402= 30 Bom. L. B. 227=(1928) M. W. N. 282= 28 A.L.J. 385=7 Pat. 221=27 L. W. 782= A. I. B. 1928 P.C. 2 = 54 M.L.J. 281 (285).

Uniformity in Indian Courts as to-Necessity. We must come to the absurd conclusion that the same ords of the Statute (S. 15 of C. P. C. of 1859) are to be repreted by the High Court in one sense when it is

STATUTE-(Centd.)

Indian statute-Interpretation of-(Contd.)

exercising its original jurisdiction or sitting on an appeal from a decree made under that jurisdiction, and in a different sense when it is sitting on an appeal from a mofussil Court; and further that the Legislature has by the same form of words intended to make one law for the mofussil Courts and another for those of the Presidency towns (187). (Sir James W. Celvile.) KATHAMA NATCHIAR v. DORA-SINGA TEVAR. (1875) 2 L.A. 169=15 B. L. B. 83= 23 W. R. 314=3 Sar. 456=3 Suth. 106.

An enactment which is intended to apply to all the Courts in India and which is also a modern enactment ought to receive the same construction in all those Courts, and no inconsistent course of practice should be allowed to spring up in any of the Presidencies (181).

This observation was made with reference to the construction of S. 15 of C. P. C. of 1859. (Sir James W. Colvile.)

KATHAMA NATCHIAR D. DORASINGA TEVAR.

(1875) 2 I. A. 169-15 B. L. R. 83-3 Sar. 456= 23 W. R. 314 = 3 Suth. 106.

-See LIMITATION ACT-INTERPRETATION OF-(1907) 34 I. A. 186 (192) = UNIFORMITY OF, ETC. 30 M. 426 (432).

Interpretation of.

AFFIRMATIVE DIRECTION-NEGATIVE DECLARATION.

-I guering of latter-Permissibility.

If the proposition contended for by the Supreme Court at Bombay could be maintained, the consequence would be, that the negative part of the clause (which directs affirmatively what shall be done, and declares negatively what shall not be done) would be wholly inoperative. It is clearly impracticable to adopt a construction so wholly repugnant to the first principle of interpretation, and so repugnant to the plain meaning of the words (439). (Dr. Lushington.) MORGAN v. LEECH.

(1841) 2 M. I.A. 428 = 3 Moo. P. C. 368 = 2 Suth. 428 = 1 Sar. 215.

AFFIRMATIVE ORDER-POWER TO MAKE, CONFERRED-NEGATIVE ORDER.

-Power to make, if implied. See REGISTRATION (1876) 3 I. A. 221 (225-6)= ACT OF 1871, S. 76. 2 C. 131 (137).

AFFIRMATIVE PROPOSITION—EXTRACTING OF, FROM SECTION EXPRESSED IN A NEGATIVE FORM. -Propriety. (Viscount Dunedin.) JWALADUTT R.

PILLANI 2. RAJA BAHADUR BANSILAL MOTILAL

(1929) 56 I. A. 174 = 53 B. 414 = 27 A. L. J. 579 = 49 C. L. J. 485=31 Bom. L. B. 687=115 I. C. 707= 29 L. W. 884 = (1929) M. W. N. 440 = A. I. B. 1929 P. C. 132 = 56 M. L. J. 739 (749).

AFFIRMATIVE WORDS WITHOUT ANY NEGATIVE EXPRESS OR IMPLIED.

-Right existing at date of suit-Effect on. See STATUTE-RIGHT EXISTING AT DATE OF. (1874) 1 I. A. 282 (306).

ANALOGY-REASONS FOUNDED ON. -Positive enactments of Statute-Inapplicability to.

Arguments from analogy may arise where a principle of law is involveds, but where the Courts are dealing with the positive enactments of a Statute, reasons founded on analogies are scarcely applicable (353). RAM CHUNDER DUTT e. JUGHESH CHUNDER DUTT. (1873) 19 W. B. 353= 12 B. L. B. 229=2 Suth. 836=3 Sar. 249.

BUSINESS VIEWS-CONSIDERATIONS FOUNDED ON. -Inapplicability of, where language unambiguous,

Considerations founded on views as to business which are obviously of the greatest practical importance would be rather arguments for the invocation of the Legislature than an incentive to the putting of a forced construction on sections of an Act which in themselves were capable of only

Interpretation of-(Centd.)

BUSINESS VIEWS-CONSIDERATIONS FOUNDED ON -(Contd.)

one interpretation. (Lord Dunctin.) IMPERIAL BANK OF INDIA 7. U RAI GYAW THU & CO.

(1923) 50 I. A. 283 (293) = 51 C. 86 = 1 R. 637 = 21 A.L. J. 784 = 25 Bom. L. R 1279 = 9 O. & A.L.R. 937 - 33 M.L.T. 395 = 2 Bur. L. J. 254 = (1923) M.W.N. 609 = A. I. R. 1923 P. C. 211 =

28 C. W. N. 470 = 39 C. L. J. 186 = 76 I.C. 910 = 45 M. L. J. 505.

CLAUSE IN.

-Meaning of. See STATUTE-INTERPRETATION OF -PART, CLAUSE OR SECTION, ETC.

CONFISCATION OR DESTRUCTION OF PRIVATE PERSON'S PROPERTY.

-Construction resulting in-Propriety.

If a Regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. (Lord Justice James.) LOPEZ v. MUDDUN MOHUN THAKOOR.

(1870) 13 M. I. A. 467 (475) - 14 W. R. P.C. 11 = 5 B. L. R. 521 = 2 Suth. 336 - 2 Sar. 594.

 The rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. (Lord Warrington of Clyffe.) INGLEWOOD PULP AND PAPER COMPANY LTD. P. NEW BRUNSWICK ELECTRIC POWER COMMISSION.

(1928) 28 L. W. 753=111 I. C. 261= A. I. R. 1928 P. C. 287.

If the view of the section (S. 12 of Madras Estates Land Act) taken by the High Court were correct its effect in the present case must be altogether to deprive the landholder, without any kind of compensation provided, of property of great value, and its effect would be similar in many other cases. A construction of the section leading to such a result is not lightly to be entertained. (Lord BOMMADEVARA NAGANNA NAIDU 25. Blanesburgh.) (1929) 56 I. A. 346=52 M. 797= PITCHAYYA.

30 L W. 435 = (1929) M. W. N. 657 = 119 I. C. 636 = 50 C.L.J. 493 = A.I.R. 1929 P.C. 249 = 33 C.W.N. 1097 = 57 M. L. J. 654.

CONFISCATORY STATUTE.

-See STATUTE-PENAL STATUTE. CONSEQUENCES OF PARTICULAR INTERPRETATION.

-Consideration of-Propriety. See STATUTE-AP-PLICABILITY OR APPLICATION OF-HARDSHIP AND STATUTE-INTERPRETATION OF-RESULT OF.

CONVENIENCE—CONSIDERATIONS OF.

Propriety. See STATUTE - APPLICABILITY OR APPLICATION OF-HARDSHIP.

DECLARATION OF TRUE.

-Suit for, and to have act done in contravention of Statute pronounced void-Maintainability. See Specific RELIEF ACT, S. 42-CASES UNDER-STATUTE.

(1898) 26 I. A. 16 (28) = 22 M. 270 (282). DOING OF A THING-DIRECTION AS TO-

NOT DOING OF A THING.

-Declaration as to-Statutes containing-Distinction. There is no room for argument, that the Charter is merely directory of what shall be done, and therefore open to the possible construction, that what was permitted before was still allowed; for it is not merely directory of what shall be done, but it is expressly declaratory of what shall not be done (439.40). (Dr. Lushington.) MORGAN v. (1841) 2 M. I. A. 428=3 Moo. P. C. 368=

STATUTE-(Cont.i.)

Interpretation of-(Contd.)

EJUSDEM GENERIS RULE.

-Applicability of. See C. P. C. OF 1908, O. 47, R. 1 -OTHER SUFFICIENT CAUSE,

-See PENSIONS ACT OF 1871, SS. 4 AND 3.

(1881) 8 I. A. 77 (86-7)=5 B. 408 (421-2). See BENGAL REGULATIONS-LIMITATION REGU-

LATION II OF 1805, S. 2 (2)-WORDS. (1860) 8 M.I.A. 225 (237).

EQUITABLE CONSTRUCTION.

See STATUTE—EQUITABLE CONSTRUCTION. ERRONEOUS INTERPRETATION TO GET OVER DEFECT IN ADMINISTRATION OF JUSTICE.

Permissibility.

In other cases, the Judges who claimed a wider discretion as to making declaratory decrees, have assigned as a reason for its exercise that there does not exist in India the power of entertaining a suit to perpetuate testimony. The proper remedy for such a defect in the administration of justice, if it exists, is an Act of the Legislature. It cannot be supplied by putting an erroneous construction, or a different construction from that which prevails in other parts of India, upon a statute which has no reference to the subject (188). (Sir James W. Colvile.) KATHAMA NATCHIAR D. (1875) 2 LA. 169= DORASINGA TEVAR.

15 B. L. R. 83 = 23 W. R. 314 = 3 Sar. 456= 3 Suth. 106.

IMPLIED LIMITATION—READING OF SECTION WITH.

-Permissibility. See C. P. C. OF 1882, S. 325-A. (1918) 45 I. A. 219 = 46 C. 183.

INTENTION OF LEGISLATURE.

-Actual cuactment-Court's duty to regard latter ouly.

Construing a statute the question to be considered is not what may be supposed to have been intended, but what has been said. (Lord Chanceller.) HENRIETTA MUIR EDWARDS 1. ATTORNEY-GENERAL OF CANADA.

(1929) 31 L. W. 601 = A. I. B. 1930 P. C. 120 = 58 M. L. J. 300.

The explicit words of a statute must rule whatever may be the general considerations as to what the Legislature was minded or was likely to do. (Viscount Dunedin.) COMMISSIONER OF INCOME TAX, BOMBAY PRESIDENCY 2. BOMBAY TRUST CORPORATION, LTD.

(1929) 57 I.A. 49 = 54 B. 216 = 1930 A.L.J. 73= 34 C.W.N. 230 = 32 Bom. L. R. 361 = 121 I.C. 532= 31 L.W. 582 = (1930) M.W.N. 564 = A.I.B. 1930 P.C. 54 = 58 M.L.J. 197.

-Expressed intention - Regard for-Necessity

Copious construction-Impropriety of.

Every statute is to be construed, not captiously, but with a view to the expressed intention of the Legislature (278.9). (Sir John Coleridge.) JUGGOMOHUN GHOSE s. (1859) 7 M.I. A. 263= MANICK CHUND.

4 W.R. P. C. 8=1 Suth. 357=1 Sar. 681. -Speculations as to-Defects-Supplying of-Permissibility-Words used-Plain meaning of-Court's duty

to give effect to.

The construction of an Act must be taken from the burt words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the statute; we can not add, and mend, and, by construction, make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly; much more, if the Legislature intended something very different; if the Leg lature intended something pretty nearly the opposite of what is said, it is not for Judges to invent something which the 2 Suth. 428=1 Sar. 215. do not meet within the words of the text (aiding their

Interpretation of-(Contd.)

INTENTION OF LEGISLATURE-(Contd.)

construction of the text always, of course, by the context); it is not for them so to supply a meaning, for, in reality, it would be supplying it; the true way in these cases is, to take the words as the Legislature has given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; and, therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning, and sapply the defect in the previous Act (187-8). (Lord Brougham.) CRAWFORD 2. SPOONER.

(1846) 4 M. I. A. 179=6 Moo. P. C. 1=1 Sat. 333. JUDICIAL INTERPRETATION LONG ACCEPTED—

DISTURBANCE OF.

(See also STATUTE -INDIAN STATUTE-INTER-PRETATION OF-INDIAN COURTS).

-Ambiguity in Statute - Statute unambigueus --Cases of -- Distinction.

When the terms of a statute or ordinance are clear, even a long and uniform course of judicial interpretation of it may be overruled if it is contrary to the meaning of the enactment. But where the terms are ambiguous and a certain interpretation has for a long time been put upon them, the Judicial Committee will not disturb the decisions which have so interpreted the statute. (Lord Summer.) TRICOMDAS COOVERJI BHOJA v. GOPINATH JIU THAKUR. (1916) 44 I. A. 65-44 C. 759 (768) =

1 Pat. L. W. 262 = 19 Bom. L. B. 450 = 21 M. L. T. 262 = (1917) M. W. N. 363 = 5 L. W. 654 = 21 C. W. N. 577 = 25 C. L. J. 279 = 15 A. L. J. 217 = 39 I. C. 156 = 32 M. L. J. 357.

JURISDICTION.

Sa STATUTE—JURISDICTION.

LANGUAGE OF STATUTE.

Plain meaning of—Adoption of—Necessity. See LIMITATION ACT—INTERPRETATION OF—LANGUAGE OF STATUTE. (1873) 20 W. B. 375 and

(1900) 36 I. A. 148 (166) = 36 C. 1003 (1014).

Straining of, to avoid inconsistency resulting from partial dealing with subject by Legislature—Propriety. See STATUTE—PROVISION OF—STRAINING OF, ETC.

(1872) 14 M. I. A. 496 (524).

LAW AS UNDERSTOOD AT THE TIME-LEGISLATURE'S

KNOWLEDGE OF.

Presumption of, from its omission to enact differ-

In holding that registration of a deed is not, under the Indian Registration Act, and the Transfer of Property Act, in itself notice, their Lordships are impressed with the view that tince registration has for nearly two centuries been held not to operate as constructive notice in this country (England), and the knowledge of this law, which was then old, must have been present to the Indian Legislature when they framed the different Indian Registration Acts and the cenalition of notice' in the Transfer of Property Act; yet none the less they have omitted to state the principle that registration is by itself notice (253). (Lord Buckmanter). The Access the principle state of the principle state of the principle state.

(1920) 47 L. A., 239 = 48 C. 1 (19) = 25 C. W. N. 49 = 32 C. L. J. 479 = 13 L. W. 161 = 28 M. L. T. 224 = 18 A. L. J. 1074 = 2 P. L. T. 101 = 29 M. L. J. 243.

22 Bom. L. B. 1319 = 57 I. C. 465 = 39 M. L. J. 243.

LAW ON WHICH STATUTE BASED.

If an explanation to a section has a particular effect it be carried out, and the fact that the enactment was

STATUTE-(Contd.)

Interpretation of -. Could.)

LAW ON WHICH STATUTE BASED-(Contd.)

passed in consequence of what the subsequent decision of the House of Lords showed to be a misconception of the English Law would be quite irrelevant (42). (Viscount Finlar) KRISHNA AVYANGAR & NALLAPERUMAL PILLAL (1919) 47 I. A. 33 = 43 M. 550 (564) = 18 A. L. J. 489 = 22 Bom. L. R. 568 = 28 M. L. T. 28 = (1920) M. W. N. 419 = 12 L. W. 92 = 56 I. C. 163 = 38 M. L. J. 444.

LEGISLATIVE COUNCIL-PROCEEDINGS IN.

Reference to—Propriety.

In a case in which the High Court referred to the proceedings of the Legislature which resulted in the passing of the Act II of 1874 as legitimate aids to the construction of S. 31 of that Act, their Lordships expressed their dissent from that proposition, observing: "The same reasons which exclude these considerations when the clauses of an Act of the British legislature are under construction are equally cogent in the case of an Indian Statute." (Lord Watton.) ADMINISTRATOR-GENERAL OF BENGAL v. PREM LAL MULLICK. (1895) 22 I. A. 107 (118) = 22 C. 788 (799 800) = 6 Sar. 603.

In ascertaining the meaning of an explanation to a section, no statement made on the introduction of the measure or its discussion can be looked at as affording any guidance as to the meaning of the words. (Viscount Finlay.) KRISHNA AYVANGAR P. NALLAPERUMAL PILLAL

(1919) 47 I. A. 33 (42) = 43 M. 550 (564-5) = 18 A. L. J. 489 = 22 Bom. L. R. 568 = 28 M. L. T. 28 = (1920) M. W. N. 419 = 12 L. W. 92 = 56 I. C. 163 = 38 M. L. J. 444.

MARGINAL NOTES.

--- Reference to-Permissibility.

Marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. There seems to be no reason for giving the marginal notes in an Indian Statute any greater authority than the marginal notes in an English Act of Parliament. (Lord Macmaghton.) THAKURAIN BALRAJ KUNWAR D. RAE JAGATPAL SINGH. (1904) 31 I. A. 132 (1423) = 26 A. 393 (406) = 8 C. W. N. 699 = 11 Bom. L. B. 516 =

1 A. L. J. 384 = 31. C. 359 = 7 O. C. 248 = 8 Sat. 639. NOVEL PRINCIPLE OF RESPONSIBILITY OF INDEFINITE SCOPE.

Intention to establish, in respect of special class of acts and emissions—Interpretation attributing—Propriety.

Their Lordships think that an intention to establish a novel principle of responsibility of such indefinite scope in relation to a special class of acts and omissions ought not to be inferred from general words which are not apt for the purpose, and to which full effect can be given by a construction in harmony with the policy of the law in granting redress in other cases of injuria cum damno (221). (Mr. Justice Duff.) AMELIA MCCOLL 2. CANADIAN PACIFIC RY. CO. (1922) 33 M.L.T. 219 (P. C.). OBJECT AND PURPOSE OF LEGISLATURE IN PASSING.

—Statute—History—Reference to—Permissibility of

The argument that "The subject-matter with which the Legislature was dealing, and the facts existing at the time with respect to which the Legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act must not be pushed too far, for, "although it may, perhaps, be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefore are exceedingly slight." (Lord Chancellor.)

Interpretation of-(Cental.)

HENRIETTA MUIR EDWARDS 7. ATTORNEY-GENERAL (1929) 31 L. W. 601= OF CANADA.

A. I. R. 1930 P. C. 120 = 58 M. L. J. 300.

OFFICIALS-PROTECTION OF-ACT INTENDED FOR. -Words-"In respect of"-"Fer anything done or in-

tended to be done"-Distinction.

In the case of statutes intended for the protection of officials in the discharge of their duties, the words "in respect of" are wider than "for anything done or intended to be done" (356.7). (Viscount Sumner.) BHAGCHAND DAGADUSA v. SECRETARY OF STATE FOR INDIA.

(1927) 54 I. A. 338 = 51 B. 725 = 32 C. W. N. 61 = 26 L. W. 809-104 I. C. 25-25 A. L. J. 641-29 Bom. L. R. 1227 = (1927) M. W. N. 561 = 46 C. L. J. 76 = 1 Luck. C. 291 = A. I R. 1927 P. C. 176 = 53 M. L. J. 81.

PART, CLAUSE, OR SECTION OF STATUTE-MEANING OF. -All parts of statute-Construction giving effect to-Necessity.

One of the first rules of construction is, that effect shall if possible be given to every part of the instrument (439). (Dr. Lushington.) MORGAN :. LEECH.

(1841) 2 M. I. A. 428 = 3 Moo. P. C. 368 = 2 Suth. 428 = 1 Sar. 215.

-The provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. (Sir Lawrence Jenkini.) MOHAMMAD SHER KHAN P. SETH SWAMI DA-(1921) 49 I. A. 60 (65) = 44 A. 185 (189) YAL.

30 M. L. T. 220 = 9 O. L. J. 81 = 25 O. C. 8 = 35 C. L. J. 468 = 20 A. L. J. 476 = 24 Bom. L.B. 695 = (1922) M. W. N. 378 = A. I. R. 1922 P. C. 17 =

4 U. P. L. R. 50 = 66 I. C. 853 = 42 M. L. J. 584. Other parts of statute-Reference to-Necessity.

To ascertain the meaning of a clause in a statute, the Court must look at the whole statute, at what precedes and at what succeeds, and not merely at the clause itself (483). (Dr. Lushington.) QUEEN r. EDULJEE BYRAMJEE.

(1846) 3 M. I. A. 468=5 Moo. P. C. 276=1 Sar. 305. -Plain provisions of ont part-Qualification or neutralisation of by other precisions.

It is conceivable that the Legislature, whilst enacting one clause in plain terms, might introduce into the same statute other enactments which to some extent qualify or neutralise its effect (115-6). (Lord Watson.) ADMINISTRATOR-GENEAL OF BENGAL P. PREM LAL MULLICK

(1895) 22 I. A. 107 = 22 C. 788 (797) = 6 Sar. 603. PARTIAL DEALING WITH SUBJECT-INCONSISTENCY

RESULTING FROM.

-Straining of statute to avoid. Sec-STATUTE PROVISION-STRAINING OF, ETC.

(1872) 14 M. I. A. 496 (524). PENAL STATUTE.

-Interpretation of. See STATUTE-PENAL STATUTE. PENDING SUIT-PROCEDURE OF-SAVING OF.

-Compulsory reference to arbitration-Right of, if within saving clause. See STATUTE-SUIT PENDING AT DATE OF-PROCEDURE OF

(1865) 10 M. I. A. 413 (424-5).

PEOPLE INTENDED TO BE GOVERNED-FACTS OF LIFE OF.

Reference to-Necessity. See INSOLVENCY ACT-INTERPRETATION OF. (1895) 22 I. A. 162 (170)= 23 C. 26 (36).

POLICY OF ACT.

- Consideration of-When necessary. See BOMBAY ACTS-AHMEDABAD TALUKDARI ACT VI OF 1862-CONSTRUCTION OF. (1887) 14 I. A. 89 (98)= STATUTE-(Contd.)

Interpretation of-(Contd.)

POLICY OF ACT-(Contd.)

Consideration of - Propriety. See COURT - POLICY. (1926) 30 C. W. N. 961.

Court's concern with.

With the policy of an Act which a court is called upon to enforce it has no concern (200). (Sir Robert Collier.) RAMJISDAS v. RAJAH BHAGWAN BAX.

(1878) 5 I.A. 196 = 3 Sar. 843 = B. & J.'s No. 51 = 3 Suth. 562

-Great and sudden change of-Construction attributing-Propriety.

The narrower construction escapes the necessity of attributing to the Legislature a great and sudden change of policy. (Sir Arthur Wilson.) VASUDEVA MUDALIAR v. SRINIVASA PILLAI. (1907) 34 I. A. 186 (193)=

30 M. 426 (433)=2 M. L. T. 333=6 C. L. J. 255= 11 C. W. N. 1005=9 Bom. L. R. 1104=

4 A. L. J. 625 = 17 M. L. J. 444. -Intent of Act-Language used in other parts of same section and in other parts of statute—Reference to—Per-missibility. See BENGAL REGULATIONS— GRANT OF LEASES REGULATION XLIV OF 1793, S. 5-CONSTRUC-TION. (1864) 10 M. I. A. 123 (144-5).

PRIOR LAW.

-Alteration by codifying statute of-Intention as to-Mode of ascertaining. See STATUTE-CODE OR CODIFY-ING ACT-PRIOR LAW.

(1896) 23 I. A. 18 (26) = 23 C. 563 (671·2). -Alteration or enactment of-Intention as to-Assumption of-Propriety. See PENAL CODE-INTERPRE-TATION OF. (1924) 52 I. A. 40 (55) = 52 C. 197. -Consideration of -Necessity. See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-INTERPRETA-

(1889) 17 I. A. 40 (47) = 17 C. 590 (599). - Exidence offorded by statute as to-Assumption made by statute as to it shown to be wrong-Effect.

Some reliance was placed on the Statutes 28 and 29 Vict. c. 86, S. 1, which enacts, that the advance of money to a firm upon a contract that the lender shall receive a rate of interest varying with the profits, or a share of the profits, shall not, of itself, constitute the lender a partner, or render him responsible as such. It was argued, that this raised an implication that the lender was so responsible by the law existing before the passing of the Act. The enactment is no doubt entitled to great weight as evidence of the law. but it is by no means conclusive; and when the existing law is shewn to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence (104-5). (Sir Montague E. Smith.) MOLLWO, MARCH & CO. v. THE (1872) Sup. I. A. 86= COURT OF WARDS.

10 B. L. R. 312=18 W. R. 384=3 Sar. 168= 9 Moo. P.C. (N. S.) 214 = 2 Suth. 715.

-Legislature's knowledge of-Presumption of, from its omission to enact differently-Propriety. Sa STATUTE -INTERPRETATION OF-J AW AS UNDERSTOOD AT THE (1920) 47 I. A. 239 (253) = 48 C. 1 (19) TIME.

Reference to-Permissibility. It is in the spirit mainly of these portions of the important documents to which reference has just been made, that we have deemed it right to construe the letter of the Regu lation I of 1821 (130). (Vice Chancellor Knight Bruct.) MAHARAJAH ISHUREE PERSAD NARAIN SINGHE, LALL (1842) 3 M. I. A. 100= CHUTTERPUT SINGH.

6 W. B. P.C. 27=1 Suth. 129=1 Sar. 245. - Reference to- Pormissibility-Rule-Exception in case in which excedment is elleged to lete wede subset 11 B. 551 (562-3). | tial changes in prior law,

Interpretation-(Contd )

PRIOR LAW-(Contd.)

It is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the Legislature intended by any particular amendment to make substantial changes in the pre-existing law; it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the Statute can be taken to effect the change that is suggested as intended. (Lord Sinha.) ABDUR RAHIM : SAVED AHOMED BARKAT ALI SHAH. (1927) 55I.A. 96=

55 C. 519 = I. L. T. 40 C. 19 = 9 Pat. L. T. 65 = A.L. W. 339 = 32 C.W N. 482 = 26 A.L.J. 464 = 108 LC. 361 = 30 Bom. L. R. 744 - 48 C.L.J. 55 = (1928) M.W.N. 926 = A.I.R. 1928 P.C. 16 = 54 M.L.J. 609.

PROHIBITORY ENACTMENTS-IMPORTATION BY INFERENCE OF.

Propriety-Inquiry into truth excluded by such importation.

It would be especially unsafe so to construe an Act as by inference to import into it prohibitory enactments, which would exclude an inquiry into the truth in any suit between the parties; when the express enactment is narrowed and confined to a specific direction as to what shall be done in a particular suit, which is described and defined in precise terms (523). (Sir Montague E. Smith.) MUSSUMAT BU-HUNS KOWAR v. LALLA BUHOOREE LALL.

(1872) 14 M I. A. 496=18 W. R. 157= 10 B. L. R. 159 = 2 Suth. 575 = 3 Sar. 69. PUNCTUATION.

Comma-Alterotion of law by-Improbability of. It is antecedently very improbable that it was meant really to after the law by the displacement of a comma-(Vincount Dunedin.) POPE ALLIANCE CORPORATION F. SPANISH RIVER PULP AND PAPER MILLS, LTD.

(1928) 116 I. C. 593 = (1929) A. C. 269 = A. I. B. 1929 P. C. 38.

-Commas-Court if can take netice of. In construing a statute a Court of Law is bound to read it without the commas inserted in the print. (Lord Warrington). LEWIS PUGH D. ASHUTOSH SEN.

(1928) 56 I.A. 93 (100-1) = 8 P. 516 = 33 C.W.N. 323 = 6 O.W.N. 151 = 27 A.L.J. 170 = 10 P.L.T. 155 = 29 L.W. 449 = 114 I.C. 604 = 49 C.L.J. 415 = 31 Bom. L. R. 702 = A.I.R. 1929 P.C 69 =

56 M.L.J. 517.

Guide to interpretation if a.

It is an error to rely on punctuation in construing Acts of the Legislature (35.6) (Lerd Hobbouse). MAHARANI OF BURDWAN D. MURTUNJOY SINGH.

(1887) 14 I. A. 30 = 14 C. 365 (372) = 4 Ear. 772. PURPOSE OF STATUTE—THEORY AS TO.

-Entertainability of.

The construction of an explanation to a section must depend upon its terms, and no theory of its purpose can be thertained unless it is to be inferred from the language and, (Viscount Finlay.) KRISHNA AYYANGAR P. NAL-LAPERUMAL PILLAI. (1919) 47 I.A. 33 (42)= 43 M. 550 (564) = 18 A.L.J. 489 = 22 Bcm. L. B. 568 = 28 M L.T. 28 = (1970) M.W.N. 419 = 12 L.W. 92 = 56 I C. 163 = 38 M.L.J. 444.

REASONS FOR ENACTMENT-SPECULATION AS TO. -Permissibility.

ich met necessary to speculate upon the reasons III OF 1920-OPERATION OF. which may have induced the Legislature to pass them

STATUTE-(Contd.)

Interpretation-(Contd.)

REASONS FOR ENACTMENT-SPECULATION AS TO-(Contd.)

(104). (Sir James W. Colvile). BUNWAREE LALL SAHOO r. MOHABEER PROSHAD SINGH.

(1873) 1 I.A. 89 = 12 B. L. R. 297 = 3 Sar. 338. REMEDY TO AGGRIEVED PARTY-EXISTENCE OR OTHERWISE OF.

Consideration of - Propriety See STATUTE-(1849 50) 4 M.I.A. 353 (378). JURISDICTION-SUIT. RESTRICTIONS NOT CONTEMPLATED BY LEGISLATURE.

-Invention by Court of-Permissibility.

It is not competent to a Court of Law to invent a restriction not contemplated by the Legislature (77). (Lord Hobboure.) RAO BALWANT SINGH P. RANI KISHORI. (1898) 25 I. A. 54 = 20 A. 267 (294) = 2 C. W. N. 273 = 7 Sar. 279

RESULTS OF.

-Regard for-Necessty.

When the construction of a statute is in question the result of construction must be looked at. (Viscount Dunedin), EUGENE BETHUIAME :. DAME ANNE-MARIE YVONNE (1929) 31 L.W. 106 = 122 I.C. 312 = DASTOUS.

A.I.R. 1930 P.C. 31.

SECTION OF.

-Meaning of. See STATUTE-INTERPRETATION OF-PART, CLAUSE, OR SECTION, ETC.

SELECT COMMITTEE-DECISION OF.

-Authority of.

The decision of the Select Committee-eminent though the members are-does not possess the same authority on the interpretation of a statute as that as a Court of Law (767). (per Lord Lordurn). SIR STUART SAMUEL, In the matter of. (1913) 19 I. C. 765 = 17 C. W. N. 735.

STARE DECISIS.

-Principle of-Applicability. See LIMITATION ACT -INTERPRETATION OF-STARE DECISIS.

(1907) 34 I.A. 186(192) = 30 M. 426 (432). STATE OF THINGS FXISTING AT TIME, OR SHORTLY

BEFORE PASSING, OF STATUTE.

-Reference to-Perminibility. In construing these words of the Regulation, we must have some reference to the state of things at the time, or shortly before the time, when the Regulation passed. (Mr. Justice Besauguet). LALL DOKUL SINGH r. LALL ROODER PURTAB SINGH.

(1835) 5 W. B. 95 = 1 Suth. 20 (21) = 1 Sar. 879. Jurisdiction.

-Conditions imposed for exercise of-Compliance with-Necessity-Waiver of, by consent of parties-Permissibility-Effect. See JURISDICTION-EXERCISE OF-CONDITIONS IMPOSED BY STATUTE FOR. (1855) 6 M.I.A. 134 (155, 161).

-Suit-Court's jurisdiction to entertain-Question as to-Remedy to plaintiff- Existence or otherwise of-Con-

sideration of-Propriety.

Whether the plaintiff might have redress before any other tribunal, can only be material in a doubtful construction of the Statutes and Charters establishing the Court in which the action was brought. If, by the Statutes and Charters, its jurisdiction in this action is clearly taken away, our decision could not be influenced by the consideration, that the plaintiff is left without remedy (378). (Lord Camp. fell). Spooner r. Juddow. (1849 50) 4 M.I.A. 353 = Perry. O.C. 392 = 6 Moo. P.C. 257 = 1 Sar. 363.

Taking away by Amending Act of, after commence-The words of the Act (Bengal Act XI of 1859) being ment of proceeding—Effect, See CALCUTTA RENT ACT

(1927) 54 I.A. 152 (156) = 54 C 508.

STATUTE-( and.)

### Land acquired for public purposes under.

ondy affected-Owner's claim to-Maintainability.

No owner of lands expropriated by Statute for public purposes is entitled to compensation, either for the value of land taken, or for damage, on the ground that his land is "injuriously affe, ted," unless he can establish a statutory right (63.4). (Lord Parmows.) SISTERS OF CHARITY OF (1922) 32 M.L.T. 62 P.C. RUCKINGHAM 7. KING.

#### Law-Declaration of-Enactment of.

-Effect as to-Decision of Court-Effect of-Distinction. See COURT-DECISION OF-EFFECT OF. (1920) 47 I.A. 213 (221) = 48 C. 30 (42).

#### Limitation Act.

-Interpretation of. See LIMITATION ACT.

#### Modern Statute.

-- Interpretation of -- Decisions and reasons therefor applying law in different circumstances, in different conturies to countries in different stages of development-Rigid application of-Propriety.

It is not right to apply rigidly to the interpretation of a modern statute the decisions and the reasonings therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances, in different centuries to countries in different stages of development.

Held, accordingly, that the appeal to Roman Law and to early English decisions was not of itself a secure foundation on which to build the interpretation of the British North America Act of 1867. (Lord Chanceller). HEN-RIETTA MUIR EDWARDS 7. ATTORNEY-GENERAL OF (1929) 31 L. W. 601 = CANADA.

58 M.L.J. 300 = A.I.R. 1930 P. C. 120

#### Order purporting to be made under-Validity of

-Wrong provision quoted-Effect. See LIMITATION (1916) 43 I.A. 113 (121-2). ACT OF 1908-S. 22.

#### Paraphrase of.

-- Danger in,

It is always dangerous to paraphrase an enactment, and not the less so if the enactment is perhaps not altogether clear (127). (Lord Macnaghten), MUSSUMMAT DURGA CHOUDHRAIN :. JAWAHIR SINGH CHOWDHRI.

(1890) 17 I.A. 122 - 18 C. 23 (30) = 5 Sar. 560.

#### Penal Statute.

-Enemy alien-Seizure and disposal by state of property of supposed-Statute authorizing-Penal one if a. So: LEGISLATION - PENAL LEGISLATION - ENEMY (1927) 47 C.L.J. 263. ALIEN.

Extension of -Propriety.

A Penal law, and especially one of so peculiar a character as that contained in S. 9 of Bengal Regulation XV of 1793, is one not to be extended by construction. (Lord Chelmsford.) SHAH MUKHUN LALL P. BABOO SREE KISHEN SINGH. (1868) 12 M.I.A. 157 (188)=

11 W. R. P.C. 19 = 2 B.L.R.P.C. 44 = 2 Suth.190 = 2 Sar. 403.

Such a construction (of S. 5 of the Bengal Regulation XV of 1793) would be an extension of a penal enactment to a case not within its language and obvious objects, and that where another section did provide for the case before the court (188). (Lord Chelmsford). SHAH MUK-HUM LALL 2. BABOO SREE KISHEN SINGH.

(1868) 12 M. I. A. 157=11 W. R. P.C. 19= 2 B.L.B. P. C. 44 = 2 Suth. 190 = 2 Sar. 403.

-Interpretation of -Strict interpretation-Necessity. Such Regulations (as Bengal Regulation XLIV of 1793 which confers on a purchaser at a revenue sale the power

STATUTE-(Contd.)

Penal Statute-(Contd.)

-Confensation for, on ground of land being injuri- to avoid and annul sub-tenures) must on general principles receive a strict construction (143). (Lord Justice Turner). RANEE SURNOMOYEE D. MAHARAJAH SUT-TEESCHUNDER ROY. (1864) 10 M.LA. 123= 2 W.B. 13=2 Sar. 60.

> See BENGAL REGULATIONS — RESISTING PRO-CESS REGULATION XI OF 1796-NATURE OF.

(1867) 11 M.I.A. 223 (237).

-Statute whether or not. See BENGAL REGULA-TIONS-RESISTING PROCESS REGULATION XI OF 1796 -NATURE OF. (1867) 11 M.I.A. 223 (237).

#### Powers confered by.

-See STATUTE-STATUTORY BODY.

#### Practice.

-Matter of, to be determined by statute-Stare decisis -Principle of-Applicability. See MAXIM-STARE DE (1907) 35 I. A. 22 (26)= CISIS-PRACTICE. 35 C. 202 (207.)

- Rule as to, created by Statute-Alteration of, when inconvenient-Power of. See PRACTICE-STATUTE. (1928) 55 I. A. 360 = 52 B. 597.

#### Preamble of.

-Control of sections of statute by.

The preamble is a key to the construction of a statute, though it would not, of course, control every provision; for we very often find that the subsequent provisions of a statute extend beyond the limits of the preamble. (Lord Wenslepdale.) NGA HOONG p. THE QUEEN.

(1857) 7 M. I. A. 72 (99) = 4 W. R. 109 P. C.= Boul. 189=1 Sar. 598=1 Suth. 285.

-See NAWAB NAZIM'S DEBTS ACT OF 1873-S. 12 (1882) 10 I. A. 39 (44)= -CONSTRUCTION. 9 C. 704 (710).

-See MADRAS ACTS-IRRIGATION CESS ACT OF (1919) 46 I. A. 302 (309)= 1900-PREAMBLE. 43 M. 529 (536.)

-Net part of statute.

The preamble of a statute is not an enactment but merely a recital. (190) (Sir Barnes Peacock.) BRINDABUN CHUNDER SIRCAR CHOWDRY v. BRINDABUN DEY (1874) 1 I. A. 178=21 W. B. 324= CHOWDRY. 12 B. L. R. 408=3 Sar. 365.

The preamble of a statute forms no part of the etactment of the statute (306.) (Sir Barnes Peacock.) THE COLLECTOR OF TRICHINOPOLY & LEKKAMANI

(1874) 1 I. A. 282=14 B. L. R. 115=21 W. R. 358= 3 Sar. 318.

-Purpose stated in-Abridgement of effect of words of statute by.

If we are to rely upon the statute alone, the words of the enactment are quite sufficient, and the effect of them is not abridged by the statement of the particular purpose, which is set forth in the preamble (200). (Lord Langdale.) ATTORNEY-GENERAL v. BRODIE.

(1846) 4 M. I. A. 190 = 6 Moo. P. C. 18= 11 Jur. 137=1 Sar. SS

## Prerogative of Crown-Deprivation of.

Express words—Necessity. See PRIVY COUNCIL APPEAL-RIGHT OF-TAKING AWAY OF.

#### Private paction.

prevails. See STATUTE-CONTRACT -Which (1924) 52 I. A. 109 (115)= CONFLICT BETWEEN. 4 P. 944

#### Procedure.

-Pending suit-Procedure of-Right in reference to -Saving by statute of -Arbitration-Reference compulsory to-Right of, if within saving clause. See STATUTE-SUIT PENDING AT DATE OF-PROCEDURE OF.

(1865) 10 M. I. A. 413 (424 5).

-Statute dealing with-Probate and Administration Act of 1881 If a. See PROBATE AND ADMINISTRATION ACT OF 1881-PROCEDURE ACT IF A.

(1903) 30 I. A. 249 (256) = 31 C. 11 (32).

-Statute dealing with -Retrospective operation of-Right substantive-Statute dealing with-Distinction. See STATUTE-RETROSPECTIVE OPERATION-PROCEDURE. (1927) 54 I. A. 421 (425).

-Statute regulating-Substantive rights existing at time of-Abolition or extinguishment of-Intention as to

-Presumption of-Propriety.

It is unlikely that in a Code regulating procedure the Legislature intended without express words to abolish or extinguish substantive rights of an important nature which admittedly existed at that time. (Lord Souka.) ABDUK RAHIM P. SYED ABU MAHOMED BARKAT ALI SHAH.

(1927) 55 I. A. 96 = 55 C. 519 = 48 C. L. J. 55 --(1928) M. W. N. 926 = I. L. T. 40 C. 19 --9 Pat. L. T. 65 = 27 L. W. 339 = 32 C. W. N. 482 --26 A. L. J. 464 = 108 I. C. 361 = 30 Bom. L. R. 744 A. I. R 1928 P. C. 16-54 M. L. J. 609.

-Substantive right or -- Right dealt with by statute-Nature of. See STATUTE-RIGHT SUBSTANTIVE DEALT WITH BY. (1927) 54 I. A 421 (425.)

#### Proviso.

-Control of operative words by. See LIMITATION ACT OF 1908-S. 22, PROVISO (1916) 43 I. A. 113 (122.)

Exception—Distinction. See SONTHAL PARGAN-NAS ACT XXXVII OF 1855—S. 2, PROVISO.

(1914) 41 I. A. 197 (206) - 42 C. 116 (138.) Implication of-Permissibility. See Succession ACT OF 1865-S. 111. (1896) 23 L.A. 18 (27)= 23 C. 563 (572-3).

-Meaning plain of-Giving of-Necessity.

There is no magic in words of proviso, and the plain meaning must be given to the words of the Legislature. (Lord Phillimore.) BESANT P. ADVOCATE GENERAL OF Madras. (1919) 46 I. A. 176 (186) - 43 M. 146 (155) -23 C. W. N. 986 = 17 A. L. J. 925 - 26 M. L. T. 408 -10 L. W. 451 = 21 Bom. L. B. 867 -

(1919) M. W. N. 555 = 20 Cr. L. J. 593 = 52 I. C. 209 =

37 M. L. J. 139. Nature real of-Proviso only or substantive enactment-Test. See FURFEITURE ACT IX OF 1859-S. 20, PROVISO-NATURE OF. (1874) 1 I. A. 167 (175).

#### Provisions of.

ADDITION TO. ALTERATION OF

APPLICABILITY OR APPLICATION OF.

DEMOLITION OF STRUCTURES PURSUANT TO-COM-PENSATION FOR.

DIRECTORY OR MANDATORY.

ENABLING OR RESTRAINING.

EXPRESS PROVISIONS—DISOBEDIENCE OF.

EATENSION OF, BEYOND WHAT LEGISLATURE IN-TENDED.

NOTICE OF

PERHISSIVE OR EXCLUSIVE.

PUBLIC POLICY. BALE UNDER

TRAINING OF-PROPRIETY.

STATUTE-(Centd.)

Provisions of-(Contd.)

ULTRA VIRES OR INTRA VIRES. VIOLATION OF.

ADDITION TO.

-See STATUTE-ADDITION TO.

ALTERATION OF.

-See STATUTE-ALIERATION OF.

APPLICABILITY OR APPLICATION OF

-See STATUTE-APPLICABILITY OR APPLICATION OF.

DEMOLITION OF STRUCTURES PURSUANT TO-COM-PENSATION FOR.

-Right to-Declaration of-Suit for-Maintainability of-Grant of declaration-Discretion of court as to. See CALCUTTA MUNICIPAL ACT OF 1899-S. 341.

(1916) 43 L A. 243 (247-8) = 44 C. 87 (95-6.)

DIRECTORY OR MANDATORY.

-See Madras Regulations-Civil Jurisdic-TION PROCEDURE REGULATION OF 1816-S. 10 (3.)

(1845) 3 M. I. A. 359 (381). -See BOMBAY REGULATIONS-PUNCHAYAT REGU-

LATION VII OF 1827-S. 3 (1)-TIME FOR MAKING (1855) 6 M. L. A. 134 (158, 160.) AWARD.

-See Bengal Regulations-Land Morigage KEDEMPTION AND FORECLOSURE REGULATION XVII OF 1806-S. 8-PROVIMONS OF-NATURE OF.

(1884) 11 I. A. 186 (192) - 11 C. 111 (117).

-See C. P. C. OF 1908-SCH. II-PARA. 3-TIME FOR MAKING AWARD-FIXING OF.

(1891) 18 I. A. 55 (57) - 13 A. 300.

\_\_\_\_\_\_See Bombay Acts—District Police Act of 1890—Ss. 25 (4) & 26 (1.) (1927) 54 I. A. 338 (352)= 51 B. 725.

#### ENAPLING OR RESTRAINING.

-See MADRAS ACTS-RENT RECOVERY ACT-S. 7 (1903) 31 I. A. 17 = 27 M. 143 (152). -NATURE OF.

EXPRESS PROVISIONS - DISOREDIENCE OF.

-Irregularity or Illegality. See CR. P. C. OF 1898-S. 537-TRIAL-MODE ENACTED BY CODE (1901) 28 I. A. 257 (263) - 25 M. 61 (97 8).

EXTENSION OF BEYOND WHAT LEGISLATURE INTENDED.

-See LEGISLATURE-COURT.

(1872) 14 M.I.A. 496 (528).

#### NOTICE OF.

-Court's duty to take.

The statute is there, and the Judges were bound to take judicial notice of it (58). (Lord Morris). RAJA HAR-NARAIN SINGH = CHAUDRAIN BHAGWANT KUAR. (1891) 18 I. A. 55=13 A. 360=6 Sar. 14.

PERMISSIVE OR EXCLUSIVE.

-See C. P. C. OF 1908-O. 21, R. 58-PROCEDURE (1913) 40 I. A. 56 (64) = 40 C. 588 (610). UNDER.

PUBLIC POLICY.

-Paramount questions of-Provisions of-Statute if can affect. See STATUTE - PUBLIC POLICY -PARA-(1924) 51 I. A. 368 (373)= MOUNT QUESTIONS OF. 48 B. 569.

-Statute based upon-Prohibitory provisions of-Waiver of-Permissibility. See STATUTE-PUBLIC POLICY -STATUTE BASED UPON. (1872) 14 M. I. A. 496 (527).

SALE UNDER.

Sale contrary to provisions of statute if nevertheless 2. See BENGAL ACTS-LAND REVENUE SALES ACT

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STATUTE-(Conta.)

Provisions of-(Cont.d.)

SALE UNDER-(Contd.)

XI OF 1859, S. 33 - SUIT BY DEFAULTER TO SET ASIDE SALE-GROUNDS. (1893) 20 I. A. 165 (174)= 21 C. 70 (82-3).

#### STRAINING OF-PROPRIETY.

-Partial doiling with subject by Legislature-Inconsistency resulting from-Straining to avoid,

Where it was orged that a particular construction of a section of a statute would lead to inconsistency, and it appeared that the alleged inconsistency would result, if at all, only from the attempt of the Legislature to deal with the subject in question in a partial manner, that Lordships observed that even in that case it was fitting that the Legislature should declare its view, and supply a remedy rather than that the Courts should strain the existing. Act (524). (Sir Montague E. Smith.) MUSSUMAT BUHUNS KOWAR (1872) 14 M.I.A. 496= 5. LALLA BUHOORFE LALL. 18 W.R. 157 = 10 B.L.R. 159 = 2 Suth. 575 = 3 Sar. 69.

ULTRA VIRES OR INTRA VIRES.

-See GARO HILLS ACT OF 1869-Intra vires, ETC. (1878) 5 I.A. 178 (192) = 4 C. 172 (179).

-See BURMA TOWN AND VILLAGE LANDS ACT IV (1913) 40 I.A. 48 = 40 C. 391. OF 1898, S. 41 (6).

-See Press Act, S. 22. (1919) 46 I.A. 176= 43 M. 146 (160).

-Sci C. P. C. of 1908, S, 80-Not ultra virci. (1927) 54 I.A. 338 (357-8) = 51 B. 725. VIOLATION OF.

-See Arbitration-Award - Decree in AC-CORDANCE WITH-VALIDITY OF - AWARD MADE AF-(1891) 18 I.A. 55 (58) = 13 A. 300. TER, ETC.

-Objection to-Prizy Council appeal-Maintainability for first time in.

No Court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset. The enactment is prohibitory. It is not confined to affording a party a protection, of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases, for which a penalty is exigible. The expression of an agreement for sea insurance, otherwise than in a policy, is a thing forbidden in the public interest, and the statutory insistence on a policy is no mere collateral requirement or prescription of the proper way of making such an agree-

Their Lordships therefore gave effect to the objection that the contract alleged by the plaintiff, being a contract for sea insurance, was unenforceable under S. 7 of the Indian Stamp Act of 1899, because it was a contract by word of mouth and not expressed in a sea policy, although that objection was not taken in the written statement of the defendants or in either of the Courts below (128-9). (Lord Summer.) SURAJMULL NAGOREMULL r. THE TRITON (1924) 52 I. A. 126= INSURANCE CO., LTD.

52 C. 408 = 23 A. L. J 105 = (1925) M. W. N. 257 = 6 L. R. P. C. 66=27 Bom. L. R. 770=29 C.W.N. 893= A. I. R. 1925 P. C. 83 = 86 I. C. 545 = 49 M. L. J. 136.

-Order passed in-Ultra vires nature of-Declaration of-Right of aggrieved party to-Discretion of Court in See BENGAL ACTS-ALLUVION AND DILU-VION ACT OF 1847, Ss. 6, 9.

(1889) 17 I.A. 40 (46-7)=17 C. 590 (604, 598).

STATUTE-(Contd.)

Provisions of -(Centd.)

VIOLATION OF- (Contd.)

-Plea of -Maintainability -Estoppel.

There have been some cases lately, in which a question has been raised whether the party has been estopped from taking advantage of any irregularity, even the non-compliance with an Act of Parliament. In Tyerman v. Smith (25 L. J. Q. B. 359), the case had been referred under the compulsory powers of the statute, 17 & 18 Vict., c. 125, S. 15. The award was not made within three months, and the time was not enlarged by the Court, or a Judge. as it ought to have been, or by the written consent of the parties; but both parties having gone before the arbitrator after the time had elapsed, it was held that the party against whom judgment had been signed upon the award was estopped from taking advantage of the non-compliance with the statute In Andrews v. Elliott (25 L.J.Q.B. 1) the parties, under the Common Law Procedure Act, chose to refer the case to a Judge and not to a jury, but that, according to the Act of Parliament, ought to have been done by a written consent. It was not done by written consent, but the court said, that having chosen to act on the oral consent, the party was precluded from taking advantage of the want of a written consent (484-5). (Sir John Patteren.) HAINES P. EAST INDIA CO. (1856) 6 M I. A. 467= 4 W. R. 99 = 11 Moo. P. C. 39 = 1 Suth. 274.

-See STATUTE-PROVISIONS OF-VIOLATION OF -OBJECTION TO-PRIVY COUNCIL APPEAL

(1924) 52 J.A. 126 (128-9)=52 C. 408.

Public policy.

-Paramount questions of -Previsions of statute if can affect.

Statutes regulating heirship or descent or giving force to wills and to the devises contained in wills, should be read as not intended to affect paramount questions of public policy or depart from well-settled principles of jurisprudence.

Acting upon the above view, their Lordships dissented from the decision of a Court in the United States of America, which held that the provisions of the Statute of Distributions were paramount and forbade the consideration of any disqualification, such as, the disqualification of a murderer to succeed to the estate of the murdered person in the case of an intestacy. (Lord Phillimore.)KINCHAVAIT. GIRIMALLAPPA CHANNAPPA (1924) 51 I.A. 368 (373) =

48 B. 569 = 26 Bom.L.R. 779 = 20 L. W. 417 = A.I.R. 1924 P.C. 209 = 3 Pat. L.R. 9 = 22 A.L. J. 962= 40 C. L. J. 447 = 29 C. W. N. 271 = 35 M. L. T. 241 = (1924) M. W. N. 719 = 82 I. C. 966 = 47 M. L. J. 401.

-Statute based upon-Prohibitory proxisions of Waiver-Destrine of-Inapplicability of, to such from

The doctrine of waiver is not properly applicable to the prohibitory provisions of a statute framed on grounds of public policy (527). (Sir Montague E, Smith.) Mussu-MAT BUHUNS KOWUR P. LALLA BUHOORER LALL

(1872) 14 M.I.A. 496 = 18 W.B. 157 = 10 B.L.B. 159= 3 Sar. 69=2 Suth. 575.

Reasons for-Phraseology employed-Reasons for-

Difficulty of Court to know.

It is difficult, no doubt, for any Court to be quite sare that they know the reasons why an Act of Parliament passed, or to account for the phraseology which is need in an Act of Parliament, or of a Regulation in India (158). (Sir John Patteson.) NUSSERWANJEE PESTONIE MEER MYNOODEEN KHAN WULLUD MEER SUDROO (1855) 6 M. I. A. 134 DEEN KHAN BAHADOOR.

#### Be-enacting Statute.

DRAFTING OF.

-Method of. See STATUTE-CODE OR CODIFYING (1891) 18 I.A. 121 (129) -ACT-PRIOR STATUTE. 18 C. 623 (628-9).

INTERPRETATION OF.

-Decisions under prior Act-Regard for-Necessity. Su Limitation Act of 1908, ART. 118-INTERPRETA-TION OF. (1924) 51 I.A. 220 (232-3)=48 B. 411. Decisions as to effect of earlier statute upon another

enactment if and how far a guide to.

The appellant says thar under the C. P. C. of 1882 some Indian courts had held the Procedure Code of 1882 inapplicable in toto to Letters Patent appeals; that the Legislature had these decisions before it when the Code was re-enacted in 1908; that the changes of form and language between the Act of 1908 and that of 1852 are not substantial, and that accordingly the Legislature must be deemed to have adopted the judicial interpretation of the language used in 1882, when it repeated that language in substance in 1908.

Quatre as to how far this mode of construing a re-enacting statute is in point, where all that has been decided is the effect of the older statute upon the provisions of another legal instrument, and not the actual meaning of the statute re-macted itself. (Lord Sumner.) SABITRI THAKURAIN v. SAVI. (1921) 48 I. A. 76 = 48 C. 481 (489) = 40 M. L. J. 308 = (1921) M. W. N. 159 =

33 C. L. J. 307=19 A. L. J. 281=23 Bom L.R. 681= 60 I. C. 274 - 14 L. W. 362

-Interpretation put upon carlier Act if a guide to Language of re-enacting statute same as that of earlier Act -Effect.

In framing the C. P. C. of 1859 the Legislature thought fit to pick out of Act VI of 1854 the 19th section, and to embody it in the very same words in S. 15 of the new code. It seems to their Lordships unreasonable to suppose that the Legislature did not mean to use the words in the sense which by judicial construction they had then obtained (187.) (Sir ames W. Colvile.) KATHAMA NACHIAR P. DORASINGA (1875) 2 I. A. 169 = 15 B. L. R. 83 =

23 W. R. 314 = 3 Sar. 456 = 3 Suth. 106 The ordinary presumption is that the legislature, when it repeats in substance in a later Act an earlier enactment, that has obtained a settled meaning by judicial construction, intends the words to mean what they meant before. (Sir Arthur Wilson.) VASUDEVA MUDALIAR D. SRINIVASA PILLAI. (1907) 34 I. A. 186 (193) = 30 M. 426 (433) = 2 M. L. T. 333 =

6 C. L. J. 255=11 C. W. N. 1005=

9 Bom. L. B. 1104 = 4 A. L. J. 625 = 17 M. L. J. 444, -8, 43 of the Government of India Act, 1833, contained a provision similar to S. 67, sub-S. 2 of the Government of India Act, 1915. The meaning of the provision of S. 43 of the Act of 1833 was discussed by Phear J., in the case of In 72 Ameer Khan. Since the judgment in that case was pronounced the provision so interpreted has been re-enacted substantially in the same terms in the Act of 1915; and many statutes and ordinances have been passed in India which were similar in effect to the Regulation then under consideration. If their Lordships were to adopt the argunt now pressed upon them, they would be casting doubt son a long course of legislation and judicial decision which be presamed to have been known to and in the view of the Imperial Parliament when the Act of 1915 was passed. (138.0) ment which has such an effect cannot be accepted (1920) 47 I. A. 128 = 1 Lah. 326 = 0. W. M. 650 = 22 Bom. L. B. 609 = 18 A.L.J. 455 = W. 296-56 LC. 440-21 Cr.L.J. 456-39 M.L.J. 1.

STATUTE-(Contd.)

Re-enacting Statuted-(Could).

INTERPRETATION OF-(Could).

-Prior to the Limitation Act of 1908, the Privy Council had held that a suit by a reversionary heir to recover possession of the last male owner's property on the death of his widow which involved the decision of an issue as to the validity or invalidity of the defendant's adoption was not a suit within the meaning of Art. 118 of the Limitation Act of 1877. Nevertheless the legislature re-enacted Art. 118 of the Act of 1908 in identical terms.

Held that, on a question of the interpretation of Art. 118 of the Act of 1908, it was a point of considerable importance to note that the Legislature passed the Act of 1908 with the article in question in precisely the same language as that used in 1877 after the construction already put upon it by the Privy Council. (Lord Phillimore.) KALYANADAPPA v. CHANBASAPPA. (1924) 51 I.A. 220 (232-3) = 48 B. 411 = 28 C. W. N. 666 - 22 A. L. J.508 =

26 Bom. L. R. 509 = 10 O. & A. L. R. 1114= A. I. R. 1924 P. C. 137-(1924) M. W. N. 414= 34 M. L. T. 111 = 20 L. W. 109 = 11 O. L. J. 181 = 79 I. C. 971 = 46 M. L. J. 598.

#### Remedial statute.

INSTANCE OF A.

This (Bengal Act XI of 1859) is to a great extent a remedial Act passed for the benefit of the subject, and in order to relax the stringency of the former statutes, whereby the Crown was empowered to sell estates for non-payment of revenue (103). (Sir James W. Colvile.) BUNWAREE LALL SAHOOF. MOHABEER PRASHAD SINGH.

(1873) 1 I. A. 89 = 12 B. L. B. 297 = 3 Sar. 338. -SA SLAVERY ACT V OF 1843-NATURE OF

(1879) 6 L. A. 137 (143-4) = 3 B. 422 (430-1).

#### INTERPRETATION OF.

-SA BENGAL ACTS-RENT ACT OF 1859, SS. 23, (1872) 12 B. L. R. 439. CL. (5) AND 78. -In constraing a remedial statute, the court ought to give to it the widest operation which its language will permit. It has only to see that the particular case is within the mischief to be remedied, and falls within the language of the enactment (143.4) (Sir James W. Colvile.) SAVAD MIR UJMUDIN KHAN P. ZIA-UL-NISSA BEGUM.

(1879) 6 I. A. 137 = 3 B. 422 (430-1) = 5 C. L. B. 11 = 4 Sar. 37 = 3 Suth. 633.

PROHIBITORY OR EXHAUSTIVE OR.

Test. See Limitation Act of 1871, S. 27. (1880) 7 I.A. 240 (246-7) = 6 C. 394 (403). Retrospective operation.

-Amending Act introducing substantive provision-Retrospective operation if has,

In 1924 the Sydney Corporation Act of that year was passed and it enacted that that Act and a prior Act of the year 1902 and the Acts amending it should be construed along with the 1924 Act as the principal Act. S. 17 of the 1924 Act provided that "Notwithstanding the provisions of any other Act the rate of interest payable upon compensation for land acquired by the Council by resumption or by the realignment method, or by any compulsory purchase shall be 6 per cent. per annum." The Act of 1924 came into operation on 17.9-1924.

On 6-6-1924, the Municipal Council of Sydney, in accordance with the provisions of the prior Act of 1902 and the Acts amending it, acquired the land of the respondent, who thereupon became entitled to compensation. The question in the appeal was as to whether, in respect of the amount of compensation payable to the respondent, she was entitled to

TAR

#### STATUTE-(Cont.)

### Retrospective operation-(Contd.)

interest at the 6 per cent. provided for by S. 17 of the Act of 1924 as and from 17.9.24 when it came into operation. The contention of the Municipal Council was that S. 17 applied only to cases in which land was acquired after the Act of 1924 came into operation, that is, after 17-9-24 and that it was inapplicable to cases of land acquired before

Held, affirming the court below, that S. 17 applied to the case and that by virtue of it respondent was entitled to the enhanced rate of 6 per cent. provided by it from and after 17-9-24.

S. 17 must be read as laying down a principle standing by itself, and to prevail, as the section declares, notwithstanding the provisions of any other Act. The provision in the section is a substantive one which is not made to depend on any reference to corresponding provisions in the earlier statutes. The words of the section are unambiguous. They give a title to the higher race of interest as from September 17th, and apply subsequently to the passing of the Act which contains this fresh provision - compensation for land acquired prior thereto, notwithstanding that the Act was assented to later. (Viscount Haldane.) MUNI CIPAL COUNCIL OF SYDNEY P. MARGARET ALEXANDRA (1927) 107 I. C 455 = 47 C. L. J. 284 = TROY. A. I. B. 1928 P. C. 128.

Finality of order at date of coming into force of Act -Act if affects. See STATUTE-RIGHT SUBSTANTIVE (1927) 54 I.A. 421 (425). DEALT WITH BY.

-Hardship in particular cases-Retrospective operation of Statute notwithstanding. See FORFEITURE ACT IX OF 1859-RETROSPECTIVE OPERATION OF.

(1874) 1 I.A. 167 (176-7).

-Interpretation giving-Propriety. See LIMITATION ACT OF 1859, Ss. 20, 21-RETROSPECTIVE OPERATION. (1877) 4 I.A. 127 (135) = 3 C, 47 (56-7).

-It is not in accordance with sound principles of interpreting statutes to give them a retrospective effect. (Lord Lindley.) MUHAMMAD ABDUS-SAMAD D. QURRAN (1903) 31 I.A. 30 (37) = 26 A. 119 (129) = HUSAIN. 8 C.W.N. 201 = 6 Bom. L.R 238 = 7 O.C. 254 =

8 Sar. 593.

-Presumption.

Statutes are prima facie deemed to be prospective only " nova constitutio futuris formam imponere debet, non practeritis" (126). (Mr. Baron Parke.) DOOLUBDASS PETTAMBERDASS P. RAMLOLL THACKOORSEY DASS.

(1850) 5 M.I.A. 109 = 7 Moo. P.C. 239 = Perry. O.C. 232 = 1 Sar. 403.

-Procedure-Right substantive - Statute dealing with-Distinction.

While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (425). (Lord Blanesburgh.) DELHI CLOTH AND GENERAL MILLS CO., LTD. v. INCOME-TAX COMMIS-SIONER, DEI.HI. (1927) 54 I.A. 421 = 8 Pat. L.T. 791 =

25 A.L.J. 964=4 O.W.N. 1053= A.I.R. 1927 P.C. 242 = 53 M.L.J. 819.

-Statute whether or not has a. See BENGAL REGU LATIONS-GOVERNMENT INDEMNITY REGULATION XI OF 1822, S. 25. (1842) 3 M.I.A. 42 (97). -See Oudh Acts-Revenue Courts Act XVI OF 1865.

#### STATUTE-(Contd.)

#### Betrospective operation-(Contd.)

-See BOMBAY ACTS-HERELITARY OFFICES ACT III OF 1874-RETROSPECTIVE OPERATION OF.

(1880) 7 I.A. 162 (166)=4 B. 494 (503).

-See MUSSALMAN WAKE VALIDATING ACT OF 1913.

-See OUDH ACTS-ESTATES ACT OF 1869, SS. 13 (1879) 6 I.A. 161 (166). AND 14.

-See OUDH ACTS--ESTATES AMENDING ACT III (1921) 49 I.A. 228 (233) = 43 A. 245 (250). OF 1910.

-See OUDH ACTS-ESTATES AMENDING ACT III OF 1910, S. 6. (1925) 52 I.A. 398 (415-6)=47 A. 883.

-See WAGERS ACT OF 1848.

(1850) 5 M.I.A. 109 (126).

#### Right barred prior to.

-Not revived by. See LIMITATION ACT-RIGHT BARRED PRIOR TO.

### Right existing at date of-Deprivation of.

-Affirmative words without any negative express or implied-Effect of.

It is a maxim that affirmative words in a statute without any negative express or implied do not take away an existing right (306). (Sir Barnes Peacock.) THE COLLECTOR OF TRICHINOPOLY P. LEKKAMANI. (1874) 1 I.A. 282 14 B.L.R. 115=21 W.R. 358=3 Sar. 318.

### Right substantive dealt with by

-Right of appeal if a.

Provisions of a statute which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights (425). (Lord Blanesburgh.) DELHI CLOTH AND GENERAL MILLS CO., LTD. v. INCOME TAX (1927) 54 I. A. 421= COMMISSIONER, DELHI. 8 Pat. L.T. 791 = 25 A.L.J. 964 =

4 O.W.N. 1053 = A.I R. 1927 P.O. 242 = 53 M.L.J. 819.

-Right to finality of order if a. See under this very sub-head-RIGHT OF APPEAL IF A.

(1927) 54 I.A. 421 (425).

### Rights dealt with by-Extent of.

-Total ambit of rights.

Whenever a statute deals with certain rights it is easy to conclude that it deals with the total ambit of those rights and leaves nothing standing outside the provisions of the statute. An illustration of this doctrine may be found in the case of Attorney General v. DeKeysors Royal Helel. As an illustration of how there is no privilege of person may be taken the case of Collector of Fullehpore v. Syed Yad Ali, where the Government as standing in right of a convict had to submit to the right of pre-emption (210 1). (Viscost Dunedin.) SHEOBARAN SINGH v. KULSUM-UN-NISSA.

(1927) 54 I.A. 204 = 49 A. 367 = 29 Bom, L.B. 877 = 101 I. C. 368 = A.I.R. 1927 P. C. 113 = 4 O.W.N. 548 = (1927) M. W. N. 444 = 25 A.I. J. 617 = 31 C.W.N. 853 = 39 M. L. T. 166=26 L.W. 326=52 M.L.J. 658.

### Special and self-contained statute

Addition to, by equitable construction-Propriety. See FORFEITURE ACT OF 1859, S. 20, PROVISO-LIM (1874) 1 I.A. 167 (176) TATION PRESCRIBED BY.

### Special remedy created by

A suit does not lie for the purpose of determining the Other remedies barred. very question which had been determined according to (1872) 14 M.I.A. 401 (404). special statutory process by a Judge from whose decision

Special remedy created by-(Contd.)

plaintiff did not appeal (92). (Sir Robert P. Collier.) RAJAH NILMONI SINGH v. RAM BUNDHOO ROY.

(1881) 8 I. A. 90 = 7 C. 388 (392) = 10 C.L.R. 393 = 4 Sar. 234.

#### Statutory body.

CASE STATED TO COURT BY-ORDER ON.

-Advisory or final-Test. See COURT-CASE STAT-ED TO. (1923) 50 I.A. 212 (224-5) = 47 B. 724 (739-40).

#### DISCRETION VESTED IN.

"Judicial or arbitrary-Court's interference with-Conditions. See (1) NEW SOUTH WALES PUBLIC SER-VICE SUPERANNUATION ACT OF 1903, S. 4.

(1911) 21 M.L.J. 641.

and (2) CALCUTTA MUNICIPAL ACT OF 1899, Ss. 14 (XI) AND 556. (1922) 49 L. A. 255 (261) = 49 C. 838 (844).

#### POWER CONFERRED UPON.

Acts done under-Damage caused by-Liability for-Fletcher v. Rylands- Principle of-Applicability of. Sa DAMAGES-RIGHT OF-EXERCISE OF.

(1874) 1 I. A. 364 (384-5).

-Acts done under-Protection as regards-Illegal acts done bona fide and in not absurd belief of authority

There can be no rule more firmly established, than that if parties bona fide and not absurdly believe that they are acting in pursuance of statutes and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act (379-80). (Lord Campbell.) SPOONER v. JUDDOW.

(1849-50) 4 M.I.A. 353 = 6 Moo. P.C. 257 = Perry, O.C. 392-1 Sar. 363.

Acts done in good faith in exercise of-Exemption from suit in Civil Court in respect of-Provision for-Ultra tires acts if included in. See BENGAL ACIS-ALLUVION AND DILUVION ACT OF 1847, S. 9

(1889) 17 I. A. 40 (53) = 17 C. 590 (603-4).

-Acts in excess or abuse of-Damage caused by-Remedy as to-Suit or compensation under statute.

If a person or a body of persons, having statutory authority for the construction of works (whether those works are for the benefit of the public, or for the benefit of the undertakers, or, as in the case of a railway, partly for the benefit of the undertakers and partly for the good of the public) taceds or abuses the powers conferred by the legislature, the remedy of a person injured in consequence is by action or mit, and not by a proceeding for compensation under the statute which has been so transgressed (64). (Lord Macnaghten.) HIS HIGHNESS THE GAEKWAR OF BARODA D. GANDHI KACHRABHAI KASTURCHAND.

(1903) 30 LA. 60 = 27 B. 344 (352) = 7 C. W. N. 393 = 5 Bom. L.R. 405 = 8 Sar. 426.

Care and skill required in exercise of-Damage to

athers—Permissibility—Extent of.

Powers conferred by Statute upon a person, or a body of rions, for the construction of works (whether those oran are for the benefit of the public, or for the benefit of undertakers, or, as in the case of a railway, partly for benefit of the undertakers and partly for the good of the able), are to be exercised with ordinary care and skill with some regard to the property and rights of others.

The property and rights of others, are granted on the condition sometimes expressed and on the condition sometimes expressed and on the condition and others. understood that the undertakers "shall do as damage as possible" in the exercise of their statutory STATUTE - (Centd.)

Statutory body-(Centd.)

POWER CONFERRED UPON--(Contd.)

powers (64). (Lord Macnaghton.) HIS HIGHNESS THE GAEKWAR OF BARODA 7. GANDHI KACHRABHAI KAS-(1903) 30 I.A. 60 = 27 B. 311 (352) = TURCHAND. 7 C.W.N. 393 = 5 Bom. L.R. 405 = 8 Sar. 426.

-Corrupt or tyrannical abuse of-Remedy in case of. In the extreme case which may be supposed, of corrupt or tyrannical abuse of such powers as these (rvz., power of distribution of the Nawab's property conferred by Act XVIII of 1848 upon the Governor of Bombay in Council), there must always be open to all the Queen's subjects those rights of complaint, in the last resort, either to the Parliament, or to the Crown (509-10). (Lord Justice Knight Bruce.) NAWAB OF SURAT, /H re. (1854) 5 M. I. A. 499.

-Exercise of, discretionary or obligatory-Shall-May-Shall and may- Think fit-Meaning and effect of. The expression " in cases in which the said Court may think fit to allow such appeal" is a very ordinary expression used in Acts of Parliament, when it is intended that a power given to any officer or any body for public purposes, shall not be absolute and compulsory upon that individual officer or body, to exercise or not, as he or they shall please, and be advised. If the words are "It shall and may be so and so done, by such and such officer and body, then the word "may" is held in all soundness of construction to confer a power, but the word "shall" is held to make that power, or the exercise of that power, compulsory; cases are not wanting where, even without the use of so stringent a word as "shall", it has been held that a power so conveyed must be executed. But where it is intended not to comp I. but to leave it optional with the parties, the words " think fit" are the very ordinary technical and appointed words to show that the power is not compulsory. (492-3.) (Lord Brougham.) QUEEN r. ALLOO PAROO.

(1847) 3 M. I. A. 483 - 5 Moo. P. C. 296 - 1 Sar. 310 = Perry. O. C. 551.

-Forms prescribed for exercise of-Compliance with -Necessity. See STATUTE-STATUTORY BODY-POWER CONFERRED UPON -- SALE. (1896) 23 I. A. 45 (54) = 23 C. 775 (787).

- Land acquisition for actual works - Power of-Acquisition of more land than is necessary for such works -Legality of.

Where an Act authorizes land to be taken for the actual works only, a local authority, or other public body, will be restrained from taking more than is actually necessary for such works (54.) (Lord Parmoor.) CALCUTTA IMPROVE-MENT TRUSTEES P. CHANDRA KANTA GHOSH.

(1919) 47 I. A. 45 = 47 C. 500 (511) = 11 L. W. 566 = 18 A. L. J. 521 = 22 Bom. L. B. 586 = 24 C. W.N. 881 = 32 C. L. J. 65-56 I. C. 32-38 M. L. J. 111.

-Where an Act authorizes land to be taken for the actual works only, a local authority, or other public body, will be restrained from taking more than is actually necessary for such works. (Lord Dunedin.) KHANDARAO VITHOBA KORE +. MUNICIPAL CORPORATION OF BOM (1923) 51 I. A. 14 (16)=48 B. 185 BAY.

19 L. W. 1=22 A. L. J. 11=A. I. B. 1924 P. C. 3 (1924) M. W. N. 77=26 Bom. L. B. 193 10 O. & A. L. B. 121 = 28 C. W. N. 375 =

33 M. L. T. 462 = 39 C. L. J. 201 = 79 I. C. 948 = 46 M. L. J. 169.

-Procedure prescribed for exercise of-Non-compliance with-Effect. See FOREST ACT OF 1878, S. 45. (1897) 24 L. A. 33 (45)=24 C. 504 (517-8).

Statutory body-(Contd.)

POWER CONTERRED UPON-(Cont.)

Purpose of statute-Energise of power for other than

-Legality of.

Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised for a different purpose are not in point. Such an exercise of the powers is outside the Act which confers them. Here the exercise of the powers was within the Act, for it was in strict conformity with the terms of the Act (129.) (Lord Sumner.) NARMA 7. BOMBAY MUNICIPAL COMMISSIONER. (1918) 45 L. A. 125=42 B. 462 (472)=23 C. W. N. 110=20 Bom. L. B. 937=

23 C. W. N. 110 = 20 Bom. L. B. 937 = (1918) M. W. N. 840 = 8 L. W. 548 = 48 I. C. 63 = 24 M. L. T. 297.

-Sale-Power of-Exercise of-Legality - Forms required by Statute-Non-compliance with-Effect.

It is unnecessary for their Lordships to point out the necessity there is when power is given to a public officer to sell the property of any of Her Majesty's subjects that the forms required by the Act, which are matters of substance, should be complied with (54). (Lord Darvy.) BAIJNATH SAHAI v. RAMGUT SINGH. (1896) 23 I. A. 45= 23 C. 775 (787) = 7 Sar. 1.

#### Suit pending at date of.

What amounts to a. See LIMITATION ACT OF 1908, S. 31 (1). (1912) 39 I. A. 96=35 M. 191.

Procedure of Right in reference to - Saving by statute as to - Arbitration - Computarry reference to -

Right of, if within saving clause.

S. 388 of C. P. C. of 1859 provides that from and after the time when this Act shall come into operation " in any part of the British territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other law or Regulation." The only exception as to suits pending at the time when the Act shall come into operation is contained in the preceding section, and is in these words. "If in any suit pending at the time when this Act shall come into operation, it shall appear to the Court that the application of any provision of this Act would deprive any party to the suit of any right in reference to the procedure of the suit, whether of appeal or otherwise, which, but for the passing of this Act, would have belonged to him, the court shall proceed according to the law in force before this Act takes effect."

Semble a reference to arbitration by court against the wishes of a party could not be brought within the definition of a right belonging to the opposite party in the exception to S. 388 of C. P. C. of 1859. (Sir James W. Celvile.)

SHEONATH P. RAMNATH.

(1865) 10 M. I. A. 413 (424-5)=5 W. B. (P. C.) 21= 1 Suth. 616=2 Sar. 134=1 I. J. N. S. 161= R. & J's. No. 4.

Tax imposed by Government—Collection of, through Municipality, when there is one.

Provision as to — Mandatory or directory. See ROMBAY ACTS—DISTRICT POLICE ACT OF 1890, Ss. 25 (4) and 26(1)—COLLECTION OF TAX THROUGH.

(1927) 54 I. A. 338 (352)=51 B. 725.

#### Ultra Vires or intra vires.

See Statute-Provision of-Ultra vires or, etc.

STATUTE-(Contd.)

#### Words in.

——For the meaning of particular words occurring in statutes. See Under WORDS—MEANING OF.

Circumstances which may be considered for determining

In coming to a determination as to the meaning of a particular word in a particular Act of Parliament it is permissible to consider two points, viz.:—

 The external evidence derived, from extraneous circumstances such as previous legislation and decided cases.

(2) The internal evidence derived from the Act itself. (Lord Chancellor.) HENRIETTA MUIR EDWARDS v. ATTORNEY-GENERAL OF CANADA.

(1929) 31 L.W. 601 = A.I.B. 1930 P.C. 120 = 58 M. L. J. 300.

——Complete and operative sense natural to—Adoption of—Necessity. See C. P. C. OF 1882, S. 325-A. (1918) 45 I. A. 219=46 C. 183.

(----) 20 2. 22. 22.

(1887) 14 I. A. 89 (99)=11 B. 551 (564),

--- Legal sense-Giving of-Rule as to.

In construing Acts of Parliament it is a general rule that words must be taken in their legal sense unless the contrary intention appears. (Chief Justice Anglin.)
ADAMSON 7. MELBOURNE AND METROPOLITAN BOARD OF WORKS. (1928) 30 L. W. 147=115 I. C. 740=

A. I. B. 1929 P. C. 181.

——Literal ordinary meaning of—Straining of-Propriety. See BOMBAY ACTS—AHMEDABAD TALUKDARI ACT OF 1862—Debts and Liabilities, etc.

-Long accepted meaning of Use of words in.

If it shall appear that the words employed by a statute have long been used in a sense which may not improperly be called technical, and have been judicially construed to have a certain meaning, and have been adopted by the Legislature in that sense, long prior to the statute in quest tion, the rule of construction of statutes will require that the words in the statute should be construed according to the sense in which they had been so previously used, although that sense may vary from the strict literal meaning of them (250). (Sir John Jervis.) HER HIGHNESS RUCKMABOYE v. LULLOOBHOY MOTICHUND.

(1852) 5 M. I. A. 234 = 8 Moo. P. C. 4=1 Sar. 423

—Other Statules of same or different legislature— Definition clauses of—Reference to—Permissibility.

It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matters more or less cognate, even when enacted by the same legislature. A fortieri must it be so when resort is had for this purpose to the enactments of other Legislatures. (Chid/Institute Anglin.) ADAMSON P. MELBOURNE AND METRO-POLITAN BOARD OF WORKS. (1928) 30 L. W. 147=115 I.C. 740 = A. I. B. 1929 P. C. 181,

Plain meaning of—Giving effect to—Court's duty as
to. See STATUTE—INTERPRETATION OF—INTENTION
OF LEGISLATURE—SPECULATIONS AS TO.

187.61.

(1846) 4 M. I. A. 179 (187-8)

——Same idea—Different words to convey—Employment of. See STATUTE—DRAFTING OF.

Works authorized by—Construction of—Compensation in respect of, on ground of land beins "injuriously affected."

Where no land of the same owner has been taken, the words "injuriously affected" only include damage or loss.

Works authorized by—Construction of—Compensation in respect of, on ground of land being injuriously affected—(Contd.)

which would have been actionable but for statutory powers, and such damage or loss must be occasioned by the construction of the authorised works as distinct from their user (65).

Where the mischief of which complaint is made is caused by what is done or lands taken from the same owner, there is no reason why a claim for compensation in respect of injury to adjoining premises might not be successfully made on account of their probable depreciation by reason of vibration, or smoke or noise, occasioned by passing trains (64).

No doubt a difficulty arises in the assessment of amount where the mischief complained of arises, not only on the land which has been taken from the claimants, but also on land over which they had no ownership or claim, but this is no reason for refusing to entertain a claim. so far as the damage claimed can be shown to arise from the apprehended legal use of the lands taken from them (67). The problem of assessing the amount in a case in which the mischief complained of has arisen partly on lands taken from the complainants, and partly on other lands outside their property, can only be settled by a consideration of all the circumstances in a particular case (69). (Lord Parmore.) SISTERS OF CHARITY OF ROCKINGHAM v. KING.

(1922) 32 M. L. T. 62 (P. C.).

# Wrongful acts-Responsibility for-Statute imposing.

Novel principle of responsibility of indefinite scope in relation to special class of acts and omissions—Inference of, from general words not suited for the purpose—Propriety. See WRONGFUL ACTS—RESPONSIBILITY FOR—STATUTE IMPOSING. (1922) 33 M. L. T. 219 (221).

### STATUTE 22 GEO. III, C. 45 (1782).

Applicability to contracts of.

The enacting words of 22 Geo. III. c. 45 (1782) do not apply to all contracts. Their application is limited in two ways. In the first place the Member of Parliament must have "directly or indirectly" undertaken the contract with "the Commissioners of His Majesty's Treasury, or the Navy or Victualling Office," or "the Master-General or Board of Ordinance" or "any one or more of such Commissioners" or "any other person or persons whatsoever." In the second place, it must appear that the contract was made "for or on account of the public service" (738). (Lord Chancellor.) SIR STUART SAMUEL, In the matter of the public service "(738).

by. Object of-Mischief intended to be guarded against

22 Geo. III, c. 45 (1782) itself declares that it was made to preserve the freedom and independence of Parliament; and the mischief guarded against is the sapping of that freedom and independence by Members being admitted to profitable contracts (738). (Lord Chanceller.) SIR STUART SAMUEL, In the matter of. (1913) 17 C. W. N. 735 — 19 I. C. 765.

Made for public service of Commons - Members of - Contract
of British Government - Forsciture of seat on ground of
Stordary of State for India in Council - Contract with.

Sir Sinart Samuel, being a member of the House of Commons, was partner in a firm which made contracts with the Secretary of State for India in Council for borrowing money upon short loans, for purchasing India Council and India Treasury Bills, for subscribing to India

#### STATUTE 22 GEO. III, C. 45 (1782)-(Centd.)

Government loans, and for purchasing silver for the purposes of the Indian currency.

The House of Commons appointed a Select Committee to consider whether Sir Stuart Samuel had vacated his seat as a member of the House of Commons by reason of the above-mentioned facts. The Committee recommended a reference to the Judicial Committee for its opinion on a definite question of law. The House adopted that course while reserving to itself the right of ultimate decision. On a special reference made by His Majesty to the Judicial Committee under the provisions of 3 & 4 William IV, c. 41, S. 4, whether by reason of the above facts Sir Stuart Samuel had forfeited his seat as a member of the House of Commons, held, that the contracts in question were made for the public service of the Crown in India and with an officer of the British Government within the meaning of S. 1 of the Act of Paylament of 1782 (22 Gec. III, c. 45) and that Sir Stuart Samuel forfeited his seat by reason of the firm in which he was a partner having entered into such contracts. (Lord Chanceller.) SIR STUART SAMUEL. In the matter of.

(1913) 19 I. C. 765 = 17 C. W. N. 735.

-Officer of British Government-Contract with
-Secretary of State for India in Council-Contract with
-If prohibited by section-Government of India Act of
1855, S. 65-Effect.

The contracts were expressed to be made with the Secretary of State in Council, pursuant to the Act of 1858 for the better Government of India, and were made with the concurrence of a majority of the Council, to be paid for out of the revenues of India as required by that Act, and without any personal liability on the Secretary of State. And by S. 65 of that Act, " the Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate." It was urged that it was not with the Secretary of State at all that the contract was made, but with a corporation. Their Lordships cannot take this view. A contract is nonetheless made with the Secretary of State that he has to obtain the concurrence of others before making it, and that he and they are designated by this Statute as liable to be sued or to sue on it as a corporate body. He and they have distinct function prescribed by the Statute which enables them to bind their successors, and this provision affords facilities for litigation which are not afforded by a Petition of Right. But this is merely machinery; the personality of the Secretary of State is not merged in any corporation by the statute nor is that of the Council. In some particulars they can check him or he can override them. They and be remain with separate and possibly conflicting responsibilities, though for purposes of litigation they can be treated as though they were one legal personality. These contracts were made with one of His Majesty's Principal Secretaries of State and with his Council, or with the concurrence of a majority of His Council it matters not, for they were made at all events with him (769-70).

Held, therefore, that a contract made by a member of the House of Commons with the Secretary of State for India in Council was a contract made with an offcer of the British Government within the meaning of S. I of the Act of Parliament, 1782 (22 Geo. III, c. 45) and was prohibited by the section. (Lord Chanceller.) SIR STUART SAMUEL, In the matter of. (1913) 19 I.C. 765=17 C.W.N. 735 (740)

-Officer of British Government-Secretary of State for India if an-Office of Secretary of State for India -Origin, history, and duties of.

By the Act of 1858 the Government of India, which had theretofore been carried on by the East India Company on behalf of the Crown under divers Acts of Parliament,

### STATUTE 22 GEO. III, C. 45 (1782)-(Contd.)

was transferred to the direct control of the Crown, acting through officers whose duties were prescribed by the Act. One of these officers is a Secretary of State. In early times there was one English Secretary of State. Then there! were two British Secretaries of State, and before 1858 the number was increased to four. The Act of 1858 created a fifth, who is paid out of the revenues of India. To him are in practice allotted the duties of transacting that part of the business relating to India which requires the intervention of a Secretary of State for India. But he is in fact one of His Majesty's five Principal Secretaries of State and as such can discharge most, if not all, of the duties of the other four, as they can discharge most, if not all, of his duties. He is an officer of the British Government in the fullest sense (769).

Held, that the Secretary of State for India in Council was an officer of the British Government within the meaning of S. 1 of the Act of Parliament, 1872 (22 Geo. 111 c. 45). (Lord Chancellor.) SIR STUART SAMUEL. In the matter of. (1913) 19 I.C. 765 = 17 C. W. N. 735 (739-40)

-Words-" Any other person "-Meaning of-Ejus dem generis principle-Applicability. See STAUTE-INTER-PRETATION-Ejusdem generis PRINCIPLE.

(1913) 19 I. C. 765 (768)=17 C. W. N. 735.

-Words-" Any other person or persons solutionerer

S. 1 of the Act of Parliament, 1782 (22 Geo. III, c. 45) prohibited a member of the House of Commons from entering into a contract with "the Commissioners of His Majesty's Treasury, or of the Navy or Victualling Office " or " the Master-General or Board of Ordinance " or " any one or more of such Commissioners" or "any other person or persons whatsoever." All the persons enumerated in the section were servants of the Crown in 1782 (the date of the Act) holding offices in the British as contrasted with the Irish Government or any other Government of the King's dominions or dependencies beyond the seas. They were officers of the British Government, which was also the Imperial Government of the King.

Held, where therefore the section, after enumerating those several office-holders, proceeded to add the words any other person or persons whatsoever " the doctrine of ejustem generis applied Any "other person" meant any one who held an office in the British Government of a similar kind to those enumerated (768). (Lord Chancellor.)

SIR STUART SAMUEL, In the matter of

(1913) 19 I. C. 765=17 C. W. N. 735 (738).

Words-Public purpose-Meaning of.

The Act of Parliament, 1782 (22 Geo. III, c. 45) prohibits a member of the House of Commons from entering into a contract with an officer of the British Government "for or on account of the public service." It was contended that the words " for or on account of the public service" meant " the public service of Great Britain " (now incorporated in the United Kingdom), and that no service could be so denominated unless it was paid for out of moneys voted by Parliament, or at all events out of British money. It does not seem to their Lordships that the public service required by the Act need be one either executed or required within Great Britain or paid for out of any particular fund. No reason can be given for this cutting down the scope of the Act. The source from which contracts are to be paid for is immaterial. So is the place where they are made (768). (Lord Chancellor.) SIR STUART SAMUEL, (1913) 19 I. C. 765=17 C.W.N. 735. In the matter of.

#### STATUTE 6 GEO. IV, C. 85.

S. 5-Object of provision in.

The intention of the Legislature in enacting S. 5 of the

#### STATUTE 6 GEO. IV. C. 85-(Contd.)

the contingency, eve., that a person taking upon himself the office of a Judge in India, and dying in possession of the office, having been put to great expenses at the time of making his outfit from this country to India, might have some certain means whereby his estate would be enabled to be reimbursed that loss, in case of his death whilst in office (445). (Dr. Lushington.) ARBUTHNOT v. NORTON. (1846) 3 M. I. A. 435 = 5 Moo. P. C 219 = 10 Jur. 145=1 Sar. 300.

-Words-Legal personal representative-Meaning of-Amount payable under section-Person entitled to.

S. 5 of the Statute 6th of Geo. IV, c. 85 provided "that when and so often as it shall thereafter happen, that any puisne Judge of the Supreme Court of Judicature at Madras shall depart this life, while in possession of the said office, and after the expiration of six calendar months from the time of his arrival in India, for the purpose of taking upon him the office of puisne Judge, then, and in all and every of such cases, the Court of Directors shall, and they are thereby required to pay or direct, and cause to be paid out of the territorial revenues from which the salary of such puisne Judge, so dying, should be payable to the legal personal representatives of such paisne Judge, so dying, as aforesaid, over and above what may have been due to such puisne Judge at the time of his death, a sum equal to the amount of six calendar months' salary of the office of puisne Judge."

Held, that the words " legal personal representative " in the section meant the executor or administrator of the Judge deceased, and that the money was to be taken as part of his general assets, and to be administered as such (445).

Any construction of this statute, which would appropriate this fund in any other way, would be against the whole intention of the legislature (445). (Dr. Lushington.) (1846) 3 M. I. A. 435= ARBUTHNOT P. NORTON. 5 Moo. P. C. 219=10 Jur. 145=1 Sar. 300.

#### STATUTORY BODY.

-See STATUTE-STATUTORY BODY.

#### STATUTORY POWER.

-See under STATUTE-STATUTORY BODY.

### STRAITS SETTLEMENTS CIVIL PROCEDURE ORDINANCE XXXI OF 1907.

S. 3 — Will of person domiciled abroad—Probate of -Grant of-Supreme Court of Straits Settlements-Juris diction of. See PROBATE-GRANT OF-JURISDICTION AS TO-PERSONS DOMICILED ABROAD.

(1916) 43 L.A. 113 (119)

### STRAITS SETTLEMENTS EVIDENCE ORDIN-ANCE III OF 1893.

### Interpretation of, on English lines.

Permissibility. See STATUTE -INDIAN STATUTE (1916) 43 I. A. 256(262), -COLONIAL STATUTE.

### S. 32 (5)—Age—Evidence of.

Birthday books-Entries in-Admissibility. EVIDENCE - AGE-BIRTHDAY BOOKS. (1915) 19 C.W.N. 787 (790).

-Family record of date of birth-Entry by father in

-Admissibility.

On a question arising as to the age of the appellant when he executed the suit mortgage in favour of the respondent. the appellant's elder brother proved an entry (in the handwriting of the appellant's father) relating to the appellant's birth in a book containing a record of births, deaths, and marriages in his family, kept by his late father. Entries Statute 6 of Geo. IV, c. 85 was to provide against were contained in the book of the births of three members

#### STRAITS SETTLEMENTS EVIDENCE ORDI. SUBROGATION-(Contd.) NANCE III OF 1893—(Contd.)

S. 32(5)-Age-Evidence of-(Contd.)

of the family. The entry in question was admittedly made before any question or dispute between the parties.

Held, that the entry in question was admissible in evidence under S. 32, Sub-S. (5) of the Straits Settlements Evidence Ordinance III of 1893, corresponding to S. 32, Sub-S. (5) of the Indian Evidence Act (261, 263). (Lord Show.) MAHOMED SYEDOL ARIFFIN P. YEOH OOI (1916) 43 I. A. 256 = 21 C. W. N. 257 = (1917) M. W. N. 162 = 39 I. C. 401 = 19 Bom. L. R. 157.

-Woman-Age of-Husband's parol evidence as to-Admissibility and value of. See EVIDENCE-AGE-WOMAN-AGE OF-HUSBAND'S PAROL EVIDENCE AS (1915) 19 C. W. N. 787 (790).

S 92.

-Sale deed-Purchases under-Joint tenancy between -Severance of-Course of dealing leading to inference of -Parel evidence of -Admissibility -Agreement to sever-Evidence of.

S. 92 of the Evidence Ordinance of the Straits Settlements (which is the same as S. 92 of the Indian Evidence Act) does not exclude parol evidence of facts from which it may be inferred that, accepting a conveyance as creating a joint tenancy between the purchasers thereunder, those purchasers subsequently so dealt with their respective interests thereunder that the joint tenancy became a tenancy in

Held, that statements made by individual purchasers under a conveyance which in terms created a joint tenancy between them indicating that they respectively thought that there was no right of survivorship, and accounts proving a division of income after the deaths of some of the purchasers were insufficient of themselves to justify an inference of an agreement to sever between the purchasers. (Lord Warrington.) TAN CHEW HOE NEO :. CHEE SWEE CHENG. (1928) 56 I.A. 112 (115-6) - 56 M. L. J. 643 -

29 L. W. 434 = 116 I. C. 38 = A. I. R. 1929 P. C. 72 STRAITS SETTLEMENTS LIMITATION ORDI-

NANCE VI of 1896.

8. 10. Se LIMITATION ACT OF 1908, S. 10.

8. 17. See LIMITATION ACT OF 1908, S. 17.

-8. 22. See LIMITATION ACT OF 1908, S. 22.

Art. 99. See LIMITATION ACT OF 1908, ART. 123 -WILL (1921) 49 L. A. 37 (41-2).

STYLE.

Common words of-Meaning to be attached to, in conveyances, when not mere surplusage. See CONYEY-ANCE-STYLE. (1924) 52 I. A. 109 (114-5)= 4 P. 244 SUBBOGATION.

Charge - Execution sale of property subject to-Payment of charge by purchaser-Sale subsequently set ande - Purchazer's right to stand in shoes of chargeholder.

Property sold in execution of a decree was subject to a charge created by the judgment-debtor in favour of a third party. The execution purchaser on being duly put into possession of the property purchased by him paid off the amount due to the charge-holder. The execution sale was, however, set aside on appeal, and the question arose as to what were the rights of the execution purchaser with

respect to the amount paid off by him to the charge-holder.

Semble the payment might entitle the execution purchaser
to mand: to mand in the shoes of the charge-holder. (Lord Carran.)

JAI BARHAM v. KEDAR NATH MARWARI.

201 10 (17)=

4 M L J. 735 = 27 O. W. N. 582 = 21 A. L. J. 490 = 37 O. L. J. 351=32 M. L. T. (P. C.) 10=

4 Pat. L. T. 61=18 L. W. 802=25 Bom. L. R. 643= L. R. 4 P. C. 117 = (1923) M. W. N. 368 = 69 I. C. 278 = A. I. R. 1922 P.C. 269.

payment of prior valid mortgage-Subrogation to rights under prior mortgage-Creditor's right of. See HINDU LAW - MINOR - GUARDIAN OF-MORTGAGE BY -INVALIDITY OF. (1856) 6 M. I. A. 393 (425).

#### SUBSTANTIAL PERSON.

-See BENGAL REGULATIONS-PATNI TALUKS RE-GULATION VIII OF 1819, S. 8, Ct. (2)-WORDS-SUB-STANTIAL PERSON. (1674) 2 L. A. 71 (79-80).

SUCCESSION ACT X of 1865.

#### Applicability of.

Persons to whom applicable. See under this Act (1905) 32 I. A. 244 (257)= ENGLISH LAW RULES. 33 C. 116 (129).

#### Basis of.

-English law.

The Act laid down the law as to inheritance and testamentary disposition in British India to all classes of persons who were not exempted from its provisions. The Act is based upon English law, and for the most part it expresses the rule of that law (255-6). (Sir Arthur Wilson.) RANI BHAGWAN KOER T. JOGENDRA CHANDRA BOSE.

(1903) 30 I. A. 249 = 31 C. 11 (32) = 13 M. L. J. 381 = 7 C. W. N. 895 = 84 P. R. 1903 = 136 P. L. R. 1903.

## Effect on prior law-English Law-Applicability of.

-Effect on.

The Sub-Judge held that, in enacting the Succession Act 1865, it was not the intention of the Legislature to alter the law in India by departing from the law of England. The High Court, on the other hand, held that the Act of 1865 had altered the law. Their Lordships concur in the judgment of the High Court (25-6). (Lord Macnaghton.) NORENDRO NATH SIRCAR D. KAMALABASINI DASI.

(1896) 23 I. A. 18 = 23 C. 563 (571) = 6 M. L. J. 71 = 6 Sar. 667.

#### English Law rules-Correspondence with and departure from.

Persons to whom act applicable.

The Succession Act of 1865, while to a large extent embodying the rules of the English law, yet departed in many particulars from those rules, and was not only made applicable to persons of European descent, or those to whom the system derived from the Ecclesiastical courts might naturally be applied, but was made the law for all persons in British India other than Hindus, Mahomedans, and Buddhists, including, for instance, the Parsees (257).
(Sir Arthur Wilson.) MIRZA KURRATULAIN BAHADUR P. PEARA SAHER (1905) 32 I.A. 244 = 33 C. 116 (129)=

15 M. L. J. 336 = 1 C. L. J. 594 = 9 C. W. N. 938 = 2 A. L. J. 758=7 Bom. L. R. 876=8 Sar. 839.

### Law enacted by-English Law.

Distinction. See PROBATE AND ADMINISTRATION ACT OF 1881-LAW ENACTED BY. (1927) 55 I. A. 18.

### Nature of-Codifying Act if a.

-Interpretation of-Principles.

The Indian Succession Act of 1865 is Codifying Act, and, in regard to the question whether or not it was intended to alter the prior law, the proper mode of interpreting the Act is that laid down by Lord Herschell in the Bank of England v. Vagliano with regard to the interpretation of codifying statutes. (Lord Macnaghten.) NORENDRO NATH SIRCAR P. KAMALABASINI DASI.

(1896) 23 I. A. 18 (26) = 23 C. 563 (571-2) = 6 M. L. J. 71 = 6 Sar. 667, SUCCESSION ACT X OF 1865-(Contd.) Ss. 2, 331.

-Christian-Succession to-Lose geterning-Hindu Late-Application of Wither or acts of deceased indicating-liftest.

Their Lordships cannot give countenance to the principle that, even though the deceased was a Christian, still be by his acts made such an indication as the law would respect to the effect that his succession was not to be governed by the Indian Succession Act. The cases of Airaben v. Abraham and Gejapathi Raihika v. Gajapathi Nelamani decided before the Indian Succession Act cannot modify or interpret it. The genaral rule is enacted in S. 2 of the Succession Act, and the exception which bears upon the present case is S. 331. The exception would apply only if the deceased had remained in or become a convert to Hinduism. In that case the Mitakshara faw would apply. If he was a Christian, the Succession Act would apply. (Lord Shire.) Kamawathi v. Digbijai Singh.

(1921) 48 I. A. 381 (385 6) = 43 A. 525 (533) = 15 L. W. 1 4 U. P. L. R. (P. C.) 27 = A. I. R. 1922 P. C. 14 = 26 C. W. N. 490 = 24 Bom. L. R. 626 - (1922) M. W. N. 336 -30 M. L. T. 47 = 64 I. C. 559 = 42 M. L. J. 87.

-Probate of will-Grant of-What amounts to-Letters of Administration with will annexed-Grant of, by competent court within province-Subsequent limitation of grant by High Court-Validity - Effect. See under his Act-SS, 187, 3-PROBATE OF WILL

(1910) 21 M. L. J. 116.

Ss. 46, 48.

-Capacity of testator-Proof of-English law rules

as to-Section embalying.

The rules for the establishment of the capacity of the testator and the circumstances which would lead to the invalidation of a will are embodied in Ss. 46 and 48 of the Indian Succession Act, 1865, which practically embody the principles of the English law on the subject. (Mr. Ameer MOTIBAL HORMUSJEE KANGA P. JAMSETJEE (1923) 29 C. W. N. 45= HORMUSJEE KANGA. 80 I. C. 777 = A. I. R. 1924 P. C. 28 (32) =

26 B. L. R. 579 = 5 L. R. P. C. 165 = 19 L.W. 437 (441). S. 51.

-Deed-poll of even date with will-Probate of-Necessity-Incorporation by reference-Absence of.

A deed-poll executed by the testator along with a will but not referred to in the latter so as to make its contents part of the will by which the executant appoints his wife to take his place in his firm after his death in pursuance of a power contained in a partnership deed is not a testamentary document requiring probate. (Lord Durcy.) BAI GUNGABAI P. BHUGWANDAS VALJI.

(1905) 32 I. A. 142 (163) = 29 B. 530 (563 4) = 9 C. W. N. 769=7 Bom. L. R. 854=3 A.L. J. 68= 8 Sar. 813=15 M. L. J. 271.

-Will-Incorporation of, in will or codicil subsequent - What amounts to-Effect. See OUDH ACTS-ESTATES ACT I OF 1869, S. 13. (1902) 25 I. A. 121.

-S. 54-Legatee-Signature in will of-Attesting witness-Signature as-Consent to dispositions of will-Signature in token of-Test-Evidence.

An Oudh taluqdar, by his will, appointed his eldest son as taluqdar after him, and gave to each of his three younger sons, certain villages out of the taluqa, to be held absolutely with heritable and transferable rights as under-proprietors if and when they or any of them wished to separate from

### SUCCESSION ACT X OF 1865-(Contd.)

S. 54-(Contd.)

among themselves with the taluqdar", the taluqa was to remain undivided and the income therefrom was to be "spent on the whole family," after paying Government and village dues. The testator also directed the division of his movable property in case of a separation, and by paragraph 8 he declared: " I have executed this will with the consent of all my sons and have got them to sign it as witnesses with this very purpose so that this will may be acted upon fully and they may not quarrel among themselves after my demise.

The will was signed by the testator as "executant", and below the testator's signature, after the signature of one of the witnesses, who was admittedly an attesting witness, there were the signatures of his four sons, and below them, the signatures of three other persons who also admittedly signed as attesting witnesses. In the margin on the left of those signatures, and just above the signature of the first attesting witness, appeared the word "Witnesses,"

The question for accision was whether or not the legatees entitled to the benefit of the legacies, if valid, signed the

will as attesting witnesses.

The evidence was to the effect that the testator had summoned his four sons to his presence, and having explained that he had made a will leaving his property to them, asked them to attach their signatures to the will, not as attesting witnesses, but in token of their consent, with a view to avoiding disputes after his death; and that they attached their signatures, pursuant to that request. The witnesses agreed that, while the testator invited others to sign as attesting witnesses, he addressed no such invitation to the sons, but asked them explicitly to sign for the special purpose of expressing their consent, with the view of avoiding dissensions in the future.

Held, affirming the Courts below, that the act of each of the sons was, openly and palpably, with the knowledge of all present, the act of expressing consent, and nothing else, and that in such circumstances the signers were not attesting witnesses, within the meaning of S. 54 of the Succession Act. (Mr. Justice Duff.) SHIAM SUNDAR SINGH r. JAGANNATH SINGH. (1927) 55 I. A. 1 = 2 Luck. 640=

26 A.L.J. 28 = 30 Bom. L. R. 110 = 47 C.L.J. 101 = 27 L.W. 7=32 C.W.N. 305=I.L.T. 40 A. 11= 106 I.C. 534 = 1928 M.W.N. 103 (2)=I.L.T. 40 A. 64= 4 O.W.N. 1205 = A.I.B. 1927 P. C. 248 = 54 M. L. J. 43.

-S. 71-Application of.

When a particular construction of a clause in a will would ascribe to it a meaning according to which it would not only defeat the object of the clause itself, but nullify the distribution of his property which the testator was seeking to bring about in making his will, while the more reason able and natural reading would give the clause the effect intended by the testator and bring about the result intended by the testator, held, that the Courts were by .S. 71 of the Succession Act enjoined to give the clause the latter construction. (Mr. Justice Duff.) SHIAM SUNDAR SINGHT. JAGANNATH SINGH. (1927) 55 L. A. 1 = 2 Luck. 640 =

26 A.L.J. 28 = 30 Bom. L. R. 110 = 47 C.L.J. 101 = 27 L.W. 7=32 C.W.N. 305=1 L.T. 40 A. II= 106 I.C. 534 = 1928 M.W.N. 103 (2)=I.L.T. 40 A 64= 4 O.W.N. 1205 = A.I.B. 1927 P.C. 248 = 54 M. L. J. 48

### S. 82-Applicability of.

Bombay town-Will made by Hindu in.

S. 82 of the Indian Succession Act, 1865, enacts that where property is bequeathed to any person he is entitled to the whole of the interest therein unless it appears from the will that only a restricted interest was intended their eldest brother; but "so long as they live in union for him. This section is, by S. 2 of the Hindu Wills Act.

#### SUCCESSION ACT X OF 1865-(Contd.)

82—Applicability of—(Contd.)

town of Bombay (135). (Sir Richard Couch.) DAMODER-DAS TAPIDAS v. DAYABHAI TAPIDAS.

(1898) 25 I. A. 126 = 22 B. 833 (839 40) = 2 C. W. N. 417 = 7 Sar. 308.

Deed not a will-Construction of.

The rule laid down in the Indian Succession Act is inapplicable to the construction of a deed which is not a will (228). (Sir Richard Couch.) KALI DAS MULLICK :. KANHYA LAL PUNDIT. (1884) 11 I. A. 218-

11 C. 121 (130) - 4 Sar. 578.

Ss. 99, 101-Sons and daughters-Residence and maintenance of-Bequest for-Benefit of-Wive- and families of sons and husbands and families of daughters if entitled to-Nature of their right-Widows or familie of deceased persons-Right of. See HINDU LAW-WILL-RESIDENCE-SONS AND DAUGHTERS.

(1923) 45 M. L. J. 780 (787-8).

#### Ss. 100 to 102.

Applicability-Hindu wills.

The Legislature has thought fit to apply Ss. 100-102 of the Succession Act to Hindu wills (177). (Sir Arthur Hobboure.) RAI BISHEN CHAND P. ASMAIDA KOER.

(1884) 11 I. A. 164 - 6 A. 560 (572) - 4 Sar. 512.

Applicability-Construction-English law-Tocknical considerations of.

The rules enacted in Ss. 100 to 102 of the Indian Succession Act constitute the law of British India applicable to succession to the property of every one except Hindus. Mahomedans or Buddhists. They are therefore, applicable to those subject to a variety of systems of juri-prudence. and must therefore be construed according to the generally current meaning of the words used and apart from such technical considerations as are only appropriate in the law of England. (Viscount Haldane.) PUTLIBRAL 5. SORABJI NAOROJI GAMADIA.

(1923) 45 M. L. J. 780 (787) = (1923) M. W. N. 626 - 25 Bom. L. R. 1099 -33 M. L. T. 401 (P. C.) = 28 C. W. N. 737 -76 I. C. 996 - A. I. R. 1923 P. C. 122

Dispositions contravening-Validity-Will-Contruction.

Clause 11 of the will of a Parsi directed that on the expiration of the first ten years from the testator's death, or from and after the death of his last surviving son, whichever should first happen, the trustees should divide the Bombay properties (but the Mahalaxmi bungalow and No. 56, Hormasjee Street House, subject to the right of re-idence pranted by cl. 9 of the will), or the sale proceeds thereof, and the investments for the time being representing the tame, into five equal sharers, and should hold each such share as that of each son upon trust to pay the income of each such share to such son until his death, and from and after the death of each son, or, if he should have died previously to pay the same to such persons as should be presamplively entitled to the corpus under the provisions in that behalf thereinafter contained, until the death of his last surviving son, and from and after the death of the last surviving son to hold each of such shares upon such trues as such son might have pursuant to the power in that behalf thereinafter given in cl. 12 directed.

Cl. 12 authorised every son whose interest should not have ceased under cl. 16 to dispose by will or deed upon such treats and upon such conditions with such restrictions, and provisions as he might think fit, but subject to proportion of shares and order of privity thereinafter

#### SUCCESSION ACT X OF 1865-(Contd.)

Ss. 100 to 102 -(Contd.)

1870, made to apply to wills made by any Hindu in the issue, widow or next of kin, of the share which should be treated as allotted to him as aforesaid, provided that he should exercise the power in the manner following :-

(1) If the son had sons or lineal descendants of sons, then in their favour only. (2) In default of those, in favour of his widow and daughters or lineal descendants of daughters. (3) Only in default of any lineal descendants male or female in favour of any other next of kin.

Cl. 13 directed that, in default of the exercise of the power so given, each son's share should devolve on his sons or their issue for stirges, and failing such sons of issue, on his sons' widows and daughters, or the issue of the latter. In the event of failure of sons and daughters and their issue the widow of any son was to take onefourth of his share, and the testator's remaining sons were to have the remaining three-fourths added to their shares,

Cl. 14 devised the residue of the testater's property to the executors upon trust to convert for payment of funeral and testamentary expenses, debts, and legacies, and to divine the balance into five equal parts, and to pay one past to each of his sons for his absolute use with a proviso that the trustees should not be bound to sell for ten years, and should in the measurime be entitled to carry on the husiness of the testator.

Cl. 15 directed that in case any person beneficially entitled to any share in the income or corput of the estate should (1) alienate or charge his interest; or (2) become lankropt; or (3) should have decree passed against him for over Rs. 25,000; or (4) should become indelated in any sum or sums exceeding Rs. 25,000 his interest should thereupon cease and become void, and it was directed how such interest should be applied according as it was a share in the income or in the owfus.

Cl. 16 directed that if any beneficiary should ceare to profess the Zoroastrian faith, or Lecome a convert, or marry a person not born of Pan'i parents, his interest should forthwith crose and become wid as if he or she had died, and the tractices should hold such interest in trust for such persons or person as should be entitled to it on the death of such beneficiary, but subject to the provisions of cls. 15 and

Held that, subject to provision being made for the valid bequests as to which no question arose, and for giving effect to the rights of occupation and maintenance provided by cls. 9 and 10 of the will, the five sons of the testator had a present title to have the residee of the testator's estate

divided Letween them-

The limitations in cls. 11 to 13 contravene the provisions of S. 100 of the Succession Act. The Lequests to the rons' daughters, widows and issue of the testator's sens thus made do not in all possible instances dispose of the subjectmatter to which they apply and so fail to comprise the whole of the remaining interest of the testator. It is obvious that he has reserved contingent rights which might well prove to be of value. The end orn Leneficiaries do not take the whole interest undisposed of by reason of the title of his own sons being only for their lives. But the difficulties are not exhausted by these considerations. Cl. 15 gives over the share in income or corfus alike of any lereficiary who alienates, in any of a comber of ways, and in that event creates a discretionary trust, which may extend, so far as the income is concerned, only to a part of it, for the benefit according to selection by the trustees of some others of a class of beneficiaries somewhat wider than that of those who are to take under the clauses just referred to. The 16th clause also puts an end to the title of every beneficiary who ceases to profess, or marries any one not professing, the Zoroastrian faith, and gives the interest over

### SUCCESSION ACT X OF 1865-(Centá.)

Ss. 100 to 102-(Contd.)

in favour of those who take on the death of such beneficiary. In the face of this clause it connot be contended successfully that S. 100 is complied with. For the whole of the remaining interest need not pass out of the hands of the trustees if there is a forfeiture of the income of the sons of the testator. (Viscount Haldame.) PUTLIBAL : SORABJI (1923) A. I. R. 1923 P. C. 122= NAOROJI GAMADIA.

(1923) M. W. N. 626 = 25 Bom. L. R. 1099 = 33 M. L. T. 401 (P. C.) = 28 C. W. N. 737 = 76 I. C. 996 = 45 M. L. J. 780 (788-9).

#### Ss. 101 and 102.

-Bequest contrary to-Distribution to take place after all sons who might be born to sons of testator had attained their majority-Will directing-Validity.

A Hindu by his will appointed his ehlest son, the appellant, to look after his estate and in certain events to divide the estate amongst his grandsons. The High Court held that on the true construction of the will, the intention of the testator was to empower the appellant to divide his property into five shares, as he had five sons, and to deliver the shares to the grandsons in the case of sons with male issue, and in the case of sons without male issue to the sons themselves. "When my grandsons may attain their age", meaning thereby that the distribution was to take place only after all the sons who might have been born to the sons of the testator had attained their majority. The High Court held that the disposition was contrary to the principles underlying Ss. 101 and 102 of the Indian Succession Act and that the will was therefore void with the result that the estate was to be administered on the footing of intestacy, Their Lordships, on appeal, upheld the judgment of the High Court. (Lord Macnaghten.) SUBRAMANIA PILLAI r. MURUGESA PILLAL (1912) 21 L.C. 282= 17 C.W.N. 488.

-Daughters-Bequest to, as a class for their lives-Remainder to their children on attaining 21-Validity of latter bequest-Age of majority of children subsequently postponed to 21 under Indian Majority Act-Effect.

Under S. 101 of the Indian Succession Act no bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority (ending at 18) of some person who shall be in existence at the expiration of that period and to whom if he attains full age, the thing bequeathed is to belong. By S. 102 of that Act, if a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in S. 101, the bequest is wholly void.

The will of a Hindu, who died in 1904, after directing the formation of a fund for the payment of a monthly sum to his widow for life, directed that his trustees were (a) to apportion the residuary trust funds into as many equal shares as he had daughters who were either living at his death, or, having prodeceased him, had left issue them and him surviving; (b) to pay the income of such shares to the respective daughters during life, and, after the death of each daughter, to hold her share aforesaid for her children who should attain 21 years; (c) if any daughter died without lawful issue, to hold the said share in trust for the children of the other daughters who should attain 21 years; and (d) if a daughter dying in the testator's lifetime left lawful issue surviving the testator and attaining the age of 21 years, such issue were to take the share appropriated as aforesaid to the said daughter as if she had survived the testator.

Held that as the bequest, treated as at the testator's death, made delay beyond the lifetime of the daughters and

#### SUCCESSION ACT X OF 1865-(Contd.)

Ss. 101 and 102-(Contd.)

the minority of some of their children possible, the bequest in favour of the children was inoperative.

The provisions of the Indian Majority Act of 1875 are of no avail as against this conclusion, because at the testator's death-for this purpose the relevant date-it was not clear, and could not be certain, whether all or any of the members of the classes in whose favour the disposition was made would ever have guardians appointed. The provision of the will fixing 21 in every case as the age of vesting was, therefore, in contravention of S. 101, and the whole gift is invalid under S. 102 of the Succession Act. (Viscount Haldane.) SOUNDARA RAJAN v. NATARAJAN.

(1925) 52 I. A. 310 (319-21) = 48 M. 906= 6 L. R. P. C. 180 = 23 A. L. J. 1010 = (1926) M. W. N. 22=43 C. L. J. 70= 28 Bom. L.R. 204 = A. I. R. 1925 P.C. 244 = 92 I. C. 289 = 49 M. L. J. 836.

S. 102.

-Applicability- Wills operation of which is suspended during testator's life-Deeds operating immediately-Distinction.

Screble as regards the applicability of S. 102 of the Indian Succession Act a distinction may be taken between wills the operation of which is suspended during the testator's life, and deeds which operate immediately, especially such deeds as confer a present interest upon a present person (177). (Sir Arthur Hobboute.) RAI BISHEN (1884) 11 I.A. 164= CHAND P. ASMAIDA KOER. 6 A. 560 (572)=4 Sar. 512.

Class gift hit at by.

S. 102 of the Succession Act lays down the rule that a bequest inoperative as to some of a class shall be wholly void, not in all cases, but only when the bequest offends against the rules contained in Ss. 100 and 101 of the Act (177). (Sir Arthur Hobbouse.) RAI BISHEN CHAND P. ASMAIDA KOER. (1884) 11 I.A. 164 = 6 A. 560 (572) = 4 Sar. 512.

--Hindu Law-Joint family-Manager-Gift by, to grandson then in existence and to other grandsons that might be born thererfter-If hit at by section.

A transaction by which a grandfather, the head and manager of a joint Hindu family governed by the Mithakshara law, makes, by a deed executed with the consent of his son obtained for valuable consideration, a gift of all the family property to his then existing minor grandson, son of that son, and to other grandsons who might be born thereafter, is not a gift falling within either of the Ss. 100 and 101 of the Succession Act, and is therefore not hit at by S. 102 thereof (177). (Sir Arthur Hobkouse.) RAI BISHEN CHAND D. ASMAIDA KOER.

(1884) 11 I. A. 164 = 6 A. 560 (572) = 4 Sar. 512

#### ILLUSTRATION (B).

Applicability.

Illustration (b) to S. 102 of the Succession Act is not made applicable beyond the two cases contemplated by Ss. 100 and 101 of the Act (177). (Sir Arthur Hobbouse.) RAI BISHEN CHAND v. ASMAIDA KOER.

(1884) 11 I. A. 164=6 A. 560 (572-3)=4 Sar. 512

Semble illustration (b) to S. 102 of the Succession Act of 1865 imports into India an English rule of construction which usually defeats the intention of the testator (177)-RAI BISHEN (Sir Arthur Hobhouse.) (1884) 11 I. A. 164= ASMAIDA KOER. 6 A. 560 (572)=4 Sar. 519.

30 M. L. J. 110.

#### SUCCESSION ACT X OF 1865-(Contd.)

8. 102-(Contd.)

ILLUSTRATION (B)-(Contd.)

Inappropriateness of.

Illustration (b) to S. 102 of the Succession Act seems out of place as attached to a section intended, not to define the word "class", but only to establish a special incident of gifts to classes (177). (Sir Arthur Hobbouse.) RAI BISHEN CHAND v. ASMAIDA KOER.

(1884) 11 I. A. 164 = 6 A. 560 (572-3) = 4 Sar. 512.

#### S. 106.

-Will-Widow- Bequest for life to- Bequest to daughter absolutely after death of widow-Estate taken under-Death of daughter before widow-Effect. See HINDU LAW-WILL-DAUGHTER-WIDOW.

(1919) 46 I. A. 256 (268) = 47 C. 466 (480).

#### S. 107.

Contingent bequest to posthumous son-Exception to S. 107-Bequest coming within-Conditions.

The material clauses of the will of a Parsi were as fol-

"(5) My wife R is now in the family way. And she has expressed her free will to live as a member of the family with my executor, my brother C. As to whatever children (child) that may be born of her womb, my brother shall bring up and maintain the same. And my said executor shall defray all the expenses in connection therewith out of my property and effects. And he shall maintain the family. (The expression 'maintenance of the family' includes that of the maintenance of the said executor also) . . . . should a son be born he also shall be cherished and maintained. and educated and brought up. And when he comes of age by executor or after his death his executors or executrices shall make over the whole of my remaining properties to the said son. Should the child (whether) daughter or son born of the womb of my wife, die in tender age (i.d., a minor) and should my wife for any reason whatever be unwilling to live as a member of the family with my executor, then my executor shall out of my property purchase Bonds for Rs. 5,000 bearing interest at 4 per cent. at the market rate and shall transfer the same to the name of my wife R.

If the maintenance of the family did not exhaust the whole income, a discretionary power was given to the execufor by cl. 14 of the will to spend the surplus income in giving encuragement to education and works in science and acts as well as in erecting troughs for cows and cattle to drink water from. Cl. 15 of the will bequeathed the testator's properties in three specified places to his brother C, and cancelled the right of his heirs from all those. Cl. 16 contained a residuary bequest to the testator's executors.

The parties were governed by the Indian Succession Act

Held, affirming the Courts below, that the bequest to the testator's son was contingent within the meaning of the first clause of S. 107 of Succession Act.

Held further, reversing the appellate Court and restoring the trial Judge, that the case did not fall within the excep-

tion to S. 107 of the said Act.

There is no direct gift to the son, but only a direction to hand over, not any particular fund, but the whole of the salor's remaining properties when the son comes of age-Nor is the income of such remaining properties to be emoyed in any way in accordance with the terms of the cition absolutely for the son, nor is it directed that the plied for his benefit. That would be impossible, as the tainable. (Lord Carton.) DADACHANJI P. RATANBAI. (1924) 52 I. A. 95 = 49 B. 167 = 27 Bom. L. B. 1 =

SUCCESSION ACT X OF 1865-(Contd.)

S. 107-(Contd.)

(1929) M. W. N. 38 = 21 L. W. 371 = 29 C. W. N. 629 = 3 Pat. L. R. 204 = A. I. R. 1925 P. C. 27 = 84 I. C. 892 = 47 M. L. J. 850. S. 111.

#### APPLICABILITY OF.

-Even in India, as regards Hindus, the application of S. 111 of the Succession Act is confined to special tracts such as the territories subject to the Lieutenant-Governor of Bengal and the Presidency-towns of Bombay and Madras (19). (Mr. Amor Ali.) BHUPENDRA KRISHNA GHOSE (1915) 43 I. A. 12= 7. AMARENDRA NATH ROY. 43 C. 432=(1916) 1 M. W. N. 73=20 C. W. N. 169= 14 A. L. J. 167 = 3 L. W. 252 = 19 M. L. T. 97 = 34 I.C. 892 = 23 C. L. J. 169 = 18 Bom. L. R. 347 =

-Real and personal property-Bequest of.

The view of the High Court that S. 111 applies to bequests of all descriptions of property, there being no difference in India between real and personal property, was not impagned in the argument before their Lordships (27). (Lord Macnaghton.) NORENDRA NATH SIRCAR : KA-(1896) 23 I. A. 18= MALABASINI DASI.

23 C. 563 (573) = 6 Sar. 667 = 6 M. L. J. 71.

-Strictnen in-Nocinty.

S. 111 of the Succession Act should be applied only to cases strictly coming within its scope (19). (Mr. Ameer Ali.) BHUPENDRA KRISHNA GHOSE : AMARENDRA (1915) 43 I. A. 12 = 43 C. 432 = NATH ROY. (1916) 1 M. W. N. 73 = 20 C. W. N. 169 =

14 A. L. J. 167 = 3 L. W. 252 = 19 M. L. T. 97 = 34 I. C. 892 = 23 C. L. J. 169 = 18 Bom. L. R. 347 = 30 M. L. J. 110.

#### BASIS OF-ENGLISH LAW.

-S. 111 of the Succession Act embodies the rule enunciated in Edwards v. Edwards. The rule of construction laid down in that case has been considerably modified by later English decisions. The Indian Act, however, has given it statutory force (19). (Mr. Ameer Ali.) BHUPEN-DRA KRISHNA GHOSE P. AMARENDRA NATH ROY.

(1915) 43 I. A. 12=43 C. 432=(1916) 1 M.W.N. 73= 20 C. W. N. 169 = 14 A. L. J. 167 = 3 L. W. 252 = 19 M. L. T. 97 = 34 I. C. 892 = 23 C. L. J. 169 = 18 Bom. L. R. 347 = 30 M. L. J. 110.

#### CONSTRUCTION.

-Proving-"Unless a contrary intention appears by the well" - Implication of - Permissibility.

It was suggested that in S. 111 of the Act of 1865 the qualification or proviso "unless a contrary intention appears by the will" is to be understood. In some sections of the Act those words are to be found. Full effect must be given to them where they occur. But where the qualification is not expressed there is surely no reason for implying it. The introduction of such a qualification into S. 111 would make the enactment almost nugatory (27). (Lord Macnaghten.) NORENDRA NATH SIECAR : KAMALABASINI DASI.

(1896) 23 I. A. 18 = 23 C. 563 (572-3) = 6 Sar. 667 = 6 M. L. J. 71.

### CONTINGENT OR EXECUTORY BEQUESTS.

-Rule under Act in regard to -Application of-Intention of testator if controls.

In regard to contingent or executory bequests, the Indian Succession Act, 1865, has laid down a hard and fast rule which must be applied whenever it is applicable without speculating on the intention of the testator, (Lord Macnaghten.) NORENDRA NATH SIRCAR 21. KAMALABASINI (1896) 23 I. A. 18 (26-7) = 23 C. 563 (572) = DASI. 6 Sar. 667 = 6 M. L. J. 71. SUCCESSION ACT X OF 1865-(Contd.)

S. 111-(Contd.)

GIFT OVER-VALIDITY OF.

-Uncertain event-Happening of-Bequest on-No time fixed for happening of event. See HINDU LAW-WILL-GIFT OVER-VALIDITY OF.

(1914) 42 I. A. 71 (78) -39 B. 296.

MARRIAGE-UNCERTAIN EVENT OF-BEQUEST IN. -What amounts to-Will-Construction.

By his will a Hindu made provision for his wives and for his two daughters, the clause relating to the daughters being as follows: - When they will be married and if they desire to live in separate houses the person in whose management my property will be at the time will make separate houses for them in the vicinity of my house from the income of my property. For the maintenance of my daughters I fix an allowance of Rs. 600 a year for each of them. As long as the daughters will live in the separate houses in this place they will get the fixed allowances respectively; but if the daughters do not live in this place they will get Rs. 10,"

It was contended that the bequests to the daughters were given only in the uncertain event of marriage, and that as that event did not happen in the lifetime of the testator the bequests never took effect under S. 111 of the Indian Suc-

cession Act, 1865.

Held that the contention was not well founded (10-1).

The payment of the maintenance is not made contingent on the marriage of the ladies. The will deals with the maintenance in a clause which stands by itself and which must be read by itself. The clause contains no reference to marriage or to any other future event. S. 111 therefore has no bearing on the construction to be put on the bequest (11). (Lord Mersey.) CHANDRA KISHORE ROY :- PRA-(1910) 38 I. A. 7= SANNA KUMARI DASI.

38 C. 327 (332-3) - 15 C. W. N. 121 = 9 M. L. T. 71 = (1911) 2 M. W. N. 30=13 C.L.J. 58=8 A. L. J. 96= 13 Bom. L. R. 67=4 Bur. L. T. 65=9 I. C. 122= 21 M. L. J. 116.

SONS-BEQUEST EQUALLY TO-GIFT OVER, ON DEATH OF ONE SONLESS, OF ALL PROPERTIES TO SURVIVORS EQUALLY.

-Effect. See HINDU LAW-WILL-GIFT OVER-SONS-BEQUEST EQUALLY TO.

(1896) 23 I. A. 18 = 23 C. 563.

WIDOW EXECUTRIX-LIFE ESTATE TO, WITH REMAINDER TO ADOPTED SON OR HIS MALE ISSUE WHO MAY SURVIVE HER.

Gift over to nephews in default -Validity of.

A Hindu, subject to the Dayabhaga school, executed a will by which he appointed his wife his sole executrix and authorised her to adopt Dattaka Putraka. The will provided, "In case of death of an adopted son my said wife shall adopt one after another five sons in succession. my said wife dies without adopting a son, or if such adopted son predeceases her without leaving any male issue, in such case my estate after the death of my said wife shall pass to the sons of my sister B who may be living at the time of my death.'

On the testator's death, his widow applied for and obtained probate of the will. She adopted a son who died without issue and herself died shortly after without making a further adoption, and the question arose whether the gift over to the testator's nephews took effect. It was contended that it failed under the provisions of S. 111 of the Succession Act.

Held that, on the right construction of the will, the estate was in the widow during her life, that the gift over was expressly declared to take effect after her decease in case of the failure of the adoptions without securing the object the Administration with will annexed—Grant of, by competed

SUCCESSION ACT X OF 1865-(Contd.)

S. 111-(Contd.)

WIDOW EXECUTRIX-LIFE ESTATE TO, WITH RE-MAINDER TO ADOPTED SON OR HIS MALE ISSUE WHO MAY SURVIVE HER-(Contd.)

testator had in view, and that, as the event on the occurrence of which the distribution was to take place was distinctly mentioned as being the death of the widow, the gift to the nephews was not affected by S. 111 and most take effect (18-9). (Mr. Ameer Ali.) BHUPENDRA KRISHNA GHOSE P. AMARENDRA NATH DEV.

(1915) 43 I.A. 12 = 43 C. 432 (440 1) = (1916) 1 M. W. N. 73 = 20 C. W. N. 169 = 14 A. L. J. 167 = 3 L. W. 252 = 19 M. L. T. 97 = 34 I. C. 892-23 C. L. J. 169-18 Bom. L. B. 347# 30 M. L. J. 110.

S. 126.

SCOPE OF.

Principle of Lassence v. Tierney-Enactment in statutory form of.

S. 126 of the Indian Succession Act, 1865, is an enactment in statutory form of a principle which was already familiar to English lawyers. The case of Lassence v. Tierney shows that where, reading the will as a whole, the intention to confer an absolute estate in the first instance is expressed or implied, and following on that absolute estate there is a provision for settlement which in the event cannot be operative, then the words of prior intention prevail and the absolute estate takes effect notwithstanding the failure of the provision for settlement that follows. In India the words in S. 126 must be followed as laying down the principle, but the principle is not substantially different from what was expressed in Lassence v. Tierney. (Viscount Haldane.) SOUNDARA RAJAN v. NATARAJAN.

(1925) 52 I. A. 310 (317-8) = 48 M. 906 = 6 L. R. P. C. 180 = 23 A. L. J. 1010 = (1926) M. W. N. 22=43 C. L. J. 70= 28 Bom. L. R. 204 = A. I. R. 1925 P. C. 244 = 92 I.C. 289 = 49 M. L. J. 836.

S. 180.

-Applicability-Letters of Administration granted

within the province-Effect.

S. 180 of the Succession Act relates exclusively to wills proved elsewhere than within the province and provides for grants of letters of administration upon the production of authenticated copies of such wills. The section has no relevancy to a case where the letters of administration were (Lord Mersey.) granted within the province (11-2). CHUNDRA KISHORE ROY v. PRASANNA KUMAR DASI. (1910) 38 I. A. 7=38 C. 327 (334)=15 C. W. N. 121= 9 M. L. T. 71 = (1911) 2 M. W. N. 30 = 13 C. L. J. 58 = 8 A. L. J. 96=13 Bom. L. R. 67=4 Bur. L. T. 65= 9 I. C. 122=21 M. L. J. 116.

S. 187.

-Probate obtained after suit but before decree-Suff.

ciency of. It is said that even if the provisions of S. 187 of the

Succession Act as to the obtaining of probate were complied with, the compliance was after suit commenced, and was therefore too late. Their Lordships, however, are of opinion that as the compliance was before decree, the Court was fully competent to deal with the case. (Lord Mersey.) CHUNDRA KISHORE ROY P. PRASANNA KUMAR DASI.

(1910) 38 I.A. 7=38 C. 327 (334-5)=15 C.W.N. 121= 9 M. L. T. 71 = (1911) 2 M. W. N. 30 = 13 C. L. J. 58= 6 A. L. J. 96=13 Bom. L. R. 67=4 Bur. L. T. 65= 9 I. C. 122=21 M. L. J. 116.

Ss. 187, 3.

-Probate of will-What amounts to-Letters of

#### SUCCESSION ACT X OF 1865-(Contd.)

8s, 187, 3-(Contd.)

Court within province-Subsequent limitation of grant by

High Court-Validity.

The suit was by the daughters of a deceased Hindu to recover from the adopted son of the diceased arrears of maintenance provided for under the will of the deceased. At the time the suit was instituted no letters-of-administration had been granted, but, pending the suits, the widow of the deceased for whom also provision was made in his will. obtained from the District Judge a grant of letters-of-administration with the will annexed. The grant was, on appeal, modified by the High Court by limiting it to the realization of the maintenance allowance provided for the widow; but before the letters-of-administration could be recalled and altered the widow died and the letters were never formally altered.

Held that "probate" of the will as defined by S. 3 of the Succession Act had in fact been obtained, and the provisions of S, 167 thereof had therefore been strictly complied

with (12).

The will was proved before a Court of competent jurisdiction within the province, and that Court duly issued to the widow a certified copy of the will under the seal of the Court with a grant of administration to the estate of the testator. The provisions of the section were therefore strictly complied with. The sabsequent limitation of the grant to so much of the estate of the deceased as might be sufficient to satisfy the widow's claim, even if right, appearto be immaterial (11-8). (Lord Mercy.) CHANDRA KISHORY ROLD, PRASANNA KUMAR DASI.

(1910) 38 I. A. 7=38 C. 327 (334-5)=15 C.W.N. 121= 9 M. L. T. 71 = (1911) 2 M. W. N. 30 = 13 C. L. J. 58 = 8 A. L. J. 96 = 13 Bom. L. R. 67 = 4 Bur. L. T. 65 = 9 I. C. 122 = 21 M. L. J. 116.

#### S. 331.

-Hindu in-Sense of-Sikhs if included.

In S. 331 of the Indian Succession Act the term Hindu is used in the same wide sense as in earlier enactments, and includes Sikhs. If it be not so, then Sikhs were, and are in matters of inheritance, governed by the Succession Actan Act based upon, and in the main embodying, the English law; and it could not be serejously suggested that such was the intention of the Legislature (256). (Sir Arthur Wil-MI.) RANI BHAGWAN KUAR P. JOGENDRA CHANDRA (1903) 30 I. A. 249 - 31 C. 11 (32)=

7 C.W.N. 895 = 84 P. R. 1903 = 135 P. L. R. 1903 = 13 M. L. J. 381.

#### Ss. 331. 2.

Christian-Succession to-Law governing-Hindu Law-Application of-Wishes or acts of deceased indicating Effect. See SUCCESSION ACT OF 1865-Ss. 2.331. (1921) 48 I. A. 381 (385-6) = 43 A. 525 (533).

SUCCESSION CERTIFICATE.

See Succession Certificate ACT of 1860.

SUCCESSION CERTIFICATE ACT XXVII OF 1860.

#### Applicability.

Wrong-Suit founded on-Case of. Act XXVII of 1860 which provides for the granting of certificate is intended for the protection of debtors to a cased's estate. It has no application to a case in which the right of action is founded entirely on wrong and not on

The plaintiff and the 2nd defendant were sons of a Mahomedan lady. The plaintiff sued to recover from the lat defendant certain promissory notes, commonly called Company's paper, of the Indian Government which appertised to the estate of the deceased. He alleged that the

#### SUCCESSION CERTIFICATE ACT XXVII OF 1860 -(Contd.)

Applicability-(Contd.)

notes had been illegally sold by the 2nd defendant to the Ist and claimed either re-titution of the notes or their value, The plaintiff described inheritance as the base or root of his title to the property, and alleged the illegal sale or transfer of, and the illegal dealing with, the notes as the wrong done to him, and that the alleged violation of his right constituted his cause of action. Held that the Act was entirely inapplicable to such a suit.

The 1st defendant was pever a delitor of the mother, nor did his taking the share, or property, or part of the share, or property, of the plaintiff, by an invalid title, constitute him a debter to the estate (521). (Lord Justice Giffard.) IKBALOODOWLAH 7. SAH BUNARSEE DOSS.

(1869) 12 M. I. A. 507 = 2 Sar. 463 = R & J.'s No. 8 (Oudh)

#### Hindu deceased—Status. of. divided or undivided -Decision as to. in contest between his widow and brother.

Effect of in Civil suit.

An application by a Hindu widow for a certificate under Act 27 of 1860, enabling her to collect the debts of her deceased husband, was opposed by her husband's brother, who alleged that he and the deceased were undivided and that he became entitled to the deceased's estate by survivorship. The Court, however, granted a certificate to the widow, and the grant was confirmed on appeal.

In a suit brought by the brother of the deceased against the widow in the Court of the Subordinate Judge for the recovery of the estate of the deceased in her possession on the ground that the deceased and he were undivided, held that the order granting the certificate did not constitute

res judicata (34-5).

The only question to be determined in a proceeding under Act XXVII of 1860 is one of representation, not otherwise of title (35). (Sir Robert P. Cellier.) RUN BAHADUR SINGH & LACHOO KOFR.

(1884) 12 I. A. 23=11 C. 301 (306 8)=4 Sar. 608.

-After the death of J. leaving a widow and no issue, his brother applied under Act XXVII of 1860 for a certificate to collect debts due to the estate of J alleging that the deceased and he had been joint in estate and that he was entitled as survivor to f'r estate. The application was opposed by J'r widow, who claimed that a partition between the brothers had been effected prior tober husband's death, and accordingly that at the date of her husband's death, the brother were separate and she was entitled to succeed to her husband's estate. The Dt. Judge decided that the alleged partition had not taken place and accordingly that the luothers were joint, and granted the certificate to the applicant,

Held that the decision being given only upon a question of representation, did not preclude fix widow from raising the question of title again in a suit properly instituted for that purpose. (Viscount Carr.) BHAGWAT KOER P. DHANUKDHARI PRASHAD SINGH. (1919) 46 I. A. 259 =: 47 C. 466 (475) = 17 A. L. J. 1036 = (1919) M. W. N. 360 = 24 C. W. N. 274 = 12 L.W. 105 = 1 Pat. L. T. 1 = 22 Bom. L. R. 477 = 53 I. C. 347 =

### Object of.

37 M. L. J. 513.

-The Succession Certificate Act 27 of 1860 was probably in part designed to protect the debtor against a multiplicity of suits (829). MIRZA BEDAR BUKRT P. (1873) 2 Suth. 823= MIRZA KHURRUM BUKHT. 19 W. R. 315 = B. & J.'s No. 20 (Qudh).

Proceedings under-Inquiry in-Scope of.

The only question to be determined in a proceeding under Act XXVII of 1860 is one of representation, not otherwise of title (35). (Sir Robert P. Collier.) RUN BAHADUR SINCH :: LACHOO KOER.

(1884) 12 I. A. 23 = 11 C. 301 (306) = 4 Sar. 602.

See also UNIOUR THIS ACT HINDU DECEASED.

-Wislow and brother of deceased-Proceedings between-Adoption by deceased-Inquity as to-Propriety of. See MUTATION-PROCEEDINGS FOR-ADOPTION BY (1909) 37 I. A. 1 (5-6) = 32 A. 104 (110). DECEASED.

S. 3-Certificate under -Absence of-Objection to. -Formal purely when. See UNDER THIS SECTION-(1873) 2 Suth. 823 (829). PRIVY COUNCIL APPEAL.

-Pricy Council appeal-Maintainability in-Objection parely cornal over-ruled by trial court and not taken in affeat.

The objection that the suit was not maintainable in the absence of a certificate under the provisions of S. 3 of Act XXVII of 1800 was decided against the respondent. by the Civil Judge, and is not made one of the grounds of appeal to the Judicial Commissioner. This would be a sufficient answer to the objection if it were merely formal; as it would be in the case of a person who, being plainly entitled to the whole debt due to a deceased person, might be suing for it without a certificate (829). MIRZA BEDAR BUKHT P. MIRZA KHURRUM BUKHT.

(1873) 2 Suth. 823 = 19 W. B. 315 = R. & J.'s. No. 20 (Oudh).

Substantial when.

Suit by appellant to recover from his father, the respondent, the sum of Rs. 50,000 as his share of the dower alleged to have been settled on his deceased mother. The appellant's case was that the contract amount of dower was 9 lakhs of rupees: that the respondent, the appellant, and three daughters of the deceased, who were made joint defendants to the suit, were the heirs of the deceased; that he (appellant), as one of the co-heirs, was entitled to threetenths of the amount fixed; but that, in deference to the law which prevailed in Outh, and having regard to the circumstances of the respondent, he had limited his claim to Rs. 50,000.

Held that, in the suit as framed, the objection to the absence of a certificate under S. 3 of Act XXVII of 1860 involved considerations which constituted substantial objections to the manner in which the suit was brought (829),

The plaint is obviously limited to the recovery of the plaintiff's share in the dower. Though the plaintiff's sisters are made formal parties, the plaint does not ask for a binding declaration as to the gross amount of the whole dower. It cannot be contended that a debtor to a Mahomedan estate is liable to be vexed by a separate suit by every cosharer in that estate for his share of the debt. The Act invoked was probably in part designed to protect the debtor against a multiplicity of suits. And as between the cosharers there are obvious objections to allowing a scramble for shares in an entire debt, since the first who takes out execution may exhaust the whole means of the debtor. Again if the respondent is treated as the sharer in possession of the entire estate of the deceased lady, and the suit, as one in the nature of an administration suit, it ought to be framed as an administration suit. No co-sharer would be entitled to receive his share until the debts of the deceased had been ascertained, and provision made for the payment of them. Until that is done the amount of the share is uncertain; and if the appellant had clothed himself with the character of an administrator by obtaining a certificate under the Act, he must have given security for the due

# SUCCESSION CERTIFICATE ACT XXVII OF 1860 SUCCESSION CERTIFICATE ACT XXVII OF 1860

-(Contd.)

S. 3-Certificate under-Absence of-Objection to -(Contd.)

administration of whatever he might receive (829). MIRZA BEDAR BUKHT P, MIRZA KHURRUM BUKHT.

(1873) 2 Suth. 823 = 19 W. R. 315= R. & J.'s No. 20 Oudh.

S. 4-Trustee-Pro-note in favour of-Suit by successor upon-Certificate under Act-Necessity.

In a suit by a widow who had succeeded her husband to the trusteeship of a trust for the recovery of the amount due under a promissory note executed in favour of her husband in respect of trust property, held that a certificate under S. 4 of the Act was not necessary to entitle her to recover the amount because she was not sueing as entitled to the effects of her husband or for the payment of his debt within the meaning of the section. (Lord Hobhouse.) SRIMANT RAJAH YARLAGADDA 7. MAKARLA SRI DEVAMMA.

(1897) 24 I. A. 73 = 20 M. 162 = 1. C. W. N. 497 = 7 Sar. 205.

#### SUCCESSION PROPERTY PROTECTION ACT XIX OF 1841.

#### Jurisdiction under.

Co-seidoses-Proceedings between-Partition complete in invitum in.

In a proceeding between co-widows under Act XIX of 1841 the court has no jurisdiction to make a complete partition in invitum (515). (Sir James W. Colvile.) BHUG-WANDEEN DOOBEV v. MYNA BAEE.

(1867) 11 M. I. A. 487 = 9 W. B. P. C. 23= 2 Suth. 124 = 2 Sar. 327.

Title-Pessession-Right to-Determination of

In a proceeding under Act 19 of 1841 a Judge has no jurisdiction to determine questions of title; he can only deal with the right to possession (515). (Sir James W. Calvile.) DHUGWANDEEN DOOBEY P. MYNA BAEE

(1867) 11 M. I. A. 487=9 W. B. P. C. 23= 2 Suth. 124 = 2 Sar. 327.

#### SUCCESSORS.

-See WORDS-MEANING OF-SUCCESSORS.

#### SUICIDE.

#### Forfeiture for.

#### ENGLISH LAW OF.

-Basis of -Inapplicability to Hindus and Mahomedans of.

The English law of forfeiture for suicide is not one which can be considered properly applicable to Hindoos and Mahomedans (427).

The grounds on which suicide is treated in England as an offence against the law, and punished by forefeiture of the offender's goods and chattels to the king are that it is an offence against nature, against God, and against the king-Against nature, because against the instinct of self-preser vation; against God, because against the commandment, "Thou shall not kill," and a felo de se kills his own soul; against the king, in that thereby he loses a subject. These considerations cannot extend to native Indians, not Chris tians, not recognising the authority of the Decalogue, and owing at the time when this law is supposed to have been introduced no allegiance to the King of Great British (427-8).

The nature of the punishment also is very little applicable to such persons. A part of it is, that the body of the offender should be deprived of the rites of Christian buril in consecrated ground. The forfeiture extends to chatter

SUICIDE-(Contd.)

Forfeiture for-(Contd.)

ENGLISH LAW OF-(Could.)

real and personal, but not to real estates; these distinctions, at least in the sense in which they are understood in England, not being known or intelligible to Hindeos and Mahomedans (428). (Lord Kingsdewn.) ADVOCATE-GENERAL OF BENGAL P. RANGE SURNOMOVE DOSSEE.

(1863) 9 M. I. A. 387 = 1 W. R. 14 = 2 Moo. P. C. (N. S.) 22 = 9 Jur. N. S. 877 = 8 L. T. 843 = 2 N. R. 530 = 12 W. R. (Eng.) 21 = 1 Suth. 515 = 2 Sar. 39.

Introduction into India of-Applicability of to Natives and Europeans in Calcutta in 1844-English lazz with respect to other offences-Applicability to matires of.

The English law of felo de se including the forfeiture attached to it had not been extended in the year 1844 to Hindoos destroying themselves in Calcutta (429).

None of the charters contains any forms applicable to the panishment, by forfeiture or otherwise of the crime of selfmurder, and with respect to other offences to which the charters did extend, the application of the criminal law of England to Natives not Christians, to Mahomedans and Hindoos, has been treated as subject to qualifications without which the execution of the law would have been attended with intolerable injustice and cruelty (427).

Quaere Whether the English law of 1100 de se had been introduced by the Charters in question with respect to Europeans (429-30). (Lord Kingsdesen.) ADVOCATE-GENERAL OF BENGAL P. RANEE SURNOMOVE DOSSER.

(1863) 9 M. I. A. 387-1 W. R. 14-2 Moo. P. C. (N. S.) 22 9 Jur. N. S. 877 8 L. T. 843 = 2 N. R. 530 = 12 W. R. (Eng.) 21 = 1 Suth. 515 - 2 Sar. 39.

#### RIGHT OF.

Abandonment by Government of -Claim by it subsequently-Maintainability.

The Crown claimed a portion of the personal estate of a Hindu, who destroyed himself at Calcutta in 1844, and was

found by inquisition to have been felo de se-The widow of the deceased was advised by counsel to take proceedings to set aside the verdict of felo de w. as being against the weight of evidence as well as on the ground of madirection by the Coroner in his charge to the jury, but no proceedings were taken for that purpose, in consequence of the Government of India, or their legal advisers, stating to her legal advisers that they would not prefer any claim under such verdict of felo de se. In the absence of any dalm to forfeiture by the Government of India, and in accordance with such waiver, the whole of the real estate, and such of the personal estate of the deceased as was not in court, was absolutely given up to the widow.

Quarre whether a claim so abandoned could be subseently set up (423). (Lord Kingsdown.) ADVOCATE-GENERAL OF BENGAL P. RANGE SURNOMOVE DOSSEE

(1863) 9 M. I. A. 387 = 1 W. 14 = 2 Moo. P. C. (N. S.) 22 = 9 Jur. N. S. 877 = 8 L. T. 843 = 2 N. B. 530 = 12 W. R. (Eng.) 21 = 1 Suth. 515 2 Sar. 39.

#### Nature of-View as to.

English and Hindu laws - Distinction. Self-destruction, though treated by the law of England Murder, and spoken of as the worst of all Murders, is y, as it affects society, and in a moral and religious of view, of a character very different not only from other Murders, but from all other Felonies. The truth decrines of Christianity has been regarded as deriving oral character altogether from the circumstances in

SUICIDE-(Contd.)

Nature of-View as to -(Contd.)

which it is committed :- Sometimes as blameable sometimes as justifiable, sometimes as meritorious, or even an act of positive duty. In this light suicide seems to have been viewed by the founders of the Hindoo Code, who condemn it in ordinary cases as forbidden by their religion; but in other's as in the well-known instances of suttee and selfimmedation under the car of Juggernaut treat it as an act of great religious merit (428.9). (Lord Kingsdown.) ADVO-CATE-GENERAL OF BENGAL T. RANGE SURNOMOVE (1863) 9 M. I. A. 387 = 1 W. R. 14 = DOSSEE.

2 Moo. P. C. (N. S.) 22 = 9 Jur. N. S. 877 = 8 L. T. 843 - 2 N. R. 530 - 12 W. R. (Eng.) 21 = 1 Suth. 515 - 2 Sar. 39.

SUIT.

ADMISSION IN-OPPONENT'S TITLE.

ADMISSION PRIOR TO-ESTOPPEL BY REASON OF.

APPLICATION IN-APPLICATION FOR EXECUTION OF DECREE IN SUIT IF AN.

AWARD.

CAPACITY OF PARTY IN.

CAPACITY TO INSTITUTE-MEANING OF,

CHANGE OR DEVOLUTION OF INTEREST PENDING-DEFECT IN SUIT BY REASON OF.

CO DEFENDANTS IN-ADMISSION BY ONE OF.

COMPROMISE OF.

COSTS OF.

COURT-SUIT BY OR AGAINST.

DECREE IN-PROCEEDINGS AFTER-RIGHT TO INI-

DISMISSAL OF-PLANTIFF'S RIGHT TO MOVE FOR.

DISMISSAL FOR DEFAULT OF.

EVENTS SUBSEQUENT TO.

INSTITUTION OF-DATE OF, FOR PURPOSES OF LIMI-TATION.

JURISDICTION OF COURTS-DEPRIVATION BY STATUTE OF, DUBING PENDENCY OF SUIT.

LIMITATION LAW APPLICABLE TO.

LITIGATION PRIOR.

MANITAINABILITY OF — OBJECTION TO — TENDER BEFORE SUIT—ARSENCE OF—OBJECTION BASED

OBJECT REAL OF-TEST.

OPPONENT'S TITLE-ADMISSION OF, BY PETITION FILED IN SUIT.

PARTY TO.

PENDING SUIT-PROCEDURE OF RIGHT IN REFE-RENCE TO-SAVING BY STATUTE OF.

PERSONS JOINTLY AND SEVERALLY LIABLE-JUDG. MENT UNSATISFIED AGAINST ONE OF.

REPRESENTATION IN-SUBSTANTIAL, THOUGH NOT FORMAL, REPRESENTATION.

REPRESENTATIVE OF PARTY TO.

REVIVOR AND SUPPLEMENT-SUIT IN NATURE OF.

RIGHT OF.

SANCTION TO PROSECUTE-FAILURE TO OBTAIN-DISMISSAL OF SUIT ON GROUND OF.

STATUTE-SUIT PENDING AT DATE OF.

TRANSFER OF.

VALUATION OF.

### Admission in-Opponent's title.

-Admission of, by petition filed in suit-Plea of-Proof required in case of. See ADMISSION-SUIT OPPO-(1875) 2 I. A. 113 (129.) NENT'S TITLE.

### Admission prior to-Estoppel by reason of.

-Conditions.

The question was whether the appellants (putnidars) were precluded from contending that the respondent was bound SUIT-(Conta.)

Admission prior to-Estoppel by reason of-(Conta.)

by certain decrees for enhancement of rent obtained by them against H, the mother of the respondent on the ground that in those proceedings she represented the respondent and therefore the estate. In support of his contention that they were so produced the respondent relied upon (1) a statement of the appellants in a petition presented by them on 19.1-1878 that the name of the respondent was not registered in their serishta, and he was not a tenant of the mouzah in question, that the name of // alone was registered in their serishta, and that she held the mouzah under them, and (2) the fact that the appellants had seed H after the respondent came of age for rent due partly before and partly after that

Held that the circumstances relied upon were weighty evidence against the contention put forward by the appellants in the suit, but the evidence amounted only to admissions by them that // was the tenant, and that as no fact was proved which would make the admissions conclusive against them, they were not estopped from contending to the

contrary (186).

Held further that the evidence of certain dowls and kabuliyats executed by II in pursuance of a compromise effected after the said decrees, which documents she executed as the mother and guardian of the respondent, oxtweighed the said admissions (186). (Sir Richard Couch.) WATSON & CO. P. SHAM LAL MITTER.

(1887) 14 I. A. 178 = 15 C. 8 (15-6) = 5 Sar. 66.

On an issue as to whether the defendant had been validly adopted into another family, held that no weight could be given to any statements of the defendant, if they fell short of founding an estoppel, as he had asserted or denied the adoption just as it suited his purpose throughout the whole of the protracted litigation between the members of the family. (Lord Collins.) HAR SHANKAR PARTAB SINGH LAL RAGHURAJ SINGH. (1907) 34 I. A. 125 (132)= 29 A. 519 (534) - 2 M. L. T. 391 -

6 C. L. J. 13 = 11 C. W. N. 841 = 9 Bom. L. R. 757 = 4 A. L. J. 497 = 10 O. C. 343 = 9 Sar. 266 = 17 M. L. J. 354.

Application in-Application for execution of decree in suit if an.

-See EXECUTION OF DECREE—APPLICATION FOR (1881) 8 I. A. 123 (133) = 8 C. 51 (61)

#### Award.

-Application to file, under para. 20 of Sch. II of C. P. C. of 1908-If a suit. Sa ARBITRATION-AWARD-APPLICATION TO FILE, ETC. (1891) 18 I. A 73 (76)= 18 C. 414 (419).

-Matters dealt with by -Suit in respect of-Maintainability. See ARBITRATION-AWARD-MATTERS DEALT (1885) 12 I. A. 67 (71) = 11 C. 386 (392-3). WITH BY.

#### Capacity of party in.

-Guardian-Suit by or against-Capacity in, individual capacity or capacity of guardian. See HINEU LAW -- MINOR-GUARDIAN OF-SUIT BY OR AGAINST-CAPACITY IN.

-Hindu joint family-Manager-Suit by or against-Capacity in, individual capacity or capacity of manager. See HINDU LAW-JOINT FAMILY-MANAGER OF-SUIT (1879) 6 I. A. 233 (237).

-Hindu widow-Suit against-Husband's estate if represented in. See HINDU LAW-WIDOW-DECREE AGAINST-HUSBAND'S ESTATE, ETC.

(1867) 11 M. I. A. 241 (267).

SUIT-(Contd.)

Capacity of party in-(Contd.)

-Religious endowment-Shebait of-Suit for recovery of property by-Right asserted in, individual right of shebait or right of endowment. See HINDU LAW-RELI-GIOUS ENDOWMENT-TEMPLE-SHEBAIT OF-SUIT BY -RIGHT ASSERTED IN. (1922) 49 I. A. 237 (250)= 45 M. 565 (580).

#### Capacity to institute-Meaning of.

Suit in which decree might be obtained-Capacity to institute, if means. See LIMITATION ACT OF 1908, S. 17 (1916) 43 I. A. 113 (119). -WORDS.

Change or devolution of interest pending-Defect in suit by reason of.

Order proper in case of. See PRACTICE—PARTIES -ADDITION OF-SUBSTITUTION OR.

Co-defendants in-Admission by one of.

(1916) 43 I. A. 113 (121·2).

-Admissibility of, against him and against other defendants in subsequent suit. See ADMISSION-CO-DEFEN-(1869) 12 M. I. A. 507 (519). DANTS-PRIOR SUIT.

#### Compremise of.

-See C. P. C. OF 1908, O. 23 AND COMPROMISE-SUIT-COMPROMISE OF.

-Some of parties only-Compromise by-Decree in terms of, against all-Validity of-Appeal from, by persons not parties to compromise-Right of. See MORTGAGE-SUIT TO ENFORCE-COMPROMISE OF, ETC.

(1926) 52 M. L. J. 407.

Withdrawal of suit pursuant to-Plaintiff's application for-Defendant's rokil not admitting compromit-Order allowing withdrawal on payment of defendant's costs in case of-Propriety.

After the trial of a suit had proceeded up to a certain stage the plaintiff applied for the dismissal of the suit upon the ground that a razinama had been entered into and agreed to by the parties by which the plaintiffs and defendants appointed arbitrators in regard to the case between them, and got the case decided by arbitrators. The defendants' vakil represented that they were not aware of the razinama, but, as the plaintiffs' vakil admitted the razinama. the Court removed the suit from the file, and ordered that the plaintiffs should bear all the costs.

Held that as the plaintiff admitted that he desired to withdraw his suit, and to pay the costs, with a precautionary recital in favour of the defendants that they did not in the least degree admit any of the statements contained in the razinama, the justice of the case was obviously met by llowing the plaintiffs to withdraw their suit, and ordering them to pay the costs of the soit thus withdrawn (867). DEVAJI GAVAJI D GODARHAI GODBHAI.

(1869) 2 B L. R. 85 (P. C.)=11 W. R. 35=2 Suth. 208.

Costs of.

-See COSTS-SUIT.

Court-Suit by or against.

-Maintainability. See COURT-SUIT BY OR (1919) 46 I. A. 228 = 42 A. 158 (167). AGAINST.

Decree in-Further proceedings after-Bight to initiate.

-Defendant's right.

After decree it is open to any party to a suit, to whose interest it is that further proceedings be taken, to initiate the supplementary proceedings; but in the ordinary case it is the plaintiff who moves. After a decree any party can SUIT-(Contd.)

Decree in-Further proceedings after-Right to initiate-(Contd.)

apply to have it enforced. (Lord Phillimore.) LACHMI NARAIN MARWARI D. BALMAKUND MARWARI.

(1924) 51 I. A. 321=4 P. 61=29 C. W. N. 391= A. I. R. 1924 P. C. 198 - 20 L. W. 491 -35 M. L. T. 143 - 26 Bom. L. R. 1129 =

22 A. L. J. 990 = 5 Pat. L. T. 623 = 40 C. L. J. 439 -1 O. W. N. 629 = 10 O. & A. L. R. 1033 -(1924) M. W. N. 707 = 81 I C. 747 = 47 M. L. J. 441.

Dismissal of -Plaintiff's right to move for.

-Practice-England and India.

Quaere, whether the practice of the Indian Courts is exactly in accordance with the practice of our own Courts, by which a plaintiff may, up to a certain stage, dismiss his own suit upon obtaining an order for its dismissal with costs (86). DEVAJI GAYAJI v. GODABHAI GODBHAI.

(1869) 2 B. L. R. 85 (P. C.) = 11 W. R. 35 (P. C.) = 2 Suth. 208.

#### Dismissal for default of.

 Dead plaintiff—Suit of—Dismissal of—Propriety. See C. P. C. OF 1908, O. 9. RR. 8 and 9-DEAD PLAIN-(1913) 40 I.A. 151 = 35 A. 331.

Partition suit-Preliminary decree in-Enquiry directed by-Non-appearance of plaintiff at-Dismissal of suit for-Jurisdiction. See C. P. C. OF 1908. O. 17, R. 2 -PARTITION SUIT. (1924) 51 I. A. 321 (325) 4 P. 61.

#### Events subsequent to.

Privy Council's cognizance of Arrangement of parties subsequent - Pricy Council's decree without pre-

Their Lordships have nothing to do with any agreement or arrangement which may have been made by any of the parties subsequently to the commencement of the suit, and the decree to be made in this appeal will be declared to be made without prejudice to any question that may arise in respect of any agreement or arrangement, if any, which may have been made or entered into by or between any of the parties to the suit subsequent to the commencement thereof (169). (Sir Barnes Peacock.) THAKOOR HUR-DEO BUX v. THAKOOR JAWAHIR SINCH.

(1879) 6 I. A. 161 = 4 Sar. 10 - Bald. 218 = 3 Suth. 608 = R. & J.'s No. 57.

Relief on fort of-Grant of-Propriety. Not HINDU LAW-REVERSIONER-PRESUMPTIVE REVERSIONER-WIDOW-ALIENATION BY-POSSESSION OF PROPERTY SUBJECT OF-SUIT FOR. (1871) 14 M. I. A. 176 (193). Institution of-Date of, for purposes of Limitation.

-Sa LIMITATION-SUIT-INSTITUTION OF.

Jurisdiction of Court—Deprivation by statute of. during pendency of suit.

Effect. See CALCUTTA RENT ACT III OF 1920-OPERATION OF. (1927) 54 I. A. 152 (156) - 54 C. 508.

#### Limitation law applicable to.

See LIMITATION-SUIT-LIMITATION LAW APPLI-CABLE TO.

#### Litigation prior.

Decision in-Disposal of subsequent suit with refernace to—Propriety—Suits raising same question on same
materials. See HINDU LAW—MAINTENANCE—AMOUNT OF-AGREEMENT. (1835) 5 W. B. 98 (P. C.).

Irrigularity.

Oners whether, in a suit brought for a declaration that the defendant was not the son of A, it is legitimate for the

SUIT-(Contd.)

#### Litigation prior-(Contd.)

Court to siispose of the case against the plaintiff on the ground that a decision against him in a former suit between the same parties in respect of the same matter was right on the evidence then before the Court (57.8). (Lord Macnaghten.) Sheosagar Singh v. Sitaram Singh.

(1897) 24 L A. 50 = 24 C. 616 (626) = 1 C.W.N. 297 = 7 Sar. 124.

-Obiter dictum in-Decision based on-Propriety. See JUDGMENT.

#### Maintainability of-Objection to-Tender before suit-Absence of-Objection based on.

Appeal - Maintainability for first time in.

Where a party has a good objection, such as an absence of tender before suit, to urge to the prosecution of a suit, his omission to do so is fatal to his availing himself of it as an objection on appeal (576-7). NAWAB MAHOMED AMEENOODEEN KHAN J. MOOZUFFUR HOOSEIN KHAN.

(1870) 5 B.L.R. 570 = 14 W. R. (P.C.) 5= 2 Suth. 334 = 28 Sar. 585.

#### Object real of-Test.

-Plaint-Allegations in - Substance of-Form of drafting of plaint-Regard for. New SPECIFIC RELIEF ACT, S. 42-CASES UNDER-DEED.

(1902) 29 I.A. 203 (210-3) = 25 I.A. (15-6).

#### Opponent's title-Admission of, by petition filed in suit.

-Plea of-Proof of. See ADMISSION-SUIT-OP-PONENT'S TITLE. (1875) 2 I.A. 113 (129).

#### Party to.

-See C. P. C. OF 1908, S. 11-PARTY TO SUIT AND S. 47-PARTY TO SUIT.

-Substitution of, at one stage -Sufficiency of, for all stages. See PRACTICE - PARTIES-SUBSTITUTION OF (1917) 44 I.A. 218 (228) = 45 C. 94. -SUIT.

#### Pending suit-Procedure of-Right in reference to-Saving by statute as to.

-Arbitration-Compulsory reference to-Right of, if within meaning of saving clause. See STATUTE-PROCE-DURE-PENDING SUIT. (1865) 10 M.I.A. 413 (424-5).

#### Persons jointly and severally liable-Judgment unsatisfied against one of.

-No bar to suit against other or others. See COM-PANY-IMPRECIORS OF-AMOUNT FRAUDULENTLY RE-CEIVED BY-SUIT BY, ETC.

(1922) 32 M. L. T. 196 (P.C.) (205).

#### Representation in-Substantial, though not formal, representation.

-What amounts to-Effect of. See C.P.C. OF 1968, S. 11-PARTY TO SUIT-PERSON SUBSTANTIALLY, ETC.

#### Repesentative of party to.

-Judgment-debtor — Representative of — Execution purchaser if and to what extent is-Private purchaser-See JUDGMENT-DEBTOR (1) ESTOPPEL Distinction. AGAINST AND (2) REPRESENTATIVE OF.

#### Revivor and supplement-Suit in nature of.

-Maintainability in India. See PRACTICE-PROCE-(1863) 9 M.I.A. 539 (602-3). DURE-REVIVOR.

#### Bight of.

-Bar of, based upon considerations of policy or expediency. See C.P.C. OF 1908, S. 11-APPLICATION OF RULE OF-POLICY OR, ETC.

(1904) 32 I. A. 45=28 M. 42.

SUIT- ( outd.)

Right of - (Contd.)

-Conversion by .1 of moveables of B-Sale thereof by R as A's agent-B's suit against C for recovery of sale proceeds in his hands-Right of. See LIMITATION ACT OF 1908, ARTS, 48, 62, 120,

(1884) 11 I.A. 59 (64-5)=10 C. 860.

Death of human being-Damages suffered in consequence of-Suit for.

Under the common law an action does not lie for damages suffered in consequence of the death of a human being (221-2). (Mr. Justice Duff.) AMELIA MCCOLL v. CANADIAN PACIFIC RAILWAY CO.

(1922) 33 M.L.T. 219 (P.C.).

 Dignity or office—Suit in respect of. See DIGNITY. -Execution of decree-Attachment and sale wrongful in-Money paid to avert-Recovery of-Suit for-Right of. See under CONTRACT ACT. S. 72 AND SS. 69, 70.

-Judgment-Money paid under-Recovery of. See DECREE-MONEY PAID UNDER.

Objection to, appearing on face of written proofs and plainly raised in the case but not put forward in court below-Privy Council appeal-Maintainability for first

It would be quite impossible for their Lordships to advise His Majesty to grant to a litigant relief to which they were of opinion he was not entitled, simply because those concerned for the parties in the cause abstained from discussing in the court from which the appeal to His Majesty had been taken a vital point plainly appearing in the very face of his written proofs, and plainly raised in the case. (Lord Atkinson.) BASANT SINGH P. MAHABIR PERSHAD. (1913) 40 I.A. 86 (934) = 35 A. 273 (280) = 11 A.L.J. 469 = (1913) M.W.N. 481 = 17 C.W.N. 669 = 16 Bom. L. R. 525 = 17 C.L.J. 566 = 16 O.C. 136 = 14 M.L.T. 64 = 19 I.C. 340 = 25 M.L.J. 301.

-Objection to, purely technical - Privy Council appeal-Objection not allowed in. (Lord Brougham), BANK (1849) 5 M. I. A. 1 (26)= OF BENGAL T. MACLEOD. 7 Moo. P. C. 35=13 Jur. 945=

Taylor 434 (b)=1 Sar. 391.

-Payment "on demand"-Deed creating obligation of -Demand prior to enforcement of obligation-Necessity. See DEED-CONSTRUCTION-PAYMENT 'ON DEMAND. (1855) 6 M. I. A. 211 (229).

-Presumption as to-Precedent-Absence of, in case of common occurrence-Effect.

If the law administered in the Mofussil is to be resorted to, the absence of all precedent in a case of such common occurrence affords an irresistible presumption that no such action is maintainable there (50). (Sir Montagu E. Smith). RAM COOMAR COONDOO :. CHUNDER CANTO MOO-(1876) 4 I.A. 23 = 2 C. 233 (260-1) = KERJEE. 3 Sar. 654 = 3 Suth. 361.

-Secretary of State for India in Council-Contract with-Suit on-Right of-Parties to. See SECRETARY OF STATE FOR INDIA-CONTRACT WITH.

(1913) 17 C.W.N. 735 (740).

-Secretary of State in Council-Subject's right of suit against—Legislation taking away—Validity of. See GOVERNMENT OF INDIA ACT OF 1858, S. 65—EFFECT (1913) 40 I.A. 48=40 C. 391. OF.

Sanction to prosecute-Failure to obtain-Dismissal of suit on ground of.

Where a Court had before it a sult which, however lawfully instituted, was by law incapable of being prosecuted without a sanction which the plaintiff was unable to obtain

SUIT-(Contd.)

Sanction to prosecute-Failure to obtain-Dismissal of suit on ground of-(Contd.)

notwithstanding several extensions of time allowed to him for the purpose held, that the court not only had jurisdiction to strike the case off the file, but would be quite right in doing so (8). (Lord Hobbouse.) KUMAR BISESWAR ROY P. KUMAR SHIKHARESWAR ROY.

(1889) 17 I. A. 5=17 C. 668=5 Sar. 501.

Statute-Suit pending at date of.

-What amounts to a. See LIMITATION ACT OF 1908, (1912) 39 I. A. 96=35 M. 191. S. 31 (1).

Transfer of.

-C. P. C. OF 1908, S. 24.

Valuation of.

-Claimant unsuccessful-Suit by, under O. 21, R. 63 of C.P.C. See C.P.C. of 1908, O. 21, R. 63-SUIT UNDER -VALUE OF, FOR PURPOSES OF JURISDICTION

(1907) 35 I. A. 22 (26-7) = 35 C. 202 (207).

-Ptaint - Valuation in - Defendant's objection in Privy Council appeal to-Estoppel-Defendant's appeal to High Court on basis of that valuation. See C.P.C. OF 1908, S. 110, PARA, 1-SUBJECT-MATTER OF APPEAL-VALUE OF-PLAINT VALUATION. (1873) 1 I.A. 84.

-Undervaluation-Practice of-Native suits in India That she should have undervalued, if she did undervalue, the amount of property in the goutaghoros will surprise nobody conversant with native suits in India (183). Sir James W. Colvile.) SRI RAGHUNADHA v. SRI BROZO (1876) 3 I.A. 154=1 M. 69= KISHORO.

25 W. R. 291 = 3 Sar. 583 = 3 Suth. 263.

SUITS VALUATION ACT VII OF 1887.

-S. 8-Declaration with consequential relief-Suit for-Appeal in-Valuation of, for purposes of jurisdic-

Where a plaintiff sues for a declaratory decree and asks for consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both in the suit and for purposes of appeal. (Sir John Edge.) SUNDERBAI 7. COLLECTOR OF (1819) 46 LA. 15 (21)= BELGAUM.

43 B. 376 (382)=21 Bom. L.B. 1148= 23 C.W.N. 753 = 52 I.C. 897 = (1919) M.W.N. 254.

SUPREME COURT.

Master of.

-Dismissal for misconduct—Order of—Privy Council appeal from. See PRIVY COUNCIL-APPEAL-SUPREME (1847) 4 M. I. A. 220 (221). COURT-MASTER OF.

-Proceedings pending before-Trial by Court of, by agreement of parties-Regularity of.

Under a writ of sequestration the Sheriff seized a moiely of an estate in the possession of A. A presented a petition to the Court, entitled in a cause then pending, claiming the land under a deed of sale executed by the defendant, for dente lite, praying to be put in possession, and to be allowed to go before the Master and examine witnesses, #1 interesse sue. Proceedings were taken under this petition before the Master, but afterwards it was agreed by consent, that the matter of the petition should be tried by the Court, and the witnesses examined virus race by the Court at the hearing of the cause in which the petition was entitled.

Held that there was nothing irregular in such a mode of proceeding (45-6). (Mr. Pemberton Leigh.) MUSADES MAHOMEU CAZEEM SHERAZEE v. MEERZA ALLY MABO (1854) 6 M.I.A. 27=8 Moo. P.O.110= MED KHAN.

1 Sar. 489.

### SUPREME COURT-(Contd.)

Master of-(Contd.)

Report of Confirmation and decree on tool of Rehearing of case—Reference to Master on, for further enquiry—Irregularity—Waiver of Flict—Charity—Bequest to—Management of bequesthed fund—Entrustment to Government—Propriety—Foreign charity—Administration under supervision of Court—Objection to—Procedure.

A testator devised considerable property, both real ann personal, for charitable purposes, amongst which he directed certain sums to be set apart for the liberation of persons imprisoned for debt, and the endowment and establishment of a college at Lucknow in the dominions of the King of Oudh. A suit having been instituted in the Supreme Court of Calcutta to administer the will, the Court directed an inquiry whether the college could be established and the bequest for the liberation of prisoners carried into effect. with reference to the testator's intention, and the sanction of the Government at Lucknow. On the subject of the bequest for the liberation of prisoners, the Master found in the negative, and reported that, with respect to the establishment of the college, there was not sufficient evidence to enable him to state whether it could be established with reference to the testator's intention, and the sanction of the Lucknow Government; but as no further evidence was likely to be obtained, he appended the correspondence with the British Resident at Lucknow, by which it appeared that though the King of Oudh did not object to the astablishment of the college he held out no expectation that he would afford it his countenance or support. The report having been confirmed, and a decree made thereon, the Supreme Court, on a re-hearing of the cause, directed an inquiry whether the Governor-General in Council had the means of giving effect to the bequest to the college at Lucknow, and whether he was willing to receive the funds bequeathed for that purpose; the Master found that the Governor-General was willing to receive the funds, but did not state whether he had the means of giving effect to the bequest. The Court, however, thereupon directed the payment of the funds to the Governor-General or such person as he should appoint.

Upon appeal held, by the Judicial Committee, that through the reference to the Master on the re-hearing, after the confirmation of his previous report, was informal, and if objected to at the time would have been fatal, yet as no objection had been taken, and the Master had not satisfied the whole of inquiry, by stating whether the Governor-General had the means of carrying the testator's intention into effect, that part of the decree affirming the Master's report, and directing the payment of the fund to the Governor-General, must be reversed, and the case sent back to ascertain that fact; their Lordships being of opinion that under the existing relations between the East India Company and the King of Oudh, an arrangement may be made for the appointment of a trustee to carry the Lucknow bequest into effect, under the directions and subject to the brindletion of the Supreme Court. (Lord Brongham.) MAYOR OF THE CITY OF LYONS P. HOU EAST INDIA (1836) 1 M. I. A. 175=1 Moo. P. C. 175=

#### Minor-Suit on behalf of

-MINOR-SUIT ON BEHALF OF.

2 State Tr. (N. S.) 647 - 1 Sar. 107.

#### Officer of.

Dismissal for misconduct—Transactions distinct from those of his office—Misconduct in—Dismissal for—Invidiction—Validity—Bank—Director—Misconduct as.
The appellant held the offices of Master and Accountant-Gueral of the Supreme Court at Calcutta, and of Raminer in Equity. The Judges of the Supreme Court

### SUPREME COURT-(Contd.)

Officer of - (Could.)

thought that the conduct of the appellant, as one of the Directors of the Union Rank of Calcutta, was such, that they could not, consistently with their duty to the public, retain him in his offices. The Court in effect removed him from his offices.

The evidence showed that the appellant was a shareholder and director of the Union Bank at Calcutta; that he was a party to deceptive statements, contained in the half-yearly reports of the concern, as to the state of the affairs of the Bank, and also availed himself, in the character of Director, to obtain credit to a considerable amount upon his personal security only, which, by the condition of the deed of co-partnership of the Bank, amounted to a breach of trust. With respect to the fulfilment of the duties of his offices of Master, etc., however, it was admitted that not the slightest imputation rested upon him.

Held, affirming the Supreme Court, that the appellant was no longer fit to hold the offices he had thereto filled in the Supreme Court (160).

We concur with Sir Lawrence Peel, that the appellant may not have intended to wrong the Union Bank of a rupee, that there may have been no intentional or conscious fraud; but there was an absence of all just sense of the obligations, of the duties undertaken, and a disregard of those principles of truth and sincerity and faithful adherence to contracts, which not only the shareholders but the public at large, had a right to expect from those who had accepted the office of Director (159). (Dr. Lushington.) WILLIAM PATRICK GRANT, In rec. (1850) 7 Moo. P. C. 141.

——Suspension for misconduct—Order of—Appeal to Privy Council from—Leave for—Grant of—Jurisdiction of Supreme Court. See PRIVY COUNCIL—APPEAL— SPECIAL LEAVE FOR. (1850) 7 Moo. P. C. 141 (145).

Transe of Moster and Accountant-General and Examiner in Equity—Person holding offices of —Suspension for menonduct—Power of Court at regards.

A question was raised as to the tenure by which the appellant held the offices of Master and Accountant-General of the Supreme Court at Calcutta, and of Examiner in Equity. We do not think it necessary to enter into that question, for whatever be the tenure of those offices, there must exist in the Supreme Court the power of suspending officers on account of misconduct, and the only question can be, whether the misconduct imputed is sufficiently proved, and if proved, it be a sufficient ground for calling upon the Court to protect the administration of justice by the suspension of the officer so misconducting himself (146). (Dr. Luskington.)
WILLIAM PATRICK GRANT, In re. (1850) 7 Moo. P. C. 141.

### Privy Council appeal from decisions of.

SUPREME COURT. COUNCIL—APPEAL—RIGHT OF—

# Suit pending in -Suit in Zillah Court in furtherance of and supplemental to.

-Net barred.

The mere pendenc, of a suit in the Supreme Court does not operate as a hor to the prosecution of a suit in a Zillah Court intended to be simply in furtherance of, and supplemental to, the suit in the Supreme Court (559). (Sir Edward V. Williams). NAWAB SIDHEE NUZUR ALLY KHAN v. RAJAH OJOODHYARAM KHAN.

(1866) 10 M. I. A. 540=5 W. B. (P. C.) 83= 1 Suth. 635=2 Sar. 198.

### SUPREME COURT- (Could.)

### Testamentary jurisdiction of.

-Nature of originally and subsequently. Testamentary parisdiction was first given to the Supreme Courts by their original Charters, that in Bengal dated in 1774 being the first. And it was then given as a branch of ecclesiastical jurisdiction, and was to be administered according to the ecclesiastical as in force in the Diocese of London. In the course of the series of events by which the British territories in India grew from a group of trading settlements into an empire, various branches of jurisdiction which sprang originally from an ecclesiastical origin, have come to be applied by a number of legislative acts to new territories and new classes of persons, and administered by new tribunals. And in the progress of this development the ecclesiastical origin of such jurisdiction has been completely discarded, and the Legislanne has gradually evolved an independent system of its own. Largely suggested, no doubt, by English law, but also differing much from that law, and purporting to be a self-containe 1 system (257 8). (See Arthur Wilson.) MIRZA KURRATULAIN BAHADUR D. PEARA SAHEB.

(1905) 32 I. A 244 = 33 C. 116 (129)= 1 C. L. J. 594 - 9 C. W. N. 938 - 2 A. L. J. 758 -7 Bom. L. R. 876 = 8 Sar. 839 = 15 M. L. J. 336.

Wills of Hindus and Mahomedans-Probate of.

-Grant of-Effect. See PROBATE-GRANT OF-HINDU AND MAHOMEDAN WILLS.

(1905) 32 I. A. 244 (258) = 33 C. 116 (130).

### SUPREME COURT OF BOMBAY.

-Admiralty proceedings in-English High Court of Admiralty-Rule and practice of-Applicability. ADMIRALTY-SUPREME COURT OF BOMBAY.

(1851) 5 M. I. A. 137 (144).

-Charter of -Authority of - Construction-Rules

applicable.

On 13-11-1834, the Supreme Court at Bombay promulgated a rule as to the admission of Attornies to practise in that Court; and the question was whether that rule

was a valid and legal rule.

Held that, in determining that question, the Court's first consideration must be applied to the Charter, whereby that Court was constituted, and its proceedings regulated; and that that Charter was for those purposes equivalent to an Act of Parliament, and must be construed on the same principles (438). (Dr. Lushington.) MORGAN r. LEECH. (1841) 2 M.I.A. 428 = 3 Moo. P.C. 368 = 2 Suth. 428 =

-Charter of -Sr. 29, 37-Limitation-Plea of, based on S. 7 of English Statute-Allewance of-Determination relative to right arising out of contract, dealing, etc., betrecen Gentees if a.

The Charter of Dec., 1823, creating the Supreme Court of Bombay, meddles not with a course of procedure in the Supreme Court, or its consequences, which shall not be inconsistent with the native laws relating to the contract, trade, or dealing, out of which the litigation may arise, and which shall not be repugnant to, or in violation of, the eligion, manners, and usages of the natives. The determination of the Supreme Court upon the rights arising out of contracts, tradings, or dealings and their incidents, must be consonant with the law, religion, manners, and usages of the Gentoos, but the allowance of a plea of limitation based on S. 7 of the English statute, 21 James I, c. 16, will not constitute a determination relative to any right arising out of the contract, or dealing, to which the cause of action refers, and the course of procedure by which the plea is

allowed is not otherwise than consonant to the religion,

#### SUPREME COURT OF BOMBAY—(Contd.)

manners, and usages of the litigant parties (270). (Sir John Jorgis.) HER HIGHNESS RUCKMABOYE v. LUL (1852) 5 M.I.A. 234= LOOBHOY MOTICHUND.

8 Moo. P.C. 4=1 Sar. 423 -Charter of-Ss. 60, 63-Determination-Meaning

The word "determination" in the Charters of the Supreme Court of Bombay and Madras is an expression at least equivalent to the terms used in the Bengal Charter, viz., Decree or Decretal order (177). (Mr. Baron Parke.) NATHOOBHOY RAMDASS v. MOOLJEE MADOW-(1840) 2 M.I.A. 169 = 3 Moo. P.C. 87=

-Equity side of -Suit instituted on-Issues remitted to common are side in-Proceedings on-Nature of-Findings on issues-Binding nature of-Objection to - Mode of raising.

In trying an issue directed to it from the Equity side of the Supreme Court of Hombay in a suit instituted on that side, the common law side of that Court is merely ancillary to the Equity Court; it investigates facts and pronounces its opinion on them, merely in order to ground some further proceedings in the equity suit; the verdict itself is no proceeding in the equity suit, it only becomes so when it is adopted and acted upon in that suit. It stands on the same footing as the finding of a jury in a distinct common law Court, analogous to the case of a reference to the Master which when confirmed by the Court, and not before, is the subject of appeal. If a party objects to such a report, he must except to it, and the overruling that objection and confirming the report, opens the whole question of the propriety of the finding of the facts contained in it, to the review of the Court above ; but if there be no exception, the report is not open to such revision (178). (Mr. Baron Parke.) NATHOOBHOY RAMDASS v. MOOLJEE MADOW. (1840) 2 M.I.A. 169=3 Moo. P.C. 87=

- Equity side of - Suit instituted on-Issues directed to be tried on common law side in-Findings on-Objection to, in Privy Council appeal from decree on Equity side-

Maintainability.

In a suit instituted in the Supreme Court of Bombay by the residuary legatees of the estate of a Hindu testator to recover their shares as such from the executors of the deceased, one of the executors pleaded a partnership between the testator and himself, and a right to retain the amount of the balance due from the testator. The Court on the common law side accordingly framed two issues and found thereon that there was a partnership and that it was deter-mined on a particular date. There was no motion for a new trial, but the court on the common law side gave leave to appeal on 2—9 –1836, on giving security, without men-tioning the time for it. The petition for leave to appeal was filed on 22—10—1836, but the security was not given until 22-11-1837

Meanwhile, on 19-11-1836, the original cause came on to be heard, on the Equity side of the Court, on the finding, upon the said issues, and for further directions, and a decree was then made directing the taking of account of the partnership. On 28-2-1837, leave was given to appeal from that decree, on condition of the amending of the petition of appeal, and stating that leave had been given on the common law side to appeal against the finding of the issues. On 23-2-1838, the order for leave to app against the finding on the issues was, however, rescinded Notwithstanding that the order for leave to appeal was so rescinded, an appeal was lodged in the Privy Council against the finding on the issues, as well as the decree of the Equity side, of 19-11-1836.

### SUPREME COURT OF BOMBAY-(Confd.)

Held that the appeal, in so far as it was directed against the findings on the issues on the common law side, was incompetent, and that it must be confined to the propriety of the decree on further directions, founded on the Austria, and

the evidence in the cause (179-80).

The finding on the common law side might, as a verdict, have been appealed from in an appeal against the judgment in that suit, which is founded on that verdict, the evidence, as well as the finding, being brought up as part of the proceedings, and included in the transcript. But the verdict only, prior to judgment being given, could not be appealed from in a common law suit; nor can this verdict on an issue directed from the equity side, as a determination in a common law suit (1778). If the appellant had meant to object to the findings, he should have applied to the equity side for a new trial, as a verdict against evidence and having brought all the evidence before the court, the refusal of a new trial and consequent adoption of the finding, as one of the grounds for a decree would then have been the subject of appeal (178-9). (Mr. Baron Parks.) NATHOOBHOY RAMDASS 7. MOOLJEE MADOWDASS.

(1840) 2 M.I.A. 169 = 3 Moo. P.C. 87 = 1 Sar. 198.

Habeas corpus-Writ of-Issue of-Jurisdiction as to. See HABEAS CORPUS.

-Native Court-Jurisdiction of-Duty to take notice

The Supreme Court of Bombay is bound to notice the jurisdiction of the Native Court, without having the same specially set forth in the return to a writ of habitas can pus (58). JUSTICES OF THE SUPREME COURT OF BUMBAY. (1829) 1 Knapp. 1 = 1 Sar. 1,

Partition of immovable property outside territorial

jurisdiction- Jurisdiction to make.

The Supreme Court of Bombay had no power to make a partition of the immoveable property which was beyond the limits of its territorial jurisdiction (190). (Sir James W. Colvile.) LAKSHMAN DADA NAIK v. KAMACHANDRA DADA NAIK. (1880) 7 LA. 181 = 5 B. 48 (57) 7 C.L.R. 320 = 4 Sar. 173 = 3 Suth. 778.

Privy Council appeal from decisions of. See PRIVY COUNCIL-APPEAL-RIGHT OF-SUPREME COURT.

Proceedings in-Hindoot-Parties being-Allega-

tion in plaint as to-Sufficiency of.

In practice the allegation in the plaint that the parties are Hindoos is regarded throughout the cause as a sufficient averment of the fact for all judicial purposes under the Charter of December, 1823, of the Supreme Court of Bombay (246). (Sir John Jervis.) HER HIGHNESS RUCKMABOYE D. LULLOOBHOY MOTICHUND.

(1852) 5 M.I.A. 234 = 8 Moo. P. C. 4 = 1 Sar. 423.

Quit rent-Distraint for arrears of-Trespass for Action of-Jurisdiction to entertain. See REVENUE-MATTER CONCERNING, ETC.

(1849-50) 4 M.I.A. 353 (379).

Revenue-Distraint illegal for arrears of-Trespass for-Action of-Jurisdiction to entertain. See REVENUE "-DISTRAINT ILLEGAL FOR ARREARS OF.

(1849 50) 4 M.I.A. 353 (379-80).

Revenue-Matter concerning-Jurisdiction as re-Pards. See REVENUE-MATTER CONCERNING.

(1849-50) 4 M.I.A. 353 (374-5).

## SUPPEME COURT OF CALCUTTA.

Criminal case-Jurisdiction in Sa CRIMINAL CASE-JURISDICTION IN-SUPREME COURT OF CAL-CUTTA.

Privy Council appeal—Procedure on—Verdict for defendant

### SUPREME COURT OF CALCUTTA-(Contd.)

-New trial-Grant of-No jury in Supreme Court, Court itself being both judge and jury. (Lord Brougham.) (1) BANK OF BENGAL r. MACLEOD. (1849) 5 M.I.A. 1= 7 Moo. P.C. 35=13 Jur. 945=Taylor 484 (b)= 1 Sar. 391

(2) BANK OF BENGAL 7. FAGAN.

(1849) 5 M.I A. 27 (42)=7 Moo. P.C. 61= Taylor 434 (b)=1 Sar. 392.

-Jurisdiction of-Person trading in Calcutta and having house of huriness there but resident at Benares.

In this case it was contended that the suit against the appellants was not maintainable, because the appellants were inhabitants of Benares, and, therefore, not within the jurisdiction of the Supreme Court at Calcutta.

Hdd that by trading in Calcutta, and having a house of business there, the appellants were within the jurisdiction of the Supreme Court at Calcutta (191). BABOO JANOKEY DOSS r. PENDABUN DOSS. (1843) 3 M.I.A. 175= 1 Sar. 263.

-Jurisdiction of, in 1866-Oudh if subject to.

The jurisdiction of the late Supreme Court of Calcutta, and of the sheriff as its officer, was originally limited by the Charter of Justice of 1774 to the provinces of Bengal, Behar and Orissa, and though afterwards extended by the 39 and 40 Geo. 111, c. 79, S. 20, was so extended only to the province or district of Benares, and to and over all such provinces and districts as might at any time thereafter be annexed to and made subject to the Presidency of Fort Williams. The province of Oudh was not, when first annexed to British India, or at the date of the execution (August-October, 1866), annexed to the Presidency of Fort Wil-liam (1234). (See James W. Colvile.) DORAB ALLY (1878) 5 I.A. 116= KHAN v. ABDOOL AZEEZ. 3 C. 806 (811) = 2 C.L.R. 529 = 3 Suth. 520 = 3 Sar. 818.

### SUPREME COURT OF MADRAS.

Charities-Jurisdiction ever.

The Supreme Court at Madras (established by Madras (harter of 1800) has an equitable jurisdiction, similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England, over charities, (Lord Laugiale.) ATTORNEY-GENERAL v. BRODIE.

(1846) 4 M. I. A. 190 = 6 Moo. P. C. 12= 11 Jur. 137-1 Sar. 335.

-Minor-Suit on behalf of-Institution of-Procedure for. See HINDU LAW-MINOR-SUIT ON BEHALF QF.

#### SUBETY.

(See also CONTRACT-GUARANTEE.)

WHO IS A.

ADMINISTRATOR UNDER LETTERS OF ADMINIS-TRATION—SURETY FOR.
AGENT OF—ARRANGEMENT WITH CREDITOR BY.

BOND BY.

CONTRACT-PERFORMANCE OF-SURETY FOR. DEBT ENTIRE-RECOVERY OF, ON FOOT OF PLAIN-

TIFF BEING ONLY A SURETY.

DISCHARGE OF .

HINDU WIDOW-HUSBAND'S DEBTS-SURETY FOR. LEASE-COVENANTS IN-LESSEE'S PERFORMANCE

MESNE PROFITS PAYABLE UNDER DECREE-SURETY

OFFICIAL-SURETY FOR.

PRINCIPAL DEBTOR OR.

RECEIVER-SURETY FOR.

SECURITY DEPOSITED BY PRINCIPAL DEBTOR WITH CREDITOR SUBSEQUENT TO CONTRACT OF SURETY-SHIP.

### Who is a.

A covenant by A that B shall pay makes A a surety, liable to pay the whole immediately on B's default (177).

(Lord Hobbouse.) HODGES v. DELHI AND LONDON BANK, LTD. (1900) 27 I. A. 168 = 23 A. 137 (146) = 5 C. W. N. 1 = 2 Bom. L. R. 967 = 7 Sar. 767 = 10 M. L. J. 279.

### Administrator under Letters of Administration— Surety for.

—Misappropriation by administrator—Liability for— Revocation subsequent of letters on ground of fraud— Effect of. See LETTERS OF ADMINISTRATION—AD-MINISTRATOR UNDER—SURETY FOR.

(1908) 35 I. A. 109 = 35 C. 955.

### Agent of-Arrangement with creditor by.

-Binding nature on surety of Agent principal deltor himself-Effect.

An arrangement made on behalf of a surety by an agent in that behalf previously authorised or whose purported authority is afterwards ratified is as binding upon the surety as if in the first instance the arrangement had been made by himself and none the less because the surety's representative in the arrangement with the creditor was the principal debtor himself. (Lord Blanesburgh.) DOROTHY VALENTINE BURNARD : WILLIAM DOUGLAS LYSNAR.

(1929) 30 L.W. 456=120 I.C. 58= A.I.R. 1929 P.C. 273=59 M.L.J. 89.

### Bond by.

--- Charge or personal liability created by.

A person, who obtained a decree for possession, applied to be put into possession of the property in dispute, pending an appeal from the decree by the defendant. She was given possession by an order of the first court, upon her providing security to restore the mesne profits to the extent of one lakh of rupees. The security was given by three persons who executed a security bond in the following terms:—" We, the declarants, furnish security for one lakh of rupees, hypothecating the following property therefor and declare that the hypothecated property shall serve as security, and be liable to the extent of one lakh of rupees for carrying out the aforesaid purpose. Wherefore this security bond has been executed so that it may serve as an authority."

Held, on the construction of the bond, that it was an instrument of charge only and not a bond imposing any personal liability (234). (Lord Phillimore.) RAGHUBAR SINGH v. JAI INDRA BAHADUR SINGH.

(1919) 46 I, A. 228 = 42 A. 158 (164) = 13 L. W. 82 = 18 A. L. J. 263 = 22 Bom. L. B. 521 = 22 O. C. 212 = 55 I. C. 550 = 38 M. L. J. 302.

The appellants were directors of a limited company. For advances obtained by the company from the respondents, the Marwar Bank, the appellants executed a surety bond addressed to the manager of the Marwar Bank. The

bond was in these terms :-

In consideration of your allowing the Luxmi Company, Ltd., to overdraw sums not exceeding in the aggregate of rupees fifty thousand only (on the security of Luxmi Co., Ltd. demand pro-note in your favour of date), we hereby pledge, for the repayment on demand of the said overdraft, together with interest thereon and of any other sum or sums of money which may be or become due to you from the Luxmi Co., Ltd., on any account whatsoever during the continuance of this pro-note. And we hereby declare and agree that the overdraft allowed and intended to be secured by this agreement shall be taken to have been allowed by

SURETY—(Contd.)
Bond by—(Contd.)

you entirely upon the faith of and relying upon the declaration signed by us at the foot hereof, which declaration
solemnly we declare to be true in every respect. It is
hereby further agreed and declared that these presents shall
remain and be a continuing security to you for the balance
of the said account for the time being to the extent aforesaid, notwithstanding that at any time or times the balance
of the said account may be in your favour, it being expressly intended that these presents shall be a security for
the balance of the said account due by the Luxmi Co.,
Ltd., to you while the said account shall continue open.

Held, that the bond imposed a personal liability upon

the appellants.

The word "pledge" was loosely used to mean that the executants of the bond pledged their personal credit in support of the obligation of the company. (Viscount Haldane.) PANNA LAL v. NIHAL CHAND.

(1922) 16 L.W. 80 = (1922) M.W.N. 376 = 36 C.L.J. 5 = 24 Bom. L. R. 971 = 31 M. L. T. 129 = 2 P L.R. (P.C.) 1922 = A. I. R. 1922 P. C. 46 = 26 C. W. N. 737 = 67 I. C. 423 = 43 M. L. J. 66.

—Enforcement of—Mode of—Execution of decree pending appeal—Stay of—Security bond given by third party as condition of—Obligee not named in bond—Charge only created by it. See C. P. C. OF 1908, O. 41, RR. 5, 6—EXECUTION OF DECREE PENDING APPEAL.

(1919) 46 I. A. 228 (237-8) = 42 A. 158.

Liability under—Release from—Rejection of bond on ground of its supposed insufficiency—Subsequent acceptance and revision of bond—Bond never taken off the file of the court to which it is given—Effect.

The security of five individuals tendered by a plaintiff on appeal from the Zillah Court, having been reported by the Nazir insufficient, the security-bond of an additional surety was offered, and being reported sufficient, was accepted by the Zillah Court. An appeal was lodged against the sufficiency of that new security, and the Provincial Court pronounced it insufficient. Thereupon it was referred back to the Zillah Court, with directions, that unless sufficient security was given, possession of the property in dispute should be delivered to the Collector. The Zillah Court, upon further investigation, being satisfied with the sufficiency of the additional surety, a security-bond was executed in that court by the appellant, the additional surety, aloes, the other five sureties having failed to perfect their securities.

On application after the decision in the cause, and pending an appeal to the king in council, by the appellant, to be discharged from the liability of his suretyship, on the grounds that the rejection of his security by the Provincial Court for insufficiency, thenceforth rendered his security nall and void, and that the acceptance of his security alone by the Zillah Court, without the other five sureties, was without his knowledge and consent, held, affirming this court below, that the security-bond being on record, was not avoided by the rejection by the Provincial Court on its supposed insufficiency, inasmuch as the Zillah Court had revived the same by its acceptance of the appellant as surely, and he had taken no steps to discharge his liability by having the security-bond taken off the file. (Lord Brosgham.) RAJAH GOPAL INDER NARAIN ROY D. RAJAH (1839) 2 M. I. A. 311= JAGARNATH GURG. 5 W. R. 129 = 1 Suth. 93 = 1 Sar. 193.

Personal liability under-Existence of Question at to-Privy Council appeal-Maintainability for first time in

The appellants were sureties who gave security for the due performance by a decree-holder, who was allowed to execute his decree for possession pending an appeal there

Bond by-(Contd.)

from, of any order that might be made by the appellate court. They gave a security bond for the purpose, and, on an appeal to the Privy Council from an order made on the application to enforce the security bond, they raised the contention that the bond merely charged property and did not impose any personal liability. The point was not specifically raised in either of the courts below. There was just enough in the general denial of liability and in the general words in the grounds of appeal to make it open to the appellants before their Lordships.

Their Lordships permitted the point to be raised before them and upheld the appellants' contention with regard to it. (Lord Phillimore.) RAGHURAR SINGH T. JAI INDRA BAHADUR SINGH. (1919) 46 I. A. 228 -

42 A. 158 (164) = 13 L. W. 82 = 18 A. L. J. 263 = 22 Bom. L. R. 521 = 55 I. C. 550 = 22 O. C. 212 = 38 M. L. J. 302.

### Contract-Performance of-Surety for.

Recission of contract on account of its broach and recovery from surety of amount paid under it—Surety's right to recover amount from contracts.

The plaintiff stood surety for the defendants for monies advanced to them by the State of Hawalpore upon a timber contract. The State of Bawalpore restinded the contract on the ground of the breach thereof by the defendants and recovered from the plaintiff the amount of the advances made to the defendants.

In a suit by the plaintiff to recover from the defendants the amount recovered from him by the State of Bawalpore, held, on the evidence, that the defendants had committed a breach of their contract with the State of Bawalpore, that the State was justified in rescinding the contract and recovering the amount of the advances from the plaintiff as surety, and that the plaintiff was entitled to recover the amount paid by him from the defendants (62-3). (Str. Richard Couch.) SIRDAR SUJAN SINGH v. GANGA RAM.

(1881) 9 I. A. 58 = 8 C. 337 (342) - 4 Sar. 307 = 7 P. R. 1882 (Civil).

Rights of, against contractor—Law secremag—

Plaintiff stood surety for the defendants for the due performance of a contract entered into by the defendants in

Bhawalpore with the State of Bhawalpore.

Htd., that in considering the rights of the plaintiff, as sarety, against the defendants, the principals, the parties must be considered to have made the contract according to the liabilities that would be incurred at Bhawalpore and that it was not proper to look at the law of British India (62). (Sir Richard Couch.) SIRDAR SUJAN SINGH F. GANGA RAM. (1881) 9 I.A. 58 = 8 C. 337 (341)

Debt entire - Recovery of, on foot of plaintiff being only a surety.

Seit for—Contribution on foot of plaintiff being codebtor—Relief for—Grant of. See MORTGAGE—MORTGAGOR—CO-MORTGAGOR. (1206) 33 I. A. 81 = 28 A. 482 (487).

#### Discharge of.

DEBTOR.

Agreement giving time to—Discharge by—Rule as to—Hardship of—Provision against—Validity of—Effect.
Where a debt bond by which A, one of the executants, many arrety to the creditor, stated that, though as next only, yet, as regards the creditor, he should be considered as principal debtor so as not to be exonerated from tability by any dealing between the creditor and the principal debtor and the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor so as not to be exonerated from the principal debtor and the principal debtor so as not to be exonerated from the principal debtor and th

SURETY-(Contd.)

Discharge of-(Contd.,

DEBTOR-(Contd.)

cipal debtor, which would otherwise have that effect, held that A became liable as principal and was not discharged by reason of time having been given to the principal debtor (177-9).

The rule that a surety for the repayment of a debt is relieved of liability when the creditor by a binding contract with the principal delitor extends the time for the repayment by him of his debt, though established in English law and in ported into the Indian Contract Act, S. 135, without express mention of all the qualifications which attach to it in England, has often operated as a surprise and hardship on creditors. It has long since become a common thing, at least in England, for prudent lenders of money to prevent its application by provisions like that which is found in the document under consideration. Whether that practice has been so common in India is not apparent (177-8). (Lord Hobkouse.) HODGES v. DELHI AND LO - DON BANK, LTD. (1900) 27 I. A. 168= 23 A. 137 (146-7) = 5 C. W. N. 1= 2 Bom. L. R. 967 =

7 Sar. 767 = 10 M.L.J. 279.

Forbearance to suc-Effect.

Mere forbearance on the part of a creditor to sue the principal delator or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the sarety (654). (Sir John Edge.) KALI CHARAN P. ABDUL RAHMAN.

(1918) 50 I.C. 651 = 23 C. W. N. 545 = 10 L.W. 34 = 1 U.P.L.R. (P.C.) 53.

HUNDI—ACCOMMODATION ACCEPTOR—LIABILITY OF.

Release from—Interest paid in advance by drawer to holder—Effect of. See NEGOTIABLE INSTRUMENT—HUNDI—ACCOMMODATION ACCEPTOR—LIABILITY OF. (1880) 6 C. 241.

INSTALMENT BOND WITH PROVISION FOR PAYMENT OF ENTIRE AMOUNT ON DEFAULT.

- Surety for payment under-Default by debtor-Failure of creditor to suefor schole sum on-Discharge by.

Where a bond by a debtor provides for the payment of the debt in stated instalments and that in the event of default in the payment of any instalment, the creditor is to be at fiberty to rescind the stipulation to pay by instalments and realise all the instalments remaining due in a lump sum, the creditor is not bound on the failure of the debtor to pay an instalment when it becomes due to insist on the payment by him of all the other instalments.

Held, further that a surety who had for consideration guaranteed the payment of the debt by the debtor was not absolved from liability merely because the creditor did not avail himself of the provision in the event of default (653).

(See John Edge) KALI CHARAN 2. ABDUL RAHMAN.

(Ser John Edge.) Kali Charan v. Abdul Rahman. (1918) 50 I.C. 651 = 23 C.W.N. 545 = 10 L W. 34 = 1 U.P.L.B. (P.C.) 53.

LEASE—COVENANTS IN—PERFORMANCE BY LESSEE OF.
——Surety for—Discharge of—Sale of lessee's interest and purchase thereof by stranger—Effect. See LEASE—LESSEE—COVENANTS IN LEASE.

(1918) 23 C.W.N. 545 (548).

OFFICIAL-SURETY FOR.

Bond by Renewal of Effect of, on liability for period covered by old bond-Retention of old bond by employer.

The Government of Bengal brought the suit out of which the appeal arose against the appellant who was surety for S, the Treasurer of Mirzapore Collectorate; and it was brought to recover a sum, with interest, of upwards of Rs, 60,000.

Discharge of-(Cont.)

OFFICIAL-SURETY FOR-(Contd.)

The case on the part of the Government was, that between the years of 1843 and 1848 the treasurer had been a party to the embezzlement of the sums of money in question.

It appeared that the surety bonds were three times renewed. The Treasurer occupied that position for a period of 8 years. The bonds were not renewed every year.—they were three times renewed, and in the other years the Government did not renew the bonds, but they made an inquiry into the sufficiency of the security. It was argued upon the part of the appellant that, by the renewal of the honds, each bond, as it was renewed, was in fact a novation, so that no action could any longer be maintained upon the old bond. but it must be taken that by an examination of the accounts the Government had satisfied themselves that no fraud or embezzlement had been committed up to that time; and that though they did not give up the old bond, yet, practically, the new bond was to be taken in lieu and satisfaction of the old bond; so that the surety only became responsible for the deficiencies which might take place subsequently to the giving of the new bond. If that defence was correct, the consequence would be that there would be a defence to all except any deficiencies which might be proved subsequently to the giving of the last bond.

Held that the defence could not be maintained (87).

The defence rests entirely upon this, that we are to infer that each new bond was given in substitution for the old one. It is not suggested that until the year 1848, when the discovery was made by one of the parties in the office making a statement to the Government, the Government had any suspicion whatever that any frauds were going on. The old bonds were never given up. The surety did not ask for the old bonds. There is nothing to shew that he had any idea that he was discharged, or that he had a right to the old bonds. There is nothing to show that the Government intended to give up or abandon any claim that they had upon any of the bonds (88).

Semble if the Government had known that frauds had been committed during the time that the old bond was in existence, that would raise a totally different question, for then, of course, they ought to have warned the surety, and not allowed him to go on by giving a new bond (88). LALLA BUNSEEDHUR (Lord Justice Mellich.)

BENGAL GOVERNMENT. (1871) 14 M.L.A. 86= 16 W. R. P. C. 11=9 B. L. R. 364= 2 Suth. 448 = 2 Sar. 689.

-Emberalement by official-Liability of surety for-Auditing by employer of accounts rendered by official for period in question-Effect of.

The suit was brought by the Government of Bengal against the appellant, who was a surety for S the Treasarer of the Mirzapore Collectorate; and it was brought to recover a sum, with interest, of upwards of Rs. 60,000. The case on the part of the Government was that between the years 1843 and 1848 the treasurer had been a party to the embezzlement of the sums of money in question.

It appeared that the surety bonds were three times renewed. The treasurer occupied that position for a period of 8 years. The bonds were not renewed every year,-they were three times renewed, and in other years the Government did not renew the bonds, but they made an inquiry

into the sufficiency of the security. It was argued on the part of the appellant that the Government having satisfied themselves, by their Collector, and by the examination which they made of the accounts, that no fraud had been committed, and that the accounts were correct, the new bonds were given upon the faith of the accounts being correct, and that they were to be estopped from saying that the accounts were incorrect.

SURETY-(Centd.)

Discharge of- (Contd.)

OFFICIAL-SURETY FOR-(Contd).

Held, there was no ground for that argument (89.)

There must be such gross negligence as almost to amount to a participation in the fraud, before the fact of the Government examining into the accounts and not discovering the frauds sooner could operate as a discharge. ject of having securities is, that if secret embezzlements take place, the Government may have a security upon which they can rely (89). (Lord Justice Mellish.) LALLA BUNSEEDHUR P. GOVERNMENT OF BENGAL

(1871) 14 M.I.A. 86 = 16 W.R. P.C. 11 = 9 B.L R. 364 = 2 Suth. 448 = 2 Sar. 689.

RECEIVER-SURETY FOR.

-Discharge of-Consent of appointing Court-Necessity-Notice to person at whose instance appointment made -Sufficiency of. See RECEIVER-SURETY FOR. (1926) 30 C.W.N. 266.

Hindu widow-Husband's debts-Surety for.

-Deed creating. See HINDU LAW-WIDOW-HUS-BAND-DEBTS OF-SURETY FOR. (1869) 2 B. L. R. 98 (99).

Lease-Covenants in-Lessee's performance of.

-Surety for. See LEASE-COVENANTS IN-PER-FORMANCE BY LESSEE OF-SURETY FOR.

Mesne profits payable under decree—Surety for.

-Assessment of such profits -- Proceeding for-Surety if necessary and proper party to-Assessment in his absence-Binding nature of, on him. See MESNE PROFITS -ASSESSMENT OF-PROCEEDING FOR-PARTIES TO-SURETIES FOR PROFITS, ETC.

(1919) 46 I.A. 228=42 A. 158 (166

Official-Surety for. DISCHARGE OF.

See SURETY—DISCHARGE OF—OFFICIAL

EMBEZZLEMENT BY OFFICIAL—SUIT AGAINST SURETY IN RESPECT OF.

Evidence of embezzlement in-Depositions ex parte of official-Admissibility.

The suit was brought on the part of the Government of Bengal against the appellant, who was a surety for S, the Treasurer of the Mirzapore Collectorate, to recover a sum of money, with interest. The case on the part of the Government was, that between the years 1843 and 1848 the Treasurer had been a party to the embezzlement of the

sums of money in question.

When the alleged frauds were in the first instance discovered, the first thing which was done was that the Collector went down to examine into the matter, and to examine everybody, including S himself, who could give any information upon the subject, to find out what the truth of the matter really was, and he took their depositions, S had died before the trial of the suit, and so could not be examined in the suit. But he had been frequently examined before; first he had been examined by the Collector, and subsequently he had been examined by the Magistrate, and then afterwards he was tried and found guilty; and subsequently an action being brought, he was examined again, and then alleged that he was innocent.

Held the evidence of S ought not necessarily to be entirely rejected,—it probably would not be satisfactory to support a case upon an admission made by him alone, if the other evidence was not sufficient to amount to strong evidence against him; but if there is strong evidence against him, then probably the examinations (at any rate the examinations minations before the Collector) might be referred for the

Official-Surety for-(Contd.)

SURETY IN RESPECT OF-(Contd.)

purpose, at least, to see if he could give any satisfactory explanation of the charges which were made against him (91-2). (Lord Justice Mellish.) LALLA BUNSEFDHUR 2. GOVERNMENT OF BENGAL. (1871) 14 M.I.A. 86=

16 W.R. P.C. 11 = 9 B.L.R. 364= 2 Suth. 448 = 2 Sar. 689.

 Maintainability—Estoppel—Auditing by employer of accounts rendered by official for period in question-Effect. See SURETY - DISCHARGE OF-OFFICIAL-SURETY FOR-EMBEZZIEMENT, ETC.

(1871) 14 M.I.A. 86 (89).

-Proof necessary in.

The action was brought on the part of the Government of Bengal against the appellant, who was a surety for S the Treasurer of the Mirzapore Collectorate, to recover a sum of money, with interest. The case on the part of the Government was, that between the years 1843 and 1848 the Treasurer had been a party to the embezzlement of the sums of money in question.

Held, that in such a suit the Government had to make out three things: (1) that there was embezzlement; (2) that the sum embezzled amounted to the sum claimed; and (3) that S, the Treasurer had a guilty knowledge of, and was a party to, those embezzlements (92). (Lerd furtice Mdlish.) LALLA BUNSEFDHUR : GOVERNMENT OF (1871) 14 M I.A. 86-16 W.R.P.C. 11 = BENGAL. 9 B.L.R. 364 = 2 Suth. 448 = 2 Sar. 689.

### Principal debtor or.

Deed by two persons in respect of their foint and uveral debt-Liability of each of them as principal debter under.

For the price of goods supplied to G.H.L., he made a promissory note, which was endorsed over by the respondent. his brother. Default having been made in the payment of the note, the due holder thereof commenced an action against both the brothers on the amount of the note. When the plaintiff was in a position to enter judgment for the amount claimed, the brothers executed a seed, expressed to be made between them, as grantors. of the one part, and the plaintiff, as grantee, of the other part. It recited that the respondent was the owner of the chaitels scheduled to the deed; that "the grantors are jointly and severally indebted to the grantee in the sum of £5.280," and witnessed that in consideration of that sum then owing by the grantors to the grantee "(as they do and each of them doth hereby admit)," the respondent assigned to the grantce the scheduled chattels by way of mortgoge only for the purpose of securing its repayment with interest in the manner therelaster provided, and the grantors jointly and severally covenanted inter alia for repayment on or before a specihed date in manner provided by the deed.

Held, that the position of the respondent under the

not that of a surety only for his brother. The respondent's part in the transaction is to all appearabiliant of protagonist. His name is first in the order of lability. It is his separate property which is made security for a debt recited as being one for which each obligant is at the moment of execution jointly and severally liable. And the significance of all this is the more marked when it is abered that the liabilities of the respondent to the the were not by the deed being assumed for the first Indeed, it seems clear that the bability which was then being dealt with was treated as the equivalent been lability on the part of the grantors which would have been SURETY-(Contd.)

Principal debtor or-(Contd.)

EMBEZZLEMENT BY OFFICIAL-SUIT AGAINST constituted by the mere formality of entering judgment against them in the pending action. In other words, their former obligations in respect of the note were treated as having ripened into a joint and several delit of agreed amount immediately exigible. If that debt was not at once to be enforced, then, in respect of it, new obligations had to be entered into and security for its repayment provided. All of which was the purpose of the deed. (Lord Blanesburgh.) DOROTHY VALENTINE BURNARD v. WILLIAM DOUGLAS LYSNAR. (1929) 30 L. W. 456=

120 I. C. 58 = A. I. R. 1929 P. C. 273 = 59 M. L. J. 89.

Receiver-Surety for.

-Discharge of. See RECEIVER - SURETY FOR.

Security deposited by principal debtor with creditor subsequent to contract of suretyship.

Right to benefit of-Condition of-Extent of. A' drew bills in favour of D on F & Co. who accepted the same. Those bills being indorsed by D, were discounted by the Bank of Bengal, and the value was paid to F & Co. The hills were renewed from time to time. At the time the bills were originally drawn, the Bank did not hold any security from F & Co., and, therefore, the engagement entered by R to pay the amount of the Bills, if the acceptors did not, was wholly unconnected with any question of security. At a period, however, long subsequent to the drawing the first Bills the Bank did take certain securities from F & Co.

Quarre how far R obtained a right to the securities subsequently acquired by the Bank securities neither given nor agreed to be given till a long time after the first bills became due-and whether he could acquire such securities without paying the debt (37-8).

Held, that, assuming that R acquired a right to the benefit of the security, he could in any view only take a right to the benefit of the security subject to the power which the creditor by the terms of the security was entitled to exercise (38). (Dr. Lushington.) BANK OF BENGAL (1842) 3 M. I A. 19= E. RADAKISSEN MITTER. 1 Sar. 231.

SURETY BOND.

-See C.P.C. OF 1908, O. 41, Rr. 5 & 6 and SURETY -BOND BY.

SURVEY.

- Correctness of Presumption-Evidentiary value of -Maps prepared at Survey-Presumption applicable also

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons, and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made. They are not conclusive, and may be shown to be wrong; but in the absence of evidence to the contrary they may be properly judicially received in exidence as correct when made (53). (Lord Lindley.) MAHA-RAJA JAGADINDRA NATH ROY BAHADOOR P. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1902) 30 L A. 44 = 30 C. 291 (301) = 7 C. W. N. 193 = 5 Bom. L. B. 1 = 8 Sar. 412.

-Mahalwar register made in pursuance of and in accordance with-Value of. See EVIDENCE -MAHALWAR (1880) 3 Suth. 809 (811). REGISTER-SURVEY.

SURVEY AWARD.

-Correctness of - Presumption - Setting oside of

award-Suit for-Onus on plaintiff.

Where a suit was not only for the recovery of certain lands, but as a necessary step towards that object, to set

### SURVEY AWARD-(Centd.)

aside certain awards passed by the officers employed to conduct the Revenue survey in the District in question, and to obtain a rectification of the boundary line as defined by them, held that, even though the suit was brought within the period in which the law allowed such awards to be contested in a regular suit, the plaintiff in such a case had to overcome the strong presumption which the decision of such a question as that by competent officers after full local inquiry, made with the aid of scientific survey of the locality, was calculated to raise against him. (Sir James W. Colvile.) RAJAH LEELANUND SINGH P. RAJAH MOHEN-(1869) 13 M. I. A. 57 (59-60) = DRANARAIN. 13 W. R. 7=2 Suth. 286=2 Sar. 482.

-Title-Possession-Evidentiary value as to.

These survey awards are founded on evidence of the actual possession. They are not, if questioned in time, conclusive on the question of title (6t). (Sir James W. Colvile.) RAJAH LEELANUND SINGH P. RAJAH MOHEN-(1869) 13 M. I. A. 57=13 W. B. 7= DRANARAIN. 2 Suth 286 = 2 Sar. 482.

### SURVEY MAP.

-See also THAKBUST MAP.

·Correctness of - Presumption - Evidentiary value. See SURVEY-CORRECTNESS OF.

(1902) 30 I. A. 44 (53) = 30 C. 291 (301.)

-Their Lordships have always given great weight to the accuracy of the survey maps. They are not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate (307). (Lord Dunedin.) SECRE-TARY OF STATE FOR INDIA P. MAHARAJAH OF TIPPERA.

(1916) 43 I. A. 303 = 44 C. 328 (340 1) = 20 M. L. T. 549-(1917) M. W. N. 25= 18 Bom. L. R. 1027 = 14 A. L J. 1205 = 21 C. W. N. 291 = 5 L. W. 570 = 25 C. L. J. 425 = 38 I. C. 379

-Permanent Settlement of 1793- Land whether or not included in-Evidence-Survey Maps subsequent-Value of. See BENGAL ACTS-ALLUVION AND DILUVIAN ACT OF 1847—PERMANENT SETTLEMENT OF 1793.

(1902) 30 I. A. 44 (52) = 30 C. 291 (300).

Statement in, referred to in Commissioner's report-Admissibility in evidence of-Map not produced-Commissioner's report not objected to-Commissioner not examined.

In this case the report of the Commissioner, who was appointed in the suit to make a local investigation, con-tained the following passage: "There is no clear and positive evidence before me to show that the river site at the time of the revenue survey was previously the site of those three villages. But the fact that the site belonged to pargana L is amply proved by the statement contained in the revenue survey map of R." This map did not form part of the record, and it was, therefore, impossible to say with certainty that the statement referred to in the Commissioner's report was of such a kind as to be receivable in the suit under S. 36 of the Evidence Act. Nevertheless, as no objections had been taken to the report and as the Commissioner had not been examined or cross-examined their Lordships thought that they ought to treat it as admissible evidence. (Lord Phillimore.) NARESH NARAYAN ROY v. SECRETARY OF STATE FOR INDIA.

(1923) 50 I.A. 121 (131·2)=50 C. 446 (457·8) = A. I. R. 1923 P. C. 1=(1923) M. W. N. 511= 32 M. L. T. 162 = 28 C. W. N. 453 = 77 I. C. 1048 = 45 M. L. J. 444

-See ALLUVION AND DILUVION-DILUVIATED LANDS. (1899) 27 I. A. 44=27 C. 336. DEO SINGH.

### SURVEY OFFICERS.

Reports of-Possession-Evidentiary value as to-See ALLUVION AND DILUVION-ALLUVIAL LAND-POSSESSION OF-SUIT FOR-ONUS ON PLAINTIFF-DISPOSSESSION-SUIT BASED ON. (1872) 19 W. B. 114.

#### SURVEY PROCEEDINGS.

#### Omission to intervene early in.

Presumption against possession from-

When the survey of the suit lands first took place, the appellant raised no claim to them. In the final proceeding, two years after the commencement of the dispute between the respondent and a third party, the appellant did intervene as third party, and made an ineffectual claim. But his omission to come forward before that time affords a strong presumption that he was, at the commencement of the survey, out of the possession of these lands, if he had ever been in it (61), (Sir James W. Colvile.) RAJAH LEELANUND SINGH T. RAJAH MOHENDRANARAIN.

(1869) 13 M. I. A. 57 = 13 W. R. 7=2 Suth. 286= 2 Sar. 482.

#### Possession-Decision as to.

-Value of-Suit for possession by unsuccessful party -Onus of proof in. See THAKBUST PROCEEDING-(1869) 12 M. I. A. 292 (340). POSSESSION.

### Thakbust map in.

-Entry in-Evidentiary value of-Entry made on ex parte statement of one party and immediately contradicted by the other.

In a suit by the plaintiffs to recover possession of plots of jungle lands on the ground that they appertained to their Zemindary, the main defence was based on the allegation that the lands in dispute formed part of the defendant's

taluk, and not of the plaintiffs' zemindary. Relying solely upon a declaration entered in the index to the thakhust map, the Sub-Judge gave a decree to the plaintiffs. He was of opinion that the said declaration was an official act to which no exception had been taken on behalf of the defendant, and might therefore be presumed to have been correctly made. The High Court, on the other hand, considered that the entry in the statement attached to the thukhust map was made ex parte, and without any inquiry. They accordingly held that the plaintiffs had failed to discharge the onus that lay on them and reversed the decree of the Sub-Judge.

Held that, as the entry on which the decree of the Sub-Judge rested was made on an exparte statement of the plaintiffs' agent which was immediately contradicted on behalf of the defendant, the decision of the High Court was correct. (Mr. Ameer Ali.) MAHARAJAH JAGADINDRA NATH ROY BAHADUR 2. HEMANTA KUMARI DEBI.

(1911) 11 I. C. 542=15 C. W. N. 887 (896)= (1911) 2 M. W. N. 101 = 10 M. L. T. 157 13 Bom. L R. 806 = 14 C. L. J. 319 = 8 A. L. J. 1176.

-Thak khasra in-What are-Entry in Thak khasra

-Evidentiary value of.

In 1840 the regular survey of the district in which the mauza is situated was taken in hand. As is well known, these surveys are preceded by a preliminary measurement by an amin, who lays down on a rough map the locality, without any guarantee of scientific accuracy, and enters in a register particulars regarding the plots gathered from people who collect to watch the proceedings. The map is called the thakbust map, and the register the thak khasra. The amin's measurements are afterwards tested by expert surveyors The "khasra", as its name implies, is a rough register, and statements entered in it have by themselves no evidential value (Mr. Ameer Ali.) JAGDEO NARAIN SINGH v. Bal-(1922) 49 I. A. 399 (406-7)=

### SURVEY PROCEEDINGS-(Contd.)

Thakbust map in-(Contd.)

2 P. 38 (46) = 32 M. L. T. 1 = (1923) M. W. N. 361 = 27 C. W. N. 925 = 36 C. L. J. 499 = 3 Pat. L. T. 605 = 71 I. C. 984 = A. I. B. 1922 P. C. 272 =

45 M. L. J. 460.

### Thak khasra in.

-What are-Evidentiary value of. See SURVEY PROCEEDINGS-THAKBUST MAP IN-THAK KHASRA IN. (1922) 49 I.A. 399 (406 7)= 2 P. 38 (46).

-Malikanadari rights-Entry as to-Evidentiary value of, as against proprietor of Moura-Entry not

brought home to proprietor.

Held that an entry in the thak khasra to the effect that within the mouza in question there were certain persons who held malikanadari rights could not be treated as evidence of such claims against the proprietor of the mouza in the absence of proof that he knowingly acquiesced in the assertion made before the Amin on the strength of which the entry was made. (Mr. Ameer Ali.) JAGDEO NARAIN SINCH v. BALDEO SINGH. (1922) 49 I. A. 399 (407) = 2 P. 38 (46-7)=32 M. L. T. 1=(1923) M. W. N. 361= 27 C. W. N. 925 = 36 C. L. J 499 = 3 Pat. L. T 605 = 71 I. C. 984 = A. I. R. 1922 P. C. 272 = 45 M. L. J. 460.

### SURVEY AND SETTLEMENT REGISTER

Title-Evidentiary value as to. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE-PROPERTY OF. OR PRIVATE OF DHARMAKARTA.

(1922) 49 I.A. 237 (246-7) = 45 M. 565 (576).

### SWAMIBHOGAM.

Meaning of.

Swamibhogam is the revenue derived by the landlord from the tenants or occupier of the land over and above what was necessary to pay the tax to Government. (Lord Salvenen:) SUBRAHMANYA CHETTIAR P. SUBRAHMAN-YA MUDALIAR. (1929) 56 I. A. 248 = 52 M. 549 =

33 C. W. N. 734 = 31 Bom L. B. 830 = 30 L.W. 30 = 116 I. C. 601 = (1929) M. W. N. 561 = A. I. R. 1929 P. C. 156 - 57 M. L. J. 1.

### SWAZI LAND.

Crown's sovereign powers over-Convention of 1894 -Effect.

The argument that the Crown had no powers over Swamland, except those which it had under the conventions and those which it acquired by the conquest of the South African Republic is unsustainable. The limitation in the convention of 1894 on interference with the rights and laws and customs of the natives cannot legally interfere with a subsequent exercise of the sovereign powers of the Crown. or invalidate subsequent Orders in Council. (Viscount Haldane.) SOBHUZA II v. MILLER.

(1926) A. I. R. 1926 P. C. 131 (135-6)= 30 C. W. N. 961 = 99 I. C. 265.

## SYLHET REGULATION (III OF 1891).

Application of - Evidence excluding.

In the exercise of powers vested in him by Regulation III of 1891, the Chief Commissioner of Assam notified that the Regulation would be put into force among tracts of land of which the salt area, which admittedly contained jhum lands, was one. The plaintiff sued for a declaration that the notification issued by the Chief Commissioner did not affect the plaintiff's right and possession of the lands in suit. The t was prayed for on two grounds—(1) that the lands in talt were part and parcel of the plaintiff's permanently tilled estates, and not lands in which the plaintiff and his harers had merely jhum rights; (2) that, by adverse

### SYLHET REGULATION (III OF 1891)-(Contd.)

possession for over sixty years, plaintiff had acquired a title against the Government.

The talugs in which the lands in suit were said to have been included were, no doubt, settled at the Decennial Settlement, and that settlement was in due course made permanent. There was evidence to shew that, in assessing the taluns, thum assets were taken into account. There were, in the original official papers, circumstances favourable to one side and circumstances favourable to the other, but no confident conclusion could be drawn from those papers either one way or the other. The Thakbust maps were equally inconclusive. As regards possession and enjoyment of the lands in question on the part of the plaintiff and those who preceded him, the evidence shewed that from as early as 1837 the appellant's predecessors in title received kabuliyats from persons carrying on jhum cultivation on the lands in question; that in 1842 and 1843 those predecessors in title succeeded in defeating an attempt to exercise rights over those lands on the part of the persons interested in an adjoining mouza; and that on several occasions in subsequent years the appellant's predecessors successfully resisted proposals on the part of revenue officers of Government to settle portions of those hill lands as ilam lands open for

Held that, though the plaintiff had failed to establish a title by adverse possession for 60 years, the evidence of possession and enjoyment adduced by him was important as proof of title, and that Regulation III of 1891 did not apply to the case. (Sir Arthur Wilson.) MAHOMED ALI HAIDAR KHAN P. SECRETARY OF STATE FOR INDIA (1908) 35 I. A. 195 = 36 C. 1 = IN COUNCIL.

4 M. L. T 234 = 8 C. L. J. 436 = 12 C. W. N. 1095 = 10 Bom. L. B. 1101=1 I. C. 182= P. L. R., 1908. p. 110 = 18 M. L. J. 549.

-fhum lands-Applicability to-Onus on Govern-

ment.

WhereGovernment claimed to apply to lands which had undoubtedly been long in the enjoyment of the appellant's predecessor in title Assam Regulation III of 1891 which would have the effect of confiscating proprietary rights and giving compensation in exchange, held that the onus was on the Government to shew that the facts of the case were such as to bring it within the operation of the Regulation-in other words, that the case was one in which, at the permanent settlement, in making settlement of certain taluqs with the appellants' predecessor in title, the officers of Government included, for the purposes of assessment, among the assets of those talogs the income derived by their owners from them cultivation carried on beyond the limits of the settled estate. (Sir Arthur Wilson.) MAHOMED ALI HAIDAR KHAN P. SECRETARY OF STATE FOR INDIA IN COUN-(1908) 35 I. A. 195 (2034) = 36 C. 1 (17-8) = 4 M. L. T. 234 = 8 C. L. J. 436 = 12 C. W. N. 1095 = 10 Bom. LB. 1101 = 1 I.C. 182= P. L.R. 1908 p. 110=

## TALABI BRAHMOTTAR GRANT.

- Nature of .

A Talabi Brahmottar grant is defined in Wilson's Glossary as " Land granted rent-free to Brahmins for their support and that of their descendants, as a reward for their sanctity of living or to enable them to devote themselves to religious duties and education ". If after the words " rent-free " be added the words " or at a fixed rent", this statement may be accepted as an accurate description of the origin of the grant, but in itself it contains no definition of the characteristies of the tenure. (Lord Buckmaster, L. C.) SASHI BHUSHAN MISRA P. JYOTI PRASHAD SINGH DEO.

18 M. L. J. 549.

(1916) 44 I. A. 46-44 C. 585 (590) = 6 L. W. 2= 19 Bom. L. B. 416=21 C. W. N. 377= 1 Sar. 684.

### TALABI BRAHMOTTAR GRANT-(Contd.)

21 M. L. T. 303 = 15 A. L. J. 209 = (1917) M. W. N. 226=25 C. L J. 265= 1 Pat. L. W. 361 = 40 I. C. 139 = 32 M. L. J. 245.

TANJORE.

-District of-Ekabhogam, Auridigarie, and Samuc'ayam or Pasankarie villages in-Distinction. See MADRAS LAND TENURES-TANJORE DISTRICT.

(1923) 51 I. A. 83 (93)=47 M. 337.

-Raja of - Status of.

Sivaji, the Raja of Tanjore, was an independent Sovereign of territories undoubtedly small, and bound by Treaties to a powerful neighbour, which left him, practically. little power of free action; but he did not hold his territory. such as it was a fief of the British Crown, or of the East India Company (532). (Lord Kingsdosen.) SECRETARY OF STATE IN COUNCIL FOR INDIA P. KAMACHEE BOYL (1859) 7 M. I. A. 476=13 Meo. P. C. 22= SAHABA. 7 W. R. (Eng.) 722=4 W. R. 42=1 Suth. 373=

TANK.

### Village tank-Repair of.

Exclusive right of some of villagers-Right to exclude other villagers from contributing towards rest of re-

pair-Proof of -Quantum.

The plaintiffs and defendants were all inhabitants of a village, and the subject of dispute was a tank belonging to that village. The plaintiffs claimed in their plaint to be hereditary hukdars, that is, rightful owners, of the tank, and they prayed for a declaration that they had the sole right to repair it at their own exclusive cost, and for other relief flowing from that right and from the defendant's interference with it.

The plaintiffs did not assert that they were owners of the tank in any full or proper sense of the word; they admitted that the villagers at large had full right to the enjoyment of it; but they contended that the function of cleaning, repairing, and generally managing and protecting the tank was an hereditary possession of their family, which they had a right to retain so long as they hore the cost of it.

Held, on the evidence, affirming the High Court, that the tank was the common property of the village, and that no class of the villagers had any right to exclude the rest from contributing to the repairs, (Lord Hobbouse.) SIVARAMAN (1888) 16 I.A. 48 -CHETTI D. MUTHIA CHETTI.

12 M. 241=5 Sar. 331.

-Right of some of villagers to effect, at their sole cost, to exclusion of other villagers-Claim to-Maintainability. See RIGHT-OBLIGATION CORRESPONDING.

(1888) 16 I. A. 48 (52) = 12 M. 241.

#### TARAF.

. Meaning of.

The word "taraf" appears to mean a sub-division of a Pergunnah including several villages (562). (Lord Davey.) RANI HEMANTA KUMARI DEBI D. SECRETARY OF STATE FOR INDIA. (1906) 3 C. L. J. 560 = 1 M. L. T. 175.

### TARAM FAISAL.

-Meaning of.

"Taram faisal" means classification settlement. (Sir Andrew Scoble.) SEENA PENA REENA SEENA MAYANDI CHETTIAR v. CHOCK ALINGAM PILI AL

(1904) 31 I. A. 83 = 27 M. 291 (297)= 8 C. W. N. 545=8 Sar. 587=14 M. L. J. 200.

TARIFF ACT (VIII OF 1894, AS AMENDED BY ACT IV OF 1916).

-S. 10-Decrease in "duty of customs" within meaning of-Decrease in " tariff value " of article if a.

TARIFF ACT (VIII OF 1894, AS AMENDED BY ACT IV OF 1916.)-(Contd.)

A decrease in the "tariff value" of an article is not a decrease in the "duty of customs" within the meaning of S. 10 so as to entitle the buyer under that section to a reduction of an equivalent apart from the price which he has contracted to pay. (Viscount Dunedin.) HAJEE SHAKOOR GANI P. SABAPATHI PILLAL (1926) 49 M. 346=

96 I C. 275 = A. I. B. 1926 P. C. 84.

-S. 10-Imported sugar-Contract for sale of-Tariff valuation of such sugar-Reduction of, after date of centract-Rights of parties on.

The tariff values and their taxation are totally different from the duties and their levying. The former is matter of intelligent anticipation, based upon such knowledge of price variations as is available. When the tariff value is thus anti-ipated, and contracts are made, then, when the dety is not changed, these contracts take stock of the position with complete accuracy and there is no occasion in reason for any subsequent re-adjustment as between buyer and seller. But "duties" are in a different position. Their rate remains the subject of Government and administrative action. The parties who make forward contracts are not appraised of such changes, but have to wait for Budget announcements. It is in this latter case that the Indian Tariff Act comes in to declare that a change in the duty by decrease, the duty having been imposed between the making of the contract and the delivery of the goods, may be the ground of a claim by the buyer.

A change of duty means a change in the rate of duty. Where there has been no change whatsoever in the rate of duty, the contention that a change of tariff values of sugar is constructively a change in the sugar duty is without justifi cation, (Lard Sham.) PROBHUDAS p. GANIDADA.

(1925) 52 I A. 196 = 52 C. 644 = 27 Bom. L. B. 856 = 41 C. L. J. 618 = (1925) M. W. N. 477 = 22 L. W. 250 = 30 C. W. N. 73=88 I. C. 337=

A. I. R. 1925 P. C. 157 = 49 M. L. J. 43.

TAX.

See also BOMBAY ACTS-DISTRICT POLICE ACT IV OF 1890. SS. 25 & 25-A.

-Attempt to impose indirectly tax which cannot be impaced directly-Legality of.

Their Lordships agree in the proposition that it would be ultra tires to attempt to impose indirectly taxation which rannot be imposed directly (259). (Lord Parmoor.) CITY OF MONTREAL #. ATTORNEY GENERAL OF CANADA. (1922) S3 M. L. T. 257 (P. C.).

-Collection of-Municipality-Collection through. when there is one-Statutory provision as to-Non-compli--DISTRICT POLICE ACT OF 1890. Se. 25 (4) & 26 (1).

(1927) 54 I. A. 338 (352)=51 B. 725. -Cream property-Tenants occupying, net as Cream efficials, but for commercial or business purposes-Liability to provincial taxation of.

It would not be possible after the decision of their Lordships in Smith v. Vermillion Hills Rural Council to contend that tenants who occupy Crown property, not as officials of the Crown, but for commercial or business purposes, are not liable to provincial taxation so long at the assessment is based on their interest as occupants (259). (Lord Parmoor.) CITY OF MONTREAL D. ATTORNEY. GENERAL OF CANADA. (1922) 33 M. L. T. 257 (P. O.).

-Direct tax-Income tax if a. Sre INCOME TAX-(1928) 111 I. C. 216. DIRECT TAX IF A.

-Direct and indirect taxes-Distinction-Test.

A direct tax is one which is demanded from the very person who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the

### TAX-(Contd.)

expectation and the intention that he shall indemnify himself at the expense of another. The practical distinction between direct and indirect taxation formulated by John Stuart Mill is not a legal definition but a fair busis for testing the character of the tax in question.

S. 10 (2) of the Ontario Succession Duty Act provides

"No property in Ontario belonging to any deceased person at the time of his death or held in trust for him, ... shall be transferred, paid or given to the person entitled thereto until the duty, if any, is paid or security given therefor. Any corporation or person allowing such prisperty to be so transferred, paid or given contrary to this sub-section shall be liable for such duty.

Held the section was a case of direct taxation and not

one of indirect taxation.

The statute makes no provision for reimbursement of the company from any quarter and no such provision can be implied. (Lord Merricale.) ERIE BEACH CO., LTD. P. ATTORNEY-GENERAL OF ONTARIO.

(1930) 31 L.W. 188= 122 L.C. 309 = A. I. B. 1930 P. C. 10.

-Direct or indirect tax-Coal producers-Gross to venues of-Tax on.

The Mine Owners Tax Act, 1923, of the Province of Alberta, imposed upon mine owners as therein defined a percentage tax upon the gross revenues of their coal mines. The question for decision was whether the lax in question was or was not a direct tax.

The respondent company was a mine owner within the definition of that term contained in the Act in question.

They refused to pay the tax.

Held, affirming the Court below, that the tax in question

was not a direct tax.

It is not disputed that, though the tax is called a tax on "gross revenue," such gross revenue is in reality the Appende of sums received from sales of coal, and is indislinguishable from a tax upon every sum received from the sale of coal. The respondents are producers of coal, a commodity, the subject of commercial transactions. The general tendency of a tax upon the sums received from the sale of the commodity which they produce and in which they deal is that they would seek to recover it in the price charged to a purchaser. Under particular circumstances the recovery of the tax may, it is true, he economically undestrable or practically impossible, but the general tenency of the tax remains. (Lord Warrington of Clyffe.) KING D. CALEDONIAN COLLIERIES, LTD.

(1928) 111 I.C. 216 = A.I.B. 1928 P.C. 282.

-Direct or indirect tax-Test.

Observations on the point made by Lord Hobbouse in delivering the judgment of the Board in The Bank of Toronto v. Lambe, 12 A. C. 575, cited and adopted. (Lord Warrington of Cliffe.) KING P. CALEDONIAN COLLIERIES, LTD. (1928) 111 I.C. 216= A.I.B. 1928 P.C. 282.

Government's right of-Protection of property

Duly in regard to.

Though it is manifestly, at first sight, the interest and daty of Government to bring under taxation as large an nt of land as possible, it is equally the interest and duty of Government to protect the rights of property; for if ach rights be not protected, there can be no security for the HARAJAH MOHESHUR SINGH v. THE BENGAL GOVERN-(1859) 7 M.I.A. 283=3 W.B. 45= 1 Suth. 325 = 1 Sar. 645.

Joint Hock company Shares of Local situation of purposes of liability to or immunity from local taxation TAX-(Contd.)

When transfer of shares in a joint stock company must be effected by a change in the register, the place where the register is required by law to be kept determines the local situation of the shares in order to decide as to liability to or immunity from local taxation. The crucial irquiry is— "where could the sharas be effectively dealt with". (Lord. Mericale.) ERIE BEACH CO., LTD P. ATTORNEY-GENERAL OF ONTARIO. (1930) 31 L.W. 188= 122 I.C. 309 = A.I.R. 1930 P.C. 10.

-Occupant-Interest of-Test.

The interest of an occupant consists in the benefit of the occupation to him, during the period of his occupancy and does not depend on the length of his tenure (200-1). (Lord Parmay.) CITY OF MONTREAL T. ATTORNEY-GENERAL (1922) 33 M.L.T. 257 (P.C.) OF CANADA.

#### TAXATION.

-Sc Tax.

#### TEMPLE.

See also HINDU LAW-RELIGIOUS ENDOWMENT -TLMPLE).

-Freetien of, on property - Selling value of property if enhanced by.

The erection of the temple would not of itself add to the selling value of the property (564). (Lord Shate.) KIDAR NATH : MATHU MAL. (1913) 40 C. 555 = (1913) M.W.N. 403-13 M.L.T. 434-127 P.L.B. 1913-17 C.W.N. 797 - 15 Bom. L.R. 467 - 77 P.R. 1913 = 18 I.C. 946 - 25 M.L.J. 176.

-Family idol-Public temple-Diversion of-Right of -Distinction. See HINDU LAW-RELIG OUS ENDOW-MENT-DEDICATION OF PROPERTY TO-DIVERSION OF. (1876) 4 I.A. 52 (58) = 2 C. 341 (347).

-Interest in-Direct interest in-Meaning of-Persons having. SA UNIVER C.P.C. OF 1908. S. 92-INTE-REST IN THE TRUST. (1924) 51 I.A. 282-47 M. 884.

-Market value if has. See LAND ACQUISITION ACT OF 1894, S. 23-MARKET VALUE OF LAND-(1893) 20 I.A. 80 (87)= TEMPLES, ETC. 16 M. 369 (377).

### TENANCY IN COMMON.

-Say JOINT TENANCY.

### TENANTS IN COMMON.

So: JOINT TENANTS—TENANTS IN COMMON.

### TENDER.

- Sec also MORTGAGE-MORTGAGE DEBT-(1) DIS-CHARGE OF (2) OFFER TO PAY & (3) TENDER OF.

-Condition accompanying-Effect-

A person, to whom a tender is made accompanied by a condition which prevents it being a perfect and complete tender, is under no obligation to accept it. Such a tender cannot be regarded as the equivalent of payment, and cannot relieve the person making the tender from his liability to pey interest upon the amount tendered (Lord Buck. master.) NARAIN DAS P. ABINASH CHANDER.

(1922) 27 C.W.N. 299 = 21 A.L.J. 201 = 37 C.L.J. 457 = L.R. 3 P.C. 129 = 16 L.W. 780 = 31 M L.T. 217 (P.C.) = A.I.R. (1922) P.C. 347 = (1922) M.W.N. 791 = 4 U.P.L.R. (P.C.) 111 = 69 I.C. 273 = 44 M.L.J. 728 (731).

-Pretest-Tinder under-What amounts to

Mere words in the form of a protest, which may accompany a tender, will not defeat it, where they can reasonably be regarded as idle words (359). (Lord Kingsdozon.) PRANNATH ROY CHOWDRY P. ROOKEA BEGUM.

(1859) 7 M.I.A. 323=4 W.B. 37=1 Suth. 367= 1 Sar. 692.

#### TENURE.

CANTONMENT TENURE.

COMMENCEMENT OF-DATE OF-FINDING AS TO.

DURANTE REGNO.

FORFEITURE OF.

GHATWALLY TENURE.

GRANT OF-LOST GRANT.

GRASSIAS.

HEREDITARY TENURE.

HOLDER OF-RIGHTS OF-EVIDENCE OF.

INCIDENT ANCIENT OF-PRESENT UTILITY OF-IN-

QUIRY INTO.

ISTIMBARI TENURE CREATED BEFORE 1793 AND GRANTING MOUZAHS TO A PERSON AND HIS DES-CENDANTS TO BE HELD ON FIXED AND ABSOLUTE JUM MA.

JAIDAD TENURE.

KASBATIS.

LAKHIRAJ TENURE.

LAND TENURES.

MEWASSIAS.

MOKURRURI ISTIMRARI TENURE.

NATURE AND INCIDENTS OF-EVIDENCE OF.

OBARI TENURE.

PERMANENT AND ANCIENT TENURE HELD IN SE-PAR ATE SHARES-ASSESSMENT PAYABLE IN RES-PE CT OF SOME SHARES-NON-PAYMENT OF, BY R ESPECTIVE SHARERS—SHARE OF SHARER NOT IN DEFAULT.

POTTAH-TENURE CREATED BY. RESUMPTION OF-PROCEEDING FOR SARANJAM.

SERVICE TENURE.

### Cantonment tenure.

-See CANTONMENT.

Commencement of-Date of-Finding as to.

-Fact or Law. See C.P.C. OF 1908, S. 100-DOCU-(1923) 45 M.L.J. 663. MENTS - CONSTRUCTION OF.

#### Durante regno.

-Tenure of. See DELHI, EX-KING OF-MAINTE-(1872) Sup. I.A. 119 (128-9). NANCE OF.

### Forfeiture of.

-Deed authorising- Terms of-Constructive enlargement of-Propriety.

The terms of an instrument alleged to evidence a right o declare a forfeiture of a tenure ought not to be construcively enlarged (111-12). (Lord Justice Giffard.) BRETT ... ELLAIYA. (1869) 13 M.I.A. 104= ELLAIYA.

12 W.R. P.C. 33 = 2 Suth. 254 = 2 Sar. 492.

-Government's right of. See TENURE-PERMANENT (1869) 13 M.I.A. 104 (112). AND ANCIENT TENURE. -Grounds - Revenue - Non-payment of - Not a

ground.

The non-payment of revenue may arise from causes implying only the misfortune of the holder, and in reason and justice, in the absence of contract or consent, a forfeiture should not be implied from a mere default of that nature (111). (Lord Justice Giff urd.) BRETT v. ELLAIVA.

(1869) 13 M I.A. 104=12 W.R. P.C. 33= 2 Suth. 254 = 2 Sar. 492.

### Ghatwally tenure.

-See GHATWALLY TENURE.

#### Grant of-Lost grant.

Presumption of-Applicability - Sanad - Tenure alleged to be founded on-Failure to prove sanad-Effect. See GRANT - LOST GRANT - PRESUMPTION OF-TENURE, ETC.

TENURE-(Contd.)

#### Grassias.

-Kasabatis-Tenures or. See GRASSIAS. Hereditary tenure.

(1915) 42 I.A. 229 (248)=39 B. 625 (660-1).

DECENNIAL SETTLEMENT - TENURE HELD AT MO-CURRARY JUMA FROM PERIOD ANTERIOR TO.

DHARMADAYA INAM.

EVIDENCE OF, CONSISTING OF TREATMENT FOR UP-WARDS OF A CENTURY AND OF SALES AND PUR-CHASES OF TENURE.

ISTIMRARY MOCURRARY TENURE IF NECESSARILY A PERPETUAL.

JAGIR-HEREDITARY TENURE UNDER,

LEASE-HEREDITARY TENURE UNDER.

RENT OF-FIXITY OF.

SUNUD-TENURE HELD UNDER.

SUNUD NEW ON EACH DESCENT EVEN IN CASE OF-TAKING OF.

TENANCY AT WILL OR.

WORDS IMPORTING.

DECENNIAL SETTLEMENT-TENURE HELD AT MOCURRARI JUMA FROM PERIOD ANTERIOR TO.

-Proof of-Quantum. See ZEMINDARI-REVENUE SALE PURCHASER OF-RENT OF SUB-TENURES-EN-HANCEMENT OF-SUIT FOR.

(1865) 10 M. I. A. 183 (191).

#### DHARMADAYA INAM.

-Sec INAM-DHARMADAYA INAM.

EVIDENCE OF, CONSISTING OF TREATMENT FOR UPWARDS OF A CENTURY AND OF SALES AND PURCHASES OF TENURE.

-Inheritance - Words of -Absence of, in material documents-Effect of,

Where a plea of a hereditary tenure held at a fixed and invariable rent was raised, the objection was raised that the documents relied on by the tenure-holders contained no "words of inheritance" (to use the English phrase), i.z., no expression importing the hereditary character of the alleged tenure. Held that the objection could hardly prevail against the evidence of the tenure-holders that for upwards of a century the Talooks in question had been treated as hereditary, and as such had both descended from father to son, and been the subject of purchase (191). (Lord Justice Knight Bruce.) BABOO GOPAL LALL THAKOOR P. (1865) 10 M.I.A. 183= TELUCK CHUNDER RAI. 3 W.R. P.C. 1=1 Suth. 558=2 Sar. 98.

ISTIMBARI MOCURBARI TENURE IF NECESSARILY A PERPETUAL.

-An istimrari mocurrari tenure is not necessarily a perpetual hereditary tenure. (Lord Davey.) MAHARANI BENI PERSHAD KOERI p. DUDH NATH ROY.

(1899) 26 I.A. 216 (224)=27 C. 156 (165)= 4 C.W.N. 274=7 Sar. 580.

JAGHIR-HEREDITARY TENURE UNDER.

-See Jachir-Hereditary tenure under. LEASE-HEREDITARY TENURE UNDER.

-Rent fixed—Lease at—Words importing hereditary character of tenure—Absence of—Enjoyment long and uninterrupted-Descent of tenure from father to son.

Where, though a patta was not in the form of ordinary instruments which create an Istimrari tenure, it was in terms a grant of the lands at a fixed rent, for it specified the sum, held, upon the principle laid down in 10 M.I.A. 191, that the absence of words importing the hereditary character of the tenure was supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenare (1854) 4 M.I.A. 467 (497). from father to son, whence that hereditary character might TENURE-(Contd.)

Hereditary tenure-(Contd.)

LEASE—HEREDITARY TENURE UNDER—(Could.). be legally presumed (268), (Sir James W. Colvile.) RAJAH

SUTTOSURRUN GHOSAL 2. MOHESH CHUNDER MITTER. (1868) 12 M.I.A. 263 = 11 W.R. P.C. 10 = 2 B L.B. (P.C.) 23 = 2 Suth 180 = 2 Sat. 420.

In a suit brought under Act X of 1859 for the enhancement of the rent of lands within plaintiff's zemindary, the history of the defendant's occupation of the suit lands showed that at the commencement of the suit the lands had been held as against the Zemindar at one unvarying rent since 1792, under a tenure originating in a pottah of that year, but treated de facto as an hereditary tenure and from time to time, described by both the semindar and the tenants as a mocurrary tenure; and, that, as such, it had been made the subject of sale and transfer, to the knowledge and with the assent of the zemindar, who on one occasion bid, through his manager, for a portion of it.

Held that evidence of the above kind supplied the want of the words "from generation to generation" in the pottah, which was the foundation of that title (466).

The facts afford incontestable proof that ever since the death of the grantee under the pottah, the hereditary character of this sub-tenure has been recognissed by the successive zemindars. There is also evidence, which is not contradicted, that some of them have recognised its transferable nature. This evidence affords ample grounds for inferring either that the tenure was always intended to be hereditary, although not so expressed in the pottah, or that, if the original grant were limited to the life of the grantee. his tenure has by some subsequent grant become hereditary and transferable. And, upon the proof here given of long and uninterrupted enjoyment, accompanied by the recognition of its hereditary and transferable character, it is almost impossible to suppose that suit by the zemindar in the Civil Court to disturb the possession of the respondents, could not be successfully resisted (465.6).

Semble from the evidence of the subsequent acts and conduct of the zemindar's recognising the grantee under the pottab and his successors as mocurrareedars a court or jury might legitimately infer, as against the first remindar and his successors, either that the rent had been always fixed, or that by subsequent contract, that which had been originally variable had been made invariable (466). (See Richard Kindersley.) BABOO DHUNPUT SINGHT. GOOMAN SINGH. (1867) 11 M.I.A. 433 = 9 W.B.P.C. 3 = 2 Suth. 692 = 2 Sat. 309.

RENT OF-FIXITY OF.

Sum certain-Meaning of-Effect-Variablement of fama normal condition.

Where variableness of the jama (the amount payable by the grantee) is the normal condition, the mere naming a sam certain in connection with the grant of a descendible tenare does not import, of itself, fixity to that sum, in the absence of positive words, or of other evidence to show that such was the original design. (Lord Chelmsford.) MAHARANZE SHIBESSOUREE DERIA D. MOTHOO RANATH ACHARJO. (1869) 13 M.I.A. 270 (275)

13 W.B. P.C. 18 = 2 Suth. 300 = 2 Sar. 528 = 15 B.L.B. 176 (Note).

SUNUD-TENURE HELD UNDER.

Inheritance—Words of Abunce of Effect.

Their Lordships consider it to have been properly found by the courts below that this tenure is an hereditary tenure, it is true that the sunnud which is produced contains no

TENURE-(Cantd.)

Hereditary tenure-(Contd.)

SUNUB-TEMURE HELD UNDER-(Contd.)

would of inheritance, but it is in their Lordship's knowledge that before the acquisition of the Dewanny, before the British power became the ruling power in India, it was extremely common where a tenure was in fact hereditary, when it practically passed as hereditary from father to son, to take out a new sunnud upon each descent. Therefore the omission of words of inheritance does not show conclusively that the sunnud was not hereditary (256), (Sir James W. Colvile.) KOOLDEEP NARAIN SINGH 7. THE GOVERNMENT. (1871) 14 M.I.A. 247 =

11 B.L B. 71 = 2 Suth. 491 = 2 Sar 734.

SUNUD NEW ON EACH DESCENT EVEN IN CASE OR-TAKING OF.

-Practice as to.

It is in their Lordships' knowledge that before the acquisition of Dewanny, before the British power became the ruling Power in India, it was extremely common where a tenure was in fact hereditary, when it practically passed as hereditary from father to son, to take out a new sunnud upon each descent (256). (Sir James W. Coelile.) KOOL-DEEP NARAIN SINGH 2. THE GOVERMENT.

(1871) 14 M. I. A. 247=11 B. L. R. 71=2 Suth. 491= 2 Sar. 734.

#### TENANCY AT WILL OR.

-Evidence.

In all cases in which a tenancy at will is alleged on one side and a permanent tenure is alleged on the other, the question is whether the true inference from the facts is that the tenure is permanent or precarious. The onus of proof is on the tenant.

In a suit for ejectment of the defendants on the ground that they were tenants at will, held that the defendants established their case of permanent tenure by evidence of, inter alia, various transmissions of a heritable title since 1804 and plaintiff's acceptance of an unaltered rent not withstanding the increased value of the land. (Lord Robertson.) NILRATAN MANDAL \*\*. ISMAIL KHAN MAHOMED.

(1904) 31 I. A. 149 = 32 C. 51 = 8 C. W. N. 895 = 8 Sar. 695.

-Lease-Construction of.

The plaintiff was the lessee of the suit land under a muttawalli of an Imambara. He sued the defendant in ejectment, alleging that the latter was merely a tenant at will. The question was whether the defendant was a mere tenant at will or whether his tenure was a permanent tenure.

The defendant founded his title upon a series of transactions dealing with the tenure by sale and mortgage which ment as far hock as 1826, each transmission purporting to be of a permanent inheritable right, and upon the continuous possession of his predecessors in title at an unaltered rent. The plaintiff alleged that the transmissions relied upon by the defendant were not recognised by the plaintiff's predecessors in title, and were not binding upon him. The plaintiff also relied on a kabuliyat granted to the defendant by the Muttawalli in 1830 as being the origin of the defendant's holding.

Held that the kabuliyat of 1830 was not the creation of a fresh holding, but a recognition of an already existing right over which the Muttawalli had no control, and that the defendant had made out his case by proof of an uninterrupted payment of an unchanged rent. (Lord Robertson.)

UPENDRA KRISHNA MANDAL v. ISMAIL KHAN MAHOMED.

(1904) 31 I. A. 144=32 C. 41=8 C. W. N. 889=8 Sar. 632,

TENURE-(Contd.)

Hereditary tenure-(Contd )

WORDS IMPORTING.

-Dawini in Pettak.

Quarre whether the use of the word "Dawami" in a pottah necessarily imports a perpectual hereditary interest or whether, notwithstanding the use of the word "dawami", it may be held that upon the considerations of the object and provisions of the pottah as well as the surrounding circumstances the intention to grant a perpetual lease does not sufficiently appear. (Lord Davy.) MAHARANI BENI PER-SHAD KOERI P. DUDH NATH ROY.

(1899) 26 I. A. 216 (224 5) = 27 C. 156 (165-6) = 4 C. W. N. 274 = 7 Sar. 580.

-Mafce-birt tenure.

The words "mafee-birt tenure" froms facie import that it is an hereditary tenure. Whatever the words may have imported originally, a "mafee-birt tenure" has, at any rate, in a great number of instances, become an hereditary tenure. RAJAH MAHENDRA SINGH : JOKHA SINGH. (1873) 2 Suth. 802 = 19 W. R. 211.

-Mocurrary.

Though the word "Mocurrary" may import perpetuity, that is not the necessary meaning of the word (498).

Held that in the sunnul before their Lordships the word had not that import (498). (Lord Justice Turner.) BLN-GAL GOVERNMENT P. NAWAB JAFUR HOSSEIN KHAN

(1854) 5 M. I. A. 467 = 1 Sar. 472. -Though "Mokurrari" might import perpetuity, that is not the necessary meaning of the word (38). (Sir Richard Couch.) MUSSUMAT BILASMONI DASI v. RAJAH SHEO PERSHAD SINGH.(1882) 9 I. A. 33 - 4 Sar. 325 = 8 C. 664 (671-2) = 11 C L.R. 215

-Moure uri istimerari

The words "Mokurrari i-timrari" might mean either per nanent during the life of the person to whom the grant was made, or permanent as regards hereditary descent (38). (Sir Richard Couch.) MUSSUMAT BILASMONI DASI D. RAJAH SHEO PERSHAD SINGH. (1882) 9 L. A. 33= 8 C. 664 (671 2) = 11 C. L. R. 215 = 4 Sar. 325. Holder of-Rights of-Evidence of.

-Tenure-holder under different tenure with different incidents-Rights of-Evidence of - Admissibility. See DIGWAR-MINERALS-RIGHT TO-EVIDENCE OF

(1912) 39 I. A. 133 (141) = 39 C 696 Incident ancient of-Present utility of-Inquiry

into. -Annulment of, and of its enjoyment by ruling power

on ground of its present uselesness-Courts's power of-Maxim cessante ratione legis cessat ipsa lex-Applicability

The contention really amounts to a claim that a Court of Law can inquire into the present utility of an ancient incident of tenure and annul it and its enjoyment by the ruling power, whenever in its opinion the incident has survived its usefulness. This is a matter of policy, not of interpretation of a legislative instrument or of application of general law, and is beyond judicial powers. The maxim cessante ratione legis cessat ipsa lex, or any corresponding rule has no application to such a case (11). (Viscount Summer.) THAKUR ASHUTOSH DEO GHATWAL P. BANSIDAR (1928) 55 I.A. 249 = 7 P. 744 = SHROFF.

32 C W.N. 880 = 48 C.L.J. 64 = 9 Pat. L. T. 549 = 109 I.C. 730 = 28 L.W. 798 = A.I.R. 1928 P.C. 177 = 55 M L. J. 7.

Istimrari tenure created before 1793 and granting mouzahs to a person and his descendants to be held on fixed and absolute jama.

-Arrears of rent due by grantee-Sale of tenure for-Zemindar's right of, as incident to tenure. See LANDLORD AND TENANT-RENT - ARREARS OF-SALE FOR-IS-(1871) 14 M. I. A. 330 (340). TIMRAR SANAD ETC.

TENURE-(Contd.)

Jaidad tenure.

See JAIDAD TENURE.

#### Kasbatis.

-Grassias-Mewassias-Tenures of-Distinction. See GRASSIAS. (1915) 42 I. A. 229 (248)= 39 B. 625 (660-1).

-Origin, abode and rights of.

The Kasbatis (or Casbatees) were Mahomedans in religion, and were living in the District of Ahmedabad at the time of its cession to the British Government by the Gaekwar, being said to have originally come from Delhi under the Great Mogul (232-3). The term Kasbatis was used to designate dwellers in towns whose lands were cultivated not directly by themselves but by raiyats, to whom they let them, receiving therefor a rent in cash or in kind. They were, in addition, apparently invested with certain powers of Government over their villages, including the management of village affairs (233). (Lord Atkinson.) SECRE-TARY OF STATE FOR INDIA D. BAI RAJBAI.

(1915) 42 I. A. 229=39 B. 625 (641.2)= 19 C. W. N. 1087=18 M. L. T. 179=

17 Bom. L. R. 730 = 13 A. L. J. 953 = 2 L. W. 731 = (1915) M. W. N. 563 = 30 I. C. 303 = 29 M. L. J. 242.

Lakhiraj tenure.

-Soc Lakhiraj -- Lakhiraj lands--Lakhiraj TENURE.

#### Land tenures.

BENGAL TENURES.

-Bakasht-Meaning of. See BENGAL ACTS-TEN-ANCY ACT OF 1885-S. 120-WORDS-BAKASRT.

(1926) 53 I.A. 176 (180, 185)=5 P. 785.

-Jaith syot. See JAITH RYOT.

(1922) 49 I. A. 399 (404) = 2 P. 38 (41).

Jhum cultivation. See JHUM CULTIVATION. (1908) 35 I. A. 195 (203) = 36 C. 1 (17).

Jote-Meaning of. Sre JOTE.

-Occupancy right-Right to confer or acquire-Cosharer-Middleman-Rights of, See PERMANENT OCCU-PANCY RIGHT-RIGHT TO CONFER.

(1924) 51 I. A. 293 (298)=51 C. 631.

-Pottah. See POTTAH OR PATTA.

-Putni tenure-Durputni tenure.

A Putni Taluk is a permanent, heritable and transferable tenure, which the Zemindar may create over the whole or part of his estate, whilst the Putni Talukdar has a similar right to let the entire property held by him in putni or in parcels to Subordinate Talukdars called durputnidars. And this process of sub infeudation may, so far as the law is concerned, be carried down to several lower degrees. In the case of these tenures the Zemindar has a right to apply to the Collector to put up the putni taluk to sale for arrears of rent and the sale has the effect of cancelling all under tenures; but the subordinate tenure holders have the right to deposit in the Collector's court the arrears of rent, and to be put in possession of the defaulting superior tenure for the satisfaction of the deposit made by them. The same right which the Zemindar possesses for the realization of his rent, with the correlative right on the part of the subordinate tenure holders of saving the superior tenure from sale, is given to them in succession. The Putni Regulation is a self-contained Act embodying the rules relative to the rights of semindars and putni Talukdars and the legislature in enacting the Bengal Tenancy Act excluded in express terms from the operation of the Act the special legislation relating to putal tenures. (Mr. Ameer Ali.) FORBES v. BAHADUR SINGH-(1914) 41 I. A. 91=41 O. 926 (938)=

TENURE-(Contd.)

Land Tenures-(Contd.)

BENGAL TENURES-(Contd.)

18 C. W. N. 747 = 23 I. C. 632 - (1914) M. W. N. 397 -15 M. L. T. 380 = 12 A. L. J. 653 = 1 L. W. 1059 =

27 M L. J. 4.

The Burdwan Raj contains a large number of patni tenures, and sub-infeudation is recognized and largely given effect to in that estate. Not only are patnidars entitled to grant sub-tenures called darpatnis, but the darpatnidar on his side can grant subordinate tenures under himself which bear the designation of sepatni. (Mr. Amorr Mr.) SURA-PATI ROY v. RAM NARAYAN MUKEKJI.

(1923) 50 I A. 155 (159) = 50 C. 680 (684.5) -A. I. R. 1923 P. C. 88 = 33 M. L. T. 314 = 18 L. W. 681 = 39 C. L. J. 26 - 28 C. W. N. 517 = 73 I. C. 193 = 45 M. L. J. 219.

Saranjami expenses. See SARANJAMI EXPENSES. (1922) 49 I. A. 399 (405) = 2 P. 38 (45).

Khudkasht in-Meaning of. So. KHUBKASHT. BOMBAY.

Quit and ground-rent-Sanadi tenure - Resumption

of-Government's right of.

In Bombay both of these tenures (quit and ground rent tenure and Sanadi tenure, exist. The land in question is in fact held under a sanad which purports to enable the Government to resume possession for public purposes on giving 6 months' notice and providing compensation for buildings and other improvements. For the purposes of the question to be decided their Lordships assume, although the Point is not conceded, that if the land were held on the other (quit and ground rent) tenure it would be contrary to the practice of the Government, if not to the law, to resume possession, and that the land would be in consequence more Valuable as a security (187.) (Viccunt Haldane.) MER-WANJI MUNCHERJI CAMA P. SECRETARY OF STATE FOR (1915) 42 L. A. 185 = 39 B. 664 (676-7) = 19 C. W. N. 1056 = 2 L. W. 701 = INDIA.

(1915) M. W. N. 536=13 A. L. J. 1026=30 I. C. 539= 29 M. L. J. 299.

-Kamavishi-Land entered as-What is. See KAMA-(1927) 54 I. A. 380 (388.) VISHI.

MADRAS TENURES.

See MADRAS LAND TENURES.

NATURE AND INCIDENTS OF -INDIAN COURTS' DECISION ON.

-Privy Council's interference with.

It seems to their Lordships, that they would be taking upon themselves a very great responsibility, if, upon a question of tenure peculiar to India, upon which the judgment of Indian Courts is so valuable, they were to overrule the manimous and carefully considered judgment of a Full Bench of the High Court, particularly when that judgment appears to them to be entirely consistent with the general Principles of justice and equity. (Sir James W. Colvile.)

KOOLDEEP NARAIN SINGH v. THE GOVERNMENT.

(1871) 14 M. I. A. 247 (258) = 11 B. L. B. 71 -2 Suth. 491 - 2 Sar. 734.

ORISSA.

See ORISSA-LAND TENURES -Land tenures in-

OUDH.

Land tenures in. See OUDH-LAND TENURES IN.

Mewassias.

(1915) 42 I. A. 229 (248)= See GRASSIAS. 39 B. 625 (660-1). TENURE-(Centd.)

Mocurrary istimrari tenure.

-Pottab creating-What amounts to. See LEASE-MOCURRARI ISTIMRARI TENURE

(1867) 11 M. I. A. 433 (464-5).

Nature and incidents of - Evidence of.

-Resente Board-Departmental instructions of-Value of.

An instrument which is only a direction from a Government Board or officer to others engaged in the Revenue Department cannot create of itself any new law, or impose any new obligation on existing tenures from which they were anto edently free; but it may indicate in many cases subsequent to it the terms of engagements, and be proof of conditions of tenure in such cases. As to Enams of an admitted precarious tenure it might serve as notice of an intention to resume them on failure of the obligation of the Enamdars to pay their actual assessment. (Lord Justice Giffard.) BRETT P. ELLAIVA.

(1869) 13 M. I. A. 104 (110) = 12 W. R. P. C. 33 = 2 Suth. 254 = 2 Sar. 492

Obari tenure.

-See OBARI TENURE.

Permanent and ancient tenure held in separate shares-Assessment payable in respect of some shares-Non-payment of. by respective sharers-Share of sharer not in default.

-Assessment payable in respect of-Increase of, on ground of such non-payment-Greenment's right of.

In this case the Government claims a right to increase the assessment on one who holds under an ancient and permanent tenure by reason of a default not arising from himself or any person holding his share but arising from his cosharers in respect of shares held by them separately. This is not a common incident of tenure, and is not involved in the right to hold the whole lands as hypothecated for the whole rent, though shares are held in severally and subject to several assessments. It, therefore, lies on the Government to prove by what authority this increase in the amount of the rent has been made (111.) (Lord Justice Giffard.)

ERR TT : ELLAIVA. (1869) 13 M. I. A. 104 = ERETT : ELLAIVA.

12 W. R. P. C. 33 = 2 Suth. 254 = 2 Sar. 492.

-- Renumption or forfeiture of, on ground of such nonpayment-Gerenment's right of.

Where the Government claimed to resuree or forfeit the portion of an ancient and permanent tenure held by one of several sharers in separate shares for default on the part of the others in the payment of their quota of Government assessment, held that the power claimed by the Government being of such an exceptional and anomalous kind, it ought to be shown to have a certain and legal origin, and could not, in the absence of any Statute, or Regulation-be presumed or established by a court upon anything short of clear evidence of its continued exercise and prevalence (112). (Lord Justice Giffard.) BRETT t. ELLAIYA.

(1869) 13 M. I. A. 104 - 12 W. R. P. C. 33 -2 Suth. 254 - 2 Sar. 492.

#### Pottah-Tenure created by.

-Pre-amption-Inheritance-Words of-Absence of, See LEASE-ESTATE CONVEYED UNDER-POTTAH-(1867) 11 M. I. A. 433 (463-4). MEANING OF.

### Resumption of-Proceeding for.

-Increase of assessment if.

This increase of assessment was not properly a resump-tion proceeding (111.) (Lord Justice Giffard.) BRETT v. ELLAIVA. (1869) 13 M. I. A. 104 = 12 W. R. P. C. 33 = 2 Buth. 254 = 2 Bar. 492.

TENURE-(Could.)

Saranjam

-Sie SARANJAM.

Service tenure.

AMARAM GRANT.

-See AMARAM GRANT.

HOLDER OF-POSITION AND RIGHTS OF.

-Words - Raja-Zemindari - Patta-Istimrari-

Even now the words "raja", "zamindari" "patta", and "istimrari mukurrari" are not so stricty used as always to bear a precise meaning or to refer invariably to cases in which nothing is due but an annual Government jama for an absolute estate in lands. There is even less ground for so holding when the documents under construction are nearly 150 years old. No authority is forthcoming to show that a holding on the terms of both yielding a jama and rendering a quasi-military service may not be consistent with the use of these words. Whether the service tenure is made a term or not, the holder might be a "Zemindar" or landholder and his holding be "perpetual" and "on fixed terms-" The position of the holder depends not on his being styled "raja" and "zemindari," which are general expressions of consideration, but upon the conditions upon which he holds the land (54). (Lord Sumuer.) NARAYAN SINGH P.

NIRANJAN CHAKRAVARTI. 3 Pat. 183 = 28 C. W. N. 351 = 34 M. L. T. 27= 5 Pat. L. T. 171 = 79 I. C. 825 = A. I. R. 1924 P. C. 5.

(1923) 51 I. A. 37 =

INSTANCES OF

-See (1) CHAKERAN LANDS; (2) CHOWKEDARI CHAKERAN LANDS; (3) DESHGAT WATAN; (4) DIGWARI TENURE; (5) GHATWALLY TENURE (6) GRAM SARAN-JAM OR MAL SARANJAM LANUS; (7) KARNAM; (8) MOK-HASA; AND (9) SARANJAM.

### MILITARY SERVICE TENURE.

-Lands held on-Alrenability.

Where lands in British India are held on military service tenure, there is good reason for holding that no one of the successive tenants could deal with the land so as to deprive the next holder of the source from which his duties might be discharged. (Sir John Edge.) APPAYASAMI NAYAKER r. MIDNAPORE ZEMINDARY CO., LTD.

(1921) 48 I. A. 100 (108) = 44 M. 575 (582) = (1921) M. W. N. 352=34 C.L. J. 6= 29 M. L. T. 383 = 14 L. W. 49 = 26 C. W. N. 106 = 60 I. C. 953 = 20 A. L. J. 393 = A. I. R. 1922 P. C. 154-40 M. L. J. 537.

MOKHASA

-See MOKHASA.

NATURE AND INCIDENTS OF.

Permanent Settlement-Effect of.

Neither the origin of a jaghire nor the precise time at which it was created was known, but it appeared that as far back as 1771, the villages of which it was composed were held by jaghirdars who paid to Government two-thirds of the annual value thereof as revenue, and retained the other one-third as remuneration for the services under which the jaghire was held. The villages included in the jaghire were permanently settled as part of the zemindary of Pachete, of which the appellant was the zemindar. In fixing the Government revenue at the time of the decennial settlement, the lands included in the jaghire were assessed at the two-thirds then payable by the jahirdar to the Government, and the one-third retained by the jagirdar in lien of services formed no part of the assets of the zemindary in respect of which the Government revenue was fixed.

It was contended, on behalf of the appellant, that, as the | SURVEY PROCEEDINGS-THAK KHASRA

TENURE-(Contd.)

Service tenure-(Contd.)

NATURE AND INCIDENTS OF-(Contd.)

lands were included in his permanently settled zemindary, the services as well as the rent belonged to him; that the services were private services, and that he had a right to cause the lands to be sold in execution of his decree.

Held, that the permanent settlement of the lands did not alter the nature of the jaghire or of the tenure upon which the lands were held, nor could it convert the sevices which were public into private services under the zemindar (121).

The Zemindar became entitled only to the rent or revenue which was previously payable to the Government and in respect of which he was assessed, and not to the services in respect of which the one-third of the rent or revenue was allowed to the tenant as compensation for the services. Those services continued to be due to the Government (121.) (Sir Barnes Peacock.) RAJAH NILMONI SINGH r. BAKRANATH SINGH. (1882) 9 I. A. 104= 9 C. 187 (204-5)=4 Sar. 335.

RESUMPTION OF.

-Amaram grant -Resumption of. See AMARAM GRANT.

-Grantor's power of Personal employment-Tenure created distinct from-Tenure-holder ready and willing

to perform service.

Where a tenure is created as distinct from mere personal employment, the tenure-holder has such an interest in the rendering of the services as entitles him to such benefit of the tenure as accrues from his readiness and willingness to perform his obligation. The service is not a mere burden on the land; it constitutes a personal right in so far as the land held on that condition is concerned, and a personal obligation in so far as concerns the grantor, which, being in the nature of a public obligation, cannot be waived by the grantor for his own advantage, nor, being in the nature of a title to the lands, can be relegated to desuctude for the mere disadvantage of the ghatwal. The truth is that, where rights can once be shown to have been established and continue to be vested in living persons, obsolescence and desuetude are popular expressions rather than solid legal grounds for refusing a continuing recognition to the right as originally established. (Lord Sumner.) NARA-YAN SINGH v. NIRANJAN CHAKRAVARTI.

(1923) 51 I. A. 37 (70)=3 Pat. 183= 28 C. W. N. 351 = 34 M. L. T. 27 = 5 Pat. L. T. 171 = 79 I. C. 825 = A. I. B. 1924 P. C. 5.

-Zemindar's right of - Circuit Committee-Statements in—Evidentiary value of. See CIRCUIT COMMIT-TEE. (1905) 33 I. A. 46=29 M. 52 (67).

SHET SANADI TENURE.

-See DESAI- INAM VILLAGE OF-SHET SANADIS (1928) 56 I. A. 44=53 B. 222.

-See WATAN.

#### TERRITORY.

-Cession of. See CESSION OF TERRITORY.

### THAKBUST MAP.

-What is a. See SURVEY PROCEEDINGS-THAK-BUST MAP IN-THAK KHASRA IN.

(1922) 49 I.A. 399 (406-7)= 2 P. 38 (46).

-Evidentiary value of. See SURVEY PROCEEDINGS -THAKBUST MAP IN.

### THAK KHASRA.

-What are-Entries in-Evidentiary value of. See

#### THAKBUST PROCEEDING.

--- Correctness of - Presumption-Onus of proof.

It lies upon the party impugning the correctness of the thabbust proceedings to show in what particulars, and to what extent they are wrong (172). (Sir James W. Colvile.)

RAJA LEELANUND SINGH v. MAHARAJAH LUCH-MESSUR SINGH. (1880) 10 C. L. R. 169 = Bald. 382.

Decision in-Effect of, on parties to proceeding— No estoppel, but of high authority-Claim opposed to decision-Maintainability-Onus on claimant.

In regard to proceedings taken before the Thakbust Deputy Collector in reference to disputes between neighbouring landowners as to the boundaries of the mowzahs

belonging to each their Lordships observed :-

These proceedings are in truth determinations by public officials of the matters in dispute, all the parties interested being given the opportunity of making their claims, raising their objections, and producing their evidence. The parties to them are, no doubt, not estopped by the decisions arrived at, as they would be in regular proceedings in courts of law, but these determinations are obviously of high authority, and when acquiesced in by all the parties interested for a length of time, and made the basis of important transactions, should not be disturbed unless upon the clearest proof that they are erroneous. (Lord Athinson.) MAHARAJA SURJA ACHARIYA BAHADUR v. SARAT CHANDRA ROY CHOWDURI.

BAHADUR P. SARAT CHANDRA ROY CHOWDURI. (1914) 18 C.W.N. 1281 = 16 M.L.T. 290 = 1 L.W. 807 = (1914) M. W. N. 757 = 16 Bom. L. R. 925 = 20 C. L. J. 563 = 25 I. C. 309 = 27 M. L. J. 365 (372 3)

Possession - Decision as to - Value of - Suit for possession by unsuccessful party-Onus of proof in.

In a suit brought by the appellant to recover certain begahs of land, the question was simply one of boundary, wir, whether the property in dispute lay within the limits of the zemindary of the appellant, or within those of the contiguous zemindary of the respondent. The respondent alleged that the boundaries between the two Rajs had been fixed and adjudicated by a decision of the Thakbust (or survey) authority, in 1848; and that under Act No. XIII of 1848, the appellant's suit was barred because brought more than three years after the date of that decision.

Held that, whatever was the effect of the Thakbust proceeding, and whether it were, or were not, an award under Regulation VII of 1882, it could not be treated as being other than a material piece of evidence upon the question of Posession, and that that careful local investigation, conducted in the presence of both parties, and implying that the property in dispute had always formed part of the respondent's remindary, cast upon the appellant the burthen of showing by satisfactory counter-evidence at what precise time, if ever, the owner of the appellant's rai was in possession of it (340). (Sir James W. Celvile.) RAJAH SAHEB PERLHAD SEIN v. MAHARAJA RAJENDER SING.

(1869) 12 M. I. A. 292 = 12 W. B. (P.C.) 6 = 2 B. L. B. (P. C.) 111 = 2 Suth. 225 = 2 Sar. 430

### THAK MAP.

Permanent Settlement of 1793—Land whether included in, or not—Evidence of—Thak map subsequent—Value of: See BENGAL ACTS—ALLUVION AND DILUVION ACT OF 1847—PERMANENT SETTLEMENT OF 1793.

(1902) 30 I. A. 44 (53) = 30 C. 291 (302).

Value of. See ALLUVION AND DILUVION—DILUVIATED LANDS.

(1899) 27 I. A. 44 = 27 C. 336.

## THAK STATEMENTS.

Is was not intended in L. R. 49 I. A. 399 to lay down that that statements could never have any evidentiary value

### THAK STATEMENTS-(Contd.)

still less that they were inadmissible in evidence, but only that they were of no evidentiary value when, as in that case they dealt with matter altogether outside the scope of the survey. (Sir John Wallis) KRISHNA PROMADA DASI DHIRENDRA NATH GHOSH. (1928) 56 I. A. 74 = 56 C. 813 = 33 C. W. N. 289 = 49 C. L. J. 112 =

56 C. 813 = 33 C. W. N. 289 = 49 C. L. J. 112 = 113 I. C. 465 = A. I. R. 1929 P. C. 50

#### THANADARS.

-Who are.

The police of the country was maintained by means of Thanadars, or police officers, kept by the Zemindars, and appointed and paid by them; but, where no other provision existed for their maintenance, the expense was in effect deprayed by the Government, either by direct allowances to the Zemindar, or by deduction from his humma, or by excluding from assessment, or assessing below their value, lands appropriated to that purpose by the Zemindar (109).

(Mr. Pemberton Laigh.) RAJA LEELANUND SINGH BAHADOOR T. GOVERNMENT OF BENGAL.

(1855) 6 M. I. A. 101-1 Suth. 248-4 W. R. 77 (P. C.)-1 Sar 505.

\_\_\_\_\_Sec Chakeran Lands—Meaning of—Chowkeedars. (1864) 10 M. I. A. 16 (40-1).

——Duties and remuneration of. So: CHOWKEEDARS —THANADARS. (1917) 44 I. A. 117=44 C. 841.

### THANADARI LAND.

Thanadari chakeran lands—Meaning of—Chakeran lands—Chowkedari Chakeran lands—Distinction, See CHAKERAN LANDS—MEANING OF—CHOWKEEDARI CHAKERAN LANDS. (1917) 44 I. A. 117=44 C. 841.

Zemindar—Thanadari lands contiguous—Right in—Surface of land—Right by cycleat to—Minerals—Right to—Resumption—Right of.

No doubt the holders of thanadari land stand in a certain position contiguous to the Zemindar. If the lands are resumed, they are to be settled with the zemindar, and it may be that they may even be described as settled with the zemindar in a certain sense and that there is a sort of superiority in the zemindar which might entitle him to the surface of the land in case of escheat. Whether this would give him a claim to the minerals is a further que-tion. It is, however, a mistake to say that thanadari lands, though made resumable, were not always resumed (119). (Lord Phillimore.) SECRETARY OF STATE FOR INDIA 2. RAJA INOTI PRASHAD SINGH DEO BAHADUR.

(1926) 53 I. A. 100 = 53 C 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = A. I. B. 1926 P. C. 41 = 94 I. C. 974.

### TIMBER.

——Conversion of—Suit for—Nature real of—Detinue
—Trover—Timber ordinary article of commerce—Damages
in case of—Measure of. See DAMAGES—TIMBER ORDINARY, ETC.

(1878) 5 I.A. 130 (133-4) = 4 C. 116 (119-20).

### TIRWA.

\_\_\_ Meaning of.

Tirwa is the share of the rents payable to Government.
(Lord Salzeson.) SUBRAHMANYA CHETTIAR v. SUBRAMANYA MUDALIAR. (1929) 56 I. A. 248 = 52 M. 549 =
33 C. W. N. 734 = 31 Bom. L. B. 830 = 30 L. W. 30 =
116 I. C. 601 = (1929) M. W. N. 561 =
A. I. B. 1929 P. C. 156 = 57 M.L. J. 1.

### TITLE.

(See also POSSESSION.)

ADMISSION OF.

ANCIENT TITLES SUPPORTED BY AUTHENTIC RE-CORDS—PRESUMPTIONS TO EXPLAIN RECORDS AND GIVE THEM VALIDITY. TITLE-(Contd.)

BENAMIDAR - TITLE OF-ADMISSION BY REAL OWNER OF.

CROWN-TITLE AGAINST-EVIDENCE OF.

DECLARATION OF.

DISPUTE AS TO-SUIT FOR DECISION OF.

EVIDENCE OF.

EXECUTOR-ADVERSE TITLE TO PROPERTY DISPOSED OF BY WILL.

IMMOVEABLE PROPERTY.

LAW ERRONLOUS - TITLE ACQUIRED UNDER -RESERVATION OF.

MULATION PROCEEDINGS-TITLE-POSSESSION.

OPPONENT-TITLE OF -ADMISSION OF, BY PETITION FILED IN SUIT.

PERSON WITH-POSSESSION IN FAVOUR OF.

PERSON WITHOUT.

POSSESSION IN RIGHT OF-EVIDENCE.

POSSESSION FOR LESS THAN STATUTORY PERIOD.

POSSESSION LONG AND UNDISTURBED.

POSSESSORY TITLE.

POTTAH NOT PART OF.

PRIOR TITLE-EXISTENCE OF-PRESUMPTION AS TO.

PROOF OF

REVENUE SETTLEMENT IF BY ITSELF CONSTITUTES. SUIT-PERSON NOT PARTY TO-DECLARATION OF TITLE OF, AT INSTANCE OF PERSON WITHOUT TITLE.

#### Amission of.

admission on, in different suit for different purpose-Effect of.

An admission against title, on a particular view of the legal status of a party, in point of law, ought not, if erroneous, to bind him in another suit for a different object, the court having before it all the facts relating to the status. (Lord Kingsdown.) MYNA BOYEE r. OGTARAM.

(1861) 8 M. I. A. 400 (418-9)=2 W. R. 4= 2 M. H. C. R. 196-1 Sar. 797-1 Suth. 452.

-Gratuitous admission-Withdrawal of.

A gratuitous admission of title may be withdrawn unless there is some obligation not to withdraw it (178). (Lord Hobbouse.) MUHAMMAD IMAM ALI KHAN P. SARDAR (1898) 25 I. A. 161= HUSAIN KHAN. 26 C. 81 (100-1)=2 C. W. N. 737=7 Sar. 432.

-Opponent's title-Admission of, by petition filed in suit-Plea of-Proof of. See ADMISSION-SUIT-OPPO (1875) 2 I. A. 113 (129) NENT'S TITLE.

### Ancient titles supported by authentic records-Presumptions to explain records and give them validity.

-Raising of-Propriety.

In upholding old titles of which the authentic records are still forthcoming, their Lordships are justified in making all reasonable presumptions to explain them and give them validity. Certainly in making either of these assumptions they are not trespassing beyond the bounds either of actual probability or of legal precedent, especially when the alternative would be either to disregard express words and to leave them no force at all, or else to assume that what has been treated as a good title for over a century is really an instance in which an official, unsuspecting and unsuspected. has outstepped the limits of his unknown power (56). (Lord Sumner). NARAYAN SINGH v. NIRANJAN CHAKRA-(1923) 51 I.A. 37 = 3 Pat. 183=

28 C.W.N. 351 = 34 M. L. T. 27 = 5 Pat. L.T. 171 = 79 I.C. 825 = A.I.B. 1924 P.C. 5.

TITLE-(Contd.)

Benamidar-Title of-Admission by real owner of. -What amounts to. See BENAMI-BENAMIDAR-TITLE OF-ADMISSION BY REAL OWNER OF.

(1875) 2 I.A. 154 (159) and (1904) 9 C.W.N. 89.

### Crown-Title against-Evidence of.

-Possession for less than statutory period if. See CROWN-TITLE AGAINST.

(1908) 35 I.A. 195 (205)=36 C. 1 (19-20).

#### Declaration of.

CONFIRMATION OF POSSESSION AND-SUIT FOR,

-Evidence insufficient for declaration of title-Decree in case of-Form of.

Where, in a suit for declaration of plaintiff's title to and for confirmation of his possession of the suit property, the evidence adduced was not sufficient to enable the Court to make an affirmative declaration of title and the High Court dismissed the suit, their Lordships affirmed its decree with custs, but with a declaration that the judgment and decree in the suit should stand without prejudice to any question of title between the parties in any future suit or proceeding. (Sir Barnes Peacock.) SHEIK TORAB ALLY v. SHEIK MOHAMED TUKHEE. (1872) 19 W.B. 1= 5 Sar. 711=2 Suth. 735.

-Onus on plaintiff in.

In a suit for confirmation of possession, in which the plaintiff asks not merely that he should be retained in -Frencens view of legal status of party-Adverse possession, but that the court should declare affirmatively that his possession was accompanied by title, the Court must be so satisfied affirmatively of the plaintiff's title that they can declare not only that he has possession, but that he has that possession in consequence of a valid and good title (Sir Barnet Peacock). SHEIKH TORAB ALLE v. SHEIKH (1872) 19 W. B. 1= MOHAMED TUKHEE. 5 Sar. 711 = 2 Suth. 735.

> —Decree for—Appeal against—Right of—Plaintiff in possession-Decree in favour of-Defendant without title or possession and mere imperlinent intervenor-Right of. See Declaration-Person in Possession.

(1916) 43 I.A. 179 = 38 A. 440.

-Injunction and-Suit for-Decree in-Form of-Plaintiff having possessory title-Defendant trespasser. See SPECIFIC RELIEF ACT, S. 42-CASES UNDER-TRES-(1893) 20 I.A. 99 (106-7)= PASSER. 20 C. 834 (842-3).

-Suit-Person not party to-Declaration in favour of, at instance of person having no title-Propriety. See (1847) 4 M.LA. 246 (256). TITLE-SUIT.

-Suit for - Onus on plaintiff in - Defendant's failure to prove his title.

The suit was for a declaration of the plaintiff's ownership of the suit property, and of his right to registration. The defendant alleged that he was owner. The property was in the possession of the tenants. Each party derived his title from a lady, S, who in the year 1858 was the undoubted owner. The defendant's claim was under a hiba or deed of gift executed by S in 1858. The plaintiff's claim was under transfers executed by her between 1880 and 1890. The plaintiff alleged that the hiba under which the defen dant claimed was a benami transaction.

Held that in such a suit the plaintiff could only succeed by the strength of his own title and could not depend upon the failure of the defendant to prove his title (230). (Link Hobbonse.) NIRMAL CHUNDER BONNERJEE v. MAHO-(1898) 25 LA. 295= MED SIDDICK. 26 C. 11 (18) = 7 Sar. 383

TITLE-(Contd.)

### Dispute as to-Suit for decision of.

Possession proceedings ordinary prelude to. No. CR. P. C. OF 1898, S. 145—PROCEEDINGS UNDER—ORDINARY PRELUDE TO. (1867) 12 M.I.A. 1 (22).

- Question to be considered in case of.

When a doubtful title is in dispute the first question that suggests itself is—when was it asserted? And has it been continuously and consistently asserted? (26). (Lord Hatherley, L.C.) FORESTER v. SECRETARY OF STATE FOR INDIA. (1872) Sup. I.A. 10 =

12 B.L.R. 120 = 18 W.R. 349 = 3 Sar. 1 = 1 P.R. 1872 = 2 Suth. 628.

### Evidence of.

——Bengal Regulation XXXVII of 1793—Registers made pursuant to. See BENGAL REGULATIONS—REVENUE FREE LANDS (BADSHAHI GRANTS) REGULATION XXXVII OF 1793—REGISTERS MADE PURSUANT TO (1836) 1 M.I.A. 19 (45-6).

- Collector - Award of -Title-Possession-Exiden-

tiary value as to.

The award of the Collector could not conclude any of the questions of title, as distinguished from possession (535). (Sir Edward V. Williams.) JOWALA BUKSH T. DHARUM SINGH. (1866) 10 M.I.A. 511 = 2 Sar. 189.

The law in India has not enabled a purchaser of land to look only to the apparent title on the Collector's books, or the presumed title of the owner in possession (323). (Lord Kingsdown.) VARDEN SETH SAM v. LUCKPATHY ROV-JEE LALLAH. (1862) 9 M.I.A. 303 = Marsh. 461= 1 Suth. 483 = 1 Sar. 857.

The Collector's book is kept for purposes of revenue, not for purposes of title. The fact of a person's name being entered in the Collector's book as occupant of land for not necessarily of itself establish that person's title or defeat the title of any other person—Decision to such effect in 10 Bom. H. C. 187 approved of (70). (Lord Shaw.) NAGESHAR BAKHSH SINGH v. GANFSHA.

(1919) 47 I.A. 57 = 42 A. 368 (380-1) = 18 A.L.J. 532 = 23 O.C. 1 = 22 Bom. L.B. 596 = 28 M.L.T. 5 = 56 I.C. 306 = 38 M.L.J. 521.

Documents showing reasonable origin of title nearly century ago, regular deduction of that title, and possession consistent with it—Long series of—Value of—Evidence of anterbalancing—Nature of, required. See EVIDENCE—DOCUMENTS. (1863) 10 M.I.A. 165 (173).

Government—Title against—Evidence of—Possestion for less than statutory period if. See CROWN—TITLE AGAINST—EVIDENCE OF.

(1908) 85 I.A. 195 (205)=36 C. 1 (19.20).

Plaintiff—Title to suit property of—Evidence of—Co-defendants—Conveyance by one of, in his favour, prior to suit—Admissibility of, against other defendants—Plaintiff without title otherwise.

See EVIDENCE—CO-DE-(1875) 2 I. A. 113 (129).

Grant of. See EJECTMENT SUIT—MAINTAINABILITY.
(1864) 10 M.L.A. 47

Possession for less than statutory period—Value of.

Possession long and undisturbed. See Possession Long Possession.

Pymash accounts—Pymash proceedings—Value of.

TITLE-(Contd.)

Evidence of-(Contd.)

Pottah. See POTTAH-TITLE.

——Rent roceipts—Revenue receipts—Value of. See RENT RECEIPTS—REVENUE RECEIPTS.

(1869) 13 M. I. A. 181 (197-8).

Revenue registry—Entry of name in—Payment of assessment. See Possession—Evidence of—Revenue REGISTRY. (1869) 2 B. L. R. (P. C.) 85 (95).

——Survey—Survey award — Survey map — Survey Officers—Reports of—Survey proceeding. See UNDER EACH OF THOSE HEADINGS.

——Survey and settlement register of village—Value of.

See Hindu Law—Religious Endowment—Temple
—Property of. Or Private Property of DharmaKakta. (1922) 49 I. A. 237 (246-7) = 45 M. 565 (576).

—Thakbust map—Thakbust proceeding. See Under
Each of those Headings.

Thak khasra-Thak map. See UNDER EACH OF THOSE HEADINGS.

Tresposer-Penerical if sufficient evidence against.

The possession of the plaintiff is sufficient evidence of title as owner against the defendant who is a mere tresposer (106). (Sir Richard Couch.) ISMAIL ARIFF v.

(1893) 20 I. A. 99 = 20 C. 834 (842) = 6 Sar. 305.

Executor-Adverse title to property disposed of by will.

\_\_\_\_\_Setting up of—Permissibility. See EXECUTOR— ADVERSE TITLE. FIC. (1911) 38 I.A. 129= 34 M. 257 (265).

### Immoveable property.

Title to—Suit relating to—Pleadings and proof in— Accuracy in—Necessity. See PRACTICE—PLEADINGS— EVIDENCE—ACCURACY IN. (1884) 12 I. A. 52 (55)= 11 G. 318 (326-7).

TITLE—PROOF OF—TITLE DEEDS.

(1914) 27 M. L. J. 20.

### Law erroneous—Title acquired under — Reservation of.

\_\_\_\_Court's power of. See Law—Declaration of— RESERVATION OF, ETC. (1899) 26 I. A. 113(152) = 21 M. 398 (430).

## Mutation proceedings-Title-Possession.

Inquiry as to—Scope of See MUTATION—PRO-CEEDINGS FOR—SCOPE OF INQUIRY IN.

# Opponent-Title of-Admission of, by petition filed in suit.

PONENT'S TITLE. See ADMISSION—SUIT—OP. (1875) 2 L A. 113 (129).

## Person with-Possession in favour of.

Presumption of. See Possession-Title-Party with.

### Person without

OF-VALIDITY.

.J -3.IT

TITLE-(Could.)

Person without - (Could.)

——Co defendant with title—Agreement between plain tiff and, to divide suit property—Decree in case of—Possessory title with contesting defendant. See EJECTMENT SUIT—DECREE IN—PLAINTIFF WITHOUT TITLE.

(1866) 10 M. I. A. 511 (528-9).

——Defendant also without title—Long possession with plaintiff. See EJECTMENT SUIT—MAINTAINABILITY—TITLE. (1864) 10 M. I. A. 47.

—Person with title made a defendant—Petition filed by, in suit admitting plaintiff's right and consenting to a decree in his favour—Decree on foot of—Conveyance or disclaimer of title by that defendant—Case of—Distinction. See EJECTMENT SUIT—DECREE IN—PLAINTIFF WITH-OUT TITLE. (1875) 2 I. A. 113 (130).

——Suit by—Persons during title from him joining as plaintiffs in—Decree in case of. See DECREE—CO-PLAINTIFFS.

### Possession in right of-Evidence.

——Jungle land. See Possession—JUNGLE LAND— Possession of—Proprietary Possession.

(1891) 18 I. A. 149 (156-7) = 15 M. 101 (109).

### Possession for less than statutory period.

### Possession long and undisturbed.

### Possessory title.

-----Sor Possession-Possessory title.

### Pottah not part of.

--- Evidence merely of. See POTTAH-TITLE.

Prior title—Existence of—Presumption as to.

——Pottah—Acceptance of—Effect. See POTTAH—ACCEPTANCE OF.

### Proof of.

(See also TITLE-EVIDENCE OF.)

----Possession for less than statutory period if. See TITLE-POSSESSION FOR LESS THAN STATUTORY PERIOD.

\_\_\_\_Title-deeds-What amount to.

In a suit for a declaration of title to certain lands, and for ejectment of the defendants therefrom, the plaintiffs at the trial proved a clear title to the lands for over 50 years by a succession of duly registered conveyances, mortgages, re conveyances, and other title-deeds, and also proved that during that period they leased portions of the lands by leases that themselves were registered. They also proved that they had not been dispossessed by the defendants until a period well within the period of limitation, and that therefore the Statute of Limitations did not apply. The trial Judge found in favour of the plaintiffs on all points and decreed the suit. On appeal, the High Court ignored entirely the clear title to the land which the plaintiffs had proved, and expressly held that they came into court without title deeds. They therefore treated the case as though it was one in which the Court had nothing relevant before them but the conduct of the parties to decide which of them was entitled to the land, and reversed the decree of the Court below. On further appeal to their Lordships, held that the High Court erred in so treating the case, and in not considering the real questions in the case in consequence. They accordingly set aside the decision of the High Court and restored that of the Court of first instance. (Lord Moulton.) JOHN KING & CO., LTD. v. MUNICIPAL COM-(1914) 18 C. W. N. 898= MISSIONERS OF HOWRAH. 20 C. L. J. 407=26 I. C. 949=27 M. L. J. 20.

TITLE-(Contd.)

Revenue Settlement if by itself constitutes.

Evidentiary value of. See REVENUE SETTLEMENT. (1871) 14 M. I. A. 289 (305).

Suit-Person not party to-Declaration of title of, at instance of person without title.

-Propriety.

The decree of the trial Judge was very singular in form, for it was made at the instance of a party who had no title in favour of persons who, if they had a title, were not parties to the suit (256). (Mr. Pemberton Leigh.) MUSSUMAT GOLAB KOONWAR v. THE COLLECTOR OF BENARES. (1847) 4 M.I.A. 246 = 7 W.B. 47 (P.O.) = 1 Suth. 186 = 1 Sar. 343.

#### TITLE DEEDS.

What are. See TITLE—PROOF OF—TITLE-DEEDS.
(1914) 27 M.L.J. 20.

——Custody of—Party entitled to. See EVIDENCE ACT —S. 90, EXPL.—TITLE-DEEDS.

(1881) 8 I A. 143 (153) = 3 M. 384 (395)

——Genuineness of —Possession proceedings—Non-production in—Presumption from.

As against the genuineness of these sunuds, it was strongly urged that they were never produced or mentioned by the appellants (who relied upon them) on several occasions on which, it is said, if they had really been in existence at that time, they ought to have been produced, and certainly would have been produced.

It is said that a litigation went on from 1833 to 1840 with respect to the possession of these lands, and that in the course of that suit no allusion was made to these documents. But the answer given to this objection much diminishes its force, viz., that the question then before the Court was not one of title but of possession, and that it was only on the question of title, as to which the court had no power in that suit to pronounce any decision, that the production of the original sunuds was of importance (175-6). (Lord Justice Turner.) WISE v. BHOOBUN MOYER DEBIA CHOWDEAL (1863-5) 10 M.I.A. 165=3 W.B. 5=

2 Sar. 91=1 Suth. 563.

-Preservation by proprietor of-Native habits.

It is far more reasonable to suppose that if the plaintifs had been the true proprietors of the estate, they would, in accordance with native habits, have kept their title deeds in the recesses of the Zenana, and would not have entrusted them to a mere manager. And if this was likely to happen under ordinary circumstances, a fortiori it would baye happened in a case in which the management of the property was by family custom vested in the females of the family (49). SERUMAH UMAH D. PALATHAN VITAL MARYA.

(1870) 15 W. B. 47 (P. C.) (49) = 2 Suth. 418.

### TITLES, ORDERS AND DECORATIONS.

-Importance attached to, by Western nations.

The Western nations, who attach so much importance to titles, orders, and decorations, have no pretence for treating with levity the marks of distinction conferred by the sovereign authority and highly valued in the East; such as the right to wear a particular button, to use a fan made from a cow's tail, or to be carried crossways in a palanguin (217-8). (Lord Campbell.) SRI SUNKER EHARTI SWAMI 2. SIDHA LINGAYAH CHARANTI.

(1843) 3 M. I. A. 198=6 W. B. 39 (P. C.)= 1 Suth. 142=1 Sat. 266.

### TODA GARAS HUK.

Execution sale of Invalidity of Ples by Government of Maintainability - Estoppel - Conditions.

Where a suit by the appellant, the purchaser at an execution sale of a certain annual payment by Government,

#### TODA GARAS HUK-(Contd.)

called Toda garas huk, praying that the Collector might be ordered to enter the Toda garas purchased by the appellant in his name, according to the Bill of Sale, and to pay him the arrears accrued for the preceding four years, was resisted by the Government on the ground that the Hak was incapable of alienation, at any rate, to one who was not of the tribe of Grasias, but it appeared that the Government had previously recognised the rights of inheritance and succession in the identical property, that it had authorised its subjects to consider that property of that description was the subject of sale, that it had had full and distinct notice of all the proceedings which had taken place in the sale at which appellant became purchaser, and that the purchasemoney was paid into Court, and paid out to the creditor. and a conveyance of the property executed by the Judge of the Court to the appellant, the Collector, that is, the officer of the Government standing by and acquiescing in the proceedings, with full knowledge of the objection to the sale, if any objection existed. Held,

(1) Semble, in the circumstances of the case, the defence of inalienability of the huk was not competent to the Government (38-9). (Lord Kingstown.) SUMBHOO-LALL GIRDHURLALL 2. COLLECTOR OF SURAT.

(1859) 8 M. I. A. 1=4 W. R. 55=1 Suth. 387-1 Sar. 713.

-Execution sale of-Validity.

Hdd, on the evidence, that an annual payment called tera garas huk was by law capable of alienation, and that the purchaser of that interest at a judicial sale was entitled to have the sale enforced (41). (Lord Kingdown.) SUM-BHOOLALL GIRDHURLALL v. COLLECTOR OF SURAT.

(1859) 8 M. I. A. 1=4 W. B. 55=1 Suth. 387= 1 Sar. 713.

-Inalienability-Plea by Government of-Onus of proof of.

The onus lies upon the Government to prove that there is something in the nature of the payment called Tora garas which makes it incapable of alienation (39). (Lord Kingsdown). SUMBHOOLALL GIRDHURLALL P. COLLECTOR (1859) 8 M. I. A. 1 = 4 W. B. 55 = OF SURAT. 1 Suth. 387 = 1 Sar. 713.

Nature of .

Whatever the payment called Tora garas huk may be, it clearly is not in the present case, on the evidence before us. at all analogous to the pay of a military officer. It is not a personal payment in consideration of services to be personally performed (40). (Lord Kingsdown.) SUMBHOO-LALL GIRDHURLALL D. COLLECTOR OF SURAT.

(1859) 8 M. I. A. 1=4 W. B. 55=1 Suth. 387= 1 Sar. 713.

Origin of.

It is very probable that Tora garas huks had not all the time origin (39). (Lord Kingalown.) SUMBHOULALL GIRDHURLALL v. COLLECTOR OF SUKAT.

(1859) 8 M. I. A. 1=4 W. B. 55=1 Suth. 387= 1 Sar. 713.

Origin and nature of.

Toda garas Auks had their origin in arbitrary exactions made by strong and powerful persons, who obtained the hame of Garaslas, upon the village communities; those arbitrary exactions were in some way commuted into fixed Payments by the villagers, in consideration of which the tratia's gave up their claim to make arbitrary exactions, and also undertook to defend the villagers against the exactions of others. The nature of these huks has been tended as M.I.A. 1 defined in two cases decided by this Board. 8 M.I.A. 1 and L.R. 1 I.A. 46. After those two decisions it must be taken that these huks have been recognised as a species of property, however unlawful their origin may have been

### TODA GARAS HUK-(Contd.)

(83-0). (Sir Mentague E. Smith.) MAHARAVAL MOHAN-SINGJI JEY SINGJI :. THE GOVERNMENT OF BOMBAY.

(1881) 8 I.A. 77-5 B. 408 (418-9)=4 Sar. 230.

Origin, nature and incidents and classes of-Nature and incidents at present day.

These annua! payments (toda garas huks), although originally exacted by the Girasias from the village communities in certain territories in the west of India by violence and wrong, and in the nature of blackmail, had, when those territories fell under British rule, acquired by long usage a quasi-legal character as customary annual payments; as such they were recognised by the British Government, which took upon itself the payment of such of them as were previously payable by villages paying revenue, and left the liability to pay such of them as were payable by inam villages to fall on the inamdar. And since the decision in 8 M.I.A. 1, it cannot be questioned that the toda giras hugs of the former class constitute a recognised species of property capable of alienation, and of seizure and sale under an execution. Quacre how far that decision may govern the rights of an inamdar (46-7).

Quaere, whether a toda giras huk is "Nibandha"

within the strict sense of that term (51)

It appears that the Girasias were sometimes Mahomedans, and therefore that the hoq may in its inception have been held by a Mahomedan. It is certain that, as these huks now exist, they may pass to, and he held and enjoyed by,

Mahomedans, Parsees, or Christians (52).

Whatever may have been the origin of the hug, it must be assumed to be now a right to receive an annual payment which has a legal foundation, and of which the enjoyment is hereditary; and the liability to make the payment is not personal, but one which attaches to the inamdar into whose soever hands the village may pass; or, in other words, that the huk is payable by the inamdar virtute tenuror. The interest of the bukdar does possess the qualities both of immobility and of indefinite duration, in a degree which, if the question depended on English law, would entitle it to the character of a freehold interest in or issuing out of real property (53). (Sir James W. Colvile.) MAHARANA FATTARSANGJI JASWANTSANGJI P. DESAI KALLIAN-(1873) 1 I. A. 34 = RAIJI HEKOOMUTRAIJI. 21 W. B. 175 = 10 B. H. C. R. 281 = 13 B. L. R. 254 =

Origin in worong and violence-Legalization of, by long enjoyment.

Assuming, however, that Tora garas huks all began in wrong and violence, still, that which had a vicious origin may, in course of time, have been legalised, since long enjoyment is itself a title, as well in favour of the recepient of an annual payment out of land, as of the possession of land itself (39-40). (Lord Kingsdown.) SUBHOOLALL GIR-DHURLALL D. COLLECTOR OF SURAT.

(1859) 8 M. I. A. 1=4 W. B. 55=1 Suth. 387=

-Payment made by Government in lieu of-Suit for -Civil Court-Jurisdiction. See PENSIONS ACT OF 1871, (1881) 8 L. A. 77 (86)= S. 4-TODA GIRAS HUK. 5 B. 408 (421-2).

Suit to establish right to, and to recover arrears due in respect of—Arrears barred—Right if also barred. See LIMITATION ACT OF 1908, ART. 144-TODA GARAS (1873) 1 I.A. 34 (53-4).

-Suit to establish right to, and to recover arrears due in respect of-Limitation. See LIMITATION ACT OF 1908, ART. 144-TODA GARAS HUK.

(1873) 1 I. A. 34 (53).

DAGA

TORT.

--- Act prima facie innocent and rightful when becomes

An act which, prima facie, would appear to be innocent and rightful, may become tortuous if it invades the right of third persons. A familiar instance is, the erection on one's own land of anything which obstructs the light of a neighbour's house: frime facts, it is lawful to erect what one pleases on one's own land; but if by twenty years' enjoyment, the neighbour has acquired the right to the unobstructed transmission of the light across that land, the erection of any building which substantially obstructs it, is an invasion of the right, and so not only does damage, but is unlawful and injurious (132). (Dr. Lushington.) ROGERS r. RAJENDRO DUTT. (1860) 8 M. I. A. 103 = 13 Moo. P. C. 209 = 3 L. T. 160 = 9 W. R. 149 (Eng.) = 2 W. R. 51-1 Suth. 413-1 Sar. 755.

The foundation of every action of tort, apart from the question of malice, is an act wrongful, and which may be It is essential to an qualified legally as an injury (131). action in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will, however directly, do him harm in his interests, is not enough. Cases are of daily occurrence in which the lawful exercise of a right operates to the detriment of another, necessarily and directly without being actionable (135-6). (Dr. Lushington.) ROGERS v. (1860) 8 M. I. A. 103= RAJENDRO DUTT. 13 Moo. P. C. 209 = 3 L. T. 160 = 9 W. R. 149 (Eng.) = 2 W. R. 51=1 Suth. 413=1 Sar. 755.

- Damages for-Special damage-Claim to-Failure to prove-Ordinary damager-Recovery of-Right of.

The principle ordinarily applied to actions of test is, that the plaintiff is never precluded from recovering ordinary damages by reason of his failing to prove the special damage he has laid, unless the special damage is the gist of the action. Thus in an action of slander for words actionable for se, when the plaintiff lays special damages, and fails to prove it, he is nevertheless entitled to such damages as the fury think right to give him. It would be otherwise if the words were not actionable for se (574-5). (Sir James IV. Coltile.) MUDHUN MOHUN DOSS p. GOKUL DOSS

(1866) 10 M. I. A. 563 = 5 W. R. (P. C.) 91= 1 I. J. N. S. 269 = 1 Suth. 644 = 2 Sar. 202.

Damages for-Suit for-Malice if necessary in-

In the case of damage occasioned by a wrongful act, that Is, an act which the law esteems an injury, malice is not a necessary ingredient to the maintenance of the action; an imprisonment of the person, a battery, a trespass on land are instances, and only instances, in which the act may be quite innocent, even laudable, as to the intention of the doer, and yet, if any damage, even in legal contemplation. be the consequence, an action will lie (131). (Dr. Lushingtoit.) ROGERS v. RAJENDRO DUTT.

(1860) 8 M. I. A. 103 = 13 Moo. P. C. 209 = 3 L. T. 160=9 W. R. 149 (Eng.)=2 W. R. 51= 1 Suth. 413 = 1 Sar. 755.

- Damages for-Wrong committed in one country-Damages for-Suit for, in another country-Maintainability-Conditions. See TORT-WRONG COMMITTED IN ONE COUNTRY. (1922) 32 M.L.T. 205 (208) (P. C.)

-Government servant-Wrongful act of-Damages for-Liability for. See CROWN-OFFICERS OF-TORT. (1860) 8 M. I. A. 103.

- Joint tort-feasors. See JOINT TORT-FEASORS.

TORT-(Contd.)

-Locusts-Driving away of, to avoid damage to land -Damage to neighbouring owner by-Liability for. See (1911) 21 M. L. J. 674. DAMAGE-LOCUSTS.

-Master-Servant-Employment of persons by, to work under him or to co-operate with him-Choice of persons for-Restrictions by master as regards-Liability of master to persons aggrieved by. See MASTER AND SER-VANT-SERVANT-EMPLOYMENT OF PERSONS, ETC.

(1860) 8 M. I. A. 103 (134).

-Remedies alternative for-Choice of-Right of aggriced party as to-Choice of one remedy by him-Effect of, on right to choose other-Estoppel.

A person interfered with in his lawful enjoyment of his own property is entitled to rid himself of that unlawful interference by lawful means without thereby affecting his right to hold the wrong-doers liable for that which they have thus caused him to do.

It is not open to the wrongdoer to prescribe by which of two alternatives the injured man shall put a stop to the wrong under which he is suffering. His choice of any one alternative does not make it as between him and the wrongdoer a voluntary act or estop him from claiming that it was done under coercion.

There is nothing in the Indian Statute law which precludes the application of this principle to a person whose property has been wrongfully attached. (Lord Moulton.) SETH KANHAYA LAL v. NATIONAL BANK OF INDIA, (1913) 40 I. A. 56 (63-4) = 40 C. 598 (609-10) =

17 C. W. N. 541 = (1913) M. W. N. 406 = 13 M. L. T. 406=11 A. L. J. 413=17 C. L. J. 478= 15 Bom. L. R. 472=184 P. L. R. 1913=18 I. C. 949= 25 M. L. J. 104.

-Wrong committed abroad-Action in England in respect of - Maintainability-Conditions.

The action in the present case is a Common law action for tort; and it is well established that in order to found such an action in this country for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in England. Secondly, the act must not have been justifiable by the law of the place where it was done (211). (Viscount Caty.) HAROLD EATON McMillan r. Canadian Northern Ry. Co. (1922) 33 M. L. T. 209 (P. C.)

Wrong committed in one country-Damages for-Suit for, in another country-Maintainability-Condi-

By the well-known rule of law laid down by Willes, J., in Phillips v. Eyre, an action will not lie in one country or province for a wrong committed in another unless two conditions are fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in the country of the forum; and, secondly, it must not have been justifiable by the law of the country where it was done (208).

Quaere as to the precise meaning of the term "justifiable"

as used by Mr. Justice Willes (208).

The term must, at all events, have reference to legal justification and an act or neglect which is neither action able nor punishable cannot be said to be otherwise than justifiable within the meaning of the rule (208). (Viscount Cary.) EDITH MAY WALPOLE P. CANADIAN NORTH-(1922) 32 M. L. T. 205 (P. C.) ERN RY. CO.

### TRADE-MARK.

-Business of manufacturer-Transfer of, as a going concern-Transferee's rights under-Trademark or trade name of original business-Use of -Representation that goods are those of original business-Right of.

### TRADE-MARK-(Contd.)

The appellant carried on business in Antwerp. There, in 1882, he founded a limited Company under the name of "El Oriente Fabrica de Tobacos Sociedad Anonima". He designed there trade-marks and trade names. All these three names and marks were registered not only at Antwerp but in various parts of the world. The Company continued trading until 1905, when it went into voluntary liquidation.

In 1905 the appellant formed under Belgian law an association of which he was appointed sole 'gerant." Thereupon the business of the old Company, including its registered trade-marks in Belgium and in every other country.

were transferred to the appellant as owner.

The appellant had before this time established at Manila a Cigar factory, at first for the old Company and later for himself. In the end of 1908 he established a second factory

at Hongkong.

In 1917 the United States Trading with the Enemy Act became law. Under that Act the American Asien Property Custodian took possession of the appellant's factory and business in Manila apparently in the belief that he had continued to be a German, and sold it to a firm. including in the sale all the stock and the goodwill trade name and trademarks of the "El Oriente Fabrica de Tobacos, C. Ingenobl." The American Trading with the Enemy Act provided that the sole relief and remedy of any person having any claim or title to any property taken or seized by the Custodian was to be limited to the proceeds received therefrom and held by the Custodian.

Held the assignment by the Costodian, although confined, so far as property was concerned, to property within the Phillippine Islands, not the less purported to include the business as a going concern and the goodwill, trade name and trade-marks thereof, of the appellant's Company doing business in the Phillippine Islands under the name of "El

Oriente Fabrica de Tobacos, C. Ingenobl."

This assignment could not transfer the title to trade-marks or trade names in China, but it could enable the transferee Company as between themselves and the appellant, to say that they were not passing off goods under a trade name to which they had no title, so long as they abstanced from representing the goods as those of Ingenohl himself. The transferees may have the right to make use of the names and marks in question, so long as they are descriptive of a kind and quality of sugar. But it does not follow that they have any right to represent the cigars as those guaranteed by the appellant or to print his signature astating this. (Viscount Haldane.) INGENOHL P. WING ON & CO. (1927) 47 C. L. J. 263 = 107 I. C. 352 = 30 Bom. L. B. 753 = A. I. B. 1928 P. C. 83.

Importer-Reputation as-Right to-Goods of tame mark-Passing off by competitors of, as being import-

ed by him-Action in respect of-Right of.

It is possible for an importer to get a valuable reputation for himself and his wares by his care in selection or his precautions as to transit and storage, or because his local character is such that the article acquires a value by his testimony to its genuineness; and if, therefore, goods, though of the same make, are passed off by competitors as being imported by him, he will have a right of action.

There is nothing to prevent a tradesman acquiring goods from a manufacturer and selling them in competition with him, even in a country into which hitherto the manufacturer

or his agent had been the sole importer.

The ordinary principles of jurisprudence with regard to trade marks and those forbidding the passing off of goods apply to India. (Lord Phillimere.) IMPERIAL TOBACCO COMPANY OF INDIA, LTD. v. BONNAN AND BONNAN & (1924) 51 I. A. 269 = 51 C. 892 = 26 Bom. L. B. 683 = 2 Pat. L. B. 230 = (1924) M. W. N. 602 = A. I. B. 1924 P. C. 187 =

TRADE-MARK-(Contd.)

30 M. L. T. 156=20 L. W. 495=29 C. W. N. 81= 80 I. C. 1013=47 M. L. J. 69.

INFRINGEMENT OF.

Sound as well as sight-Deception by-Possibility

In a passing-off action, held that there might be deception by sound as well as by sight. (Viscount Dunclin.)

JUGGI LAL KAMALAPAT T. SWADESHI MILLS CO., I TD.

OF BOMBAY. (1928) 56 I. A. 1=51 A. 182=

31 Bom. L. R. 285 = 29 L. W. 243 = 114 I. C. 30 = I. D. (1929) P. C. 70 = 27 A. L. J. 1 = 33 C. W. N. 242 = A. I. R. 1929 P. C. 11 = 56 M. L. J. 282,

-Suit for-Manufacturer's right to maintain.

An action for breach of trade-mark does not lie at the instance of the manufacturer who supplies articles when another firm carries on the actual business with the articles samplied.

The manufacturer may be interested in the success of the firm which de facte carries on the business, but this cannot put him in the shoes of the latter in vindicating the latter's right against wrong-doers. (Lord Rebertow.) T. ULLMAN & CO. r. CESAR LEURA. (1908) 13 C. W. N. 82=4 I. C. 318.

——Law in India as to, and to cases of infringement of.
So: Trade-Mark—Importer.

(1924) 51 I. A. 269 - 51 C. 892.

Manufacturer—Tradesman acquiring goods from—
Sale by, in competition with him Right of, See TRADEMARK—IMPORTER. (1924) 51 I. A. 269 - 51 C. 892.

Passing-off action—Damages in—Measure of.

The plaintiffs were a milling company who dealt largely in Indian cloths, and who, in connection with the sale of that Indian cloth, used certain trade-marks. In several of those trade-marks, either in conjunction or alone, the lotus

flower was the leading figure. They instituted a passing-off action against the defendants, also manufacturers of cotton piecegosals, complaining that, in using a trade-mark bearing a latus desice, they were able successfully to palm off their goods as those manufactured by the plaintiffs

Held that there was no cut and dried role which could be laid down by a Court of law for the estimation of damagein such a case, and that a fair test to work on would be to take the figure which showed the falling off in the plaintiffs' trade which came in after the pirated mark was introduced on the market by the defendants, and to add something thereto for a possible increase of trade. (Viscoust Duncdow.) JUGGI LAI. KAMALAPAT 7: SWADESHI MILLS CO., LTD. OF BOMBAY. (1928) 56 I. A. 1-51 A. 182 ~

31 Bom. L B. 285 = 29 L. W. 243 = 114 I. C. 30 = I. D. (1929) P. C. 70 = 27 A. L. J. 1 = 33 C. W. N. 242 = A. I. R. 1929 P. C. 11 = 56 M. L. J. 282.

### TRANSFER-

Goods described as being in certain warehouses of transferor—Transfer of, to secure loan—Validity—Goods not all in warehouses specified at date of transfer—Loan not advanced at that date, but advanced subsequedtly in instalments—Effect. See INSOLVENCY—INSOLVENT—ASSIGNMENT BY, OF GOODS DESCRIBED AS BEING IN CERTAIN WAREHOUSES TO SECURE LOAN.

(1848) 4 M. I. A. 382.

Inheritance—Legal course of—Alteration of—Transfer resulting in—Validity. See HINDU LAW—INHERI-TANCE—LEGAL COURSE OF.

Perpetual lease if a. See MADRAS REGULATIONS

-PERMANENT SETTLEMENT REGULATION OF 1802;
S. 8—TRANSFER. (1861) 8 M. I. A. 327 (338).

-Property—Transfer of. See Property.

### TRANSFER OF PROPERTY ACT (IV OF 1882).

Ss. 1. 123, 129-Extension of Art-Power of Local General under S. 1-Extension of S. 123 without extending S. 129 of Act-Legality of.

In 1914 a Mahomedan conveyed immoveable property in the Pegu District. Burma, to his wife by a registered deed. The learned Judge held that, at the date of the deed, in that part of Burma transfer of possession was not necessary to perfect the gift, because the Local Government, in the exercise of the powers conferred upon them by S. 1 of the Transfer of Property Act, as amended, to extend "the whole or any part of the Act." had only extended S. 123 in that part of the Act and had not extended S. 129 thereof.

Held that that view was based on a a serious misconcep-

tion (27-8).

The power to extend any part of the Act to Hurma did not authorize the Local Government to extend particular sections of the Act, so as to give those sections a different operation from that which they had in the Act itself read as a whole, and to abrogate in the area to which the extension applied a rule of Mahomedan law till then in force there, as to which the Legislature had expressly provided that it was to remain unaffected by the Act (28). (Sir John Wallis.) MA MI v. KALLENDER AMMAL

(1926) 54 I. A. 23 = 5 R. 7 = 25 A. L. J. 69 = (1927) M. W. N. 76-38 M. L. T. (P. C.) 53= 4 O. W. N. 300 = 25 L. W. 679 = 6 Bur. L. J. 59 = 29 Bom. L. R. 772-100 I. C. 32-A. I. B. 1927 P.C. 22 = 52 M. L. J. 362.

S. 3-Notice. See NOTICE.

### S. 6(a).

-Hindu Law-Reversioner presumptive-Interest of -Nature of. See HINDU LAW-REVERSIONER-PRE-SUMPTIVE REVERSIONER-INTEREST OF-NATURE OF.

-Hindu Law-Reversioner presumptive-Interest of -Sale or transfer of-Contract for sale or transfer of-Validity. See (1) HINDU LAW-REVERSIONER-PRE-SUMPTIVE REVERSIONER-INTEREST OF-SALE OF, AND (2) HINDU LAW-REVERSIONER-PRESUMPTIVE RE-VERSIONER-MINOR REVERSIONER.

-Insolvent-Alienee from-Property in possession of -Official Assignee's sale of-Validity. See INSOLVENCY -ASSIGNEE IN-SALE BY-PROPERTY, ETC.

(1927) 55 I. A. 7=6 R. 29.

-Oudh Estate-Collateral's right in, during widow's lifetime-Transfer of. See OUDH ACTS-ESTATES ACT OF 1869-SUCCESSION UNDER-COLLATERAL.

(1922) 50 I.A. 69 (74-5) = 45 A. 179 (182-3).

-Will-Joint legatees under-Survivorship of one of. in case of other predeceasing him or her-Right of, conferred by will-Transfer of, before right accrues-Valldity of. See HINDU LAW-WILL-DAUGHTERS-BEQUEST TO-SURVIVORSHIP, ETC.

(1929) 57 M. L. J. 794 (799-800)

#### S. 6 (e).

-Insolvency-Assignee in-Sale of property in possession of alience from insolvent-Validity of-Objection to. See INSOLVENCY-ASSIGNEE IN-SALE BY-PROPERTY IN POSSESSION OF ALIENEE FROM INSOLVENT.

(1927) 55 I.A. 7=6 R. 29.

### S. 8.

Deed executed before Act-Applicability to.

In a case in which the question was as to the interest conveyed under an ikrarnama executed in 1841, whether it was an absolute estate or an estate for the life only of the grantee, held that the rule laid down in the Transfer of Property Act (S. 8) was inapplicable to the case, because

TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 8 .- (Contd.)

the Act was not in force until a later date (228). (Sir Richard Couch.) KALI DAS MULLICK v. KANHYA LAL (1884) 11 I.A. 218=11 C. 121 (130-1)=

4 Sar. 578.

-Hindu widow-Immoveable property gifted by-Furniture and plant attached to-Right to-Donee-Third party to whom property itself is adjudged-Right of. See HINDU LAW-GIFT-WIDOW-GIFT BY-IMMOVEABLE PROPERTY SUBJECT OF.

(1889) 16 I.A. 125 (128)=16 C. 753 (757).

-Law prior to-Effect on-Absolute gifts - Rule enacted by section in case of.

Quatre whether the Transfer of Property Act (S. 8) enacts what was unquestionably the law before. The rule of law was that indefinite words of gift were calculated to convey all the interest of the grantor, but that it was necessary to read the whole instrument to gather the intention. It is a question to be decided when it arises, whether the framers of the Act have not, consciously or otherwise, so expressed themselves as to lay down a more positive rule in favour of absolute gifts (228). (Sir Richard Couch). KALI

(1884) 11 I.A. 218 = 11 C. 121 (130-1) = 4 Sar. 578.

-Reservation in favour of transferor-Presumption-Onus of proof-Mort gage deed-Sale deed-Sale certificate.

DAS MULLICK P. KANHYA LAL PUNDIT.

The conveyances to the plaintiffs' ancestor, L, were made in 1883 and 1894. The deed of 1883 contains no words of exception or reservation, and is ample in point of language to pass all the transferor's interest in the zemindary, including the land on which the bazaar was situate. His interest in the houses on that land and in the profit rents derived from them would pass by the deed in the absence of words showing an intention to retain them (75).

The share of S was sold under the decree of the Court, and the sale certificate shews that all his interest in the property mortgaged by him was sold to the plaintiffs. The description in the certificate is again quite sufficient to poss his interest in the bazaar in the absence of any words shewing an intention to exclude it (76). (Lord Lindley.) SYED ASHGAR REZA KHAN 21. SYED MAHOMED MEHDI HOS-(1903) 30 I.A. 71 = 30 C. 556(564)= SEIN KHAN. 7 C.W.N. 482=8 Sar. 439

Trees - Right to-Owner of land-Right of.

The trees on the land were part of the land, and the right to cut down and sell those trees was incident to the proprietorship of the land (311). (Lord Cairns.) RUT-TONJEE EDULJI SHET P. COLLECTOR OF TANNA.

(1867) 11 M.I.A. 295 = 10 W. R. 13 = 2 Sar. 292.

### Ss. 10, 11,

-Hindu Law-Will-Estate created by-Alienation-Restraint upon, inconsistent with estate created-Validity of-Effect of. See HINDU LAW-WILL-ALIENATION-RESTRAINT UPON.

-Lessor - Alienation by - Covenant restraining What amounts to-Validity. See LEASE-COVENANTS IN-VALIDITY OF.

(1880) 7 I.A. 107 (112) = 5 C. 932 (935).

-Mahomedan Law-Gift-Absolute gift-Restraint upon alienation-Validity of-Effect. See MAHOMEDAN LAW-GIFT-ABSOLUTE GIFT.

(1892) 19 I.A. 170 (178) = 17 B.1 (5).

### Ss. 28, 30.

Prior and ulterior dispositions—Invalidity of latter— Effect of, on former. See HINDU LAW-GIFT-CONDI-TION-SUBSEQUENT CONDITION. (1928) 65 I.A. 180= 50 A. 975.

## (Contd.)

S. 35.

-Flection. See ELECTION.

S. 36

Apportionment of rent. See LANDLORD AND TEN. ANT-RENT-APPORTIONMENT OF.

S. 40.

-Sale-Contract for-Execution-purchaser sub-equent -Kinding nature of contract on-Notice of contract to-What amounts to. See SALE-SPECIFIC PERPORMANCE OF CONTRACT FOR-EXECUTION PURCHASER SUBSE-(1922) 45 M.L.J. 770.

S. 41.

Ostensible owner-Holding out of a person as +5% dence of-Mahomedan sisters-Helding out by, of brother as ostensible owner.

The sister, and the representatives of another deceased sister of S, a Mahomedan, claimed against him and his transferees shares in the suit property as having descended from their mother according to the rules of Mahomedan Law. The mother died in 1907, and soon after her death possession was taken of her entire estate on behalf of her son S by the Court of Wards. A year after the Court of Wards released the estate to S, and the suit by the claimants aforesaid was instituted only about 7 years later. Both the sisters had husbands who were well aware of the state of the family and of the descent of the property and of such claims as they might have to share in the succession. The sisters, and after the death of one of them, her reporsentatives were receiving allowances from the Court of Wards such as are usually made to junior branches when the estate vests in one heir. They were not also entirely ignorant of the way in which S was encumbering the estate.

Held that the above-mentioned facts satisfied the first condition of S. 41 of the Transfer of Property Act. and that S must be deemed to have been allowed to be the ostensible owner of the property with the implied consent of the Plaintiffs. (Lord Phillimere.) DEPUTY COMMISSIONER OF BARA BANKI D. RECEIVER IN BANKRUPTCY OF THE

ESTATE OF CHAUDHRI SHALIQ-UZ-ZAMAN. (1928) 3' Luck. 372=5 O.W.N. 565=32 C.W.N. 1120=

48 C.L.J. 418 - A. I. R. 1928 P. C. 202 - 113 I. C. 113 -29 L.W. 793 - 56 M.L.J. 601.

Ostentible owner-Transfer by-Validity against real owner-Conditions.

C died having sold the suit property to his wife. On her death, C's nephew took possession of the property and executed a mortgage in respect of it for repayment of a decree debt due by her for which the property had been attached during her lifetime. Subsequently, the Raja of Basti, claiming to be entitled to the suit property, among others, by virtue of a sapradnama executed by C, and a mil executed by C's widow, obtained a decree for possession of the suit property, and recovered possession in execution of that decree. The question arose whether the mortgages from Cr nephew was entitled to enforce the mortgage against the Raja of Basti, the real owner of the property.

The High Court held, reversing the Sub-Judge, that under the proviso to S. 41 of the Transfer of Property Act, the mortgagee, not having acted in good faith after taking resonable care to ascertain that his transferor had power to make the transfer, could not claim to be a boma fide transfirse without notice so as to be in a position to defeat the

title of the real owner.

Their Lordships affirmed the High Court. (Viscount Baldane.) NAGESHAR PRASAD PANDE 7: RAJA NARAIN BALdane.) NAGESHAR PRASAD PANDE 7: RAJA NARAIN BALdane.) MAGESHAR PRASAD PANDE T. RAJA NARAIN 6MOH. (1915) 3 L.W. 454 = 20 C.W.N. 265 = (1916) 1 M.W.N 142=34 I.C. 673.

TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 41-(Could.)

-Transferee acting in good faith-Purchaser from-Good faith on part of-Necessity.

Where a mortgagee takes a mortgage of property from its ostensible owner after taking reasonable care to ascertain that the "transferor had power to make the transfer" within the meaning of S. 41 of the Transfer of Property Act, purchasers from the mortgagee under arrangements made for realising parts of the property in order to discharge part of the mortgage must equally be held to have taken reasonable care, (Lord Phillimore). DEPUTY COMMISSIONER OF BARA BANKI 1. RECEIVER IN BANK-RUPTCY OF THE ESTATE OF CHAUDHRI SHALIO-UZ-(1928) 3 Luck. 372=5 O.W.N. 565= ZAMAN. 32 C. W. N. 1120 - 48 C. L. J. 418 =

A.I.R. 1928 P. C. 202 = 113 I. C. 113 = 29 L. W. 793 = 55 M. L. J. 601.

S. 43.

-Applicability - Hindu widow-Sale by-Persons joining in-Purchase by, of same property from reversionary heirs of last male owner-Vendee from widow if entitled to benefit of. See HINDU LAW-WIDOW-SALE (1918) 46 I.A. 1 (13-4)= BY-PERSONS JOINING IN. 46 C. 566 (579 80).

-Applicability - Hinda widow -- Sale by-Reversioner's beir-Execution of deed of sale by, as mooktar of widow-Effect. See HINDU LAW-WIDOW-SALE BY-REVERSIONER--HEIR OF EXECUTION OF DEED OF, (1892) 19 I. A. 221 (227) = 20 C. 1 (7).

-Effect of-Equitable destrint of " feeding the estoppel"-Reproduction of.

S. 43 of the Transfer of Property Act practically repro-duces the equitable doctrine of what is called "feeding the estoppel," (Mr. Ameer Ali.) GUR NARAYAN v. SHEO LAL (1918) 46 I. A. 1 (10) = 46 C. 566 (578-9) = SINGH. 17 A. L J. 66 = 9 L.W. 335 = 23 C W. N. 531 =

12 Bur. L. T. 122 = 49 I. C. 1 = 36 M. L. J. 68. -Feeding the grant by esteppel-English dectrine of

-Nature of -Operation of -Circumstances preventing. The principle of law, which is sometimes referred to as feeding the grant by estoppel, is well established in this country (England). If a man who has no title whatever to property grants it by a conveyance which in form would carry the legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. In such a case there is nothing on which the second grant could operate in prejudice to the first (254).

There may be statutory provisions or provisions of native law which would prevent the operation of the doctrine; for the law of conveyance in England depends on special and complicated considerations (254). (Lord Buckmaster.) TILAKDEARI LAL 2. KHEDAN LAL. (1920) 47 I.A. 239 = 48 C. 1 (20 1) = 32 C. L. J. 479 = 13 L. W. 161 =

(1920) M. W. N. 591 = 28 M. L. T. 224 = 18 A.L.J. 1074 = 2 P.L.T. 101 = 22 Bom. L. B. 1319 = 57 I. C. 465 = 39 M.L.J. 243.

-Hindu conteyance -Feeding the estoppel-English equitable doctrine of -Inapplicability of.

The principle of English law which allows a subsequently acquired interest to feed, as it is said, the estoppel does not apply to Hindu Conveyances (737). (Sir James W. Colvile.) BABOO DOOLI CHAND v. BABOO BRIJ BHOO. KUN LAL AWASTI. (1880) 3 Suth. 734 = 6 C.L.B. 528 =

-Mortgage of property not belonging to mortgagor-Acquisition of title by him subsequently-Effect-Second mortgage of same property subsequently-Priority between

### TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 43-(Contd.)

mortgagees in case of. See MORTGAGE-PRIORITY-PROPERTY NOT BELONGING TO MORTGAGOR.

(1920) 47 I. A. 239 (254) = 48 C. 1 (20).

S. 48.

Effect of.

S. 48 of the Transfer of Property Act merely enacts what is expressed in the old maxim "Qui prior est tempore petior est jure." (Lord Dunedin.) IMPERIAL BANK OF INDIA v. U RAI GYAW THU & CO. (1923) 50 I. A 283 (290) = 51 C. 86=1 R. 637=21 A. L. J. 784=

25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 = 33 M. L. T. 395=2 Bu-. L. J. 254= (1923) M. W. N. 609 - A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 = S9 C. L. J. 186 = 76 I. C. 910 = 45 M. L. J. 505.

-Mortgage-Priority. See MORTGAGE-PRIORITY.

-Fraudulent transfer-Transferee under-Improvements effected by-Compensation for-Right to, in ejectment suit by him on foot of transfer. See TRANSFER OF PROPERTY ACT, S. 53 - FRAUDULENT TRANSFER-PARTY TO-TRANSFEREE. (1854) 6 M. I. A. 27 (50-1).

-Hindu widow-Purchaser from - Improvements effected by - Compensation for. See HINDU LAW-WIDOW-SALE BY-IMPROVEMENTS EFFECTED, ETC.

#### S. 52.

### ADMINISTRATION SUIT.

-Purchaser from heir or residuary legatee pending-Rights of. SW ADMINISTRATION-SUIT FOR-SALE HELD, ETC. (1904) 32 I.A. 1 (16) = 32 C. 198 (218).

CONTENTIOUS SUIT WITHIN MEANING OF.

There is no warrant for the view that a suit contentious in its origin and nature is not contentious within the meaning of S. 52 until a summons is served on the opposite party (105). (Lord Macnaghten.) FAIVAZ HUSAIN KHAN v. PRAG NARAIN. (1907) 34 I. A. 102=

29 A. 339 (345) = 2 M. L. T. 191 = 5 C. L. J. 563 = 11 C. W. N. 561=4 A. L. J. 344=9 Bom. L R. 656= 10 O. C. 314 = 9 Sar. 220 = 17 M. L. J. 283.

#### EXECUTION SALE.

Applicability of rule of lis pendens to.

Pending proceedings by S in execution of a money decree which he held against B, in which proceedings S claimed to set off against the amount of his decree the amount of a decree for mesne profits which B held against him, the respondent attached B's right to mesne profits under the said decree in execution of a decree for money which the respondent held against B. Subsequent to the respondent's attachment the matter in dispute between S and B was settled by a consent order, to which the respondent was not a party, by which B's decree for mesne profits was set off pro tanto against S's decree against him.

Omere whether, if the respondent had purchased B's decree for mesne profits at a sale under his (respondent's) execution, his attachment of the decree for mesne profits would have protected him from the effect of the consent order of set off, his attachment having been made pendente life, that is to say, pending the proceedings between S & B, in which the question was raised as to the right of set off (74). (Sir Barnes Peacock.) DININDRONATH SANNYAL P. RAM-COOMAR GHOSE. (1881) 8 I. A. 65=7 C. 107 (117-8)=

10 C. L. R. 281 =4 Sar. 213. A claim put in by M to property attached by B in execution of a mortgage decree obtained by him against l (Contd.)

S. 52-(Contd.)

EXECUTION SALE-(Contd.)

the mortgagors having been disallowed, M instituted a suit and obtained a decree declaring that the said property belonged to him and was not liable to be attached and sold inexecution of A's decree. To that suit A's heirs, A being then dead, and the mortgagors were parties. Meanwhile the property had been brought to sale in execution of A's decree and had been purchased by one Moti, who was not made a party to M's suit. M's heirs disturbed the possession of Moti whereupon he (Moti) obtained an order removing that obstruction. Thereupon M's representatives sued Moti for a declaration that the execution sale in favour of Moti was invalid and ineffectual as against M and that .If was the person really entitled to the property.

Held that, Moti's purchase having been made during the pendency of M's suit, it was affected by the doctrine of lis fendens and that the fact that Al's suit was after the attachment in execution of the mortgage decree in As favour did not affect the applicability of the doctrine. (Lord

Hobbause.) MOTI LAL D. KANAB-UL-DIN.

(1897) 24 I. A. 170 = 25 C. 179 = 1 C. W. N. 639 = 7 Sar. 222.

-See also TRANSFER OF PROPERTY ACT, S. 52-MORTGAGE-SUIT FOR SALE ON FOOT OF-SALE OF MORTGAGED PROPERTY ETC.

### FOUNDATION OF DOCTRINE OF LIS PENDENS.

The doctrine of lis pendens, with which S. 52 of the Act of 1882 is concerned, is not, as Turner, L.J. observed, founded upon any of the peculiar tenets of a Court of Equity as to implied or constructive notice. It is...a doctrine common to the courts both of law and of equity, and rests... upon this foundation, that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations fendent lite were permitted to prevail." The correct mode of stating the doctrine, as Lord Cranworth. L. C. observed in the same case, is that "pendente lite neither party to the liligation can alienate the property in dispute so as to affect his opponent." (Lord Mocnaghten.) FAIVAZ HUSAIN KHAN v. MUNSHI PRAG NARAIN. (1907) 34 I. A. 102 (105) = 29 A 339 (345)= 2 M. L. T. 191 = 5 C. L. J. 563 = 11 C. W. N. 561 =

4 A. L. J. 344=9 Bom. L. R. 656=10 O. C. 314= 9 Sar. 220 = 17 M. L. J. 263.

### MAHOMEDAN LAW.

-Debt of deceased-Suit by creditor for payment of, out of estate in hands of heir at-law-Alienation by heir-atlaw pending. See Mahomedan Law-Debt Due by Deceased-Liability for etc.

(1878) 5 I. A. 211 (223-4)=4 C. 402 (407-8).

Dower-Suit by widow against husband's heir for-Alienation by him before and pending-Applicability of rule of lis pendens to. See MAHOMEDAN LAW-DOWER -SUIT FOR-WIDOW-SUIT BY, AGAINST HUSRAND'S HEIR-HEIR AT-LAW'S ETC. (1878) 5 LA. 211(223 4)= 4 C. 402 (409 10).

### MORTGAGE-FORECLOSURE SUIT.

Purchaser of equity of redemption from mortguget

tending, if affected by decree therein.

The case of The Bishop of Winchester v. Paine (11 Ves. 194. 201) merely determines this,—that where there is a suit for foreclosure and the mortgagor, a defendant to that suit, makes a voluntary alienation, pending the suit, of any part of his interest in the equity of redemption, a parthese will not be allowed afterwards to institute a new suit for a

# (Contd.)

2. 52-(Contd.)

MORTGAGE-FORECLOSURE SUIT-(Could.)

new foreclosure, the ground being, that if that were permitted, proceedings in a foreclosure suit would be endless, because every day a fresh alienation might be made in some part of the proceedings. But that was simply a foreclosure suit and the subsequent mortgagee would be barred from instituting any new suit in the Court of Chancery for the purpose of enforcing the equity of redemption. That case simply decides, that subsequent mortgagees of an equity of redemption are bound by a foreclosure suit (109). (Lord Junice James.) ANUNDO MOVEE DOSSEE : DHONEN-DRO CHUNDER MOOKERJEE. (1871) 14 M. I. A. 101 = 16 W. R. P. C. 19 = 8 B. L. R. 122 = 2 Suth. 457 =

MORTGAGE-SUIT FOR SALE ON FOOT OF.

-Mortgage granted pending, if affected by decree in sait. See MORTGAGE - PRIOR AND SUBSEQUENT MORTGAGES-DECREES ON FOOT OF-SALES IN EXE-CUTION OF. (1907) 34 I. A. 102 (106) = 29 A. 339 (346). -Sale of mortgaged property in execution of money

decree pending, if affected by decree in suit.

In October, 1865, plaintiff advanced money to .1 oc mortgage of his estate. In December, 1866, a writ of heri faciat was issued by some creditors of A upon a decree obtained by them prior to the mortgage. At what date the stimre was effected under that fieri facists did not appear. but the mortgaged property was sold in execution in July. 1867 and purchased by one K. In the meantime, before the sale in July, 1867, and in the month of June, 1867. plaintiff had instituted a soit in the ordinary form for the realization of his mortgage by foreclosure or sale. The High Court thought that, if A' had not been made a party to the mortgage suit, he would not be bound by the decree therein, and that his right of redemption of the plaintiff's mortgage would remain unaffected. Their Lord-hipdoubted whether the High Court were right in their limitation of the doctrine of lis pendens (178.9). (Lord Hol-Auge.) NILAKANT BANERJI P. SURESH CHUNDER MULLICK. (1885) 12 I. A. 171= 12 C. 414 (420 1) = 4 Sar. 685.

M, the proprietor of an estate, granted it in putni to the father of the defendant, and afterwards mortgaged her proprietary interest to him (the father of the defendant).

After the putni lease and the mortgage in favour of the father of the defendant, a creditor of M soed for his deld. got a decree, attached the same estate, and sold it in April. 1872; and under that sale the plaintiff became the purchaser. But in the meantime the father of the defendant had been enforcing his charge against M, and he got a decree, and in the month of May, 1872, a sale took place under his decree, and he himself purchased at the sale.

Held, that as the suit of the defendant's father to enforce his charge was pending at the time of the sale to the plain-

tiff, the plaintiff was bound by the proceedings against M. By his purchase, the plaintiff got M's proprietary rights subject to the putni, and subject to the charge in favour of defendant's father. Now: f M herself had retrained the owner of the proprietary interest she would be clearly excluded by the sale to defendant's father (in execution of his decree) from all interest in the property. It is equally clear that the plaintiff must be excluded, he having purchased only the right, title, and interest of M, unless he can shew that after the purchase in April, 1872, he was not bound by the proceedings in the suit of the defendant's father. Lord Hobboure.) RADHAMADHUB HOLDAR 2. MONOHUR MOOKERJEE. (1888) 15 I.A. 97 = 15 C. 756 = 5 Sar. 211. Transferee of mortgaged property fending, not im-Meaded in mit-Redemption right of.

TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Coutd.)

S. 52-(Contd.)

MORTGAGE-SUIT FOR SALE IN FOOT OF-(Contd.)

A transferee of mortgaged property pending a suit for sale on the mortgage must take his interest subject to the incidents of the suit; and one of those is that a purchaser under the decree will get a good title against all persons whom the suit binds.

Held that a transferre pendente lite could not, after sale in execution of the decree obtained in the suit, claim to recleem the property by paying the debt on the ground that he was not marle a party to the proceedings (211-2). (Lord Hobboure.) UMES CHUNDER SIRCAR : MUSSUMMAT (1890) 17 I. A. 201 = ZAHOOR FATIMA. 18 C. 164 (178-9)=5 Sar. 507.

#### PARTITION SUIT.

-Putmi losse of suit preperty granted by judgmentdeter pending-Validity of against decree-helder.

The final decree in a partition suit declared the respondents entitled to the possession of the property in dispute against the judgment-debtors of that partition decree without "disturbing the possession of any of the ryots and other tenants." Peading the suit the judgment-debtors granted putni tenure of thai property to the appellants

Quarry whether, if the appellants had established their right as third parties, and had proved that they were holding the putni on their own behalf and not on behalf of the judgment-delears, they would not have been bound by the decree in the partition suit, the putui having been granted to them fendente lite (85). (Sir Barnes Peacock.) PROSONNO GOPAL PAL CHOWDRY P. BROJONATH ROY CHOWDRY.

(1876) Bald. 82 = 3 Suth. 340 = 26 W. R. 93.

TRUST-SUIT FOR ADMINISTRATION OF.

Derce in, declaring right of kenchesary in certain property subject to further orders of Court-Mortgage of that projectly by beneficiary-Sale subsequent thereof under further orders of Court-Which provails.

In a suit brought against the trustees under a trust-deed for the construction of the deed, for the ascertainment of the respective rights of the parties interested thereunder, and for directions as to the administration of the trust, a decree, dated 31-8-1885, was made by which it was declared interalia that R, one of the beneficiaries, was entitled to a onesixth share of the surplus income of properties which included a particular house and after other declarations and directions it was ordered that the trustees should retain their costs of suit out of the trust properties. Thereupon, and while further proceedings in the suit were still pending R mortgaged his one-sixth share on 27-3-1886. On 10-3-1887, a further order was made in the suit for sale of the house aforesaid, and other properties, in order to raise the money for payment of the trustees costs payable under the decree of 31-8-1885. The sale was duly held, and pursuant to the order of the court, the trustees excruted a conveyance accordingly on 2-8-1890.

Hdd, that the mortgagee from R took subject to the sale which was subsequently ordered, and the mortgage could not prevail against the conveyance of 1890 or encumber the

title to the house conveyed.

R could only mortgage such interest as he took under the deed as declared by a competent Court and the interest declared in the interim decree of 1885 was subject to further orders and directions to be given by the Court in further proceedings in the same suit to provide for payment of the costs of the suit itself. The principle laid down in L. R. 32 I. A. I applies equally to the suit now in question. (Vis. count Summer.) PURAN CHAND NAHATTA 1. MONMOTHO (1927) 55 I. A. 81= NATH MUKERJEE.

(Cont.(.)

S. 52-(Cont.)

TRUST-SUIT FOR ADMINISTRATION OF-(Centd.) 55 C. 532 = 26 A. L. J. 121 = (1928) M. W. N. 149 = 27 L. W. 336-47 C. L. J. 396-32 C. W. N. 629-108 I. C. 342 = 30 Bom. L. R. 783 = A. I. R. 1928 P. C. 38 = 54 M. L. J. 473.

S. 53-Fraudulent.

-Meaning of. See FRAUDULENT-MEANING OF. (1891) 19 I. A. 15 (18) - 19 C. 223 (231)

S. 53-Fraudulent benami.

-See BENAMI-FRAUDULENT BENAMI.

S. 53-Fraudulent transfer.

BENAMI TRANSFER.

EFFICE OF.

EVIDENCE AS TO-APPRECIATION OF-PRINCIPLE. HINDU FAMILY - FRAUDULENT TRANSFER BY-ATTEMPT AT.

LAW APPLICABLE TO-ENGLISH STATUTE, 13 ELIZ.,

LOAN BOND FRAUDULENT-SUIT TO ENFORCE--PORTION OF DERT JUSTLY DUE.

PARTY TO.

PLEA OF.

SETTING ASIDE OF-SUIT FOR.

TESTATOR DECEASED-FRAUDULENT DEED BY-CREDITOR OF TESTATOR WHO HAS OBTAINED DECREE FOR HIS DEBT.

TRANSACTION AMOUNTING OR NOT AMOUNTING

BENAMI TRANSFER.

- Distinction. See BENAMI-FRAUDULENT TRANS-FER.

-Pleas of-Distinction. See BENAMI-FRAUDULENT TRANSFER. (1916) 44 I. A. 72 (76-7)= 44 C. 662 (670-1).

EFFECT OF.

-Void or vidable.

On a transfer being established as a fraudulent one intended to defeat the rights of the creditors of the transferor, the creditors will not be entitled to recover the whole of the property transferred from the transferee. The only result will be that as against their debts, as against their claims, the transaction could not be maintained. The moment their debts were satisfied the remainder of the property transferred would remain in the hands of the transferee (517). (Mr. Pemberton Leigh.) BEEBEE TOKAI SHEROB v. BEGLAR.

(1856) 6 M. I. A. 510 = 4 W. R. 87 = 1 Suth. 259 = 1 Sar. 577.

EVIDENCE AS TO-APPRECIATION OF -PRINCIPLE.

-Facts must be viewed in relation to each and as a whole.

Where the question for determination was whether a mortgage executed by a debtor in favour of one of his creditors was a bona fide transaction entered into with the object of securing the debt of the creditor or whether it was a mere contrivance for defeating or delaying the just claims of the other creditors and retaining the properties for the benefit of or in trust for the debtor, the District Judge took each fact which militated against the bona fides of the mortgage separated from the rest of the facts and proceeded to demonstrate that it was quite consistent with good faith, and by this process he held that the mortgage was a bona fide transaction.

TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 53-Fraudulent transfer-(Contd.)

EVIDENCE AS TO-APPRECIATION OF-PRINCIPLE-(Contd.)

Held, that the course adopted by the District Judge was patently erroneous.

In a case like the present it is essentially necessary that the facts should be considered in relation to each other and weighed as a whole. (Mr. Ameer Ali.) SETH GHUN-SHAM DAS to UMA PERSHAD.

(1919) 23 C.W.N. 811 = (1919) M.W.N. 513 = 10 L.W. 511 = 21 Bom. L.R. 472 = 17 A.L.J. 410 = 15 N.L.R. 68=50 I.C. 264=36 M. L. J. 483 (490).

HINDU FAMILY-FRAUDULENT TRANSFER BY-ATTEMPT AT.

-Suspicious circumstances accompanying.

An attempt in a Hindu family to put property out of the reach of an apprehended claim is ordinarily accompanied with very suspicious circumstances (304). (Sir Robert Phillimore.) JUGGUT MOHINI DOSSEE v. MUSSUMAT (1871) 14 M.I.A. 289= SOOKHEEMONEY DOSSEE. 10 B. L. R. 19 (P.C.) = 17 W.R. P.C. 41 = 2 Suth. 512= 3 Sar. 23.

> LAW APPLICABLE TO-ENGLISH STATUTE, 13 ELIZ, C. 5.

- Applicability in India of principles of, and of common law.

There seems to be no doubt that the principles of the Statute of 13 Eliz., c. 5 and the principles of the common law for avoiding fraudulent conveyances have been given effect to by the High Courts of India, and have properly guided their decisions in administering law according to equity and good conscience (17-8). (Lord FittGerald.) ABDOOL HYE : MIR MOHAMED MOZUFFER HOSSEIN:

(1883) 11 I.A. 10=10 C. 616 (624)=4 Sar. 500.

Applicability in mofussil of.

Semble the Statute of 13 Eliz., c. 5 may not extend to or operate in the mofussil in India (17). (Lord FitzGerald.) ABDOOL HVE D. MIR MOHAMED MOZUFFER HOSSEIN.

(1883) 11 I.A. 10-10 C. 616 (624)-4 Sar. 500

-Scope and effect of.

Quarre whether the Statute of 13 Eliz., c. 5 is more than declaratory of the common law so far as it avoids transactions intended to defraud creditors (17). (Lord Fitz-Gerald.) ABDOOL HYE P. MIR MOHAMED MOZUFFER (1883) 11 I.A. 10=10 C. 616 (624)= HOSSEIN. 4 Bar. 500.

> LOAN BOND FRAUDULENT-SUIT UPON-PORTION OF DERT JUSTLY DUE.

-Decree making bond security for-Discretion of Court. See DEBTOR AND CREDITOR-DEBTOR-LOAN (1874) 1 I.A. 241 (267). BOND FRAUDULENT BY.

PARTY TO.

-See also BENAMI - FRAUDULENT BENAMI.

-Relief on foot of transfer being fraudulent-Right

Whatever may be the real intention amongst themselves of some of the members of a Hindu joint family in executing a deed of partition, purchasers from them have an undoubted right to bind them, by the execution of the deed and their public acts attending it, to the fulfilment of those obligations which such public acts cast upon them Courts ought not to credit readily assertions of hidden and fraudulent intentions, which, made to-day for one purpose, may be abandoned or denied to-morrow for the assertion of another and inconsistent one.

(Contd.)

8.53-Fraudulent transfer-(Contd.)

PARTY TO-(Contd.)

Their Lordships do not mean to apply the above observations to any mere benami transaction, or in any way to shake the authority of the numerous decisions which have established between the apparent and the real, though conceded title, that a benami transaction, devoid of fraudulent design, may be made the foundation of a decree in a Court of Justice. SRIMATI SUKHIMANI DASI 7. MAHENDRA NATH (1869) 4 B.L.R. 16 (29) = 13 W.R. P.C. 14 = 2 Sar. 530 = 2 Suth. 297.

Transferce-Improvements effected by-Compensation for-Right to-Ejectment by him on fact of transfer

In an ejectment suit brought by a transferce of property. the Court below held that the transfer was fraudulent and void against the creditors of the transferor, and that there was no estate or interest in the plaintiff against creditors.

Hild, in such a case, that the transferce was not entitled to any allowance for sums expended by him for improvements made upon the estate (50-1). (Mr. Pemberten Largh.) MUSADEE MAHOMED CAZLEM SHERAZEE : MEERZA ALLY MAHOMED SHOOSTRY.

(1854) 6 M.I.A. 27 - 8 Moo. P.C. 110 - 1 Sar. 489.

Transferor-Receivery of property transferral-

Right of-Fraud contemplated carried out.

To enable a fraudulent confederate to retain property transferred to him, in order to effect a froud, the contemplated fraud must be effected. Then, and then alone, does the fraudulent grantor, or giver, lose the right to claim the ald of the law to recover the property he has parted with-(Lord Atkinson.) PETHAPPERUMAL CHETTY P. MUNI-

MDI SERVAI. (1908) 35 LA 98 = 35 C. 551 (559) = 4 M.L.T. 12 = 7 C.L.J. 528 = 12 C.W N. 562 = 10 Bom. L.R. 590 = 5 A.L.J. 290 = 14 Bur. L.B. 108 4 L.B.R. 266 = 18 M.L.J. 277.

Transferor-Recovery of property transferred-Right of-Fraud contemplated not carried out but some

they taken towards an arrangement.

Il was contended that, where there is a fraudulent arrangement to defeat creditors, if anything be done or any step be taken to carry out the arrangement, such as on the trial of an indictment for conspiracy, would amount to a good overt act of the conspiracy, any properly transferred by the debtor to his co-conspirator cannot be recovered back. This, however, is obviously not the law. (Lord Atkinson.) PETHAPPERUMAL CHETTY D. MUNIANDI SERVAL

(1908) 35 I.A. 98 = 35 C. 551 (559) = 4 M.L.T. 12 = 70.L.J. 528 = 12 C.W.N. 562 = 10 Bom. L.B. 590 = 5 A.L.J. 290 = 14 Bur. L.R. 108 = 4 L.B.R. 266 = 18 M. L. J. 277.

#### PLEA OF.

Insolvent-Transfer by-Assignee's suit to set aside, being a fraudulent transaction—Ones of proof in-Transfer many years before. See INSOLVENCY—ASSIGNEE IN-TRANSPER BY INSOLVENT-SUIT TO SET ASIDE-PRAUDULENT TRANSACTION.

(1857) 6 M I.A. 494 (507).

Partition deed-Fraudulent benami nature of-Plea of Proof of Onus Quantum. See BURMESE BUT-DHIST LAW DAUGHTER. (1928) 56 M. L. J. 244. (1928) 56 M.L J. 244.

Privy Council appeal-Maintainability for first time Facts-Investigation of, necessary. (Lerd Summer.) THARUR SRI RADHA KRISHNA V. RAM BAHADUR.

(1917) 23 M.L.T. 26=16 A.L.J. 33=7 L.W. 149 70LJ. 191 = 22 O.W.N. 330 = (1918) M.W.N. 163 =

TRANSFER OF PROPERTY ACT (IV OF 1882)- | TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 53-Fraudulent transfer-(Contd.)

PLEA OF-(Contd.)

20 Bom. L.B. 502=4 P.L.W. 9=43 I.C. 268= 34 M.L.J. 97 (100).

SETTING ASIDE OF-SUIT FOR.

Debtor-Trust deed fraudulent by-Setting aside of -Debt due by debtor to trustee-Lien for-Enforcement of. See DEBTOR AND CREDITOR-DEBTOR-TRUST (1867) 11 M.I.A. 317 (335-6). DEED, ETC.

-Debtor-Trust deed fraudulent by-Setting aside of -Purchaser of property in execution of decree against debtor-Right of-Decree before sale declaring transfer void as against creditors. See DEBTOR AND CREDITOR-DEBTOR-TRUST DEED, ETC.

(1867) 11 M.I.A. 317 (337-8).

- Decree in-Firm of - Concellation of deed of transfor-Profridy.

The purchaser of property in execution of a decree obtained against a such for steclaration that a deed of trust executed by A charging the property purchased by the plaintiff with payments of debts alleged to be due by A was void because the deed was executed with intent to defraud and delay creditors. The Court below, finding that the deed was executed with the intent alleged, made a decree declaring the deed to be fraudelent and void as against the plaintiff, and ordering it to be cancelled.

Held, that the decree, in point of form, went too far in

providing for the cancellation of the deed.

The plaintiff in the suit not being interested to cancel the deed as a whole, but being interested only to remove the deed out of the way of the assertion of his own rights in regard to the property which he has purchased, their Lordships think that the portion of the decree which retains the deed for cancellation should be omitted (344). (Lord Cairer.) TARENY CHURN BONNERJEE .. MAITLAND. (1867) 11 M.I.A. 317-2 Suth. 98-2 Sar. 299.

France of Parties-Refresentative suit-Necesity. The following passages (at p. 15 of the report in 32 L A. 1) in their Lordships' judgment have been cometimes relied upon as authority for the view that a suit to set aside a fraudulent transfer under S. 53 of the Transfer of Property Act must be a representative proceeding :- "No issue was stated in this suit whether the transfers were or were not liable to be set aside at the instance of Dhunpet under S. 53 of the Transfer of Property Act, and no decree has been made for setting them aside. Such an issue could be raised and such a decree could be made only in a suit properly constituted for that purpose, and this suit was not so constituted either as to parties or otherwise. Their Lordships do not express and have not formed any opinion whether the transfers or any of them could have been avoided in a properly constituted suit." On examination, however, the case will be found to be authority for no such view (see the explanation of this case given in 31 M.L.J. Journal Portion. pp. 23-25). (Lord Davey.) CHUTTERPUT SINGH r. (1904) 32 I. A. 1 (15)= MAHARAJ HAHADOOR, 32 C. 198 (217) = 9 C.W.N. 225 = 2 A.L.J. 190 = 8 Sar. 713 = 7 C.L.J. 395 = 10 Bom. L.B. 262 = 3 M L.T. 344 = 18 M. L. J. 125.

-Guardian-Charge on minor's estate - Fraudulent transaction creating-Setting aside of-Money advanced under it for binding purposes—Charge's right to, See HINDU LAW—MINOR—GUARDIAN OF— CHARGE ON MINOR'S ESTATE-FRAUDULENT TRANSACTION. (1866) 10 M. I. A. 454 (473). TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Conta.)

S. 53 - Fraudulent transfer-(Contd.)

SETTING ASIDE OF-SUIT FOR-(Conta.)

-Guardian-Charge on minor's estate-Fraudulent transaction creating-Setting aside of, on payment to chargee of money advanced for binding purposes-Interest on that amount-Rate of, to be allowed-Contract rate or not. See HINDU LAW-MINOR-GUARDIAN OF-CHARGE ON MINOR'S ESTATE-FRAUDULENT TRANSACTION

(1866) 10 M. I. A. 454 (475).

TESTATOR DECEASED-FRAUDULENT DEED BY -CREDITOR OF TESTATOR WHO HAS OBTAINED DECRFE FOR HIS DEBY.

-Right of, against property transferred-Mode of enforcing.

When a stranger is in possession of property of a deceased testator under fraudulent and sham deeds executed by the iestator, a creditor of such testator, who has obtained a decree, should, in order to recover his decree-debt from that property by setting aside the said deeds to the extent of his claim, bring his suit, when resisted in execution-proceedings, against that stranger. Instead of so doing, if he obtains a personal decree against the residuary legatee of the testator as if the debt was a debt personally due from the legatee, and puts the property to sale, the auction-purchaser cannot subsequently sue the stranger for possession of the property, on the ground of the deeds being fraudulent and without consideration, as the legatee, whose right, title and interest. he has purchased, is as much a volunteer as the stranger (524). (Afr. Pemberton Leigh.) BEERRE TOKAL SHUROR P. D. M. F. BEGLAR.

(1856) 6 M. I. A. 510 = 4 W. R. 87 = 1 Suth. 259 = 1 Sar. 577

TRANSACTION AMOUNTING OR NOT AMOUNTING TO A.

-Consideration-Transfer for good, but in fraud of creditors.

In this case the Judicial Committee affirmed the decision of the High Court which set aside two assignments on the ground that they, though for good consideration, were made to defeat creditors, and held that no valid proceedings could be based on either of them.

The question whether any of the parties rould establish rights based, not on the assignments, but on other grounds, such as the actual payment of debts, was not before the courts below, and their Lordships did not accordingly pronounce any opinion upon it. (Lord Moulton, (CHIDAM-BARAM CHETTIAR O. SRINIVASA SASTRIAR.

(1913) 37 M. 227 = 18 C. W. N. 841 = 16 M. L. T. 286 = 20 C. L. J. 571 = (1914) M. W. N. 754 = 16 Bom. L. R. 783 = 1 L. W. 963 = 23 I. C. 714 = 26 M. L. J. 473.

-Creditors-Preference of one of-Transfer seeuring.

In a case in which no consideration of the law of bankruptcy or insolvency applies there is nothing to prevent a debtor paying one creditor in full and leaving others unpaid although the result may be that the rest of his assets will be insufficient to provide for the payment of the rest of his debts. The law is rightly stated by Palles, C. B., in In re Mroney where he says: " The right of the creditors, taken as a whole, is that all the property of the debtor should be applied in payment of demands' of them, or some of them without any portion of it being parted without consideration or reserved or retained by the debtor to their prejudice. Now it follows from this, that security given by a debtor to one creditor upon a portion of or upon all his property (although the effect of it, or even the interest of the debtor

(Centd.)

S. 53-Fraudulent transfer-(Contd.)

TRANSACTION AMOUNTING OR NOT AMOUNTING TO A -(Contd.)

in making it may be to defeat an expected execution of another creditor) is not a fraud within the statute; because notwithstanding such an act, the entire property remains available to the creditors or some or one of them, and as the statute gives no right to rateable distribution, the right of the creditors by such act is not invaded or affected (106.7)

Held that the transfer in the case was one in which the debtor had preferred one creditor to the detriment of another, but that that in itself was no ground for impeaching it under S. 53 of the Transfer of Property Act even, if the debtor was intending to defeat an anticipated execution by the plaintiff (107). (Lord Wrenbury.) MUSAHAR SAHU P. HAKIM LAI. (1916) 43 I. A. 104=43 C. 521= 19 M. L. T. 203 = (1916) 1 M.W.N. 198=3 L.W. 207= 14 A. L. J. 198=20 C. W. N. 395=23 C. L. J. 406= 18 Bom. L. R. 378 = 32 I. C. 343 = 30 M. L. J. 116.

-The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors to the benefit of the debtor. The debtor must not retain a benefit for himself. He may pay one creditor and leave another unpaid. So soon as it is found that the transfer here impeached was made for adequate consideration in satisfaction of genuine debts, and without reservation of any benefit to the debtor, it follows that no ground for impeaching it lies in the fact that the plaintiff who was also a crecitor was a loser by payment being made to this preferred creditor-there being in the case no question of bankruptcy (107). (Lord Wrenbury.) MUSAHAR SAHU v. HAKIM LAL. (1916) 43 I.A. 104 = 43 C. 521 = 19 M.L.T. 203 = (1916) 1 M. W. N. 198=3 L.W. 207=14 A. L. J. 198= 20 C. W. N. 393 = 23 C.L.J. 406 = 18 Bom. L. B. 378 = 32 I. C. 343=30 M.L. J. 116.

The fact that a judgment-debtor prefers a creditor of his, with whom he is connected by family ties, and effects a transfer of his property to that person in lieu of his debt with the set purpose of defeating an execution by another creditor, will not stamp the transaction as a fraudulent transfer. A debtor, for all that is contained in S. 53 of the Transfer of Property Act, may pay his debts in any order he pleases, and prefer any creditor he chooses. (Sir Lawrence Jenkins.) MINA KUMARI BIBI D. BIJOY SINGR (1916) 44 I. A. 72=44 C. 662 (671)= DUDHURIA.

21 M. L. T. 344 = 5 L. W. 711 = 21 C. W. N. 585 = 25 C. L. J. 508=19 Bom. L. R. 424=15 A. L. J. 382= 1 Pat. L. W. 425=40 I. C. 242=32 M. L. J. 425.

A debtor is entitled to prefer a creditor, unless the transaction can be challenged in bankruptcy, and such a preference cannot in itself be impeached as falling within S. 53 of the Transfer of Property Act. The transfer, which defeats or delays creditors within the meaning of that section is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors to the benefit of the debtor.

In a case in which a mortgage deed purported to be executed for (i) the balance of principal and interest due under prior promissory notes executed by the mortgagors in favour of the mortgagee and (ii) a cash advance made at the time of the mortgage, the High Court concurre din the District Judge's finding that the deed was duly executed by the mortgagors and that the consideration was truly stated in the deed, but nevertheless held that the mortgage was made with intent to defeat and delay the creditors,

### TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 53-Fraudulent transfer-(Contd.)

TRANSACTION AMOUNTING OR NOT AMOUNTING TO A-(Contd.)

inconsistent with its finding that the mostgagees were actual gages by conditional sale (67). (Lord Datry). BALKISHUN creditors of the mortgagors. (Lord Atkin.) MA PWA MAY DAS: LEGGE. (1899) 27 I.A. 58 = 22 A. 149 (160) = v. S. R. M. M. A. CHETTIAR FIRM.

(1929) 56 I.A. 379 = 7 R. 624 = 34 C.W.N. 6 51 C.L.J. 6=30 L.W. 481=6 O.W.N. 869 - \_\_\_\_\_ Aknowledgment of excentant-Attentation upon-120 I.C. 645 = 1929 M.W.N. 941 A.I.R. 1929 P.C. 279 - 1930 A.L.J. 533 = 32 Bom. L. R. 117 = 58 M.L.J. 59.

Hindu Law-Joint family-Father-Self acquisition of-Gift to son's sons (minors) of. See HINDU LAW-JOINT FAMILY - FATHER-SELF-ACQUISITION OF-GIFT TO SON'S SONS OF. (1873) 20 W. R. 137. -Hindu Law - Joint family-Manager - Gift of entire family property by, to one member to save it from the extravagance of another. See HINDU LAW - JOINT

FAMILY-MANAGER-GIFT BY. -Hindu Law-Joint family-Partition. See HANDE LAW - JOINT FAMILY - PARTITION - FRAUDULENT

TRANSACTION.

-Insolvent-Transfer by, more than two years before insolvency. See INSOLVENCY-INSOLVENT-TRANSFER (1857) 6 M. I. A. 494.

-Minor-Guardian of - Charge on minor's estate created by. See HINDU LAW-MINOR-GUARDIAN OF-CHARGE ON MINOR'S ESTATE-FRAUD, ON MINOR, ETC. (1866) 10 M. I. A. 454 (471-2).

Mortgage. See under MORTGAGE. -Moveables-Frandulent deposit of - Proof of.

The appeal arose out of a suit brought by the respondent against the appellants, a firm of bankers, to recover a quantity of gold, said to consist of 1,000 gold mohurs, 500 guineas, and five ingots of gold, which were alleged to have been deposited with them by one L, or the value of the gold. The plaintiff claimed as the purchaser of the right of L in the deposit under an auction-sale held in pursuance of execution proceedings upon a decree which he dence of the above facts. had obtained against /..

The case of the respondent was that L was one of a firm of native bankers, that L's firm became largely indebted, and that, with a view to protect the property from his creditors, L deposited the gold in question with the appellants. It was said that a surkut or receipt was given for the gold which was signed by one of the appellants. N.

Held, on the evidence affirming the High Court, that the respondent had established his case and was entitled to DWARKA DAS 7. a decree. (Sir Montagne E. Smith.) (1879) 5 C.L.R. 430 - Bald. 308. RAI SITA RAM.

-Partition. See HINDU-LAW-JOINT FAMILY-PARTITION-FRAUDULENT TRANSACTION.

-Religious endowment - Shebait of-Property of endowment-Sale of. See HINDU LAW-RELIGIOUS EN-(1877) Bald. 140 (143). DOWMENT.

-Sale. See under SALE.

-B. 54-Sale-Contract for sale. Sa SALE.

8. 55-For all cases likely to come under this section, including those relating to vendor's lien. See SALE AND SALE-PURCHASE-MONEY.

Chapter IV (Sa. 58 to 104).

Cases relating to mortgages not noted under the sections of this chapter will be found under MORTE WEE.

-8. 58-Mortgage. See MORTGAGE. 4. 58 (c)-Low and practice existing at date of-Effect on.

(Contd.)

S. 58 (c)-(Contd.)

It may be assumed that the framers of the Transfer of Property Act in S. 58 (c) of the Act intended to state the Held, reversing the High Cours, that its decision was existing law and practice of India with reference to mort-

4 C.W.N. 153 = 2 Bom. L.R. 523 = 7 Sar, 601.

### S. 59-Attestation of mortgage deed.

Validity et.

The word attested in S. 59 of the Transfer of Property Act means the witnessing of the actual execution of the document by the person purporting to execute it. Attestation upon the acknowledgment of the executant is not sufficient.

When it appeared that the witnesses to a mortgage deed were not present at its execution but had put their names on the document on the acknowledgment of the executant, held that the mortgage deed was invalid under S. 59 of the Transfer of Property Act, and that the mortgagee was entitled to a personal decree against the executant (Mr. Anice Ali.) SHAMU PATTER?. ABDUL KADIR KAVU-(1912) 39 I.A. 218 = 35 M. 607 = THEN.

14 Bom. L.R. 1034 - 16 C.W.N. 1009 - 12 M.L.T. 338 -1912) M.W.N. 935-10 A.L.J. 259-

16 C.L.J. 596 = 16 I.C. 250 = 23 M.L.J. 321.

 Invalidity of Effect—Admission of execution by mortgagor-Effect. See EVIDENCE ACT, S. 70.

(1925) 52 I.A. 312 = 5 P. 58. ——Purdanashin—Mortgage by—Attestation of deed of

—Validity of—Proof required. See PURDANASHIN—

MORTGAGE BY-ATTESTATION OF DEED OF. -Signing of Jocument by way of approval of transac tion not equivalent to.

The two wives of one / executed a mortgage deed, which contained the following recital :-

The deed is executed by us with consent and permission of our husband so that he may not in future raise objection to realization of debt by sale of mortgaged property (villages). Our husband signed as witness in the bond in evi-

The signatures in the deed were as follows: --

'Signature.... Srimati . I" (first wife) - "By my own pen." "Signature .... Srimati M" (second wife.)-"By my own

"Signature ..... J.

Witnessed by .... Sabral or Saphal.

The question was whether the mortgage bond was properly attested, in other words, whether I was an attesting witness. It appeared from the evidence that / signed the document after seeing the execution of the document by his wives. The High Court held that nevertheless / was not an attesting witness to the bond, because (1) he did not purport to sign in the document as attesting witness, and (2) the document established that he signed the document as giving his approval to the transaction and not as an attesting witness. The High Court held accordingly that the mortgage bond was invalid for want of proper attestation.

On appeal their Lordships affirmed the High Court. (Lord Shew). SARKAR BARNARD & CO. P. ALAK MAN-(1924) 83 I.C. 170 at JARY KUARL

A.I.R. 1925 P.C. 89 = 26 Bom.L.R. 737.

-Usufrectuary mortgage - Attestation due of - Absince of -Enforceability of mortgage as such-Effect on. Nor MORIGAGE-USUFRUCTUARY MORIGAGE-DEED (1916) 31 M.L.J. 251. AMOUNTING TO AN.

Validity of Question as to Pricy Council appeal -Permissibility for first time in-Remand of case to . Court below for exidence.

(Conta)

S. 59-Attestation of mortgage deed-(Contd.)

In a suit to enforce a mortgage bond the question whether it was duly attested within the meaning of S. 59 of the Transfer of Property Act was not raised in either of the Courts below, and was for the first time raised in an appeal to His Majesty in Council. Under the circumstances the Board remanded the case to the High Court in order to enable the parties to produce evidence on the question of attestation (166). (Sir John Edge.) PADARATH P. NAIN UPADHIA. (1915) 42 I.A. 163 = 37 A. 474 (480.1) = 18 M.L.T. 85 = 2 L.W. 639 = RAM NAIN UPADHIA.

(1915) M.W.N. 709=19 C.W.N. 991= 22 C. L. J. 165 = 17 Bom. L.R. 617 = 13 A.L.J. 809 =

30 I. C. 366 = 29 M.L.J. 159. -S. 65 (a) - Applicability of - Mortgage before Act-

Further charge after Act.

S. 65 (a) of the Transfer of Property Act has no appliration to the case of a mortgage executed before the date of the Act, though one of the further charges was subsequent to it (37). (Lord Macnaghten.) ABDULLAH KHAN P. BASHARAT HUSAIN. (1912) 40 I.A. 31= 35 A. 48 (57) = 13 M.L.T. 182 = (1913) M.W.N. 131 = 17 C.W.N. 233 = 17 C.L.J. 312 = 15 Bom. L.R. 432 = 17 I.C. 737 = 25 M.L.J. 91.

-Ss. 67, 68-Simple and usufructuary mortgage-Combination of - Default of mortgagors to deliver possession to mortgagee-Remedy of latter in case of-Recovery of mortgage money and decree for sale-Right to sue for.

The first two defendants (mortgagors under a mortgage which was a combination of a simple mortgage and an usufructuary mortgage) have failed to discharges their obligation of making over possession to be mortgagee and have thereby deprived the mortgagee of part of his security and in these circumstances their Lordships are of opinion that under S. 68 of the Transfer of Property Act the money has become payable and the mortgagee is entitled to a money decree for the same, but if the money has become payable under S. 68, their Lordships are further of opinion that under S. 67 a decree for sale can be made. It would indeed be a startling result of the legislation if in such a case as this here a default has been made by the mortgagors of a kind which materially affects the mortgagee's security there existed no remedy for the immediate enforcement of the mortgage. (Lord Tamlin.) LAL NARSINGH PARTAB BAHADUR SINGH P. MD. YAQUB KHAN.

(1929) 56 I.A. 299 = 4 Luck. 363 = 27 A.L.J. 581 = 33 C.W.N. 693 = 31 Bom. L.B. 825 = 49 C.L.J. 588 = 116 I.C. 414 = 30 L.W. 87 = 1929 M.W.N. 635 = A.I.R. 1929 P.C. 139 = 7 O.W.N. 64 = 58 M.L.J. 401.

-S. 76-Principle of-Applicability of, to case not governed by Act-English practice-Applicability of.

Mr. Haldane contended that there is no rule of abstract justice in taking the accounts of a mortgagee in possession, and that the Indian rule, which is now embodied in S. 76 of the Transfer of Property Act, should, though the Act has not been extended to Burma, be followed there in preference to the English practice. Their Lordships are not prepared to dissent from Mr. Haldane's contention on this point, but it is really unnecessary for them to express any judicial opinion on it in the present case (245). (Lord Davey.) KADER MOIDEEN v. NEPEAN.

(1898) 25 I.A. 241 = 26 C. 1 (6-7) = 2 C.W.N. 665=7 Sar. 394.

-S. 79-Mortgage to secure further advances-Advance made after another mortgage granted-If a subsequent advance.

It was argued that when a mortgage was to secure further advances, any advance when made was not truly a subsequent advance. The words of the section (79), in their a setting aside of that execution sale. The amount sequent

TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 59-(Contd.)

Lordships' opinion, are destructive of this argument. "Subsequent from the context must mean subsequent to the intermediate mortgage, and if that is so, then in the sence of the section, an advance when made after another mortgage granted becomes a subsequent advance, (Lord Dunedin.) IMPERIAL BANK OF INDIA D. U RAI GYAW THU & CO. (1923) 50 I. A. 283 (292-3)=

51 C. 36 = 1 R. 637 = 21 A. L. J. 784 = 25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 = 33 M. L. T. 395 = 2 Bur. L.J. 254= (1923) M. W. N. 609 = A. I. R. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186 = 76 I. C. 910 = 45 M. L. J. 505.

-Mortgages coming under-Maximum-Expression of-Necessity-S. 80-" In the case mentioned in S. 79"

Meaning.

Their Lordships cannot accept the argument that the words of S. 80 of the Transfer of Property Act "in the case mentioned in S. 79" mean mortgages to secure further advances or the balance of a running account. They think that the words of S. 79 mean that the mortgage there referred to must express a maximum. The words "to secure further advances, etc.," denominate the different classes of mortgages, but to bring them under S. 79 they must have the common feature of a maximum expressed. The exception in S. 80 is inapplicable to a case in which no maximum was expressed. (Lord Dunedin.) IMPERIAL BANK OF INDIA D. U RAI GYAW THU & CO.

(1923) 50 I. A. 283 (292)=51 C. 86=1 R. 637= 21 A. L. J. 784 = 25 Bom. L. R. 1279 = 9 O. & A. L. B. 937 = 33 M.L.T. 395 = 2 Bur. L.J. 254 = (1923) M. W. N. 609 = A I. R. 1923 P. C. 211 = 28 C. W. N. 470 = 39 C. L. J. 186 = 76 I. C. 910 = 45 M. L. J. 505.

-S. 80-Words-" In the case mentioned in S. 79" - Meaning of. See TRANSFER OF PROPERTY ACT, S. 79 -MORTGAGES COMING UNDER.

(1923) 50 I. A. 283 (292) = 51 O. 88

S. 82-Mort gaged properties-Purchaser of one of. subject to mortgage-Liability to contribution of, to purchaser of another paying off mortgage-Contract between latter and mortgagor to pay off that mortgage—Effect.

On 8-11- 1906, the owner of properties K and M mortgaged them both to Mongul. On 19-5-1914, property A was sold to S, the ancestor of the respondents, a portion of the purchase price being left with S to enable him to discharge the mortgage of 8-11-1906, and other debts of the vendor, including certain debts for which creditors had already obtained decrees and had attached the properties In July 1914, property M was sold to the appellants in execution of a decree obtained by Kishin, a creditor of the mortgagor before 19-5-1914. The sale was subject to Mongul's mortgage. Then on 14-11-1914, property K was sold under a decree obtained by another creditor of the mortgagor before 19-5-1914. That sale was also subject The purchaser later on, on to Mongul's mortgage. 16-4-1915, conveyed property K to S.

S having failed to pay off Mongul's mortgage and the other debts of the mortgagor out of the money left with him for that purpose, Mongul took in 1918 proceedings to enforce his mortgage by the sale of both properties, and, in execution of the decree obtained by him, both properties were sold in August 1921. Before the confirmation of the sale, however, S intervened and deposited the amount required to satisfy the mortgagee's claim and thus obtained

## (Contd.)

S. 82-(Contd.)

deposited by S was a much greater sum than would have been required if the mortgage had been paid off in 1914.

S then died, and his representatives, the respondents. sued to compel from the appellants as owners of property .M contribution towards the amount which S had applied in paying off Mongul's mortgage.

Held, that the provisions of S, 82 of the Transfer of Property Act applied to the case and that the appellants

were bound to make contribution.

The appellants were not parties to the contract between S and the mortgagor for the application of the money, and the benefit of the contract had not in any way passed to them. They brought subject to the mortgage and paid a price for the property on that footing, and they cannot be allowed to have the benefit of it free from the mortgage and that without making any payment towards the attainment of that satisfactory result. (Lord Tomlin.) GANESHI LAL (1930) 57 I. A. 189 --D. THAKUR CHARAN SINGH.

34 C. W. N. 661 = 1930 A. L. J. 753 = 124 I C. 911 = 32 L. W. 19 = 52 C. L. J. 117 = A. I. R. 1930 P.C. 183 = 59 M. L. J. 177

-S. 82-Provisions of Modification of by introduction of extrinsic principle-Permissibility.

S. 82 prescribes the conditions in which contribution is payable and it is not proper to introduce into the matter any extrinsic principle to modify the statutory provisions. (Lord Tomlin.) GANESHI LAL P. THAKUR CHARAN SINGH. (1930) 57 I.A. 189 = 34 C.W.N. 661 = 1930 A.L.J. 753 =

124 I. C 911 = 32 L. W. 19 = 52 C. L. J. 117 -A. I. R. 1930 P. C. 183 - 59 M. L. J. 177.

S. 95-Applicability of, to simple mort gage.

S. 95 of Transfer of Property Act ought not to be so strictly construed as to limit its operation to mortgages under which possession passes, and, therefore, on redemption properly repasses. The section must be construed distributively so as to make the condition of obtaining possession apply only to the cases in which its fulfilment is from the nature of the mortgage possible, and in other cases to make the charge follow upon redemption. (Sir Arthur Wilson.) MALIK AHMAD WALI KHAN P. MUSSAMMAT SHAMSHUL-(1906) 33 LA. 81= JAHAN KHAN.

28 A. 482 (487) = 10 C. W. N. 626 = 3 A. L. J. 360 = 3 C. L. J. 481 = 1 M. L. T. 143 = 8 Bom. L. R. 397 = 8 Sar. 918 = 16 M. L. J. 269.

-8.96-Prior mortgage-Sale free from-Consent of prior mortgagee to-Necessity. (Sir Lawrence Jenkins.) RADHA KISHEN D. KHURSHED HOSSEIN.

(1919) 47 I. A. 11 (15)=47 C. 662 (668-9)= (1920) M. W. N. 308 = 11 L. W. 5-18 = 22 Bom. L. R. 557 = 55 I. C. 959 = 38 M. L. J. 424.

S. 100-Charge.

(See also CHARGE.)

-Charge on immoveable property-Deed creating-What amounts to.

In July, 1881, plaintiff's predecessor in title executed a usufructuary mortgage of a village to respondents, on the terms that the mortgagor was to have no power of redeniption for a period of 15 years, and that after that he was to pay off the entire morigage money. The respondents entered into possession, in the ordinary course, of the village.

In November, 1881, plaintiff's predecessor executed a further document which recited that he had executed a possessory mortgage deed in respect of the whole village, and that he needed a further specified sum, which he had borrowed, and he then stipulated to repay the entire amount of the debt, principal and interest in a lump sum Within the period stipulated in the former mortgage deed,

TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-(Contd.)

S. 100-Charge-(Centd.)

namely, within 15 years, and he recited that he had borrowed the money by way of a further debt with interest at a certain rate. The deed then provided: 'I shall first pay up this debt, including principal and interest, and thereafter I can redeem the mortgaged village, having paid up the mortgage money. Without the payment of this debt I cannot redeem the mortgaged village." It then provided that he should pay every year the interest on the amount, and if he did not, then he would execute separate bonds each year, bearing interest at the same rate.

Hold, affirming the courts below that the need of November, 1881, created a charge upon the village.

When the deed of November, 1881, is looked at, it seems clear that the parties intended that the original village should remain in the possession of the mortgagees until the second debt was paid off, and intended, therefore, that the property should be security for the debt. (Lord Atkin.) M. ADITYA PRASAD P. LALA RAM RATAN LAL.

(1930) 57 I. A. 173 = 123 I. C. 191 = 34 C. W. N. 625 = 1930 A. L. J. 646-32 L. W. 14-7 O. W. N. 700-52 C. L. J. 49 = A. I. R. 1930 P. C. 176.

-Debt-Charge on immoveable property in respect of -Will creating. See HINDU LAW-WILL-DEBT.

(1887) 14 I. A. 137 = 15 C. 66.

-Decree-Charge on property-Decree creating. See (1) DECREE-CONSTRUCTION OF-CHARGE ON PRO-(1883) 10 I A. 162 (168) = 10 C. 305 (313). (2) MAHOMEDAN LAW-DOWER-SUIT FOR-WIDOW SUIT BY, AGAINST HUSBAND'S HEIRS-CHARGE IN (1929) 56 I. A. 254 = 8 Pat. 926. RESPECT OF, ETC.

-Maintenance-Charge in respect of-Agreement creating-What amounts to. So HINDU LAW-MAINTENANCE (1899) 27 I. A. 51 = 22 A. 191. -AGREEMENT FOR

-Maintenance-Charge in respect of-Grant creating -What amounts to. See HINDU LAW-IMPARTIBLE ESTATE-JUNIOR MEMBERS-MAINTENANCE OF.

(1920) 47 I. A. 149 (163) -47 C. 932 (949.50). Maintenance-Charge in respect of-Will creating-What amounts to. See HINDU LAW-MAINTENANCE-CHARGE IN RESPECT OF-WILL CREATING.

(1879) 6 L. A. 114 (117-8) = 3 B. 415 (419-20). Maintenance grant-Trust or charge if created by-Grant to a person to hold possession and support his dependants and relations. So: HINDU LAW-MAINTENANCE -GRANT FOR-TRUST OR, ETC. (1862) 9 M. I. A. 55. -Mortgage-Hypothecation-Personal covenant to pay-Deed containing-What amounts to. See MORT-GAGE-DEED AMOUNTING TO A-HYPOTHECATION (1884) 11 I. A. 83 (87) - 10 C. 740 (742-3). -Usufructuary mortgage or-Deed-Construction. See MORTGAGE-USUFRUCTUARY MORTGAGE-DEED AMOUNTING TO AN-CHARGE OR.

(1916) 31 M. L. J. 251.

S. 100 -Transaction prior to Act.

-Procisions of section applicable under head of justice, equity and good conscience to.

S. 100 of the Transfer of Property Act does not apply to a transaction which took place before the date of the Act ; but the principles that prevail in those circumstances for determining whether a deed prior to that date did or did not create a charge upon immoveable property are the principles of justice, equity and good conscience, which for this purpose may be taken to be identical with the provisions in the Transfer of Property Act. (Lord Atkin.) ADITYA (1930) 57 I. A. 173= PRASAD D. RAM RATAN LAL. 34 C. W. N. 625 = 1930 A. L. J. 646 = 52 C. L. J. 49 =

32 L. W. 14 = 7 O. W. N. 700 = 123 I. C. 191 = A. I. B. 1930 P. C. 176.

## TRANSFER OF PROPERTY ACT (IV OF 1882)- TRANSFER OF PROPERTY ACT (IV OF 1882)-

Chapter V (Ss. 105 to 117).

-For cases not noted under the sections in this chapter, see (1) LANDLORD AND TENANT AND (2) LEASE. -S. 105-Lease-Reversion to lessor-Reservation of -Necessity-English late rule as to-Inapplicability of.

The rule, arising out of the special conditions of land tenure in England, that a conveyance to operate as a lease must reserve a reversion to the lessor finds no place in the Transfer of Property Act In India a lessor is expressly empowered to grant a lease in perpetuity, and is not obliged for that purpose, as in England, to grant a lease for lives, or for a term, with a covenant for perpetual renewal. (Sir John Wallis.) HUNSRAJ v. BEJOY LAL SEAL

(1929) 57 I.A. 110 = 1930 A. L. J. 131 = 51 C.L.J. 120 = 34 C. W. N. 342 = 31 L. W. 309 - 32 Bom. L. R. 550 = 122 I.C. 20 = 1930 M.W.N. 334 = A.I.R. 1930 P.C. 59 = 58 M. L. J. 293 (299).

-S. 108-Effect-Maxim - Quicquid inacdificatur solo, solo credit-Applicability of. See MAXIM-QUI-AQUID, ETC. (1899) 26 I. A. 58 (63) = 21 A. 496 (503). S. 108 (j).

-Contract to contrary within meaning of-Contract amounting to. See LEASE-LEASE FOR TERM-ASSIGN-(1929) 58 M. L. J. 293 (299-300).

English law if and to what extent made applicable by. S. 108 (/) of the Transfer of Property Act, though founded on English law, and drafted in the first instance by eminent lawyers in England, has only applied the English law in so far as it was considered applicable in India. (Sir John Wallis.) HUNSRAJ P. BEJOY LAL SEAL.

(1929) 57 I.A. 110 = 1930 A. L. J. 131 = 51 C.L.J. 120 = 34 C. W. N. 342 = 31 L. W. 309 = 32 Bom. L. R. 550 = 122 I. C. 20 = 1930 M.W.N. 334 = A.I.R. 1930 P. C. 59 = 58 M. L. J. 293 (298-9).

S. 118—Exchange. Ser EXCHANGE. S. 123.

-Extension of, to a particular area without extending S. 129-Power of Local Government under S. 1. See TRANSFER OF PROPERTY ACT, Ss. 1, 123, 129.

(1926) 54 I. A. 23 (27-8)=5 R. 7. -Gift deed-Recocation of, before registration-Donor's power of-Deed executed and delivered to dones-

Where a gift deed in respect of immoveable property has been duly executed and delivered to the donee, the donor cannot revoke the gift before the deed is registered on the ground that the gift is not complete until the deed is registered.

Registration does not depend upon his (the donor's) consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses must register it, if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with. (Lord Shate.) VENKAT SUBBA SHRINIVASA HEDGE P. SUBBA KAMA HEDGE. (1928) 52 B. 313 = 27 L. W. 766 =

108 I. C. 367 = 26 A. L. J. 598 = 32 C. W. N. 708 = 47 C. L. J. 500 = 30 Bom. L. R. 827 = I.L.T. 40 B. 99 = A. I. R. 1928 P. C. 86=54 M. L. J. 573.

Gift deed of joint family property-Validity against adopted son of-Execution of deed and delivery thereof to donee prior to adoption -- Registration of deed subsequent-

A Hindu, who had no son at the time, executed a deed of gift of part of his family invnoveable property and delivered it to the donee. On the following day he adopted the appellant. A few days later he registered the deed of gift. It

(Contd.)

S. 123-(Contd.)

was contended for the appellant that, as the grantor had before registration adopted the appellant as his son, the latter's rights in the family property had intervened so as to invalidate the gift.

Held, overruling the contention, that the gift was valid

against the appellant.

The provision of S. 123 of the Transfer of Property Act cannot be reconciled with S. 47 of the Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immoveable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with. (Lord Salvesen.) KALYANASUNDARAN PIELAI D. KARUPPA MOOPPANAR. (1926) 54 L A. 89=

50 M. 193=25 A. L. J. 113=(1927) M. W. N. 149= 4 O. W. N. 197-25 L. W. 336-100 I. C. 105-38 M. L. T. (P. C.) 87=31 C.W. N. 509=

8 Pat. L.T. 527 = 29 Bom. L. R. 833 = 45 C. L.J. 435= A. I. R. 1927 P. C. 42=52 M. L. J. 346.

Gift deed not registered-Effect-Gift accepted during lifetime of denor-Gift deed not communicated to intended donce and remaining in possession of donor undelivered-Distinction.

The decision of the F. B. in I. L. R. 40 M. 204 is thus summarized in the headnote: " There is nothing in S. 123 of the Transfer of Property Act which requires the donor to have the deed registered. All that is required is that he should have executed the deed. Once such an instrument is duly executed the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the This statement of the law needs qualifidate of execution." cation by reference to S. 122 of the Transfer of Property Act, and is only correct upon the footing that the gift had been accepted by or on behalf of the donee during the life time of the donor. A deed of gift executed in accordance with the terms of S. 123 of immovable property but never communicated to the intended donee, and remaining in the possession of the grantor, undelivered, would not come within the ruling of the said F. B. (94-5) (Lord Salvesen.) KALYANASUNDARAM PILLAI v. KARUPPA MOP-(1926) 54 I. A. 89=50 M. 193= PANAR.

25 A. L. J. 113 = (1927) M. W. N. 149= 4 O. W. N. 197 = 25 L. W. 336 = 100 L C. 105 = 38 M. L. T. (P. C.) 87 = 31 C. W. N. 506 =

8 Pat. L.T. 527 = 29 Bom. L. B. 833 = 45 O. L. J. 436= A. I. R. 1927 P. C. 42 = 52 M. L. J. 346

-Gift deed not registered as required by law-Effect of Where a transfer deed without consideration is executed but is not registered as is required by law, it is ineffectual to pass any estate or interest either at law or in equity. At the most it amounts to an incomplete instrument which is not binding for want of consideration. It is nothing else than an inchoate transfer. As such and as it is voluntary, it is no more than an imperfect gift of which a Court of Equity will not compel perfection (316). (Viscount Haldane.) MACEDO v. BEATRICE SHOUD. (1922) 31 M. L. T. 312 (P.O.)

### TRANSFER OF PROPERTY ACT (IV OF 1882) | TRESPASS. -(Contd.)

S. 123-(Contd.)

Property not possessed by donor-Gift of-Donce's rights under. See (1) SALE-PROPERTY NOT POSSESSED (1884) 11 I. A. 218 (232) = BY A PERSON. 11 C. 121 (135).

and (2) HINDU LAW-GIFT-DONOR OUT OF POSSES.

#### S. 129.

Mahomedan Law-Gift-Delivery of possession-Necessity for-Effect of section upon. See MAHOMEDAN LAW-GIFT-DELIVERY OF POSSESSION - NECESSITY FOR-TRANSFER OF PROPERTY ACT.

#### S. 130.

English law relating to assignment of choses in

action-Principles of-Inapplicability of.

The positive language of S. 130 of the Transfer of Property Act precludes the application in India of the principles of English law relating to the assignment of choses in action (Lord Moulton.) MULRAJ KHATAN P. VISHWANATH (1912) 40 I. A. 24 = PRABHURAM VAIDYA.

37 B 198 - 17 C. L. J. 162 - 17 C. W. N. 209 -15 Bom. L. R. 9 - (1912) M. W. N. 124 -11 A. L. J. 7 = 12 M. L. T. 652 = 17 I. C. 627 = 24 M L. J. 60.

-Life insurance policy-Deposit writing of-Charge if created by.

The right to the monies becoming due under a life insurance policy being an actionable claim, held that the mere deposit without writing of the policy did not create a charge on it. (Lord Moulton.) MULRAJ KHATAN v. VISHWA-NATH PRABHURAM VAIDYA. (1912) 40 I. A. 24=

37 B. 198 = 17 C. L. J. 162 = 17 C. W. N. 209 = 15 Bom. L. R. 9 = (1912) M. W. N. 124 = 11 A. L. J. 7=12 M.L. T. 652=17 I. C. 627= 24 M. L. J. 60.

-Life Insurance policy-Money due under-Right to -If an actionable claim.

The right to the monies becoming due under a life Insurance Policy is an actionable claim within the meaning of S. 130 of the Transfer of Property Act. (Lord Moulton.) MULRAJ KHATAN D. VISHWANATH PRABHURAM VAID-(1912) 40 I. A.24 = 37 B. 198 = 17 C. L. J. 162 =

17 C. W. N. 209 = 15 Bom. L. R. 9 = (1912) M. W. N. 124 = 11 A.L.J. 7 = 12 M. L. T. 652 = 17 I. C. 627 = 24 M. L. J. 60.

-Transfer-Transfer by way of charge if included in.

S. 130 of the Transfer of Property Act covers transfers by way of security as well as absolute transfers. (Lord Moulton.) MULRAJ KHATAN v. VISHWANATH PRABHU-RAM VAIDYA. (1912) 40 I. A. 24 = 37 B. 198 = 17 O. L. J. 162 = 17 O. W. N. 209 = 15 Bom. L. B. 9 = RAM VAIDYA. (1912) M. W. N. 124-11 A. L.J. 7-12 M.L. T. 652-17 I. C. 627 = 24 M. L. J. 60.

Shipping company-Document accompanying transhipment of goods issued to shipper-Nature of-Assignment by transfer of -- Assignee's rights under. See SHIP-SHIPOWNER-TRANSHIPMENT OF GOODS. (1913) 41 C. 670 (678-9).

#### TREATY.

-See UNDER INTERNATIONAL AGREEMENT.

Action of-Plea of "Net guilty"- Jurisdiction of Court-Objection to, if included in plea-Facts ousting jurisdiction not appearing in plaintiff's case-Facts appearing therein-Distinction.

In an action of trespass brought against the appellants (the Collector of Revenue at Bombay and one of his assistants) for distraining for arrears of Government "quit-rent" the appellants pleaded "Not guilty" only, and did not specifically raise the plea that the Supreme Court at Bombay had no jurisdiction to try the case because it related to a matter concerning the revenue of India, and was exempt from the jurisdiction of that Court. The question was whether the defendants, by pleading "Not guilty" admitted the jurisdiction of the Supreme Court, and waived all objection thereto, and whether it was therefore not competent to them to take the objection at the trial.

Held that under the plea of "Not guilty" the Court was bound to admit the objection to jurisdiction (371-2).

It appears from the Books of Practice cited, that it has been usual to plead such a defence in the Indian Courts, and, certainly, the convenient course would be to put it on the record. The issue joined, seems simply to be whether the alleged trespasses were committed by the defendants, and it is urged, that the necessity for a special plea is rendered more argent by the new rules introduced at Bombay, which provide, that in actions of trespass, under the plea of "Not guilty", no defence shall be given in evidence which confesses and avoids. However, looking at the statutes and charters under which this Court is constitutest, and to the cases, in point, which have been decided in Westminister Hall, we have come to the conclusion, that the Court, under the plea of "Not guilty," was bound to admit the objection (371-2).

We are not prepared to say, how it might have been, if, when the plaintiff's case was closed, nothing more had appeared, than that the defendants had entered his house at Bombay, and carried away his lamp. Possibly, under the plea of "Not guilty," the defendants might not have been at liberty to adduce evidence which went in confession and avoidance, and the facts ousting of its jurisdiction might never have been judicially before the Judge. But the plaintiff himself, proved the controversy respecting his liability for the arrears of the quit, rent, the demand made upon him for the arrears, and the warrant to levy them by distress; therefore, supposing upon these facts, the Court had no jurisdiction to try the cause, was the Court to try it, and give judgment for the plaintiff, because the defendants had omitted to plead specially? (375). The facts ousting the jurisdiction having been brought judicially to the notice of the Judge, and with perfect regularity, he usurps a jurisdiction which does not belong to him, if he proceeds and gives judgment for the plaintiff. Therefore, these facts coming out for the first time, on the trial of an issue, he ought either to have directed a nonsuit or a verdict to be entered for the defendants. (376, 378). (Lord Campbell.) (1849-50) 4 M. I. A. 353= SPOONER 7. JUDDOW. 6 Moo. P. C. 257 = Perry, O. C. 392 = 1 Sar. 363.

-Property-Trespass upon-Real owner's remedy in case of-Ejectment. See Ejectment Suit-Trespass on

(1854) 6 M. I. A. 27 (44). PROPERTY.

-Wrongful trespass-Action for-Damages substantial-Plaintiff's right to-Failure to prove special damage. In England, a plaintiff, in an action for wrongful trespass may, without proving special damage, recover substantial damages (571). (Sir James W. Colvile.) MUDHUN MOHUN DOSS r. GOKUL DOSS. (1866) 10 M. I. A. 563-

5 W. R. P.C. 91=1 I. J. N S. 269=1 Suth. 644= 2 Sar. 202.

#### TRESPASSER.

-See LIMITATION -ADVERSE POSSESSION-AD-VERSE POSSESSOR.

-Declaration of title and injunction against-Suit by person with only possessory title for-Right of-Decree in -Form of. See Specific Reliff ACT, S. 42-Cases UNDER-TRESPASSER. (1893) 20 I. A. 97 (106-7)= 20 C. 834 (842-3).

Outgoings-Sums paid on account of Recovery of -Right of.

The High Court laid it down as a proposition of law of universal application that "a person who is in wrongful possession is not entitled to recover sums paid on account of outgoings, although he may be able to use them for the pur-

pose of reducing the mesne profits.

Semble it would be difficult, after the decision of the House of Lords in the case of Peruvian Guano Co. v. Dreyfus Brothers, (1893) A.C. 166, to maintain the proposition that the rule stated by the learned judges of the High Coart admitted of no exception (163). (Lord Manchaghten.) DAKSHINA MOHUN ROY CHOWDHRY E. SERODA MOHUN ROY CHOWDHRY. (1893) 20 I. A 160= 21 C. 142 = 6 Sar. 366.

-See also POSSESSION-TRESPASSER.

#### TRIBES.

-Aboriginal Bhuiyas. See HINDU LAW-CUSTOM -APPLICABILITY OF-ABORIGINAL BHUIVAS.

(1922) 50 I. A. 58 (62-4) = 2 P. 230.

-Ahbans, See AHBANS,

-Ahban Thakurs in Oudh. See AHBANS.

-Bhale Sultan Chattris of Sultanpur. See BHALE SULTAN CHATTRIS OF SULTANPUR.

Bohra Tribes. See BOHRA TRIBES.

Chowrasi Gaddis. See CHOWRASI GADDIS.

-Chudasama Gamati Garasias. See Chudasama GAMATI GARASIAS.

-Dhusars of District of Gurgaon. See DHUSARS OF DISTRICT OF GURGAON.

-Gharbari Gosavis. See GHARBARI GOSAVIS.

-Kanchans. See KANCHANS.

-Punjab agricultural tribes. See UNDER PUNJAB-AGRICULTURISTS IN.

### TROVER.

-Action of. See UNDER ACTIONS-TROVER. TRUST.

AGREEMENT RAISING.

CHARITABLE OR RELIGIOUS PURPOSES-TRUST FOR. CONSTRUCTIVE TRUST.

CREATION OF

DECLARATION OF-ENFORCEABILITY IN EQUITY OF. DEDICATION OF PROPERTY TO.

ENGLISH LAW NOTION OF.

ESTATE OTHERWISE VALID NOT RENDERED INVALID

ESTATE UNKNOWN TO LAW CREATED THROUGH MEDIUM OF.

FAMILY TRUST.

GIFT.

LIFE ESTATE CREATED BY WILL THROUGH MEDIUM OF.

MAINTENANCE GRANT - TRUST OR CHARGE IF CREATED BY.

PERSONS NOT ENTITLED TO BENEFIT OF-EXCLU-SION OF.

PRECATORY TRUST.

PUBLIC TRUST -PRIVATE TRUST.

RELIGIOUS TRUST.

RESULTING TRUST.

REVOCATION OF.

### TRUST-(Contd.)

SUBJECT-MATTER OF-UNCERTAINTY OF.

TRUST DEED.

TRUSTEE.

TRUST PROPERTY.

VOID TRUST-ESTATE CREATED THROUGH MEDIUM

### Agreement raising.

-Gift-Life interest in usufruct of property subject of -Reservation to donor of-Agreement for, for valid consideration-Enforceability of. See MAHOMEDAN LAW-GIFT-RESERVATION OF LIFE INTEREST, ETC.

(1867) 11 M. I. A. 517 (548).

### Charitable or religious purposes-Trust for.

-Public or private -Uncertainty-Trust if void for. See TRUST-PUBLIC TRUST-CHARITABLE OR RELI-GIOUS PURPOSES. (1924) 48 M. L. J. 236 (241-3).

### Constructive trust.

-Company-Director of-Amounts improperly paid by-Suit by liquidator for recovery ot-Basis of. See COMPANY-DIRECTOR OF - AMOUNTS IMPROPERLY (1922) 32 M. L. T. 196 (203) (P. C.) PAID BY. -Money never reduced into possession of claimant-Suit for-Limitation. See LIMITATION-TRUST-CONS-

TRUCTIVE TRUST. (1922) 32 M. L. T. 196 (204) (P.C.). -See LIMITATION ACT OF 1908-S. 10-APPLICA-

BILITY.

### Creation of.

### EVIDENCE.

-Government notes-Gift of-Trust for idols-Affixing of, to gift-Proof of-Pencil writings on notes indicating trust in donee's hands-Sufficiency of. See GOVERN-(1875) 3 Suth. 210 (212). MENT NOTES-GIFT OF.

#### TRANSACTION AMOUNTING TO A

-Buyer and seller-Agreement between, for payment by buyer to local temple of sum allowed as rebate by seller-Trust not created by-Suit by temple for recovery of amount from buyer-Not maintainable.

The plaintiff in the suit was the managing proprietor of a temple in Broach. In that capacity he claimed to be entitled to a lago, or perquisite or tax of two annas per bale on all cotton bought in and exported from Broach. The lago in question was found to be a cess or tax on a trade, within the meaning of Act XIX of 1844 (Bombay), and to be therefore incapable of being enforced in a court of law. It was contended for the plaintiff that nevertheless such a payment was not thereby made illegal, and it was argued that, by virtue of something loosely described as standing", the buyers of cotton in Broach had come under some sort of obligation in the nature of a trust which made them liable as trustees or agents to the claim of the plaintiff.

It appeared to have been the practice for the native cultivators selling cotton in Broach to allow a walthar or rebate of one rupee for every candy or two bales. That walthar was no doubt originally intended to meet or cover certain charges or allowances of which the Mandir's lago was one; and it was said on behalf of the plaintiff that the native cultivators would naturally be disposed to take that burthen on themselves because they were interested in maintaining the worship of the temple of which the plaintiff was the managing proprietor. From those premises it was argued that the plaintiff was entitled to enforce his claim directly against the cotton buyers as his trustees, or as having received moneys for his use, for which they were accountable to him.

Held, that there was nothing whatever in the nature of a trust to be found in the transaction or to be inferred from

the course of business (106.7).

TRUST- (Contd.)

Creation of-(Contd.)

TRANSACTION AMOUNTING TO A-(Contd.)

There is not the slightest evidence that the respondents accepted the position of trusteee for the plaintiff, or consented to receive moneys for his use. The cutton sellers may or may not have a valid claim against the cotton buyers in respect of so much of the walthar as may be attributable to or connected with the lago, but such claim, if valid, cannot give any right to the representatives of the plaintiff (who died pending the appeal) against persons who undertook no oldigation towards the plaintiff (107). (Lord Macnaghten.) SHRI KALYANRAIJI D. MOFFUSII. COM-PANY LTD. (1890) 17 I. A. 103 = 14 B. 526 (531-2) =

-Mutation proceedings - Admission in, by legal owner of legal title of third party-Mutation effected and possession given to third party in pursuance of-Trust not created by. See MUTATION - PROCEEDINGS FOR -ADMISSION IN, BY LEGAL OWNER, ETC.

(1898) 25 I. A. 161 (177-8) = 26 C. 81 (100-1). -Trust estate--Creation by will of--Validity. See HINDU LAW-TRUST-TRUST ESTATE

(1872) Sup. I. A. 47 (71-2).

### Declaration of-Enforceability in equity of.

-Non-Registration of transfer as required by lase-Effect.

Had the deed of transfer been in terms a declaration of trust, a Court of Equity might, even though it was not registered as is required by law, have compelled the trustee to carry out the trust, which would have been binding on him. even if voluntary (316). (Viscount Haldane.) MACEDO :. (1922) 31 M. L. T. 312 (P. C.). BEATRICE STROUD.

#### Dedication of property to.

-Assent of State to-Necessity-Revocability of dedication in absence of such assent-Family trust. See TRUST -FAMILY TRUST. (1871) 14 M. I. A. 289 (302). Diversion of-Validity-Public and private trusts-Distinction. See HINDU LAW - RELIGIOUS ENDOW. MENT-IDOL-DEDICATION TO-DIVERSION.

(1876) 4 I. A. 52 (58) = 2 C. 341 (347).

-Evidence of -Income of property-Appropriation of. for purposes of endowment if such evidence. See HINDU LAW-RELIGIOUS ENDOWMENT-DEDICATION OF PRO-PERTY TO - EVIDENCE -INCOME OF PROPERTY.

### English law notion of.

Unknown in India. See HINDU LAW-TRUST-(1921) 48 I. A. 302 (311) -ENGLISH, ETC. 44 M. 831 (839).

Estate otherwise valid not rendered invalid by.

See HINDU LAW - WILL - TRUST-ESTATE (1872) Sup. I. A. 47 (75) OTHERWISE, ETC.

Estate unknown to law created through medium of. -Validity of. See HINDU LAW-WILL-TRUST-ESTATE UNKNOWN TO, ETC. (1872) Sup. I. A. 47 (72)

### Family trust.

-Dedication to-Assent of State to-Necessity-Revecability of dedication in absence of such assent.

It was urged that such dedications of property without the assent of the State, should be regarded as merely revocable appropriations, which the founders might vary the use. No authority whatever was adduced in support of this position, which strikes at the root of most modern endowments of the like nature. A family trust of this nature has never, in modern times at least, been held to require such an assent (302). (Sir Robert Phillimort.) JUGGUT MOHINI DOSSEE v. MUSSUMAT SOOKHEE- did they make the trustee a party. They prayed for a

TRUST-(Contd.)

Family trust-(Contd.)

MONEY DOSSEE. (1871) 14 M. I. A. 289= 10 B. L. R. 19 P. C = 17 W. R. P. C. 41 = 2 Suth. 512 = 3 Sar. 23

Gift

-Distinction. See HINDU LAW-GIFT-TRUST-DECLARATON OF. (1928) 33 C. W. N. 493.

-Property subject of - Trust upon - Affixing by donor of, sub-equent to gift-What amounts to-Validity of. See HINDU LAW-GIFT-TRUST-PROPERTY SUB-(1875) 3 Suth. 210 (211-2). JECT OF.

-Trust apart from-Conception of-Introduction in India during Mahemedan rule.

The conception of a trust apart from a gift was introduced in India with the establishment of Moslem rale, And it is for this reason that in many documents of later times in parts of the country where Mahomedan influence has been predominant, such as Upper India and the Carnatic, the expression wakf is used to express dedication (312), (Mr. Ameer Ali.) VIDVA VARUTHI TRIRTHA v. BALU-(1921) 48 I.A. 302 = 44 M. 831 (840) = SAMI AIYAR. (1921) M.W.N. 449 = A.I.R. (1922) P.C. 123=

30 M. L. T. 66 = 26 C.W.N. 537 = 20 A.L.J. 497 = 24 Bom. L.R. 629 - 65 I.C. 161 =

15 L.W. 78-A. I. R. 1922 Pat. 245-41 M. L. J. 346. Life estate created by will through medium of.

-Validity. See HINDU LAW-WILL-ESTATE FOR LIFE-CREATION OF, ETC. (1872) Sup. I.A. 47 (75-6).

Maintenance grant-Trust or charge if created by. -Grant to a person to hold poseession and support his dependants and relations. See HINDU LAW-MAINTE-NANCE-GRANT FOR-TRUST OR ETC.

(1862) 9 M.I.A. 55.

### Persons not entitled to benefit of-Exclusion of.

-Trustee's duty as to-Failure by him to exclude-Injunction restraining those persons from sharing benefit -Suit by beneficiaries for-Right of-Trustee not made

When property is set apart for public or charitable uses, it will be a malversation to apply any of the funds for persons who are not objects of the trust. Those who are objects of the trust must have all the benefits they require; and if there is a surplus, it must be left to the Courts to make a cy-pres application of it. But when the subjectmatter of such a trust or charity is the rendering of some convenience or service of such a nature that it will not hart the lawful recipients if others share with them, it cannot be held that the trustees are bound to exclude persons who have no legal title to share. They may do so; they may treat all such persons as trespassers and say. 'Sic Velo sic juhen stel pro ratione voluntas. But if they choose to admit them, this of itself furnishes no ground of complaint. If the members admitted are too large or the persons are disorderly or unpleasant in their habits or in any way substantially interfere with the benefit or convenience of these for whom the endowment was created, the trustees may be required to exclude them. But the mere claim of A that B shall not share in such a benefit because B is not within the terms of the foundation is not one that courts would encourage (54-5).

Certain members of the Parsi Community sued for an injunction restraining a non-racial Parsi convert to the Zoroastrian faith from using the Fire Temple at Rangoon or attending its ceremonies. The plaintiffs did not seek for a general declaration as to the persons who were objects of the trust. They did not seek for a construction of the Scheme, or for any order to be made upon the trustee, nor TRUST-(Contd.)

Persons not entitled to benefit of—Exclusion of —(Contd.)

declaration that the defendant was not entitled to the use and benefits of the Parsi Fire Temple, and for an injunction as stated above. They failed to make out that the defendant was not a Zoroastrian. Their claim to the injunction was not what might be called a quasi-caste claim. Their claim to the injunction was put forward on the grounds that the result of defendants' presence in the Temple would be the wounding of religious feelings and the descration of the Temple. The latter ground was found to be not tenable.

Held, that the injunction prayes for could not be granted (56-7). (Lord Phillimore.) SAKLAT v. BELLA.

(1925) 53 I.A. 42=3 R. 582=43 C.L.J. 23= 92 I.C. 200=30 C.W.N. 289=28 Bom. L.R. 161= A.I.R. 1925 P.C. 298=23 A.L.J. 1016= 49 M.L.J. 821 (830-3).

Precatory trust.

#### Public trust-Private trust.

Held, on the construction of a will the terms of which are set out in their Lordships' judgment, that it created a trust for public purposes of a charitable or religious nature, and that it was not void as being vague or uncertain as to the charities to which it applied. (Sir John Edge.) LALA JAI NARAIN 2. LALA UJAGAR LAL

(1924) 21 L.W. 162=29 C.W.N. 775= (1925) M.W.N. 13=A.I.B. 1925 P.C. 11= 27 Bom L.R. 713=85 I.C. 2=48 M.L.J. 236 (241-3).

In a suit under S. 92 of C. P. C. of 1908 relating to a chattiram (also called a choultry), the case of the plaintiffs was that the chattiram was a public charity, which had been founded and dedicated to the public more than 60 years before suit as a charitable institution for the convience of travellers as a halting place and for the feeding of poor Brahmins resorting to it, while the case of the defendants was that the chattiram was a private chattiram and that it had never been dedicated to the public. The Courts below concurrently found that the chattiram was a public trust, and their Lordships also found that the chattiram was a public trust (Sir John Edge.) VAIDYANATHA AYYAR v. SWAMINATHA AYYAR.

(1924) 51 I.A. 282 (289) = 47 M. 884 = 35 M.L.T. 189 =
A I.R. 1924 P.C. 221 (2) = 22 A L.J. 983 =
26 Bom. L.R. 1121 = 40 C.L.J. 454 = 29 C.W.N. 154 =
20 L.W. 803 = (1924) M.W.N. 749 = 26 P.L.R. 1 =
10 O. & A.L.R. 1076 = 82 I.C. 804 = 47 M.L.J. 361
—Diversion of—Validity of—Distinction See Hindu
LAW—KELIGIOUS ENDOWMENT—DOL.—DETUCATION

LAW—RELIGIOUS ENDOWMENT—IDOL —DEDICATION TO—DIVERSION OF. (1876) 4 I. A. 52 (58) = 2 C. 341 (347).

-Ecidence.

In this case in which the question was whether the suit shrine was a public trust or the private property of the defendants' family, the Courts below concurrently found that it was a public trust, and their Lordships accepted that finding (16). (Lord Dunofin.) ANAND RAM 7. RAMDAS DADURAM. (1920) 48 I. A. 12=48 C. 493 (498)= (1921) M.W.N. 24=13 L.W. 318=25 C.W.N. 794=

Religious trust.

----Execution of—Duty of—Administrator-General if may be entrusted with. See ADMINISTRATOR-GENE-RAL'S ACT II OF 1874—RELIGIOUS TRUSTS.

(1895) 22 I.A. 107 (118)=22 C. 788 (799). debtor—Right of—Decree before sale declaring transfer

17 N.L.R. 37=62 I.C. 737=30 M.L.T. 194.

TRUST-(Contd.)

Religious trust-(Contd.)

—Hindu will involving execution of—Trusts of—Duty of carrying out—If and when may be imposed upon Administrator-General. See ADMINISTRATOR-GENERAL'S ACT II OF 1874—RELIGIOUS TRUSTS.

(1895) 22 I.A. 107 (118) = 22 C. 788 (799).

— Property devised upon trust for—Corpus of—Attackment and sale of, in execution of personal decree against trustee —Validity—Surplus income —Beneficial interest in—Trustee having—Effect.

Where property was devised upon trust for the performance of religious duties, held, that the corpus of the estate could not be sold, nor could any specific portion of the corpus of the estate be taken out of the hands of the trustee in execution of a decree obtained against him personally, because there might be a margin of profit coming to him after the performance of all the religious duties (9).

If there was any surplus in the hands of the trustee for the benefit of the judgment-debtor it would not entitle the judgment-creditor to attach and sell the whole or any specific portion of the corpus of the estate. He could, under S. 266 of C.P.C. of 1882, only attach that property over which the judgment-debtor had a disposing power, which he might exercise for his own benefit, "whether the same was held in the name of the judgment-debtor, or by another person in trust for him." (9.10). (Sir Barnes Peacock.) BISHEN CHAND BASAWANT v. SYED NADIR HOSSEIN.

(1887) 15 I.A. 1 = 15 C. 329 (339-40) = 5 Sar. 113.

- Trustees of - Appointment of - Considerations which ought to weigh with Court in matter of.

The Court executing the duty of appointing trustees of a religious trust must have due regard to the claims of that branch of the family with whom the worship was established and by whom the services were performed (107). (Lord Buckmaster.) GOPAL LAL SETT v. PURNA CHANDRA BASAK. (1921) 49 I.A. 100 = 49 C. 459 (468)=

20 A.L.J. 625 = 36 C.L.J. 57 = 24 Bom. L.B. 937 = 16 L.W. 963 = A.I.R. 1922 P.C.253 = 27 C.W.N. 174 = 67 I.C. 561 = 43 M.L.J. 116.

#### Resulting trust.

—Principle of—Applicability — Purchase with As money in name of B—Purchase intended to be for B's benefit—Effect, See BENAMI—GIFT.

(1872) 14 M.I.A. 433 (437 8).

#### Revocation of.

-Deed subsequent-Revocation by.

A trust, prima facie, well established, cannot be held to be revoked on evidence of a subsequent deed of revocation not only not proved but, on every judicial examination of it, discredited (304). (Sir Robert Phillimore.) JUGGUT MOHINI DOSSEE 7: MUSSUMAT SOOKHUMONY DOSSEE.

(1871) 14 M. I. A. 289 = 10 B. L. B. 19 (P. O.) = 17 W.B. P C. 41 = 2 Suth. 512 = 3 Sar. 23.

### Subject-matter of-Uncertainty of.

Enforceability of trust—Effect on, See HINDU (1921) 49 LA 1 (7.8) = 46 B. 153 (159-60).

#### Trust deed.

DEBTOR—FRAUDULENT TRUST DEED BY—SETTING ASIDE OF.

——Debt due by debtor to trustee—Lien for—Baforcement of. See DEBTOR AND CREDITOR—DEBTOR— TRUST DEED FRAUDULENT BY.

(1867) 11 M.I.A. 317 (335.6).

Purchaser of property in execution of decree against

Trust deed - (Contd.)

DEBTOR-FRAUDULENT TRUST DEED BY-SETTING ASIDE OF- (Contd.)

void as against creditors. See DEBTOR AND CREDITOR -DEBTOR-TRUST DEED FRAUDULENT BY-SETTING (1867) 11 M.I.A. 317 (337-8).

#### INTEREST IN.

-Trusteeship under deed if an-Beneficiary third party. See REGISTRATION ACT OF 1877, S. 69. (1920) 47 I.A. 224 (230) = 42 A. 609 (616).

LITIGATION-PROPERTY SUBJECT OF, OR TO BE RECOVERED BY.

-Trust deed in respect of. Sec LITIGATION-PRO-PERTY SUBJECT OF, OR TO BE RECOVERED BY -TRUST DEED, ETC.

### TRUSTRE UNDER.

——Charge created by—Validity—Consent of trustor— Payment for—Charge in respect of. See DEBT—SETTLE-(1915) 39 M. 115. MENT DEED FOR PAYMENT OF.

Power of Attorney by-Nature of necessary Special power of attorney or general power of attorney.

If any power existed in P to delegate authority under the trust deed it would be quite clear that the power of attorney to be granted would have to be a special power of attorney, specially referable to dealing with the estate which was subject to the trust, and not a general power of attorney, which may have been executed by P in favour of his son, entitling him to deal with the whole of his private property (50-1). (Lord Buckmaster.) BONNERJI v. SITA-(1921) 49 I. A. 46=49 C. 325 (333)= (1922) M. W. N. 98=26 C. W. N. 236= NATH DAS.

30 M. L. T. 182=15 L. W. 452=20 A. L. J. 294= 35 C. L. J. 320 = 24 Bom. L. R. 565 = A. I. R. 1922 P. C. 209-66 I. C. 140-42 M. L. J. 403

Power of attorney executed previously by-Cancellation by trust deed of-Properties comprised in former not dealt with by latter. See TRUST DEED-TRUSTEE UNDER (1927) 6 R. 113, -SALE ON CONSENT ETC.

-Sale on consent in writing of co-adintor-Power of. conferred by deed-Sale without such consent-Validity-Agent appointed by trustee-Sale by, without such consent-Validity-Power of attorney executed previously by truster -Cancellation of, by trust deed-Property comprised in

former not dealt with by latter. One K. P. R., as the manager of a Joint Hindu Family carrying on money-lending business, executed a power of attorney in favour of one S, his agent at Pegu, on 10-2-1906, authorising him among other things to use the name of K. P. R. to sell or exchange immoveable property at Pegu to which K. P. R. was or should thereafter become possessed or entitled. The K. P. R. Firm was in a critical condition in 1908 and therefore a trust deed was executed in April, 1908, by K. P. R. in his own behalf and as the head of the joint family to one V. M. S., by which "all the properties, assets and interests mentioned in Schedules A & B" were transferred to him in trust to collect all debts owing to the family and to pay all creditors. Schedule B included the firm under the mark of K. P. at Pegu and all the rights such as money-lending, etc. Among other powers of management, the power of appointing agents was also one. But a clause in the deed limited the power of the trustee to sell immoveable properties only on the consent in writing of a co-adjutor appointed under the deed of trust. The co-adjutor appointed died in 1911 and in 1912 in 1912 purporting to act under the trust deed, V. M. S.,

TRUST-(Contd.)

Trust deed-(Could.)

TRUSTEE UNDER-(Centd.)

the trustee appointed S, as agent in Pegu on behalf of the trustee in January, 1912. In June, 1912, S sold certain properties consisting of paddy and garden land and houses situated in Pegu to M, the first respondent by a registered deed of sale. In 1913, V. M. S., the trustee, was discharged. In 1918 on the application of a creditor K. P. R. was adjudicated an insolvent and all his properties and the joint family assets vested in the Official Receiver. The properties at Pegu were brought to sale in Court auction and the Appellant brought them and they were duly conveyed to him by sale deeds dated 8-5-1920 and 7-10-1921, executed by the Official Receiver. In a suit to recover possession of the properties from M, who held under the sale deed executed by S, held, that the power of attorney executed to S by K.P.R. in 1906 was not cancelled by the subsequent trust deed as the property claimed in the suit could not be said to be covered by the description of the properties in the Schedules to the trust deed; and that the power-of-attorney given by V. M. S. to S was ineffective as there was no consent by a co-adjutor to the sale of immovable properties by S. (Sir Lancelet Sanderson.) CHOCKA-LINGAM CHETTIAR P. E. N. M. K. CHETTIAR FIRM.

(1927) 6 R. 113 = 107 I. C. 461 = 47 C. L. J. 429 = 32 C. W. N. 677 = 30 Bom. L. R. 788 = 27 L. W. 811 = A. I. R. 1928 P. C. 44 = 54 M. L. J. 517.

#### Trustee.

ACCOUNTABILITY OF, TO CESTUI QUE TRUST.

ADVANTAGES NOT WARRANTED BY TRUST.

ADVERSE POSSESSION AGAINST CO-TRUSTEE.

ALIENATION BY-VALIDITY OF-RIGHT TO DISPUTE.

APPOINTMENT OF.

BREACH OF TRUST BY.

COMPROMISE BY.

CONFISCATION DECREE AGAINST.

DECREE FAVOURABLE TO TRUST-COMPROMISE SUR-RENDERING.

DECREE FOR MONEY OBTAINED BY-LIABILITY TO CESTUI QUE TRUST IN RESPECT OF.

DECREE PERSONAL AGAINST - EXECUTION OF -ATTACHMENT AND SALE OF CORPUS OF TRUST PROPERTY IN.

HINDU JOINT FAMILY-MANAGER OF.

HINDU OR MAHOMEDAN RELIGIOUS INSTITUTION.

MEANING OF.

MORTGAGE - SIMPLE MORTGAGE - MORTGAGEE UNDER, TRUSTEE FOR MORTGAGOR IF A.

OFFICE OF.

PERSON IN POSITION OF.

PERSON NOT ENTITLED TO BENEFIT OF TRUST-EXCLUSION OF.

PURCHASE BY-VALIDITY OF-RULES APPLICABLE TO.

RECEIVER-MANAGER.

RELATIONSHIPS COVERED BY WORD.

RELIGIOUS ENDOWMENT-MANAGER OF.

RELIGIOUS TRUST-TRUSTFE OF-APPOINTMENT OF. RENUNCIATION OR FAILURE TO ACT BY A.

SUIT BY-COMPROMISE IMPROPER OF-ADDITION OF

PARTIES TO PROTECT INTERESTS OF BENEFICIA-

TRUST DEED-TRUSTEE UNDER

TRUST PROPERTY.

WILL-TRUSTEE UNDER

4171

Trustee-Accountability of to cestui que trust.

English strict rules as to-Application of, in India, See HINDU LAW - JOINT FAMILY - MANAGER-ACCOUNTABILITY OF-TRUSTEE.

(1921) 48 I. A. 280 (287)=44 M. 656 (663)

## Trustee-Advantages not warranted by trust.

-Helding out of to prior beneficiaries with authority of ultimate beneficiaries-Former's right to such advantag's -Questioning of, by trustee and ultimate beneficiaries

The true result of this case appears to he that the ultimate beneficiaries under the trust have authorized the trustees to hold out to the prior beneficiaries advantages which were not warranted by the trust, and have thereby altered the position of the prior beneficiaries. Under such circumstances, both the trustees and the ultimate bene ficiaries must be liable to make good to the prior beneficiaries the advantages which have been so held out to them (424). (Lord Justice Turner.) EAST INDIA COM-(1859) 7 M. I. A. 361= PANY P. ROBERTSON. 12 Moo. P. C. 400 = 4 W. R. 10 = 1 Suth. 332=

1 Sar. 652.

## Trustee-Adverse Possession against Co trustee.

Acquisition by, of right of management by rotation. · The right of management by rotation by each of several co-trustees cannot, as between themselves, be acquired merely by the operation of the law of limitation (80). (Lord Macnighten.) VINAVAK WAMAN JOSHI RAYARIKAR P. GOPAL HARI JOSHI RAVARIKAR. (1903) 30 I. A. 77= 27 B. 353 (357)=7 C. W. N. 409=5 Bom. L. R. 408= 8 Sar. 453.

## Trustee - Alienation by-Validity of-Right to dispute.

-Estoppel. See HINDU LAW-RELIGIOUS ENDOW MENT-SHEBAIT. (1923) 51 L. A. 83 (97) = 47 M. 337

### Trustee-Appointment of.

-Choice of person for-Discretion of Indian Courts as to-Privy Council's interference with.

The discretion of the Judicial Commissioner as to the person appointed as a co-trustee is a matter with which their Lordships are indisposed to interfere (548). (Sir Edward Williams.) NAWAB UMJAD ALLY KHAN :: MUSSUMAT (1867) 11 M. I. A. 517 = MOHUNDEE BEGUM.

10 W. R. P. C. 25 = 2 Suth. 98 = 2 Sar. 315 = R. & J's. No. 7 (Oudh).

Founder's heirs-Right of.

The last survivor of the descendants in the male line of the founder of a chattiram (which is a public trust) possibly has a right to appoint a trustee of the charity. (Sir John Edge.) VAIDVANATHA AYVAR : SWAMINATHA AYVAR.

(1924) 51 1. A. 282 (292) = 47 M. 884 = 35 M. L. T. 189 = A. I. R. 1924 P. C. 221 (2) =

22 A. L. J. 983 = 26 Bom. L.R. 1121 = 40 C. L. J. 454 = 29 C. W. N. 154 = 20 L. W. 803 = (1924) M. W. N. 749 = 26 P. L. R. 1=

10 O. & A. L. R. 1076 = 82 I. C. 804 = 47 M. L. J. 361.

-Power of-Fraudulent exercise of. See Under this very sub-head-APPOINTMENT OF-VALIDITY OF

(1921) 51 I. A. 282 (291-2) = 47 M. 884.

-Validity of-Person entitled to appoint-Appointment by, with indirect motives, on foot of property being his oron private property.

Where a person entitled to appoint a trustee of properties subject to a trust did not profess to appoint the appellant as a trustee of the properties on the footing that they were already trust properties, but professed to appoint him can on no principle of law, equity, or good conscience, be

TRUST-(Contd.)

## Trustee-Appointment of-(Contd.)

a manager of property which he (the person appointing) falsely alleged to be his own private property, and his object in doing so was to afford a monthly income for the daughter of his late concubine and her children, held that the appointment of the appellant was invalid. (Sir John Edge.) VAIDYANATHA AYYAR P. SWAMINATHA AYYAR.

(1924) 51 I. A. 282 (291-2)=47 M. 884 = 35 M. L. T. 189 = A. I. R. 1924 P. C. 221 (2) = 22 A. L. J. 983 = 26 Bom. L. B. 1121 = 40 C. L. J. 454 = 29 C. W N. 154 = 20 L.W. 803 = (1924) M. W. N. 749 = 26 P. L. R. 1=10 O & A. L. R. 1076=82 I. C. 804= 47 M. L. J. 361.

## Trustee-Breach of trust by.

-Decree favourable to trust-Surrender of, by way of compromise-Validity of. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE-TRUSTEE OF - DECREE FA-VOURABLE TO TEMPLE.

(1908) 35 I. A. 176=31 M. 236.

-Presumption of-Propriety. See HINDU LAW-RELIGIOUS ENDOWMENT - SHEBAIT - BREACH OF (1869) 13 M.I.A. 270 (275).

-Presention of-Right of-Prior breaches of same mature-Trustee guilty of-Effect,

A former abuse of trust, in another instance, cannot be pleaded against a trustee who seeks to prevent a repetition of abuse, even if he were formerly implicated in the same indefensible courses against which he is seeking to protect the property, though it would be a reason for excluding him from the administration of the property as shebait. The court could not with any propriety say, we will decline to protect the property and leave it further exposed to loss, and decline to make a declaration that it is trust property, merely because they would not trust the plaintiff with its administration (306-7), (Sir Robert Phillimore). JUGGUT MOHINI DOSSEE P. MUSSUMAT SOOKHEEMONEY DOSSEE. (1871) 14 M.I.A. 289=10 B.L.R. 19 P.C.= 17 W.B. P.C. 41 = 2 Suth. 512 = 3 Sar. 23.

-Trust Property or income thereof-Application of to alien charity. See HINDU LAW-RELIGIOUS EN, DOWMENT-SHEBAIT OF-PROPERTY OF ENDOWMENT--APPLICATION OF, ETC.

(1917) 44 I.A. 147 (150) = 40 M. 709.

## Trustee-Compromise by.

-Decree favourable to trust-Compromise surrendering-Validity of. See HINDU LAW-RELIGIOUS ENDOW-MENT-TEMPLE-SHEBAIT OF-DECREE FAVOURABLE (1908) 35 I.A. 176=31 M. 236

-Office-Right to-Compromise as to-Validity. See HINDU LAW - RELIGIOUS ENDOWMENT -TEMPLE-SHEBAIT OF-OFFICE OF-RIGHT TO.

(1894) 21 I.A. 128=18 M. 1.

-Suit-Improper compromise of-Addition of parties to protect interests of beneficiaries-Propriety of. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE-SHEBAIT OF-SUIT BY.

(1908) 35 I. A. 176=31 M. 236.

Suit in which he is interested with certai que trust -Compromise of-Validity of, against latter-Liability of trustee to 'cestui que trust' in respect of amount decreed in suit-Nature and extent of. See COMPROMISE-SUIT-(1849) 4 M.LA. 452. COMPROMISE OF-PLAINTIFF.

### Trustee-Confiscation decree against

Effect of, on cestui que trust and his rights.

A decree of confiscation pronounced against a trustee

Trustee-Confiscation decree against-(Contd.)

made to affect his cestus que trust and his rights (127.8): (Lord Justice James.) MUSSUMAT THAKOORAIN SOOK-RAJ KOER v. GOVERNMENT OF INDIA.

(1871) 14 M.I.A. 112 = 3 Suth. 1 = 2 Sar. 705 = B. & J.'s No. 11 (Oudh).

Trustee—Decree favourable to trust—Compromise surrendering.

Trustee-Decree for money obtained by-Liability to 'cestui que trust' in respect of.

——Nature and extent of—Amount not recovered without wilful default—Liability in respect of. See COMPRO-MISE—SUIT—COMPOMISE OF—PLAINTIFF.

(1849) 4 M.I.A. 452.

## Trustee—Decree personal against—Execution of—Attachment and sale of corpus of trust property in.

——Validity—Property devised upon trust for performance of religious duties—Beneficial interest in surplus income—Trustee having—Effect. Sw TRUST—RELIGIOUS TRUSTS—PROPERTY DEVISED UPON TRUST FOR.

(1887) 15 I. A. 1 (9-10) - 15 C. 329 (339-40).

Trustee-Deputy.

-Appointment of.

The appointment of a deputy by the holder of an office which involves the performance of religious duties does not amount to an alienation of the same. It only means that the office and the rights are preserved, but that the particular acts are performed by a deputy (77-Arg.) (Per Sir Montague E. Smith.) RAJAH VURMAH VALLIA P. RAVI VURMAH MUTHA. (1876) 4 I.A. 76 = 1 M. 235 = 3 Sar. 687 = 3 Suth. 382.

Trustee-Hindu joint family-Manager of.

——Misappropriation of trust funds by—Junior members' liability for—Manager a trustee. See HINDU LAW— JOINT FAMILY—MANAGER—MISAPPROPRIATION BY— JUNIOR MEMBER'S LIABILITY FOR.

(1924) 48 M.L.J. 236 (244).

——Relation to other members of—Trustee if 2. See HINDU LAW—JOINT FAMILY — MANAGER— JUNIOR MEMBERS—RELATION BETWEEN MANAGER AND.

Trustee—Hindu or Mahomedan religious institution.

TION ACT OF 1908—ART. 134—TRUSTEE.

(1921) 48 I.A. 302 = 44 M. 831

## Trustee-Meaning of.

----General and strict sense of-Distinction,

In a general sense every man is a trustee to whom is entrusted the duty of managing and controlling property that belongs to another. But that does not make him a trustee in the strict sense, viz., a person in whom property is absolutely vested (232) (Lord Buckmaster.) MUHAMMAD RUSTOM ALI v. MUSHTAQ HUSAIN.

(1920) M.W. N. 665 = 18 A.L.J. 1089 = 12 L.W. 539 = 28 M.L.T. 220 = 57 I C. 329 = 39 M.L.J. 263.

Trustee-Mortgage -Simple mortgage-Mortgagee under, trustee for mortgagor if a.

(1920) 24 C.W.N. 769 (774-5).

TRUST-(Contd.)

Trustee-Office of.

DELEGATION OF.

Kule against—Applicability of, to person in representative capacity—Lease by agent of such person—Validity. So: FIDUCIARY RELATIONSHIP—DUTIES AT-TACHED TO—DELEGATION OF—RULE AGAINST.

(1921) 49 I.A. 46 (52-3) = 49 C. 325 (333). REMOVAL FROM.

——Assertion of hostile title to trust property—Mismanagement of trust—Misappropriation of trust funds—Removal from office on ground of. See MAHOMEDAN LAW—WAKE —MUTWALI—REMOVAL FROM OFFICE OF—GROUNDS —ASSERTION OF, ETC. (1928) 54 M.L.J. 692.

Diversion of trust property—Concoction of accounts to support—Removal on ground of. Srv HINDU LAW—RELIGIOUS ENDOWMENT—TEMPLE—SHEBAIT OF—OFFICE OF—REMOVAL FROM.

(1922) 49 I.A. 237 (253-4) = 45 M. 565 (583-4).

—English rules as to—Applicability of to manager of religious endowment. See HINDU LAW—RELIGIOUS ENDOWMENT—SHERAIT OF — OFFICE OF — REMOVAL. FROM—GROUNDS. (1921) 48 I.A. 258 (264-5) = 48 C. 1019 (1026-7).

——Grounds, 56: HINDU LAW-RELIGIOUS ENDOW-MENT-TEMPLE-SHEBAIT-OFFICE.

——Rules applicable to—Applicability of, to fiduciary relationships other than trustee. See H1NDU LAW—RELL-GIOUS ENDOWMENT — SHERAIT — OFFICE—REMOVAL FROM. (1921) 48 LA. 258 (264-5) = 48 C. 1019 (1026-7). —Suit fer — Existence of trust and of its public character admitted in courts below—Denial of its existence and of its public character in Privy Council appeal— Permussibility.

Where, in a suit for the removal from office of a gaddi machin or trustee of a wakf, the trustee conducted his case in the courts below on the footing that a wakf existed and that it was a public wakf, held that he could not, for the first time in his appeal to the Privy Council, be allowed to raise the defence that there was no wakf at all, or. that, if a wakf existed at all, it was not public but private. (Lord Share.) MUSUMAT HUSAIN HIST v. SAYAD NUR HUSSAIN SHAH. (1928) 47 C.L.J. 542 = 30 Bom. L.R. 849 = 26 A.L.J. 471 = 32 C.W.N. 769 = 29 Punj. L.R. 392 = 28 L.W. 30 = 109 I.C. 52 = A.I.R. 1928 P.C. 106 =

RIGHT TO-COMPROMISE AS TO.

54 M.L.J. 692 (P.C.).

——Validity. See HINDU LAW—RELIGIOUS ENDOW-MENT—TEMPLE—SHEBAIT—OFFICE OF -RIGHT TO. (1894) 21 I.A. 128 = 18 M. 1.

SALE OF, FOR PECUNIARY ADVANTAGE OF TRUSTEE.

——Custom sanctioning—Validity.

If the custom set up was one to sanction not merely the transfer of a trusteeship, Lut, as in this case the sale of a trusteeship for the pecuniary advantage of the trustee, their Lordships would be disposed to hold that that circumstance alone would justify a decision that the custom was bad in law (85). (Sir James W. Colvile.) RAJAH VURMAH VALIA P. RAVI VARMAH MUTHA. (1876) 4 I.A. 76=

1 M. 235 (252) = 3 Sar. 687 = 3 Suth. 382.

TRANSFER OF-CUSTOM SANCTIONING.

- General custom-Proof of-Evidence loose and tague-Effect.

In a case in which the question was as to the validity of a transfer by the trustee of a pagoda of his office and its duties, it was contended that in India, and particularly in that part of India in which the pagoda in question was situated, custom sanctioning such a transfer must prevail against the general law.

Trustee-Office of-(Contd.)

TRANSFER OF-CUSTOM SANCTIONING-(Contd.)

Held that no general custom such as that contended for could be established by very vague and loose evidence (83.) (Sir James W. Colvile.) RAJAH VURMAH VALIA z. RAVI VURMAH MUTHA. (1876) 4 I. A. 76=1 M. 235 (250)=3 Sar. 687=3 Suth. 382.

Nature of, to be proved - Custom of particular institution - General custom.

In a case in which the question was as to the validity of a transfer by the trustee of a pagoda of his office and its duties, it was said that in India, and particularly in that part of India in which the pagoda in question was situated, custom sanctioning such a transfer must prevail against the general law.

Their Lordships had grave doubts whether any such general custom could, in such cases, be set up and proved in that way. Their Lordships "conceive that when, owing to the absence of documentary or other direct evidence of the nature of the foundation and the rights, duties and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution "(83.) (Sir James W. Colvile.) RAJAH VURMAH VALIA v. RAVI VURMAH MUTHA.

(1876) 4 I. A. 76=1 M. 235 (250-1)=3 Sar. 687= 3 Suth. 382.

-Validity of.

Though by the common law of India a trustee has no power to transfer his trusteeship, a well-proved and established custom sanctioning such a transfer will prevail against the general law (83.) (Sir James W. Colvile.) RAJAH VURMAH VALIA v. RAVI VURMAH MUTHA.

(1876) 4 I. A. 76=1 M. 235 (250) = 3 Sar. 687 = 3 Suth. 382.

#### TRANSFER OF-VALIDITY OF.

--- Common law of India.

The plaintiff, called the Cherakel Rajah, claimed to be the assignee of the uraima right, or right of management, of the Tracharamana pagoda and its subordinate chetroms, under an assignment from the persons known as the urallers of that religious foundation. The question was whether the urallers were legally competent to transfer their uraima right.

It was admitted that according to the constitution of the institution the urallers for the time being were to be the karnavans or chief members of four different tarwads. It was, therefore, presumably the intention of the founder that the uraima right should be exercised by four persons representing four distinct families.

Held that the urallers had no power under what may be termed the common law of India to transfer their uraima

right to the plaintiff (83.)

The first question is, whether, independently of custom, persons holding such a trust are capable of transferring it at their own will. No authority has been laid before their Lordships to establish this proposition; principle and reason seem to be strongly opposed to such a power, and particularly to such an exercise of it as has taken place in this instance. The unknown founder may be supposed to have established this species of corporation with the distinct object of securing the due performance of the worship and the due administration of the property by the instrumentality and at the discretion of four persons capable of deliberating and bound to deliberate together; he may also have considered it essential that those four persons should be the heads of particular families resident in a particular district, open to the public opinion of that district, and having that sort of family interest in the maintenance of this religious worTRUST-(Contd.)

Trustee-Office of-(Conta

TRANSFER OF-VALIDITY OF-(Contd.)

ship, which would insure its due performance. It seems very unreasonable to suppose that the founder of such a corporation ever intended to empower the four trustees of his creation at their mere will to transfer their office and its duties, with all the property of the trust, to a single individual who might act according to his sole discretion, and might have no connection with the families from which the trustees were to be taken (80-1.) (Sir James W. Colvile.) RAJAH VURMAH VALIA 2. RAVI VURMAH MUTHA.

(1876) 4 I. A. 76=1 M. 235 (247-8)=3 Sar. 687= 3 Suth. 382.

Religious and charitable foundations—Distinction.

Quacre whether, as regards the validity of a transfer by a trustee of his office and its duties, there is any distinction between a religious and a charitable foundation (82.) (Sir James W. Celvile.) RAJAH VURMAH VALIA v. RAVI VURMAH MUTHA. (1876) 4 I.A. 76=3 Bar. 687=

1 M. 235 (249)=3 Suth. 382.

## Trustee-Person in position of.

-See Limitation Act of 1908-S. 10; ART. 134.

## Trustee—Person not entitled to benefit of trust— Exclusion of.

Duty as to—Failure to exclude—Injunction restraining those persons from sharing benefit—Suit by beneficiaries for—Right of Trustee not made party. See TRUST— PERSONS NOT ENTITLED TO BENEFIT OF.

(1925) 53 I. A. 42 (56.7)=3 Rang. 582.

## Trustee-Purchase by -- Validity of-Rules applicable to.

Applicability of, to purchases by shebait of religious endowment. See HINDU LAW—RELIGIOUS ENDOW-MENT—SHEBAIT OF—PROPERTY OF ENDOWMENT—PURCHASE BY SHEBAIT OF—VALIDITY.

(1921) 48 I. A. 258 (265-6)=41 C. 1019 (1028-9).

## Trustee-Receiver-Manager.

-Distinction.

A receiver and manager by virtue of his appointment has no estate in the property he is called upon to control; he possesses powers over it but not an interest in it, and the appointment of others in his place would by itself effect no transfer of ownership. A trustee, on the other hand, is a person in whom the property is absolutely vested (232.) (Lord Buckmaster.) MUHAMMAD RUSTAM ALI v. MUSSTAO IHUSAIN. (1920) 47 I. A. 224=42 A. 609 (618)=

(1920) M. W. N. 665 = 18 A. L. J. 1089 = 12 L. W. 539 = 28 M. L. T. 220 = 57 I. O. 329 = 39 M. L. J. 263.

## Trustee -Relationships covered by word.

The word "trustee" covers a very large number of relationships, involving different obligations; the word "trust", therefore, may be so used that it is intended to apply only to one class of such duties. (Lord Buckmaster.) PEARY MOHAN MUKERJI r. MANOHAR MUKERJI.

(1921) 48 I. A. 258 (265) = 48 C. 1019 (1028) = 23 Bom. L. R. 913 = 14 L. W. 104 = (1921) M. W. N. 554 = 19 A. L. J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 =

26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M. L. T. 24 = (1922) P. C. 235 = 41 M. L. J. 68.

Trustee -Religious Endowment-Manager of.

Trustee if a. See HINDU LAW-RELIGIOUS ENDOWMENT-IDOL-SHEBAIT OF-TRUSTEE.

(1921) 48 I. A. 802 (311)=44 M. 831 (840).

Trustee-Religious trust-Trustee of-Appointment

-Considerations which ought to weigh with Court in matter of. See TRUST-RELIGIOUS TRUST-TRUSTEES (1921) 49 I. A. 100 (107) = 49 C. 459 (468.)

Trustee-Renunciation or failure to act by a

-A trust cannot be said to fail because one of the trustee had renounced or had not acted, especially where the will distinctly provides for the case of a trustee not acting, and gives a directory power to fill up the number of trustees when required. (Mr. Justice Willer.) JUTTEN-DROMOHUN TAGORE D. GANENDROMOHUN TAGORE.

(1872) Sup. I. A. 47 (72)=9 B. L. R. 377= 18 W. B. 359 = 3 Sar. 82 = 2 Suth. 692.

Trustee-Suit by-Compromise improper of-Addition of parties to protect interests of beneficiaries.

Propriety of, See HINDU LAW—RELIGIOUS-ENDOWMENT—TEMPLE—SHEBAIT OF—SUIT BY. (1908) 35 I. A. 176 = 31 M. 236.

Trustee-Trust deed-Trustee under.

-See TRUST-TRUST DEED-TRUSTEE UNDER.

Trustee-Trust property.

ADVERSE POSSESSION OF.

-Possibility of.

In a case in which the High Court held that, though two persons had come into possession of property under a will which created a trust in respect thereof and had recognised the trust of the property which had come into their possession had been by them appropriated, from the first, to their own purposes, and had been so long held by them adversely to the trust title, that one of them could not allege that there was no beneficial interest in the other transmissible by inheritance, held that the view of the High Court was in the teeth of Ss. 63 & 64 of the Trusts Act, under which no trustee could acquire a title against the trust by such an appropriation (21.) (Sir Richard Couch.) BITTO KUN-(1897) 24 I. A. 10= WAR v. KESHO PERSHAD. 19 A. 277 (291) = 1 C, W. N. 265 = 7 Sar. 131.

ADVERSE TITLE TO-SETTING UP OF.

Mismanagement of trust-Misappropriation of trust funds-Removal from office on ground of. See MAHO-MEDAN LAW-WAKE - MUTWALL - REMOVAL FROM OFFICE OF-GROUNDS-ASSERTION OF ETC.

(1928) 54 M. L. J. 692.

-Permissibility.

A person who executes a solemn instrument and accepts the management of property on the conditions therein contained is not at liberty to repudiate the trust thereby imposed on him and to set up an adverse title in himself or in another. (Lord Macnaghten.) PARSOTAM GIR v. NAR-(1899) 26 L. A. 175 (181)= BADA GIR. 21 A. 505 (512) = 3 C. W. N. 517=

1 Bom. L. B. 700 = 7 Sar. 538.

The appellant, who was the only son of a deceased Hindu, was one of the executors and trustees named in his will and sole residuary legatee. He joined in obtaining probate. He took upon himself the management of the estate and possessed himself of all the assets. For some years he acted in execution of the trusts of the will, Called upon to account and charged with various breaches of trust he now asserts that the will was wholly inoperative and that the entire estate was joint family property, and that it belongs to him in his individual capacity by right of sur-vivorship.

To such a contention advanced under such circumstances it would be a sufficient answer to say that no person who TRUST-(Contd.)

Trustee-Trust property-(Contd.)

ADVERSE TITLE TO-SETTING UP OF-(Contd.)

has accepted the position of trustee and had acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. (136.) (Lord Mainaghten.) SRINIVASA MOORTHY v. VEN-KATA VARADA IYENGAR. (1911) 38 I. A. 129=

34 M. 257 (265) = 15 C. W. N. 741 = 13 Bom. L. R. 520 = (1911) 2 M. W. N. 375 = 14 C. L. J. 64 - 10 M. L. T. 263 - 8 A. L. J. 774 = 11 I. C. 447 = 21 M. L. J. 669.

APPLICATION TO ALIEN CHARITY OF, OR OF INCOME OF.

-Breach of trust. See Under this very Sub-head -INCOME OF.

CORPUS OF-ATTACHMENT AND SALE OF, IN EXECU-TION OF PERSONAL DECREE AGAINST TRUSTEE.

Validity-Property devised upon trust for performance of religious duties—Beneficial interest in surplus income—Trustee having—Effect. See TRUST—RELIGIOUS TRUSTS-PROPERTY DEVISED UPON TRUST FOR

(1887) 15 I.A. 1 (9-10) = 15 C. 329 (339-40.)

FREEDOM FROM TRUST OF-PLEA OF,

Onus of Proof of.

PURCHASE ETC.

The title being one founded on trust and the contention of the holders being that it is not now in their hands subject to the trusts, prima facie, at least, attaching to it, the onus of the proof was on them (307.) (Sir Robert Phillimore.) JUGGUT MOHINI DOSSEE v. MUSSUMAT SOOKHEE. MONEY DOSSER. (1871) 14 M. I. A. 289=

10 B. L. R. 19 P. C. =17 W.R.P. C. 41 = 2 Suth. 512 = 3 Sar. 23.

INCOME OF - APPLICATION OF, TO ALIEN TRUST.

-Breach of duty if. See HINDU LAW-RELIGIOUS ENDOWMENT-SHEBAIT OF-PROPERTY OF ENDOW-MENT-APPLICATION OF, ETC.

(1917) 44 I.A.147 (150) = 40 M. 709.

MONEY BORROWED ON SECURITY OF-PURCHASE WITH Ownership of property purchased-Loan paid by trustee-Credit for, in account with certai que trust-Right of. See HINDU LAW-RELIGIOUS ENDOWMENT. -ASTHAL - MOHUNT OF-PROPERTY OF ASTHAL-

(1877) Bald. 140 (146-7.) PRIVATE PROPERTY OF TRUSTEE-ONUS OF PROOF OF.

-Origin of property showing it to be trust property. See HINDU LAW-RELIGIOUS ENDOWMENT-TEMPLE PROPERTY OF-PRIVATE PROPERTY OF TRUSTEE -ONUS OF PROOF. (1922) 49 I. A. 237 (246)= 45 M. 565 (575-6.)

PURCHASE OF.

-Another - Purchase with-Purchase benami for -Validity of.

The reason for the rule against a trustee purchasing for himself property held by him as trustee applies equally to a purchase of that property by him secretly in his own name for the benefit of another and to a purchase thereof by the trustee for himself and another jointly.

Where a decree held by a trustee as such was purchased for the benefit of himself and another jointly, held therefore that the sale should be set aside in its entirety and could not be allowed to stand as to the half for the benefit of the third party (24.) (Sir Barnes Peacock.) MOOKERJEE v. (1874) 2 I. A. 18=14 B. L. R. 276= MOOKERJEE

22 W. B. 6-3 Sar. 408-3 Suth. 53

Trustee-Trust property-(Contd.)

PURCHASE OF-(Contd.)

-Bencheiaries sai juris-Purchase with-Validity

A trustee for sale cannot purchase; he cannot purchase because the same person cannot be both vendor and purchaser, and he who acts for another cannot also act for himself. But even if he be not a trustee for sale, if in any capacity he is trustee of the estate, although his incapacity to buy is not absolute and is subject to different limitations, it is equally well established. A trustee may indeed acquire from beneficiaries who are mi juris an estate in which they are interested, but he can only do this if he has made the fullest disclosure to them of all the relevant and material facts within his knowledge affecting or that might affect the value and condition of the estate and the parties are at arm's length the cestus que trust knowing that he is dealing with the trustee. Otherwise the purchase is bad, and it is had because any person who occupies a fiduciary relationship may be able by virtue of his position to acquire information with regard to the trust estate which he is not permitted to use for his own benefit. (Lord Buckmaster.) PEARY MOHAN MUKERJEE D. MONOHAR MUKERJEE

(1921) 48 I. A. 258 (265) = 48 C. 1019 (1027-8) = 23 Bom. L. R. 913 = 14 L. W. 104 = (1921) M. W. N. 554 = 19 A. L. J. 773 = 26 C. W. N. 133 = 2 P. L. T. 725 = 62 I. C. 76 = 30 M.L.T. 24 = A.I.R. (1922) (P.C.) 235 = 41 M.L.J. 68

-Rule against-Basis of-Applicability of - Conditions, See FIDUCIARY RELATIONSHIP - PERSON IN (1923) 50 I. A. 162 (171-2)= -PURCHASE BY, ETC. 4 Lah. 284.

-Rule against-Reason for.

One of the reasons for setting aside a purchase by a trustee of property held by him as trustee is that the purchaser is presumed from his position to have better means than the vendor has of ascertaining the value of the property purchased (24.) (Sir Barnes Peacock.) MOOKERIEE P. MOOKERJEE. (1874) 2 I. A. 18=14 B. L. B. 276= 22 W. R. 6 = 3 Sar. 408 = 3 Suth. 53.

REVENUE SETTLEMENT OF, AS PRIVATE PROPERTY OF TRUSTEE.

-Effect of.

A Shebait cannot get rid of his shebait title and possession by the machinery of a mere settlement for revenue, though it was in terms made with him as a private person. Such a settlement cannot divert and destroy trusts to which the settlor was subject (305.) (Sir Robert Phillimore.) JUGGUT MOHINI DOSSEE :: MUSSUMAT SOOKHEEMONEY DOSSEE. (1871) 14 M. I. A. 289 = 10 B. L. R. 19 P.C. = 17 W. R. P. C. 41 = 2 Suth. 512 = 3 Sar. 23.

Trustee-Will-Trustee under.

-Account from - Heir-at-law's right to. See ACCOUNTS-HEIR AT-LAW-WILL OF DECEASED.

(1872) Sup. I. A. 47 (83). -Heir at-law's suit against-Performance by trustee of trusts under will-Allegations inconsistent with-What amount to. See DECEASED-HEIR-AT-LAW-WILL OF DECEASED-TRUSTEES UNDER. (1872) Sup. I.A. 47 (83.)

## Trust property.

(See also TRUST-TRUSTEE-TRUST PROPERTY). -Following of-Suit for-What is a, See (1) LIMI-TATION ACT OF 1908-S. 10-TRUST PROPERTY.

(1921) 49 I. A. 37 (43.)

AND (2) LIMITATION ACT OF 1908 - S 10-WORDS IN-FOR THE PURPOSE OF ETC.

TRUST-(Contd.)

Trust property-(Contd.)

-Revenue sale of-Effect on trust of, See REVENUE SALE-TRUST ANTECEDENT ON PROPERTY SOLD AT. (1871) 14 M. I. A. 289 (305).

Void trust-Estate created through medium of.

-Validity of.

Sa: HINDU LAW-WILL-TRUST-VOID TRUST. (1872) Sup. I. A.47 (71.)

#### TRUST ACT II OF 1882.

-(See also TRUST.)

-Scope of -Wakf and Hindu Religious Endowments

-Exemption of Reason for.

It was in view of the fundamental difference between the judicial conceptions on which the English law relating to trusts is based and those which form the foundations of the Hindu and the Mahomedan systems that the Indian Legislature in enacting the Indian Trusts Act (II of 1882) deliberately exempted from its scope the rules of law applicable to wakf and Hindu religious endowments (312-3.) (Mr. Ameer Ali.) VIDYA VARUTHI THIRTHA v. BALUSAMI (1921) 48 I. A. 302-44 M. 831 (841)= AIYAR.

(1921) M. W. N. 449 = A.I.R. 1922 P. C. 123 = 15 L. W. 78=30 M. L. T. 66-26 C. W. N. 537= (1922) Pat. 245 = 20 A. L. J. 497 = 24 Bom. L. R. 629 = 65 I. C. 161 = 41 M. L. J. 346.

-Company-Debenture-holder in-Sale by, on bebehalf of Company as well as of debenture-holders-Purchase at, by debenture-holder (seller) himself-Validity of. See FIDUCIARY RELATIONSHIP - PERSON IN-PUR-(1903) 50 I. A. 162 (171-2)= CHASE BY, ETC. 4 Lah. 284.

-Co-sharers-Revenue sale of joint estate-Purchase fraudulent by one sharer at-Remedy of others in case of, See CO-SHARERS-REVENUE SALE OF JOINT ESTATE.

(1916) 44 I.A. 30=44 C. 573.

Executor-Purchase by, of property held by him in trust for benefit of himself and others, from co-executor-Invalidity of-Setting aside of, in suit by those others-Refund of plaintiff's share of consideration paid-Necessity. See EXECUTOR-PURCHASE BY, OF PROPERTY, ETC. (1874) 2 I.A. 18 (23-4).

-Fiduciary position - Person in-Purchase by, of property in respect of which he is in that position. See FIDUCIARY POSITION-PERSON IN-PURCHASE BY, ETC. (1923) 50 I.A. 162 (171-2)=4 Lah. 284.

-Legal practitioner - Mortgage suit - Decree in-Transfer of, obtained by pleader for mortgagor benami in name of his wife-Purchase by her at sale in execution after obtaining leave to bid-Validity of transfer and of purchase- Leave to bid obtained and purchase made without disclosing fact of wife being only benamidar. See LEGAL PRACTITIONER—MORTGAGE SUIT—DECREE IN. (1923) 51 I.A. 24 = 51 C. 299.

-Mortgage-Usufructuary mortgage-Mortgaged prope-ty-Mortgagee's purchase of See MORTGAGE-USU-FRUCTUARY MORTGAGE-MORTGAGEE UNDER-PUR-CHASE BY.

-Mortgaged property - Mortgagee's purchase of-Effect of. See MORTGAGE-MORTGAGED PROPERTY-MORTGAGEE'S PURCHASE OF.

-Principle of -Applicability of, to cases not governed

The consequences which ensue from a person in a conf-(1883) 10 I. A. 90 (96)=6 A. 1 (9). dential position making use of that position to obtain an

## TRUST ACT II OF 1882-(Contd.)

S. 88-(Contd.)

advantage over the person with whom he is in confidentiality are embodied in S. 88 of the Indian Trusts Act. That Act does not apply to the part of India with which there is here concern, but the ordinary equitable conditions which are applicable come to the same result. (Lord Funcdin). NAGENDRABALA DASI v. DINANATH MAHISH.

(1923) 51 I.A. 24 (267) - 51 C. 299 =
A.I.R. 1924 P. C. 34 = (1924) M. W. N. 155 =
22 A. L. J. 177 = 19 L. W. 349 = 33 M.L.T. 472 =
10 O. & A.L.R. 408 = 26 Bom. L. R. 515 =
2 Pat. L.R. 96 = 29 C. W. N. 491 = 81 I. C. 752 =
46 M.L.J. 532.

Trustee — Trust property — Purchase of. Ser TRUST—TRUSTEE—TRUST PROPERTY—PURCHASE OF.

#### S. 90

——Co-sharers—joint estate — Revenue sale of — Purchase fraudulent by one sharer at—Remedy of others in case of. See Co-Sharers—Revenue Sale of Joint ESTATE. (1916) 44 I. A. 30=44 C. 573.

— Mortgagees prior and subsequent—Prior mortgagee—Sale by, under power of sale conferred by mortgage—Subsequent mortgagee's purchase at — Effect of Sor MORTGAGE—PRIOR AND SUBSEQUENT MORTGAGES—PRIOR MORTGAGEE—SALE BY, UNDER POWER OF SALE CONFERRED BY MORTGAGE.

(1879) 6 I.A. 145 (160) = 5 C. 198 (211).

——Trustee—Purchase by, with money borrowed upon trust property—Ownership of property purchased. See TRUST—TRUSTEE—TRUST PROPERTY—PURCHASE BY, ETC. (1877) Bald. 140 (146-7).

## ULAVADAI MIRASIDAR.

Meaning of Decision of case rested on Propriety.

The Judges of the High Court translate the words "ulavadai mirasidars" as "persons with an hereditary right to cultivate"; but the Subordinate Judge says that, although the meaning of the words taken separately is clear enough, "the meaning of both the words put together is not explained," nor does the combination find a place in Wilson's Glossary. The words do not appear to have a well-established meaning. It would be extremely unsatisfactory to rest the decision in a case of importance on a vernacular expression of doubtful signification. (Six Andrew Scoble.)

SEENA PENA REENA SEENA MAYANDI CHETTIAR :
CHOCKALINGAM PILLAY. (1904) 31 I. A. 83 (92)=
27 M. 291 (298-9) = 8 C.W.N. 545 = 8 Sar. 587 =
14 M.L.J. 200.

#### UMPIRE.

See ARBITRATION-UMPIRE.

## UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912).

Management by Court of Wards under-Order directing assumption of-Validity of - Jurisdiction of

Ss. 8, 11 and 12 of the United Provinces Court of Wards Act of 1912, and Ch. VII thereof, which contains Ss. 53 to 60 all point to what is a stringent provision that no one is to investigate the motives or review the discretion of the governing body which is being dealt with, or to question what it has done in the Courts (498-9). (Viscount Haldane.) NARINDRA BAHADUR SINGH 2: OUDH COMMERCIAL BANK, LTD. (1921) 48 LA. 494

43 A. 478 (482) = 26 C.W.N. 326 = L.B. 3 P.C 25 = (1922) M.W.N. 61 = A.I.B. 1922 P.C. 1 = 64 I.C. 187 = 24 O.C. 183 = 42 M.L.J. 58.

## UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

advantage over the person with whom he is in confidentia.

S. 32 (2)—Entry in register under, and not in lity are embodied in S. 88 of the Indian Trusts Act. That clause (e)—Dispute as to—Decision of Board on—Privy Act does not apply to the part of India with which there is Council appeal from—Right of.

The first respondent, a thikadar registered under the United Provinces Land Revenue Act, 1901, purported to transfer his thika or lease to the second and third respondents. The second and third respondents then applied for mutation of names. On notice of that application being given to the appellant as the superior proprietor, he objected that the thika had been forfeited by the transfer, that the transferees were at most more tenants, and that they were not entitled to be entered either as thikadars or as matahatdars. The Assistant Collector upheld that contention and directed the second and third respondents to be registered as tenants. The first respondent thereupon sued the second and third respondents in the Civil Court and obtained a decree by consent declaring that his gift to them was incomplete and that no title passed. He then appealed to the Deputy Commissioner, who ordered the second and third respondents to be registered as thikadars. That order, on appeal by the appellant, was reversed by the Commissioner, who restored the order of the Assistant Collector. On appeal by the first respondent from that order of the Commissioner, the Board of Revenue, after making the second and third respondents parties in the appeal to it, held that the transfer in their favour was invalid and directed that the name of the first re-pondent should again be entered as thikadar. On appeal to His Majesty in Council from that order of the Board of Revenue, held that the appellant had no right of appeal to His Majesty in Council.

The dispute was about an entry in the register mentioned under cl. (a) and not under cl. (c) of S. 32 of the Land Revenue Act, and disputes about entries in register maintained under cl. (a) are to be decided, not in accordance with the provisions of S. 42, but in accordance with the provisions of S. 40 of the Act, which does not make any of the provisions of the C.P.C. applicable.

All the Collector could do besides amending the register after the summary inquiry under S. 40 of the Act was to put the successful party into possession, and his order could not debar the unsuccessful party from asserting his rights by suit in a Civil Court. Hence there is no provision of law making the summary inquiry under S. 40 subject to the C.P.C. so as to render the order made by the Board of Revenue in such an inquiry appealable to His Majesty in Council, (Sir John Wallis.) UDIT NARAYAN SINGH v. MUBARAK ALL. (1928) 56 I.A. 86 e 51 A. 358 =

MURARAK ALI. (1928) 56 I. A. 86 = 51 A. 358 = 27 A. L. J. 81 = 13 R. D. 159 = 114 I.C. 577 = 49 C.L.J. 406 = 30 L.W. 246 = 6 O.W.N. 915 = A. I. R. 1929 P.O. 75 = 57 M.L.J. 13.

-S. 32 (a) -Register of proprietors under-Person to be entered in - Thikadar referred to in S, 3 (10) of Oudh Rent Act if a.

A thikadar, who is referred to in S. 3 (10) of the Oudh Rent Act, is clearly a person in possession of proprietary rights under a lease within the meaning of the explanation to S. 32 of the United Provinces Land Revenue Act of 1901, and so to be entered in the register of proprietors under cl. (a) of that section (91). (Sir John Wallis.) UDIT NARAYAN SINGH v. MUBARAK ALI.

(1928) 56 I.A. 86=51 A. 359=27 A.L.J. 81= 13 R.D. 159=114 I.C. 577=49 C.L.J. 406= 30 L. W. 246=6 O. W. N. 915= A.I.B. 1929 P.C. 75=57 M.L.J. 13.

- S. 32 (e)-Register maintained under-Persons entitled to be entered under.

Proprietors and under-proprietors and those claiming under them by lease or mortgage are not to be entered in

## UNITED PROVINCES LAND REVENUE ACT (III VICE-ADMIRALTY REGULATION OF 1832. OF 1901)-(Contd.)

the register maintained under cl. (c) of S. 32 of the United Provinces Land Revenue Act of 1901, except in so far as they themselves actually occupy or cultivate land in the village, and it cannot otherwise include persons in possession of proprietary rights under a mortgage or lease such as a thikadar (91). (Sir John Wallis.) UDIT NARAYAN SINGH P. MUBARAK ALL (1928) 56 I. A. 86=

51 A. 359=27 A. L. J. 81=13 R.D. 159= 114 I. C. 577=49 C.L.J. 406=30 L.W. 246= 6 O. W. N. 915 = A.I.R. 1929 P.C. 75 = 57 M.L.J. 13.

-S. 42-Dispute as to entries in register maintained under S. 32 (e) of Act-Order of Collector on-Appeal from-C.P.C. provisions-Applicability of.

Quaere whether S, 42 (which applies the provisions of C.P.C. to the trial of particular disputes as to certain entries to be made in the register maintained under cl. (e) of S. 32 of the Act) merely directs the Collector in the trial of the dispute to observe the provisions of the C.P.C., and does not provide that that procedure should be observed as appeals from his order (90, 92). (Sir John Wallis). UDIT NARAYAN SINGH : MUBARAK ALL

(1928) 56 .A. 86 = 51 A. 359 = 27 A. L. J. 81 = 13 R.D. 159=114 I.C. 577=49 C.L.J. 406= 30 L.W. 246=6 O.W.N. 915= A I.R. 1929 P.C. 75 = 57 M.L.J. 13.

#### USURY.

-Effects of, on well-being of community. See COM-MUNITY-WELL-BEING OF.

(1917) 34 M. L. J. 361 (369).

-Mahomedan Law-Usury. See MAHOMEDAN LAW -USURY.

-See BENGAL REGULATIONS-INTEREST REGULA-TION XV OP 1793.

## USURY ACT XXVIII OF 1855.

-Effect of, on Mahomedan law relating to usury. See MAHOMEDAN LAW-USURY.

(1916) 43 I. A. 294 (300) = 38 A. 581 (585-6).

## VENDOR AND PURCHASER

—Sce all cases under SALE.

## VERNACULAR DEED.

-Translation of-Official translation-Translation by Indian Courts -Conflict between-Translation adopted by Privy Conneil in case of. See DEED-CONSTRUCTION OF -VERNACULAR DEED.

## VERNACULAR WORD.

----Doubtful signification-Word of-Decision of case rested on-Propriety of. See ULAVADAI MIRASIDAR. (1904) 31 I.A. 83 (92) = 27 M. 291 (298-9).

Meaning of-Indian Courts-Opinion of-Value

attached to, by Pricy Council.

It is a matter of extreme difficulty for their Lordships here to give with confidence decisions as to the exact meaning of words in a language with which they are unfamiliar, and they always place the greatest reliance upon the learned judges in India for the purpose of affording them an exact and accurate interpretation of any word that may be in dispute. (Lord Buckmaster). BAWA MAGNI-RAM SITARAM 7. KASTURBHAI MANIBHAI.

(1921) 49 I.A. 54 (57-8) = 46 B. 481 (486) = 26 C.W.N. 473 = 20 A.L.J. 371 = 35 C.L.J. 421 = 24 Bom. L. R. 584=30 M.L.T. 268= (1922) M.W.N. 319 = A. I. R. 1922 P.C. 163 = 66 I.C. 162=42 M.L.J. 501.

-R. 35. See ADMIRALTY - VICE-ADMIRALTY REGULATION OF 1832-R. 35.

#### VILLAGE

-Aurudigarai village. See MADRAS LAND TENURES (1923) 51 I. A. 83 (93)= -TANJORE DISTRICT. 47 M. 337.

-Ekabhogam village. See MADRAS LAND TENURES -TANJORE DISTRICT-EKABHOGAM VILLAGE.

(1923) 51 I.A. 83 (93)=47 M. 337.

-Indian village-What is.

An Indian village or mauza is not a mere village in the sense of an aggregation of houses or huts, with the land actually cultivated by its inhabitants. It is the division of a Pergunna, and may consist of dwellings, of lands cultivated, and of a large extent of forest in which the rights of a zemindar may co-exist with rights belonging to the villagers (48-9). (Str James Colvile). SHEIKH ZAHU-RUDDIN P. COLLECTOR OF GORUCKPORE.

(1870) 4 B.L.R. 36=13 W.B. P. C. 31= 2 Sar. 454 = 2 Suth. 314.

-Pasangurai village. See MADRAS LAND TENURES -TANJORE DISTRICT.

(1923) 51 I. A. 83 (93)=47 M. 337.

-Rokkaguthagai miras egabhogam village-Meaning of. See ROKKAGUTHAGAI MIRAS EKABHOGAM VILLAGE. (1923) 51 I.A. 83 (95)=47 M. 337.

-Samudayam village. See MADRAS LAND TENURES (1923) 51 I.A. 83 (93)= -TANJORE DISTRICT. 47 M. 337.

-Share in-Value of-Value of component parts if a fair test of. See HINDU LAW-WIDOW-SALE BY-PRICE FOR-FAIRNESS OF-TEST.

(1922) 16 L.W. 478 (483-4).

-Tank of-Repair of-Exclusive right of some of villagers-Right to exclude other villagers from contributing towards cost of repair-Proof of. See TANK-VIL-(1888) 16 I.A. 48=12 M. 241. LAGE TANK.

-Tank common property of-Repair of, at their sole cost-Right of some villagers to effect, to exclusion of others-Claim to-Maintainability. See RIGHT-OBLI-(1888) 16 I. A. 48 (52)= GATION CORRESPONDING. 12 M. 241.

-Waste tands of-Pasturage right over, of village cultivators-Presumption of legal origin for-Condition-Decree declaring right-Reservation in. of right of owners to cultivate and improve lands. See EASEMENT-VILLAGE (1904) 31 I.A. 75=31 C. 503.

## VILLAGE COMMUNITY.

Meaning of. See OUDH ACTS-LAWS ACT OF (1929) 56 I.A. 356=4 Luck. 421. 1876-S. 5.

See PUNJAB LAWS ACT XII OF 1878-SS. 10, 12. (1903) 30 I A. 89=30 C. 635,

-Minor members of-Representation of, in matters affecting all members of community-Right of adult members as regards-Appointment as guardians through Court -Necessity.

Where it was contended that infants, who were some of the members of a village community, could not properly be represented in the matter of a purchase on behalf of the village except through guardians properly appointed through the Court, held that it would require very strong and cogent reasons to compel their Lordships to hold that an arrangement so extremely reasonable and wise, and so much in the interest of all the villagers as that effected, by appointing, on behalf of the whole village, two or three trusted and res-

## VILLAGE COMMUNITY-(Contd.)

ponsible agents to act on their behalf should in such a matter be held to be bad, simply because one or more of the villagers happened to be an infant. (Lord Buckmaster.)

IDRIS v. MRS. JANE SKINNER. (1918) 56 LC. 723=

82 P.R. 1919 = 45 P.W.R. 1919.

Followed in. (Lord Shaw.) RIKHI RAM DHANPAT

RAI. (1928) 55 I. A. 20

(1928) 55 I. A. 266 (272) = 110 I.C. 1 = 48 C. L. J. 158 = 33 C. W. N. 190 = A.I.R. 1928 P.C. 190.

## VIZAGAPATAM AGENCY RULES (CIVIL JUS-TICE).

No appeal lies to His Majesty in Council from an order passed by the High Court allowing an application under Rule 13 of the Vizagapatam Agency Rules (Old Rules) and in effect directing the Court below to review its judgment. (Viscount Dunedin.) SRI RAJAH NALLAPARAJU MIRJA ACHUTARAMARAJU v. PERRAJU.

(1929) 34 C. W. N. 397 = 32 Bom. L. R. 481 = 51 C. L. J. 76 = 31 L. W. 199 = = 121 L. C. 227 = A. I.R. 1930 P. C. 29 = 58 M. L. J. 101.

#### WAGERS ACT XXI OF 1848.

Retrospective operation - Contracts sucd upon -

Applicability to.

Wagers Act XXI of 1848 is not to be construed as affecting existing contracts; at all events, not those contracts on which actions have already been commenced (126). (Mr. Baron Parke.) DOOLUBDASS PETTAMBERDASS F. RAMLOIL THACKOORSEYDASS. (1850) 5 M.I.A. 109 = 7 Moo. P. C. 239 = Perry O. C. 232 = 1 Sar. 403.

#### WAIVEB.

—Irregularity—Waiver of. See IRREGULARITY — WAIVER OF.

Jurisdiction—Conditions imposed by statute on— Waiver of—Effect. See BOMBAY REGULATIONS—PAN-CHAYAT REGULATION VII OF 1827—S. 3 (1)—JURIS-DICTION ETC. (1855) 6 M. I. A. 134 (161).

Landlord—Tenants different of different holdings— Ejectment suit single against—Evidence applicable to one tenant—Use of, as regards another—Irregularity as to— Waiver of Sec. C. P. C. OK 1908—O. 2. K. 3.

Waiver of. See C. P. C. OF 1908—O. 2, R. 3.

(1919) 47 I. A. 76 (86-7) = 43 M. 567 (578).

Revenue sale—Irregularity in—Waiver of—Appro-

priation of surplus purchase money by proprietor if amounts to. See BENGAL REGULATIONS—GOVERNMENT INDEMNITY REGULATION XI OF 1822—S. 6 (3.)

(1842) 3 M. I. A. 42 (97-8.)

Security for costs—Furnishing by appellant of— Waiver by respondent of—Filing answer to appeal before objecting to want of security for costs if amounts to. Sec BENGAL REGULATIONS—SECURITY FROM FOREIGN LITIGANTS REGULATION XVI OF 1829.

(1850) 7 M. I. A. 431.

## WAJIB-UL-ARZ.

## Authority of.

The authority of a wajib-ul-arz is universally recognised, and in 28 A. 488 (492) P.C. it was said:— The term wajib-ul-arz in the North-Western Provinces is applied to what is considered to be the most important document contained in the official records relating to the village administration (800). (Sir Lawrence Jenkins.) DAKAS KHAN ?:

GHULAM KASIM KHAN.

24 M. L. T. 271 = 28 C. L. J.441 = 20 Bom. L. B. 1068 = 26 P. L. B. 1919 = 1 P. W.B. (Rev.) 1919 = 9 L. W. 558 = 48 I. C. 473.

## Correctness of-Presumption.

It is to be presumed, as the contrary has not been Tradition and history of devolution—Entries no shown, that the wajib-ul-arz of 1863 and the wajib-ul-arz fermer and purporting to give latter—Distinction,

## WAJIB-UL-ARZ-(Contd.)

## Correctness of-Presumption-(Contd.)

of 1870 had been properly prepared in accordance with the law then in force, and with the "Directions for Revenue officers in the North-Western Provinces of the Bengal Presidency", which had been promulgated under the authority of the Lieutenant Governor of those provinces (16). (Sir John Edger.) DIGAMBAR SINGH P. AHMAD SAID KHAN. (1914) 42 I. A. 10 = 37 A. 129 (138.9) =

17 M. L. T. 193 – 19 C. W. N. 393 – 13 A. L. J. 236 = 21 C. L. J. 237 – (1915) M. W. N. 581 – 2 L. W. 303 = 17 Bom. L. R. 393 – 28 I.C. 34 – 28 M. L. J. 556.

See WAJIB-UL-ARZ—EVIDENCE— ADMISSIBILITY IN-VALUE OF—UNAMBIGUOUS ENTRY.

(1923) 50 I. A. 196 (201) = 45 A. 413 (418).

Land Revenue Act 1876-S.17-Effect-Evidentiary

Though, under S. 17 of the Oudh Land Revenue Act, 1876, every entry in a wajib-ul-arz duly made and attested shall, until the contrary is proved, he presumed to be a correct record of the fact entered, its weight may be very slight or may be considerable according to circumstances. (Lord Collins.) PARBATI KUNWAR :: CHANDARPAL KUNWAR. (1909) 36 I. A. 125 = 31 A. 457 (475) =

10 C. L.J. 216=6 A. L. J. 767=13 C.W.N. 1073= 11 Bom. L. R. 890=12 O. C. 304=4 I. C. 25= 19 M. L. J. 605.

## Evidence-Admissibility in-Value of.

——A wajib-ul-arz has been considered to be an official record, of more or less weight according to circumstances, but still an official record, of the local customs of the district in which it is recorded. It has been received before this tribunal and elsewhere as important evidence. In 7 I.A. 63 it is stated that "these documents are entered on record in the office. They must be taken upon the evidence, which is general evidence, to have been regularly entered, and kept there as authentic wajib-ul-arz papers." In that case effect was given to the wajib-ul-arz produced (134). (Lord Hobboux) UMAN PARSHAD 2. GANDHARP SINGH. (1887) 14 I.A. 127 = 15 C. 20 (28-9) = 5 Sar. 71 = R. & J.'s No. 98.

SWAJIB-UL-ARZ — CORRECTION OF — PRE-SUMPTION—OUDH LAND REVENUE ACT, 1876.

(1909) 36 I. A. 125 = 31 A. 457 (475).

The wajib-ul-arz is cogent evidence of the rights as they existed when it was made of those holding proprietary or other rights of property within the Mauza. (Sir John Edge.) FATEH CHAND T. KISHEN KUNWAR.

(1912) 39 I. A. 247 (255) = 34 A. 579 = 12 M.L.T. 413 = (1912) M. W. N. 1065 = 14 Bom L. B. 1090 = 16 C. W. N. 1033 = 17 C. L. J. 1 = 10 A. L. J. 335 = 16 I. C. 67 = 23 M. L. J. 330.

-- Ambiguous cutry.

A custom is not established by an ambiguous statement of it in a wajib-ul-arz. (Sir John Edge.) BALGOBIND::
RADRI PRASAD. (1923) 50 I. A. 196 (201)=

45 A. 413 (418) = 26 O. C. 217 = 38 C. L. J. 302 = 33 M. L. T. 317 = (1923) M. W. N. 799 =

9 0 & A. L. R. 581 = 10 O. L. J. 368 = 21 A. L. J. 578 = A. I. B. 1923 P. C. 70 = 29 C. W. N. 465 = 74 I C. 449 = 45 M. L. J. 289.

Existing rights and customs—Entries relating to— Tradition and history of devolution—Entries narrating

## WAJIB-UL-ARZ-(Contd.)

Evidence-Admissibility in-Value of-(Contd.)

A wajib-ul-arz is a village administration paper, prepared by a village official, in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs. As such they are of considerable value in the determination of such rights and customs. But statements which merely narrate traditions and purport to give the history of devolution in certain families not even of the narrators stand in no better position than any other tradition (282), (Mr. Ameer Ali.) MURTAZA HUSAIN KHAN P. MAHOMED VASIM ALL. (1916) 43 I. A. 269 = 38 A. 552 (568) = 14 A. L. J. 1083 = 20 M. L. T. 362 = (1916) 2 M. W. N. 555 = 4 L. W. 538 = 19 O. C. 290 = 18 Bom. L. R. 884 = 25 C. L. J. 1=1 Pat L. W. 122=

-Inheritance-Custom of-Entry as to. See WAJIB-UL-ARZ-INHERITANCE.

21 C. W. N. 410 = 36 I. C. 299 = 31 M. L. J.804.

-Khesont of Village-Eridentiary value of.

Records of that character (the wajib-ul-arz and the Khewat of a village) take their place as part of the evidence in a case. They do no more. Their importance may vary with circumstances and it is not any part of the law of India that they are by themselves conclusive evidence of the facts which they purport to record. It may turn out that they are in accord with the general bulk of evidence in the case; they may supply gaps in it; and they may, in short, form a not un-important part of the testimony as to fact which is available. But to give them any higher weight than that might open the way for much injustice, and afford temptation to the manipulation of records, or even of the materials for the first entry (69), (Lord Shase.) NAGESHAR BAKSH SINGH, & GANESHA. (1919) 47 I. A. 57=

42 A. 368 (380) = 18 A.L.J. 532 = 23 O.C. 1 = 22 Bom. LR. 596 = 28 M.L.T. 5 = 56 I.C. 306 = 38 M.L.J. 521

 Oudh estate—Family custom relating to. See OUDH-OUDH ESTATE. (1898) 25 I.A. 161 (169) = 26 C. 81 (92).

-Parties' wishes as to practice which ought to prevail -Record of instead of facts of well-established custom.

There is no class of evidence that is more likely to vary in value according to circumstances than that of the Wajibul-arges.

Where, from internal evidence it seemed probable that the entries recorded in Wajib-ul-arzes connoted the views of individuals as to the practice that they would wish to see prevailing rather than the ascertained fact of a well-established custom, held that the appellate Courts in India, in holding that the custom was not proved, properly attached weight to the fact that no evidence at all was forthcoming of any instance in which the custom sought to be established had been observed. (Lord Collins.) ANANT SINGH v. (1910) 37 L. A. 191 (197) = DURGA SINGH.

32 A. 363 (373) = 12 C. L. J. 36 = 14 C. W. N. 770 = 7 A. L. J. 704 = 12 Bom. L. R. 504 = 8 M.L.T. 79 = 6 I. C. 787=13 O. C. 163=20 M.L.J. 604.

-Person signing entry-Heir of-Almiissibility in evidence against.

A Wajib-ul-arz of a village stated, under the heading "Transfer of Property and Rights of Inheritance."

"A married wife belonging to a different caste, and an unmarried wife, or their descendants will, provided they bear good conduct, be entitled to maintenance according to their scatus, and they will not be entitled to any share whether the property be partitioned or unpartitioned.

This document bore the signature, amongst others, of R. Held that the fact that R' signed it made it admissible, for what it was worth, against those who claimed as his heirs. (Sir Arthur Wilson.) SHEIKH HUB ALL P. WAZIR-UN- that the officers recorded those statements, and attested

WAJIB.UL-ARZ-(Contd.)

Evidence-Admissibility in-Value of-(Contd.) NISSA. (1906) 33 I A. 107 (115-6) = 28 A. 496 (506) = 3 C.L.J. 601 = 10 C.W.N. 778= 3 A.L.J. 712=1 M.L.T. 297.

Unambiguous entry-Correctness of-Presumption. Settlement officers in recording customs in Wajib-ularzes have to perform duties which the Government orders them to perform. One of these duties was to record customs as the Settlement Officer found them, and not as he might think they ought to be. When it is not shown by reliable evidence that the Settlement Officer neglected to perform his duty or was misled in recording a custom, and it does not appear that the statement of the custom is ambiguous, the record in a Wajib-al-are of a custom is most valuable evidence of the custom; much more reliable evidence than subsequent oral evidence given after a dispute as to the custom has arisen. (Sir John Edge.) BALGOBIND v. BADRI PRASAD.

(1923) 50 I. A. 196 (201)=45 A 413 (418)= 26 O. C. 217 = 38 C. L. J. 302 = 33 M. L. T. 317 = (1923) M.W.N. 799 = 9 O & A.L.R. 581 = 10 O.L.J. 368 = 21 A.L.J. 578 = 29 C.W.N. 465 = A. I. R. 1923 P. C. 70 = 74 I.C. 449 = 45 M. L. J. 289. Inheritance.

-Custom of-Entry as to-Person not party to wajibul-arz-Binding character of entry on-Adminibility in coidence against him-Value of.

A person who was no party to the making up of wajibud-arz, or village administration papers. made in pursuance of Reg. VII of 1822, and stating a custom by which daughters were excluded from succeeding to the inheritance of their father's estate is not bound by the statements in them, in the sense of bring concluded by them. They do not in any way estop him or her from asserting his or her right or disputing the custom which is stated in them. They are, however, receivable in evidence, and are open to be answered, and the statements in them may be rebutted (72). (Sir Mantague E. Smith). RANI LEKRAJ KUAR . r. (1879) 7 I.A. 63= BABOO MAHPAL SINGH.

5 C. 744 (754 5)=6 C.L.R. 593=4 Sar. 94= 3 Suth. 704 = B. & J's. No. 61 (Oudh).

Custom of-Statement as to-Admissibility in exidence-Reg. VII of 1822-Wazib-ul-ar: made under-Opinion or finding of Settlement Officer not appearing on face of record-Evidence Act-Ss. 35, 48.

Wajib-ul-arz or village administration papers made in pursuance of Regulation VII of 1822 stated a custom to the effect that daughters were excluded from succeeding to the inheritance of their father's estate in a particular clan-The Settlement Officer, the substitute of the Collector in that province, or his subordinate employed in making or revising the settlements, recorded the statements of persons who were connected with the villages in the pergunnah in The papers which the talook in question was situated. were authenticated by the signatures of the officers who made them. No express statement of the opinion or finding of the officers, however, appeared upon the papers.

Held, on a question as to the existence of the custom in the clan in question, that the papers were admissible in evidence under S. 35 of the Evidence Act (70-1).

Held further that, if the papers were treated as merely recording only the opinions of persons likely to know the custom, S. 48 of the Evidence Act would in that view of the entries make them admissible (71).

Quaers whether, treating the papers as recording opinions, they would be admissible under S. 49 of that Act (71).

Though there was no express statement of the opinion or finding of the officers on the face of the papers, yet the fact

## WAJIB-UL-ARZ-(Contd.)

#### Inheritance-(Contd.)

them by their signature, amounted to an acknowledgment by them that the information they contained was worthy of credit, and gave a true description of the custom (70). (Sir Montague E. Smith). RANI LEKHRAJ KUAR v. BABOO MAHPAL SINGH. (1879) 7 I.A. 63 =

5 C. 744 (753 4) = 6 C.L.R. 593 = 4 Sar. 94 = 3 Suth. 704 = R.& J.'s No. 61 (Oudh).

Exclusion from-Custom of-Entries as to-Exdentiary value of.

A totjib-ul-arz of a village stated, under the heading "Transfer of Property and Right of Inheritance-"

"A married wife belonging to a (ghair kuf) different caste and an unmarried wife, or their descendants will, provided they bear good conduct, be entitled to maintenance according to their status, and they will not be entitled to any share whether the property be partitioned or unpartitioned,"

The document commenced with words meaning "by agreement."

Held that the document did not purport to be a record of immemorial custom, and that, in the absence of other evidence to support a custom by which a ghair kmf wife and her daughter were excluded from inheritance, the entry in the unjib-ul-ar: was insufficient to establish it. (Sir Arthur Wilson.) SHEIKH HUB ALL P. WAZIR-UNNISSA. (1906) 33 I.A. 107 (115 6) P.

28 A. 496 (506) = 3 C.L.J. 601 = 10 C.W.N. 778 = 3 A.L.J. 712 = 1 M.L.T. 297.

——Land tenures – Usages connected with—Wajib-ularzes prepared under Regulation VII of 1822 and Act XIX of 1873—Distinction. See Wajib-Ul-ARZ—STA-TUTORY PROVISIONS WITH REGARD TO MAKING OF. (1906) 33 I.A. 97 = 28 A. 488 (493):

Widow of sharer dying without male issue—Gift of decoased's share by, to daughter or daughter's son to as to defeat right of brother or nephew of decoased—Right of— Descendants—Children if expland to.

The wajib-ul-arz which governed the right of succession to the property in dispute was as follows:—

The rule of inheritance is that if a sharer has children by two lawfully married wives-that is, one child by one wife and several by the other-the children by both the wives shall get equal shares, that is, one child will get possession over one half, and several children over the other half. If one wife have children, and the other be childless, both of them will hold possession of equal shares for their lifetime; after the death of the childless wife, the children of the other wife will hold possession in equal shares, If there be no male child, and any sharer or his wife make a gift of his or her share during his or her life time to his or her daughter or daughter's son, and puts her or him in possession of the same, they will remain in possession. If there remain no descendants of any sharer's son or daughter, his brothers or nephews descended from the same ancestor shall take possession of the share. A non-married wife, or children by her, shall not get anything except maintenance."

Held, affirming the courts below, that, on the right construction of the wajib-ul arz, a sharer in Hindu family property or his wife could in the absence of male issue give his or her share absolutely to his or her daughter or daughter's son, and thereby defeat the preferential right of the brother's sons of the sharer.

The intention appears to be to modify the Mitakshara law which prevails in Oudh by enabling a sharer in family property or his wife to after the course of succession by introducing a daughter or daughter's son, and their descendants male or female, in preference to brothers or nephews

## WAJIB-UL-ARZ-(Contd.)

#### Inheritance-(Contd.)

of the sharer. There is no reason for limiting the meaning of "descendants" to children, as where they are intended that word is used, and where a male is intended it is so said. It is also apparent from the provision that the brothers and nephews are to take if there remain no descendants of a son or daughter, that the gift by the wife must be of more than the interest she would take as a widow and is not, as the appellants contended, limited to that interest (46.7.) (Sir Richard Couch.) NANDI SINGH T. SITA KAM. (1888) 16 I. A. 44 = 16 C. 677 (681) = 5 Sar. 309.

## Nature of.

A wajib-ul arz or record of rights has been described by Sir Henry Maine as a detailed statement of all rights in land drawn up periodically by the functionaries employed in settling the claims of the Government to its shares of the rental. He adds that—

"The most important object of the settlement operations—not second even to adjustment of Government revenue—is to construct a record of rights, which is a detailed register of all rights over the soil in the form in which they are believed to have existed on the eve of the conquest or annexation." (800). (Sir Lawrence Jenkins.) DAKAS KHAN CHULAM KASIM KHAN. (1918) 45 C. 793 = 24 M. L. T. 271 = 28 C. L. J. 441 = 20 Bom. L.R. 1068 =

26 P. L. R. 1919-1 P. W. R. (Rev.) 1919-9 L. W. 558-48 I C. 473.

Entries in—Admissibility in evidence of—Value of.

The term anyibad-ara in the North-Western Provinces is applied to what is considered to be the most important document contained in the official records relating to the village administration. Entries therein, properly made and authenticated by the signatures of the officers who made them, are admissible in evidence under S. 35 of the Evidence Act in order to prove a family costom of inheritance, or, under S. 48, as the record of opinions as to the existence of such costom by persons likely to know of it. These ansibad-area, or village papers, are regarded as of great importance by the Government. (Sir Andrew Scoble.)

MUSSAMMAT LALLE, MURLI DHAR.

(1906) 33 I. A. 97 = 28 A. 488 (492) = 3 A. L. J. 415 = 10 C. W. N. 730 = 8 Bom. L.R. 402 = 3 C.L.J. 594 = 1 M. L. T. 171.

#### Preparation of.

Regularity in—Presumption of—Regulation VII of 1822—Wajib-ul-arz prepared under. See EVIDENCE ACT S. 114 (c)—Wajib-Ul-ARZ. (1879) 7 I. A. 63 (69) = 5 C. 744 (752.)

Statutory precisions as to-Object and effect of— Distinction—Land tenures—Usages connected with—Evidentiary value as to-Distinction.

Regulation VII of 1822, by which tortibul arres were directed to be made, was passed at the time of the introduction of a regular settlement of the land revenue into "the ceded and conquered Provinces," under which designation the districts afterwards known as "the North-Western Provinces" were at that time included. The object of the Government appears to have been to obtain a body of reliable contemporary evidence, upon matters which might afterwards come into controversy not only between the landholders and the Government, but between rival claimants to estates.

Regulation VII of 1822 was repealed, as regards the North-Western Provinces, by Act No. XIX of 1873 and it is to be observed that this Act, while providing, in the 62nd and following sections, for the maintenance of a careful

## WAJIB-UL ARZ-(Contd.)

Preparation of-(Contd.)

"record of rights," in each mahal, no longer included a record of "local usages connected with land tenures" among the particulars to be entered. It was probably considered that, during the fifty years which had elapsed between the passing of the Regulation and the Act, such usages had been sufficiently ascertained, and that it was desirable that reference should be made to the earlier records when the existence of any such usage was asserted. In later years, at any rate, attempts have been made by some proprietors to use these records as an indirect means of giving effect to their wishes with regard to the nature of their tenure, or the mode of devolution of their property after their death. When this has been the case, these records are "worse than useless, they are absolutely misleading." (Sir Andrew Scoble.) MUSSAMMAT LALI v. MURLI DHAR.

(1906) 33 L. A. 97 = 28 A. 488 (493) = 3 A. L. J. 415 = 10 C. W. N. 730 = 8 Bom. L. R. 402 = 3 C. L. J. 594 = 1 M. L. T. 171.

# Proprietor's own views as to custom—Record of, as official record of custom.

Evidentiary Value of wajib-ul-arz in case of—Effect
on. See Wajib-ul-arz—Evidence—Admissibility in

Value of — Parties' wishes etc.

--- Propriety.

The Oudh courts have stated that the proprietor has the right to enter his own views upon the village records (wajibul-arzes), and have them recorded as if they were the official records of the local customs. That is an exceedingly startling thing. It does not only render these records useless—they are worse-than useless—they are absolutely misleading, because they are evidence concocted by one party in his own interest (134-5). (Lord Hobbouse.) UMAN PARSHAD 1. GANDHARP SINGH. (1887) 14 I. A. 127=

15 C. 20 (29)=5 Sar. 71=R. & J's No. 98.

## Title-Evidentiary value as to.

Though a wajib-ul-arz does not create a title, it gives rise to a presumption in its support, which prevails until its correctness is successfully impugned (800). (Sir Lawrence Jenkins.) DAKAS KHAN 2. GHULAM KASIN KHAN.

(1918) 45 C. 793 = 24 M. L. T 271 = 28 C. L.J. 441 = 20 Bom. L. R. 1068 = 26 P. L. R. 1919 = 1 P. W. R. (Rev.) 1919 = 9 L. W. 558 = 48 L.C. 473.

WARGS.

——Murli Wargs—Warg Kumris—Warydar Kumris.
See MADRAS LAND TENURES—SOUTH CANARA.

## WASTE LANDS.

---Old wastes-Government's absolute title to-Presumption-Onus of rebutting. See CROWN - FOREST TRACTS ETC. (1924) 51 I. A. 257 (264-5) = 47 M. 572.

## WASTE LANDS ACT XXIII OF 1863.

Applicability - Lands other than those held by Government.

Held that the Sub-judge erred in holding that the procedure prescribed by the Waste Lands Act, 1863, for the sale of, or dealings with, waste lands only applied to lands held by the Government (308).

The very fact of providing special machinery to adjudicate on claims by other people to land which the Government are practically dealing with by means of sale is destructive of the idea that S. 18 of the Act is not applicable except in cases where in other Courts the Government could show it had a title (308). (Lord Dunedin.) SECRETARY OF STATE FOR INDIA v. MAHARAJA OF TIPPERA.

(1916) 43 I. A. 303 = 44 C. 328 (342) = 20 M. L. T. 549 = (1917) M. W. N. 25 = WASTE LANDS ACT XXIII OF 1863—(Contd.)

18 Bom. L. R. 1027 = 14 A. L. J. 1205 = 21 C.W. N. 291 = 5 L.W. 570 = 25 C. L. J. 425 = 38 I. C. 379.

The jurisdiction of the ordinary Courts is, under the Act, only ousted on proclamation made of the constitution of the Special Court. (Lord Duncdin.) SECRETARY OF STATE FOR INDIA D. MAHARAJAH OF TIPPERA.

(1916) 43 I. A. 303 (308) = 44 C. 328 = 20 M. L. T. 549 = (1917) M. W. N. 25 = 18 Bom. L. B. 1027 = 14 A. L. J. 1205 = W. N. 291 = 5 L. W. 570 = 25 C. L. J. 425 =

21 C. W. N. 291=5 L. W. 570=25 C. L. J. 425= 38 I. C. 379.

- Provisions of, drastic-Party pleading Act-Onus on.

The Waste Lands Act of 1863 is drastic in its character and makes a great invasion on private rights, Those pleading it must therefore bring the matter strictly within its provisions. (309). (Lord Dunedin.) SECRETARY OF STATE FOR INDIA v. MAHARAJAH OF TIPPERA.

(1916) 43 I. A. 303 = 44 C. 328 (343) = 20 M. L. T. 549 = (1917) M. W. N. 25 = 18 Bom. L. R. 1027 = 14 A. L. J. 1205 = 21 C. W. N. 291 = 5 L. W. 570 = 25 C. L. J. 425 = 38 I. C. 379.

—S. 18—Limitation under—Applicability — Invalid notice—Sale under—Owner's suit for possession in ordinary civil courts.

The provision as to the three years in S. 18 of the Act is applicable to the proceedings before the Special Court and that Court alone. The section is inapplicable to a sait for possession brought in the ordinary civil Court against the Government by a person whose lands had been sold under an invalid notice and delivered to the purchaser at such sale (Lord Dunedin.) SECRETARY OF STATE FOR INDIA v. MAHARAJAH OF TIPPERA. (1916) 43 I. A. 303 (309)=

20 M. L. T. 549=44 C. 328=

(1917) M. W. N. 25 = 18 Bom. L. B. 1027 = 14 A. L. J. 1205 = 21 C. W. N. 291 = 5 L. W. 570 = 25 C. L. J. 425 = 38 I. C. 379.

—S. 18—Sale of land under the Act—Validity— Notice of sale misleading—Proclamation of sale—Absence of proof of—Effect.

The whole of the provisions of the Waste Lands Act of 1863 beginning with S. I, as to notices to be given to the collector, advertisements, etc., clearly point to the necessity of proper intimation being given by the Government as to the proposed sale. The notice must be clear and not misleading, for otherwise how is the true owner, if such exists, to realise the necessity of coming forward?

Where the notice was quite misleading, because it advertised a sale of lands in Bijura, whereas the lands in question were certainly not in Bijura, whether they were in Bishgaon or Taraf, held that the whole proceedings failed for want of proper basis (309). (Lord Dunedin.) SECRETARY OF STATE FOR INDIA 7. MAHARAJAH OF TIPPERA.

(1916) 43 I. A. 303 - 44 C. 328 (343) = 20 M. L. T. 549 = (1917) M. W. N. 25 = 18 Bom. L. R. 1027 = 14 A. L. J. 1205 = 21 C. W. N 291 = 5 L. W. 570 = 25 C. L. J. 425 = 38 I. C. 379.

#### WATAN.

---- Nature and origin of.

In the Deccan when the Zemindar was appointed as a fiscal officer, lands were granted to him by way of additional emolument under the name of watan, the income arising from such lands being called by the same name. As the office became hereditary, the lands came into the hands of

### WATAN-(Contd.)

the next holder with the same obligation. (Mr. Ameer All.) MAHATABSINGH v. BADANSINGH.

(1921) 48 I. A. 446 (461) = 48 C. 997 (1013) = 26 C. W. N. 226 = 20 A. L. J. 443 = A.I.R. (1922) P.C. 146 = 64 I. C 194.

--- Watan lands. See WATAN LANDS.

#### WATAN LANDS.

## Adverse possession of.

- Title by Alience of lands by way of absolute as a gament - Acquisition by, against alience's successors.

The alienation of service watan lands being prohibited in the interests of the state, Quarre whether a stranger to the watan, who had got possession of service watan lands by an absolute assignment to him by the then watandar, can successfully defend a suit for possession of those Lands by a subsequent watandar by proving that after the death of the grantor he had been in undisturbed possession of the lands for a period of 12 years. (Sir John Edgs.) MADHAVRAO WAMAN SAUNDALGEKAR v. RAGHUNATH VENKATESH DESHPANDE. (1923) 50 I. A. 255 (263-4)

47 B. 798 (807.8) - 28 C. W. N. 857 - 25 Bom. L. R. 1005 - (1923) M. W.N. 689 - 33 M. L. T. 389 - A. I. R. 1923 P.C. 205 - 20 L. W. 248 - 74 I. C. 362 - 47 M. L. J. 248.

Title by Stranger's claim Suit involving Party to Secretary of State if a necessary.

Quare whether the Secretary of State for India in Council, as representing the interests and rights of the Crown in service watan lands, would not be a necessary party to a suit in which a stranger claimed that he was entitled to those lands by a right by adverse possession. (Sir John Edge.) MADHAVRAO WAMAN SAUNDALGEKAR T. RAGHUNATH VENKATESH DESHPANDE.

(1923) 50 I. A. 255 (263 4) = 47 B. 798 (808 9) = 28 C. W. N. 867 = 25 Bom. L. R. 1005 = (1923) M. W. N. 689 = 33 M. L. T. 389 = A. I. B. 1923 P.C. 205 = 74 I. C. 362 = 20 L. W. 248 = 47 M. L. J. 248.

## Alienation of.

Permanent lease if an-Bombay Regulation XVI of 1827-S. 20.

The granting by a watandar of a right of permanent tenancy in fands of his watan would undoubtedly be an alienation within the meaning of S. 20 of Bombay Regulation XVI of 1827. (Sir John Edge.) MADHAVRAO WAMAN SAUNDALGEKAR 2. RAGHUNATH VENKATESH DESH-PANDE. (1923) 50 I. A. 255 (258) = 47 B. 798 (801) = 25 Bom. L. B. 1005 = (1923) M. W. N. 689 =

25 Bom. L. B. 1005 = (1923) M. W. N. 689 = 33 M. L. T. 389 = A. I. R. 1923 P.C. 205 = 28 C. W. N. 867 = 20 L. W. 248 = 74 I. C. 362 = 47 M. L. J. 248.

Validity-Bombay Regulation XVI of 1827-St. 19, & 20-Bombay Act III of 1874-S. 5-Ffleet.

Before Reg. XVI of 1827 was passed by the Governor of Bombay in Council a watandar could, apparently without the sanction of the Government, assign or mortgage his service watan lands and could grant to any one a permanent lease of them, but the effect of Ss. 19 and 20 of that Regulation was to prohibit, in the interests of the State, all such watandars from alienating in any way the service watan lands which they held as watandars. Ss, 19 and 20 of that Regulation continued in force until they were repealed by Bombay Act III of 1874, but the repeal did not make valid any alienation of service watan lands which had been prohibited by Reg. XVI of 1827. S. 5 of Bombay Act III of 1874 was passed, as was S. 20 of Reg. XVI of 1827, in the interests of the State and not in the interests of the watandars.

#### WATAN LANDS-(Contd.)

Alienation of-(Contd.)

only. (Sir John Edge.) MADHAVRAO WAMAN SAUN-DALGERAR P. RAGHUNATH VENKATESH DESHPANDE.

(1923) 50 I. A. 255 (257.8) = 47 B. 798 (801) = 25 Bom. L. R. 1005 = (1923) M. W. N. 689 = 33 M. L. T. 389 = A. I. R. 1923 P. C. 205 = 28 C. W. N. 857 = 20 L. W. 248 = 74 I. C. 362 = 47 M. L. J. 248.

## Impartibility by custom of.

-Heet on, of ecssation of services to which lands attached.

The mere cessation of services to which watan lands are attached, which are by custom impartible, does not ordinarily destroy that custom. (Mr. Ameer Alr.) MAHATAB-SINGH v. BADANSINGH. (1921) 48 I. A. 446 (461) × 48 C. 997 (1014) = 26 C. W. N. 226 = 20 A. L. J. 443 = A. I. R. (1922) P.C. 146 = 64 I. C. 194.

## Mortgage of.

- Bombay Regl. XVI of 1827 in force-Mortgage while -Validity of against heir of zeatandar-Repeal of Regulation by 3et III of 1874-Effect.

A mortgage by a watandar of watan property, when Regulation XVI of 1827 was in force, was in its inception void against the heir of the watandar, and did not become validated against the heir by reason of the repeal of that regulation by Act III (Boenbay) of 1874 (90). (Lord Darcy.)

[ADDA] IN BRUJANGAPPAT: SWAMIRAO SHRINIVAS.

[1900) 27 I A 86 24 B 556 (561) 4 C. W. N. 512

(1900) 27 I. A. 86 - 24 B. 556 (561) - 4 C. W. N. 517 = 2 Bom. L. R. 548 - 7 Sar. 710.

- De facto watendar-Mertgage by-Validity of, against his or her heir.

B, a watandar, died in 1847, leaving two widows, K & R. K was childless, but R had a son, the appellant, who was been on September 15, 1848. In 1865, certain villages forming part of the watan lands of B, were placed in the possession of K on the terms of the Gordon Settlement, by which the services were commuted for one-fourth of the income, but the tenure continued to be watan. On September 15, 1865, K made a mortgage of the watan to the father of the respondents, who obtained possession of the property on August 31, 1875, and was in possession in November, 1877, when K died. On August 16, 1887, the appellant, who had by that time been recognised as the watandar, sued the respondents (their father having died in the interval) for a declaration that the mortgage of the villages was not binding after the death of K, and for possession.

Held that, assuming that the appellant was barred by limitation from recovering the lands as heir of his father from those claiming under K, and consequently his title as watandar from his own birth was extinguished, yet as the lands remained watan, and K was watandar de facto with all the rights and subject to all the restrictions incident to that tenure, she could not make any alienation which would be valid against her own heir whether that heir were the appellant or another, and there was nothing to preclude the appellant from asserting his title as heir of K.

The argument to the contrary seems to give greater right to possession as watandar by wrong or usurpation than would be enjoyed by a rightful watandar. (Lord Darry.)
PADAPA EIN EHUJANGAPPA P. SWAMIRAO SHRINIVAS.

(1900) 27 I. A. 86 = 24 B. 556 = 4 C.W.N. 517 = 2 Bom. L. R. 548 = 7 Sar, 710.

Void or Voidable-Heir's right to question validity
of mortgage-Acquiescence in mortgage-Estoppel by reason

was passed, as was S. 20 of Reg. XVI of 1827, in the interests of the State and not in the interests of the watandars his heir and not merely voidable, and, therefore, no amount WATAN LANDS-(Centd.)

Mortgage of -(Contd.)

of acquiescence short of the period of limitation would give it validity as against such heir. (Lord Davey.) PADAPA BIN BHUJANGAPPA =. SWAMIRAO SHRINIVAS.

(1900) 27 I A. 86 = 24 B. 556 = 4 C. W. N. 517 = 2 Bom. L. R. 548 = 7 Sar. 710.

## Tenants of-Permanent tenancy.

 Acquisition by adverse possession of, against watandar—Possibility of.

Held that the defendants, who and whose predecessors in title always continued to be and were tenants of service watan lands could not acquire any title to a permanent tenancy in the lands by adverse possession as against the watandars from whom they held the lands (264). (Sir John Edge.) MAVHAVRO WAMAN SAUNDALGEKAR P. RAGHUNATH VENKATESH DESHPANDE.

(1923) 50 I. A. 255 (264) = 47 B. 798 (809) = 25 Bom. L. R. 1005 = (1923) M. W. N. 689 = 33 M. L. T. 389 = A. I. R. 1923 P. C. 205 = 28 C.W.N. 857 = 20 L. W. 248 = 74 I. C. 362 = 47 M.L.J. 248.

WATER.

See RIVER, RIPARIAN OWNER & WATERCOURSE.
WATERCOURSE.

(See also RIPARIAN OWNER.)

#### Artificial Channel.

—Right to take water from, for irrigation purposes— Lost grant of —Presumption of, from long possession. See EASEMENT—LOST GRANT OF.

(1919) 46 I. A. 302 (311) = 43 M. 529 (538).

Artificial Watercourse.

—Artificial watercourse in origin—Owner of land on bank of—Rights which a riparian owner would have had if it had been a natural stream—If and when will have.

A watercourse originally artificial may have been made under such circumstances, and have been used in such a way that an owner of land situate on its bank will have all the rights over it that a riparian owner would have had if it had been a natural stream. (Lord Atkinson.) MAUNG BYA v.

MAUNG KYI NYO. (1925) 52 I. A. 385 (395)=

3 R 494=42 C. L. J. 156=

27 Bom L. R. 1427 = 9 L. R. P. C. 209 = (1925) M.W.N. 894 = 30 C.W.N. 218 = A.I.R. 1925 P. C. 236 = 90 I.C. 198 = 49 M.L.J. 282.

——Defendant's land—Watercourse on—Water overflowing from artificial reservoir through—Plaintiff's right to enjoyment of—Evidence—Criminal Proceedings prior between plaintiff and defendant's ryots—Razinama filed in, relating to enjoyment of said water—Admissibility of— Purpose of. See EVIDENCE — DOCUMENT — INTER PARTES. (1912) 39 I. A. 202 (217) = 36 B. 639 (661).

— Land of another—Watercourse constructed on— Right to water flowing through—Legal origin for—Presumption—Evidence—Infringement of right—Suit for— Decree in—Form of.

Plaintiff and defendant were adjoining owners. There had existed in the defendant's estate for a long time a large reservoir, called M. Ta'l, formed by artificial embarkments, and fed partly by water brought from a natural river by artificial channels, and partly by the collection of the rainfall on the adjoining land. The reservoir was undoubtedly created for irrigation purposes. A large Khonwa (overflowing channel) had been cut on the eastern side of that Ta'l by which, and by other channels, water from this ta'l had flowed to another and lower ta'l constructed at the northern extremity of the defendant's mouzah, and mainly upon it, called C Ta'l, from which last ta'l the water was

WATERCOURSE-(Centd.)

Artificial Watercourse-(Contd.)

carried by several channels to the plaintiff's adjoining and other estates for the purpose of irrigating them. That system of irrigation existed beyond living memory. The plaintiff claimed as a right subject to the defendant's right to use the water of the M ta'l for irrigating his mouzah, that the overflow water of the ta'l and the surplus water, after irrigating the defendant's mouzah, should be allowed to flow in the accustomed manner to his mouzah.

The M ta'l was of a permanent nature. The construction of the C ta'l indicated that a permanent and connected system of irrigation for what were at the date of suit the plaintiff's and defendant's mouzahs beneficial to both those estates, was by those means provided. The fact that that lower reservoir, which seemed to have acquired the name of the C Ta'l was built mainly upon the defendant's mouzah, led irresistibly to the conclusion that it was constructed by, or with the consent of, the then owner of that moarah, and it was evident from its situation, that the main, if not only, use was to store water for the convenient irrigation of the plaintiff's mouzahs, Then it was proved that the water had been used and enjoyed for irrigating those mouzahs from a time beyond living memory.

Held that, from all the facts of the case, a presumption fairly arose that that enjoyment had an origin which conferred a right (40); and that the plaintiff had established a right to have the overflow water of the M Ta'l discharged into the Khonwa, so that it might flow through it towards the C Ta'l; and also a right to the flow of the surplus water towards the ta'l as theretofore (43).

Held, however, that plaintiff's whole right was subject to the right of the defendant to irrigate the lands of mouzah M, and to take by proper channels and other proper means so much of the water as might be proper and requisite for such purpose (43).

It may be that at the time when this system of irrigation was adopted the mouzahs now belonging to the plaintiff and the defendant formed one estate, and, if so, on severance, the right to the continued flow of the water in the accustomed channel would arise and subsist; or, if the mouzahs were always separate, it may be that, by the construction of the M Ta'l, water was intercepted which would naturally have flowed to mouzah C, and that this or some other consideration existed, which led to an agreement between the proprietors respecting the use of the water (40-1).

It is not inconsistent with the plaintiff's claim that the power of fixing the time for letting off the overflow from the M Ta'l should reside with the defendant. The necessity for this operation would obviously occur in the rainy seasons, and it is apparant upon the evidence that in these seasons a considerable quantity of water is let off, which runs down to the C reservoir, and is stored there (43).

Decree to be passed in such a case. (Sir Montague E. Smith). RAMESHUR PERSHAD NARAIN SINGH v. (1878) 6 I.A. 33 = 4 C. 633 (641-2, 643-4)=3 Sar. 856

— Land of another—Watercourse constructed on—Right to water flewing through—Lost grant of—Presumption of— Evidence justifying.

Possibly 50 or 60 years—certainly more than 20 years—before suit, the plaintiff's ancestors and predecessors in estate had constructed and used a pyne, or artificial water-course, on the defendant's land, making compensation to them. The pyne, by a channel at one part of its course, contributed to the water in a Ta'l or reservoir, belonging to the defendants, and by a channel at another part took the water which overflowed from the ta'l after the defendants had used as much of the water therein as they required.

## WATERCOURSE - (Contd.)

## Artificial Watercourse-(Contd.)

The detendants, without authority, obstructed the flow of water along the pync in several places. In a suit brought by the plaintiff to establish his right to the #ywc or artificial watercourse, and also to the ta'l or reservoir, and the water flowing from them to his estate, and to obtain the removal of the said obstructions of the defendants, held that, upon the facts of the case, there ought to be presumed the existence of a grant at some distant period of time.

This being an artificial pywe, constructed on the land of another at the distant period found by the Courts, and enjoyed ever since or at least down to the time of olistructions complained of by the plaintiff and his ancestors, any Court which had to deal with the subject might, and indeed, ought to, refer such a long enjoyment to a legal origin, and, under the circumstances which have been insiicated, to presume a grant or an agreement between those who were owners of the plaintiff's mehal and the defendant's land by which the right was created. That being so, the plaintiff does not require the aid of the statute; and his right, therefore, is not in any degree interfered with by the provision in S. 27 of the Limitation Act of 1871 (247). (Sir Montague E. Smith). MAHARANI RAJROOP KOER (1880) 7 I.A. 240 = r. SYED ABUL HOSSEIN.

6 C. 394 (403-4)-7 C.L.R. 529=4 Sar. 199= 3 Suth. 816.

### WHARF.

-Exit from, conditional on payment-Exit without payment-Prevention by force of-False imprisonment if amounts to. See FALSE IMPRISONMENT-WHARF.

(1909) 14 C. W. N. 410.

## WILL.

-See also HINDU LAW-WILL AND MAHOMEDAN LAW-WILL

-Genuineness of - Evidence.

The appellant, the principal legatee under an alleged will of one N, applied for letters of administration with the will annexed. The 1st respondent, the widow of N, opposed the application on the ground that the will set up was a

forgery.

Their Lordships affirmed the High Court, which had decided against the genuineness of the will, relying upon the following main points:-(1) that the appellant's story as to the manner, time and place at which the will came into his possession was false; (2) that the conduct of the parties in relation to certain enhancement suits was inconsistent with the alleged will having been in existence at that time; (3) that a certain letter written by the widow, the 1st respondent, was inconsistent with any knowledge on her part of the alleged will, it being admitted that, if there was a will, she must have known of it; (4) that the evidence of the witnesses to the alleged will could not be relied upon, having regard to the many material matters upon which such evidence appeared to be false. (Lord Tomlin.) GOPAL SARAN D. MT. JANKI KOER.

-Oudh talukdar-Will by. See under HINDU LAW. WILL AND OUDH-OUDH ESTATE-TALUQUAR OF-WILL BY.

Parsec-Will by. See PARSEE-WILL BY. Skinner family-Will by. See SKINNER FAMILY-WILL BY.

## WILLS ACT XXV OF 1838,

-8. 7-Acknowledgment of attestation by one winness

Attestation by another on Sufficiency of.
C made his last will in writing, and signed it, in the presence of N, who also subscribed it in his presence.

## WILLS ACT XXV OF 1838-(Contd.)

Another witness, G, was brought, some hours after, to the apartment in which the testator was, and signed it, after hearing t'acknowledge his subscription, and N, his fellow witness, also acknowledged his subscription. Moreover, both C and A were present when G subscribed. The question was, whether or not the subscription of the two witnesses was so made, as to comply with the requisition in S. 7 of the Indian Wills Act of 1838, the signature of N being not made but only acknowledged in G's presence.

Held, affirming the court below, that the requirements of the Act had not been sufficiently complied with (402).

In the present case the testator has acknowledged before two witnesses, present at the same time. Then must the witnesses who subscribe be present at the same time? We think the words admit of no other construction, for it is and such witnesses shall subscribe." Now this forms one sentence, with the preceding words, "present at the same time," and "such" must plainly be read,—such present witnesses, or such witnesses so being present at the same time, "Such" describes not merely the names of the witnesses, but all that is previously enacted respecting them. One quality of these witnesses is their being present at the same time. Therefore, we cannot limit the meaning of the large word of reference, "such," to the mere names or persons of the witnesses; it must embrace what had just been said of their presence; it must mean "the witnesses, etc. present at the same time." (405). (Lord Brougham.)

CASEMENT > FOULTON. (1845) 3 M. I. A. 395 = 5 Moo. P.C. 130 =1 Sar. 293.

-8.7-Attestation by witnesses in presence of each other-Necessity-Acknowledgment of attestation in fellowwitness's presence-Sufficiency of-

S. 7 of the Indian Wills Act XXV of 1838 enacts that no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say), it shall be signed at the foot or end thereof by the Testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the Testator, in the presence of two or more witnesses, present at the same time, and such witnesses shall subscribe the will in the presence of the Testator, but no form of attestation shall be necessary."

The question was whether a witness acknowledging his subscription in the presence of his fellow-witness was equivalent to his signing in that fellow-witness's presence within

the meaning of the section,

IIdd, that the fact that the Act expressly allowed the acknowledgment of the testator to be as good as the signature, while it said nothing of the witnesses acknowledg ing was a very strong argument against the contention that acknowledgment was equivalent to signing in both cases, for if the legislature had meant to make acknowledgment equivalent to signing in both cases, the word acknowledg ment would have been repeated in connection with the attestation. (403-4). (Lord Brougham.) CASEMENT v. (1845) 3 M.I.A. 395=5 Mad. P.C. 130= FOULTON.

-8.7-Construction of - English Act I, Vict., C. 26 S. 9-Decisions on construction of -Applicability.

S. 7 of the Indian Will Act XXV of 1838 is copied from the English Act, I Vict., c. 26, S. 9, with the single omission of the words "attest and" after "shall and before "subscribe."

Held that alteration could make no difference in the construction of the Indian Act, and that questions arising upon the Indian Act ought to be dealt with as if they had arisen upon the English Statute (401-2.) (Lord Brougham.) (1845) 3 M.I.A. 395 = CASEMENT & FOULTON. 5 Moo. P.O. 130=1 Sar. 293,

## WILLS ACT XXV OF 1838-(Contd.)

-S. 7- Execute - Meaning of.

The word "execute" in S. 7 of the Indian Will Act XXV of 1838 is employed plainly to designate the whole operation, including both the signature of acknowledgment of the testator, and the attestation of the subscribing witnesses, and it is not used at all to designate the testator's part alone (406-7). (Lord Brougham). CASEMENT v. FOULTON. (1845) 3 M.I.A. 395=5 Moo P.C. 130=1 Sar. 293.

## WOMAN.

——Chastity of—Issue as to — Unchastity found against—Conduct "Suspicious"—Opinion as to—Propriety of. See PRACTICE-ISSUE-FEMALE-CHASTITY OF.

(1910) 37 I.A. 152 (158) = 32 A. 410 (412-3)

-Exclusion of, from public offices-Common and Statutory law as to-History of, traced. (Lord Chanceller.) HENRIETTA MUIR EDWARDS P. ATTORNEY-GENERAL (1929) A. I. R. 1930 P. C. 120= OF CANADA. 58 M.L.J. 300.

-Hindu Women. See HINDU WOMAN.

—Mahomedan Women. See MAHOMEDAN WOMEN.

#### WORDS-MEANING OF.

## Abuse of process of Court.

-See PROVINCIAL INSOLVENCY ACT OF 1907-Ss. (1916) 44 I.A. 11 = 44 C. 535. 5, 6, 15.

Abwab.

-See ABWAB.

### Accretion.

-See ALLUVION AND DILUVION-ACCRETION-(1872) 10 B.L.R. 406 (427). MEANING OF. -Gradual accretion-Gradual, slow and imperceptible

accretion. See under ALLUVION AND DILUVION-AC-CRETION.

### Acquisition unjust or dishonest.

-See BENGAL REGULATIONS-LIMITATION REGU-LATION II OF 1805-S. 3-UNJUST, ETC.

(1842) 3 M.I.A. 1 (17).

### Adha.

-See MINERALS - LEASE - ZEMINDAR - PUTNI LEASE BY-LESSEE UNDER-RIGHT TO MINERALS OF -WORDS. (1924) 52 I.A. 109 = 4 Pat. 244.

#### Administer, in regard to oath.

-See OATHS ACT OF 1873-S. 10-WORDS-AD-MINISTER.

## Adoption.

-See HINDU LAW-WILL-ADOPTION IN. (1900) 27 I. A. 128 (135)=27 C. 996 (1003).

## "Affect the provisions of another statute."

-At the time of the passing of the Contract Act of 1872, the Carriers Act of 1865, in connection with the common law of England, regulated the duties and liabilities of common carriers in India. The Carriers Act was not only not expressly repealed by the Contract Act, but it was provided by the latter Act that nothing contained in it should " affect the provisions " of the Carriers Act. Nevertheless it was contended that the Contract Act was intended to alter the law applicable to common carriers.

Their Lordships observed that it was a strong thing to say that the provisions of an Act were not affected, when the whole foundation upon which the Act rested was displaced, and almost every section assumed a different meaning, or came to have a different application (130). (Lord Macnaghten.) IRRAWADY FLOTILLA CO. v. BUG-(1891) 18 I. A. 121=18 C. 620 (629)=

6 Sar. 40.

## WORDS-MEANING OF-(Contd.)

## Affirming decision.

-See C.P.C. OF 1908-S. 110, PARA. 3-AFFIRMING DECISION.

## Agency, in modern business and in motor car trade.

-See PRINCIPAL AND AGENT -AGENCY-MEAN-ING OF, ETC. (1925) 49 M. 1.

## Agent, in modern business and in motor car trade.

-See PRINCIPAL AND AGENT-AGENCY-MEAN-ING OF, ETC. (1925) 49 M. 1.

#### Agraharam.

(1886) 13 I. A. 32 (38)= -See AGRAHARAM. 9 M. 307 (314).

## Agricultural land.

-Tea-garden if. See PUNJAB ACTS-PRE-EMPTION ACT OF 1905-S. 3 (1). (1923) 51 I.A. 11=5 Lah. 50.

Agricultural purposes-Land held for.

See AGRA TENANCY ACT OF 1901-S. 79. (1924) 51 I.A. 281 (287)=46 A. 831.

## Alluvial land.

-See ALLUVION AND DILUVION - ALLUVIAL LAND-MEANING OF. (1848) 4 M.I.A. 403 (405).

#### Always and for ever.

-See HINDU LAW-WILL-WORDS IN-ALWAYS AND FOR EVER. (1885) 12 I.A. 159 (165) = 8 A 39 (48-9).

## Always or for ever.

-See Arbitration-Award-Estate Conveyed UNDER-WORDS-ALWAYS OR FOR EVER.

(1901) 28 I. A. 65 (70) = 23 A. 324 (330).

## Amanat dufter.

--- See AMANAT DUFTER. (1354) 5 M.I.A. 467 (486).

#### Ancestral Property.

-See HINDU LAW - ANCESTRAL PROPERTY-MEANING OF-MEMBERS OF FAMILY.

(1859) 8 M. I. A. 91 (967-7)

## And.

---- If means "or" See C.P.C. OF 1908-S. 110, PARA 1 (1901) 29 I. A. 40 (41) = 24 A. 174 (177). -AND.

### Annual net profits.

-See BENGAL ACTS-CESS ACT IX OF 1880-Ss. 6 & 72-NET ANNUAL PROFITS.(1910) 38 L. A. 31 (35)= 38 C. 372 (376).

## Annual Value of houses, etc.

-See ASSESSMENT-ANNUAL VALUE OF HOUSES, (1845) 3 M. I. A. 408. ETC.

## Auras Poutradik.

Females if included - Custom excluding females from succession-Grant authorised by, and not made under ordinary Hindu Law. See GRANT-CONSTRUCTION-BABU-(1914) 41 I. A. 275 (286)= ANA GRANT. 42 O. 582 (602-3).

## Arudikarai village.

-See MADRAS LAND TENURES-TANJORE DIS-TRICT-ARUDIKARAI VILLAGE.

(1923) 51 I. A. 83 (93)=47 M. 337.

#### Attachment.

Order for attachment or de facto attachment. See C. P. C. OF 1908, O. 21, RR. 41 to 54.

#### Aulad.

-See HINDU LAW-WILL-WORDS IN-AULAD.

## WORDS-MEANING OF-(Contd.) Auras putra poutradik. -See GRANT-BABUANA GRANT.

(1914) 41 I. A. 275(286)=42 C. 582 (602-3).

## Avaruddha in Hindu Law.

-See HINDU LAW-EXPRESSIONS IN-MEANING OF-AVARUDDHA. (1926) 53 I.A. 153 (160) = 50 B. 604.

#### Ba farzandan.

-See LEASE-ESTATE OF INHERITANCE-GRANT OF-EXPRESSIONS. (1885) 12 I A. 205 (214) = 12 C. 117 (126).

-See BENGAL ACTS-TENANCY ACT OF 1885-S. 120-Words. (1926) 53 I.A. 176 (180, 185) = 5 Pat. 735.

## "Belligerents" in international agreement.

-See INTERNATIONAL AGREEMENT - BELLIGE-RANTS ETC. (1922) 31 M. L.T. 260 (264-5).

#### Benefit of estate in Hindu Law.

-See HINDU LAW-EXPRESSIONS-MEANING OF -BENEFIT OF ESTATE. (1917) 44 I. A. 147=40 M. 709.

#### Beyond the seas.

-See LIMITATION-ENGLISH STATUTE 21 JAMES I, Ch. 16-S. 7. (1852) 5 M. A. 234 (260).

#### Boitokanah.

(1874) 1 I. A. 387 (396). —See Boitokanah.

## British Subjects.

-See SUPREME COURT OF BOMBAY. (1856) 6 M. I. A. 349 (392).

## Capable of instituting suit.

-Capable of instituting suit in which decree might be obtained if meant. See LIMITATION ACT OF 1908-S. 17 -WORDS. (1916) 43 I. A. 113 (119).

#### Capital employed in business.

-See INCOME-TAX ACTS - EXCESS PROFITS DUTY ACT OF 1912-S. 6. (1923) 50 I. A. 227 (237-8)= 47 B. 742 (753-5).

#### Cardinal point...

-See APPEAL-REMAND-PRELIMINARY POINT. (1894) 22 I. A. 1=17 A. 112.

## Carry on business.

-See JURISDICTION - CARRYING ON BUSINESS WITHIN.

-See C. P. C. OF 1908-S. 115-CASE. (1917) 44 I. A. 261 (269) = 40 M. 793.

-Held that the word "cash" in cl. 12 of the will in question was probably intended to have a much wider meaning than, according to ordinary rules of construction, the word would bear (1031.) (Lord Buckmaster.) GNA-NENDRA NATH DAS v. SURENDRA NATH DAS.

(1920) 24 C. W. N. 1026 = (1921) M. W. N. 550 = 28 M. L. T. 453=61 I. C. 323.

Mortgage with possession—Receipts under—Cash if, See Arbitration—Award—Hindu Law—Joint Pamily—Partition, (1914) 27 M. L. J. 128.

### Cause of action .

-See (1) CAUSE OF ACTION-MEANING OF. (2) C. P. C. OF 1908-OR. 2, R. 2-CAUSE OF ACTION.

## WORDS-MEANING OF-(Contd.)

## Certificate of guardianship-Obtaining of, within meaning of Statute.

-Order for certificate-Obtaining of-Sufficiency of-Formal certificate pursuant to order not obtained-Effect. See MINORS ACT XL OF 1858-S. 3.

(1892) 16 L.A. 195(200) = 17 C. 347 (356-7).

## Cesses on trades and professions.

-See BOMBAY ACTS - ABOLITION OF TOWN DUTIES, ETC. ACT 19 of 1844-CESSES ON TRADES AND PROFESSIONS. (1890) 17 I. A. 103 (105-6)= 14 B. 526 (530-1)

#### Chakeran.

-See CHAKERAN.

Chakeran lands.

-See CHAKERAN LANDS.

#### Children.

-Illegitimate children if included. See HINDU LAW -WILL-CHILDREN. (1870) 13 M. I. A. 277.

#### Chowkedars.

-SA CHOWKEDARS.

## Chowkedari Chakeran lands

-See CHOWKEDARI CHAKERAN LANDS.

## Churs.

-See ALLUVION AND DILUVION-CHUR LAND-MEANING OF.

## "Civil Proceeding in a Court."

-Proceeding before arbitrator if included. See LIMI-TATION ACT OF 1908-S. 14-CIVIL PROCEEDING, ETC. (1928) 56 I, A. 128 = 56 C. 1048.

## Claim "now due owing or payable."

-See ASSIGNMENT-CONSTRUCTION OF DEED OF. (1902; 29 I. A. 138 (146-7) - 25 M. 603 (612). Coercion.

-See CONTRACT ACT-S. 72-COERCION. (1913) 40 L A. 56 (65-6) = 40 C. 598 (611-2).

## Confirmed credit.

-Sir AGREEMENT-CONFIRMED CREDIT. (1927) 54 I. A. 317 (330)=1 Luck. 241. Confiscation.

## Contract.

-See BENGAL ACTS-VILLAGE CHAUKEDARI ACT (1918) 45 I. A. 162 (167) = OF 1870-S. 51. 46 C. 173 (181-2).

## Contract-Breach of

-See Limitation Act of 1908 - Act. 115-(1871) 14 M. I. A. 134 (142-3). BREACH OF, ETC. Conversion.

See LIMITATION ACT OF 1908-ART. 48.

#### Corrody.

(1373) 1 I. A 34 (51). -See CORRODY. Court of Competent jurisdiction.

-See C. P. C. OF 1877-S. 13. (1882) 9 I. A. 197 (204-5) = 4 C. 439 (445).

-See C. P. C. 1908-S. 11-COURT OF COMPETENT JURISDICTION-MEANING OF. (1884) 12 I.A. 23 (37-8)= 11 0. 301 (308-10).

## Court of Concurrent Jurisdiction.

-See JURISDICTION-CONCURRENT JURISDICTION. (1882) 9 I. A. 197 (203-4) = 9 C. 439 (444-5).

Court of highest Civil jurisdiction in any province. -See APPEALS TO QUEEN IN COUNCIL ACT II OF -See BENGAL ACTS-LANDLORD AND TENANT 1863.

S. 36 of the Dominion Statute (10 and 11 Geo. V, c. 32) excepted from the appellate jurisdiction of the Supreme Court of Canada "proceedings for or upon a writ of certivrari arising out of a criminal charge."

Held that the word "criminal" in the section and in the context in question was used in contradistinction to "civil," and connoted a proceeding which was not civil in its character (190-1.) (Lord Sumner.) KING v. NAT BELL LIQUORS, LTD. (1922) 31 M. L. T. 163 (P. C.).

## Dakilkar.

-See DAKILKAR. (1889) 16 I.A. 166 (172-3)= 17 C. 122(129).

## Darkast Ijara.

-Sa DARKAST IJARA. (1904) 31 I. A. 83= 27 M. 291 (296).

#### Dawani.

-See TENURE-HEREDITARY TENURE- WORDS -"DAWANI". (1899) 26 I. A. 216 (224-5)= 27 C. 156 (165-6).

## Death-In the event of.

-If means "on the death of" See HINDU LAW-WILL-WORDS IN-DEATH OF A PERSON.

#### Debt.

-See BOMBAY REGULATION-ACKNOWLEDGMENT OF DEBTS, INTEREST, MORTGAGES REGULATION 5 OF 1827-S. 3-DEBT. (1837) 2 M. I.A. 23 (35).

## Decision.

-Affirming decision. See C. P. C. OF 1908-S. 110. PARA. 3.

-Summary decision-Summary decision means a decision arrived at by a summary proceeding (125). (Sir Richard Couch.) MINA KONWARI P. JUGGUT SFTANI (1883) 10 I. A. 119=10 C. 196 (203)=

13 C. L. R. 385 = 4 Sar. 454.

## Decree.

-See DECREE AND C. P. C. OF 1908-S. 109 (a) -DECREE IN.

-Final decree. See C. P. C. of 1882-S. 595. (1890) 18 I. A. 6 (7)=15 B. 155.

## Deed.

-Authenticity of. See REGISTRATION ACT OF 1843 -S. 2. PROVISO. (1865) 10 M. I. A. 220 (228) -Execution of. See (1) HINDU LAW-WILL-EXE-CUTION OF-MEANING OF.

(1845) 3 M. I.A. 395 (406-7).

& (2) REGISTRATION ACT OF 1908-S. 35-PERSON EXECUTING. (1927) 55 I. A. 81 = 55 C. 532.

---Interest in-Trusteeship for beneficiary under deed if an. See REGISTRATION ACT OF 1877-S. 69.

(1920) 47 I. A. 224 (230) = 42 A. 609 (616).

### Deemed to be.

-When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. (Viscount Dunedin.) COMMISSIONER OF INCOME TAX, BOMBAY PRESIDENCY D. BOMBAY TRUST CORPORATION, LTD. (1929) 57 L. A. 49=

54 B. 216 = 1930 A. L. J. 73 = 34 C. W. N. 230 = 32 Bom. L. R. 361 = 121 I. C. 532 = 31 L. W. 582 = A. I. R. 1930 P. C. 54 = 58 M, L. J. 197 (203-4).

| WORDS-MEANING OF-(Contd.)

#### Default.

(1877) 4 I. A. 178 (183) = 3 C. 522 (527). PROCEDURE ACT OF 1869-S. 66-DEFAULT.

(1904) 31 I. A. 195=31 C. 901 (908).

## Deliverable-Legacy when becomes.

-See LIMITATION ACT OF 1908-ART. 123-PAYA-BLE. (1925) 52 I. A. 214 (226) = 48 M. 312.

## Demand-On demand.

-See DEED - CONSTRUCTION - PAYABLE "ON DEMAND." (1855) 6 M. I. A. 211 (229).

## Descend to eldest son.

-See HINDU LAW-WILL-WORDS IN-DESCEND TO ELDENT SON. (1901) 28 I. A. 159 (163)= 28 C. 621 (632-3).

## Determination.

-Ser (1) SUPREME COURT OF BOMBAY-CHARTER OF-Ss. 60 & 63. (1840) 2 M. I. A. 169 (177)

& (2) WORDS-MEANING OF-JUDGMENT-DETER-MINATION OR

## Devolve or go to eldest son.

-See HINDU LAW-WILL-WORDS IN-DESCEND (1901) 28 I. A. 159 (163)= TO ELDEST SON. 28 C. 621 (632-3).

## Dharam.

(1899) 26 I. A. 71 (81)= -See DHARAM. 23 B. 725 (735).

#### Dhardhura custom.

-See CUSTOM-DHARDHURA CUSTOM.

## Dharmakarta.

-See HINDU LAW-RELIGIOUS ENDOWMENT -(1874) 1 I. A. 209 (229). TEMPLE-DHARMAKARTA.

## Different places in deed-Word same used in.

-Same meaning to-Giving of-Rule as to-Nature of, and limits to. See WORDS-MEANING OF-SAME WORD, ETC.

## Dispose-Negotiate.

-See WORDS - MEANING OF - NEGOTIATE -DISPOSE.

## Duly repayable.

---Bond by one party-Admission by another that money due under it is "duly reparable," See ADMISSION -MORTGAGE-LIABILITY OF THIRD PARTY UNDER-

(1892) 19 I. A. 228 (230) = 20 C. 93 (96-7).

## Dwelling within jurisdiction.

-See JURISDICTION-DWELLING WITHIN.

#### Effects in will.

-Immoveable property if included in. See HINDU LAW-WILL-EFFECTS. (1927) 54 I. A. 276 (284-6)= 5 B. 427.

#### Ekabhogam village.

-See MADRAS LAND TENURES-TANJORE DIS-TRICT-EKABHOGAM VILLAGE. (1923) 51 I.A. 83 (95)= 47 M. 337.

## Ekasal.

-See EKASAL.

(1904) 31 L A. 83= 27 M. 291 (296).

## Eldest son to be born.

-See HINDU LAW-WILL-WORDS IN-ELDEST (1901) 28 I. A. 158 (163)= SON TO BE BORN. 28 Q. 621 (6323).

## Estate.

-See BENGAL ACTS .- LAND REVENUE SALES ACT (1927) 54 I. A. 218 (224) = 54 C. 669. OF 1859, S. 3.

" Excludes " from succession.

-Bequest which-Bequest which delays enjoyment of succession if a. See OUDH ACTS-SETTLED ESTATES ACT. 1900, S. 18 (2)-PROVISO-EXCLUDE.

(1929) 56 I. A. 156=4 Luck. 122.

## Execute.

-See WILLS ACT 25 OF 1838, S. 7-CONSTRUCTION -WORDS-EXECUTE. (1845) 3 M. I. A. 395 (406-7)

#### Execution, in reference to deed.

-See Under Words-Deed-Execution of.

#### Extend.

-If means apply.

The word " extend " in Act, 9th Geo, iv., c. 74 is to be read the same as if it were "apply "(93). (Lord Wendeydale.) NGA HOONG P. THE QUEEN.

(1857) 7 M. I. A. 72=4 W. R. 109=1 Suth. 285= Bonl. 189 = 1 Sar. 598.

## " Enterritoriality " in international agreement.

-See INTERNATIONAL AGREEMENT - ENTERRI-TORIALITY IN. (1901) 28 I.A. 121 (131-2) = 26 B. 1 (13).

## Failure or determination of estate

Gift over on-Failure or determination in fact or in law. See HINDU LAW-WILL-GIFT OVER-FAILURE OR DETERMINATION OF ESTATE.

(1872) Sup. I. A. 47 (80).

#### Family.

-See FAMILY.

#### Final order.

-See C. P. C. of 1908, S. 109 (a)-FINAL ORDER-(1920) 47 I. A.124 = 47 C. 918. MEANING OF.

## " For anything done or intended to be done ".

"In respect of" - Distinction. See STATUTE-INTER-PRETATION-OFFICIALS. (1927) 54 I. A. 338 (356-7).

### "Forever" in maintenance grant.

-See HINDU LAW-MAINTENANCE-GRANT FOR (1900) 28 I. A. 1 (9-10) = -WORDS-PROPRIETOR. 23 A. 194 (204-5).

#### Fraudulent.

See FRAUDULENT-MEANING OF.

(1891) 19 I. A. 15 (18) = 19 C. 223 (231).

## Fundamental irregularity.

See BENGAL ACTS-ALLUVION AND DILUVION ACT OF 1847-ASSESSMENT PROCEEDINGS UNDER-FUNDAMENTAL IRREGULARITY.

(1924) 51 I. A. 241 (250) = 51 C. 802 (812-3).

## Gardens.

See BENGAL ACTS - LAND REVENUE SALES ACT OF 1859, S. 37 EXCEPTION 1V.

(1922) 50 I.A. 247(254) = 50 C. 243 (251).

## Generation to generation.

Sa LEASE-MOCURRURY ISTIMRARI LEASE. (1861) 9 M. I. A. 1 (12-3).

The words " generation to generation " in a mokurraree pottah have always been considered to have the effect of creating an absolute and hereditary mokurrarce tenure (97). (Sir James W. Celvile.) RANEE SONET KOWAR z. (1876) 3 I. A. 92= MIRZA HIMMUT BAHADOOR. 1 C. 391 (398)=25 W. B. 239=3 Sar. 608=

## WORDS-MEANING OF-(Contd.)

## Generation to generation-(Contd.)

The terms generation to generation are well known in India as conferring an hereditary estate (61). (Sir Robert P. Collier.) GULABDAS JUGJIVANDAS 2. COLLECTOR OF SURAT. (1878) 6 I. A. 54 = 3 B. 186 (192) = 3 Sar. 889.

-With regard to the expression contained in some of the Sunnuds of the grant being to the person named, "his son, grandson, etc., from generation to generation, " it has been observed by many writers of authority on this subject, that they do not, as might be supposed, import a fixed hereditary tenure. The terms in such documents (Sunnuds) for ever, from generation to generation, or in Hindu grants while the sun and moon endure, are mere forms of expression, and were never supposed, either by the donor or receiver, to convey the durability which they imply, or any, beyond the will of the sovereign (59-60). (Lord Hannen,) SHEIKH SULTAN SANI T. SHEIKH AJMODIN.

(1892) 20 I. A. 50 = 17 B. 431 (447) = 6 Sar. 52,

-See JAGIR - GRANT OF-ESTATE CONVEYED UNDER-GRANT TO A PERSON, ETC.

(1898) 25 I. A. 54 (66) = 20 A. 267 (283).

## Gift.

-Trust-Gift through medium of, if included. See OUDH ACTS-LAWS ACT OF 1876, S. 3.

(1916) 43 I. A. 212 (221) = 38 A. 627 (645).

#### Government regulations and restrictions.

-Meaning of, in Charter party. See SHIP-CHARTER-PARTY- GOVERNMENT REGULATIONS AND RESTRIC-TIONS. (1926) 53 I. A. 230 (237)= 54 C. 84.

#### Grant.

-English law technical meaning of-Inapplicability to legal transactions in India. See GRANT-MEANING OF, IN LEGAL TRANSACTIONS IN INDIA. (1916) 44 I. A. 46= 44 C. 585 (590).

## Gudi Kattu dowle.

-See Guda Kattu Dowle.

(1886) 13 I. A. 32 (40) = 9 M, 307 (316). Hearing

-Sec C. P. C. OF 1908-OR. 17, R. 2-HEARING. (1924) 51 L. A. 321 (325)=4 Pat. 61.

Ownership if and when indicated by. See PROPRIE. (1856) 6 M. I. A. 393 (412), TOR-OWNERSHIP, EIC.

-Deed-Executant of-Description of, as " proprietor " and " heir "-Effect-Capacity in which deed executed-Executant in fact guardian of minor. See HINDU LAW -MINOR-GUARDIAN OF-ALIENATION BY-DEED OF. (1856) 6 M. I. A. 393 (412).

#### Heir and malik.

See HINDU LAW-WILL-DAUGHTER-IN-LAW-(1874) 2 I. A. 7 (15). REQUEST TO.

## Heirs.

-Collateral heirs if included. See COMPROMISE-CONSTRUCTION OF-ANNUITY.

(1918) 46 I. A. 64 (69) - 42 M. 581 (585-6).

-English will-Meaning in. See HINDU LAW-WILL -WORDS IN-HEIRS. (1922) 49 I. A. 323 (328)= 49 C. 1005 (1011).

-Heirs general-Heirs who are also issue.

In 1839, the then king of Oudh executed a deed of trust by which he settled a sum of money deposited with or lent to the East India Company as security for certain pensions 3 Suth. 258 = 11 M. J. 149. for the benefit of persons connected with his family, and for

Heirs-(Contd.)

other purposes. One of the original pensioners was K. a daughter-in-law of the king. In a suit brought after the MADHAVRAO GANPATRAO DESAIT. RAGHUNATH AGASdeath of K by the appellant, her sister and her sole heir according to Mahomedan law, the question was whether the title to the pension descended to the heirs general of A'. or whether the right to succeed was limited to heirs who were also issue.

Held, that on the true construction of the deed of trust (the terms of which are set out in the judgment) the pension was to descend by inheritance, and that the descent was to be to heirs general (140-1). (Sir Arthur Wilson.) NAWAB HAIDAR HUSAIN KHAN v. NAWAB FAGHFUR MIRZA. (1905) 32 I. A. 135 = 27 A. 383 (390-1) = 2 C. L. J. 57 = 9 C. W.N. 817 = 3 A. L. J. 64 = 7 Bom. L. R. 850 =

8 O. C. 270 = 8 Sar. 826 = 15 M. L. J. 327.

-Inam grant-Word in. See INAM-GRANT IN-HEIRS IN. (1929) 58 M. L. J. 125.

-International agreement-Word in. See INTERNA-TIONAL AGREEMENT-SOVEREIGN POWERS-TREATY BETWEEN. (1889) 16 I. A. 175 (181-2)= 17 C. 234 (243-4).

-Issues-Convertible terms if-Pension-Grant of, to a person and his heirs or issue.

By a deed of the 22nd of November, 1838, Mahomed Ali, the then King of Oudh, provided pensions of stipends for the ladies of his royal family, children, and other relations, including amongst others Malka Jehan and her son

By the 3rd article of the deed it was stipulated that the pension should be paid to the several pensioners specified therein and to their heirs in perpetuity, and by the 4th article, that if any of the pensioners should die without issue, his or her pension should revert to the King of Oudh.

By article 6, it was provided that the said pensioners and after them their issue who on their decease should succeed to their respective pensions should always experience the special favour and kindness of the British Government.

Held, on a construction of the deed, it was the intention of the King that in the event of the death of any of the pensioners leaving issue his or her heirs, according to the Mahomedan law of inheritance, should receive payment of the pension in the proportions regulated by such law of inheritance (181).

In the deed, the words "heirs "" issue " are used as convertible or equivalent terms so that in that document the words "heirs" must mean heirs who are issue and "issue" must mean issue who are heirs (181). (Sir Barnes Peacock.) NAWAB SULTAN MARIAM BEGUM P. NAWAB SAHIB MIRZA. (1889) 16 I. A. 175=

17 C. 234 (244) = 5 Sar. 422.

-Legal heir. See MAHOMEDAN LAW-WAQF-MUT-TAWALLI-HEIR OF-SUCCESSION TO OFFICE OF.

(1922) 45 M. L. J. 359 (362-3).

-Male beirs. See HINDU LAW-GIFT-DAUGHTER -GIFT TO-MALE HEIRS. (1927) 55 I. A. 74= 52 B. 176

-Malik-Effect. See HINDU LAW - WILL DAUGHTER-IN-LAW. (1874) 2 I. A. 7 (15).

-Persons taking in succession to another when means. See HINDU LAW-WILL-WORDS IN-HEIRS-MEAN-ING OF. (1874) 2 I. A. 7 (15).

"Right heirs"-Meaning in English law of-Inapplicability to deed of Hindu.

The phrase "right heirs" has a district meaning in English law and there refers to the heirs at common law as opposed to the heirs by special local customs, but it has no such |-

WORDS-MEANING OF-(Contd.)

Heirs-(Contd.)

special significance in Bombay. (Lord Buckmaster.) (1927) 55 I. A. 74.

Successors-Convertible terms if. See HINDU LAW -WILL-WORDS IN-HEIRS-SUCCESSORS.

(1921) 48 I. A. 143 (146) = 43 A. 291 (294).

-Widow of testator-Heirs at death of-Meaning of. See HINDU LAW-WILL-HEIRS OF TESTATOR, ETC.

(1905) 32 I. A. 193 (201-2)=33 C. 180 (192).

-Zemindary newly created-Sunud granting-Meaning of word in. See ZEMINDARY-GRANT OF.

(1879) 7 I. A. 38 (48-9)=2 M. 128 (134-5).

## Heirs and representatives.

-See OUDH-OUDH ESTATE-SETTLEMENT OF-DEED OF. (1923) 50 I. A. 265 (273)=45 A. 596 (603). Hindu-Deed by-Words in.

-Meaning of-English law technical meaning-Inapplicability of, See DEED-CONSTRUCTION OF-HINDU (1927) 55 I. A. 74-52 B. 176. -DEED BY.

## Hindu lady-Letter Written by-Words in.

-Meaning of-Substance of transaction to be looked to. See DEED-CONSTRUCTION OE-HINDU LADY.

(1876) 4 L. A. 1 (11-2)=1 M. 174 (188).

## Humble request for maintenance.

-Meaning of, in will. See HINDU LAW-WILL-MAINTENANCE-BEQUEST TO-HUMBLE REQUEST FOR (1902) 32 I. A. 105(111)=28 M. 173. ETC.

## Immoveable property-Interest therein

-Meanings of. See PROPERTY-IMMOVEABLE PRO-PERTY.

### Improvement Scheme.

-Land acquired for execution of. See CALCUTTA IMPROVEMENTS ACT, OF 1911-S. 42.

(1919) 47 I. A. 45 (54)=47 C. 500 (511-2).

-Land affected by construction of. See CALCUTTA IMPROVEMENT ACT, OF 1911-S. 42. (1919) 47 I. A. 45(54-5) = 47 C. 500 (511-3).

Inam.

-See INAM-MEANING OF.

Inami.

-See INAMI.

(1892) 20 I. A. 50 (57)= 17 B. 431 (444).

## Including.

-If connotes exclusion.

Their Lordships cannot construe the word "including" in the submission to arbitration as connoting exclusion (246). (Lord Parmoor.) ATTORNEY-GENERAL OF MANITOBA (1922) 31 M. L. T. 238 (P. C.). D. KELLEY.

Including all interests therein, in respect of lease.

-See LEASE-ESTATE CONVEYED UNDER -(1928) 55 I. A. 320. WORDS.

#### Income.

Gross or net income. See HINDU LAW-WILL-MANAGER UNDER WILL-COMMISSION OF 10 PER CENT. (1880) 7 I. A. 196 (207-8)= FROM INCOME. 3 A. 91 (103-4).

#### Incumbrance.

See INCUMBRANCE.

Incur.

-See INCUR.

## Indians-Deeds of-Words in.

-Form of expression or literal sense not to be regarded-Real meaning of parties to be looked to. See DEED -CONSTRUCTION OF-INDIANS.

## "In respect of"-"For anything done or intended to be done."

-Distinction. See STATUTE- INTERPRETATION-OFFICIALS. (1927) 54 I. A. 338 (356-7).

Aurasa male issue-Failure of-Mouning of. An agreement between two brothers stipulated as follows :-

"As to the immoveable property belonging to us both, the said immoveable property shall, in case of the failure of aurasa (self-begotten) male issue in either of these two lines, i.e., either for yourself or in your line of aurasa sons or in my line of aurasa sons, be put in possession of the other line, but it shall not be alienated by making adoption and the like."

Held, that the words "in case of the failure of self-begotten male issue" in the agreement meant an indefinite failure of issue; and that an adopted son should not ever take by descent from his father (99). (Sir Barnes Penceck.) SRI RAJA RAO VENKATA MAHAPATI SURYA RAO BAHADUR v. THE HON. SRI RAJA RAO VENKATA MAHAPATI GAN-GADHARA RAMA RAO BAHADUR. (1886) 13 I. A. 97= 9 M. 499 (505)-4 Sar. 725.

-Have issue-Leave issue when means. See HINDU LAW-WILL-WORDS IN-ISSUE-HAVE ISSUE.

(1895) 22 I.A. 119 (128)=18 M. 347 (358),

-Heirs-Convertible terms if. See WORDS-MEAN-ING OF-HEIRS-ISSUE.

-International agreement-Word in. See INTERNA-TIONAL AGREEMENT-SOVEREIGN POWERS- TREATY (1889) 16 L. A. 175 (181-2) = BETWEEN. 17 C. 234 (243-4).

-Legitimate issue-Issue treated as legitimate or issue legitimate according to law or religion of testator. See HINDU LAW-WILL-ISSUE IN-LEGITIMATE ISSUE.

(1913) 41 I. A. 1=36 A. 101 (115-6).

#### Istimrar.

-See ISTIMRAR.

## Istimrari Mocurruri.

See LEASE-ESTATE OF INHERITANCE-GRANT. OF. (1885) 12 I. A. 205 (214) = 12 C. 117 (126).

#### Isumnovisce returns.

-See GHATWALI TENURE-EXTENT OF LANDS IN-CLUDED IN-EVIDENCE-ISUMNOVISEE RETURNS. All and

(1871) 14 M. I. A. 259 (264, 266).

#### Jagir.

-See JAGIR.

DAY.

## Jaith ryot.

-See JAITH RYOT.

(1922) 49 I. A. 399 (404) = 2 Pat. 38 (44).

#### Jhum cultivation.

See JHUM CULTIVATION. (1908) 35 L. A. 195 (203) = 36 C. 1 (17). 13 C 703 209

Jote.

See JOTE.

Jotedar.

(1929) 56 I. A. 119 = 56 C. 1003. See JOTEDAR.

## WORDS-MEANING OF-(Contd.)

#### Judgment.

-Final judgment. See PRIVY COUNCIL-APPEAL-RIGHT OF-COURT OF HIGHEST CIVIL JURISDICTION IN (1877) 4 I. A. 178 (183) = 3 C. 522 (527). PROVINCE.

-Sac JUDGMENT-FINAL JUDGMENT.

(1923) 50 I. A. 212 (220-1) = 47 B. 724 (733, 735).

-See JUDGMENT-MEANING OF.

## Julkur.

-Sw JULKUR-MEANING OF.

### Julpai.

-See JULPAL

(1881) 8 I. A. 172 (187) = 8 C. 95 (107).

#### Jurisdiction.

-Carrying on business within. See JURISDICTION-CARRYING ON BUSINESS WITHIN.

-Court of concurrent jurisdiction. See JURISDICTION -CONCURRENT JURISDICTION.

(1882) 9 I. A. 197 (203.4) = 9 C. 439 (444.5).

-Dwelling within. See JURISDICTION-DWELLING WITHIN. (1911) 38 I. A. 129 (139) = 34 M. 257 (267-8).

-Extraordinary jurisdiction. See HIGH COURT-JURISDICTION OF-ORDINARY JURISDICTION.

(1889) 16 I. A. 156 (162) = 13 B. 520 (533).

-Ordinary jurisdiction. See HIGH COURT-JURIS-DICTION OF-ORDINARY JURISDICTION.

(1889) 16 I. A. 156 (162) = 13 B. 520 (533).

-Original jurisdiction. See HIGH COURT-JURIS-DICTION OF-ORIGINAL JURISDICTION.

(1923) 50 I. A. 212 (218) = 47 B. 724 (732).

## Justice, Equity and good conscience.

-See JUSTICE, EQUITY AND GOOD CONSCIENCE.

-A direction to decide by equity and good conscience is generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances. (Lord Tomlin.) MEHRBAN KHAN P. MAKHNA.

(1930) 34 C. W. N. 529 = 1930 A. L. J. 544 = 123 I. C. 554 = 31 L. W. 732 = 11 Lah. 251 =

32 Bom. L. R. 882 = 51 C. L. J. 427 = 57 I. A. 168 = 31 Punj. L. R. 583 = A. I. R. 1930 P.C. 142 = 58 M. L. J. 714.

## Kabuliyat.

-See Kabuliyat. (1923) 28 C. W. N. 145 (152-3). Kamavishi-Land entered as.

Sor KAMAVISHI

(1927) 54 I. A. 380 (388)=51 B. 830.

## Kayam Taram Thirwa.

-See Kayam Taram Thirwa. (1904) 31 I. A. 83 = 27 M. 291 (297).

## Khalari.

-See KHALARI.

(1881) 8 I. A. 172 (184) = 8 C. 95 (107-8).

## Khalsat.

See KHALSAT.

(1927) 54 L A, 380 (388)= 51 B. 830.

### Khandan.

-Illegitimate issue if and when included. See HINDU LAW-WILL-WORDS IN-HEIRS-KHANDAN.

(1913) 41 I. A. 1 = 36 A. 121 (121-2, 123). Khiraj.

See KHIRAJ.

(1855) 8 M. I. A. 101 (109).

Khudkasht.

(1926) 53 I. A. 176 (180) = See KHUDKASHT. 5 Pat. 735.

(1) & (2).

## WORDS-MEANING OF-(Contd.)

#### Kudimiras.

-Sa LANDLORD AND TENANT-PERMANENT TEN-ANCY-PRESUMPTION OF-KUDIMIRAS.

(1923) 51 I. A. 83 (99) = 47 M. 337.

## Kudiwaram.

-Sor MADRAS ACTS--ESTATES LAND ACT, S. 8.

## Kudiwaram interest.

-See MADRAS ACTS-ESTATES LAND ACT, S. 8.

#### Knmris.

-Kumri cultivation - Warg Kumris - Wargdar Kumris. See MADRAS LAND TENURES-SOUTH CANARA.

Land acquired for execution of scheme.

-CALCUTTA IMPROVEMENT ACT OF 1911, S. 42. Land affected by execution of Scheme.

-See CALCUTTA IMPROVEMENT ACT OF 1911. S. 42.

## Land held for agricultural purposes.

-See AGRA TENANCY ACT, S. 79.

## Landlord.

-Ex-landlord if included in. See CALCUTTA RENT ACT OF 1920-LANDLORD AND TENANT IN.

(1928) 55 I. A. 344.

### Lanka.

-See LANKA.

(1899) 26 I. A. 107 (109)= 22 M. 464 (467).

## Legal personal representative.

-See STATUTE 6TH OF GEO IV, C. 85, S. 5. (1846) 3 M. I. A. 435 (445).

### Legal transactions in India-Words in.

-English law technical meaning-Inapplicability of. See GRANT-MEANING OF, IN LEGAL TRANSACTIONS IN INDIA. (1916) 44 I. A. 46=44 C. 585 (590).

## Lineal descendant.

-Married daughter of a lady if her. See HINDU LAW -COMPROMISE - CONSTRUCTION- LINEAL DESCEN-DANTS. (1929) 57 M. L. J. 580.

#### Litigation.

Compromise of-Movable or immovable properties obtained by. See LITIGATION-PROPERTY SUBJECT OF. OR TO BE RECOVERED BY-AGREEMENT TO SHARE-MOVEABLE OR, ETC. (1921) 52 I. A. 1(20)=48 M. 230. -Property-Litigation respecting. See SALE-CON-TRACT FOR-LITIGATION RESPECTING, ETC.

(1925) 50 M. L. J. 644 (653).

## Maafee sunud.

-See Maafee Sunud. (1852) 5 M. I. A. 271 (275). Machinery.

#### -See MACHINERY.

## Mafee-Birt tenure.

-See TENURE-HEREDITARY TENURE-WORDS IMPORTING-MAFKE-BIRT TENURE.

(1873) 19 W. R. 211.

## Mahal.

-See (1) OUDH ACTS-LAWS ACT OF 1876, S. 9 -MAHAL. (1910) 37 L. A. 124=32 A. 351

and (2) OUDH ACTS-LAWS ACT OF 1876, S. 9 (2). (1910) 37 I. A. 124 = 32 A. 351.

## Mahal-Co-sharer in.

-See (1) OUDH ACTS-LAWS ACT OF 1876, S. 9-CO-SHARER IN MAHAL. (1904) 31 I. A. 212=26 A. 574

## WORDS-MEANING OF-(Contd.)

Mahal-Co-Sharer in-(Contd.)

(2) OUDH ACTS-LAWS ACT OF 1876, S. '9-MAHAL. (1910) 37 I. A. 124=32 A. 351 and (3) OUDH ACTS-LAWS ACT OF 1876, S. 9

Maharani Sahiba.

(1910) 37 I. A. 124 = 32 A. 351.

-See HINDU LAW-WILL-OUDH TALUKDAR-WILL OF -MAHARANI SAHIBA IN.

(1888) 15 I. A. 127 (146)=15 C. 725 (747-8)

## " Mai huk hukuk ".

Quacre whether the expression " Mai hug hukuk" with all rights", or "with all right, title, and interest ". (Lord Shaw.) GIRDHARI SINGH v. MAGHLAL PANDEY. (1917) 44 I. A. 246=45 C. 87=7 L. W. 90= 3 Pat. L. W. 169 = 26 C. L. J. 584 = 22 C. W. N. 201 = 22 M. L. T. 358=15 A. L. J. 857=42 I. O. 651= 33 M. L. J. 687.

## Maintenance—Humble request for.

-Meaning of, in will. See HINDU LAW-WILL-MAINTENANCE-BEQUEST TO-HUMBLE REQUEST, ETC. (1905) 32 I. A. 105 (111)=28 M. 173.

## Male heirs of lady.

-See HINDU LAW-GIFT-DAUGHTER-GIFT TO -MALE HEIRS. (1927) 55 I . A. 74 = 52 B. 176

## Malguzari.

(1927) 54 I. A. 432 (434)= -See MALGUZARI. 7 Pat. 143.

## Malik.

-Daughter-in-law-Bequest to. See HINDU LAW-WILL-DAUGHTER-IN-LAW-BEQUEST TO.

(1874) 2 I.A. 7 (15).

-Estate of inheritance-Bequest of. See HINDU LAW -WILL-ESTATE OF INHERITANCE-BEQUEST OF-(1897) 24 I. A. 76 (88) = 24 C. 834 (839). WORDS.

Widow-Bequest to. See HINDU LAW-WILL-(1923) 45 M. L. J. 247 WIDOW-BEQUEST TO. and HINDU LAW-WILL-WORDS IN-MALIK-WIDOW DONEE. (1907) 35 I. A. 17 (21) = 30 A. 84 (89).

-Wife-Bequest to. See HINDU LAW-WILL-WIFE-ABSOLUTE ESTATE TO. (1907) 35 I. A. 17= 30 A. 84 (89-90) and (1921) 49 I. A. 1 (6)= 46 B. 159 (159).

-Wife-Gift to. See HINDU LAW-WIFE-GIFT TO -ESTATE CONVEYED-MALIK. (1994) 47 M.L.J. 585.

-See HINDU LAW-GIFT-WIFE - GIFT TO-(1928) 55 L A. 227= ESTATE CONVEYED-MALIK. 3 Luck. 114.

-Will-Word in. See HINDU LAW - WILL -WORDS IN-MALIK-EFFECT OF.

(1) (1907) 35 I. A. 17 (21)=30 A. 84 (89-90); (2) (1921) 49 I. A. 1 (6) = 46 B. 153 (159);

(3) (1921) 49 I. A. 25 (35)=1 P. 305 (315); (4) (1923) 45 M. L. J. 247 (248).

## Malikana.

-See MALIKANA.

## Malikan Gabig

(1918) 45 C. 793 (799)--See MALIKAN GABIZ.

#### Malikiyat.

-See HINDU LAW-WILL-WIDOW-BEQUEST TO ESTATE CONVEYED. (1921) 49 L A. 25 (35-6)= 1 Pat. 305 (316).

#### Malik-o-Qabiz.

-See HINDU LAW-WILL-WOMAN-ABSOLUTE ESTATE TO. (1916) 43 I. A. 181 (186)= 38 A. 446 (450-1)

## Mal Surunjamee or Gram Surunjamee lands.

-See MAL SURUNJAMEE OR.

## Management of property-Purposes of.

See BENGAL ACTS-TENANCY ACT OF (1903) 31 I. A. 24 = 31 C. 305 (311). Ss. 92, 98.

#### Maraldar.

-See NATTUKOTTAI CHETTY-BANKING FIRM OF. (1929) 57 M. L. J. 628.

## Marriage-Question regarding.

-Maintenance claim of wife against husband if a. See BURMA COURTS ACT. S. 4.

(1884) 11 I. A. 109 (119) = 10 C. 777 (784)

## Matters in controversy.

-See C. P. C. OF 1908, S. 2 (2). (1915) 42 I. A. 91 (95-6) = 42 C. 914 (925).

There is no doubt that in some cases the words " must" or the word "shall" may be substituted for the word " may ", but that can be done only for the purpose of giving effect to the intention of the Legislature; but, in the absence of proof of such intention, the word " may " must be taken to be used in its natural, and therefore in a permissive, and not in an obligatory sense (135). (Sir Barnes Praceck.) DELHI AND LONDON BANK P. ORCHARD. (1877) 4 I. A. 127 = 3 C. 47 (57) = 3 Sar. 731 =

3 Suth. 423.

-Shall-Shall and May-Think fit. See STATUTE-STATUTORY BODY-POWER CONFERRED BY STATUTE (1847) 3 M. I. A. 488 (492-3). ON.

Shall be lawful-Meaning ordinary of-Obligation when involved in.

No doubt the earlier part of S. 51 of the Indian Income Tax Act of 1918 does not say that the Chief Revenue Authority shall state a case, it only says that he may. And as the respondent rightly urged, "may" does not mean "shall". Neither are the words "it shall be lawful " in the section those of compulsion. Only the capacity or power is given to the authority. But when a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of Julius v. Bishop of Oxford :

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

In their Lordships view, always supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court. (Lard Phillimore.) ALCOCK, ASHDOWN & CO. v. CHIEF REVENUE ALTHORITY, BOMBAY. (1923) 50 I.A. 227 (236) = 47 B. 742 (751-2) = 25 Bom. L. R. 920 = 21 A. L. J. 689 =

A. I. B. 1923 P. C. 138 = 33 M. L. T. 267 = 18 L. W. 918 = (1923) M. W. N. 657 = 39 C. L. J. 302 = 28 C. W. N. 762 = 75 I. C. 392 = 45 M. L. J. 592

## WORDS-MEANING OF-(Contd.)

#### Melwaram.

-See MADRAS ACTS-ESTATES LAND ACT, S. 8.

## Members, in Statute.

-Male persons alone if indicated by.

The word "member" is not in ordinary English confined to male persons. (Lord Chancellor.) HENRIETTA MUIR EDWARDS +. ATTORNEY-GENERAL OF CANADA.

(1929) 31 L. W. 601 = A. I. R. 1930 P. C. 120 = 58 M. L. J. 300.

#### Mistake.

-See MISTAKE.

(1914) 41 I. A. 110 (119)= 41 C. 972 (988).

#### Mocurrary.

-See (1) LEASE - ESTATE CONVEYED UNDER-WORDS-MOCURRARY AND (2) TENURE-HEREDITARY TENURE-WORDS IMPORTING.

(1854) 5 M. I. A. 467 (498) and (1882) 9 I.A. 33 (38)= 8 C. 664 (671-2).

#### Mokhasa.

-See MOKHASA.

### Mokurrari istimrari.

-See TENURE-HEREDITARY TENURE-WORDS IMPORTING. (1882) 9 I. A. 33 (38) = 8 C. 664 (671-2). -The words "mokurrai istimrari" do not in their lexicographical sense primarily imply any heritable character in the grant as the term "mourasi" does; but they imply permanency from which in a secondary sense such heritable character might be inferred, it always being doubtful whether they meant permanent during the lifetime of the persons to whom the grant was made or permanent as regards hereditary character. The words do not per se convey an estate of inheritance, (Sir Lancelet Sanderson.) KUMAR KAMAKHYA NARAYAN SINGH P. RAM RAKSHA SINGH.

(1928) 55 I. A. 212 = 7 Pat. 649 = 32 C. W. N. 897 = 48 C. L. J. 69 = 9 Pat. L. T. 501 = 28 L. W. 41 = 109 I. C. 663 = 30 Bom. L. R. 1361 = A. I. R. 1928 P. C. 146 = 55 M. L. J. 882.

#### Money debt.

-S. BOMBAY REGULATIONS-ACKNOWLEDGMENT OF DERTS, ETC., REGULATION V OF 1827, S. 3-MONEY (1838) 2 M. I. A. 37 (53). DEBT.

#### Mouje.

-See MOUJE.

Mourasi. -See WORDS-MEANING OF-MOKURRARY ISTIM-(1928) 55 I. A. 212 = 7 Pat. 649. RARL.

## Moveable Property.

-If includes money. See LIMITATION ACT OF 1908. -ART. 89-MOVEABLE PROPERTY

(1901) 28 I. A. 227 (238) = 24 A. 27 (43).

#### Muddud-Mash.

See MUDDUD-MASH.

## Mutual Credit.

-See INSOLVENCY-SET OFF. (1836) 1 M. I. A. 87.

Mutual, open and current account.

-See LIMITATION ACT OF 1908, ART. 85.

## Naslan bad naslan.

-COMPROMISE - CONSTRUCTION OF - ESTATE CONVEYED-PROPRIETARY RIGHT.

(1886) 14 L. A. 7 (16·7) = 14 C. 296 (307·8).

See LEASE-ESTATE OF INHERITANCE.

(1885) 12 I. A. 205 (214) = 12 C. 117 (126).

#### Nazul property.

-See NAZUL PROPERTY,

Negotiate, as applied to pro-note.

-See POWER OF ATTORNEY-NEGOTIABLE IN-(1884) 11 I. A. 94 (108)= STRUMENT-WORDS. 10 C. 901 (912).

## Net annual profits.

-See BENGAL ACTS-CESS ACT OF 1880, Ss. 6, 72 (1910) 38 I. A. 31 (35-6) = 38 C. 372 (376-7). Nibandha.

-See NIBANDHA

## Numuk Sayer Mehal.

-See NUMUK SAYER MEHAL.

### Occupancy-Possession.

-Meaning of-Distinction. See MADRAS ACTS-ESTATES LAND ACT. S. 6 (1).

(1921) 48 I. A. 387 (394) = 44 M. 856 (863).

## Occupation-Occupy.

-S.Y OCCUPY-OCCUPATION.

(1922) 31 M. L. T. 114 P. C. (116-6).

## On demand.

-See Deed-Construction of-Payment "on DEMAND". (1855) 6 M. I. A. 211 (229).

-Use of disjunctive, in connection with synonymous words-Propriety.

When words are synonymous, like the words, "Ship or Vessel," the use of the disjunctive is not objectionable (372). (Mr. Justice Bosanquet.) POONEARHOTY MOODELIAR 2. THE KING. (1835) 3 Knapp 348=1 Sar. 76.

## Parakudi.

-See PARAKUDI.

(1904) 31 I. A. 83 (92-3)= 27 M. 291 (299).

#### Parties using words-Interests of, at the time.

-Regard for-Necessity. See DEED-CONSTRUC-TION OF-WORDS IN DEED-MEANING OF.

(1854) 6 M. I. A. 1 (23).

## Pasunkarie or Samudayam Village.

-See MADRAS LAND TENURES-TANJORE DIS-TRICT-PASUNKARIE OR ETC. (1923) 51 L. A. 83 (93)= 47 M. 337.

## Patta Patti.

-See CONTRACT-GOODS-CONTRACT FOR SALE OF-PATTA PATTI.

#### Payable—Legacy when becomes.

-See LIMITATION ACT OF 1908, ART. 123-PAYA-BLE. (1925) 52 I. A. 214 (226) = 48 M. 312.

## Pension-Political pension.

-See C. P. C. OF 1908 S. 60 (1) (g).

### Permanently fastened.

See LAND ACQUISITION ACT OF 1894, S. 3 (a). (1927) 54 I. A. 187=54 C. 582.

Female if included.

The word "person" is ambiguous and in its original meaning would undoubtedly embrace members of either sex. No doubt in any Code where women were expressly excluded from public office the problem whether the word "persons" therein would include women would present no difficulty, but where instead of such exclusion those entitled to be summoned to or placed in public officer are described under the word "person" different considerations arise. In an Act of Parliament passed several centuries ago the word 'person' when used in connection with persons entitled to be -WORDS IN

## WORDS-MEANING OF-(Contd.)

Person-(Contd.)

elected to particular offices, would no doubt, have only referred to males, but the cause of this was not because the word "person" could not include females but because at Common Law a woman was incapable of serving a public office.

Held, reversing the Court below, that the word "persons" in S. 24 of the British North America Act of 1867 included women. (Lord Chancellor.) HENRIETTA MUIR ED-WARDS D. ATTORNEY-GENERAL OF CANADA.

31 L. W. 601 = A. I. R. 1930 P. C. 120=

(1929) 58 M. L. J. 300.

-Municipal authority if included. See CALCUTTA MUNICIPAL ACT OF 1899, Ss. 618 AND 619. (1916) 43 I. A. 243 (247)=44 C. 87.

## Place of business-Departure from.

-See Insolvency-Gomasta-Departure from PLACE OF BUSINESS, E1C.

(1895) 22 I. A. 162 (167) = 23 C. 26 (33.4). Pledge.

-Pledge of personal credit. See SURETY-BOND BY -LIABILITY UNDER-COMPANY.

(1922) 43 M. L. J. 66.

## Political Pension.

-See C. P. C. OF 1908, S. 60 (1) (g)-POLITICAL PENSION.

## Possession.

-Actual possession-Formal possession-Physical possession. See LIMITATION ACT OF 1908-ART. 10. (1901) 28 I. A. 248 = 24 A. 17.

Occupancy—Distinction, See WORDS—MEANING OCCUPANCY. (1921) 48 I. A. 387 (394)= OF-OCCUPANCY. 44 M. 856 (863).

## Pottah.

-See PATTAH OR POTTAH.

## Poutradikrame.

-See HINDU LAW-WILL-DAUGHTER'S DAUGH-(1881) 8 I. A. 46 (62)=7 C. 304 (315-6). TER.

## Preliminary point.

See APPEAL-REMAND-PRELIMINARY POINT.

## Primogeniture in Government Sanad.

-See Crown-Grant by-Primogeniture in. (1910) 37 I. A. 168 (178, 181) = 32 A. 599 (607, 610). Property.

-Immoveable property-Interest in-Meanings of. See PROPERTY-IMMOVABLE PROPERTY.

 Litigation—Compromise of—Moveable or immoveable properties obtained by. See LITIGATION-PROPERTY SUBJECT OF, OR PROPERTY TO BE RECOVERED BY-AGREEMENT TO SHARE-MOVEABLE OR ETC.

(1924) 52 I. A. 1 (20)=48 M. 230.

Litigation respecting—Meaning of. See SALE— CONTRACT FOR—LITIGATION RESPECTING PROPERTY. (1925) 50 M. L. J. 644 (650).

-Right to-Pre-emption right if. Sa PRE-EMPTION -RIGHT OF-DECLARATION OF-SUIT FOR.

(1920) 47 I. A. 255 (260-1) = 48 C. 110 (114 5).

## Proprietor.

-See PROPRIETOR.

# Proprietary possession.

See MADRAS REGULATIONS - PERMANENT SETTLEMENT REGULATION XXV OF 1802-PREAMBLE (1874) 1 L A. 282 (306).

## Proprietress according to Shasters.

-Meaning of in reference to widow. See HINDU LAW WILL-WIDOW-BEQUEST TO-ESTATE CONVEYED-(1881) 8 L. A. 46 (60)= WIDOW'S ESTATE ONLY. 7 C. 304 (313 4).

## Public purpose.

-See PUBLIC PURPOSE.

#### Public service.

-Sa STATUTE 22 GEO. III. C. 45-S. 1-PUBLIC SERVICE. (1913) 19 I. C. 765 (768) = 17 C. W. N. 735.

#### Purakudis.

-See PURAKUDI.

(1904) 31 I. A 83 = 27 M. 291 (296).

#### Purakudi Ulavadai.

-See PURAKUDI ULAVADAL

(1904) 31 I. A. 83 (93) = 27 M. 291 (299).

## Purchased for a Valuable Consideration.

-See LIMITATION ACT OF 1877-ART. 134-PUR-(1909) 36 L. A. 148 (166-7)= CHASED FOR ETC. 36 C. 1003 (1014).

#### Purchaser.

-Lessee under Mocurraree lease it a. Sec LIMITA-TION ACT, OF 1877-ART, 134-PURCHASER. (1909) 36 L. A. 148 (166-7) = 36 C. 1003 (1014-15).

-See HINDU LAW-INHERITANCE-COLLATERAL SUCCESSION-WORDS-PUTRA IN-MILTAKSHARA. (1915) 42 I. A. 208 (227) = 37 A.604 (616, 623).

#### Putra Poutradi.

-See JAGIR- GRANT OF - ESTATE CONVEYED UNDER-WORDS-PUTRA ETC. (1918) 46 I. A. 88 = 46 C. 683.

## Putra Poutradi Krame.

-See HINDU LAW-WILL-WORDS IN-PUTRA (1881) 8 L. A. 46 (62)= POUTRADI KRAME. 7 C. 304 (315) & (1897) 24 I. A. 76 (88) = 24 C. 834 (839).

## Purta Pputradik.

-Sa Hindu Law-Will-Words in-Purta (1923) 28 C.W.N. 145 (149-50). POUTRADIK.

## Raiyat-Baiyati holding.

See BENGAL ACTS-TENANCY ACT OF 1885-(1918) 45 I. A. 190 (198) = 48 C. 90 (102). S. 104.H.

## Reasonable Commercial terms.

-See HINDU LAW-JOINT FAMILY-MANAGER-MORTGAGE BY-AUTHORITY AS TO-REASONABLE COMMERCIAL TERMS. (1927) 55 I. A. 85 = 7 Pat. 294.

## Relationship-Words of.

-Meaning of, in connection with law of inheritance-Difference in, in case of different Communities. See (1928) 55 I. A. 139= RELATIONSHIP-WORDS OF. 3 Luck. 76.

Actual rent. See BENGAL ACTS-TENANCY ACT OF 1885-S. 74-WORDS-ACTUAL RENT.

(1927) 54 I. A. 432 (437)=7 Pat. 134.

-Money not payable to landlord though part of consideration for enjoyment of tenure if. See BENGAL REGULA-TIONS-PUTNI TALUKS REGULATIONS VIII OF 1819-(1905) 33 I. A. 30 = 33 C. 140. S. 3 (3)-RENT. Fixed rent. See BENGAL ACTS-RENT ACT OF (1875) 2 L. A. 193 (204). 1659-S. 15.

## WORDS-MEANING OF-(Contd.)

Rent-(Contd.)

-Rent decree-Decree obtained by person who had parted with property in which tenancy is situate if a. See BENGAL ACTS-TENANCY ACT OF 1885-S. 65.

(1914) 41 I. A. 91 = 41 C. 926 (939-40).

#### Rent decree.

-Decree obtained by person after he has parted with property in which tenancy is situate if a. See BENGAL ACTS -TENANCY ACT OF 1885-S. 65-SALE UNDER RIGHT TO BRING TENURE OR HOLDING TO. (1914) 41 I.A. 91 = 41 C. 926 (939-40).

### Re payable.

-Bond by A-Recital in "that amount due under prior bond by B is, re-payable". See ADMISSION-MORTGAGE-LIABILITY OF THIRD PARTY UNDER. (1892) 19 I. A. 228 (230) = 20 C. 93 (96.7).

### Re-presentative.

-See REPRESENTATIVE AND REGISTRATION ACT OF 1908-S. 2 (10.)

#### Requires.

-See C. P. C. OF 1908-O. 41, R. 27-REQUIRES. (1907) 34 I. A. 115 (122) = 31 B. 381 (390).

## Requisite-Required.

-Distinction. Sr. LIMIT. ACT OF 1908-S. 12 (2)-(1928) 55 I. A. 161 = 6 R. 302. REQUISITE.

## Resides-Ordinarily resides.

-See GUARDIAN AND WARDS ACT 1890, S. 9-(1914) 41 I. A. 314 WORDS-ORDINARILY RESIDES. (322)=38 M. 807 (820).

#### Residence.

-See HINDU LAW-WILL-RESIDENCE-CONDI-(1874) 1 I. A. 387 (397). TION OF.

## Residence beyond the seas.

-See LIMITATION-ENG. STATUTE, 21 JAMES I. C. 16-S. 7-RESIDENCE "BEYOND THE SEAS." (1852) 5 M. I. A. 234 (250, 260).

## Residential purposes-Purchase for.

-See CIVIL SERVANTS IN INDIA-PURCHASE OF (1920) 47 I. A. 275 IMMOVEABLE PROPERTY. (280, 284.5) = 48 C. 260 (270.1).

## Revenue-Sum realizable as.

-Claim on account of. See AGRA LAND REVENUE ACT OF 1873-SS. 241 (1) AND 45.

## Right of occupancy.

-See BOMBAY ACTS-GUZARAT TALUKDARS' ACT (1915) 42 I. A. 229 (250)= VI of 1888-Ss. 73, 68. 39 B. 625 (663).

## Right, title and interest.

-Ser (1) HINDU LAW-JOINT FAMILY-FATHER-DECREE AGAINST-EXECUTION OF - SALE IN-IN-TEREST PASSING UNDER-ENTIRE ESTATE - RIGHT, TITLE ETC.

(2) INTEREST PASSING UNDER-FATHER'S SHARE

ONLY-RIGHT, TITLE AND ETC.

ETC.

(3) INTEREST PASSING UNDER-QUESTION AS TO-

RIGHT, TITLE, EIC. -See HINDU LAW-WIDOW-DECREE AGAINST-SALE IN EXECUTION OF-INTEREST PASSING UNDER -ENTIRE ESTATE OR WIDOW'S INTEREST ONLY-RIGHT (1884) 11 I. A. 66 (73.4) = 10 C. 985 (991.2).

## Rokkaguthagai.

-See ROKKAGUTHAGAI. (1923) 51 I. A. 83 (92)= 47 M. 337.

Rokkaguthagai miras ekabhogam Village.

\_\_\_\_\_See Kokkaguthagai miras ekabhogam village. (1923) 51 I. A. 83 (95)=47 M. 337.

## Same word used in different places in a deed.

Same meaning to—Giving of—Rule as to—Nature of, and limits to. See DEED—CONSTRUCTION OF—WORD SAME ETC. (1905) 32 I. A. 135 (141-2)=27 A. 383 (391-2) and (1928) 56 M. L. J. 91 (94).

## Samudayam or Pasunkare Village.

TRICT. (1923) 51 I. A. 83 (93) = 47 M. 337.

## Santana.

——See HINDU LAW—WILL—WORDS IN—SANTANA. (1915) 42 I.A. 208 (220)=37 A. 604 (616).

## Santana Sreni Kramane.

SANTANA ETC. (1878) 5 I.A. 138 (147-8) = 4 C. 23 (28).

#### Saranjam.

See Saranjam—Meaning of. See (1892) 20 I. A. 50 (56) = 17 B. 431 (443).

## Saranjami expenses.

-S& SARANJAMI EXPENSES-BENGAL.

(1922) 49 I.A. 399 (405) = 2 P. 38 (45).

# Scheme—Execution of—Land affected by—Land required for.

S. 42—LAND AFFECTED BY EXECUTION OF SCHEME. (1919) 47 LA. 45 (53-4)=47 C. 500 (511-2).

Self-begotten male issue—Failure of.

-See Words—Meaning of— Issue—Auras

## MALE ISSUE. (1886) 13 I.A. 97 (99) = 9 M. 499 (505). Shall.

## Shall be lawful.

#### Shet Sanadi.

A Shet Sanuti is defined in Wilson's Glossary as "one holding a Sanuti or grant of lands for military service, applied especially to a local militia acting also as police and as guardians of forts; also an assignment or grant of revenue of land for certain services; the assignment, as well as the office, may be hereditary." (Sir John Wallia.) LAKHAMGOWDA 2 APPANNA. (1928) 113 I.C. 467 ==

31 Bom. L. R. 235 = 53 Bom. 222 = 56 I. A. 44 = 29 L. W. 617 = A. I. R. 1929 P.C. 30 = 56 M. L. J. 429 (432-3).

## Shikmi-Shikmi taluk.

The word Shikmi, or belly, is applied to taluks which were once independent but are now inside another estate. (Sir John Wallis.) SURENDRA NATH KARAN DEO & KUMAR KAMAKHYA NARAIN SINGH.

(1929) 31 L.W. 352=32 Bom. L.R. 515=123 I.C. 145= 51 C. L. J. 502=.A. I. R. 1930 P. C. 45.

Son, grandson, etc., from generation to generation.

See Jagir—Grant of — Estate conveyed under—Words—Son etc.

(1892) 20 I.A. 50 (59-60)=17 B. 431 (447).

Specific purpose.

CIFIC PURPOSE. (1921) 49 I.A. 37 (43).

## Squander away or destroy to the prejudice of the owner.

STRUCTION. (1913) 26 M. L. J. 1 (6).

## WORDS-MEANING OF-(Contd.)

## Stipulated.

Interest Regl. XV of 1793, S. 5—Applicability.
(1868) 12 M.LA. 157 (188).

## Street to be formed.

See BOMBAY ACTS—CITY IMPROVEMENT ACT IV OF 1898, Ss. 41 and 45. (1918) 45 I.A. 233= 43 B. 181.

## Style-Common Words of, in Conveyance.

——Meaning to be attached to, when not mere surplusage
See CONVEYANCE—STYLE.

(1924) 52 I.A. 109 (114-5)=4 P. 244.

#### Substantial person.

(1874) 2 I.A. 71 (79-80).

Substantial question of law.

SUBSTANTIAL QUESTION OF LAW.

### Successors.

——See OUDH—OUDH ESTATE — PRIMOGENITURE SANAD—SUCCESSORS IN. (1921) 48 I.A. 135=43 A. 297 and (1922) 49 I.A. 195 (202, 206)=44 A. 301 (312). ——Heirs—Convertible if. See HINDU LAW—WILL—

WORDS IN-HEIRS-SUCCESSORS.

## (1921) 48 I.A 143 (146) = 43 A. 291 (294).

-See C.P.C. OF 1859, S. 327.

(1876) 3 I.A. 209 (213).

## Suit-Institution of-Capacity for.

Sufficient cause.

Capacity to obtain decree in suit when meant. Sur LIMITATION ACT OF 1908, S. 17.

(1916) 43 I.A. 113 (119).

## Sum certain payable at time certain.

----S& INTEREST ACT OF 1839, S. 1.

## Sunavas.

"Sunavas" is the plural of Sunu "offpring". Sunu is the old Indo-Aryan word which survives in the English "Son". The word "Sunavas" connotes the same idea as the word "Santana" (220). (Mr. Ameer Ali.) BUDDHA SINGH v. LALTU SINGH.

(1915) 42 I.A. 208=37 A. 604 (616)=20 C.W.N. 1= 22 C.L.J. 481=13 A.L.J. 1007=17 Bom. L.B. 1022= (1915) M.W N. 772=2 L.W. 897=18 M.L.T. 408= 30 I.C. 529=29 M.L.J. 434.

#### Superfluous words.

—Meaning given to certain words resulting in making others words superfluous—Instance of. See Deed—Con-STRUCTION OF—WORDS IN DEED — SUPERFLUOUS, WORDS. (1896) 23 I.A. 119 (125) = 24 C. 8 (18).

## Support in "various ways".

—Support "in some way or other". See HINDU LAW

—MAINTENANCE—GRANT FOR—WORDS — SUPPORT

ETC. (1888) 15 I.A. 149 (154)=16 C. 71 (78-9).

## Surviving sons.

Surviving by themselves or by their issue if means in gift over. See HINDU LAW—WILL—SONS—VESTED INTERESTS TO, ETC. (1929) A.O. 462=
A.I.B. 1930 P.O. 7.

## Taraf.

-See TARAF. (1906) 3 C.L.J. 560 (562).

Taram faisal.

-See Taram Faisal. (1904) \$1 LA. 88= 27 M. 291 (297).

Ex-tenant if included in. See CALCUTTA RENT ACT OF 1920-LANDLORD AND TENANT IN. (1928) 55 I.A. 344.

#### Terminable lease.

-See BENGAL ACT-RENT ACT OF 1859, S. 15. (1867) 11 M.I.A. 433 (467).

#### Thakbust map.

-See THAKBUST MAP. (1922) 49 I.A. 399 (406 7) = 2 Pat. 38 (46).

#### Thak Khasra.

-See THAK KHASRA. (1922) 49 I A. 399 (406.7)= 2 Pat. 38 (46).

#### Thanadars.

-See THANADARS. (1855) 6 M.I.A. 101 (109).

### Thing done.

-Acknowledgment of liability if a. See GENERAL CLAUSES ACT I OF 1868, S. 6 (4)-WORDS-THING (1913) 40 I.A. 74 (84) = 35 A. 227 (236). DONE.

#### Time-bargain.

-See CONTRACT-TIME BARGAIN.

#### Time certain.

-See INTEREST ACT OF 1839.

#### Town duties.

-See BOMBAY ACTS-ABOLITION OF TOWN DUTIES, ETC., ACT XIX. OF 1844-TOWN DUTIES.

(1890) 17 I.A. 103 (105)=14 B. 526 (530).

### Transfer for Valuable consideration.

Permanent lease on small quit rent if a. See LIMI-TATION ACT OF 1908-ART. 134-TRANSFER FOR (1928) 48 L. A. 302 = VALUABLE CONSIDERATION. 44 M. 831 (854).

## Ulavadai Kani.

-The word ulavadai kani means right of cultivation. (Sir Andrew Scolle) SEENA PENA REENA SEENA MAYANDI CHETTIAR v. CHOCKALINGAM PILLAL

(1904) 31 I.A. 83 = 27 M. 291 (294) = 8 C.W.N. 545 = 8 Sar. 587 = 14 M.L.J. 200.

## Ulavadaikani tenure.

The character of the tenure granted is described as ulatedaikani or "cultivation-right land," that is to say. land in which the grantee and his heirs were to have a hereditary right to cultivate. (Sir Andrew Scoble). SEENA PENA REENA SEENA MAYANDI CHETTIAR P. CHOCKA-LINGAM PILLAI. (1904) 31 LA. 83 = 27 M. 291 (294)-8 C.W.N. 545=8 Sar. 587=14 M.L.J. 200.

#### Ulavadai mirasidars.

See ULAVADAI MIRASIDARS.

(1904) 31 I. A. 83 (92) = 27 M. 291 (298-9).

## Unavoidable accident.

-See C.P.C. OF 1908-0. 41, R. 19.

(1861) 9 M. I. A. 26.

## Unjust or dishonest acquisition.

-See BENGAL REGULATIONS-LIMITATION REGU-(1842) 3 M.I.A. 1 (17-8). LATION II OF 1805-S. 3.

See MINERALS - LEASE - ZEMINDAR - PUTNI LEASE BY-LESSEE UNDER-RIGHT TO MINERALS OF-(1924) 52 I. A. 109 = 4 Pat. 244. WORDS.

## Usage having the force of law.

See C.P.C. OF 1882-S. 584 (a). (1692) 19 I. A. 228 (233) = 20 C. 93 (99-100).

## WORDS-MEANING OF-(Contd.)

## Valuable consideration.

Quit rent small reserved under permanent lease if a. See LIMITATION ACT OF 1908-ART. 134-VALUABLE CONSIDERATION. (1921) 48 I.A. 302=

44 M. 831 (854).

## Vara adai olai chits.

The documents are required as Vara adai olai chits which is translated as "deeds letting land for cultivation and providing for share of produce." (Sir Andrew Scoble) SEENA PENA REENA SEENA MAVANDI CHETTIAR D. (1904) 31 I.A. 83= CHOCKALINGAM PILLAI. 27 M. 291 (294) = 8 C.W.N. 545 = 8 Sar. 587 =

14 M.L.J. 200.

#### Vernacular words.

—Meaning of—Indian courts' opinion as to—Value attached by Privy Council to. See VERNACULAR WORDS (1921) 49 I.A. 54 (57-8)= -MEANING OF. 46 B. 481 (486).

## Village community.

-SAY VILLAGE COMMUNITY.

#### Void in disabling statutes.

-Voidable when means. See STATUTE-DISABLING (1864) 10 M.I.A. 123 (145-6). STATUTE.

#### Voluntary transfer.

-Transfer to provide funds to meet contingent liability on hundis if a. See INSOLVENCY-INSOLVENT-VOLUNTARY TRANSFER BY-HUNDIS.

(1883) 10 I.A. 98 (109-10) = 6 A. 84 (96).

#### Wargs.

-Warg Kumris - Wargdar Kumris. See MADRAS LAND TENURES-SOUTH CANARA.

#### Wasil baky papers.

-Wasil body papers are papers signed by Government officers, stating the sums collected and balances outstanding (479). (Lord Justice Turner). BENGAL GOVERN-MENT P. NAWAB JAFAR HOSSEIN KHAN.

(1854) 5 M.I.A. 467=1 Bar. 472. Will

-Words in. See HINDU LAW-WILL-WORDS IN. Wilful neglect.

-See RAILWAYS ACT OF 1890-S. 72 (2)-WILFUL (1927) 55 I.A. 67 (73) = 52 B. 169. NEGLECT.

#### With all rights.

-See Lease-Estate conveyed under-Words -INCLUDING ALL INTERESTS THEREIN.

(1928) 55 I. A. 320 = 55 M.L.J. 456 (462).

#### Zirat or zarait land.

See ZIRAT OR ZARAIT LAND.

(1917) 34 M.L.J. 97 (100-1).

#### WORKMAN.

-Injury by accident to-Compensation for-Nature of-Damages for tort-Compensation for accident-Claims

S. 3, Part I of the Workmen's Compensation Act of

Ontario provides :-

"Where in any employment.. personal injury by accident arising out of and in the course of the employment is... caused to a workman, his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned."

Held that the claim given by the statute was not a claim for damages for tort, but a claim for compensation for the accident (211). (Viscount Care.) HAROLD EATON MC MILLAN v. CANADIAN NORTHERN RAILWAY CO.

(1922) 33 M. L. T. 209 P C.

#### WRITS

---- Certiorari. See CERTIORARI.

——Habeas Corpus. Scr Habeas CORPUS.

#### WRONG

-Six TORT.

## WRONG DOERS.

- (See also JOINT TORT-FEASORS).

——Liability of—Joint or joint and several—Company—Directors of—Amounts fraudulently received by—Liability in respect of. See COMPANY—DIRECTORS—AMOUNTS IMPROPERLY RECEIVED BY—LIABILITY IN RESPECT OF. (1922) 32 M.L.T. 196 (205) P.C.

—Suit against—Prior unsatisfied judgment against one of them if a bar to. See COMPANY—DIRECTORS—AMOUNT FRAUDULENTLY RECEIVED BY — SUIT BY SHAREHOLDERS FOR RECOVERY OF.

(1922) 32 M.L.T. 196 (205) P.C.

## WRONGFUL ACT.

——Damages caused by—Liability for—Proximate and direct consequences of act—Indirect consequences—Distinction. See DAMAGES—WRONGFUL ACTS.

(1922) 33 M.L.T. 219 (221) P.C.

Damages for—Wrong committed in one country— Suit for damages for, in another—Maintainability. Sa TORT—WRONG COMMITTED, ETC.

(1922) 32 M.L.T. 205 (208) P.C.

#### YETTIAPURAM.

- Servagar-Office of. See SERVAGAR.

### ZEMINDAR.

ADVERSE POSSESSION.

BHAKEE BIRT TENURE.

BIRT TENANT-RENT FROM-CLAIM TO-BASIS OF.

BOUNDARY DISPUTE—EVIDENCE.
CHAKERAN LANDS WITHIN ZEMINDARY.

CHOWKEEDARS.

CHOWKIDARI CHAKERAN LANDS.

DEED BY, DISPOSING OF ZEMINDARI LAND, AND RE-SERVING TO HIMSELF PART OF LAND AS "ZIRAT OR ZARAIT LAND"—MEANING OF "ZIRAT LAND" IN.

DEPENDENT TALOOK-REVENUE DUE IN RESPECT OF-UNDERTAKING TO PAY.

DIGWARI TENURE - LANDS WITHIN ZEMINDARY HELD ON.

ESCHEAT-RIGHT OF.

FISHING-RIGHT OF.

GHATWALS.

GHALWALLY TENURE.

GRAM SARANJAM OR MAL SARANJAM LANDS.

GRANT BY.

IRRIGATION WORKS MAINTAINED BY — DAMAGES CAUSED BY.

JAGHIR.

JOTEDARS—RELATION OF LANDLORD AND TENANT BETWEEN.

LAKHIRAJ LAND OR LAKHIRAJ TENURE.

LEASE BY.

MINERALS.

OFFICERS OF-RESTRAINT OF PERSONS OF.

POWERS OF, BEFORE 1802

PROPERTY WITHIN AMBIT OF ZEMINDARY.

RENT.

RESUMPTION BY.

RYOTS OF — ALLEGATION OF RIGHT TO CERTAIN TENURE BY—DECLARATION OF TITLE FREE FROM —SUIT FOR.

## ZEMINDAR-(Centd.)

SEAL OF DECEASED.

THANADARI LANDS CONTIGUOUS.

ZEMINDARY.

## Adverse possession.

Chukdari right — Acquisition by adverse possession
of, against zemindar purchasing from Government—Evidence.

The sait was brought by the heir of a person who in the year 1861 had purchased from the Government the taluk or semindari of K, which was situated in the Soonderbuns. When the purchase was made from the Government the taluk was subject to a lease which expired in the year 1866. The plaintiff complained that, when the lease expired he became entitled in possession to the lands of the taluk, but that the defendants, being in possession of a large quantity of those lands, fraudulently kept themselves, and kept him out of, that possession. Then he prayed for possession of the lands mentioned in the Schedule to his plaint, and for a declaration of his absolute right to possession thereof, as well as for a declaration that the de-

fendants had no sort of right thereto.

The defendants' case was that they were in possession of the land from a time long before the permanent settlement of those very lands which was effected in the year 1832 " by right of a jungleboori, chukdari, mokurrari, and mourussi title, as tenants." They stated that though the Government had obtained a decree for resumption in the year 1824, the right, which might he called for shortness the chukdari right, previously acquired by their ancestors, was in no way destroyed by that resumption decree. "On the contrary," they said, "the Government, after the passing of the decree aforesaid, made a separate jummabandi of the ryoti chukdari right to the said land, confirming our chukdari eight, and made a settlement with the zemindar as regarded the proprietary right; and the zemindar too, confirming our chukdari right, has since that settlement been receiving the rents from us as before." Therefore the claim made by the defendants was to hold the checks as distinct from, and as against, the zemindar. The question for decision was whether the zemindar had such a title to the lands as enabled them to resist the plaintiff's claim to possession.

Held, on the evidence, affirming the High Court, that the defendants, even if not in possession under a well-proved legal title, were in possession under a colour of title which might have been avoided as far back as the year 1838; and that inasmuch as no proceedings were then taken to avoid it, time had run in their favour. HURRO PERSHAD ROY CHOWDHRY v. GOPAL DAS DUTT.

OPAL DAS DUTT. (1881) 5 I. J. 495.

- Mokurrareedar-Adverse Possession by-Notice of tenure-Necessity.

Limitation does not begin to run in favour of the mokurrareedar against a Zemindar until the Zemindar has had notice that the mokurrareedar claims under a mokur-

Where, therefore, in a suit by a Zemindar to recover possession of lands claimed to have been held by the defendants under a mokurraree grant, there was no proof that notice had been given to the plaintiff of such a tenure 12 years before the commencement of the suit, held that the High Court had rightly decided that the statute of limitation was no bar (254). TEKACTNEE GOURA COOMAREE v. MUSAMMAT SAROO COOMAREE.

(1873) 19 W. B. 252=2 Suth. 806.

Zensindari—Property within ambit of — Adverse possession of—Plea of—Onus of proof of. See ZEMINDARI —PROPERTY WITHIN AMBIT OF—ADVERSE POSSESSION OF. (1883) Bald. 480.

ZAMINDAR-(Contd.)

## Bhakee Birt tenure.

-Claim to, by person in possession under title to inferior right derived from semindar-Remody in case of -Possession-Quieting of claim-Suit for beth-Mara-

Supposing a claim to Bhaker Birt tenure to be groundless, the injury to the Zemindar by such a claim is not the less a wrong requiring a remedy, when it is put forward by one in possession under a title to an inferior right, derived from the Zemindar; as, for instance, by a farmer of a postion of the Zemindary. If such a claim was preferred by a person having such an interest, it would certainly be competent to the Zemindar, if the claim amounted to a repudiation or worked a forfeiture of the existing interest, to sue for restoration of possession, and the quieting of the claim al-o because the limitation of his demand to that of possession would keep alive an adverse claim, and would also multiply saits. (449.50). (Lord Chelmsford.) MAHARAJAH RAJUNDAR KISHWER SINGH BAHADOOR :. SHEOPUR-SUM MISSER. (1866) 10 M. I. A. 438-

5 W. R. P. C. 55=1 Suth. 628-2 Sar. 174.

-Interposition of-Effect on commune's rights-Rent from cultivators-Jumma from mesne proprietors-

If this tenure (Bhakee Birt tenure) be not interpresed between the Zemindar and the cultivators, the ordinary relation between him and them exists; but if it be interposed the Zemindar's general proprietary title to the collections is gone, and in lieu of it he is simply entitled to sum justima from the mesne proprietors. Such an intermediate tenure cuts off the possession, that is, the Zemindar's title to the tents and profits immediately derived from the cultivators

If the Bhakee Birt be valid, the Zemindar has no title to possession in the sense in which he uses that term. He might have a right to rent for a time on the footing of contract, or estoppel even from a Birt tenant if the latter accepted a lease, but that would rest on special grounds, and would not flow from his general proprietary title. Until this claim to a Birt tenure, therefore, be removed, the Zemindar cannot have the "possession" which he seeks, since, in some way or other, the Birt tenant stands between the Zemindar, as owner of the prima facie proprietary right and the cultivators (450). (Lord Chelmsford). MAHARAJAH RAJUMDAR KISHWAR SINGH BAHADOOR P. SHEOPURSUN MISSER. (1866) 10 M. I. A. 438 = 5 W. R. P. C. 55=1 Suth. 628=2 Sar. 174.

Birt tenant-Rent from - Claim to-Basis of.

Contract-Estoppel.

A Zamindar may have a right to rent for a time on the footing of contract, or estoppel, even from a Birt tenant, if the latter accepted a lease, but that would rest on special grounds, and would not flow from his general proprietary title (450), (Lord Chalmsford.) MAHARAJAH RAJUMDAR KISHWAR SING BAHADOOK P. SHEOPURSUN MISSER.

(1866) 10 M. I. A. 438 - 5 W. R. P. C. 55 -1 Suth. 628 - 2 Sar. 174.

Boundary dispute -- Evidence.

Chittas-Admissibility of-Zemindar and tenant-Cemindar and rival proprietor—Disputes between—Cares of-Distinction. See EVIDENCE-CHITTAS.

(1868) 12 M. I. A. 136 (142-3).

Chakeran lands within Zemindari. Rights over-Resumption of. See UNDER CHAKE-RAN LANDS.

Appointment and removal of-Powers of, UNDER CHOWKEDARS.

ZAMINDAR-(Could.)

Chowkedari Chakeran lands.

NO UNDER CHOWKEDARI CHAKERAN LANDS.

Deed by, disposing of Zemindari land, and reserving to himself part of land as "Zirat or zarait lands '-Meaning of zirait land in".

Quantion between comminder and eyet-Question between zemindar and recenue officers-Distinction-Interest of executant in land reserved.

S. the head of a joint Hindu family of zamindars, governed by the Mithakshara law, executed, what was loosely called, a deed of gift in favour of his only son, R. There were other members of the family besides 5 & R. By the deed he recited that among other family properties there was an 8 annas share in Monzah. V and he conveyed by gift to his son all his rights and interests in that and other properties and then declared that-

"400 rupees per month . . . shall continue to be paid to me . . . for defraying the expenses of the maintenance of me, the declarant, and for meeting my personal expenses, and, over and above that, 150 highes of land by measurement, situate in Mousa P, or in any other Mouza, shall remain in my prosession and occupancy as zirat land, and the measurement and the demarcation of the boundaries thereof shall be made as soon as possible, and the said land shall be held by me in my possession as airat without paying any yent therefor".

Held that on the true construction of the words "as ciral land", in the deed, they merely meant "for the personal use and maintainance of the declarant himself, without paying any sent therefor," and that the interest of the declarant continued no longer than his life, and deter-

mined with his death (99-100).

As between ryot and zamindar, and sometimes as between the gamindar and the revenue authorities, questions as to zirat or zarait lands involve very different considerations. The present case, however, is not one which touches a ryot's claim to be protected against dispossession so long as his rent is paid, or a zemindar's claim to an abatement of jumma in respect of lands held by him for his maintenance as zirat. In this case the word is used merely to describe the kind of interest reserved to the grantor under this particular deed, and its interpretation does not affect the general law or custom as to zirat lands. The deed reserves a certain area for the declarant's occupation, rent free, as part provision for his personal maintenance. So used, the term 'zirat" ceased to be a description truly applicable to these lands after the death of the declarant. not could third parties, who were entitled to his rights alone found upon this word any claim to rights in the land which he could never have enjoyed. With the determination of his interest this land would again form part of the general comindary property of the undivided family. During the lifetime of the declarant, the interest of his son in the 150 highes would be a vested zamindari interest in reversion. On the father's death the suspension of his right as zamindar to collect rents from the tenants of it would terminate, and as manager and head of the joint family he would possess and enjoy this parcel in like manner as the rest of the family property (100-1). (Lord Summer.) THAKUR SRI RADHA KRISHNA C. RAM DUR. (1917) 23 M. L. T. 26 = 16 A. L. J. 33 = 7 L. W. 149 = 27 C. L. J. 191 = 22 C. W. N. 330 = BAHADUR.

(1918) M. W. N. 163 - 20 Bom. L. B. 502 -4 P. L. W. 9 = 43 I. C. 268 = (1917) 34 M. L. J. 97.

Dependent talook—Revenue due in respect of— Undertaking to pay.

-Binding character of -Resenue sale purchaser of Zamindary-Successor in title of Zamindar-Distinction. ZAMINDAR-(Cont.)

Dependent Talook—Revenue due in respect of Uniertaking to pay—(Contd.)

A transaction by which a Zamindar transfers villages torming part of his zamindary to his wife in lieu of prompt dower payable to her taking the whole of the Government revenue upon himself might be impeached by a purchaser of the zamindary for arrears of Government revenue; but it is nevertheless good against all who claim title under the grantor (173). (Sir James W. Celvile.) SHADUT ALI KHAN C. KHAJEH ABDOOL GUNNEE.

(1873) Sup. I. A. 165 = 11 B. L. R. 203 = 19 W. R. 171 = 3 Sar. 229 = 2 Suth. 785.

## Digwari tenure—Lands within Zamindary held on.

CLAIX TO.

MINERALS UNDERLYING-RIGHT TO. Proof of-Thanadari land-Claim on foot of.

The Rajah of Pachete sued, inter alia, the Secretary of State and certain persons described as digwar ghatwals for a declaration that the three plaint named mouzahs were included in his zamindari, and that he was the proprietor of the mineral rights under the said mouzahs.

The suit mouzahs were interlocked with the unquestioned portion of the plaintiff's zamindari but it was doubtful whether all three were absolutely enclosed in it. The topographical situation was such as to afford some slight presumption that the three mouzahs were part of the zamindari. The three mouzahs had been in the occupation of the digwar ghatwals for as far back as could be traced, certainly for a period anterior to the settlement with the Raja. Both the Coarts below were of opinion that in the ordinary sense of the word the suit villages were not within the plaintiff's zamindary, or, to put it in another way, both courts held that they were neither malguzari nor chowkidar chakran. The High Court, however, decided in his favour upon the theory that they were thanadari lands. The lands had, however, never been resumed; Government had never acquired an increase of revenue from the Raja, and the Raja never derived rent from the lands.

Held, reversing the High Court, that the long established usage and possession was not reconcilable with the theory that the mouzahs were thanadari lands, that the trial Judge was right in deciding that they were not within the plaintiff's zamindary, and that the plaintiff had, therefore, failed to prove that he had any right to the minerals under the three mouzahs. (Lord Phillimore.) SECRETARY OF STATE FOR INDIA v. RAJA JYOTI PRASHAD SINGH DEO BAHADUR. (1926) 53 I. A. 100 = 53 C. 533 =

30 C. W. N. 745 = 24 A. L. J. 761 = A. I. B. (1926) P. C. 41 = 94 I. C. 974.

--- Suit to establish-Parties-Government if one.

In a suit by the zemindar of a permanently settled estate to establish his right to the minerals underlying two mouzhs which were within his Zemindary and were held by the defendant on Digwari tenure, held that the Government was not a necessary or a proper party to the suit (141).

Apparently the Government does not claim the minerals under permanently settled estates. However that may be, the Government has never claimed the minerals under the suit mouzahs or either of them, or put forward any claim inconsistent with the rights now asserted by the Zemindar. The rights of the Government, whatever they are, will not be prejudiced or affected by the result of a suit to which it is not a party (141). (Lord Macnaghten.) DURGA PRASAD SINGH v. BRAJA NATH BOSE.

(1912) 39 I. A. 133 = 39 C. 696 = 16 C W. N. 482 =

ZAMINDAR-(Could.)

Digwari tenure—Lands within Zemindary held on —(Contd.)

MINERALS UNDERLYING -- RIGHT TO-(Contd.)

9 A. L. J. 462=15 C. L. J. 461=14 Bom, L. B. 445= 15 I. C. 219=23 M. L. J. 26,

-Z zwindar and Digwar-Right of.

In a suit brought by the Zamindar of a permanently settled estate to establish his right to the minerals underlying two mouzahs which were within his Zamindary and were held by the defendant on digwari tenure, held that the proprietary right in the underground minerals belonged to the Zamindar and not to the Digwar (141).

The suit mouzahs are within the plaintiff's zamindari. The permanent settlement was made with the then zamindar. No separate settlement was made with the defendant's predecessor in interest, if there was a digwar at the date of the permanent settlement, which seems more than Joubtful. No attempt was made to prove that the mineral rights now in question were vested in the digwar Lefore or at the time of the permanent settlement if the lands were then held on digwari tenure. Nor is there the slightest evidence tending to show or to suggest that the Zenindar ever parted with his mineral rights to the digwar (141). (Lord Macnaghten.) DURGA PRASAD SINGH v. BRAJA NATH BOSE.

(1912) 39 J. A. 133 = 39 C. 696 (702-3) = 16 C. W. N. 482 = (1912) M. W. N. 425 = 11 M. L. T. 337 = 9 A. L. J. 462 = 15 C. L. J. 461 = 14 Bom. L. R. 445 = 15 J. C. 219 = 23 M. L. J. 26.

Escheat-Right of.

Tenure carved out of Zemindary—Death without heirs of holder of—Escheat on. See ESCHEAT—ZAMIN-DAR. (1876) 3 I. A. 92=1 C. 391.

Thanadari land—Zamindar contiguous to—Rights of. See THANADARI LAND. (1926) 53 LA. 100 (119)=
53 O. 533.

## Fishing-Right of.

Under-tenants in Zamindari-Rights of-Limits to.

See FISHERY RIGHT-ZAMINDARI. (1873) 20 W. B. 45.

Ghatwals.

See UNDER GHATWAL.

Ghatwally tenure.

-See UNDER GHATWALLY TENURE.

Gram Saranjam or Mal Saranjam lands.

-Sor UNDER GRAM SARANJAM, ETC.

## Grant by.

Amaram grant—Resumption of, See AMARAM GRANT,

Brahmottar rent free grant, before permanent settlement, of zamindary village—Grantee under—Minerals—Right to. Sα MINERALS—ZAMINDAR—BRAHMOTTAR, ETC. (1919) 46 I. A. 158 = 47 C. 95.

——Evidence—Terms of deed — Surrounding circumstances—Conduct subsequent of parties—Potta—Grant of See DEED—CONSTRUCTION OF—ESTATE CONVEYED— EVIDENCE. (1875) 24 W. B. 176.

Grant to a person and his descendants from generation to generation-Maintenance of certain persons by

grantee-Precision for-Effect.

The case of Rajah Nursing Deb v. Roy Koylamath and others (9 M. I. A. 55) decided no more than that where a Zamindar had made a grant vesting property in the grantee and his descendants from generation to generation,—terms well known in India as conferring an hereditary estate, that hereditary estate was not cut down and made unalenable

## ZAMINDAR-(Contd.)

## Grant by-(Contd.)

merely by a direction that certain persons should be main-The grant in that case was one from a private individual (61). (Sir Robert P. Collier.) GULABDAS JUG-JIVANDAS 11. COLLECTOR OF SURAT.

(1878) 6 I. A. 54=3 B. 186 (192) = 3 Sar. 889.

-Istimrar Sanad created before 1793 and granting mouzahs to a person and his descendants to be held on fixed and absolute jama-Arrears of rent due by grantex-Sale of tenure for-Zamindar's right of, as incident of tenure. See LANDLORD AND TENANT-RENT-ARRE-ARS OF-SALE FOR- ISTMIRAR SANAD, FTC.

(1871) 14 M. I. A. 330 (340).

-Permanent Settlement-Grant made before-Binding character of, on his successors-Conditions. S.: MADRAS REGULATIONS-PERMANENT SETTLEMENT REGULA-TION 25 OF 1802-ZAMINDAR. (1875) 25 W. R. 3. Talali Brahmottar grant, before perusment settlement, of Zamindary village by-Grantee under-Right to minerals of. See MINERALS - ZAMINIAR - TALALI (1916) 44 I. A. 46-44 C 585. BRAHMOTTAR, ETC. -Tenure at fixed rent but permanent, heritable, and transferable-Grantee under-Right to minerals of. See MINERALS-ZAMINDAR-TENURE AT FIXED, FIG. (1916) 44 I. A. 46 - 44 C. 585 (594).

-Tenure in lands within Zamindari-Grantee of -Right to minerals of. See MINERALS-ZAMINDAR-(1919) 46 I.A. 158 = TENURE IN LANDS, ETC. 47 C. 95.

## Irrigation works maintained by -- Damages caused by.

-Liability for-Vis Major-Damages caused by.

The Madras Railway Company claimed damages against the defendant, the Zamindar of Carvatenagaram. for the injuries occasioned to their railway and works by the loars

ting of two tanks upon his land.

The defendant was under the law bound to maintain the tanks and keep them in good condition. He had no power to do away with them. The tanks were ancient, and formed part of what might be termed a natural system of irrigation. The accident in question was due not to any negligence on the part of the defendant either in keeping the tanks in good repair or otherwise but to an extraordinary

Held, affirming the Courts below, that the defendant was not responsible to the Railway Company for the injuries

The defendant in this case is in a very different position from the defendants in Fletcher v. Rylands. In that case, the defendants, for their own purposes, brought upon their land and there accumulated a large quantity of water by what is termed by Lord Cairns" a non-natural use" of their land. They were under no obligation, public or private, to make or to maintain the reservoir; no rights in it had been acquired by other persons, and they could have removed it if they had thought fit. The rights and liabilities of the delendant appear to their Lordships much more analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. The duty of the defendant to maintain the tanks is a duty of very much the same description as that of the railway company to maintain their railway; and their Lordships are of opinion that, if the banks of his tank are washed away by an extraordinary flood without negligence on his part, he is no more liable for damage occasioned thereby than they would be for damage to a passenger on their line, or to the lands of an adjoining proprietor occasioned by the banks of the railway being washed away under similar circumstances

ZAMINDAR - (Contd.)

Irrigation works maintained by-Damages caused by-(('. utd.)

(385 h). (Sir Robert P. Collier.) MADRAS RAILWAY COMPANY : ZAMINDAR OF CARVATENAGARAM.

(1874) 1 I. A. 364 = 14 B. L. R. 209 = 22 W. R. 279 = 3 Sar. 391.

## Jagir.

-Resumption of. See JAGIR - RESUMPTION OF-ZEMINDAR.

## Jotedars-Relation of landlord and tenant between.

-Decree establishing-What amounts to. See LAND-TORD AND TENANT-RELATION OF BETWEEN ZEMIN-TOR AND JOTEPARS. (1929) 56 M. L. J. 562.

## Lakhiraj land or Lakhiraj tenure.

-S.: UNDER LAKHIRAL

Lease by.

-No LEASE-ZEMINDOR.

#### Minerals.

-Right to, No MINERALS-ZAMINDAR.

## Officers of-Restraint of persons of.

-Damages for-Nominal damages if enough-Custom of Zemindars to restrain persons of their officers-Restraint under a supposed-Effect. See DAMAGES-ZAMINDAR-RESTRAINT BY, OF PERSONS OF HIS OFFICERS.

(1841) 2 M. I. A. 504 (512-3).

- Kicht of.

A Zeminslar has no right to restrain the persons of his officers in case he thinks proper to do so (513). (Mr. Baron Parke.) RAJAH PEDDA VENCATAPPA NAHOO BAHA-DOOR P. ARGOVALA ROODRAPPA NAIDOO.

(1841) 2 M. I. A. 504 = 6 W. R. 13 P. C. = 1 Suth. 112 - 1 Sar. 224.

## Powers of, before 1802.

Estrat of

What were the powers of a Zemindar, of one of these Zemindaris, prior to the year 1802, it might be difficult to define with perfect accuracy; but we may presume, as we think we are fairly entitled to do, that they were at least commensurate with the powers stated to belong to a Zemindar in 1802 (133). (Dr. Lushington). UNIDE RAJAHA RAJE BOMMARAUZE BAHADUR D. PEMMASAMY (1858) 7 M. I. A. 128= VENKATADRY NAIDOO. 4 W. R. 121 - 1 Suth. 300 - 1 Sar. 637.

### Property within ambit of zemindary.

-See Zemindary-Property within ambit of. Rent.

S& UNDER LANDLORD AND TENANT-KENT.

## Resumption by.

-See RESUMPTION.

## Byots of-Allegation of right to certain tenure by -Declaration of title free from-Suit for.

-Maintainability--Consequential relief-Plaintiff not entitled to any. See LANDI ORD AND TENANT-LAND-(1874) 2 I. A. 83.

### Seal of deceased.

-Use by his successor of-Practice of. See SEAL-(1865) 10 M. I. A. 183 (192). ZEMINDAR DECEASED.

## Thanadari land contiguous.

-Rights of-Escheat-Right to surface of land in caseof-Minerals-Right to. See THANADARI LAND. (1926) 53 I. A. 100 (119)= 53 C. 533. ZEMINDAR-(Cont 1.)

Zamindary.

Sa ZEMINDARI.

#### ZAMINDARI.

(See also HINDU LAW-IMPARTIBLE ESTATE).

CONFISCATION AND RE-GRANT OF-DECENNIAL SET-TLEMENT IN CASE OF.

DECENNIAL SETTLEMENT OF -SHIKMEE TALUQ-NON-MENTION OF, IN SETTLEMENT.

GRANT OF.

MAL ASSETS OF-PROPERTY INCLUDED IN.

MAI. VILLAGE IN-LESSEE OF.

MILITARY JAGIR-ZEMINDARY HELD AS.

MOKURRARY ISTIMBARI TENURE CARVED OUT OF.

MOUNTAIN LAND IN.

PERGUNNAH SITUATED WITHIN—MAHAL SEPARATED FROM ZEMINDARY OR 'PART OF ZEMINDARY—EVI-DENCE.

PERMANENT SETTLEMENT—ZEWINDARY SUBJECT OF —CLAIM TO PORTION OF.

PERMANENT SETTLEMENT OF.

PROPERTY WITHIN AMBIT OF.

REVENUE SALE OF -PURCHASER AT.

SHIKMEE TALUK IN-EXISTENCE OF - EVIDENCE CONCLUSIVE AGAINST.

SOONDERBUNS-ZEMINDARY BOUNDED BY-JUNGLE LANDS WITHIN.

TENURE OF LANDS WITHIN—KABULIVAT SHOWING— NON-PRODUCTION BY ZEMINDAR OF.

VILLAGES FORMING PART OF.—GRANT OF. SUBJECT TO PAYMENT OF REVENUE.

# Confiscation and re-grant of—Decennial settlement in case of.

——Effect of—Presumption. See DECENNIAL SETTLE-MENT—POLICY OF—ESTATE CONFISCATED AND RE-GRANTED. (1867) 12 M. I. A. 1 (35).

## Decennial settlement of -Shikmee Taluk - Nonmention of, in settlement.

Evidence conclusive of non-existence of taluk at the time if. See DECENNIAL SETTLEMENT — UNDER-TENUNES. (1863-5) 10 M. I. A. 165 (175).

#### Grant of.

—General language of — Marginal specification of villages then comprising samindary—Control of former by latter.

A sunnud granted by Lord Clive to the then Zemindar of Singampatti contained the usual recitals, one of those setting forth that the object of the grant was to confer upon the Zemindar, his heirs and successors, "a permanent preperty in their land in all time to come". It contained no specification or description of the lands which it was intended to carry, but was a grant in general terms of the Zemindary as then held and possessed by the grantee. There was a marginal note specifying the names of three villages then composing the Zemindary.

Ii was contended that the effect of the note was to limit the grant to those three villages and a limited area in their immediate vicinity, and to exclude the claim of the grantee and his decendants for any land beyond those limits which was not shown to have been subsequently acquired from the

Government by prescription.

Held that a marginal specification of the villages existing at the date of the grant could not control the plain terms of the grant, nor could it be taken as definitive of the extent of land, cultivable or not, which was then held and possessed by the Zemindar of the villages enumerated (154). (Lord Watson.) Secretary OF State for India in Coun-

## ZAMINDARI-(Contd.)

Grant of-(Contd.)

CIL v. NELLAKUTTI SIVA SUBRAMANYA TEVAR (1891) 18 I. A. 149 = 15 M. 101 (107-8) = 6 Sat. 74.

-Newly constituted Zemindary-Grant of-"Heirs' of grantee in-Meaning of.

Where a sunnud of 1802 under which a Zemindary newly constituted was granted declared that the grantee was to hold the same in perpetuity to his heirs, successors, and assigns, at the permanent assessment threin named, held that the word "beirs" in the Sunnud meant the heirs of the grantee according to the ordinary rules of inheritance of the Hindu law, and that there was no reason why the limitation to his heirs should be construed to mean a single heir according to the rule of primogeniture (48-9). (Sir Barnes Poweeck.) RAIA VENKATA NARASIMHA APPA RAO BAHADUR P. RAJA NARASIMHA APPA RAO BAHADUR.

(1879) 7 I. A. 38=2 M.128 (134-5)= 6 C. L. R. 152=4 Sar. 81=3 Suth. 725.

## Mal assets of-Property included in.

- Rent of Enhancement of Right of Tenant disparing Onus on. See LANDLORD AND TENANT-RENT -ENHANCEMENT OF ZEMINDAR'S RIGHT OF ETC.

(1870) 5 M. J. 389.

## Mal Village in-Lesses of.

— Minerals—Right to—Proof of—Onus—Quantum.
See MINERALS—LEASE—ZFMINDARI.

(1913) 37 I. A. 136=37 C. 723.

## Military Jagir-Zemindari held as.

—Incidents of—Alteration of, by perpetual settlement and by Regulation XI of 1793. See HINDU LAW-IM-PARTIBLE ESTATE—MILITARY JAGIR. (1872) 19 W.B. 8.

## Mokurrary istimrari tenure carved out of.

——Death of grantee without heirs—Escheat—Zemindar's right by. See ESCHEAT—ZEMINDAR.

(1876) 3 I. A. 92=1 C. 391.

## Mountain Land in.

——Claim to, as being part of his Zzemindary, against Government—Presumption—Onus of Proof—Government grant—Zemindary held under.

Respondent, the Zemindar of Singampatti sued for cancellation of a decision of the Government Survey Officer, and for a declaration of his title to certain tracts of mountain land, covered with forest and jungle, as being parts of his Zemindary. The title of the respondent was a Sunnud, dated 22—4—1803, granted by Lord Clive to his ancestor, the then Zemindar of Singampatti. The Sunnud contained the asual recitals, one of those setting forth that the object of the grant was to confer upon the Zemindar, his heirs and successors, "a permanent property in their land in all time to come." It contained no specification or description of the lands which it was intended to carry, but was a grant in general terms of the Zemindary as then held and possessed by the grantee.

Held, that the respondent was entitled to succeed in the suit, if he established by direct evidence or as matter of reasonable inference, that the lands in dispute were held and possessed by the Zemindar at the time when he obtained a permanent title from the Government (154-5). (Lord Watson.) SECRETARY OF STATE FOR INDIA IN COUNCIL 7. NELLAKUTTI SIVA SUBRAMANYA TEVAR.

(1891) 18 I. A. 149=15 M. 101 (107-8)=6 Sar. 74.

Pergunnah situated within—Mahal separated from zemindary or part of zemindary—Evidence.

Permanent settlement of semindary including per-

## ZAMINDARI-(Contd.)

Pergunnah Situated within—Mahal Separated from zemindary or part of zemindary—Evidence —(Contd.)

The respondent, Zemindar, sued the appellant, the holder of six taluks forming portion of pergunnah. S situated within his Zemindary, for enhancement of rent, treating the appellant as under-tenant. The decision of the suit-depended upon whether pergunnah, S was, as the respondent alleged a part of his Zemindary, or, as the appellantcontended, a mahal separated from the Zemindary of the respondent, and enjoyed as lakheraj from a period anterior to the permanent settlement.

Both the appellant and the respondent descended from a common ancestor, and the appellant belonged to the elder branch of the family. At one period the whole of the Zemindary was in the appellant's ancestor. A. But subsequently the whole Zemindary passed to the respondent's grandfather, and the deed of settlement granted to him 1803 under Madras Regulation XXV of 1802 established that the Zemindary then granted included pergunnah S. Further, on the occasion of the settlement the permanent revenue of Rs. 1,050 per annum or upwards was a sessed specifically on pergunnah S.

Held that from the above facts there asose the strongest presumption against the truth of the appellant's case.

If pergunnah S was held in 1802 as a distinct separate property, the then holder of it would have settled for it with Government, and would have taken a deed of permanent property, assuring to him that separate property. Such would have been the natural course of things unless the whole pergunnah were, as between the possessor of the land and Government, lakhiraj; but that it certainly was not, since we find it clearly proved that it was treated as malgazary land, and Government revenue assessed upon it. On the other hand there is also a strong presumption that the Zemindar of Jeypuram would not have settled for this land as he did, unless he had been in the receipt of the collections from it, or of some tent payable in respect of it (390). SRI KRISHNA DEVU MAHARAJULUNGARU 2. SRI RAMCHENDRA DEVU MAHARAJULUNGARU.

(1870) 5 M. J. 389.

## Permanent Settlement—Zemindari subject of — Claim to portion of.

Onus on claimant—Zemindasi traversed by navigable river of variable course. See ZEMINDARI—PERMANENT SETTLEMENT OF—OBJECT OF.

(1917) 43 I. C. 361 (368).

## Permanent Settlement of.

Effect of-Lands owned by zemindar but not lakhiraj or thanadari-Zemindar's rights to-Effect on.

It was argued upon the language of the Regulations of 1790 and 1793 (VIII of) that the Government of the day recognised a pre-existing right in the zemindars and others and did not confer rights by the permanent settlement, and consequently that it was possible that lands owned by a zemindar—though not lakhiraj or thanadari—might never have been settled and yet be his property and so might descend to the successor in title of the original Zemindar, having remained unsettled through all these years. Whether such lands were to be reckoned as a part of a Zemindari or to be treated as de hors the zemindari was not made clear.

Their Lordships refrained from pronouncing on the soundness of that argument, observing, however, that it received no support from decided cases and appeared at first sight to be contrary to the teaching of the text-books (106-7). (Lord Phillimore.) SECRETARY OF STATE FOR INDIA D. RAJA JYOTI PRASHAD SINGH DEO BAHADUR.

(1926) 53 I. A. 100 = 53 C. 533 = 30 C. W. N. 745 = 24 A. L. J. 761 = A. I. B. 1926 P. C. 41 = 94 I. C. 974.

## ZAMINDARI-(Confd.)

Permanent settlement of-(Contd.)

— Inclusion in, of Jagir lands within Zemindary held rent-free under hereditary jagir grant made by Government before Decennial Settlement—Effect of, on Jagirdar's rights.

Jaghire lands within a Zemindary held rent-free by the defendants and their predecessors under a heriditary Jaghire grant made by the Government before the Devinnial Settlement were made the subject of assessment, in the Settlement between the Zemindar and the Government in 1802. Held that the Settlement between Government and the Zemindar could not affect the rights of the Jaghirdars (460). (Six James II. Celvile.) FORMES 2: MEER MAHOMED.

(1870) 13 M. I. A. 438 = 14 W. R. P. C. 28 = 5 B. L. R. 529 = 2 Suth. 358 = 2 Sar. 588.

Land held rent-free under subsisting sanad at time of Treatment as labbrest of Presumption Validity of title on which labbrest land of that extent held—Right to question, of Zemindar and of Government.

How were the lands dealt with on the occasion of the Permanent Settlement in 1802? They were then unquestionably held rent-free, under a subsisting Sanad, and the presemption is that they would be treated as Lakhiraj. In that case no revenue would be assessed upon them. Nor would the Zemindar acquire any right to question the validity of the title on which Lakhiraj land of that extent was held. That question could only be raised by Government (457). (See James II. Celvile.) FORBES: MEER MAROMED TUQUEE. (1870) 13 M. I. A. 438=

14 W. R. P. C. 28 - 5 B. L. R. 529 - 2 Suth. 358 -2 Sar. 588.

— Object of — Title conferred by—Assumption in farour of, and not against claim to Zemindari subject of settlement—Onus on claimant—Zemindari traversed by navigable river of variable course.

Their Lordships wholly reject the conclusion that, whenever a zemindari has been the subject of Permanent Settlement and there was any dispute as to its external boundaries, the remindars would never be able to establish title to any portion of it if it happened to be traversed by a navigable river of variable course, unless they could show what were the exact boundaries of that course at the date of the Permanent Settlement. The object of the Permanent Settlement was to confirm the zemindars in their holdings at a fixed and immoveable rent, and, if assumptions are made one way or the other, they ought to proceed upon an attempt to justify the title rather than to render it insecure (368). (Lord Buckmatter.) HARADAS ACHARIYA CHOW-DHURI - SECRETARY OF STATE FOR INDIA.

(1917) 43 I. C. 361 = 22 M. L. T. 438 = 26 C. L. J. 590 = (1918) M. W. N. 28 = 20 Bom. L. R. 49.

#### Property within ambit of.

Adverse personien of Plea by junior branch of -

G, the grandson of Rajah A' and son of the elder son of the Rajah V, sued the two sons of the younger sen of Rajah A' for the purpose of recovering certain property. The plaint stated the cause of action to this effect; that the plaintiff's father and the defendant's father were brothers; that the plaintiff's father, who was the elder, succeeded to the Zemindari of Pittapuram, iselonging to their father, Rajah A'. It averred that "the defendant's father, in 1845, received from plaintiff's father the estate called Kolanka Mutta, and having built a house in the village of C, attached to the said Mutta, has lived there separately". The plaint proceeded: "As the plaintiff's grand-mother, B, was a member of the plaintiff's family, she lived in some of the

## ZAMINDARI (Cott.)

Property within ambit of-(C. mld.)

houses within the fort of Pittapuram belonging to plaintiff, and had in her use some grounds appertaining to that fort; and while so, she died on 11—3—1870. The defendants retained the said houses and grounds in their possession, even after her death, on the ground of their having occupied them with her until her death; and although the plaintiff demanded them to surrender them up to the plaintiff in July 1870, they have not done so yet." Then it was alleged that the fort was part of the plaintiff's ancient gemindari.

The material plea, on the part of the defendants, was to the effect that their paternal grand-father died in 1828, "and from seven or eight years afterwards the disputed houses and grounds have been in uninterrupted and undisputed possession and enjoyment of the defendant's father and themselves. Some of the disputed houses were built by the defendant's grand-father and some by their father, and not by plaintiff or his father. As the plaintiff's father and plaintiff have all along been maliciously disposed towards the defendant's father's and defendant's possession and enjoyment have been adverse to plaintiff's title, and therefore his claim is larred by the Statute of Limitation".

The High Court found against the defendant's contention namely, that there had been an adverse possession.

Held that under the circumstances of the case the defence of the defendants was not made out, and that the High Court were manifestly right in giving a judgment for the plaintiff, there being no dispute that the property in question was originally part of the zemindari. (Sir Robert P. Collier.) SRI RAJAH ROW MAHIPATI SURVA = SRI RAJAH ROW MAHIPATI GANGADHARA RAMA.

(1883) Bald 480.

—Mokurraree grant in perpetuity at fixed rent in respect of—Plea of—Onus of proof of. See LEASE—ZEMINDAR—LEASE BY—MOKURRAREE LEASE, ETC.

(1873) 19 W. R. 252 (254).

-Mourrance or dur-Mekurrance rights in-Plea of
-Onus of Proof of.

Admitted title of plaintiff frima facie imposes on defendants the onus of establishing a defence which would entitle them to continue in possession. (Lord Shand.) RAM RANJAN CHUCKERBURTY v. RAM NARAIN SINGH.

(1894) 22 I. A. 60 (66) - 22 C. 533 (542) = 6 Sar. 530 = 5 M. L. J. 7

——Rent—Free—Claim to land as being—Presumption —Onus of proof. See BENGAL ACTS—TENANCY ACT OF 1885, S. 103 R—RECORD OF RIGHTS—ENTRY IN.

(1922) 49 I. A. 399 (408-9)= 2 Pat. 38 (48-9).

——Resumption of—Zamindar's right of—Presumption of—Onus on person resisting. See RESUMPTION—ZEMIN-DAR—PROPERTY WITHIN AMBIT OF.

——Servant of zemindar—House occupied by—Ownership of—Presumption. See MASTER AND SERVANT— HOUSE APPROPRIATED, ETC.

(1841) 2 M.I.A. 504 (513-4).

- Shikmee Talook-Settlement of lands as-Defence plea of-Presumption-Onns of proof.

In a suit by the purchaser of a zemindary at a sale held under Reg. XI of 1822 for the recovery of lands alleged to be part of the Zemindary, held, that the lands, being situate within the zemindary purchased, were prima facie to be considered as part of the zemindary, and that it was for the defendants, who insisted upon the separation of those lands from the general lands of the zemindary, and on their settlement as Shikmee Talook, to establish their title (171). (Lord Juntice Turner.) WISE v. BHOOBUN MOYEE DEBIA

## ZAMINDARI-(Contd.)

Property within ambit of-(Contd.)

CHOWDRAINEE. (1863-5) 10 M. I. A. 165=3 W. R. 5= 2 Sar. 91=1 Suth. 563.

Zemindar's title to-Claim adverse to-Onus of proof of.

Plaintiff was the owner of a Zemindary which included mouzi C D. He sued for the recovery of possession of the suit lands which were situated within the said Mouza. The defendants, who owned three horder in the said Mouza, claimed the suit lands as being within their horder.

Held, that, as the plaintiff's title as zemindar was not

Held, that, as the plaintiff's title as zemindar was not questioned and the suit lands were admittedly within the ambit of the Zemindary, on failure of the defendants to prove that the suit lands were within their own howlas, the plaintiff was entitled to a decree, (Lord Tomlin.) GNANENDRA KUMAR ROY CHOWDHURY 7. PRAFULLA NATH THAKUR. (1929) 33 C.W.N. 984=1929 M.W.N. 616=50 C. L. J. 509=30 L. W. 1024=

A.I.R. 1929 P.C. 200 = 57 M.L.J. 776.

Revenue Sale of-Purchaser at.

ANNULMENT OF INCUMBRANCES—RIGHT OF.

—Rengal Later as regards—Policy of.

The general policy of the Revenue Sale Laws that have been passed since the Perpetual Settlement, has been to protect the public revenue by placing the purchaser of an estate sold for arrears of revenue in the position of the person who, at the time of the Decennial Settlement, engaged to pay the revenue then fixed. They, therefore, gave, or sought to give, to the purchaser, the power of abrogating all engagements made by the defaulting zemindar or his predecessors since the settlement, whereby the zemindary rents and profits, which were the security to Government for the due payment of its revenue, were diminished. The Indian Legislature, however, has not uniformly tried to effect this general object by precisely the same means. The various Regulations and Acts which it has from time to time passed for the purpose differ in the language of their provisions, and in the stringency of the powers conferred by them (323.4). (Sir James W. Colvile.) KHAJAH ASSA-NOOLLAH +. OBHOY CHUNDDR ROY.

(1870) 13 M.I.A. 318=13 W. R. P. C. 24= 2 Suth. 306=2 Sar. 535.

-Presumption of -Basis and extent of.

The Statutory title which the law gives to an auction-purchaser of a Zemindary at a revenue sale is that, for the protection of the revenue, and in order to ensure its due payment by him, and in order to avoid the necessity of repeated sales of the property, he is remitted to all those rights which the original settlor at the date of the perpetual settlement had; and may, in consequence of that, sweep away or get rid of all the intermediate tenures and encumbrances created by preceding zemindars since that date. In the assertion of this right, the action purchaser is, no doubt, in many cases allowed to have the benefit of a certain presumption, and by virtue thereof to throw the burden of proof on his opponent. The presumption, however, is founded not so much on the principle just mentioned, as upon the principle that every bugah of land is bound to pay and contribute to the public revenue, unless it can be brought within certain known and specified exceptions, and that the right of the zemindar to enhance rent is also presumable until the contrary is shown. Accordingly, in many cases, a very heavy burden of proof has been placed upon the defendants whose tenures have been questioned by auction purchasers; and they have had to prove, in circumstances of great difficulty. that their tenure did really exist at the date of the perpetual settlement, or even twelve years before, in order to escape the consequences of the claim. The course of modernlegislation, and also of modern decision, has, however, if not ZAMINDARI-(Contd.)

Revenue sale of-Purchaser at-(Contd.)

ANNULMENT OF INCUMBRANCES-RIGHT OF-(Contd.)

in the case of lakhiraj lands, at least in the case of under tenants, to a considerable degree modified the rules laid down in the earlier cases, by giving force to the contrary presumptions arising from proof of long and undisturbed possession (867.) (Sir James W Celvile.) FORBES P. MEER MAHOMED HOSSEIN.

(1873) 2 Suth. 865 = 20 W. R. 45 = 12 B. L. R. 210 = 3 Sar. 264.

ANNULMENT OF SUB-TENURES-RIGHT OF-REGULA TIONS CONFERRING.

-Construction strict of - Necessity.

These laws (Regulations conferring on purchasers at Government auction sales in the case of conindaris the right of avoiding under-tenures created by the defaulter) must on general principles receive a strict construction (14.5) (Lord Justice Turner.) RANEE SURNOMOYEE - MAHA-RAJAH SUTTESHCHUNDER ROY BAHADOOR.

(1864) 10 M. I. A. 123-2 W. R. P. C. 13-1 Suth. 548 - 2 Sar. 60.

Modification of, by Act of 1859.

These laws (Regulations conferring on parchasers at Government auction sales in the case of Zeminstaries the right of avoiding under-tenures created by the defaulter) cannot but occasionally operate very hardly on the grantees of subordinate interests, and they have, therefore, been materially modified by an Act of 1859 (143). (Lord Justice Turner.) RANEE SURNOMOVEE D. MAHARAJAH SUT. TEESH CHUNDER ROY BAHADOOK.

(1864) 10 M. I. A. 123-2 W. R. P. C. 13-1 Suth. 548 = 2 Sar. 60.

Policy of.

The Regulations which have been made at different times empowering purchasers at Government auction sales in the case of zemindaries from which the Government income has not been duly paid to avoid and annul sub-tenures created since the Decennial Settlement have been couched in different language, but all with the same policy in view. It has been assumed, as the foundation of them, that the default of the zemindar may have been occasioned by improvident grants of talooks and other subordinate tensireat inadequate rents; that this was in breach of the condition on which the fund was originally created by the Sovereign power; and the purchaser, therefore, has been set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created (142 3). (Lord Justice Turner.) RANEE SURNOMOVEE P. MAHARAJAH SUTTESHCHUN-DER ROY BAHADOOR. (1864) 10 M.I. A. 123= 2 W. R. P.C.13=1 Suth 548=2 Sar. 60.

GHATWALLY TENURE CREATED BEFORE DECENNIAL SETTLEMENT.

Disturbance of-Right of.

An auction purchaser of a zemindary at a sale for arrears of Government revenue, coming in by virtue of the sale, would appear to have no right to disturb the tenure (ghatwally tenure at a fixed rent, created before the Decennial Settlement) in the way in which an auction parchaser can sweep away incumbrances created since the Decennial Settlement. The only advantage which he gains by the character of being auction purchaser is, that he is relieved from any difficulty arising from the law of limitation, and that he is not conclusively barred by the acts or the omisalons of the former zemindars, whatever presumptions may arise from the omission to question the tenure by those who preceded him in the zemindary. It would seem, therefore, that if he has any right at all to destroy the tenure, it I ZAMINDARI-(Contd.)

Revenue sale of -Purchaser at -- (Contd.)

GHATWALLY TENUKE CREATED BEFORE DECEN-NIAL SETTLEMENT-(Contd.)

must be by virtue of the clause in S. 41 of Regulation VIII of 1793, relating to chakeran or service lands. Their Lord ships fail to see upon what the title of the action purchaser can depend, if it does not depend upon that (255-6.) (Sir James H. Calede.) KOOLDEEP NARAIN SINGH ?. THE GOVERNMENT. (1871) 14 M. I. A 247=

11 B. L. R. 71-2 Suth. 491-2 Sar. 734.

JULKUR RIGHTS INCIDENT TO TEXURE WHICH CANNOT BE AVOIDED BY HIM.

-Suit for receivery of-Onns of proof in-Presump. tien in his favour.

Appellant was the auction purchaser of a zemindary at a revenue sale. The respondents represented holders of an istimrance or jagheere, which had existed before the decennial settlement and which the appellant, thesetore, had no right, as auction purchaser, to destroy. The appellant swed to recover possession of certain julker or rights of fishery, which the respondents claimed as incident to their tenure. They gave proof of their possession of the suit Jalkurs for a period of nearly 50 years.

Held that, even if the respondents had not given proof of long possession, there was nothing in the circumstances of the case, to relieve the appellant from the ordinary rule which the law imposed on a plaintiff, namely, that of establishing his own title afarmatively, and indeed of making out a strong title in order to disturb a possession of very

long duration (867-8.)

In the circumstances of the case, the question resolves itself into one of parcel or no parcel-whether the julkurs are parcel of the old estate of under-tenant, or whether they have been granted by an act of the zemindar for the time

being subsequent to the perpetual settlement.

The courts below were therefore right in holding that the burden of proving that these jalkurs did form part of the assess upon which the settlement was made, and that his means of meeting the revenue had been diminished by the alienation of them by means of acts subsequent to the date of the perpesual settlement, lay upon the zemindar (868.) (Sir James Gelvile.) FORBES : MEER MAHOMED HOS-SEIN. (1873) 2 Suth. 865 = 20 W. B. 45 = 12 B. L.R. 210 = 3 Sar. 264.

RENT OF SUB-TENURE-ENHANCEMENT OF -SUIT FOR.

-Heroditary tenure held at Mocurrarce jamma-Defence ples of-Proof of - Quantum-Inheritance-Words of -Absence of -Effect of -Plea based on absence of. if open to semindar in such suits.

Appellant who claimed title to the larger part of a gemindari under a sale for arrears of Government revenue, which took place in 1819, instituted 5 suits to enhance the rents of 5 talooks forming part of that zemindary, founding his alleged right to enhance the rents of a talook or a sub tenure held upon payment of a rent variable according to the current rates of the district. The defence was that the suit talooks had been held at fixed and invariable rent for more than 12 years antecedent to the permanent settlement, and were consequently not liable to further assessment.

The evidence adduced in the case proved that for upwards of a century the suit talooks had been treated as hereditary, and as such had both descended from father to son, and been the subject of purchase. Further, in the mutation papers of 1807, one of the talooks was expressly termed "hereditary". It was contended for the appellant that the documents relied upon by the defendants contained ZAMINDARI- ( M.C.)

Revenue Sale of -Purchaser at-(Contd.)

KENT OF SUB-TENURE—ENHANCEMENT OF—SUIT FOR—(Contd.)

no 'words of inheritance' (to use the English phrase), i.e., no expression importing the hereditary character of the

alleged tenure.

Held; that the objection was not open to the appellant in the suits as brought, and that, even it it were open, it could hardly prevail against the evidence in the case that for upwards of a century the suit talooks had been treated as herelitary, and as such had both descended from father to son, and been the subject of purchase (191.)

The appellant's suits are for the enhancement of rent. The pleadings consequently admit the existence of the tenures, and the lawful occupation of the defendants. The only question between the parties is whether the talooks are Tashkhis or Mocarrares, i.e., whether they are held at a variable or at a fixed and invariable rent (191.) (Lord Justice Knight Bruce.) BABOO GOPAL LALL THAKOOR P. TELUCK CHUNDER RAI. (1865) 10 M. I. A. 183 = 3 W. R. P. C. 1 = 1 Suth-558 = 2 Sar. 98

Tenure held at fixed and invariable rent for more than 12 years prior to perfetual settlement—Defence plea of—Onus of proof of.

The suits out of which the appeals arose were instituted by the appellant, and each of them was founded on the alleged right of the appellant as zemindar claiming, in part at least, as purchaser at a sale for arrears of Government revenue, to enhance the rents of a Talook described as Tastikisi zimma, or a sub-tenure held upon payment of a rent variable according to the current rates of the district. The principal question in each suit was, whether the Talook that was the subject of it had been held from a period considerably anterior to the Decennial Settlement at a fixed or Mocurrary jumma, or was held on a rent variable, and, therefore, subject to enhancement.

Meld, that, as the law stood in 1858, the ones lay on the defendants of proving that the suit Talooks had been held at a fixed and invariable rent for more than 12 years antecedent to the perpetual settlement (189.) (Lord Juntice Knight Brace.) BABOO GOPAL LALL THAKCOR r. TILUCK CHUNDER RAI. (1865) 10 M. I. A. 183=

3 W. B. P. C.1-1 Suth. 558-2 Sar. 98.

RIGHTS OF-BENGAL REG. XI OF 1822.

-Sale under.

The purchaser of a Zemindary at a sale by public auction to satisfy arrears of Government revenue under Bengal Regulation XI of 1822 acquired whatever rights in the Zemindary belonged to the Zemindar at the time of the Decennial, or Perpetual Settlement. He was entitled to the immediate possession of such lands as at the time of the sale were in possession of the Zemindar, and he had a right under the Revenue sale law to set aside by suit all subtenures created since the Decennial Settlement by the Zemindar, or any of his ancestors (168). (Lord Justice Turner.) WISE C. BHOOBUN MOVEE DEBIA CHOWDRAINEE.

(1863-5) 10 M. I. A. 165= 3 W. R. 5-2 Sar. 91=1 Suth. 563.

TALOOKDAR-DISPOSSESSION OF-RIGHT OF.

-Law before 1822-Regulation XI of 1822 (Bengal)
-Effect of, as regards dependent talooks.

Under the Sale Law, as it existed before 1822, a Talookdar could not be dispossessed of his lands at the will of a Purchaser of the Zemindary at a sale for arrears of revenue; he was at most, liable to pay the full Pergunnah or district rate for them; and could only only be ejected from them if he finally declined to hold them at the enhanced rent (324).

ZAMINDARI -(Confd.)

Revenue Sale of-Purchaser at-(Contd.)

TALOOKDAR—DISPOSSESSION OF—RIGHT OF— (Contd.)

Under Regulation X1 of 1822, the Law respecting dependent Talooks created subsequently to the Settlement, was, "that such Talooks were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of revenue," unless they fell within the class contemplated by S. 32 of that Regulation (324-5). (Sir James Colvile.) KHAJAH ASSANOOLLAH v. OBHOY CHUNDER ROY.

(1870) 13 M. I. A. 318=13 W. R. P. C. 24= 2 Suth. 306=2 Sar. 535.

Shikmee taluk in—Existence of—Evidence conclusive against.

—— Non-mention of taluk in Decennial Settlement if, See DECENNIAL SETTLEMENT—UNDER—TENURES. (1863-5) 12 M. I. A. 165 (175).

> Soonderbuns—Zemindary bounded by— Jungle lands within.

-Ownership of.

The presumption which might arise in other parts of India, that jungle was within the limits of a Settled Zemindary, would not arise in the case of a Zemindary bounded by the Soonderbuns. For that tract of land was advisedly excluded from the Perpetual Settlement; and, therefore, the presumption would be that the Settlement in that locality was confined to the land then in cultivation. (Sir James W. Colvile.) RAJAH BURODACANT ROY v. THE COMMISSIONER OF THE SOONDERBUNS.

(1868) 12 M. L.A. 226 (238 9) = 11 W. B. P. C. 14 = 2 B. L. R. P. C. 33 = 2 Suth. 184 = 2 Sar. 413.

Tenure of lands within—Kabuliyat showing—Non-production by Zemindar of.

by him—Effect. See EVIDENCE ACT— S. 114, ILL (G)—ZEMINDARI. (1923) 28 C. W. N. 145 (152-3).

Villages forming part of—Grant of, subject to payment of revenue.

Revenue paid by Zemindar himself—Enhancement of rent on ground of. See Landlord and Tenant—RENT—ENHANCEMENT OF—ZEMINDAR—ZEMINDARY—VILLAGES FORMING PART OF.

(1873) Sup. I. A. 165 (1734).

ZANZIBAR.

Zanzibar territory—Land owner's rights in Law

The administration of the East Africa Protectorate, acting under the Indian Land Acquisition Act I of 1894, for the purposes of a railway at Mombasa, acquired plots of land on the island from owners to whom compensation was awarded.

Possession was taken before the land had been duly acquired under the Act, and building for the railway purposes went forward without the consent of the present claimants. The provision of the Indian Land Acquisition Act became applicable at Mombasa on the 27th May 1896, under power given by the Zanzibar Order in Council of 1884. The declaration of requirement of the land was made on the 2nd November following. The assessment of the value of the land acquired was made by a Court held by the Vice-Consul at Mambasa, and heard in appeal by Her Majesty's Court for Zanzibar, which increased the compensation awarded.

As part of their compensation the respondents claimed the value of the buildings erected on the land before the date of the declaration alleging that the buildings had, as soon as they were attached to the land, become the property of the then owners of the land, according to English law. ZANZIBAR-(Contd.)

Bevenue Bale of-Purchaser at-(Coutd.)

That law, however, recognises the principle that the incidents of property in land are regulated by the law of its site. Therefore the system of law applicable on this question was the law of Zanzibar regulating the holding of immove able property. That law was the Muhammadan. It was true that the Article XVI of the Treaty of 1886 conferred on British subjects the rights of exterritoriality as regarded their persons and their property. But that was consistent with the application of the rule of the lex loci rei titae.

The whole question turned on the meaning of exterritoriality. It could not be maintained that when an Englishman, in foreign territory, having that right purchased land, it was thereupon attended by the same incidents that would belong to it, if it were treated as actually transferred to England. The real state of things was that the English Law, for such purposes as the present, applied to the local

ZANZIBAR-(Contd.)

Revenue Sale of-Purchaser at-(Contd.)

law of Zanzibar.

The source of jurisdiction is the Treaty, giving authority to the Queen in foreign territory, Zanzibar. The English Acts relating to foreign jurisdiction supervene, enabling Her Majesty in Council to or Jer what way her authority over British Subjects there shall be exercised. The Order in Council then is that jurisdiction shall be exercised partly in accordance with certain Anglo-Indian legislation and partly with English law. That legislation is silent on this point; and the English law, for purposes of which the present is one, incorporate the local law of Zanzibar. (Lord Habbouse) SECRETARY OF STATE FOR FOREIGN AFFAIRS; CHARLESWORTH, PILLING & CO.

(1901) 28 I. A. 121 = 26 B. 1 = 8. Sar. 1.

ZURPESHGI LEASE.

-See LEASE-ZURPESHGI LEASE.

## SUPPLEMENT.

#### ADMISSION.

-Statemant relied upon as an-Taking as whole of-

If a statement is to be relied upon as an admission the

whole statement must be taken.

The mahant of mutt Sainwal in an application made by him called the Sainwal Gadi. "Gadi Sainwal Kotha Koh Kerana," Koh Kerana being another mutt. In the same application, however, there was a definite assertion that Sainwal was a gadi and the person making the statement the gadinashin, mahant.

The High Court, translating "Kotha" in the application as "granary" or "treasury" regarded the statement as an admission by the mahant of Sainwal that Sainwal was nothing more than a part of the institution of Koh Kerana.

Held that the statement in the application must be taken as a whole, and that, if that was done, there was no such admission as that inferred by the High Court. (Sir George Lounder.) BABA JWALA DAS v. PIR SANT DAS.

(1930) 34 C. W. N. 933 = 59 M. L. J. 283.

#### ARBITRATION,

-Award-Validity of-Parties whose presence serces-

tary not before arbitrator-Effect. An award which is incomplete because the parties whose presence was absolutely necessary to make it valid were never before the arbitrator is not valid. (Sir Binod Mitter.) KAMINI KUMAR BASU THAKUR D. BERENDRA NATH (1930) 57 I. A. 117= BASU THAKUK.

34 C. W. N. 489 = A. I. B. 1930 P.C. 100 = 32 Bom. L. B. 639=123 I. C. 187=51 C. L. J. 400=

31 L. W. 811 = 59 M. L. J.82.

BENGAL LAND BEGISTRATION ACT VII OF

-8. 10(g)(ii)-Name of mouza containing land-Omission to state, in register-Registration not invalidated by. (Lord Buckmaster). AMIRUDDI GAZI : MAKHAN (1929) 34 C. W. N. 285= LAL CHATTERJI.

51 C. L. J. 162=121 I. C. 514=32 Bom. L. B. 520= 31 L.W. 561 = A. I. B. 1930 P.C. 83 = 58 M.L., J. 218.

BENGAL MUNICIPAL ACT III OF 1884.

-8. 102-Percentage of tax once fixed-Continuance In force of, inspite of new valuation-Alteration of-Mode of, See SUPPLEMENT UNDER THIS ACT-S. 358. (1929) 33 C. W. N. 1039.

8. 358-Revision of assessment-Resolutions forfregularity in, by reason of non-comformity with Rule 16 of bye-laws-Validity of assessment not affected by-S. 102-Percentage of tax once fixed-Continuance in force

of, in spite of new valuation-Alteration of Mode of.
On 28-6-1922, the Municipal Commissioners of Municipal pality D passed, under S. 96 of the Bengal Municipal Act,

1884, two resolutions:-

(1) That the question of a general revision of assessment be postponed for a year in view of the economic distress prevailing in the country, and that all new and improved buildings which had escaped notice be assessed first and the Vice. ret, and the Vice-Chairman be requested to undertake the

## BENGAL MUNICIPAL ACT III OF 1884-(Contd.)

work; and (2) That the general revision of assessment of holdings be undertaken without delay, as it was overdue.

The Chairman did not, as he was bound to, under Rule 16 of the bye-laws of the Municipality, put these resolutions separately, but he put them as alternatives and ascertained the numbers in favour of each respectively. In accordance with the terms of the second of the resolutions above referred to, the valuation duly took place, and the assessment list was published on 28-3-1923, for the year 1923-4. The re-valuation was subsequently signed by the Chairman and deposited in the office on 28-3-1923, and notice was published on the same day.

The courts below held that the irregularity in not conforming to Rule 16 of the bye-laws of the Municipality was a mere defect of form under S. 358 of the Municipal Act, and that the assessment was not invalidated thereby. They further over-ruled, relying upon S. 102 of the Act, the appellant's contention that the rate was invalid because the Commissioners, before the result of the re-valuation had been ascertained and become known to them, sanctioned a budget framed on the basis of the old valuation and of the percentage at which rates had been for some years levied on that valuation.

Their Lordships affirmed the judgments below on both points. (Lord Carson.) BHUBAN MOHAN BASAK v. CHAIRMAN OF MUNICIPAL COMMISSIONERS OF THE (1929) 33 C. W. N. 1039 = DACCA MUNICIPALITY.

50 C. L.J. 149-119 I. C. 622-A. I. R. 1929 P.C. 272.

## BENGAL TENANCY ACT VIII OF 1885

-Holding, tenure or raigati-Test of-Evidence.

The real test, whether a holding is a tenure or raiyati, depends upon the purpose for which the holding was

acquired.

Held, on the evidence, reversing the High Court and restoring the District Judge, that notwithstanding the entry in the record of rights finally published on 2-4-1915, to the effect that the appellants were tenure-holders, the appellants were really occupancy raiyats and not tenureholders. (Sir Binod Mitter.) MIDNAPUR ZEMINDARY CO., LTD. P. SECRETARY OF STATE FOR INDIA IN (1929) 56. I. A. 388 = 57. Cal. 756 = COUNCIL

32. Bom L. B 114=51 C. L. J. 1=120 I. C. 56= 34 C. W. N. 1=30 L. W. 600= A. I. R. 1929 P. C. 286=57 M.L.J. 849.

-Rent decree under-Interest not recoverable as rent -Decree including-Rent decree not a.

A decree which includes interest not recoverable as rent of the tenure in arrears is not a proper rent-decree under the Bengal Tenancy Act and is not executable as such. (Sir George Loundes.) JITENDRA NATH GHOSE v. MANMO. (1930) 57 I. A. 214= HAN GHOSE.

34 C. W. N. 831 (838) = A. I. R. 1930 P. C. 193. -Rent decree under-Transfer of tenure-Decree against original tenure-holder after-Rent decree not a.

After the due transfer of a tenure, the original tenureholders are no longer liable for the rent, and an effective

## BENGAL TENANCY ACT VIII OF 1885-(Contd.)

degree for the rent can only be obtained against the transferes. (Sr George Leander.) JITENDRA NATH GHOSE S. MANMOHAN GHOSE. (1930) 57 I. A. 214 =

34 C. W. N. 831 (838) = A. I. R. 1930 P. C. 193.

-Survey and preparation of record of rights under-Settlement Officer engaged in-Order of-Not evidence under the Act.

The order of the Settlement Officer is not evidence under the Bengal Tenancy Act. (Sir Birod Mitter.) MAHARAJA BIR BIKRAM KISHORE MANIKYA BAHADUR P. ALI AHAMAD. (1930) 34 C. W. N. 793 = A. I. R. 1930 P. C. 221 = 59 M. L. J. 302.

-Transfer of tenure-Rent-decree obtained against original tenure-holder after-Validity against transferee of-Sale of tenure in execution of-Transferee's right to object to-S. 65-Effect of-Chapter XIV of Act-Scope and effect of.

Before the Bengal Tenancy Act of 1885 came into force the duty was laid specifically upon the transferee of a tenure to see that his name was recorded in the landlord's Sherista, and it may well have been that, if he failed without good reason to do this, he could not be heard to object to a decree passed against the recorded tenants, even though their interest in the tenure had in fact ceased. But the Act of 1885 made a radical change in this respect, Instead of the transferee being bound to go to the landlord to get his name recorded, it was provided that a voluntary transfer must be by a registered instrument, and that before registration a fee was to be paid by the transferree and notice given by the registration office. through the collector to the landlord, or in the case of an execution sale by the executing court. In this state of the law their Lordships can see no foundation for the contention that a landlord can ignore all transfers of the tenure and rely upon decrees obtained by him against persons whom he chooses for his own purposes still to record as his tenants, though he knows, or must be taken to know, that their interest in the tenure has ceased (837). Only arrears of rent are charged by S. 65 of the Act upon the tenure, and only such arrears can be realised in execution by the sale of the tenure. Chapter XIV of the Act does not purport to enlarge or restrict the exercise of this right, but only provides the machinery for working it out. If a landlord seeks to use this machinery for the recovery of something that is not rent, to the prejudice of a third party on whom the decree is not binding, Chapter XIV of the Act does not deprive the latter of his right to object to the same (838). (Sir George Loundes.) JITENDRA NATH GHOSE D. MANMOHAN GHOSE

(1930) 57 I. A. 214 = 34 C. W. N. 831 = A. I. B. 1930 P. C. 193.

——S. 6 (a)—Tenure held from before Permanent Settlement—Rent of—Enhancement of—Right to—Proof of—Onus on landlord—Presumption arising from entry in record-of-rights—Evidence to rebut—Quantum—Assessments occasional owing to increase of area—Right to enhance if can be founded on.

The appellant was the owner of a Zemindary, which consisted, inter alia, of a number of taluks, and one nijtaluk of the Zemindar which was split up into a number of tappaks. The taluks and tappaks existed before the Permanent Settlement. In or about the year 1912, a survey of the estate was commenced, and a record-of-rights was prepared under the Bengal Tenancy Act. The entries in the record-of-rights described the said taluks and tappaks as "rent liable to enhancement." After the publication of the final record-of-rights, the appellant instituted suits against the talukdars and tappahdars under S. 105 of the Bengal Tenancy Act, ostensibly for the settlement of a fair and equitable rent in respect of the lands held by them, but in

## BENGAL TENANCY ACT VIII OF 1885-(Contd.)

reality for enhancement of rent. The Courts below took into account the presumption in favour of the appellant arising out of the entry in the record-of-rights that the tenures were liable to enhancement, but nevertheless held, on the evidence in the case, that the appellant had failed to discharge the onus cast on him by S. 6 (a) of the Bengal Tenancy Act. The only circumstance relied upon by the appellant against the permanency of rent was that the tuppahs were assessed in 1824 and that both the taluks and tuppaks were assessed on 1847 for 30 years. It appeared, however, from the various reports of the Revenue Officers that the rent of the tenure was intended to have been fixed for ever, and that no fresh assessments would have been made but for the fact that neither the areas nor the boundaries had ever been fixed. The courts below also found upon evidence that the increase, if any, was due to excess

Held that, in view of the special circumstances of the case under which the assessments of 1824 and 1847 were made, and the statements of the Revenue Officers above referred to the said assessments were insufficient to raise an inference in law that the appellant had proved the conditions enabling him to enhance the rent. (Sir Binod Mitter.) MAHARAJA BIR BIKRAM KISHORE MANIKIYA HAHADUR P. ALI AHAMAD. (1930) 34 C. W. N. 793=

A. I. R. 1930 P. C. 221=59 M. L. J. 302.

-Ss. 12 and 13-Procedure for transfer of tenure under-Compliance with-Presumption as to.

In the absence of evidence to the contrary, the presumption is that the procedure laid down by Ss. 12 and 13 of the Act was duly followed and that the proper statutory notice was given of the various incumbrances and execution sales from which the title of the transferee of a tenure has evolved (Sir George Loundes.) JITENDRA NATH GHOSE :: MANMOHAN GHOSE. (1930) 57 I. A. 214

34 C. W. N. 831 (837-8) = A. L. R. 1930 P. C. 193.

S. 104—Applicability—Record of rights—Entry in, as to tenant being only tenure-holder—Incorrectness of—Suit by tenant for declaration of. See LIMITATION ACT OF 1908, ART. 120—BENGAL TENANCY ACT OF 1885, S. 104—H. (1929) 57 M. L. J. 849.

## BERAR ALIENATED VILLAGES TENANCY LAW, 1921.

S. 47—Tenant holding land within—Tenant forcibly disposessed if a—Tenant reluntarily ceding possession on receipt of notice to quit if a.

A person who being a tenant is forcibly dispossessed is still a tenant holding land within the meaning of S. 47 of the Berar Alienated Villages Tenancy Law, 1921. He would not be such a tenant if he voluntarily ceded possession after receiving notice to quit. (Viscount Dunedin.) SADA-SHEO P. VITHOBA. (1929) 58 M. L. J. 257 A. I. R. 1930 P. C. 28.

## BOMBAY RECORD OF RIGHTS ACT IV OF 1903.

- Entries in record of rights and mutation Registers under-Admissibility in evidence of-Evidence Act, S. 35 Evidentiary value of entries.

The entries in the record of rights and the mutation registers prepared and kept under Bombay Act IV of 1903 were prepared by public servants in the discharge of their official duty, and they are relevant under S. 35 of the Evidence Act to prove the facts recorded therein. The entries are not in any way conclusive, but they are evidence of the facts recorded therein.

Where, in the entry in the record of rights relating to a pasticular village, B was described as the separated younger brother of S and the reason of the transfer of the village from the name of S to that of B was given as private parti-

# -(Contd.)

tion, and there was a reference in the register of the record of rights to the mutuation register, which also stated that private partition had been effected between the brothers, held that the entries were cogent, though not conclusive, evidence of there having been a partition between the brothers. (Sir Binod Mitter.) DESALT. DESAL.

(1929) 58 M. L. J. 322.

## BOMBAY LAND REVENUE (AMENDMENT) ACT IV OF 1913, S. 135 (J).

-Applicability of, to entries made before 1913.

Quaere whether Bombay Act of 1913 has a retrospective effect, and whether S. 135 (j) of that Act applies to entries made before 1913. (Sir Bined Mitter) DESAI v. DESAI (1929) 58 M. L. J. 322.

-Entry in record of rights and register of mutations

-Correctness of-Presumption as to

Under S. 135 (i) of Bombay Act IV of 1913 an entry in the record of rights and register of mutations is presumed to be correct unless the contrary is proved. (Sir Rimol Mitter.) (1929) 58 M. L. J. 322. DESALT, DESAL

BOMBAY REGULATION (V OF 1827)-S. 15 (3)

-Scope and applicability of

Sub-S. 3 of S. 15 of Bombay Regulation V of 1827 is not limited to the case where the creditor has been placed in possession and remains in possession. Its terms are general and wide enough to cover a mortgage which is not strict. ly a usufructuary mortgage, but under which the mortgagee has the the right to collect the rents and profits of the mortgaged property, and under which he does enter into possesssion of the mortgaged property and collect the rents and profits arising therefrom but subsequently gives up possession to the mortgagor. (Sir Lancelot Santerom.) NILKANTH BALWANT NATU P. VIDYA NARASINH BHARATI

(1930) 57 I. A. 194 (204-5).

CHINESE CUSTOMARY LAW-Wedge-Share in husband's estate-Maintenance only out of it-Right of-Mortgage of part of husband's estate by widow-Validity-Administration of estate by widew-Mortgage for necessity and for benefit of estate-Effect.

Quare, whether under the Chinese Customary law a wislow has right to share in the estate of her late husband or whether her right is limited to maintenance out of such estate.

Where the Courts below found that the widow of a Chinese Buddhist, who died intestate, administered the estate of her deceased husband for herself and her children from the death of her husband, and that, whilst she was so administering it, she mortgaged part of the estate for money, borrowed for necessity and expended for the benefit of the estate, held, affirming the Courts below, that, whether the Chinese customary law or the ordinary law was applicable to the case, the mortgage was a valid mortgage and was binding upon the property comprised therein. Lancelet Sanderson.) BON KWI v. FIRM OF S. K. R. S. (1929) 58 M. L. J. 178. K. R.

OHOTA NAGPUR TENANCY ACT. 1908-Ss. 84 (3): 87-Record of rights prepared under Act-Entry in-Ad. missibility in evidence of-Correctness of-Presumption-

Suit under S. 87 to rectify entry—Omission to file-Fiffeet.

It is open to a party aggrieved by an entry in a record of rights prepared by a Settlement Officer under the provisions of the Chota Nagpur Tenancy Act, 1908, to file a suit. under S. 87 of the Act, before a Revenue officer within 3 f months to rectify the entry in the Khewat. If he omits to do so, the entry stands and cannot be altered by the Civil Court, and under S. 84 (3) it is to be "evidence of the matter referred to in such entry and is to be presumed to be corfrect until it has been proved by evidence to be incorrect."

(Sir John Wallis.) SURENDRA NATH KARAN DEO 1.

BOMBAY RECORD OF RIGHTS ACT IV OF 1903 CHOTA NAGPUR TENANCY ACT, 1908-(Contd.) KUMAR KAMAKHYA NARAIN SINGH.

(1929) 32 Bom. L. R. 515 = 31 L. W. 352 = 123 I. C. 145 - A. I. R. 1930 P. C. 45.

## CIVIL PROCEDURE CODE.

#### S. 11.

-Application of rule of res indicata Principles guiding-Matter of Substance within limits allowed by law and not technical considerations of form, (Lord Darling.) KALIPADE DE F. DWIJAPADA DAS. (1929) 58 M.L.J. 171.

-Letters of Administration-Proceedings contentious as to-Relationship of one of the parties to-Decision as to -Res judicata in subsequent civil suit. See HINDU LAW (1929) 58 M. L. J. 171. -REVERSIONER.

Scope of-Not exhaustive of circumstances in which (Lord Darling.) rule concerning res indicata applies KALIPADA DE ». DWIJAPADA DAS.

(1929) 58 M. L. J. 171.

-Title to land-Estoppel under S. 116 of Evidence Act -Derec declaring As title to land as aginst B based on-Expiry of lease-It's suit for declaration of title to same land as against A after-Maintainshifty.

The appellant was one of the four children of one S. V., who had died intestate. In an ejectment suit the first respondent sought to obtain a de rec of ejectment against the appellant, the widow of S. V., and the three other children of S. V. The 1st respondent, whose title in the suit land was derived under a conveyance to him by the widow (and executrix) of S. V. had granted a lease to the appellant of the said land, upon which he and the other defendants were residing. That suit went up on appeal to the Privy Council. The Board was of opinion that that the conveyance by the widow operated to pass to the 1st respondent only her interest as widow in the said land, and not the beneficial interests of the children, but that the appellant was estopped, under S. 116 of the Evidence Act, from denying the title of the first respondent as regards his (appellants') own share of the suit land. The Board accordingly passed a decree declaring that the 1st respondent was entitled to a quarter of two-thirds (or a one-sixth share) of the land sued for.

The appellant sued subsequently to obtain a decision that the one-sixth share so declared by the Foord to be the property of the 1st respondent was his (appellants') property not by any title acquired by him subsequently to the date of the Board's decision, but by virtue of a title then existing in him as one of the children of the intestate. He claimed that the estoppel under S. 116, which prevened him from asserting his title in the ejectment action, was temporary only, and ceased to operate when he gave up possession of the land and when his tenancy accordingly came to an end. He claimed that being no longer estopped under S. 116, he was entitled to assert and obtain a declaration of his ownership, and that the matter was not res indicata.

Held, over-ruling the appellant's contention, that the subsequent suit was barred under S. 11, C. P. C., because the judgment of the Board in the prior suit had, in clear and unambiguous language, determined finally and conclusively the ownership of the share claimed by the appellant in the subsequent suit. (Lord Russel of Killetten.) VERTAN-NES 7. ROBINSON. (1930) 57 I: A. 208.= NES 7. ROBINSON. 59 M. L. J. 296.

-8. 11, Expl. iv. - Makemedan Law - Dower - Widow taking possession of entire husband's estate under claim to -Suit by other heir for possession of his share of estate-Widew's claim to dower in-Interest on dewer in arrear -Claim to-Omission to put forward-Claim res judicata by reason of .

On the death of a Mahomedan, one-fourth of his property devolved upon his widow, and three-fourths on his C. P. CODE (1908)-(Centd.)

S. 11-(Confd.)

cousin, while the widow being so entitled took possession of the whole of the estate in lieu of her clower. Thereafter, assigners from the cousin, alleging that the widow's dower had long before been discharged from her usufruct of the estate, sued for the unconditional delivery of possession to them of a three-fourths share of the estate. The plaint contained an alternative prayer for the delivery of such share on payment of such portion of the dower debt as might be found to be due. In that suit it was found that a portion of the dower debt was still due, and a decree was passed for the delivery of possession of the share sued for on payment by the plaintiffs of the amount so found due for dower. In arriving at the balance due for dower, that decree did not, however, take into account the interest upon the dower in arrear, no such claim having been put forward by the widow. The amount decreed for dower was not paid and presession was retained. In a suit for possession of the three-fourths share subsequently instituted by the representative in interest of the plaintiffs in the prior suit against the widow or her representative in interest, held that a claim by the latter to charge any interest in respect of the period during which dower remained unpaid was barred under S. 11, Expl. iv of C. P. C.

In the first suit, the widow's claim to interest was one which might, and which ought to, have been made ground of defence. (Lord Blanesburgh.) NAWASI BEGAM r. DILAF-ROZ BEGAM. (1930) L. R. 57 I. A. 181 = 59 M.L.J. 262.

-S.17-Mortgage of properties in British India, some being outside jurisdiction, and of properties not in British India-Forcelosure or sale on foot of Suit for-Jurisdiction of British Indian Court to entertain,

In a suit for foreclosure or sale on foot of certain mortgages instituted in the Sub-Court of Satara in the Bombay Presidency, it appeared that the properties, in respect of which relief was sought, were situated in Satara, Felgaum and Kolhapur, Satara and Belgaum being, and Kolhapur not being, within British India.

Held that the Sub Court of Satara had no jurisdiction to try the suit, so far as it related to the mortgaged properties situated in Kolhapur; that it had jurisdiction to try the suit so far as it related to the mortgaged properties situated in Satara; and that, inasmuch as the mortgaged properties in Belgaum were within the jurisdiction of a different Court in British India, it had jurisdiction to deal

with those properties also,

The words "a suit to obtain relief respecting immoveable property " in S. 17, C.P.C. are wide enough to cover suits for foreclosure or sale on foot of mortgages. "within the jurisdiction of different Courts" in that section must, however, he held to mean within the jurisdiction of different Courts to which the Code of Civil Procedure applies, that is to say, Courts in British India, because the provisions of the Code are regulations dealing with the jurisdiction and governing the procedure of the Courts in British India. (Sir Lancelot Sanderson). NILKANTH BALWANT NATU v. VIDYA NARASINH BHARATI.

(1930) 57 I.A. 194 (199-200'.

-S. 47 - Execution proceeding - Separate suit-Remedy appropriate-Exonerated defendant-Money realised in execution from-Suit by him for recovery of-

In a suit instituted by S against M and a French Company, S obtained an order for the attachment before judgment of a sum of money in fixed deposit with a Bank. The sum stood in the Bank in the name of M and was his property and the French Company had no right to it what-To obtain release from that attachment, M got a third party to execute a security bond for the sum attached, C. P. CODE (1908)-(Contd.)

S. 47-(Contd.)

and the court accepted that security bond and raised the attachment. Eventually a decree was passed in the suit in favour of S against the French Company, and the suit was dismissed against M. Nevertheless, S applied to the court for an order calling upon the surety to pay into court the sum mentioned in the security bond executed by him to be paid to S in satisfaction of his decree. The Court made an order as prayed for, notwithstanding M's opposition, and the amount paid into court pursuant to that order was paid over to S. There was no appeal from that order and it became final.

M thereupon brought the suit out of which the appeal to the P.C. arose, inter alia, for the recovery from S of the sum paid into court by the surety under the security bond and paid over to S in satisfaction of his decree. M's case was that the decree in the prior suit having been only against the French Company, the amount of the security bond, on its true construction, was not available to S to satisfy that decree, and that the order directing the payment of that amount to S in satisfaction of that decree was errone-

Held that S. 47, C.P.C. barred the suit. The question in this case arises between the parties to the prior suit and relates to the satisfaction of the decree therein. So far as the order for payment out is concerned it is expressed to be in satisfaction of the decree, it has no other meaning, and that in itself precludes any cause of action by the present plaintiff in the present suit. (Lord Atkin). JULIEN MARRET P. MD. KHALEEL SHIRAZI AND SONS.

(1929) 58 M. L. J. 275.

S. 100.

-Documents-Misconstruction of-Finding based upon-Documents forming root of title-Documents forming part of evidence-Distinction between cases of. (1) See SUPPLEMENT UNDER THIS SECTION--INTERFERENCE UNDER. (1929) 59 M. L. J 53.

(2) Where the question was whether the suit lands were included in a purchase made by the respondent's father at an auction sale, and the whole of the relevant evidence in the matter was documentary, the documents themselves constituting the foundation of the rights claimed by the respondent, held that a finding on the said question was, in the true legal sense, not a finding of fact at all but an interpretation of the various documents constituting the foundation of the respondent's rights. (Lord Buckmaster.) AMIRUDDI GAZI P. MAKHAN LAL CHATTERJEE.

(1929) 34 C. W. N. 285 = A. I. R. 1930 P.C. 83 = 58 M.L.J. 218.

-Fact-Finding of-Interference with-Jurisdiction -Documents - Construction of-Finding based on. See SUPPLEMENT UNDER THIS SECTION-INTERFERENCE UNDER. (1929) 59 M. L. J. 53.

-Fact-Legal effect of proved - Question as to-Law. See SUPPLEMENT UNDER THIS SECTION-INTER-FERRNCE UNDER. (1929) 59 M. L. J. 53.

-Fact-Proof of-Question as to-Fact purely. See SUPPLEMENT UNDER THIS SECTION-INTERFERENCE UNDER. (1929) 59 M. L. J. 53.

-Finding of fact-Error as to-Interference in case of-Jurisdiction.

No second appeal lies on the ground that the first appellate court came to an erroneous finding of fact. The only question which the High Court can consider in second appeal is whether the first appellate court had before it any evidence proper for its consideration in support of the finding. If it had evidence proper for its findings notewithstanding statutory presumptions applicable to the case C. P. CODE (1908)-(Contd.)

S. 100-(Contd.)

its findings of fact are final and conclusive. (Sir Bined Mitter). MIDNAPORE ZEMINDARY CO., LTD. v. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1929) 34 C. W. N. 1 = A. I. R. 1929 P.C. 286 = 56 I.A. 388 = 30 I. W. 600 = 57 M.L.J. 849.

-Finding of fact-Error gross as to-No interference even in case of. See SUPPLEMENT UNDER THIS SECTION -INTERFERENCE UNDER-JURISDICTION.

(1929) 31 L.W. 321.

-Interference under-Jurisdiction-Rules as to. The question whether a statutory presumption is rebutted by the rest of the evidence is always a question of fact.

Questions of law and fact are no doubt often difficult to disentangle, but, as regards jurisdiction to interfere in second appeal under S. 100 of C. P. C., the following propositions are clearly established:-

(1) There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of facts, however gross

the error may seem to be.

(2) The proper legal effect of a proved fact is essentially a question of law, but the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact.

(3) Where the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or otherwise the direct foundations of rights but were really historical materials, have to be construed for the purpose of deciding the question.

(4) A second appeal would not lie because some portion of the evidence might be contained in a document or documents and the first appellate court had made a mistake as to its meaning. (Sir Bined Mitter.) WALI MAHOMED v. MD. BAKSH. (1929) 57 I. A. 86=

11 Lah. 199-59 M. L. J. 53. -Mortgage-Usufructuary mortgage-Sale of mortgaged property by mortgagor to mortgagee subsequent to-Question as to-Fact or law-Punjab Land Revenue Act XVII of 1887-Record of rights under-Entries in-Evidence of sale consisting in part of. See SUPPLEMENT-MORTGAGE-USUFRUCTUARY MORTGAGE.

(1929) 59 M. L. J. 53.

Statutory presumption-Rebuttal of, by rest of evidence-Question as te-Fact only. (Sir Rined Mitter.) WALL MAHOMED P. MAHOMED BAKSH.

(1929) 59 M. L. J. 53.

-Tenure-Permanent settlement-Tenure if existed before-Question as te- Fact or law,

The question whether a tenure existed before the Permanent Settlement is one of fact. (Sir Bined Mitter). MAHA-RAJA BIR BIKRAM KISHORE MANIKYA BAHADUR P. (1930) 34 C. W. N. 793. ALI AHAMAD. S. 110.

-Appeal under-Right of - Conditions - Subjectmatter of suit and of appeal-Value of each should be

Rs. 10,000 or more.

The word "and" in the amount or value of the subjectmatter of the suit in the court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards in paragraph, I of S. 110 of C. P. C., means " and " and not " or , that each of the two conditions has to be separately fulfilled. (Viscount Dunedin.) GUDIVADA MANGAMMA P. MADDI MAHALAKSHMAMMA. (1929) 58 M. L. J. 184. -Subject matter of mait-Interest or mesne profits

subsequent to date of first court's decree if included in.

Interest from the date of the institution of the suit to the date of the decree of the first Court cannot be added to | Liability of allottees-Sale illusory-Effect.

C. P. CODE (1908)-(Contd.)

S. 110-(Contd.)

ascertain the amount or value of the subject-matter of the suit within the meaning of S. 110 of C. P. C. There is, in this respect, no difference between interest and mesne profits.

I. L. R. 39 M. 843, approved.

Mesne profits are something attaching to the subject claimed and not what is the subject of a direct claim. (Vir. count Dunedie.) GUDIVADA MANGAMMA P. MADDI (1929) 58 M. L. J. 184. MAHALAKSHMAMMA.

Or. 1. R. 8.

-Applicability-Managers of religious association in possession through agents-Persession of property frem-Sunt for receivery of, by person with preprietary title.

The Secretary of State sued to recover possession of certain lands from 8 persons described as " all resident and Mahants of Juna Akhara." The Juna Akhara was an unregistered association of a considerable number of sadhus, and at the date of suit the defendants were the managers of the institution and were, through their agents, in possession of the suit property. The main question in the case was whether the suit property was granted by the Crown to the Jona Akhara by a sunud. It was found thus it was not, and that the proprietary title to the suit property was in the

Held, on the above facts, that it was not neversary for the plaintiff to obtain leave under Or. 1, R. 8 of C.P.C. (Sir. Laucelet Sanderson.) MAHANT BHAGWANPURI P. SECRE-TARY OF STATE FOR INDIA IN COUNCIL.

(1930) 34 C. W. N. 849 = 52 C. L. J. 54 = A. I. R. 1930 P. C. 232 = 59 M. L. J. 134. Or. 23. R. 3.

-Compremise-Recording of-Distrition as to-Proceedings used to work substantial in justice-Preventing of -Inherest proor as to.

The words of Or. 23, R. 3 of C. P. C. do not in terms appear to confer a discretion on the Court, but their Lordships desire to say nothing to prejudge a contention that the courts retain an inherent power not to allow their proceedings to be used to work a substantial injustice such as emerged in the case of Neale v. Gordon Lennox in (1902) A. C. 465. (Lord Athin.) SOURENDRA NATH MITRA P. TARUBALA DASI. (1930) 57 I.A. 133=

34 C.W.N. 453 = 1930 A.L.J. 489 = 32 Bom. LR. 645 = 51 C.L.J 309 = 123 I.C. 545 = 11 Pat. L.T. 461 = 31 L.W. 803 = A.I.R. 1930 P.C. 158 = 58 M. L. J. 551.

COMPANY.

Joint Stock Company.

-Shares of-Local situation of, for purposes of liability to or immunity from local taxation-Test. See TAX-JOINT STOCK COMPANY.

(1930) A. I. R. 1930 P. C. 10. Shares in.

-Alletment of-Executory contract valid for, before alletment-Conditions.

There may be a valid executory contract for the allotment of shares in a company constituted by offer and communicated by acceptance before allotment is made. If, however, the only facts are that there is application for shares to a Company, and nothing further is done by the Company but allotment, there is no concluded contract until the allotment is communicated to the applicant, (Lord Atkin.) BAI MANGU P. PHARAIKHAND COTTON MILLS Co., LTD. (1930) 34 C.W. N. 585 = 32 Bom. L.R. 812=

123 I. C. 717 = 51 C.L. J. 439 = A. I. B. 1930 P.C. 134 = 59 M. L. J. 61.

Fully-paid shares-Allotment of, as price of shares purchased-Loss from-Test-Sale of purchased sharesShares in -Contd.)

The appellants, the Indian Company, were incorporated in India in 1920 with a nominal capital of 7 crores of rapers divided into 350,000 shares of Rs. 200 each. Promoted as a private company by two English Companies, all the issued shares of the Indian Company were practically throughout held by one or other of those companies. The Indian Company was really established that it might acquire from the English Companies 312.817 shares held by them in the Burma Corporation. Ltd. The Indian Company entered into two agreements with the English Companies in regard to this matter, one in February, 1920, and the other in November, 1923.

By the agreement of February, 1920, the Indian Company contracted to purchase the whole block of the Burma Corporation shares in consideration of the issue of an equal number of shares in the Indian Company credited as fully paid. Out of the 312.817 shares of the Indian Company representing the then consideration for the Burma shares, one-half-or 156,408 shares-were to be allotted immediately, while the remaining shares were to be altotted at the rate of one share for each two shares of the Burma Corporation as delivered to the Indian Company. The whole were, however, to be delivered Within 3 years. In the meantime possession of the undelivered shares was to be retained by the English Companies, and during the period prior to completion those companies were given power from time to time to deposit and charge the shares for their own liabilities joint or several or for their liabilities jointly with any other parties, The English Companies were also given power with the consent of the Indian Company to sell any of the undelivered shares and either to utilize the proceeds of sale in discharge of such Eabilities in which event the purchase consideration was to be "proportionately reduced"-or to remit the proceeds to the Indian Company, in which event "the equivalent purchase consideration for the shares" was to be duly allotted. The 156,408 shares of the Indian Company credited as fully paid were duly issued by that company as provided by the principal agreement. No Burma shares at all were ever delivered to the Indian Company. On the day of the expiration of the three years limited for completion, all that had happened was that 156,408 shares of the Indian Company had been issued as fully paid for nothing.

By the agreement of November, 1923, it was provided that the Burma shares need not any of them be delivered; that the English Companies, with the general or special authority of the Indian Company, might sell any of the shares and should in that event on completion pay to the Indian Company the proceeds of sale, together with all dividends received on the shares. In consideration for this, it was agreed by the English Companies that the purchase consideration mentioned in the agreement of February, 1920, should not in any case exceed the 156,408 shares already allotted as above stated.

The agreements left the English Companies with, in effect, the same dominion over the shares as they enjoyed before the so-called sale. They did not in any real sense embody a purchase of the Burma Corporation shares by the Indian Company, in consideration of the issue of fully paid shares of that Company. They more truly embodied an arrangement under which the Indian Company, getting everything to which under the agreements it was entitled, would receive a sum of money only, a sum which it was under the arrangement bound to accept in satisfaction whatever its amount might be. And as, in the events, it received a sum, less than the nominal value of the shares by Rs. 32 each, it was contended for the Indian Company that the resultant figure represented the loss sustained by the Company in respect of the transaction.

COMPANY-(Contd.)

Shares in-(Contd.)

Held. overruling the contention, that, on the principle enunciated in the case of Moseley v. Koffysontein Mines, Ltd. (1904) 2 Ch. 108 (118), the English Companies remained between them liable for the discount which had in fact materialized, and that, as there was no doubt as to the solvency of either of them, the Indian Company sustained no loss at all.

The Commissioner found that in 1920 each share in the Indian Company was worth only Rs. 98. But the Indian Company nevertheless contended, relying upon In re Wragg, (1897) 1 Ch. 796, that, in ascertaining, on a question between it and the revenue, whether the transaction resulted in loss or not, the allotted shares must be taken at their nominal value of Rs. 200.

Held, further affirming the High Court, that In re Wragg did not compel the court to take the nominal value of the shares allotted by the Indian Company as necessarily representing the price paid by that Company for the Burma shares, and that that case was no bar to the Court

ascertaining the true value of the shares.

In rx Wragg has no application to a case in which the transaction regarded as a purchase and sale of shares, was illusory altogether. It is also inapplicable to a case in which the issue is one between the Revenue and the Indian Company only. (Lord Blanesburgh.) THE TRUSTESS CORPORATION (INDIA), LTD. v. COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY (1930) 57 I. A. 152 = 59 M. L. J. 242.

Fully-Paid shares-Issue of shares as Validity of Possibility of result being issue thereof at a discount-Effect.

If an arrangement for the issue of shares is such that in the course of its due working out there is as much as a possibility that in the result the shares will have been issued at a discount, then the issue of the shares as fully paid cannot be justified. (Lord Blancsburgh.) THE TRUSTEES CORPORATION (INDIA), LTD. v. COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY. (1930) 57 I.A. 152 = 59 M. L. J. 242,

Paid up share-Issue of share as-Effect-Company if becomes debtor to share-holder in respect of that full amount.

The view is not correct that a company by the issue of a share credited with a definite sum as paid thereon, becomes in some sense a debtor to its share-holder in respect of that full amount. A Company is in no sense debtor to capital. The amount credited upon a share may, as between one shareholder and another, while the Company is a going concern, determine the proportion of profits receivable by him as dividend, and, in a winding-up, his proportion of surplus assets. But it has no influence to extend or increase the aggregate amount available for decision in due course of administration among? the whole body of share-holders; nor does it make the Company a debtor for any sum at all. (Lord Blanesburgh.) TRUSTEES CORPORATION (INDIA). LTD. v. COMMISSIONER OF INCOME-TAX, BOMBAY PRE-(1930) 57 I. A. 152=59 M. L. J. 242. SIDENCY.

- Preference shares-Allotment to creditors of, for their claims-Concluded contract for-Proof of.

Held, on the evidence, that there was a concluded contract between K and the respondent Company to take pre ference shares for the amount which he should be entitled to claim. (Lord Atkin.) BAI MANGU 21. BHARAI KHAND COTTON MILLS CO., LTD. (1930) 59 M. L. J. 61.

- Preference shares-Allotment to creditors of, for their claims-Offer of-Meaning true of.

The offer of a Company to allot preference shares to creditors for their claims can only mean for their just claims not for what they may put forward as their claims.

### COMPANY-(Could.)

Shares in-(Contd.)

(Lord Atkin.) BAI MANGU P. BHARAI KHAND COTTON MILLS CO., LTD. (1930) 59 M. L. J. 61.

#### COMPANIES' ACT (VII OF 1913).

S. 109—Registration of mortgage parsuant to-Failure—Effect.

Sec. 169 of the Companies' Act, which requires a mortgage coming within its terms to be registered in a particular manner and within a fixed time, does not avoid a mortgage not so registered absolutely, but only so far as any security is given thereby on the Company's property or undertaking. The effect, therefore, is that if a mortgage is not registered it is valid as an admission of debt, but as against a creditor or the liquidator it could not be said that a valid change on the Company's property had been created. (Six Laucelot Sanderson.) LALA RAM NARAIN v. RADHA KISHEN.

(1929) 57 I. A. 76.

— S. 120—Extension of time for registration under-Order of Reservation in, of rights of any mortgager accrued in the meantime—Meaning and effect of—Mortgage expressly stated to be only second mortgage if converted into first mortgage merely by priority of registration.

The Pioneer Mills, Ltd. (hereinafter called the Company) who carried on the business of sugar manufacturers, executed, on 10.8-1922, a mortgage in favour of the plaintiffs, the property comprised in the mortgage being the Company's sugar refinery and the distillery. It was stipulated that the mortgage should be treated as a second mortgage against the sugar refinery and as a first mortgage against the distillery, and the mortgagor (the Company) covenanted that "there was no other charge or mortgage against the mortgaged premises except that of the Tata Bank against the Sugar Refinery". The mortgage to the plaintiffs was registered in pursuance of the provisions of the Indian Companie's Act of 1913 on 21-11-1922, the time for registration having been extended, under S. 120 of that Act, by an order of the High Court of Calcutta, dated 14-11-1922.

On the same day, viz., 10-8-1922, the Company executed a mortgage in favour of the Tata Bank (hereinafter called the Bank), the premises comprised in the mortgage being the refinery and the machinery attached thereto on which the plaintiffs held a second mortgage. The mortgage to the Bank was registered under the Companies' Act on 22-12-1922, the time for registration having been extended, under S. 120 of that Act, by an order of the High Court at Calcutta, dated 6-12-1922. That order extending the time for registration expressly stated that it (the order) was to be "without prejudice to the rights of any mortgagee accrued in the meantime".

Held that the Court having extended the time for registration of the Bank's mortgage, and the mortgage having been registered within that time, the mortgage was constituted a valid charge ab initio, i.e., from the date of its execution, triz., 10-8-1922, subject only to such conditions as were imposed by the Court in the order which extended the time; that, as, on the face of the plaintiff's mortgage, it was only a second charge upon the refinery, the reservation in the order of 6-12-1922 extending the time for registration of the Bank's mortgage that the order should be without prejudice to the "rights of any mortgagee accrued in the meantime" could not have been intended to convert the plaintiff's second mortgage upon the refinery into a first charge thereon and that the said order had not the effect of interfering with the priority of the Bank's mortgage upon the refinery over the plaintiffs' mortgage therein.

The right which the plaintiffs had to enforce their mort. CRIMINAL gage against the property of the Company depended not only upon the registration, but also on the terms of the precedent to.

#### COMPANIES ACT OF 1913-(Contd.)

mortgage itself, and the right which they had to enforce in respect of the refinery was a second charge only.

The expression "in the meantime" in the order must be taken to mean the period between the date when the said mortgage should have been registered and the date of actual registration. (Str. Lancelot Sanderson.) LALA RAM NARAIN v. RADHA KISHEN. (1929) 57 I. A. 76. CONTRACT.

- Reservation by mutual consent of - Evidence.

In an action for damages for breach of contract brought by the respondents, shipowners, against the appellant, a shipper, the latter admitted the contract and the non-performance of it, and pleaded that the contract had before breach been dely rescinded by mutual consent. All the evidence upon the vital issue of rescission had before the hearing been taken on commission, and the trial Judge had, therefore, not had the advantage of seeing the witnesses in the box. The trial Judge held that the appellant had made good his plea of rescission, and dismissed the suit with costs. On appeal, the appellant had failed to establish his case of rescission, and decreed the suit.

On further appeal to the Privy Council, held that the judgment of the appellate Court expressed on the evidence was the only conclusion judicially permissible. (Lord Ralmenhargh.) ISPAHANI P. SOCIETA VENEZIANA DI NAVIZASIONE A VAPORE. (1930) 59 M.L.J. 1.

#### CONTRACT ACT(IX OF 1872).

S. 22—CRIMINAL PROSECUTION—STIPLING OF— CONSIDERATION OF—AWARD OR AGREEMENT FOUNDED IN PART ON.

-Endence of.

Held, on the evidence, that it was an implied, though not an expressed, term, of an ekrarnama that part of the consideration for it was that a criminal prosecution should not be further proceeded with. (Sir Bined Metter.) KAMINI KUMAR BASU THAKUR: BRENDRA NATH BASU THAKUR. (1930) 57 I.A. 117—34 C.W.N. 489

32 Bom. L. R. 639 = 123 I.C. 187 = 51 C. L. J. 400 = 31 L. W. 811 = A.I.R. 1930 P.C. 100 = 59 M. L. J. 82.

Exidence leading to inference of Sufficiency of Express statement in award not necessary,

It is unlikely that an ekrarnama will expressly state that a part of the consideration for it is an agreement to settle a criminal prosecution. It is enough in such cases if evidence is given from which the inference necessarily arises that part of the consideration is unlawful. (Sir Binol Mitter.)

KAMINI KUMAR BASU THAKUR: BIRENDRA NATH
RASH THAKUR. (1930) 57 I. A. 117 = 34 C.W.N. 489 =

BASU THAKUR. (1930) 57 I. A. 117 = 34 C.W.N. 489 = 82 Bom. L.B. 639 = 123 I.C. 187 = 51 C. L. J. 400 = 31 L. W. 811 = A. I. B. 1930 P. C. 100 = 59 M.L.J. 82.

-Invalidity of award or agreement in case of.

If it is an implied term of a reference to arbitration or of an ekrarnama executed to give effect to the arbitrator's award that the complaint of a non-compoundable offence will not be further proceeded with then the consideration of the reference or the ekrarnama, as the case may be, is unlawful, and the award or the ekrarnama is invalid, quite irrespective of the fact whether any prosecution in law had been started. (Sir Binod Mitter.) KAMINI KUNWAR BASU THAKUR 2: BIRENDRA NATH BASU THAKUR.

(1930) 57 I. A. 117 = 34 C. W. N. 489 = 32 Bom. L. B. 639 = 123 I. C. 187 = 51 C. L. J. 400 = 31 L. W. 811 = A. I. R. 1930 P. C. 100 = 59 M.L.J. 82.

CRIMINAL PROSECUTION.

Commencement of Issue of summons if condition precedent to,

#### CRIMINAL PROSECUTION-(Contd.)

Quare whether a prosecution only commences after a summons is issued, and whether before that stage is reached a complainant cannot be said to have dropped a prosecution under the Code. (Sir Binod Mitter.) KAMINI KUMAR BASU THAKUR. BRENDRA NATH BASU THAKUR.

(1930) 57 I. A. 117=34 C. W. N. 489= 32 Bom. L. R. 639=123 I. C. 187=51 C. L. J. 400= 31 L. W. 811=A. I. R. 1930 P. C. 100=59 M. L. J. 82. CUSTOM.

-Reason for-Disappearance of-Non-challenge of custom long after.

Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared. (Lord Chancellor.) HENRIETTA MUIR EDWARDS P. ATTORNEY-GENERAL OF CANADA. (1929) 58 M. L. J. 300.

#### DECREE.

 Appeal from—Rectification in—Duty of appellate Court—Decree as it stands imperfect and unenforceable— Appellant not asking for any relief except complete reversal of decree.

Where it was found that the decree under appeal was, as it stood unenforceable, and, even if enforceable, certain persons who were not parties to the suit could not be compelled to apply certain money in the way in which it was intended by the decree that it should be applied, held that the decree could not be left in the form in which it stood, and that, as it was the subject of appeal, it might be rectified, although the appellant had not asked for any relief, except for its complete reversal. (Viscount Sumner.) ROBERT HERCULES SKINNER: ROSY SKINNER.

(1927) 108 I. C. 350 = 5 O. W. N. 245 = A. I. R. 1928 P. C. 51.

Consent decree for money—Execution of—Bar of right of—Conditions to be observed by judgment-debtor so as to operate as—Fulfilment of—Evidence of—Effect of.

A consent decree for money provided that the plaintiff would not be competent to execute the decree within 6 months, and that if the defendant executed a patta in terms of a certain agreement and the plaintiff executed a habuliat in similar terms the plaintiff would not be competent to realise the decree money from the defendant, and that otherwise the plaintiff would be competent to realise the decree money from the defendant by executing the decree after the expiry of the said 6 months.

On an application for execution made by the appellant (plaintiff) for realization of the decretal amount by sale of certain properties described therein, held, affirming the High Court, that the respondent (defendant) had always been ready and willing to execute the patta, that the appellant had wrongfully prevented him from doing so, and that the appellant was not, therefore, entitled to execute the decree as a money decree. (Sir Lancelot Sanderson.) MAYA-SANKAR BHAGWANJI 7-. SACHINDRA MOHAN GHOSH.

(1930) 52 C. L. J. 110 = 32 L. W. 66 = 124 I. C. 565 = A.I.R. 1930 P.C. 147 = 59 M. L. J. 201.

### DEED.

--- Construction of -- Conduct of parties subsequent-Consideration of -- Propriety.

Where the question is one purely of the construction of a contract for sale, and there is no difficulty as to the meaning of words, the subsequent conduct of the parties is irrelevant. The question must be decided upon the terms of the written agreement construed, so far as may be, in the light of the surrounding circumstances. (Sir George Lownder.) RUSTOMJI ARDESHIR COOPER v. DHAIRYAWAN.

(1930) 51 C.L.J. 527 = 123 I. C. 712 = 31 Punj. L. R. 604 = A. I. R. 1930 P. C. 165 = 32 Bom. L. R. 798 = 34 C. W. N. 681 = 59 M. L. J. 43.

#### EASEMENT.

Water of stream—Diversion of, for irrigation purposes—Permanent masonry structures—Diversion by putting
up—Claim to right of—Evidence disproving, but disclosing
right to diversion by erection of temporary structures—
Decree proper in case of—Dismissal of suit—Declaration of
latter right. See Water—Diversion from Stream,
ETC. (1929) 58 M. L. J. 285.

#### EVIDENCE ACT.

——S. 32 (3)—Hindu Law—Adoption—Authority to adopt—Evidence of—Widow adopting—Statement of deceased, in mutation proceedings to obtain mutation of names in favour of adopted son—Admissibility of. See SUPPLEMENT—HINDU LAW—AUTHORITY TO ADOPT. (1929) 58 M. L. J. 446.

—S. 33—Hindu Law—Adoption—Authority to adopt
—Evidence of—Widow adopting—Statement of deceased,
in mutation proceedings to obtain mutation of names in
favour of adopted son—Admissibility of—Cross-examination by reversioner disallowed in such proceedings. See
SUPPLEMENT—HINDU LAW—AUTHORITY TO ADOPT.

(1929) 58 M. L. J. 446.

- S. 63 (5)—Settlement Officer's report—Documents referred to in—Secondary evidence of—Report if.

In a case in which the conclusions of the Settlement Officer were largely based on the jamabandi statement put in by plaintiff's predecessor prior to the Decennial settlement of 1790, neither side attempted to obtain production of the original, nor was any secondary evidence tendered. The courts helow treated the Settlement Officer's Report on the Survey and Settlement of the District, which was not even exhibited in evidence as secondary evidence of the contents of the jamabandi statement under S. 63 (5) of the Evidence Act.

Held that the report was not secondary evidence of the contents of the documents referred to in it under cl. (5), or under any other section. (Sir John Wallis.) SUREND-RA NATH KARAN DEO v. KUMAR KAMAKHYA NARAIN SINGH. (1929) 32 Bom. L. R. 515 = 31 L. W. 352 = 123 I. C. 145 = 51 C. L. J. 502 = A. I. B. 1930 P. C. 45.

S. 116—Contract for valuable consideration—Rights relinquished under—Claim sub-equent based on—Maintainability. See MAHOMEDAN LAW—WAKF—INVALIDITY OF. (1929) 58 M. L. J. 252.

— Mahomedan Law—Wakf—Invalidity of—Rights based on—Relinquishment of, for valuable consideration— Claim subsequent inconsistent with—Maintainability. See MAHOEDAN LAW—WAKF—INVALIDITY OF.

(1929) 58 M. L. J. 252,

——Partition decree—Property allotted to one party at—
Revenue sale of—Purchase by other party at—Title based on—Right of purchaser to enforce—Estoppel—Property liable at time of allotment to such sale—Ignorance of all parties as to.

Where, under a partition decree lands belonging to the family were allotted to the defendant without regard to the fact that some of them were liable to be sold at a revenue sale for revenue due on another estate, a fact which was probably unknown to any member of the family, and they were subsequently sold at the revenue sale and purchased by the plaintiffs, the other party to the partition decree, held, that the plaintiffs were not estopped from enforcing their rights against the defendant.

It really made no difference to the defendant whether the lands were purchased at the revenue sale by the plaintiffs or by a stranger. (Sir John Wallix.) KRISHNA PROMADA DASI v. DHIRENDRA NATH GHUSH.

(1928) 56 I. A. 74=56 C. 813=33 C. W. N. 289= 49 C. L. J. 112=113 I. C. 465= A. I. R. 1929 P. C. 50,

## HINDU LAW.

### Adoption--Evidence of.

On an issue as to whether the appellant had been adopted by R, the trial Judge found in favour of the adoption. The High Court reversed him on appeal. The Privy Council reversed the High Court and restored the judgment of the trial Judge, observing that the High Court had not given sufficient weight to any of the following matters :-

(1) That the support given to the appellant's case by R's

widow was against her own interest.

(2) That both sides admitted that R desired to adopt a

(3) That the counter story that R had adopted one N had

already been found to be a false story.

(4) That the appellant in the box stated that he had performed the funeral ceremonies of R and was not crossexamined to the matter.

(5) That at the earliest possible, moment, namely, on the termination of the funeral ceremonies of R, the facts as alleged by the appellant were communicated to and recorded by the village officers and the necessary steps were taken to secure the entry in the Revenue records in substitution for R's name of the name of the appellant as the adopted son of R. (Lord Tombia.) VIRAYVA r. ADENNA.

(1929) 31 L. W. 176-(1930) M. W. N. 60-51 C. L. J. 136-121 I. C. 205-32 Bom. L. R. 499-A.I.R. 1930 P. C. 18 = 58 M. L. J. 245.

-Will of adoptive father reciting-Value of. See HINDU LAW-JOINT FAMILY-PARTITION-DIVISION IN STATUS-EVIDENCE AS TO-WILL SUBSEQUENT OF DECEASED MEMBER, ETC. (1929) 58 M. L. J. 245 (251).

#### Adoption by widow.

-Proof of-Quantum-Preparation for adoption

Willingness of soidow to adopt—Evidence of—Effect.

Where the evidence showed that every preparation had been made by a Hindu widow for adopting a boy to her husband, and that the widow was willing to adopt the boy, held, that in such a case, very strong evidence would not be required to prove the adoption of the boy by her. (Sir (1929) 57 I. A. 61= Binol Mitter.) DESAL D. DESAL.

32 Bom. L. B. 368 = 123 I.C. 166 = 51 C. L. J. 592 = 32 L. W. 34 - 54 Bom. 336 - A. I. R. 1930 P.C. 93 -58 M. L.J. 322.

### Authority to adopt.

-Evidence of-Widow adopting-Statement of deceased, in mutation proceedings to obtain mutation of mames in favour of adopted son-Admissibility of, under S. 32 (3) or S. 33 of Evidence Act, against reversioner-Cross-examination on that point by reversioner disallowed-Effect.

The principle upon which a statement made by a dead person against his pecuniary or proprietary interest is regarded as admissible in evidence is that in the ordinary course of affairs a person is not likely to make a statement to his own detriment unless it is true. But this sanction is manifestly wanting in the case of a Hindu widow who, after a life-long enjoyment of her husband's property, desires at the end to pass it on to her own relations and for this purpose goes through the form of adopting her brother's grandson, to effectuate which she is bound to allege authority from her husband.

Held, accordingly, that a statement made by a deceased Hindu widow in proceedings to obtain a mutation of names in the register in favour of a boy whom she had adopted to her deceased husband that she had authority to adopt to him was not against her pecuniary or proprietary interest within the meaning of S. 32 (3) of the Evidence Act and was not admissible in evidence under that sub-section.

Held further, that the widow's statement was not ad-

#### HINDU LAW-(Contd.)

Authority to adopt-(Contd.)

inasmuch as the Commissioner in the mutation proceedings definitely ruled, and rightly, that the question as to the power to adopt was not in issue in those proceedings and disallowed all cross-examination on that point by the reversioners (against whom the statement was sought to be used in evidence in the suit out of which the appeal arose), and the reversioners therefore never had the opportunity or right to cross-examine upon it.

The true reading of S. 33 is that the adverse party in the first proceeding had both the right and the opportunity of cross-examining, and not " the right or opportunity to crossexamine," (Lord Buckmaster.) LAL BAHADUR SINGH :: BIJAI BAHADUR SINGH. (1929) 52 A. 1 = 57 I. A. 14 = 1930 A. L. J. 122 = 34 C. W. N. 369 = 7 O. W. N. 295 =

51 C.L.J. 230 = 32 Bom. L. R. 487 = 122 I.C. 8 = 31 L W. 434 = A.I.R. 1930 P. C. 79 = 58 M. L. J. 446.

-Exidence of one old man who had no sufficient reaton to remember incident-Sufficiency of.

Where the only evidence of an alleged authority to adopt, not attempted to be exercised, and not referred to or acted upon, by the widow until some 50 years after the death of her husband was that of an old man, and there was no exact reason given as to why he should have recollected except the circumstances that he gave, 192., that he found the widow unhappy and weeping, because she was to be left utterly helpless, and that she was consequently told by her husband to adopt, held, that it was impossible to rely upon that piece of evidence and that piece of evidence alone for the purpose of satisfying the very grave and serious onus that rested on the adopted son of proving the alleged authority to adopt. (Lord Buckmaster.) LAL BAHADUR SINGH (1929) 52 A. 1 = P. BIJAI BAHADUR SINGH.

57 I A. 14 = 1930 A. L. J. 122 = 34 C. W. N. 369 = 7 O W. N. 295 = 51 C. L. J. 230 = 32 Bom. L.R. 487 = 122 I. C. 8 = 31 L. W. 434 = A. I. B. 1930 P. C. 79 = 58 M. L. J. 446.

-Proof strict of-Necessity-Lapse of time-Necessity greater after long.

A very grave and serious onus rests upon any person who seeks to displace the natural succession of property by the act of an adoption. In such a case the proof requires strict and almost severe scrutiny, and the longer the time goes back from the date when the power was given to the time when it comes to be examined, the more necessary it is having regard to the fallibility of human memory and the uncertainty of evidence given after the lapse of such time, to see that the evidence is sufficient and strong. (Lord Buckmaster.) Lat. Bahadur Singh r. Bijai Bahadur (1929) 52 A. 1=57 I. A. 14= SINCH.

1930 A. L. J. 122=34 C. W. N. 369=7 O. W. N. 295= 51 C. L. J. 230 = 32 Bom. L. R. 487 = 122 I. C. 8 = 31 L. W. 434 = A. I. R. 1930 P. C. 79 = 58 M. L. J. 446.

#### Joint Family.

-Manager-Family outstandings collected and misappropriated by-Junior member's claim in respect of-Limitation-Art. 89 of Limitation Act of 1908-Applicability. See LIMITATION ACT OF 1908-ART. 89. (1929) 58 M. L. J. 245 (251).

## Migrating family.

-Law governing-Evidence.

The question was as to the validity of an adoption made by a Hindu widow without the express authority of her husband for that purpose, and the answer to that question depended upon the school of Hindu law applicable to the case, the Bombay School of law or the Benares School of missible in evidence under S. 33 of the Evidence Act also, law. The property, the title to which was in question, was

## HINDU LAW-(Contd.)

Migrating family-(Contd.)

within the Presidency of Bombay. But the evidence showed that the ancestors of the husband of the widow originally came from the District of Delhi, where the Benares School of law was applicable, and that that was the origin of the family. The evidence further showed that the old customs prevailing on the Delhi side were still good among the family.

Hdd that the proper inference was that the old customs prevailing on the Delhi side had been introduced into the present place, Bombay, and that the family continued to be governed by the Benares School of Hindu law. (Lard Buckmaster.) BALKISAN DEVCHAND r. KUNJALAL HIRA LAL. (1929) 51 C. L. J. 237=32 Bom. L. R. 365= 122 I. C. 1 = 31 L. W. 625 = 58 M. L. J. 358.

## Partition.

-DIVISION IN STATUS-EVIDENCE AS TO.

-Date of alleged division-Discrepancy between witnesses as to-Effect.

Discrepancy between witnesses as to dates is not unnatural in a case in which the question is as to the date at which an alleged division in status took place, and so far from being necessarily a hadge of fraud, may even be some indication of bona fides. (Lord Tomlin.) VIRAYVA 2. ADENNA.

(1929) 31 L. W. 176-1930 M. W. N. 60-51 C. L. J. 136=121 I. C. 205=32 Bom. L. R. 499= A. I. R. 1930 P. C. 18=58 M. L. J. 245 (250-1).

-List of property prepared at division-Non-production of before Tabsildar in mutation proceedings-Inference against division from-Propriety of.

A list of property alleged to have been made at the time of a division in statuts between the members of a Joint Hindu Family is not a relevant document before the Tahsildar in proceedings before him in connection with the entry of the name of an adopted son of one of the parties to the division who had died in the interval in the Revenue Records in substitution for the deceased's name and the nonproduction of the list before the Tahsildar on that occasion does not militate against the case of the said division in status. (Lord Tomlin.) VIRAYVA v. ADENNA.

(1929) 31 L. W. 176=1930 M. W. N. 60= 51 C. L. J. 136=121 I. C. 205=32 Bom. L. R. 499= A. I. R. 1930 P. C. 18 = 58 M. L. J. 245 (250-1)

Will subsequent of decrosed member reciting division -Value of.

Held that the will of a deceased Hindu, which recited (a) a prior division in status between himself and his brothers, and (b) the adoption of the appellant by the deceased, being genuine, was cogent evidence of the division in status and of the adoption of the appellant. (Lord Tomlin.) VIRAYYA p. ADENNA. (1929) 31 L. W. 176=1930 M.W. N. 60=

51 C. L. J. 136 = 121 I. C. 205 = 32 Bom. L. R. 499 = A. I. R. 1930 P. C. 18 = 58 M. L. J. 245 (251)

## Evidence of.

-Admission by deceased member of jointness-Admissibility of, against his representative in interest-Insufficiency of, to counteract evidence of partition.

A statement made by a deceased person that property in respect of which he executed a mortgage deed was the joint property of himself and his brother and that he had been requested by his brother to execute the mortgage was, on an issue as to whether the deceased and his brother were or were not at the date on which the mortgage was executed joint as regards the property mortgaged, held to be admissible as an admission against the representatives in interest of the deceased, but to be not such a clear assertion of the jointness of the family as to induce their Lordships to hold. in the face of the other evidence in the case, that there had HINDU LAW-(Contd.)

Evidence of-(Contd.)

been no partition. (Sir Binol Mitter.) DESAL v. DESAL (1929) 58 M. L. J. 322, Proof of.

Quantum.

Held, reversing the High Court and restoring the Sub-Judge, that the evidence in the case set out in their Lordships' judgment amply justified the conclusion of the Sub-Judge that there had been a partition between the two brothers (through whom the parties to the appeal claimed) during their life-time. (Sir Binod Mitter.) DESAI v. DESAI. (1929) 58 M. L. J. 322.

-Widow-Sale by-Necessity for-Onus of Proof-Future necessity-Sale in anticipation of-Validity.

The burden of proving that there was necessity justifying

a sale by a Hindu widow lies upon the purchaser.

Where in the case of a sale by Hindu widow it appeared that at the date when the deed of sale was executed the widow had admittedly in her possession Rs. 1,600, and the expenses which it was alleged justified the sale on the ground that there was necessity might not even then have been in contemplation and certainly had not then been incurred, held that necessity for the sale had not been established. (Lord Buckmaster.) Balkisan Devchand v. Kunjalal Hira-(1929) 51 C. L. J. 237=32 Bom. L. R. 365= 122 L C. 1=31 L. W. 625=A. I. R. 1930 P. C. 133=

58 M. L. J. 358. Religious Endowment.

-Mutt-Independent and separate Mutts-Mahant of one of-Succession by, to mahantship of other-Right of.

There is no rule precluding a mahant of an independent muth from claiming to succeed to the gadi of another independent and separate muth. (Sir George Lowndes.) BABA JWALA DAS r. PIR SANT DAS. (1930) 34 C. W. N. 933= 59 M. L. J. 283.

## INCOME TAX ACT OF 1922.

-S. 4 (3) (1)-Trust deed-Income of property covered by, applicable to purposes neither religious nor charitable-Liability to tax of entire-Portion of property exclusively appropriated to charitable or religious purposes not identifiable-Effect.

In a case in which a claim to exemption from incometax was based upon S. 4 (3) (1) of the Act, it appeared that under the trust deeds on which the claim to exemption was founded the income of the trust property was applicable to purposes many of which were neither religious nor charitable, and that no part of the property could be identified or appropriated exclusively to charitable or religious purposes,

Held, that the whole of the property covered by the trust deeds in question was assessable to income-tax. (Lord Tomlin.) MUHAMMAD IBRAHIM RIZA MALAK . COMMISSIONER OF INCOME-TAX, NAGPUR.

(1930) A. I. R. 1930 P. C. 226. -S. 6. (vi)-Other sources-Meaning of. SUPPLEMENT UNDER THIS ACT-S. 12 (1).

(1930) 57 I. A. 228.

-Ss. 12(1), 6-Zemindari permanently settled-Income derived from-Liability to tax of-Permanent Settlement Regulations-Scope and effect of -Basis of assessment in such case-S. b. (vi)-Other source-Meaning of.

The Income-Tax Act, 1922, by Ss. 6 and 12, brings into charge for the purposes of income tax the income derived from a Zemindari and a Zemindar is assessable in respect of income profits and gains derived from that source.

In assessing a Zemindar to income-tax in respect of the income derived from his Zemindari, his income, profits and gains from that source should be computed after making proper allowance in respect of the jama assessed and

## INCOME TAX ACT OF 1922-(Contd.)

When the Permanent Settlement Regulations contain assurances against any claim to an increase of the jama, based on an increase of the Zemindari income, they contain no promise that the Zemindar shall in respect of the income which he derives from his Zemindari be exempt from liability to any future general scheme of property taxation, or that the income of a Zemindari shall not be subjected with other incomes to any future general taxation of incomes.

The words of S. 12 (1) of the Income-Tax Act of 1922 are expressly framed so as to make the sixth head mentioned in S. 6 describe a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them i. c., provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India as provided by S. 4 (1), and are not exempted by virtue of S. 4 (3).

In S. 6, the words "other sources" used in relation to the words "property" would naturally mean sources other than the source which the word "property" connotes in this Act. (Lord Russell of Killwarn) PROBHAT CHANDRA BARUA? EMPEROR.

(1930) 57 I. A. 228-34 C.W.N. 1017.

— S. 66-Object of—Conditions imposed by—Compliance with—High Court's duty to sec to, before entertaining question under section.

The High Court must require, before they seek to entertain any question under S. 66 of the Act, that the preliminary requirements of the section are strictly complied with. The stringency of these requirements is clearly deliberate. It is the intention of the enactment that the High Court is not to be flooded with such applications. The object is salutory. (Lord Blanchurgh.) TRUSTES CORPORATION (INDIA). LTD., D. COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY.

(1930) 57 L. A. 152 - 59 M.L.J. 242.

S. 66—Reference under—Finding of fact of Commissioner—Binding on High Court and on Privy Council in appeal to it if and when. (Lord Blanciburgh.) TRUSTEES CORPORATION (INDIA), LTD.: COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY. (1930) 57 I.A. 152—59 M. L. J. 242.

### JUDGMENT.

-Effect of - Decree actually passed - Reference to-

Without examining the decree actually passed the true effect of the decision in the case cannot be ascertained. (Lord Tomlin.) RAJA OF KAMNAD P. MANGALAM.

(1930) A. I. R. 1930 P. C. 234 = 59 M. L. J. 289.

## LEGAL PRACTITIONER.

——Clients with adverse interests—Acceptance of—Not proper practice. (Lord Thankerton.) ANANDALWAN F. JUDGES OF THE HIGH COUT OF JUDICATURE AT MADRAS. (1930) 34 C. W. N. 534

(1930) M. W. N. 300 = 1930 A. L. J. 539 = 31 L. W. 627 = A. I. R. 1930 P. C. 144 = 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 635. Misconduct.

— Charge of Inquiry into-Formulated charges— Necessity-Evidence in case of Taking and judging of —

In a case in which a legal practitioner is charged with professional misconduct, the enquiry should proceed on formulated charges, not only in fairness to the practitioner but in order that the evidence may relevantly bear on the particular issues, and, further, the evidence should be carefully taken and judged according to the ordinary standards of proof. (Lord Thankerton.) ANANDALWAN 2.

### LEGAL PRACTITIONER-(Contd.)

Misconduct-(Contd.)

JUDGES OF THE HIGH COURT OF JUDICATURE AT MADEAS. (1930) 34 C. W. N. 534-

(1930) M. W. N. 300 = 1930 A. L. J. 539 = 31 L. W. 627 = A. I. B. 1930 P. C. 144 – 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 636.

——Charges of—Proof clear of, necessary—Inference of, from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion not proper. (Lord Thankerton.) ANANDALWAN r. JUDGES OF THE HIGH COURT OF JUDICATURE AT MADRAS.

(1930) 34 C. W. N. 634 = (1930) M. W. N. 300 = 1930 A. L. J. 539 = 31 L. W. 627 = A. I. R. 1930 P. C. 144 = 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 635.

— Client—Notice on behalf of, prejudicial to his interests—Sending of—Misconduct in—Finding as to— Propriety—Conditions.

Before a gractitioner can be found guilty of professional misconduct in sending such a notice, it must be shown, first, that the practitioner knew the rights of parties and that his client did not know them or did not intelligently or deliberately realise them, and, secondly, that the notice was in fact prejudical to the interests of his tlients. (Lord Thankerton.) ANANDALWANT, JUDGES OF THE HIGH COURT OF IUDICATURE AT MADRAS.

(1930) 34 C. W. N. 534 = (1930) M. W. N. 300 = 1930 A. L. J. 539 = 31 L. W. 627 = A. I R. 1930 P. C. 144 = 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 635.

Fast exceptions—Stepulation for—Per se net gross misconduct.

Though the fact that the amount demanded for fees is exorbitant in view of the work done or the work undertaken may be open to criticism, it cannot amount of itself to gross professional misconduct. (Leval Thunkerton.) ANAND-ALWAN P. JUDGES OF THE HIGH COURT OF JUDICA-TURE AT MADRAS. (1930) 34 C. W. N. 534

(1930) M. W. N. 300 = 1930 A. L. J. 539 = 31 L. W. 627 = A. I. R. 1930 P. C. 144 = 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 635.

-Fraudulent conduct-Allegation of-Clear and specific mention in charge of-Necessity.

Fraudulent conduct, if intended to be alleged against a practitioner, should be clearly and specifically mentioned in the charge, so that the practitioner may have notice of it. (Lord Thankerton.) ANANDALWAN v. JUDGES OF THE HIGH COURT OF JUDICATURE AT MADRAS.

(1930) 34 C. W. N. 534 = (1930) M. W. N. 300 = (1930) A. L. J. 639 = 31 L. W. 627 = A. I. R. 1930 P. C. 144 = 123 I. C. 184 = 7 O. W. N. 517 = 58 M. L. J. 635.

### LIMITATION ACT OF 1908.

-Art. 120-Bengal Tenancy Act, 1885-Rent decree against original tenure-holder after transfer of tenure-Sale of tenure in execution of Suit by transferee for declaration against landlord's right of Limitation Starting point.

Art. 120 of the Limitation Act applies to a suit by the transferee of a tenure for a declaration that the landlord is not entitled to have the tenure sold in execution of a decree, called a rent-decree, obtained by him against the original tenure-holders. The starting point of the period provided by that article is, in such a case, not the date of the decree, but the date on which the landlord first applied for the sale of the tenure in execution of that decree. (Sir George Lounder.) JITENDER NATH GHOSE r. MONMOHAN GHOSE. (1930) 34 C. W. N. 831 (838).

## LIMITATION ACT OF 1908-(Contd.)

-Art. 132-Suit to enforce mortgage-Limitation-Starting point-Mortgagee entitled, but not bound, to go into possession and collect rents and profits. No time fixed for payment-Demand and refusal starting point in case of.

In a suit for a sale on foot of certain mortgages, which provided for interest at a certain rate, and that the mortgagee should have the right to collect the rents and profits arising from the mortgaged property, an account being taken for each year and the balance due for principal and interest settled, but which fixed no time for payment of the debt, held, that the mere fact that the mortgagee permitted the mortgagor to receive the rents and profits subsequent to the dates of the mortgages did not give rise to a cause of action for the suit, and that on the facts of the case the mortgage money did not become due and the cause of action did not arise until demand for payment of the mortgage debt was made by the mortgagee and it was refused by the mortgagor.

The mortgagee was not bound by the terms of the mortgages to enter into possession of the mortgaged properties and to apply the rents and profits thereof towards the pay-ment of the debt, though he had power to do so. (Sir Lancelot Sanderson.) NILKANTH BALWANT NATUO. VIDYA NARASINGH BHARATI.

(1930) 57 I. A. 194 (205-6).

## MADRAS ESTATES LAND ACT, 1908.

-Ss. 4 and 27-Land allowed to lie fallow-Rent in respect of - Landlord's right to-Custom relieving tenant of rent-Effect.

Where there is a custom to relieve the tenant of rent in respect of land allowed to lie fallow, the custom is one of the conditions under which the ryot holds his land within the meaning of S. 27 of the Madras Estates Land Act, and the operation of S. 4 of the Act is restricted to the extent to which the tenant by the custom is relieved of his rent. (Lord Tomlin.) RAJA OF RAMNAD v. MANGALAM.

(1930) A. I. R. 1930 P. C. 234 = 59 M. L. J. 289.

S. 73-Experimental harvesting of portion of holding to find out yield-Landlord's right of-Term in pattak as to- Inscrtion of-Landlord's right of.

Where the landlord alleged that, in order to determine what was his proportion of the produce of a crop, he had a right to harvest himself a section of the field by way of experiment and to have provisions in regard to it inserted in the pastah, held that the claim of the landlord to have inserted in the pattah any provision entitling him to make such an experimental harvesting as was suggested was contrary to the provisions of S. 73 of the Estates Land Act. (Lord Tomlin) RAJA OF RAMNAD v. MANGALAM. (1930) A. I. R. 1930 P. C. 234 = 59 M. L. J. 289.

## MARRIAGE.

-French Law-Marriage under-Validity of-

Under the law of France, there must be a civil ceremony of marriage, and if that has not taken place any religious ceremony is an idle performance so far as that law is concerned. (Viscount Dunedin.) EUGENE BETHUIAME F. DAME ANNE-MARIE YVONNE DASTOUS. (1929) 122 I. C. 312.

-Putative marriage-Civil rights attached to-Ali-

mony-Wife's right to All civil rights appendant to real marriage are not produced by a putative marriage. But the criterion is obvious, those only subsist which are consistent with a real marriage, not existing. Alimony is such a right. The duty of a husband to support his wife is quite apart from his duty to cohabit with her. The continuance of alimony to the wife

## MARRIAGE-(Contd.)

is one of the civil effects of a marriage held null but allowed to be putative. (Viscount Dunedin.) EUGINE BETHUIAME P. DAME ANNE-MARIE YVONNE DASTOUS.

(1929) 122 I.C. 312.

-Putative marriage-Marriage which is mull if can

The doctrine of putative marriage was well known to the Canon law, and has been adopted by many systems which have founded their law on the Canon law. The proposition that a putative marriage cannot be a marriage which is null is not correct. It is just when a marriage is declared null that the doctrine of putative marriage becomes necessary. (Viscount Dunedin.) EUGENE BETHUIAME v. DAME ANNE-MARIE VIVONNE DASTOUS

(1929) 122 I. C. 312.

-Validity of-Law governing-Law of place where it is effected-Law of place of parties domicile.

It there is one question better settled than any other in International Law, it is that as regards marriage-putting aside the question of capacity-Locus regit actum. If a marriage is good by the locus of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would not constitute marriage in the country of the domicils of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage any where, although the ceremony or proceeding if conducted in the place of the party's domicil would be considered a good marriage. Of course, these results may be altered by positive i.c., Statute I.aw. (Viscount Dunedin). EUGENE BETHAUINE D. DAME ANNE-MARIE VIVONNE DASTOUS. (1929) 122 I. C. 312.

## MASTER AND SERVANT.

-Servant-Personal danger to-Risk of-Order for service at particular place involving-Legality of-Disobedience by servant of, though willing to work at other places free from such danger-Dismissal for grave fault in case of-Damages for wrongful dismissal-Claim for-Maintainability.

The respondent was an employee of the appellant Bank. By his contract of service he was bound to serve as an employee of the Bank at Constantinople and other places. On being asked to work at Constantinople he represented to the appellant Bank that he being a Turkish subject, his life was in danger at Constantinople in its then troubled state, and requested a provisional transfer to one of the Bank's agencies outside Turkey. The appellant declined to accede to that request and refused to allow him to leave whereupon the respondent fled from Constantinople. The appellant Bank dismissed him from service without notice and without pension for grave fault within the meaning of the book of regulations which dealt with conditions of service and a contributory pension fund for the staff.

In a suit brought by the respondent for damages for wrongful dismissal, held,

(1) that the risk to the respondent was such that he was not bound to obey the Bank's order to him to remain in Constantinople, and the said order was therefore not a lawful one;

(2) that the respondent's refusal was not a grave fault within the meaning of the book of regulations;

(3) that the respondent's offer of service outside Turkey afforded a complete answer to the appellant's pleas that the respondent was under a permanent disability to serve the appellant and that the contract of service had become incapable of performance by the time of dismissal;

### MASTER AND SERVANT-(Contd.)

and (4) that respondent was therefore entitled to damages for wrongful dismissal. (Lord Thankerton). OTTOMAN BANK v. ETIENNE CHAKARAIN. (1930) 59 M. L. J. 336.

#### MORTGAGE.

-Mortgaged propercy-Security on portion of Abandonment by mortgagee of-Evidence-Possession-

Mortgagee with.

In a suit for sale brought on foot of certain mortgages executed between the years 1840 and 1844, and treated as consolidated, the High Court held that the parties had agreed that the security of the mortgaged properties in British India, that is, in Satara and Belgaum, should be given up, and that the mortgaged properties in Kolhapur Iply should be considered as security for the debt. They thought that a presumption to the said effect was raised by two facts, (1) that before 1860 the properties in British territory "were given back" to the mortgagors and (2) that no steps were taken to recover possession until the suit was filed long after.

Held, that the facts relied upon were insufficient to raise the presumption to which the High Court referred (203).

There is no evidence to justify the finding that the said properties "were given back", if by these words the learned Judges meant a retransfer of the properties. The mortgage deeds were not cancelled. They remained with the mortgagee or his successors, and they were produced and proved by the plaintiffs at the trial. There is no evidence of any surrender of the plaintiffs' rights, except the fact that after 1859 the plaintiffs or their predecessor ceased to receive the rents and profits of the mortgaged properties situated in Satara and Belgaum. The mortgagor was the spiritual guru of the mortgagee, and the mortgagee might have given up the possession of the villages in British territory to enable the mortgagor to maintain the establishment nd meet the expenses of the Samsthan, without in any way tending to give up his rights as mortgagee or to abandon remedies, if and when he desired to enforce them 03.4). (Sir Lancelot Sanderson.) NILKANTH BAL-NT NATU D. VIDYA NARASINH BHARATI. (1930) 57 I. A. 194.

of, by mortgager to mortgagee rubsequent to mortgage-Plea of-Onut of Proof of Question as to-Fact or Law.

Where, in a suit for redemption of a usufructuary mortgage for a term, the mortgagees admit the mortgage sued upon, but plead a subsequent sale of the mortgaged property to them, the onus is on the mortgagees to show that the mortgage had been extinguished by subsequent sale.

The question whether there has been such a sale or not is a question of fact, and it does not cease to be such a question merely because some of the items of evidence adduced to prove the sale consist of entries in the record of rights prepared under the Punjab Land Revenue Act XVI of 1887. (Sir Binod Mitter.) WALI MAHOMED v. MD. BAKSH.

(1929) 67 I.A. 86 = 1930 A.L.J. 292 = 31 L.W. 321 = 31 P.L.B. 145 = 32 Bom, L.B. 380 = 122 I.C. 316 = 11 Lah. 199 = 51 C.L.J. 518 = A.I.B. 1930 P.C. 91 = 59 M. L. J. 53.

OUDH-LAND TENURES IN-Under proprietary right-Thekedar Right merely if a-Issue as to-

The suit was for a declaration that the defendant had no proprietary or under-proprietary right in a village situated whithin a taluqa of which the plaintiff was the taluqdar. In his right of taluqdar the plaintiff was the superior proprietor of the said village. The defendant was in possession of the village, and at the time of the suit he was paying to the plaintiff a yearly rent. His defence was that he held under-proprietary rights in the village, which had been

### OUDH-LAND TENURES IN-(Cond.)

granted to his ancestor by the ancestor of the plaintiff four generation before. He denied that he was merely a thekedar of the Village as alleged by the plaintiff.

The plaintiff and the defendant did not prove the particular cases on which they respectively relied in the pleadings. The plaintiff failed to establish that the defendant was mere thekedar, and the defendant failed to prove the deed of gift on which he relied. The Chief Court held, however, on the other evidence in the case, reversing the trial judge, that in fact there was a grant by the ancestor of the defendant of an heritable and transferable estate in the suit willage, by reason of which the defendant had under-proprietary rights. On a detailed consideration of the evidence, their Lordships affirmed the Chief Court. (Sir Lancolot Sanderson.) BISHNATH SARAN SINGH v. RAWAT SHEO BAHADUR SINGH. (1930) 59 M. L. J. 169.

#### PARTNERSHIP.

——Dissolution and accounts—Suit for—Amount due from defendant to plaintiff—Interest on—Plaintiff's right to, only from date of final decree.

In an action to dissolve and wind up the affairs of a partnership, it is impossible to say, until the accounts have been taken, what if anything is due from any partner to his co-partners. Accordingly in such an action interest should only be allowed to the plaintiffs from the date of the final decree by which the amount (if any) is found due from the defendants to the plaintiff. (Lord Russel of Kilonom.)
SULEMAN P. ABBUL LATIF. (1930) 34 C.W.N. 737 =

1930 A.L.J. 868 = 124 I.C. 891 = 52 C.L.J. 10 = A.I.B. 1930 P.C. 185 = 59 M.L.J. 121.

- Dissolution and accounts-Suit for-Goodwill of business-Value of-Taking into account of-Necessity.

In taking the accounts of a partnership the value of the goodwill must also be brought into the accounts. (Lord Russel of Killsonon.) SULEMAN v. ABDUL LATIF.

(1930) 34 C. W. N. 737 = 1930 A. L. J. 868 = 124 I.C. 891 = 52 C.L.J. 10 = A.I.B. 1930 P.C. 185 = 59 M. L. J. 121.

Partner—Mercantile firm—Partner of—Bills— Authority to draw and accept—Implied authority—Cancellation express of, not brought to knowledge of discounting banks—Effect of.

A partner in a mercantile firm has implied authority to draw and accept bills on behalf of the firm. Even if such implied authority has been expressly cancelled, the other partners are liable on the bills if such cancellation was not brought to the knowledge of the discounting banks. (Lord Tomlin.) MOTI LAL v. MANUCHA UNAO COMMERCIAL BANK, LTD. (1930) A. I. B. 1930 P. C. 238.

Partner-Over-drawings by-Interest on-Liabi-

Ordinary rule is that a partner is not charged with interest. (Lord Russel of Killowom) SULEMAN v. ABDUL LATIF. (1930) 34 C. W. N. 737 = 1930 A.L.J. 868 = 124 L.C. 891 = 52 C.L.J. 10 = A. I. B. 1930 P. C. 185 = 56 M. L. J. 121.

Where one of the issues in a suit for dissolution of a partnership and for accounts was as to the shares of the defendants in the partnership business, and there were concurrent findings of the Courts below on that issue, held,
that there was no reason for departing from the ordinary
rule of the Privy Council, as to concurrent findings of fact.
(Lord Russell of Killowom.) SULEMAN v. ABDUL LATIF.

(1930) 59 M.L.J. 121.

POSSESSION-Submergence of land-Effect of, on PRIVY COUNCIL-(Contd.) oroner's possession.

Mere submergence of land will not put an end to its owner's possession. (Sir George Loundee.) RAMPATI CHATTERJEE v. RAMANI MOHAN SEN.

(1930) 34 C.W.N. 772=52 C.L.J. 132= A.I R. 1930 P.C. 198=59 M.L.J. 208

PRACTICE-PLEADING-Proof-Variance between-Data for finding out-Form of plaint-Issues-Case presented at trial-Regard for.

Where notwithstanding the form of the plaint, the suit was fought by the parties deliberately upon issues substantially as framed by the trial Judge held, that the criticism that there had been a variance between the pleadings and the case alleged at the trial was not justified, and the suit ought to be determined upon the footing upon which it was dealt with by the trial Court. (Lord Temlin.) SAGAR-MALL NATHANY 2. GALSTAUN. (1930) 59 M. L. J. 328.

#### PRIVY COUNCIL.

Appeal-Decree under-Variation of-Propriety-Contents of decree not known with certainty-Effect.

It is impossible for the Privy Council to vary a decree the contents of which have not been placed before it, and are not known with certainty. (Lord Tomlin.) RAJA OF RAMNAD v. MANGALAM. (1930) A.I.R. 1930 P. C. 234= 59 M. L. J. 289.

-Appeal-Finding of fact of first appellate court-Interference with-Jurisdiction-Second appeal-Decree in - Appeal from.

In an appeal to the Privy Council from the decree in a Second Appeal, held that the finding of fact of the first appellate court as to the existence of a custom was binding upon the Privy Council. (Lord Tomlin,) RAJA OF RAM-NAD : MANGALAM. (1930) A. I. R. 1930 P. C 234 = 59 M. L. J. 299.

-Appeal-Right of-Legislative body-Flection to membership of-Validity of-Decision as to- Appeal from -Malta Court of Affent-Decision of-Malta Letters Patent-S. 33-Effect.

S. 33 of the Letters Patent of Malta provides: "All questions which may arise as to the right of any person to be or remain a member of the Senate or the Legislative Assembly shall be referred to and decided by our Court of Appeal in Malta ".

Held, on a construction of the section, that no appeal lay to the Privy Council from the judgment of the court of Appeal in Malta deciding against the validity of the election of two of the appellants to be members of the Senate of Malta.

Decisions on questions relating to the membership of legislative bodies are not decisions of mere ordinary civil rights; such an enactment as this S. 33 creates an entirely novel jurisdiction, the history of which, in cases where the legislative assembly is not itself then created for the first time, has been that the assembly has, by its own consent, concurred in vesting in the Court the jurisdiction hitherto inherent in itself of determining the status of those who claim to be its members. The jurisdiction is extremely

special; it is of a character that ought, as soon as possible, to become conclusive, in order that the constitution of the assembly may be distinctly and speedily known. And there is another reason for finality in such a jurisdiction. It concerns what, according to British ideas, are normally the rights and privileges of the Assembly itself, always jealously maintained and guarded in complete independence of the Crown so as far as they properly exist. (Lord Blanesburgh.) LORD STRICKLAND v. GIWSAPPA GRIMA. (1930) A. I. R. 1930 P. C. 227.

#### SHIKMI TALUK.

-Meaning.

The expression is applied to a taluk which was once independent but is now inside another estate. (Sir John Wallis.) SURENDRA NATH KARAN DEO P. KUMAR KAMAKHYA NARAIN SINGH.

> (1929) 32 Bem. L. R. 515 = 31 L. W. 352= 123 I. C. 145 = A. I. R. 1930 P. C. 45.

#### STRAITS SETTLEMENTS.

Chinese domiciled in-T'sip or secondary wife of.

-Direrce of .

According to Chinese custom a t'sip cannot be put away who has borne a son and in the Straits Settlements there is no divorce provided for by the laws of the Chinese. (Lord Russell of Killower). KHOO HOOI LEONG v. KHOO CHONG YEOK. (1930) 59 M. L. J. 256.

-Illegitimate natural son of-Legitimation of, by subsequent recognition.

The Chinese custom of legitimation of a natural son by subsequent recognition is not part of the law operative in the Straits Settlements.

Legitimation of a child, whose parents are not husband and wife, is unknown and repugnant to the common law of England, and no hardship (much less injustice or oppression) need result from a refusal to admit a modification in this respect of the English law in its application to Chinese. KHOO HOOI LEONG v. (Lord Russell of Killewon.) (1930) 59 M. L. J. 256. KHOO CHONG YEOK.

-Presumption of, from recognition of ton.

The mere fact of recognition of a person as a son cannot raise any presumption of marriage between the parents. (Lord Russell of Kilotow.) KHOO HOOI LEONG v. (1930) 59 M. L. J. 256. KHOO CHONG YEOK.

-Proof of.

Held, on the evidence, that P was not a t'sip or lawful secondary wife of the settlor, and that the association between them was merely of a temporary or casual character. (Lord Russell of Killowon.) KHOO HOO! LEONG T. (1930) 59 M. L. J. 256. KHOO CHONG YEOK.

-Sen of -Legitimacy of .

According to the law operative in the Straits Settlements the son of a t'sip or secondary wife will be legitimate being a son by a lawful wife. (Lord Russell of Killisten.) KHOO HOOI LEONG P. KHOO CHONG YEOK. 59 M. L. J. 256.